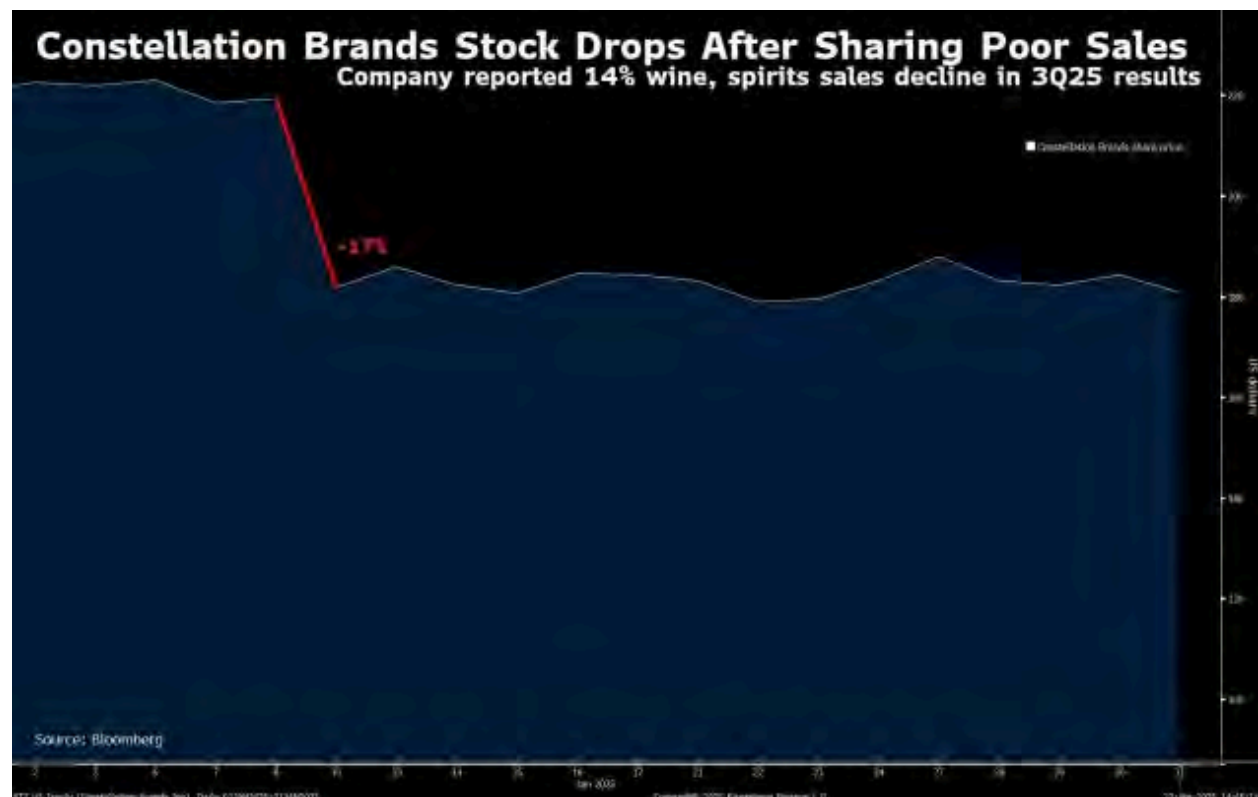


Constellation Brands Brass Sued by Shareholder Over Drink Demand

- COURT: W.D.N.Y.
- TRACK DOCKET: No. [1:25-cv-00353](#) (Bloomberg Law subscription)

Constellation Brands Inc. leadership overhyped its wine and spirits segment's growth potential before revealing disappointing financial results that missed its sales performance target, a shareholder lawsuit said.

The alcohol distributor's share prices slid 17% on Jan. 10 after announcing a 14% net sales decline for that sector in the third quarter of fiscal year 2025, with executives citing demand headwinds and inventory destocking, an investor told the US District Court for the Western District of New York on Monday. It was the stock's steepest one-day decline in nearly 12 years, according to data compiled by Bloomberg.



Executives and current and former directors harmed investors and Constellation Brands by issuing and causing the company to tout misleading projections about its wine and spirit business' momentum, said the shareholder derivative complaint, which is filed on behalf of a company against certain decision-makers. This exposed the company—which includes brands Robert Mondavi Winery, Modelo Especial, Meiomi, and more—to reputational and financial harm, including via potentially-costly litigation, said plaintiff Jeff Mason.

Meanwhile, five of these leaders engaged in improper insider trading, raking in a combined \$81.6 million, Mason said. And management forced the company to spend more than \$668 million to buy back over 690,000 of its own wrongly inflated shares between April and November 2024, he said.

Mason alleges wrongdoing by executives and current and former board members from at least April 11, 2024, through Jan. 8, 2025. The market was closed in remembrance of late President Jimmy Carter on Jan. 9.

The Brown Law Firm PC represents Mason, who seeks damages and corporate governance reform for Constellation Brands, among other relief. He's suing management for alleged securities law violations, breach of fiduciary duties, unjust enrichment, abuse of control, gross mismanagement, and waste of corporate assets.

It's the second derivative action filed recently in this court alleging similar issues. And a proposed class action containing similar securities allegations against the company and three leaders was filed in February.

Constellation Brands didn't immediately respond to an email seeking comment. Neither did law firms representing it in that related litigation, Nixon Peabody LLP and Kirkland & Ellis LLP.

The case is Mason v. Newlands , W.D.N.Y., No. 1:25-cv-00353, complaint filed 4/21/25 .

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Adidas Investor's Fraud Claims Over Rapper Ye Fail, Company Says

- Investor said Adidas suppressed incidents before public split
- Adidas argues case over disclosures was properly dismissed

The “dramatic and unfortunate end” of Adidas AG’s partnership with the designer and rapper Kanye West and his Yeezy businesses doesn’t mean investors have a case for securities fraud, the company told the Ninth Circuit.

The lead investor “fails to plead any of the core elements of a securities fraud claim” over the company’s relationship with West, also known as Ye, Adidas said Monday in a brief. Adidas terminated the partnership in October 2022 after Ye made antisemitic and racist remarks and wore a “White Lives Matter” t-shirt to a fashion event, according to the lawsuit.

That investor, a group of funds associated with the Hampton Roads Shipping Association—International Longshoremen’s Association, has asked the US Court of Appeals for the Ninth Circuit to revive its proposed class action after a dismissal.

The HRSA—ILA funds alleged that Adidas suppressed information about several previous problems with Ye, including playing pornography at staff meetings and making antisemitic statements. The funds said two sets of Ye’s own comments caused Adidas’ stock price to fall, and then fell twice again, including after the company reported on some negative financial effects of its split with him.

Adidas touted its anti-discrimination policies but enabled Ye’s offensive conduct, they said in their opening brief.

But Adidas’ risk disclosure related to its creative partners’ behavior is “*precisely* what Plaintiff alleged occurred with Ye in October 2022,” the company told the Ninth Circuit. “There is no legal obligation to accompany broad risk disclosures with a description of prior incidents of inappropriate behavior,” Adidas said.

Statements in Adidas’ annual reports that it complied with European disclosure guidelines also don’t support a securities fraud claim, it said. And the funds didn’t show the necessary level of intent or a causative link to their losses, the apparel and footwear maker said.

The Rosen Law Firm PA represents the HRSA—ILA funds. Markowitz Herbold PC and Debevoise & Plimpton LLP represent Adidas.

The case is HRSA-ILA Funds v. Adidas AG , 9th Cir., No. 24-6655, brief 4/21/25 .

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Class Action

April 23, 2025, 3:54 AM PDT

Quad/Graphics Plans to Settle Retirement Plan Fee, Fund Lawsuit

Quad/Graphics Inc. plans to settle a proposed class action with workers who say the marketing and printing company mismanages its retirement plan.

The parties struck a deal after a private mediation session and plan to file details of the agreement for court approval by June 15, they said in a joint status report filed Tuesday in the US District Court for the Eastern District of Wisconsin. The filing, submitted to Judge Pamela Pepper, asked that case deadlines remain on hold while they draft settlement paperwork.

- The nearly five-year-old lawsuit challenges the Quad retirement plan's investment options and says its annual administrative fees were more than double what they should have been
- Pepper first declined to dismiss the case in 2022, two days after the US Supreme Court considered similar allegations in *Hughes v. Northwestern University*

Morgan, Lewis & Bockius LLP represents Quad/Graphics. Walcheske & Luzi LLC represent the plan participants.

The case is Shaw v. Quad/Graphics, Inc. , E.D. Wis., No. 2:20-cv-01645, status report 4/22/25 .

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Class Action

April 22, 2025, 2:22 PM PDT

Litigation Funder Therium Conducts Layoffs Amid Upcoming Shift

- **Therium lays off unspecified number of employees**
- **Will continue to manage its portfolio, source says**

Global litigation funder Therium Capital Management has laid off some staff due to unspecified changes at the company, according to a person familiar with the matter.

Therium listed 25 employees in the UK, US, Jersey, Australia and Germany, as of November of last year, according to the Internet Archive. It recently deleted the employee page from its website. The firm will continue to manage its existing portfolio, according to the same individual, who declined to specify the upcoming changes at the company.

The company did not respond to requests for comment.

Therium, which is registered in Jersey, has funded claims with a total value of around \$100 billion, according to its website. Launched in 2009, it is a prominent player in the litigation finance space. Its chief investment officer, Neil Purslow, serves as chairman of industry trade group the International Legal Finance Association.

Therium funded lawsuits against the British Post Office over a faulty computer system that led to more than 900 sub-postmasters being convicted of theft and fraud in what has been called one of Britain's greatest miscarriages of justice. Therium funded 555 claims on behalf of the sub-postmasters to overturn the criminal convictions and receive compensation. The case settled for £58 million, but the claimants received £12 million after legal costs.

Despite pushback from funding opponents about the amount of the settlement that went to legal fees that included Therium, Alan Bates, founder of the Justice for Subpostmasters Alliance, said the case would not have been possible without litigation funding.

It also funded a dispute against Malaysia involving descendants of a sultan who ruled part of the region—now known as Sabah—in the late 1800s who allege Malaysia breached a contract going back decades. A Spanish arbitrator who sided with the claimants and awarded them \$14.9 billion in damages was later convicted on a related criminal charge. The guilty verdict could make it more difficult to enforce his findings about the case and jeopardizes Therium's return on its investment.

Purslow formed a new company in April called Therium Capital Advisors, according to public records.

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Litigation

April 22, 2025, 12:45 PM PDT; Updated: April 22, 2025, 2:18 PM PDT
Florida Sues Snapchat 'Over Addictive Features,' Minor Users (2)

- **COURT:** Fla. Cir. Ct.

Snap Inc., the owner of social media app Snapchat, is violating Florida law with “addictive features” and accounts for children age 13 and under, the state attorney general claimed in a lawsuit.

The state court complaint, filed Monday, alleges the app markets to minors and includes features—such as infinite scrolling, push notifications, interactive metrics for posts, and auto-play videos—which are prohibited under a law enacted last year targeting minors’ social media exposure.

“Snap is deceiving Florida parents about the dangers children face on the app, from behavioral addictive features to allowing sexual predators and drug dealers access, and we cannot allow this deception to continue,” Attorney General James Uthmeier (R) said in a statement.

The state contends that app features—even if they have nothing to do with the content of the media application—can violate the Florida Deceptive and Unfair Trade Practices Act.

“In sum, Snapchat includes numerous features identified in H.B. 3 that promote harmful compulsive overuse by teenagers. Despite these design features, Snap continues to make its platform available to users under 14 years old and to 14- and 15-year-old users without parental consent in defiance of Florida law,” the state said in its complaint.

Snapchat issued a statement saying Florida’s law both doesn’t adequately address age verification while also infringing on the First Amendment.

“We believe there are more privacy-conscious solutions to online safety and managing age verification, including at the operating system, app store, or device level,” the company said.

Dueling Lawsuits

Florida’s complaint comes as the state is battling in federal court to save its beefed up deceptive practices law.

Associations representing internet-based companies are urging the US District Court for the Northern District of Florida to block the law, claiming it violates free speech rights.

Florida “cannot begin to show that its draconian access restrictions are necessary to advance any legitimate interest it may assert,” the Computer & Communications Industry Association said in its complaint filed last October. “Parents already have a wealth of tools at their disposal to limit what online services their minor children use, what they can do on those services, and how often they can use them.”

Judge Mark E. Walker dismissed that complaint last month, finding that none of the group's members—which include Meta Platforms, Inc. and Google—had suffered an injury to give the association standing. The groups refiled an amended complaint less than two weeks later, pointing out that Snapchat appeared to fit the restrictions under the state's law.

"In a Nation that values the First Amendment, the preferred response is to let parents decide what speech and mediums their minor children may access—including by utilizing the many available tools to monitor their activities on the Internet," the association said in a motion seeking to temporarily block the law.

The case is Office of the Att'y Gen., State of Florida, Dep't of Legal Affairs v. Snap Inc. , Fla. Cir. Ct., No. 572025CA000258CAAXMX, complaint filed 4/21/25 .

(Updated with company comments in paragraphs six and seven.)

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Former judge is plaintiff and lawyer in suit over fire that wrecked his home

DJ [dailyjournal.com/articles/385111-former-judge-is-plaintiff-and-lawyer-in-suit-over-fire-that-wrecked-his-home](https://www.dailyjournal.com/articles/385111-former-judge-is-plaintiff-and-lawyer-in-suit-over-fire-that-wrecked-his-home)



Alexander Roberts IV of Robertson & Associates LLP and JAMS mediator Vijay "Jay" C. Gandhi at the ruins of the former judge's Pacific Palisades home.

Former U.S. magistrate judge Vijay "Jay" C. Gandhi has joined Robertson & Associates LLP and Foley Bezek Behle & Curtis LLP in a lawsuit stemming from the January wildfires that destroyed the Pacific Palisades, including his home.

The arrangement is somewhat unusual, because Gandhi, now a mediator with JAMS, will be litigating a case in which he is a plaintiff and lawyer.

Gandhi is not the only current or former judicial officer to lose his home in the Palisades and Eaton wildfires. But his experience should be particularly useful here: Gandhi was a mediator who settled many of the PG&E wildfire cases, including the Camp Fire which destroyed the town of Paradise in Northern California. Gandhi is also representing U.S. District Judge Dean Pregerson, whose home in the Palisades was also destroyed.

"What you see behind me, my burned down house, was just not the everyday facet of life, like a toaster oven or what-have-you," Gandhi said at a news conference in front of the ruins. "It was a sense of security and safety that went up in smoke on Jan. 7."

The fire was preventable, Gandhi said. But there wasn't enough water for firefighters to work with. Fire hydrants did not have enough water pressure, and the Santa Ynez reservoir was empty. These are the grounds for scores of lawsuits against the City of Los Angeles in the wake of the Palisades fire. Others have also blamed utility companies, saying their wires may have triggered sparks.

The lawsuit was filed Monday in Los Angeles County Superior Court. Vijay C. Gandhi, et al. v. City of Los Angeles acting by and through the Los Angeles Department of Water and Power (L.A. Super. Ct., filed April 21, 2025).

"This was not some rare anomaly, but a manifestation of risks well known that the city ignored," Gandhi continued. "In fact, what the city has done now is argue that a case from 1911 defends their actions, and it does not. And what they forget is that this incident is not unusual, and water utilities have been held accountable."

Gandhi pointed at a case in which the Yorba Linda Water District was held responsible for fire hydrants that did not have enough water pressure due to maintenance. That case also claimed inverse condemnation. Retired Judge John K. Trotter ruled in favor of 12 of the 19 involved homeowners, stating that firefighters were able to get water to the other seven. A total judgment of nearly \$70 million was awarded to the homeowners and subrogating insurers. The Court of Appeals and California Supreme Court declined to overturn the verdict. Itani, et al. V. Yorba Linda Water District, 30-2009-00124906 (O.C. Super. Ct., filed 2009).

The city of Los Angeles has retained Munger Tolles & Olsen LLP to defend the Department of Water and Power in the lawsuits.

"So, on Jan. 7, as the Palisades was burning, the distribution powerlines overhead remained energized because DWP did not shut off the power," his co-counsel Alex Robertson IV said. "DWP is the only major utility in the state of California that does not have a public safety power shut-off program."

Gandhi was working with U.S. District Judge David O. Carter at the federal courthouse in downtown Los Angeles on Jan. 7. They had a hearing in the city and county's historic \$1 billion settlement with the L.A. Alliance for Human Rights, a skid row advocacy group.

Gandhi's phone rang. It was his wife, but Gandhi was unable to answer because he was on the bench. He did not know what was going on outside the courtroom. The neighborhoods overlooking the Pacific were burning, and Gandhi's wife evacuated. She picked up their son

from school and headed to a relative's home.

"And then later that evening, we watched as the Palisades burned on TV," Gandhi said.

Most of their belongings were destroyed. Among them were some sentimental and irreplaceable items, such as Gandhi's comic book collection that he started when he was a kid - which he intended to give his son - and keepsakes that his wife's family took when they fled Iran during the 1979 revolution.

"And I think it especially affects me because we're trying to sort of resolve the city and county's most complicated issues, and yet here I am the victim of the city," Gandhi said.

#385111

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Law Students Signing Pledge To Refuse Offers From Collaborating Biglaw Firms

 [abovethelaw.com/2025/04/law-students-signing-pledge-to-refuse-offers-from-collaborating-biglaw-firms](https://www.abovethelaw.com/2025/04/law-students-signing-pledge-to-refuse-offers-from-collaborating-biglaw-firms)

<https://www.facebook.com/>

April 23, 2025

As more Biglaw firms sell out their integrity in exchange for relief from illegal retaliation from the Trump administration, lawyers and clients are distancing themselves from the settling firms. Some law students have already walked away from recruiting efforts by these firms.

A pledge circulating among law schools gathers signatures from students willing to go on record that they won't be joining firms that give in to the administration or those that try to squelch fully legal diversity initiatives just because the White House would like to pretend they aren't.

Yesterday, the People's Parity Project publicly announced a Law Student Firm Pledge that started among law school chapters of the organization, though signing on is certainly open to all law students.

Law students from People's Parity Project chapters across the country have come together to call the legal profession to its greater ideals. From UCLA to Harvard, and Georgia State to the University of Chicago, students are calling for a more ethical legal profession. And the law students are not only pushing for an affirmation of basic legal principles, but for affirmative actions by firms to ensure the rule of law, such as firms joining amicus briefs in litigation against unconstitutional targeting of firms for specific legal stances or efforts to suborn firms into a fascist project to eliminate criticism of the regime.

In addition to "refus[ing] to work for any firm that gives in to Trump administration demands regarding diversity, equity, and inclusion or the types of cases handled by the firm," the pledge adds four specific planks that firms need to meet:

- 1) Joining an amicus brief in opposition to Trump's executive orders targeting law firms and lawyers,
- 2) Publicly refusing to audit or alter hiring practices that recognize the structural disadvantages that continue to prevent historically marginalized groups from entering the legal profession,
- 3) Publicly refusing to release personal information about firm employees or take any adverse action against employees in response to administration threats, and
- 4) Publicly committing to pro bono representation of individuals and groups targeted by the Trump administration.

So far, the Order of the Obsequious affirmatively giving in to Trump remains limited, but these additional asks implicate a lot more of Biglaw right now. That said, these are critical demands because standing up to the administration is almost as important as not caving. Indeed, settling firms have suggested that the lack of support from law firms keeping their heads down contributed to the decision to cave because the rest of the market tried to use the prospect of escaping Trump's retribution as a partner poaching overture. Personally, I don't buy it as an excuse... those same firms are now pitching "don't you want to get out from under this stigma" to poach business so it was a fool's gambit to believe signing on with Trump would slow down lateral recruiting.

But that doesn't diminish the importance of encouraging a supportive Biglaw culture. Amicus briefs are often useless — if not unethical — but the cases challenging Trump's attack on law firms are exactly where they're valuable. Third parties explaining how the case impacts them uniquely, showing the widespread chaos that could arise if the case spins out beyond the caption. Hopefully, law students demonstrating that they aren't going to let firms try to hide from this moment can incentivize Biglaw to do what all the other segments of the legal profession are doing and finally step up for their peer firms.

These students see themselves as the future of the legal profession and are not interested in facilitating authoritarian policies in the name of ideological diversity. They are committed to serving the people of this country, whether that places them in opposition to Trump's government or not.

That last part is important. There are a lot of legal luminaries on the right willing to stand up to this administration even if they wouldn't necessarily be in opposition to many Republican goals. Opposing the administration's authoritarian efforts just isn't a partisan issue at this point.

The form to sign is available [here](#).



Joe Patrice is a senior editor at Above the Law and co-host of Thinking Like A Lawyer. Feel free to email any tips, questions, or comments. Follow him on Twitter or Bluesky if you're interested in law, politics, and a healthy dose of college sports news. Joe also serves as a Managing Director at RPN Executive Search.

Witness accuses ex-deputy city attorney of perjury in billing scandal case

DJ [dailyjournal.com/articles/385112-witness-accuses-ex-deputy-city-attorney-of-perjury-in-billing-scandal-case](https://www.dailyjournal.com/articles/385112-witness-accuses-ex-deputy-city-attorney-of-perjury-in-billing-scandal-case)

Disbarred New York attorney Paul O. Paradis testified Tuesday that former Los Angeles deputy city attorney James Clark gave false and misleading testimony about his involvement in a plan to steer the outcome of a class action lawsuit tied to the city's troubled 2013 billing system rollout.

Paradis, disbarred and convicted for playing a role in the scheme, said Clark, who faces potential disciplinary action from the State Bar, made a "false statement" and gave "perjurious testimony" about his knowledge of the plan during a key 2019 deposition.

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

Reverse auctions in themselves are not illegal, if the plaintiff knows. In this case, the plaintiff said he had never met the attorneys the city attorney's counsel selected for him.

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

The second step of the scheme was to have the lawsuit against the city turned into a lawsuit against PricewaterhouseCoopers, the developer of the billing software. Paradis testified Tuesday about efforts by the city to fight discovery so that PwC would not find out how the plaintiff's complaint against the city was prepared and settled with no discovery, but with millions paid to the city's counsel.

These efforts included a strategy by then-City Attorney Mike Feuer, his head of civil litigation, Thomas H. Peters, and his chief of staff, Leela Kapur, to resist discovery efforts by PWC's attorney, Daniel J. Thomasch of Gibson, Dunn & Crutcher LLP in New York, Paradis testified.

"The strategy was ... to continue, to use Ms. Kapur's words, to 'fight, fight, fight' the production of any of the requested materials in order to avoid public disclosure or disclosure to PwC and its counsel of the collusive litigation scheme," Paradis said.

Thomasch continued to push for discovery of the documents, eventually resulting in Clark being deposed in 2019 after returning from medical leave, Paradis testified under questioning by State Bar prosecutor Eli D. Morgenstern.

"Do you believe Mr. Clark's testimony is truthful ... that prior to his coming back to the office after his leave, he did not have any understanding about any controversy in this case over the production of the Jones v. PWC draft complaint motion?" Morgenstern asked.

"No sir, I don't believe that's truthful," Paradis answered over an overruled objection by Clark's attorney, Erin M. Joyce of Erin Joyce Law in Pasadena. "Based on my knowledge, I believe that's a false statement and perjurious testimony."

At the same time, Paradis said he suspected Thomasch had obtained privileged information through the Gibson Dunn email servers after discovering that Clark, a former partner at the firm, and Gibson Dunn counsel Mel Levine, then-president of the Board of Water and Power Commissioners, used their Gibson Dunn email addresses to conduct city business.

Clark explained to Paradis that he felt the city's IT department was incompetent, Paradis said.

"Gibson Dunn's an 800-pound gorilla," Clark said, according to Paradis. "Who would you rather fight with, the city attorneys or Gibson Dunn's people, if you're going to come after me to try to get access to my email? ... You're much less likely to get it from the Gibson Dunn folks."

Paradis said he suggested filing a motion to disqualify Gibson Dunn but was rebuffed by Feuer.

"[Feuer] said, 'Look, I'm very, very close to the Gibson Dunn firm. I've had a lot of financial support for all my campaigns from a lot of attorneys there,'" Paradis said.

Feuer indicated he wanted to protect Clark and Levine from potential blowback from the motion, Paradis said.

"I am not going to put Jim or Mel in harm's way," Feuer said, according to Paradis. "I don't think that this situation merits doing that. You're not authorized and you're not going to file a motion to disqualify Gibson Dunn. Are we clear?"

Proceedings are scheduled to resume on April 29.

#385112

State Bar used AI to write exam questions, suggests lower pass score

DJ [dailyjournal.com/articles/385113-state-bar-used-ai-to-write-exam-questions-suggests-lower-pass-score](https://www.dailyjournal.com/articles/385113-state-bar-used-ai-to-write-exam-questions-suggests-lower-pass-score)

State Bar & Bar Associations

Apr. 23, 2025

The California State Bar quietly disclosed it used artificial intelligence to help write some questions on the February Bar Exam--prompting an outcry from academics and test takers who say the exam was riddled with typos and awkward phrasing. In response, the bar has lowered the passing score and promised further review.



The California State Bar used artificial intelligence to help write some of the questions on the February bar exam. The disclosure came on Monday night when the bar announced it was lowering the score needed to pass after a variety of problems plagued the most recent exam.

"Many examinees reported after taking the exam, without disclosing the content of the questions, that they felt there were a lot of typos, and the language felt strange," Mary Basick, assistant dean for academic skills at UC Irvine School of Law, said when reached on Tuesday. "Many suspected the questions were AI generated. Honestly, I defended the bar. I thought there's no way they would do that."

On Monday evening, the bar issued a news release stating that the Committee of Bar of Examiners met on April 18 and recommended "That the raw passing score for the exam be set at 534. This represents two standard errors of measurement below the psychometrician-recommended raw passing score of 560." This was "in recognition of the reported experiences of examinees, performance data, and the challenges associated with fairly and accurately categorizing the level of disruption experienced by individual examinees," the release stated.

"After thoughtful deliberation and hearing directly from many applicants, we believe our recommendations to the Supreme Court mark the beginning of a fair and meaningful path forward for all February bar exam test takers," Board Chair Alex Chan said in the news release.

The State Bar did not say when the California Supreme Court might take up the matter.

According to its website, the bar will release the exam results on May 2. It was not immediately clear how many additional test takers will pass because of the change, but it could easily be hundreds, based on past exam results.

But some academics and test takers focused on a different paragraph near the end of the news release: "Also discussed during the CBE meeting was the performance of the different types of questions on the bar exam, including the multiple-choice questions (MCQs) and their sources. A majority of the MCQs were developed by Kaplan, a subset of questions came from the First-Year Law Students' Exam, and some questions were developed by ACS Ventures, the State Bar's independent psychometrician. The ACS questions were developed with the assistance of AI and subsequently reviewed by content validation panels and a subject matter expert in advance of the exam."

There are several problems with this admission, Basick said.

"They were all supposed to be developed by Kaplan," she said.

She added that her "holy crap" moment came when she saw that questions were developed by ACS Ventures. Many of the problematic questions, and the ones she suspects were written using AI, were in the criminal justice portion of the exam, Basick said, and appeared to have been written by "non-lawyers."

"The questions were developed with the assistance of AI and subsequently reviewed by content validation panels," Basick said. "I would like to know who was on those."

"Who is responsible for this decision?" she added. "Because it appears that the Board of Trustees and the Committee of Bar Examiners and the Supreme Court did not approve this."

The board is scheduled to meet again on May 5, three days after the release of the exam results. According to the Monday news release, they will take up "non-scoring related remedies for February bar exam takers, including provisional licensure, a supervised practice pathway to licensure, and special admission status for attorneys licensed in other states."

A State Bar spokesperson issued a statement late Tuesday that read: "The decision to use ACS Ventures to draft some of the questions using AI was made by staff within the Admissions Division and not clearly communicated to State Bar leadership. This was a breakdown, and structural changes have been made within Admissions to address it, with a new Chief-level role overseeing Admissions directly reporting to the Executive Director, a new team structure to strengthen accountability and effectiveness, and other personnel changes."

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April 22, 2025, 10:55 AM PDT

Matt Levine's Money Stuff: Goldman's CEO Wants to Get Paid

Goldman pay

I sometimes talk to students at colleges or business schools, and a question that one often gets asked in that circumstance is “what should I do with my life?” The venues being what they are, the way that question comes out of a student’s mouth is often “should I go into private equity?” I don’t know! Nothing in this newsletter is ever career advice. But my heuristic is that, if everyone in your graduating class is trying to get on a clearly defined and rigidly structured career track that leads to the same place, then succeeding on that track is a good safe prestigious well-paying thing to do, but maybe, you know, the peak is at least in sight? The way you make a lot of money in finance is by spotting market inefficiencies that no one else has seen; everybody kind of knows about private equity now.

More broadly, you could ask the question: “Is private equity a structurally lucrative sort of business, or did the relatively recent *discovery* of private equity turn a bunch of people into billionaires?” I wrote last month about KKR & Co.’s partial shift from doing traditional leveraged buyouts to making “strategic” acquisitions of companies that they planned to hold for the long term, and I suggested that this shift — along with the broader trend of private equity managers getting into private credit and becoming more general “alternative asset managers” — might have something to do with the business model reaching maturity. I wrote:

The original private equity founders were in a scrappy business of picking low-hanging fruit; now they run huge institutions and a lot of that low-hanging fruit is gone. Every top business school graduate wants to work for them, and every institutional allocator wants to give them money, because of the generational profits they made with the essential insight of “companies could be much more levered,” but that insight is not as lucrative now as it was when they made all that money.

Those founders are still around: George Roberts and Henry Kravis, the R and a K in KKR, are co-chairmen of the firm, though the co-chief executive officers are from a younger generation. This is generally true at the biggest alternative asset managers: The founders are around somewhere, and the people who were young whippersnappers when the firm was a scrappy upstart are now running the place.

Those people are rich: The founders are often billionaires, and the next-generation executives often get paid vastly more than people who work in older and more established financial businesses. We also talked last month about John Waldron, the No. 2 guy at Goldman Sachs Group Inc., who was “approached by Apollo Global Management about a senior job offering life-changing money, even when set against the \$30mn he earned the preceding year.” I am sure that Marcus Goldman and Samuel Sachs did great out of founding Goldman Sachs, but they died in 1904 and 1935. A lot of subsequent heads of Goldman Sachs have also done great; Lloyd Blankfein, the immediate past CEO, is a billionaire. But being a good professional executive and steward of a 150-year-old institution *shouldn't* be as lucrative as founding your own huge institution, or even taking over that institution after getting in near the beginning. Some portion of the money that the big alts managers get paid is a sort of amortization of the compensation they earned for taking the risk of getting into a whole new sort of finance when the clearly defined and rigidly structured career track led elsewhere.

One way to put this to my college audiences would be: If you had joined a private equity firm as a first-year associate in 1985, in hindsight that had a pretty high likelihood of making you extremely wealthy. You were jumping into an inefficient market, and the opportunities to correct the inefficiencies were large. If you join a private equity firm as a first-year associate in, let's see, 2027 — graduate college this spring, work your two years in banking and then move to private equity with everyone else — that just seems like a very, very efficient market.

How should this make executives at big investment banks feel? One possible answer is: Great, because the banks can more easily compete for talent with the big alternatives managers, because joining an institutional alternatives manager at this point is not the golden ticket that it was 20 years ago. On the other hand, if you are an executive at a big investment bank, *your* paycheck is much lower than the paycheck of a similar executive at a big alts manager, who *did* get that golden ticket.

Anyway how much should David Solomon get paid? Bloomberg's Todd Gillespie reports:

As Goldman Sachs Group Inc. asks shareholders this week to back \$160 million in special bonuses for its top two executives, the hope is that investors will agree that the firm is far more than a storied investment bank.

The retention packages for Chief Executive Officer David Solomon and President John Waldron give the latter more reason to stick around to run the place — but Goldman's justifications go beyond that. It says their compensation needs to reflect their status as the heads of a private-markets giant.

“The board considered the unique competitive threats for talent that Goldman Sachs faces, including from alternative management firms and others beyond the traditional banking sector,” the firm said when announcing the bonuses and a new carried-interest program in January. After all, it noted, Goldman is “a top 5 alternative asset manager.” ...

At the heart of the spat is the blurring line between diversified investment banks and alternative investment firms — known as “alts” — in the era of burgeoning private markets. Both sides are expanding beyond their traditional roles, with banks gathering more money from wealthy and institutional investors to invest privately in companies, while alts are scaling up lending.

In recent years, the firm has increasingly pitched itself as a competitor to the likes of Blackstone Inc., KKR & Co. and Apollo Global Management Inc., which carry higher market valuations and give non-founding leaders a shot at billionaire status. But ahead of Goldman's vote, several influential voices have lined up against rewarding its own top brass in a similar fashion.

One way to think about this is “alts managers are more lucrative than investment banks, therefore they pay their executives more, and so Goldman is positioning itself as an alts manager because (1) that is true, (2) it is good for shareholder value and (3) it is good for executive pay.” But another way to think about it is something like “the people running Blackstone and KKR and Apollo mostly got in pretty early on building new institutions, and are getting paid for that, but that can't last forever.”

GWA basket options

In the US, generally, short-term capital gains are taxed at a higher rate than long-term capital gains. (“Long-term” mostly means “more than a year.”) If you buy a stock and sell it in a week, your profits are taxed at ordinary income rates, say 37%. If you buy a stock and sell it in two years, your profits are taxed at lower capital gains rates, say 20%. If you are in a business of frequently buying and selling stocks, you will generally pay 37% taxes on your profits.

If you are doing that business over a long term, though, you might want to do better. You might have a thought process like: “I am going to buy some stocks today. Tomorrow I will sell them and buy different stocks, and the day after that I'll do it again, for years and years. At the end of, say, two years, I will hopefully have a profit from all that trading. But that is a long-term profit, isn't it? I shouldn't have to pay short-term capital gains taxes on my *interim* profits, my *daily* trading profits along the way. I should just pay long-term capital gains taxes on the overall profits on my portfolio over the long term.”

This thought process is not particularly correct, but it is tempting. How might you achieve it? Conceptually the answer is:

1. You create a box. The box will hold your stock portfolio, and will buy and sell stocks every day.
- 2. *You* don't own the stocks: The box owns the stocks. You control the box's trading, but the trading takes place in the box, not in your account.
- 3. *You* just own shares in the box, which you hold consistently for years.
- 4. At the end of, say, two years, you sell your shares in the box, hopefully at a profit (because the box has made money by trading stocks).
- 5. Your profits on the shares of the box are long-term capital gains, because you held the box for two years.

Again this doesn't feel quite correct, but it is the right direction. There are two obvious problems. One is that *the box* is trading stocks every day, so *it* should have to pay short-term capital gains taxes. But you can find solutions to that. Perhaps the box is a nonprofit, or a foreign entity, and doesn't have to pay taxes. More realistically, the box can be owned by a bank or securities dealer: Professional securities dealers normally pay ordinary income taxes on all of their mark-to-market trading gains and losses, short- or long-term. The bank can write you a derivative giving you the gains or losses on the box. Then the bank has profits (from the box's trading) and offsetting losses (from the derivative giving you the box's profits), so it doesn't owe any taxes. The box's short-term gains have been converted into your long-term gains.

The other problem is that this is too cute and, if you do it, the Internal Revenue Service will say that it doesn't work and that *actually* you own the box and are responsible for its short-term gains. You can work on that too. One promising approach is for the bank to write you a derivative giving you, not *all* the gains and losses on the box, but just the gains. (A "call option" on the box, rather than a "swap" or "forward.") This makes you look less like an owner of the box and more like a genuine derivatives counterparty.

Why would the bank do this? One answer is "you pay the bank a premium for the call option," but there is a better and more conceptually satisfying answer. This answer is: Giving you a call option on a box full of securities that you select is a lot like giving you a *loan* against that box of securities, which is a business that the bank is in anyway. If you are a hedge fund and want to buy \$100 of securities, you can probably do that with \$15 of your own money and \$85 you borrow from your bank. If the securities go up to \$120, you will pay back the loan and keep \$35 for yourself; if the securities go down to \$80, you won't pay back the loan and your \$15 will be gone. Roughly speaking that is like paying \$15 for a call option on the securities struck at \$85. But if the bank gives you an \$85 loan against a \$100 basket of securities that you own and trade every day, you will have short-term capital gains on that basket. If the bank *owns* those securities (and trades them every day at your instructions), and writes you a *two-year call option* on them, then perhaps you will have only long-term capital gains on the option.

That's the idea. Does it work? Well. No. Some very smart people tried it! We have talked about it a couple of times before, because the most famous attempt was made by Renaissance Technologies Inc., which trades stocks frequently and prefers not to pay taxes. Rather than trade stocks that it owned, Renaissance would buy long-term "basket options" from its prime brokers; the options referenced a basket of stocks that Renaissance could and did change frequently. The benefits here are (1) lower long-term capital gains taxes and also (2) US bank regulation limits how much Renaissance could *borrow* from its banks to buy stocks, but doesn't limit the leverage Renaissance could get from options.

The IRS didn't like this, though, and challenged it; ultimately Renaissance settled and its investors had to pay billions of dollars in taxes.

But another hedge fund, George Weiss Associates, also did these trades, and the IRS also challenged them, and GWA fought the IRS. Last week the US Tax Court ruled in favor of the IRS. Here is the opinion. Here is how it describes the trades:

GWA invested hundreds of millions of dollars in STFI's ["specially tailored financial instruments"] that it characterized as "call options." GWA initially invested in this type of product with Royal Bank of Canada (RBC) and later with Deutsche Bank. These products lacked many (or most) features of standard call options. And the products GWA purchased from Deutsche Bank included stop-loss features or "barriers" that significantly reduced, if they did not entirely eliminate, the risks that buyers and sellers of call options typically face.

The putative "call options" had long terms, with expiration dates ranging from 5 to 12 years into the future. The asset underlying each "option" was a basket of securities that included hundreds or thousands of different stocks ("basket securities"), which could vary from day to day (or hour to hour). The basket securities were nominally owned by the bank. But GWA was entitled to trade the basket securities as it wished, subject to very minor constraints. And it traded them with great gusto, employing the same long/short strategies that its affiliates deployed in their other portfolios.

If GWA's investment strategy was successful, its annual trading profits would increase the value of the securities in the underlying basket. But if GWA did not exercise its "option" on the basket securities until maturity, the accumulated trading profits could escape taxation for many years, and would ultimately be taxed, not at ordinary income rates, but at more favorable long-term capital gain rates. And because the basket securities were not held in a prime brokerage account titled to GWA, regulatory limits on leverage would not apply.

For instance:

Beginning in 1998 Deutsche Bank developed a Managed Account Product Structure, or "MAPS," which was marketed by GPF [Deutsche's Global Prime Finance division]. It characterized MAPS as involving "barrier call options," to which we refer as Barrier Contracts. GPF marketed this product to hedge fund customers as an "amortizing call option [that] provides delta-1 exposure to [an] underlying reference portfolio" of securities. A customer's "delta-1 exposure" to the reference basket ensured that changes in the value of the basket securities would be reflected dollar for dollar in the value of the "option."

"Delta-1" means that, for every dollar that the value of the underlying basket increased, the value of the "option" would also increase by a dollar. That's not usually true of call options, but it is true if you own the stocks yourself. The MAPS description goes on:

The customer would be required to pay a "premium" when purchasing the "barrier call option." The "premium" would purportedly be priced according to the investment strategy used to manage the basket securities, including the volatility and liquidity of the assets. In practice, the "premium" was almost always 10% of the "notional amount," i.e., the amount of cash Deutsche Bank made available to the customer for investment in the securities basket.

The customer could choose the initial composition of the securities portfolio, and Deutsche Bank's London branch would purchase those securities and place them (at least notionally) into the basket. Although the securities were titled to Deutsche Bank, the customer could appoint the investment advisor, who would direct all trading activity in the account. At the termination of the contract, the customer would be entitled to receive a cash settlement amount corresponding to the gains that had accumulated in the basket.

The Barrier Contract had a knockout feature such that, if the value of the basket fell below a specified barrier, the contract would be terminated and the securities would be liquidated. But Deutsche Bank built in a fail-safe mechanism that kicked in before that point was reached. If the value of the portfolio fell to a level that approached the knockout barrier, Deutsche Bank could demand payment of an "additional premium." The demand for "additional premium" resembled an anticipatory margin call in a traditional prime brokerage account.

If the customer declined to supply additional premium, Deutsche Bank could immediately terminate the contract and the securities would be liquidated to cash. These features were designed to ensure that the Barrier Contract would be terminated, and the underlying assets converted to cash, before investment losses in the reference basket exceeded the "premium" paid by the customer. Deutsche Bank was thus insulated from downside risk on the investment portfolio.

That is: Normally if you put up \$15 and borrow \$85 to buy \$100 worth of stocks, and the stocks go down to \$90, your bank will call you and ask you for more money. Normally if you buy a call option on some stocks, and the stocks go down, the option seller *won't* call you to ask you for more money: The whole point of an option is that you can't lose more than your premium. These trades were much more like margin loans than they were like options, but they were *called* options.

The tax court didn't buy it:

We conclude that the Barrier Contracts were not options in substance because they lacked the essential economic and legal characteristics of genuine options. When the self-serving labels are stripped away, the true substance of the arrangements is clear. GWA held and traded the basket securities through a prime brokerage account, and Deutsche Bank financed GWA's investment in those securities by extending a margin loan at 10-to-1 leverage, with the putative "premium" serving as collateral for that loan.

In particular, GWA generally got its full premium back in upside cases (in my example numbers, it would pay \$15 for an "option" on \$100 worth of stock, struck at \$85, so if the stock went up to \$101 it would get back \$16), and "the pricing of the Barrier Contracts exhibited none of the risk characteristics that inform the pricing of true options." Also the options "had a term of 12+ years," which is pretty abnormal for a real option, and the dividends on the underlying stocks were passed through to GWA. Basically GWA's prime brokers had none of the risks of owning the stocks; they just held onto the stocks for GWA. So effectively GWA owned the stocks, and bought and sold them frequently, and had short-term gains. The box was a neat idea, but it didn't work.

Take your game to the next level

Two models you might have are:

1. Retail brokerages compete to attract the most sophisticated retail investor customers, because ... I honestly don't even have a "because" here? Because sophisticated retail customers are more fun to deal with? Because they are less likely to lose all their money and sue? Because they are more likely to make money, and retail brokerages measure their success by how much money their customers make? Because the retail brokerages use customer flow to predict stock prices, and the most sophisticated customers are the most predictive? Perhaps you have other suggestions.

- 2. Retail brokerages compete to attract the most *addicted* retail day traders, because, you know. Because a core business of a retail brokerage is to take the other side of its customers' trades (or more commonly to get paid by a market maker that wants to take the other side of the customers' trades), and the more the customer (1) trades and in particular (2) trades risky high-margin things like options or crypto, the more money the brokerage makes.

Just two models you might have. Anyway:

Morgan Stanley, whose E*Trade business just posted its highest-volume trading days in years, is ramping up efforts to reach the most-active day traders with a new platform.

"Power E*Trade Pro" allows traders to customize as many as 120 tools across six screens on a desktop application separate from the firm's current web and mobile products. The offering, announced Monday, is in a pilot period and set for a full launch in June.

"Our sophisticated trader population is a hugely important group of folks for us," Jed Finn, Morgan Stanley's head of wealth management, said in an interview. "We took the most sophisticated active traders in the industry and we said, what do you need to take your game to the next level?"

The word that jumped out to me there is "game," which is perhaps unfair but here we are. "Six screens," also. And for that matter "Power" and "Pro," which I guess are normal enough words in this context, but I was amused to find *both* of them in the name. I should launch Power Money*Stuff Pro, which is just this newsletter but on all six of your screens.

Gambler's coin

One thing that I like about crypto is that many crypto projects make explicit things that are latent or obscured in real financial markets. For instance here is a crypto project called Gambler's Coin, which is a token that allows you to make negative-sum all-in random bets with your money until you lose it all. From the description:

If you send exactly 0.0003 Gambler's Coin to another person, you automatically wager your entire Gambler's Coin balance against theirs.

Wagers require no counterparty consent, meaning you might be targeted for a wager whenever you hold Gambler's Coin. In any wager, win odds are based on your balance and your opponent's balance.

So if your opponent has twice as much Gambler's Coin as you have, she has a 2-in-3 chance of winning, and you have a 1-in-3 chance; resolution uses a random number generator. There is a small fee to do a bet, so the bets are all slightly negative-sum for everyone. Why would you do this? I mean! If I said to you "sports gambling and single-stock options trading are also ways to do negative-sum bets resolved using random number generators," you would probably protest, and technically you would be correct, but come on. Those are big businesses. Surely the distilled explicit version should be ... you know, an amusing art project. Probably not a big business but who knows.

Things happen

Markets Are Discovering the Real Trump Trade Is 'Sell America.' Wall Street Fears Trump Will Wreck the Soft Landing. Japanese investors sold \$20bn of foreign debt as Trump tariffs shook markets. Ukraine Starts Talks With Hedge Fund-Led Group on Warrant Revamp. Shaky Junk Market Faces Test With \$4 Billion Roofing M&A Deal. UniCredit says Banco BPM deal in limbo after Italy imposes conditions. McDonald's Revamps Ranks to Speed Burger Breakthroughs. Corgi Derby.

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- 1. This is all roughly true. These are the top normal federal individual rates. Corporate taxation is different, but I am essentially assuming here that you are a hedge fund structured as a pass-through entity with taxable individual limited partners.
- 2. You probably can't do this in your personal account, because US margin regulations limit how much you can borrow, but a hedge fund with a diverse portfolio of long and short positions can do better. See pages 10-11 of the Tax Court decision.
- 3. I'm ignoring interest here, which you can incorporate into the strike price and/or premium. (Like, you pay \$15 of your money to get \$100 of securities, but your call option is struck at \$95, etc.)
- 4. Again the issue is not *Renaissance*, but rather the *investors in its fund*, who owe taxes on the fund's gains or losses. Renaissance's main fund has been closed to outside investors for many years, meaning that the relevant taxpayers here are Renaissance's senior employees, who obviously have incentives to minimize their own taxes.
- 5. GWA makes the fun argument that, technically, Deutsche Bank could have put nothing in the box. GWA could (and did) make frequent changes to the reference securities for the basket option, but it couldn't tell Deutsche Bank what stocks to buy. Deutsche Bank owed GWA the upside on its ever-changing basket of stocks, and it would be natural for Deutsche Bank to hedge that option by just buying the stocks that GWA

picked, but it didn't actually have to: "Petitioner asserts that Deutsche Bank bore upside risk because it could have chosen not to purchase the basket securities. Instead, Deutsche Bank allegedly could have made notional trades in a notional securities basket, with the cash settlement amount being based on the cumulative performance of the theoretical securities positions. In effect, petitioner argues that Deutsche Bank could have converted a Barrier Contract into what is commonly called a 'naked' call option." The tax court "reject[ed] this argument out of hand." It's not even clear that it's technically true under the terms of the option agreement, but even if Deutsche Bank was allowed not to purchase the stocks, it would be crazy to do so.

- 6. The least sophisticated customers — the ones who consistently lose — arguably also have predictive value.
- 7. We talked once about a paper finding that some retail brokerages get more price improvement from market makers than others, with a plausible explanation being that some retail brokerages have more sophisticated customers than others: The more sophisticated the customers are, the less a market maker wants to trade with them, so the less the market maker will pay the broker for their orders.
- 8. Not you. If you're reading this footnote you are probably an advantage gambler or a professional options trader or both. But in the aggregate I am right. One of Eugene Fama's former students once told me that he told his students "markets are efficient, *for you*."

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<https://www.wsj.com/business/autos/tesla-tsla-q1-earnings-report-2025-f7120a39>

BUSINESS | AUTOS

Tesla Profit Sinks, Hurt by Backlash Over Elon Musk's Political Role

CEO says he will spend significantly less time on DOGE starting in May; electric-vehicle maker's net income falls 71%

By [Sean McLain](#) [Follow](#)

Updated April 22, 2025 6:31 pm ET



The company's first-quarter global vehicle deliveries declined 13%. PHOTO: CFOTO/ZUMA PRESS

[Tesla's](#) TSLA **6.26%** ▲ net income slid 71% in the first quarter, as the company struggled to overcome [competitive pressure overseas](#) and a reputational hit from Chief Executive [Elon Musk's](#) polarizing role in the Trump administration.

Musk said he would be devoting significantly less time to his federal cost-cutting work at the Department of Government Efficiency starting next month, but struck a defiant tone against critics. "I believe the right thing to do is to fight the waste and fraud and try to get the country back on the right track," Musk said on a call with analysts after the quarterly earnings report Tuesday.

The electric-vehicle maker also reported adjusted earnings per share of 27 cents, which missed analysts' expectations of 41 cents.

Tesla said that shifting trade policies, exacerbated by the administration's tariff regime, are stressing supply chains while adding to the automaker's costs. Tesla imports some of its battery cells from China, but said it was looking to source them from the U.S. instead.

The trade fight and "changing political sentiment" could weigh on demand for its vehicles, the company said, leading it to potentially revisit its sales forecast for the year. Tesla previously said it expected vehicle sales to rise this year, after reporting a rare drop in 2024.

Musk sighed deeply on Tuesday's call before addressing the Trump administration's trade war. The CEO said he has advocated for lower tariffs and would continue to do so. "I just want to emphasize that the tariff decision is entirely up to the president of the United States," Musk said. "Whether he will listen to my advice is up to him."

Tesla shares were up more than 3% in after-hours trading on Tuesday, after gaining 4.6% ahead of the first-quarter report. Analysts attributed the rise to investors taking comfort in Tesla reaffirming plans to launch more affordable models later this year.

The company's first-quarter revenue fell after a steep decline in automotive sales, including double-digit percentage drops in crucial markets such as the U.S., China and Germany.

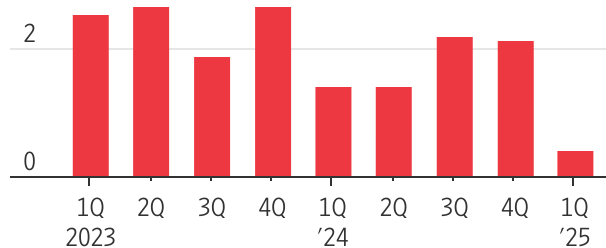
The decline in vehicle sales and weaker selling prices—dented by more-generous sales promotions—hurt revenue and the bottom line, Tesla said. The company also cited several weeks of lost production time across its four factories to prepare for the recent launch of a retooled Model Y, its top seller.

Larger investments in artificial intelligence also weighed down profit. Musk has said that autonomous cars and other AI innovations are central to Tesla's growth prospects.

Tesla net profit, quarterly



Even before Musk's entrance into partisan politics sapped some of the brand's goodwill among consumers, Tesla was contending with slowing demand for its vehicles. The company has long touted the potential of its nonautomotive businesses as a way to expand the company beyond the core car business.



Note: In 4Q 2023 Tesla received a one-time tax benefit

Sources: S&P Capital IQ; the company

The sharp quarterly sales and profit declines masked an otherwise bright spot in Tesla's energy-storage and software-subscription businesses, which had double-digit growth in the first quarter.

The next step for Tesla is the launch of its fleet of robotaxis, which Musk has compared to a combination of Uber and Airbnb. The company said it was on track to launch its first driverless taxi service in Austin, Texas, in June.

Still, Tesla reported \$19.3 billion in revenue for the quarter, down 9% compared with the same period last year. Revenue from the company's automotive business fell 20%. The energy business grew 67%.

Tesla also reported \$595 million in revenue from other automakers that pay Tesla for carbon credits to offset their sale of conventional vehicles, up sharply from a year earlier.

The company reported a 2.1% operating margin for the quarter, compared with 5.5% a year earlier.

Tesla's [global vehicle deliveries fell 13%](#) in the first quarter, partly because of a consumer backlash against the brand in response to Musk's role as President Trump's cost-cutting czar. Tesla has faced protests across the U.S. and Europe, and some of its stores and charging stations have been vandalized or even set on fire.

Some analysts also have said that customers likely delayed purchases as they waited for the recent introduction of a refreshed version of Tesla's Model Y, the company's top seller.

Tesla Cybertrucks on a dealer lot in California, the largest electric-vehicle market in the U.S. PHOTO: JUSTIN SULLIVAN/GETTY IMAGES

Tesla also is contending with 25% tariffs imposed on auto imports. While Tesla builds its U.S.-sold cars in Texas and California, it relies on neighboring countries for components, including Mexico, which supplies more than 20% of its parts, according to federal data.

Estimates from third-party research providers show significant sales declines in some of Tesla's biggest markets, including California and China. The company doesn't disclose delivery figures by model or region.

In California, the nation's largest EV market, Tesla's first-quarter market share fell to 44% of all zero-emission vehicle registrations in the state, from 56% a year earlier, according to the California New Car Dealers Association.

Tesla shipments fell about 22% in the quarter in China, while its deliveries sank 62% in Germany, according to industry trade groups.

To spur sales, Tesla in April released a less-expensive version of the Cybertruck, priced at \$69,990, with low-cost features including fabric seats. The company is also developing a lower-cost version of its Model Y.

Write to Sean McLain at sean.mclain@wsj.com

Appeared in the April 23, 2025, print edition as 'Tesla Profit Falls 71%, Hurt by Backlash'.

Videos

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<https://www.wsj.com/business/autos/tesla-has-a-deep-hole-to-pull-out-of-15815d7e>

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Tesla Has a Deep Hole to Pull Out Of

Elon Musk promises more attention on EV maker, but brand damage from his political activities won't be easy to repair

By [Dan Gallagher](#) [Follow](#)

April 23, 2025 5:30 am ET



Tesla reported one of its worst quarters in recent memory. PHOTO: NOAH BERGER/AP

Key Points

What's This? ⓘ

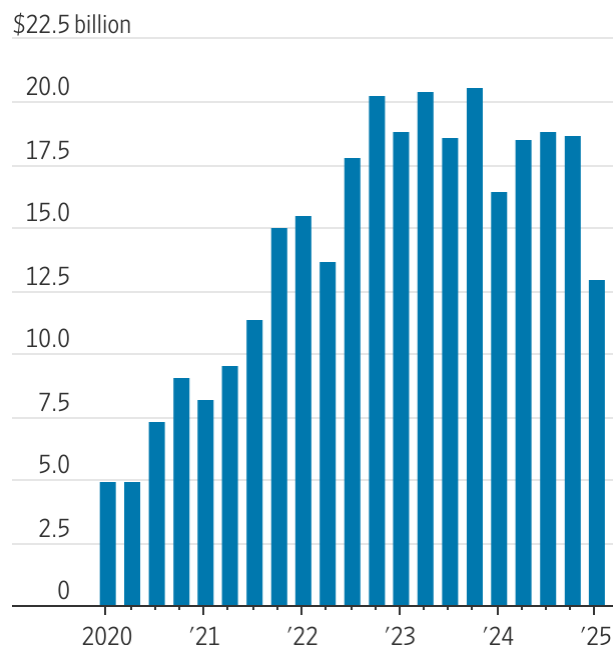
- Elon Musk says he will dedicate more time to Tesla starting next month, but the political damage to the company's brand from his activities could endure.
- Tesla's Q1 results were poor, with operating income significantly below expectations.
- Tesla's stock rose in after-hours trading; valuation remains high even compared with tech giants.

[Tesla's](#) TSLA **6.13%** ▲ famously busy boss will be devoting a lot more time to the electric-vehicle maker soon. It's unclear whether that will be a good thing.

[Elon Musk](#) said on Tesla's [first-quarter earnings call](#) on Tuesday that he would be allocating more time to Tesla starting next month “now that the major work of establishing the Department of Government Efficiency is done.” The comments came after the company reported one of its worst quarters in recent memory, with revenue seeing its biggest year-over-year slide in 13 years and operating income coming in about 65% below Wall Street's estimates.

Brake Job

Tesla's automotive revenue per quarter



The timing might seem to suggest that [Musk's distracted driving](#) is the main reason for Tesla's woes. But the results actually confirm that Musk's controversial work with the Trump administration has tarnished [Tesla's image](#) with many prospective buyers. The company pointed to “changing political sentiment” as a factor affecting demand in its letter to shareholders Tuesday. And Musk led off the company's earnings call addressing the “blowback,” in which he blamed protests against the company on “recipients of wasteful largesse.” He added that he expects to continue spending “a day or two” each week on

government matters.

In other words, [Tesla's hyperpolitical CEO](#) won't be getting any less political—even if he spends a little less time in D.C. And that could continue to cast a shadow over the company, which also now has to deal with a trade war that will likely raise its costs and a sharp drop in consumer confidence that could result in fewer people willing to spend up on a new car.

Many of those factors weren't even in full swing during the first quarter. And still Tesla's automotive sales revenue plunged 21% from a year earlier to about \$12.9 billion in the quarter, 13% below even Wall Street's downgraded projections. The company's automotive gross margins also took a sharp hit, falling to their lowest level since 2012, at 11.3%. Tesla even seemed to backtrack on its projection from three months ago for annual sales to return to growth this year. “We will revisit our 2025 guidance in our Q2 update,” the company said in its release.

Tesla's share price still managed to perk up, though, rising around 5% in after-hours trading. The stock benefited from Tuesday's [big broad-market upswing](#) and from the perception that it has been punished enough. By Tuesday's close, Tesla's shares were down nearly 16% since President Trump's tariff announcements earlier this month and 41% since the first of the year. Only five other S&P 500 stocks have fared worse this year, according to FactSet data.

But even a [downtrodden Tesla](#) is still expensive, with the stock now fetching 88 times forward earnings compared with a multiple of more than 120 times at the first of the year. That is far in excess of any carmaker and even megacap tech stocks such as Nvidia. Most of Tesla's valuation lies in hopes for the company's efforts in artificial intelligence, self-driving cars and robotics.

Musk said Tuesday that those efforts in autonomy will start contributing "in a material way" to its business around the middle of next year. But Musk also has a long history of missing his own projections. And now, the success of those ventures might also depend on how well he manages his image by then. People who won't buy a car from Musk's company are unlikely to put one of his robots in their house.

Write to Dan Gallagher at dan.gallagher@wsj.com

Videos

Tesla Inc

Elon Musk to prioritise Tesla over White House role as profits slump

Electric-car maker's sales knocked by political 'blowback'



Elon Musk and Donald Trump in a Tesla car at the White House last month. Musk on Tuesday said he would not be leaving the Trump administration completely © Mandel Ngan/AFP/Getty Images

Kana Inagaki in London, Joe Miller in Washington and Stephen Morris in San Francisco

Published YESTERDAY | Updated 06:32



Elon Musk said he would “significantly” scale back his US government role and refocus his attention on Tesla, after the carmaker’s profits cratered in the first quarter.

“Starting next month, I will be allocating far more of my time to Tesla,” Musk said on Tuesday. “The large slug of work necessary to get the [Department of Government Efficiency] team in place and working in the government to get the financial house in order is mostly done.”

The Tesla chief emphasised he would not be leaving the Trump administration completely, and would probably remain Doge’s figurehead until the end of the president’s term, “to make sure that the waste and fraud that we stop does not come roaring back”.

Tesla shares rose 5.2 per cent to \$250.28 in early trading on Wednesday.

Musk’s role as an adviser to Donald Trump — whose campaign he backed with more than a quarter of a billion dollars — has catapulted the world’s richest man into the heart of government and handed him enormous power to gut key departments and regulatory agencies.

But some of the billionaire’s business interests have also suffered from his political alliances. Tesla’s brand has become associated with Trump’s actions, and the administration’s sweeping tariffs on China threaten to disrupt important supply chains.

Musk’s planned pullback from Doge came after Tesla reported its lowest quarterly profits since the fourth quarter of 2020., and dropped its forecast for a rebound in electric vehicle sales this year.

Musk was also facing a deadline for his role as a “special government employee”, a category that is restricted to a 130-day term.

Tesla’s sales have fallen as Musk’s political interventions sparked widespread [protests at the carmaker’s showrooms](#) and hurt the company in major markets, which the chief executive described as “blowback”.

Adjusted net income for the first quarter missed analysts’ expectations, falling 39 per cent year on year to \$934mn, according to a filing from the Austin, Texas-based company on Tuesday. Reported net income dropped 71 per cent to \$409mn.

Musk, a long-standing critic of trade barriers, said he would continue to advocate for lower tariffs with Trump, adding that the levies “are still tough on a company where margins are still low”.

Tesla assembles all of its vehicles sold in the US locally but it is exposed to Trump’s 25 per cent car tariffs because it sources components from other markets, including battery cells from China.

Chief financial officer Vaibhav Taneja warned of an “outsized” impact of tariffs on its energy storage business as it worked to reduce its dependence on battery cells from China by localising production and finding non-Chinese supplies. “It will take time,” he added.

Tesla shares have fallen since December

Share price, \$



Source: LSEG via markets.ft.com

Tesla is banking on a revival in vehicle demand following the recent upgrade to its flagship Model Y car. The company also said that plans to start production of more affordable models by June remained on track.

Musk doubled down on promises to start fully autonomous rides by June in Austin. He predicted the self-driving “cybercabs” would significantly move Tesla’s “financial needle” starting from the middle of next year.

“We will have, I don’t know, 99 per cent market share or something ridiculous,” he added.

Tesla reported this month that its deliveries fell 13 per cent in the first three months of this year, compared with a year before, marking its [worst quarter](#) since 2022. It also lost its crown as the world’s largest electric-vehicle maker to Chinese rival BYD.

Revenue fell 9 per cent to \$19.3bn, missing the average \$21.4bn analyst estimate, according to S&P Capital IQ. Tesla’s first-quarter operating margin also fell to 2.1 per cent, from 5.5 per cent a year earlier.

Musk’s ambitions for Doge have seemingly been downgraded in recent weeks. He initially claimed the initiative would cut \$2tn from the US’s annual budget. But he said this month that it had saved \$150bn even as he signalled the bulk of its work might be complete.

A ubiquitous figure at Trump’s side since the November election, Musk has been less prominent of late. He has clashed with members of the administration over the White House’s trade policy.

Musk, who this month called Peter Navarro, the architect of Trump’s tariffs, a [“moron”](#), on Tuesday reiterated that lower levies were a good idea “for prosperity”.

But he added that decisions over tariffs were “fundamentally up to the elected representative of the people, being the president of the United States”.



Alison Frankel

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IDK Maybe Chancellor McCormick was right

 **George Pearkes** @peark.es · 20h

Oh it's a miss bb

*TESLA 1Q ADJ EPS 27C, EST. 43C

*TESLA 1Q REV. \$19.34B, EST. \$21.37B

*TESLA: WILL REVISIT OUR 2025 GUIDANCE IN OUR Q2 UPDATE

*TESLA: TARIFF LANDSCAPE TO HAVE A LARGER IMPACT ON ENERGY UNIT

April 22, 2025 at 2:11 PM  Everybody can reply

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1



1



4



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It's not a control fraud if there's no fraud...and there's no fraud if you're purchased immunity and impunity...it's just a few activist judges and fake news short sellers.

If only there were signs...



Tesla exec cancels Rome conference trip over security concerns

 [reuters.com/business/autos-transportation/tesla-exec-cancels-rome-conference-trip-over-security-concerns-2025-04-23](https://www.reuters.com/business/autos-transportation/tesla-exec-cancels-rome-conference-trip-over-security-concerns-2025-04-23)

Reuters

April 23, 2025



A drone view shows charred Tesla vehicles following a fire at a Tesla dealership that destroyed vehicles, in Rome, Italy, March 31, 2025. REUTERS/Yara Nardi/File Photo Purchase Licensing Rights , opens new tab

(TSLA.O) , opens new tab senior executive has cancelled her attendance at a conference in Rome over fears of protests surrounding the carmaker in response to CEO Elon Musk's right-wing activism.

Tesla cars, infrastructure and offices have recently become targets of vandalism in several countries, including Italy. The group's sales have nosedived along with its share price, which has lost more than 30% this year.

Samantha Harris, Tesla's Global Sustainability Lead, had been due to speak at Regenerative Futures , opens new tab, a conference planned in Rome for May 16-17 by the European Institute of Innovation for Sustainability (EIS).

"Given the recent protests and violence against Tesla, and now in Rome, I've been asked to hold my external presence and travel ... I won't be able to attend," she said in an email to the EIS seen by Reuters.

A fire at a Tesla dealership in Rome last month destroyed 17 cars in what tech-billionaire Musk described as an act of "terrorism";

Drone images of the fire showed the burnt-out remains of cars lined up in a parking lot, with two rows of vehicles back-to-back and a third row some distance away.

Musk, a close ally of President Donald Trump, has been working to eliminate wasteful U.S. public spending through the Department of Government Efficiency (DOGE).

However, he said on Tuesday he would cut back the time he devotes to DOGE in order to spend more time running his many companies.

Reporting By Gavin Jones; Editing by Aidan Lewis

Class Action

April 22, 2025, 12:24 PM PDT

Tesla Settles Claims Over Failure to Warn Workers About Layoff

Tesla Inc. agreed to end a lawsuit brought by a former worker who alleged the company fired about 14,000 people in 2024 without providing sufficient advance notice of a mass layoff.

Judge Araceli Martinez-Olguin of the US District Court for the Northern District of California ordered the case dismissed with prejudice on Monday, several days after the parties confirmed they had reached a settlement agreement “resolving all matters in dispute.” She noted that the dismissal doesn’t preclude other employees from bringing individual or representative claims against Tesla “in relation to the same facts.”

- Tesla failed to give the fired workers 60 days of advance written notice as required by the California Worker Adjustment and Retraining Notification Act, according to the complaint filed by Sharon Lane Chin
- Chin, who worked at a Tesla manufacturing plant in Dublin, Calif., initially sought to represent a class made up of everyone who lost their jobs as part of the mass layoff but later dropped the class claims
- Eric Lechtzin, a partner with Edelson Lechtzin LLP, which represents Chin, declined to comment on the terms of the settlement, and lawyers for Tesla didn’t immediately respond to questions

Law Offices of Daniel Feder also represents Chin. Morgan, Lewis & Bockius LLP represents Tesla.

The case is Chin v. Tesla Inc. , N.D. Cal., No. 3:24-cv-03873, order 4/21/25 .

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Ninth Circuit hands win to ex-Tesla engineer in fight over arbitration award

 [courthousenews.com/ninth-circuit-hands-win-to-ex-tesla-engineer-in-fight-over-arbitration-award](https://www.courthousenews.com/ninth-circuit-hands-win-to-ex-tesla-engineer-in-fight-over-arbitration-award)

A sign bearing the company logo stands outside a Tesla store in Cherry Creek Mall in Denver. (AP Photo/David Zalubowski, File)

SAN FRANCISCO (CN) — A Ninth Circuit panel of judges on Monday nullified a lower court decision against a former Tesla engineer who claims she was fired after raising safety concerns, undoing a previous arbitration award favorable to Tesla and its CEO, Elon Musk.

In the order, the panel agreed with plaintiff Cristina Balan that the lower federal court lacked jurisdiction to confirm the award, which should have been heard in a state court, according to a 2022 Supreme Court decision.

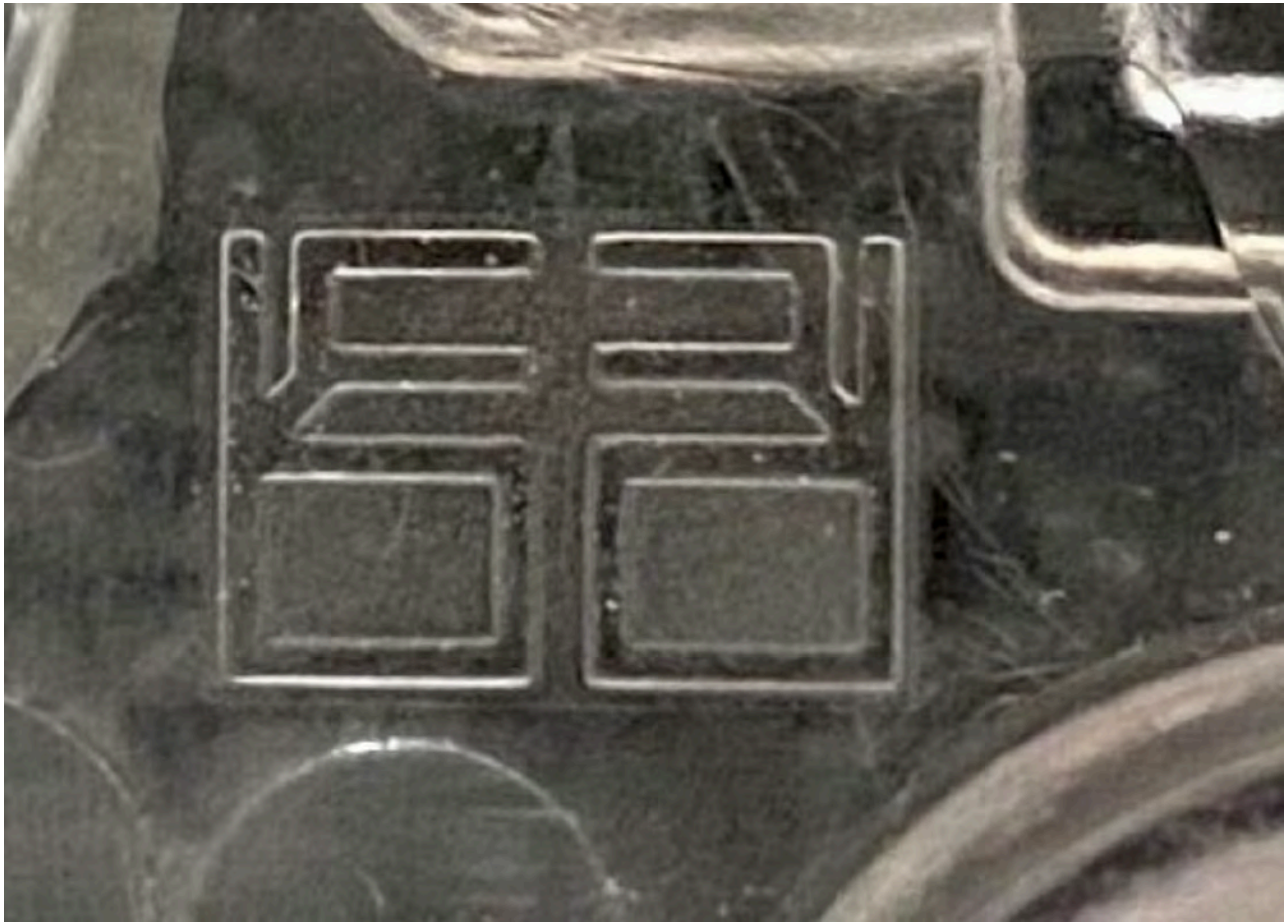
“District courts are courts of limited jurisdiction, and that jurisdiction is defined by federal statute — subject, of course, to constitutional limitations,” U.S. Circuit Judge Lawrence VanDyke, a Donald Trump appointee, said in the ruling.

The panel vacated the lower court ruling and remanded Tesla’s case with directions to dismiss for lack of jurisdiction.

Balan and her attorney celebrated the decision, which will give the former Tesla engineer a new opportunity to raise procedural concerns to the court about the underlying arbitration and could even allow her another chance at the arbitration.

“This decision will likely have profound implications for arbitration practice by corporate entities moving forward, as they will need to confirm more awards in state courts,” her attorney, William Moran of Arthur William, told Courthouse News.

Before becoming Tesla’s legal rival, Balan was a rising star at the company — a prominent engineer whose initials were etched on the batteries of every vehicle the company built. However, she was fired in 2014, she claims, after she raised safety concerns about a design flaw that could impact the cars’ braking.



Cristina Balan's initials "CB," as seen on a Tesla Model S battery. (Photo by Cristina Balan)

Tesla later went on to publicly accuse her of criminal activity in an article on an online news website, prompting her to file a defamation lawsuit in 2019. The former engineer claims the electric car company tarnished her reputation when it accused her of using its resources for a “secret project” during her employment — accusations that amount to embezzlement under U.S. law.

Balan’s legal battle with Tesla has had a long journey through the courts. After some success in federal court, the Ninth Circuit ruled that her suit was subject to an arbitration agreement she signed with Tesla. An arbitrator later found in favor of the company and dismissed her defamation claims. Tesla sued in the Northern District of California to confirm the award in late 2021, which a federal judge did the following year.

Balan later appealed this lawsuit against her and returned to the Ninth Circuit, claiming now that under the Federal Arbitration Act, her arbitration decision should have been confirmed in state court, not federal.

For the federal court to have jurisdiction over her arbitration, the panel said the suit must be between citizens of different states and the “amount in controversy” must be over \$75,000. Specifically, the panel said it relied on *Badgerow v. Walters* for clarification that this \$75,000

threshold must be “present on the face” of the petition to confirm the arbitration award.

The judges found Tesla did not satisfy this requirement because it went to the lower court to confirm a “zero-dollar award” that simply dismissed Balan’s libel claims.

“On its face, a petition to confirm a zero-dollar award cannot support the amount in controversy requirement,” the panel ruled.

The panel also rejected arguments by Tesla that it was entitled to return the entire matter to federal court because it asked the lower court to stay its suit against Balan instead of dismissing it, which it should have done under Section 3 of the Federal Arbitration Act. This, the company argues, entitles them to a “return ticket” to confirm the award in court under Section 9 of the same act.

The Federal Arbitration Act allows a party in an arbitration agreement to seek several kinds of assistance from a federal court, including either compelling parties to abide by the decision or vacating it completely.

But because Tesla didn’t contest the dismissal and never appealed the issue, the court said that the unappealed and now-binding judgment would remain a dismissal, not a stay.

“The upshot is that Tesla’s attempt to characterize this case as a Section 3 case involving a stay is simply incorrect,” the panel decided.

Balan told Courthouse News she was on “cloud nine” about the decision and that she looks forward to what her lawsuit can reveal about the inner workings of Musk and Tesla’s working environment.

“That’s the thing that I’m most happy about this, this appeal is that it will open a lot of, let’s say, ‘hidden facts’ that Musk and Tesla have tried to bury over the years. I have a lot of confidence this appeal opened the Pandora’s box as to the reality of what’s happening in Tesla,” Balan said.

The stakes are high for Balan, who told the Courthouse News this lawsuit may be her only chance at professional redemption. Since her firing, she claims her professional reputation has suffered so much that companies have refused to hire her for fear of being on Musk’s blacklist.

But more than her reputation, Balan said she’s doing it for her legacy. She is currently in remission after a stage 3B breast cancer diagnosis, which has required multiple deadline extensions in court and delayed proceedings. She doesn’t want her son to grow up thinking her mother was a thief.

The outlook appeared bleak for Balan, who planned on representing herself before the Ninth Circuit, as she had always done, until mid-2024, when she met her now-attorney Moran through a friend.

Her son, then 9, is now 15, and Balan said he understands the situation enough to talk about it with her. He even celebrated the ruling with her.

“He was like, ‘Mom, you won!’” she said gleefully.

If she could say one thing to her son about the case, she said it would be “never give up.”

And if she could say one thing to Elon Musk?

“Shame on you. I will never give up,” she stated.

A spokesperson for Tesla did not respond to a request for comment.

U.S. Circuit Judges Salvador Mendoza, a Joe Biden appointee, and Daniel P. Collins, a Trump appointee, rounded out the panel of judges.

Categories / Appeals, Business, Courts, Technology

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SEC Tests 'New Policy' Against Crypto Executive Behind \$198M Fraud

 [law.com/nationallawjournal/2025/04/23/sec-tests-new-policy-against-crypto-executive-behind-198m-fraud](https://www.law.com/nationallawjournal/2025/04/23/sec-tests-new-policy-against-crypto-executive-behind-198m-fraud)

Michael A. Mora

April 23, 2025

What You Need to Know

- The SEC accused the founder of PGI Global of orchestrating a \$198 million unregistered crypto securities and foreign exchange fraud.
- Ramil Ventura Palafox allegedly misused investor funds on luxury goods, including Lamborghinis and designer brands.
- The case aligns with the SEC's evolving policy focused on crypto securities fraud, according to an expert.

The U.S. Securities and Exchange Commission sued Ramil Ventura Palafox, founder and former CEO of the cryptocurrency asset trading company PGI Global, for an alleged \$198 million securities fraud on Tuesday in a federal district court in Virginia.

And the case fits squarely within the parameters of the "new policy" that Commissioners Hester Peirce and Mark T. Uyeda are developing, according to Daren H. Firestone, a former federal prosecutor and current partner at [Levy Firestone Muse](#) in Washington, D.C., who represents whistleblowers who expose fraud in the crypto world.

"The new policy targets fraud and it does not require making a tough call about whether a cryptocurrency is a security," said Firestone, who is not involved in the case. "Here, the security is the membership package, and that's an easier case because it meets all of the *Howey* test prongs. This case is a step in the right direction and underscores that just because a cryptocurrency is involved, the SEC is not going to shy away from protecting investors."

Around January 2020, Palafox launched PGI Global, controlling and directing all material aspects of the company, and recruited promoters with experience in multilevel marketing and the solicitation of investments in crypto assets, according to the complaint. The company touted that it was "successfully using blockchain technology to trade crypto assets."

And PGI Global promised guaranteed returns to its membership package holders as well as bonuses for existing investors who recruited new investors. In doing so, Palafox secured over \$198 million in Bitcoin and fiat currency investments from victims who purchased these membership packages.

However, the SEC alleged in the complaint that Palafox misappropriated over \$57 million of the funds he obtained through PGI Global's "unregistered securities offerings" and allocated that money to himself and various insiders. The money allegedly went toward "real estate, Lamborghinis, and items from retailers including Cartier, Versace, and Louis Vuitton."

"Palafox, meanwhile, used the vast majority of the remaining PGI Global investor funds to pay certain other investors—payments that ostensibly represented profits and other rewards those investors had earned from PGI Global's trading operations," the SEC alleged in the complaint. "In fact, this money represented funds circulated from new investors to old investors."

However, the international Ponzi-like scheme collapsed in late 2021.

Now, the case is pending before the U.S. District Court for the Eastern District of Virginia.

And the SEC alleged that throughout PGI Global's short lifespan, it failed to file a registration statement in connection with its securities offerings, which included its global membership packages. Yet, that did not stop Palafox and other defendants from offering and selling these securities via general solicitations to investors worldwide.

"Palafox used the guise of innovation to lure investors into lining his pockets with millions of dollars while leaving many victims empty-handed," Laura D'Allaird, chief of the Commission's new Cyber and Emerging Technologies Unit, said in a statement. "In reality, his false claims of crypto industry expertise and a supposed AI-powered auto-trading platform were just masking an international securities fraud."

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Trump Sons' Bitcoin Mining Partners Had Run-Ins With Regulators

To break into the cryptocurrency mining industry, **Eric Trump** and Donald Trump Jr. are teaming up with executives who previously founded a miner with the backing of investors implicated in an illegal penny-stock pump-and-dump operation.

The Trump sons and other investors created a new company and merged it with publicly-traded miner Hut 8 Corp., led by Chief Executive Officer **Asher Genoot** and Chief Strategy Officer Michael Ho. Those executives came to Hut 8 in 2023 when the company bought another miner the two founded called US Bitcoin, which was formed with financial backers who in 2018 settled accusations by the Securities and Exchange Commission of illegal promotion and manipulative trading of microcap stocks.

US Bitcoin's involvement with those investors, Mark Groussman and John Stetson, was laid out in a Massachusetts state regulator's enforcement action in 2022 after the company improperly sold shares without registering the offering. Both the SEC case, which did not involve the Hut 8 executives, and the Massachusetts case against US Bitcoin were settled with fines and other penalties without the investors or the company admitting any wrongdoing.

Asked about the connection between now-CEO Genoot and Ho and the investors involved in the alleged pump-and-dump operation, a spokesperson for Hut 8 said "the individuals named were active in the digital currency space many years ago" when Genoot and Ho were still early in their entrepreneurial careers.

"They were merely a small number of the many investors who have invested in businesses formed and led by Mr. Genoot and Mr. Ho," the Hut 8 spokesperson, Gautier Lemyze-Young, said in a statement. At no point did the investors named in the SEC case hold leadership roles or governance rights in the businesses, he added.

Genoot and Eric Trump, who are both based in Florida and have many mutual friends, hatched the deal to create the new company called American Bitcoin together, Genoot said in a recent CNBC interview. There's no evidence to indicate that Eric and Donald Trump Jr. knew about the past regulatory actions. Neither responded to requests for comment. Eric has lavished praise on the leadership team of Hut 8.

"I think the Hut 8 guys are phenomenal," Eric Trump said on a conference call to discuss the venture. "They can get projects done in half the time of other builders. It's one of the things that really attracted me to them, just their willingness to work seven days a week and be pragmatic and get things done using their own hands."

The Trumps' foray into Bitcoin mining, in which high-powered computers support the cryptocurrency's network in exchange for payment in the form of newly issued tokens, was announced on March 31. Hut 8 said the company had contributed nearly all of its ASIC mining computers in exchange for an 80% interest in American Data Centers Inc., a company launched by investors including Eric Trump and Donald Trump Jr. with Dominari Holdings Inc. in February. American Data Centers was renamed American Bitcoin and will operate as a Hut 8 subsidiary.

Eric Trump was named as American Bitcoin's chief strategy officer. Precise financial details of the deal between Hut 8 and the Trump sons, including what assets the Trumps contributed to the new venture, are unknown. The plan is to eventually take American Bitcoin public, the founders have said.

Prior to their leadership roles at Hut 8, Ho and Genoot started the mining company US Bitcoin in 2020. The miner was created with the help of "material assistance" from Groussman and Stetson, two of the investors who settled with the SEC in the 2018 pump-and-dump case that generated more than \$27 million, according to Massachusetts' financial regulator.

Two years after it was founded, US Bitcoin was the subject of a Massachusetts financial regulator's consent order for securities violations. The company allegedly sold shares without registering the offering with the state or making the appropriate filings to qualify for an exemption from registration, according to the order. The company was not allowed to sell the securities due to the involvement of Groussman and Stetson in the alleged pump-and-dump scheme, according to the order.

US Bitcoin agreed to pay a \$1 million fine to Massachusetts and restitution without admitting or denying the facts of the case. The company entered into separate settlement orders with regulators in Maryland and Virginia relating to the securities offering.

US Bitcoin, Hut 8 Merger

After becoming aware of the enforcement history of Groussman and the others, the company voluntarily reached out to investors and provided them an opportunity to recoup their investment through a rescission offering, said Lemyze-Young, the Hut 8 spokesperson. The company also took action to have investors who were named in the SEC case removed from the shareholder base, he said.

The company “also proactively reached out to regulators in various states where capital was raised to inform them of the situation and remediation efforts,” Lemyze-Young said, adding that Genoot, Ho and Hut 8 have not had any relationship with Groussman or others involved in the case since 2021.

US Bitcoin went on to merge with Hut 8 in 2023, with Genoot appointed as president and Ho as chief strategy officer of the combined firm.

Hut 8's purchase of US Bitcoin in 2023 prompted a research report from short-seller J Capital Research. The report, which Hut 8 called “false and misleading,” pointed out concerns over the company's connections to the investors named in the pump-and-dump case, as well as potential conflicts of interest. According to a company filing: “Hut 8's and USBTC's directors and executive officers have interests in the business combination that may be different from, or in addition to, the interests of Hut 8 and USBTC stockholders generally.”

Hut 8 later named Genoot as chief executive officer three weeks after the short-seller report.

Ho and Honig

While Barry Honig, the alleged leader of the pump-and-dump scheme, was not named as an investor in US Bitcoin in the Massachusetts case, Ho's connection to him dates back to before US Bitcoin. In 2017, Ho sold a company called Kairos Global Technologies to the former Riot Blockchain for \$11.9 million two weeks after Kairos was formed, according to SEC filings. In April 2018, Riot disclosed that Honig — one of Riot's large beneficial owners — was also a beneficial owner of Kairos. The company held only \$2 million of mining equipment, according to another short-seller report from Hindenburg Research.

“This was one of many transactions where Michael Ho sold machines and facilities to public and private companies,” Lemyze-Young said.

Both Honig and Groussman told Bloomberg News they have no connections to American Bitcoin, the new Hut 8 venture with the Trumps. Stetson could not be reached for comment.

Honig did describe how he came to know Genoot and Ho.

“I met them when they were young kids, in their early 20s, through an introduction,” Honig said in an interview with Bloomberg. “Their business acumen — they said all the right things. It's like picking a girl up at a bar, I knew at ‘hello.’ They were very articulate, they were very polished. I bet at hello.”

The formation of American Bitcoin follows a promise by Eric Trump's father, President Donald Trump, to make the US "the undisputed Bitcoin superpower" and ensure that the oldest cryptocurrency is "made in the USA." In recent months, the Trump family has moved full speed ahead into digital assets, expanding beyond collections of non-fungible tokens and into investments in various cryptocurrencies and a decentralized-finance project called World Liberty Financial.

"There are no conflicts because I don't work with the White House," Eric Trump said in the Bloomberg TV interview earlier this month.

Eric Trump said in the CNBC interview that the foray into mining is part of a wider interest in the crypto industry as an alternative to a traditional financial industry "that had tried to put our family out of business."

"Having a lot of like-minded people in that industry, who are also getting absolutely malayed by the very people who were coming after us, it brought together a kind of unique allegiance," he told CNBC. When it comes to Hut 8, he added: "It's kind of the perfect synergy between myself, Don and a company that's already amazing. We're going to go out and do great things."

(Updates timeline to include rescission offering.)

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Michael P. Regan

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Flash Boys Emerge From Shadows to Reorder Stock Trading

The flash boys made famous by Michael Lewis were a secretive bunch. The high-frequency trading firms depicted in his 2014 bestseller worked almost unseen, leveraging their technical prowess to mint a fortune in the shadows between stock buyers and sellers.

Which is what makes Oscar van Schaijk's current schedule such a surprise.

Instead of flying under the radar, this flash boy is flying all over Europe, attending conferences, roundtables, and the offices of major money managers. Basically any place that puts him in front of the investors that his employer, the Dutch market maker Optiver Holding BV, increasingly deals with directly.

"It's not how I started off as a trader," says Van Schaijk, the Amsterdam-based firm's head of cash equity trading. "But it's important."

Van Schaijk's mission is to sign deals that set up direct connections between Optiver and buy-side investors, cutting out the brokers and exchanges who usually sit between in a major challenge to the established stock-trading order.



Oscar van Schaijk, head of cash equity trading at Optiver Holding BV.

Source: Optiver

At the same time, rival market makers including XTX Markets and Tower Research Capital are also providing liquidity to the buy side on a bilateral basis, according to people familiar with the matter, albeit with a broker showing quotes and handling settlement. Goldman Sachs Group Inc., which acts as both a market maker and broker, has recently started streaming quotes directly to its money manager clients, another person familiar with the matter says.

These new kinds of arrangements — more akin to currency trading — are stirring concerns among some market participants, who fear they're a threat to transparency and liquidity in an already fragmented financial landscape. But as ultra-fast firms take an increasingly key role on both sides of the Atlantic and ever-more activity migrates away from exchanges, this shift in how stock trades get done is gathering pace.

Dealing Direct

A market maker like Optiver facilitates trading by standing ready to buy or sell securities at any time, taking no view on the direction of prices but aiming to make a small profit with each transaction.

Usually an investor will place an order with a broker, whose job it is to execute that at the best possible price, whether that's on or off-exchange. Market makers will often be on the other side of that business, but by signing deals that establish direct trading connections with money managers, Optiver effectively cuts out the middleman.

These bilateral arrangements can help a market maker manage their own overall exposure, plus bring in flows while avoiding trading against ruthless rival firms or fast-money players who will be seeking to profit against it. The pitch for the investor is convenience, access to liquidity that might not be on exchange, and maybe even better pricing (since the market maker doesn't need to build a cushion into their quotes in case they're trading against a rival).

Sam Spencer, a trader at asset manager Ninety One Plc, says its ability to measure the outcome of its trades gives his firm confidence to deal with market makers directly.

"It gives us a lot of power, so we're not necessarily fearful of not being anonymous in the way we used to be with market makers," says Spencer. "We'd almost rather the market makers know it's us so we're likely to achieve a better price."

The evolution echoes what's happening in the US, where similar forces are driving the growing use of "private rooms" — venues created inside dark pools where firms can specify who they'll trade with. But in Europe the trend has added significance: It threatens to siphon more business away from exchanges with publicly visible orders, which already account for only about 40% of trades, compared with roughly half in the US.

Bilateral trading agreements represent "a bit of a self-fulfilling prophecy because on-exchange liquidity has been declining in Europe for a while and then the market makers come and say, 'Hey, we can offer you this liquidity,'" says Evan Canwell, an equity trader at T. Rowe Price, which trades bilaterally with a few market makers including Optiver. "That's quite appealing."

Bloomberg LP, parent company of Bloomberg News, runs a platform where banks and market makers show so-called indications of interests to the buy side.

Dark Market

The new model is a blow to exchanges and big banks that used to dominate stock trading. But some agency brokers like BTIG Ltd. — which doesn't trade its own book — are in demand as a middleman to facilitate direct trades between investors and liquidity providers. "In the last six months we have seen exponential growth in the use of this model," says CEO Luke Hodges.

Even before this boom, volumes had long been shifting away from accessible venues on both sides of the Atlantic partly because investors naturally like to find alternatives where they can hide their trading intention.

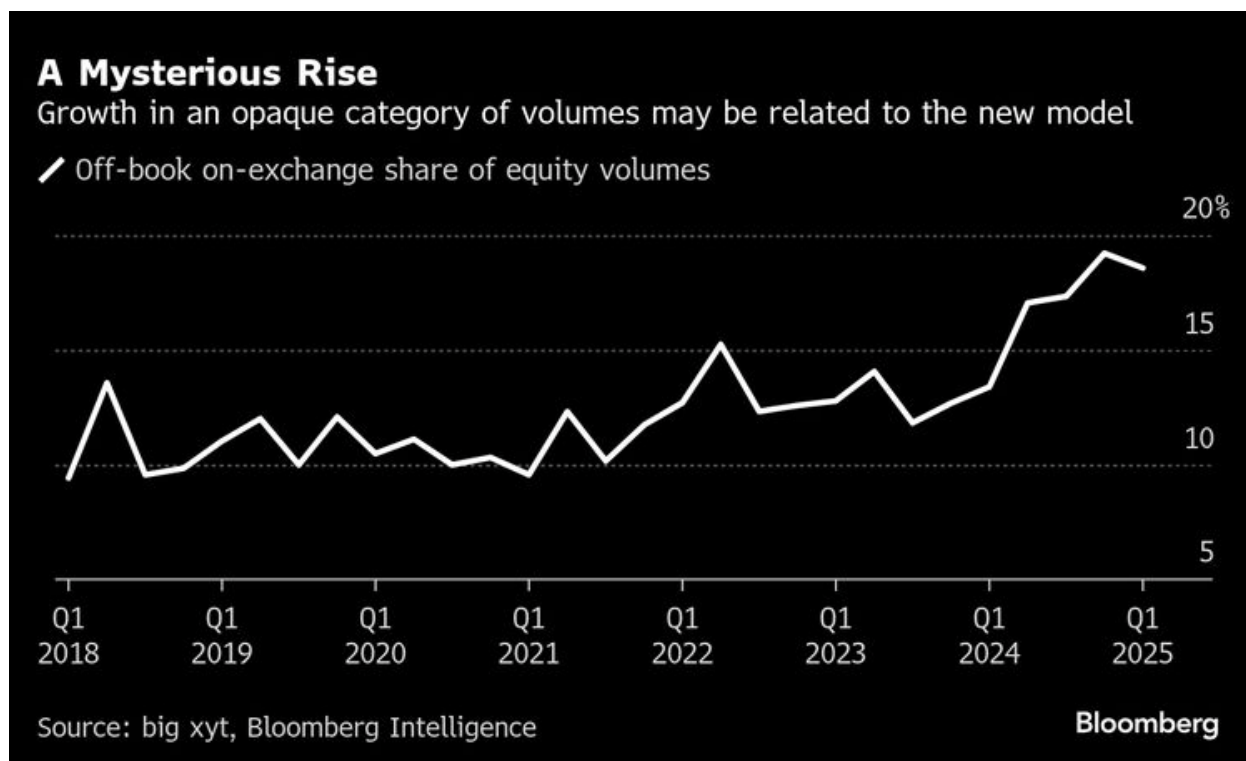


In isolation, bilateral trading can seem like a win-win. Market makers provide good pricing, but still make money by guiding the kind of flows they want — often smaller and so-called benign transactions, or those that don't have any informational value, like an asset manager buying more stocks because of fund inflows.

Yet in the long run this shift poses a challenge to price discovery because these alternative arrangements still rely on prices on exchanges as a reference, which may become less representative, says Rosa Armesto, the director general of the Federation of European Securities Exchanges, which represents 17 bourses.

"If this trend continues, we will go into a dark or bilateral market instead of trying to increase transparent liquidity, which after all is more efficient and more accessible," she says.

Natan Tiefenbrun, president for North American and European equities at Cboe Global Markets Inc., says while the exchange supports competition and innovation, the growth of bilateral trading does raise a "philosophical question" for regulators on how they maintain oversight and ensure the quality of price formation. "It adds to the uncertainty about what liquidity is broadly addressable versus selectively available," he says.



Responding to questions from Bloomberg News on bilateral arrangements, a spokesperson for the European Securities and Markets Authority, which oversees the region's capital markets, said it's actively monitoring developments. The watchdog shares "the concerns about potential negative impact on price formation and market functioning," the spokesperson said.

A spokesperson for Optiver declined to comment on the concerns.

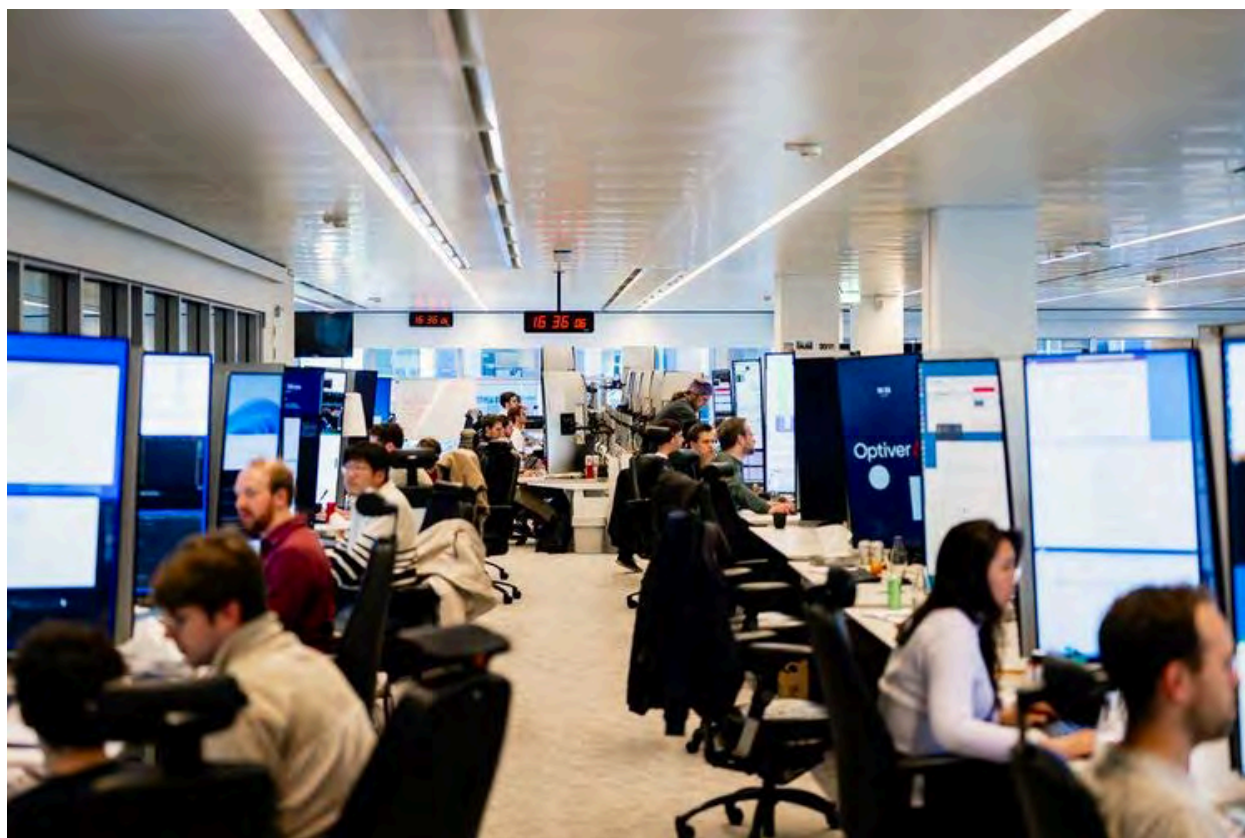
Sentiment Shift

Ironically, many traders trace the emergence of bilateral arrangements to a regulatory overhaul aimed at bringing more volumes into the open.

When it took effect in 2018, MiFID II popularized a new category called systematic internalizers (SIs) for banks and market makers that trade on their own book. This had the unexpected side effect of the buy side getting used to these players, and often seeing them on the other side of trades they had sent to brokers.

"There was an air of caution," says Hayley McDowell, head of European market structure at investment bank RBC Capital Markets. "But that sentiment has really shifted. We see the buy side viewing these sophisticated players as key partners."

Until recently, Optiver's model stood out because it bypassed both brokers and the SI regime, which covers most of its peers such as XTX and Citadel Securities. In regulatory data, the firm's one-to-one transactions were classified as "off-book on-exchange." That's a miscellaneous category that can also include manually negotiated and retail trades which has nearly doubled in five years to 19% of volumes — an increase that experts say is partly driven by Optiver's success.



A trading floor at Optiver's headquarters in Amsterdam.

Source: Optiver

The firm says it's now become an SI, which means it will start reporting volumes under that category, bringing it in line with rivals.

"It's just business as usual," George Fletcher, an institutional trader at Optiver, told a conference hosted by Bloomberg Intelligence earlier this month. "We truly believe in true bilateral. Broker intermediation doesn't really make sense with this."

For all that non-bank market makers like Optiver, XTX and Tower have increased their provision of bilateral liquidity, their activity is dwarfed by that of major banks including Goldman, Morgan Stanley, JPMorgan Chase & Co., Bank of America and UBS Group AG.

But rising demand for bilateral arrangements has not gone unnoticed by these major players, as evidenced by Goldman's recent move to stream quotes directly to clients.

Meanwhile, UBS has long offered bilateral liquidity for large trades, but has expanded that to stream quotes to the buy side for smaller orders. Jonathan Fletcher, EMEA head of electronic trading at UBS, points out that banks are also offering a lot more, such as research and financing.

JPMorgan has also seen a “persistent increase” in client demand for such liquidity, Cansu Temiz, head of global equity liquidity solutions for EMEA, told the BI event this month. But she doubts it will take over the market.

“There are self-limiting factors to bilateral liquidity becoming too big” since it’s mostly used for just certain types of trades, she said. “The recent few days are a prime example of that: When there is an urgency to trade, we see investors moving into the lit venues.”

Trusted Trading

Since its founding in 1986 on the floor of Amsterdam’s options exchange, Optiver has grown into a roughly 2,000-person operation, with 150 to 200 counterparties signed up in cash equities. Its net trading income rose to €3.5 billion (\$4 billion) last year, a 26% increase from 2023.

In Van Schaijk’s telling, the firm first decided to trade directly with the buy side after building out a central risk book from its options and ETF business — a dashboard of the firm’s aggregated exposures to every stock.

There are times when it needs to buy or sell particular securities to hedge its positions, and that enables it to give a better pricing on those names. Multiplied across the market, it’s able to post quotes to buy and sell any European stock. Van Schaijk also stresses that Optiver’s ability to unwind positions slowly and across a range of instruments helps limit the likelihood it will unduly move markets.

Given its success with bilateral arrangements in Europe, the firm is now contemplating bringing a similar model to the US, Van Schaijk says.

In one sense, trading directly with buy-side investors takes Optiver far from its high-frequency roots since the paperwork to sign up a new counterparty can take anything from weeks to a year to complete. It also requires a degree of persuasion: Thanks in part to Lewis, the flash boys don’t enjoy the most positive of reputations.

“Bilateral trading is very heavily dependent on trust,” says Van Schaijk. “That requires us to explain what we do, to be open about it, and to understand how somebody else trades.”

(An AI summary was removed from the top of the story for lack of specificity about how some market makers provide liquidity to investors via a broker.)

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Tivity Health Denied Win In Suit Over Nutrisystem Buy

By **Sydney Price**

Law360 (April 22, 2025, 6:22 PM EDT) -- Health program company Tivity Health was largely denied a summary judgment win over investors who sued the company over its troubled \$1.3 billion purchase of Nutrisystem, according to an order from a Tennessee federal judge who ruled Tivity's duty to disclose certain information is still debatable.

U.S. District Judge Waverly D. Crenshaw Jr. **said Monday** that at this point in the litigation, Tivity's responsibility to report an \$8.3 million loss to adjusted earnings before interest, taxes and depreciation before it did is not certain. The investors allege in the class action that the defendants, which include Tivity and several of its executives, did not reveal the issue until February 2020, painting a misleading picture of Nutrisystem's success leading up to and after the acquisition.

The investors claim the executives misled shareholders about Nutrisystem's performance in the beginning of 2019 and the deal's impact on Tivity's newly launched nutrition segment. Despite Tivity's assurances that the new segment was doing well, the investors said it had actually performed poorly from the beginning.

The alleged scheme was revealed when Tivity announced a \$377 million charge related to its acquisition of Nutrisystem, consisting of a \$240 million impairment charge to lower the value of the Nutrisystem trade name and a \$137 million charge to reduce the value of the goodwill associated with the acquisition, according to the complaint. Tivity's stock price fell more than \$10 per share, or about 45%, to close at \$12.50 per share on Feb. 20, 2020, "causing tens of millions of dollars in damages to Tivity investors," according to the suit.

Judge Crenshaw, in denying part of the defendants' motion for summary judgment Monday, said both the defendants and investors have submitted competing evidence sufficient to raise a genuine dispute of material fact best resolved by a jury.

Judge Crenshaw, however, did grant the defendants' request to dismiss the suit's claim that the departure of former Tivity Chief Operating Officer Dawn Zier in December 2019 revealed Tivity's fraud. Judge Crenshaw said the claim contradicts the investors' assertion that Tivity's various disclosures throughout 2019 concealed the alleged fraud, which allegedly surfaced in the February 2020 corrective disclosure.

"Further, the plain language of Tivity's announcement over Zier's departure makes no mention of any of the fraud alleged," the order states. "Regardless of whether Zier departed from Tivity to 'pursue other career opportunities' or because of 'Nutrisystem's financial performance,' there is no evidence in the record demonstrating that investors would have attributed her departure to the Nutrisystem and goodwill fraud."

In June 2022, Judge Crenshaw certified a class of investors led by Sheet Metal Workers Local No. 33 Pension Fund after finding that questions common to the class members predominate over any questions affecting only individuals.

The class includes anyone who acquired Tivity stock between March 8, 2019, and Feb. 19, 2020, according to the order, which appoints Robbins Geller Rudman & Dowd LLP as class counsel.

Judge Crenshaw granted a stay in the proceedings in July 2023 after Tivity appealed the class certification decision. Judge Crenshaw said at the time that Tivity had raised "legitimate issues" about the certification, making it possible that it could prevail in an appeal, but the stay was lifted in

September 2024.

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

The investors are represented by Christopher Wood, Shawn Williams, Snehee Khandeshi, Darren J. Robbins and Sara B. Polychron of Robbins Geller Rudman & Dowd LLP, Jerry E. Martin of Barrett Johnston Martin & Garrison LLC and Michael E. Heffernan of Allotta Farley Co. LPA.

Tivity and its executives are represented by Jessica P. Corley, Lisa Bugni, Brandon R. Keel and Logan R. Hobson of King & Spalding LLP and Joseph B. Crace Jr. and Briana Sprick Schuster of Bass Berry & Sims PLC.

The case is Robert Strougo v. Tivity Health Inc. et al., case number 3:20-cv-00165, in the U.S. District Court for the Middle District of Tennessee.

--Editing by Michael Watanabe.

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Firms Vie To Lead Trade Desk Investor Suit Over AI Rollout

By **Emilie Ruscoe**

Law360 (April 22, 2025, 9:44 PM EDT) -- Robbins Geller, Bernstein Litowitz and other firms are seeking to represent a proposed class of investors in a suit alleging global digital marketing venture The Trade Desk Inc. hid snags that ultimately delayed the rollout its artificial intelligence-driven ad-buying platform.

Five lead plaintiff and lead counsel motions were filed Monday in the matter in Los Angeles federal court alleging losses ranging from over \$41,000 to over \$16.5 million in connection with The Trade Desk's alleged misrepresentations.

Bernstein Litowitz Berger & Grossman' clients, the Arkansas Public Employees Retirement System and the Public Employees Retirement System of Mississippi, claimed losses of over \$11 million and over \$5 million respectively, which together total over \$16.5 million.

Robbins Geller Rudman & Dowd LLP's clients, an asset management company and three institutional investors associated with Michigan's Macomb County, claimed losses of over \$10 million in connection with the matter.

And individual investor Manuel Savorelli, who is represented by Glancy Prongay & Murray LLP, alleged losses of nearly \$208,000.

On Tuesday, two other would-be lead plaintiff movants took their names out of consideration.

Levi & Korsinsky LLP client Kapil Bagaria, who had claimed losses of nearly \$1.25 million, withdrew his lead plaintiff bid.

And James Williams, who is represented by the Rosen Law Firm PA and claimed losses of over \$41,000, said Tuesday that he didn't oppose competing lead plaintiff bids.

The suit was filed in February by institutional investor United Union of Roofers, Waterproofers & Allied Workers Local Union No. 8 WBPA Fund, which is represented by Saxena White PA and Bienert Katzman Littrell Williams LLP but did not seek lead plaintiff appointment.

The complaint **alleges** that when Trade Desk launched its Kokai platform in June 2023, it described the new offering as an AI forecasting tool that would empower its users to more effectively deploy their advertising spending.

According to the pension fund, the company promised its users a seamless transition from its old ad-buying platform before seeing "significant, ongoing, self-inflicted execution challenges" rolling out Kokai.

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

The United Union of Roofers, Waterproofers & Allied Workers Local Union No. 8 WBPA Fund is represented by Saxena White PA and Bienert Katzman Littrell Williams LLP.

The Arkansas Public Employees Retirement System and the Public Employees Retirement System of Mississippi are represented by Jonathan D. Uslaner of Bernstein Litowitz Berger & Grossmann LLP.

KBC Asset Management NV, the Macomb County Employees' Retirement System, the Macomb County Intermediate Retirees Medical Benefits Trust and the Macomb County Retiree Health Care Fund are represented by Darren J. Robbins of Robbins Geller Rudman & Dowd LLP.

Manuel Savorelli is represented by Charles Linehan of Glancy Prongay & Murray LLP.

Kapil Bagaria is represented by Adam M. Apton of Levi & Korsinsky LLP.

James Williams is represented by Laurence M. Rosen of the Rosen Law Firm PA.

The defendants are represented by Benjamin M. Crosson, Caz Hashemi and Jessica L. Snorgrass of Wilson Sonsini Goodrich & Rosati PC.

The case is United Union of Roofers Waterproofers & Allied Workers Local Union No. 8 WBPA Fund v. The Trade Desk Inc. et al., case number 2:25-cv-01396, in the U.S. District Court for the Central District of California.

--Additional reporting by Sydney Price. Editing by Emily Kokoll.

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Scott + Scott To Lead Medical Cannabis REIT Securities Suit

By **Isaac Monterose**

Law360 (April 22, 2025, 5:59 PM EDT) -- A Maryland federal judge picked Scott + Scott as the lead class counsel Tuesday for a proposed securities class action accusing a medical cannabis-focused real estate investment trust of misleading shareholders about its declining rents, declining property management fees and the state of its leasing operations.

In his decision, U.S. District Judge George L. Russell III granted movant the City of Birmingham Retirement and Relief System's lead plaintiff and class counsel appointment bid and rejected similar bids filed by movants Yolanda Castaneda, Richard A. Blocker, Kelly R. Johnson and the Utility Board Retirement System City of Key West.

The Birmingham, Alabama, pension system is represented by Scott + Scott attorneys and its local counsel is Abato Rubenstein & Abato PA.

The movants jostled for the lead plaintiff and class counsel spot after named plaintiff Alain Giraudon sued Innovative Industrial Properties Inc. **in January**.

Judge Russell determined that the Birmingham pension system alleged that it was damaged in the amount of \$257,792, which meant that it suffered the highest loss of all the movants.

"As to the other factors, during the class period, Birmingham purchased 5,538 total shares of [the REIT], retained 5,191 shares, and expended approximately \$672,257 on its purchases of [the REIT's] securities during the class period," the judge said.

"The other movants suffered losses of \$183,675 and \$129,046," the judge said, referring to Blocker and Johnson together and the Key West, Florida, pension system, respectively.

Blocker and Johnson claimed they bought 10,480 of the REIT's shares during the class period, but the Birmingham pension system still suffered worse losses overall, Judge Russell ruled.

The judge also ruled that the Birmingham pension system is an "adequate" lead plaintiff and its claims are typical of the proposed class.

Judge Russell wasn't convinced by the Key West pension system's argument that the Birmingham pension system couldn't be the lead plaintiff because across a three-year period, it was the lead plaintiff in more than five other securities class actions.

According to the judge, the Birmingham pension system said that as an institutional investor, it was exempt from the Private Securities Litigation Reform Act's "five-in-three" provision.

Judge Russell determined that the Birmingham pension system could handle being a lead plaintiff in the Giraudon case.

"Here, Birmingham's involvement in six other suits does not prevent it from fulfilling its duties as lead plaintiff," the judge argued. "Birmingham has affirmed that it is well-resourced, experienced, and successful at managing multiple simultaneous securities class actions and competing movants have provided no evidence to the contrary."

"The court will exercise its discretion under [federal law] to appoint Birmingham as lead plaintiff," the judge said.

Judge Russell rejected Blocker and Johnson's other "speculative" arguments, which included alleging that they should be picked as lead plaintiffs because they bought preferred and common stock in the REIT while the Birmingham pension system only bought common stock.

The Birmingham pension system's counsel Thomas L. Laughlin IV of Scott + Scott told Law360 on Tuesday that they were grateful for the judge's decision.

"As stated in our complaint, [the REIT] caused significant financial harm to our client and we look forward to bringing this case on behalf of the City of Birmingham Retirement and Relief System, which was also named lead plaintiff," Laughlin said.

Counsel for Giraudon, the other movants and the REIT didn't immediately respond to requests for comment Tuesday.

The City of Birmingham Retirement and Relief System is represented by Thomas L. Laughlin IV, Donald A. Broggi, Nicholas S. Bruno and Jessica M. Casey of Scott + Scott and Corey S. Bott and Shauna Barnaskas of Abato Rubenstein & Abato PA.

Giraudon is represented by Daniel S. Sommers and S. Douglas Bunch of Cohen Milstein Sellers & Toll PLLC, Jeremy A. Lieberman and J. Alexander Hood II of Pomerantz LLP and Peretz Bronstein of Bronstein Gewirtz & Grossman LLC.

Castaneda is represented by Cynthia L. Leppert of Law Office of Cynthia Leppert LLC and Phillip Kim and Laurence M. Rosen of The Rosen Law Firm PA.

The Utility Board Retirement System City of Key West is represented by Scott E. Nevin of Law Office of Peter T. Nicholl and Mitchell M.Z. Twersky, Atara Twersky and Lawrence D. Levit of Abraham Fruchter & Twersky LLP.

Blocker and Johnson are represented by Steven D. Silverman, Andrew C. White and William N. Sinclair of Silverman Thompson Slutkin & White LLC and Michael Albert, Juan C. Sanchez and Kenneth P. Dolitsky of Robbins Geller Rudman & Dowd LLP.

Innovative Industrial Properties is represented by Jarren N. Ginsburg, Andrew A. Howell, Stephanie L. McPhail and Todd A. Murray of Foley & Lardner LLP.

The case is Giraudon v. Innovative Industrial Properties Inc. et al., case number 1:25-cv-00182, in the U.S. District Court for the District of Maryland.

--Editing by Stephen Berg.



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Fintech Faces Investor Suit Over Unpaid \$1.25M Settlement

By **Emilie Ruscoe**

Law360 (April 22, 2025, 7:57 PM EDT) -- A Toronto-headquartered fintech company faces a fresh suit in Brooklyn federal court, alleging it has not paid "a dollar" of the \$1.25 million it committed to handing over to end securities fraud claims.

In his Monday suit, plaintiff Alejandro Handal claimed Tenet Fintech Group Inc., its CEO Johnson Joseph and its former Chief Financial Officer Jean Landreville should be found liable for breaching a contract after Tenet failed to pony up the sum the parties agreed to — but which it had not yet been ordered to pay — in the securities fraud suit.

"In violation of the obligations to which they bound themselves, Defendants failed to pay or cause to be paid any of the installments, in whole or in part, breaching [a memorandum of understanding's] express terms," Handal said Monday.

Handal is one of three plaintiffs in the first-filed suit and in that matter sought to represent two subclasses of investors in the company now known as Tenet. In the latest version of those claims, from October 2023, the investors claimed that they were damaged in 2021 after a short-seller took aim at Tenet with a report accusing the company of "multiple material misrepresentations and omissions" regarding its involvement with three separate companies.

After U.S. District Judge Pamela K. Chen **trimmed** claims from the first version of the securities class action in September 2023, Handal said, the parties reached an agreement in principle to settle the suit, inking their memorandum of understanding in April 2024.

In exchange for the release of the suit's claims, the MOU states, the defendants agreed to "pay or to cause the payment of the 'settlement amount'" into an escrow account in a series of five payments that was supposed to be completed by the end of 2024.

But Tenet failed to make its first payment at the end of April 2024 — prompting the parties to add an additional \$50,000 to the original \$1.2 million settlement total — before defaulting on its subsequent payments.

The investors sought enforcement of the MOU in October, and in November, Judge Chen found that the agreement was enforceable, but told the plaintiffs to file suit separately over the contract dispute.

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

Handal is represented by Jacob A. Goldberg and Jing Chen of The Rosen Law Firm PA.

Counsel information for the defendants was not immediately available on Tuesday.

The case is Handal v. Tenet Fintech Group Inc et al., case number 1:25-cv-02195, in the U.S. District Court for the Eastern District of New York.

--Additional reporting by Katryna Perera. Editing by Vaqas Asghar.



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Intel Asks For Final End To Claims Over Chipmaking Problems

By **Nate Beck**

Law360 (April 22, 2025, 6:12 PM EDT) -- Intel Corp. has told a California federal judge that a group of investors on a second try failed again to show that the company concealed problems in its domestic computer chipmaking business before posting results on Aug. 1 that led to its largest single-day stock decline since 1985.

Intel argued Monday that a judge should dismiss a second attempt by the investors to claim that wrongdoing by the company caused quarterly results that prompted Intel's stock price to fall 26% in 24 hours, wiping out \$32.2 billion in equity.

The company on Aug. 1 announced a \$1.6 billion loss along with plans to lay off 15,000 people and cut \$10 billion in 2025 due to struggles launching a chipmaking business.

U.S. District Judge Trina Thompson on March 5 tossed a set of arguments from five investors over the decline, although the judge allowed the group a second chance to argue that Intel reported false statements about its chipmaking business.

The company said it was upfront in telling investors that it would not report results for a newly formed business segment selling chips to external customers until it finished a reorganization in 2024. Executives created the segment in 2021 to compete with rivals such as Nvidia and Samsung, including by spending more than \$40 billion on factories in Arizona and Ohio.

"Dismissal with prejudice is now warranted," Intel argued in its **motion** Monday. "The SAC is 352 paragraphs. Nothing was left on the cutting room floor. Yet all it offers is unsupported spin on the same public material, without witnesses, documents, or other hallmarks of fraud like insider sales, government investigations, or restatements required by auditors."

In 2021, Intel said it would seek to make computer chips for outside buyers, instead of its own use, announcing Qualcomm and Amazon Web Services as its first major buyers that year.

The group of investors pointed to the company's struggles in launching the business as contributing to Intel's November removal from the Dow Jones Industrial Average. The investors also noted that CEO Pat Gelsinger announced his retirement in December while the company in February delayed the expected opening of its first chipmaking factory in Ohio to at least 2030.

Intel argued Monday that the second complaint by investors brings the same unsuccessful claims against the company while challenging fewer statements by the company or executives as false or misleading.

The company said it reorganized into two segments on Jan. 1 2024 — one that designs computer chips and another that makes them as part of the plan announced in 2021.

Once the company completed the reorganization, it released financial results for 2021, 2022 and 2023 that were recast as if the two segments had existed independently during that time.

Intel on Monday said Ernst & Young later independently audited the company's 2023 financial statements, finding that they conformed with generally accepted accounting principles.

"Every number that Intel reported was undisputedly correct," Intel argued. "The fact that Intel provided a reorganized view of past results, for comparison purposes, does not mean the recast results previously were fraudulently concealed."

After the investors in their revised complaint offered an accounting consultant's opinion of the company's reporting, Intel on Monday argued that the analysis only offered an observation of public information.

"What the [second amended complaint] calls 'expert analysis' by Harris Devor, CPA, is new gloss on old allegations," the company argued.

In a March 5 decision, Judge Thompson found that the investors misleadingly cast a \$7 billion loss for Intel's overall manufacturing business in 2023 as the result of its chipmaking arm for external customers.

The judge likewise found that statements from the company about the effects of customer momentum or artificial intelligence on Intel's chipmaking businesses weren't an act of deception.

"The court agrees with defendants that these statements are 'so imprecise and noncommittal that they are incapable of objective verification,'" Judge Thompson ruled.

Counsel for the parties did not respond to messages seeking comment Tuesday.

The investors are represented by Charles Henry Linehan, Pavithra Rajesh and Robert Vincent Prongay of Glancy Prongay & Murray LLP.

Intel is represented by Brian Rivas Boessenecker, Gregory P. Stone, John Michael Gildersleeve and Lorraine Abdulahad of Munger Tolles & Olson LLP.

The case is *In re Intel Corp. Securities Litigation*, case number 3:24-cv-02683, in the U.S. District Court for the Northern District of California.

--Editing by Rich Mills.



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Wells Fargo 'Sham' Hiring Suit Delayed For Mediation

By **Katryna Perera**

Law360 (April 22, 2025, 2:16 PM EDT) -- A California federal judge agreed to move deadlines in a proposed investor class action accusing Wells Fargo of conducting "sham" job interviews to meet diversity targets that later triggered a stock drop when the practice was revealed, citing plans to attempt mediation in May.

U.S. District Judge Trina L. Thompson issued a text-only order in the case docket on Monday, stating that the parties have retained former U.S. District Judge Layn R. Phillips to mediate the action in person on May 28. Therefore, Judge Thompson reset the alternative dispute resolution deadline to May 30 and ordered status reports on the outcome of the mediation to be filed by June 10.

The parties were most recently fighting over class certification, with Wells Fargo **arguing in February** that shareholders have not shown how a downturn in the bank's stock price was caused by the supposedly "sham" job interviews rather than a challenging interest rate environment.

Investors filed suit shortly after the stock price fell, alleging Wells Fargo lost \$17 billion in market capitalization — a 10% downturn in its stock price — over the two-day period after its hiring practices came to light.

The bank **has been accused** of setting up phony job interviews for positions that didn't exist or that had already been filled in order to meet a stated goal of diversifying its pool of job candidates.

Shareholders moved to certify the class action in January after Judge Thompson **declined to dismiss** the suit last year.

The case is SEB Investment Management AB et al. v. Wells Fargo & Co. et al., case number 3:22-cv-03811, in the U.S. District Court for the Northern District of California.

--Editing by Alex Hubbard.

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BlackRock Funds Drop Claims In Valeant Stock Suit

By **Carla Baranauckas**

Law360 (April 22, 2025, 9:45 PM EDT) -- Dozens of BlackRock funds have dropped their claims in multidistrict securities litigation that accused a Bausch Health Cos. Inc. predecessor and others of a market manipulation scheme that caused a stock plummet, according to an order signed Tuesday by a New Jersey federal judge.

The BlackRock funds were among the investors that filed lawsuits against the former Valeant Pharmaceuticals International Inc. and others, alleging that the company misled investors by having employees operate under aliases for another company, Philidor Rx Services LLC.

Philidor allegedly engaged in deceptive practices to prevent generic alternatives from competing with Valeant's branded drugs. The order signed by U.S. District Judge Michael A. Shipp didn't detail the reason the claims were dismissed.

Valeant **agreed to pay** \$1.2 billion to a class of investors in 2019. Claims remain ongoing against the remaining defendant, PwC, formerly PricewaterhouseCoopers. Investors contend that the auditing firm **failed to find red flags** that could have identified the drug company's alleged market manipulation earlier.

Valeant reportedly misled investors by altering prescription codes for its branded drugs and making claims for unrequested refills, investors contended. The company concealed the scheme by lying about pharmacy ownership and issuing false statements to investors.

In 2015, shares of Valeant plunged up to 40% after a report by Citron Research, a stock commentary website, accused the company of counting inventory shipments to specialty pharmacies, like Philidor, as revenue.

Citron called Valeant a "pharmaceutical Enron." Valeant denied the allegations.

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

The BlackRock funds are represented by David J. Libowsky of Bressler Amery & Ross PC.

Valeant is represented by Matthew A. Sklar and Omar A. Bareento of McCarter & English LLP.

The case is In re Valeant Pharmaceuticals International Inc. Securities Litigation, case number 3:15-cv-07658, in U.S. District Court for the District of New Jersey.

--Additional reporting by Jessica Corso, Jeff Overley and Ryan Harroff. Editing by Andrew Cohen.



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Bernstein Litowitz Looks To Hire SEC's Ex-Top Crypto Cop

By **Jessica Corso**

Law360 (April 23, 2025, 12:55 PM EDT) -- Investor-side firm Bernstein Litowitz Berger & Grossmann LLP has disclosed in a court filing that it is seeking to hire Jorge Tenreiro, the former head of the U.S. Securities and Exchange Commission's crypto enforcement unit as well as the onetime chief of the agency's entire litigation team.

Bernstein Litowitz informed a New York federal court of the potential hire on Tuesday, requesting that the court approve a procedure the firm has put in place to wall off Tenreiro from a shareholder suit over Elon Musk's purchase of the social media platform Twitter, now known as X.

The SEC sued Musk in the waning days of the Biden administration over his prebuyout purchase of Twitter shares, and Bernstein said Tenreiro had "minimal involvement" in that investigation as chief litigation counsel.

The firm said that Tenreiro's employment "will only commence once he has fully cleared all conflicts, including the determination of this motion by this court."

Tenreiro was the deputy chief of the SEC's crypto assets and cyber unit for two years before being promoted to chief litigation counsel in December 2024.

He was shifted out of the enforcement division following the inauguration of President Donald Trump and the ascension of a majority Republican commission, which has taken a softer stance toward the crypto industry and has dropped many of the cases that Tenreiro previously oversaw.

Bernstein Litowitz and Tenreiro didn't immediately respond to requests for comment.

--Editing by Robert Rudinger.

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Judge Wonders If BofA Fake Accounts Suit Is 'Fishing'

By **Hayley Fowler**

Law360, Charlotte, N.C. (April 22, 2025, 3:24 PM EDT) -- A North Carolina federal judge on Tuesday questioned why he shouldn't dismiss a proposed class action alleging Bank of America opened unauthorized accounts in people's names after the bank argued that a similar suit against Wells Fargo didn't survive.

The proposed class has accused Bank of America of opening the accounts without their consent as part of a sales incentive program detailed in a **\$150 million consent order** that Bank of America inked to settle the federal government's consumer protection claims in 2023. Bank of America, however, has said the named plaintiffs weren't part of that consent order.

In evaluating whether the Charlotte-based bank has grounds to dismiss the suit, U.S. District Judge Max O. Cogburn Jr. noted the plaintiffs' claims appeared to be "more on the edges" rather than at the center of the consent order. He then questioned whether it was worth letting the parties conduct discovery, spend money on lawyers and get all the way to the summary judgment stage.

"Are we really going to have something there, or is this a fishing expedition?" Judge Cogburn said.

Counsel for the proposed class shot back that Bank of America is trying to "confuse the issue" with an alternative set of facts that have nothing to do with the present case. Abou Amara of Gustafson Gluek PLLC said the federal government found hundreds of thousands of customers were affected by Bank of America's alleged misconduct, and he argued that the named plaintiffs' experiences were in "complete alignment" with what the government found.

"This is not a fishing expedition," he said multiple times during the hearing.

Amanda Groves of Winston & Strawn LLP, representing Bank of America, later said that the consent order's remediation population was 4,883 individuals rather than the "hundreds of thousands" touted by class counsel.

That consent order was signed in 2023 by Bank of America, the Consumer Financial Protection Bureau and the Office of the Comptroller of the Currency to resolve allegations involving the bank's credit card rewards and overdraft policies.

As part of the settlement, the bank agreed to pay \$150 million in fines. About \$30 million of those penalties was attributed to Bank of America's alleged failure to provide credit card sign-up reward bonuses as advertised and opening unauthorized credit card accounts to meet sales targets, which have since been eliminated.

Bank of America did not admit any wrongdoing in agreeing to pay the fines, and the CFPB said only a "small percentage" of the bank's new credit card accounts opened between 2012 and 2020 were found to be unauthorized.

An avalanche of consumer lawsuits followed, including one by Ohio resident Nadine Ballard **filed a few days after** the government announced its settlement with Bank of America. Ballard sued on behalf of a proposed class of consumers who said they unknowingly had credit card accounts opened in their names between 2012 and 2022, which allegedly resulted in penalties for unpaid fees and impacted their credit scores.

Ballard said the accounts were opened by Bank of America employees desperate to reach "unrealistic

sales quotas" as part of an alleged money-grabbing scheme by the bank.

Those cases were eventually consolidated before Judge Cogburn in the Western District of North Carolina, and an amended consolidated complaint was filed in October. Bank of America subsequently **moved to have the case tossed** in November, arguing that third-party identity theft is to blame for the alleged fake accounts.

The bank pointed to a California federal court's Nov. 8 decision in *Patterson v. Wells Fargo & Co. et al.*, in which a proposed class of consumers **accused the bank** of accessing their credit reports after fraudsters applied to open accounts in their name. In dismissing the suit, the judge determined that accessing a customer's credit report is not a violation of the Fair Credit Reporting Act, even if the "customer" turns out to be an identity thief.

Groves, representing Bank of America, argued during Tuesday's hearing in Charlotte that the *Patterson* case is the "most relevant, on point authority" as to why dismissal is warranted.

But Amara argued the *Patterson* case involved a different set of facts and isn't otherwise compatible with Fourth Circuit precedent. Arguing for the proposed class, he said the *Patterson* case involved existing customers, whereas the present suit has two named plaintiffs who were never customers of Bank of America before they had accounts unknowingly opened in their names.

The court in *Patterson* also engaged in a "factual contest" that the Fourth Circuit disallows at the motion to dismiss stage, Amara said.

In seeking dismissal, Groves argued that the named plaintiffs built their case around Bank of America's consent order without showing how it relates to their own experiences. In the consent order, she said, the sales incentive program only applied to Bank of America employees at brick and mortar branches. But all of the named plaintiffs had accounts opened online, Groves said.

"They have to have the consent order or they have no claim," she argued. "The problem is that the consent order doesn't apply to them."

Groves also sought to have several state law claims dismissed that were based on named plaintiffs who she said have since resolved their claims out of court. Those include claims based on consumer protection statutes in California, Illinois, Nevada and North Carolina.

Class counsel countered that the North Carolina Unfair and Deceptive Trade Practices Act claim — which allows for treble damages — can still be applied nationwide, even without a named plaintiff from the Tar Heel State. But Groves said the proposed class needs to show a substantial in-state effect to keep the North Carolina claim, which she argued it hasn't done.

According to Groves, the bank doesn't owe any of the named plaintiffs a duty of care, meaning it can't be liable for negligence. She also said the named plaintiffs didn't show what benefit was conferred on the bank such that a claim for unjust enrichment should stick, arguing the supposed fees levied on their accounts may have been applied but were never actually paid.

In response, Amara accused Bank of America of trying to lure the court into an impermissible weighing of the facts.

"This is a distraction," he said. "It's a smokescreen."

Joshua Samra of Bleichmar Fonti & Auld LLP, who also represents the proposed class, added that the bank does have a general duty of care to ensure accounts aren't opened without a person's consent. He argued it was "brazen" to suggest otherwise.

Judge Cogburn took the motion under advisement at the conclusion of Tuesday's hearing.

The proposed class is represented by Abou B. Amara Jr. of Gustafson Gluek PLLC, Joshua Samra and Lesley E. Weaver of Bleichmar Fonti & Auld LLP, Hassan Zavareei of Tycko & Zavareei LLP, Marc E. Dann of the Dann Law Firm, Jennifer S. Czeisler of Sterlington PLLC, Charles E. Schaffer of Levin Sedran & Berman LLP and Gary Jackson of the Law Offices of James Scott Farrin.

Bank of America is represented by Amanda L. Groves and Elizabeth J. Ireland of Winston & Strawn LLP.

The case is In re: Bank of America Unauthorized Account Opening Litigation, case number 3:23-cv-00422, in the U.S. District Court for the Western District of North Carolina.

--Additional reporting by Sydney Price. Editing by Patrick Reagan.

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Credit Sesame Users Say Data Breach Leaked Personal Info

By **Craig Clough**

Law360 (April 22, 2025, 8:37 PM EDT) -- Financial services provider Credit Sesame is facing a proposed class action filed Monday in California federal court by two customers who said their personally identifiable information was compromised in a data hack earlier this month and that the company did not follow common industry standards to protect their sensitive information.

The lawsuit filed by plaintiffs Daniel Fontana and Melissa Sackett is seeking to represent a nationwide class of Credit Sesame customers and says the California-based financial and online banking service provider fell short in its obligation to protect their information, while its efforts to remedy the problems caused by the hack were also woefully ineffective.

"Several best practices have been identified that — at a minimum — should be implemented by businesses like defendant," the customers said. "These industry standards include: educating all employees; strong passwords; multi-layer security, including firewalls, anti-virus, and anti-malware software; encryption (making data unreadable without a key); multi-factor authentication; backup data; and limiting which employees can access sensitive data."

According to the suit, Credit Sesame started informing some of its customers recently that their personally identifiable information, or PII, may have been exposed in a data breach.

"Cybercriminals were able to breach defendant's systems because defendant failed to adequately train its employees on cybersecurity and failed to maintain reasonable security safeguards or protocols to protect the class' PII," the customers said in the suit. "In short, defendant's failures placed the class' PII in a vulnerable position — rendering them easy targets for cybercriminals."

The customers also said Credit Sesame "has not yet revealed the exact types of PII exposed in the data breach, however, defendant has confirmed that sensitive personal information was included in the information compromised during the data breach."

Credit Sesame "has done little to remedy its data breach," the customers also said. "True, defendant has offered some victims credit monitoring and identity related services. But ... such services are wholly insufficient to compensate plaintiffs and class members for the injuries that defendant inflicted upon them."

The complaint also says the alleged cybercriminals behind the breach showed a high level of sophistication, making it likely the customers' PII has been or will soon be posted to the dark web.

The suit said Fontana has "has spent — and will continue to spend — significant time and effort researching the data breach, monitoring his accounts to protect himself from identity theft, and contacting counsel. After all, defendant encouraged those steps in its breach notice."

The complaint also said Fontana has received letters in the mail regarding his eligibility for out-of-state car loans he never applied for, was notified by Experian that his information has been published on the dark web and suffered "a spike in spam and scam calls and text messages, further suggesting that his information is in the hands of cybercriminals."

Sackett also listed many problems that have allegedly arisen since the breach, including that she also "has suffered from a spike in spam and scam calls and text messages."

The suit brings claims for negligence, negligence per se, breach of implied contract, breach of the implied covenant of good faith and fair dealing, unjust enrichment and violations of California's unfair competition law, while also seeking a declaratory judgment that says Credit Sesame "owed — and continue to owe — a legal duty to use reasonable data security to secure the data entrusted to it" and failed to keep that duty.

A representative for Credit Sesame did not immediately respond to a request for comment Tuesday. Counsel for the customers declined to comment.

The customers are represented by Andrew G. Gunem of Strauss Borrelli PLLC.

Counsel information for Credit Sesame was not immediately available Tuesday.

The case is Daniel Fontana et al. v. Credit Sesame Inc., case number 5:25-cv-03479, in the U.S. District Court for the Northern District of California.

--Editing by Stephen Berg.

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9th Circ. Affirms Otonomo's Escape Of Calif. Car Tracking Suit

By **Rae Ann Varona**

Law360 (April 22, 2025, 9:18 PM EDT) -- The Ninth Circuit on Tuesday unanimously refused to revive a California man's proposed class action accusing autotech company Otonomo Inc. of surreptitiously tracking drivers' movements in violation of California privacy law, finding that a device installed in the man's BMW wasn't an "electronic tracking device" under the relevant state law.

A three-judge panel **ruled** that because the component was installed in Saman Mollaei's vehicle during manufacturing, it was part of the vehicle itself.

The judges said Otonomo thus couldn't be held liable under Section 637.7 of the California Invasion of Privacy Act that prohibits the use of electronic tracking devices, which are defined as devices attached to vehicles that reveal movement via transmission of electronic signals to determine one's location and movement.

"We decline to accept Mollaei's invitation to expand liability under § 637.7," the panel wrote. "Mollaei's contention that tracking devices installed during manufacturing are 'attached to' rather than part of the 'vehicle' cannot be squared with the plain understanding of what constitutes a 'vehicle' or with the statute's purpose."

Mollaei sought to represent all California residents who owned or leased a vehicle and whose GPS data was collected by the Israel-based company.

Mollaei's lawsuit, filed in California state court in 2022 before Otonomo removed it to federal court, alleged that the company secretly collected and sold real-time driver location information from more than 50 million cars around the world, including tens of thousands in the Golden State.

According to Mollaei, Otonomo was able to collect the location data by working with at least 16 automakers, including BMW, General Motors, Ford and Toyota, to install "telematics control units," which he said collected information from a vehicle's sensors and radios to determine its precise physical location.

Mollaei alleged that the data allowed Otonomo and its paying clients to pinpoint the location and movement of every connected car and driver without the driver's consent, thus violating Section 637.7.

"Unfortunately, Otonomo does not obtain — or even try to obtain — consent from the tens of thousands of California drivers it tracks," Mollaei alleged.

U.S. District Judge Trina L. Thompson **tossed Mollaei's lawsuit** in January 2023, saying that the telematics control unit at the heart of Mollaei's suit "falls short" of being an electronic tracking device covered by the state statute.

Judge Thompson noted in her ruling that the application of Section 637.7 to "a built-in component of a vehicle, as opposed to a standalone device, is one of first impression."

In tossing the suit, Judge Thompson said that the legislative history of the law showed that its purpose was to prohibit placing an electronic tracking device on a vehicle by someone who isn't the registered owner. The device, thus, had to be a separate device that was "attached, or placed, onto

an automobile by the alleged wrongdoer," Judge Thompson wrote.

"The court declines to extend the statute beyond its plain meaning or the intent of the legislature," she wrote. "The statute simply does not address vehicles with built-in devices that can be used to determine location, which had existed by the time the statute was enacted in 1998."

Mollaei appealed Judge Thompson's ruling to the Ninth Circuit and **contended at oral arguments** in July that the telematics control units were "attached" under the ordinary and plain meaning of the word.

Otonomo, for its part, argued during the hearing that the device was part and parcel of the vehicles and thus shouldn't be considered attached.

In affirming the lower court's ruling, the Ninth Circuit said the legislative history of Section 637.7 "strongly suggests that § 637.7 was enacted to address private investigators affixing tracking devices to other people's vehicles to track them without their knowledge."

"There is nothing in the legislative history to suggest that the law also intends to target devices built into a car during manufacturing that collect location data," the panel wrote.

Mollaei had argued that the device had to be considered "attached" to the vehicle if it could be removed from the vehicle.

But the Ninth Circuit said that interpreting the term "vehicle" to carve out parts installed during manufacturing would lead to "absurd results and sweep in conduct far beyond what the legislature intended to prohibit."

Accepting Mollaei's preferred definition of vehicle would turn the privacy law into an "expansive consumer protection law targeting the collection of location data generally," the panel wrote. "That is not what the legislature intended."

Ultimately, because the telematics control unit was installed during the vehicle's manufacturing, the component is a "part of the vehicle itself" and can't be considered attached, the panel ruled.

"Therefore, the TCU is not an 'electronic tracking device' under § 637.7(d), and Mollaei fails to plead a plausible claim that Otonomo violated § 637.7," the panel said.

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

U.S. Circuit Judges Michelle T. Friedland, Salvador Mendoza Jr. and Roopali H. Desai sat on the panel for the Ninth Circuit.

Mollaei is represented by J. Aaron Lawson, Ryan D. Andrews and Roger Perlstadt of Edelson PC.

Otonomo is represented by Michael H. Rubin, Melanie M. Blunsch, Roman Martinez and David Steinbach of Latham & Watkins LLP.

The case is Saman Mollaei v. Otonomo Inc., case number 23-16079, in the U.S. Court of Appeals for the Ninth Circuit.

--Additional reporting by Allison Grande and Dorothy Atkins. Editing by Michael Watanabe.



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PacifiCorp Should Pay For 39 Years Of Fire Trauma, Jury Told

By **Cara Salvatore**

Law360 (April 22, 2025, 11:44 PM EDT) -- A group of nine displaced property owners started the latest trial Tuesday over 2020 wildfires during which PacifiCorp chose not to de-energize its power lines, telling an Oregon state jury that more than 39 years' worth of harm has been done when all the plaintiffs' sagas are considered together.

A jury that decided **classwide liability issues in 2023** found the power company was negligent before and during a historic wind event on Labor Day 2020. The trial that started Tuesday includes plaintiffs whose properties were caught up in the Echo Mountain Fire, the Santiam Canyon Fire and the South Obenchain Fire, major clusters in the outbreak of Oregon wildfires.

A plaintiffs' lawyer told the jury that PacifiCorp caused untold emotional damage. Although he did not ask for a specific figure, he told the jury that each plaintiff is eligible for up to \$25 million in damages, or \$225 million total.

"What happens when a person lays down their head at night and then wakes up to a crisis evacuation situation?" the lawyer asked. The total of the time spent by all nine plaintiffs since the fire, including one who died in 2023, is "39 years, seven months, 29 days of harm. That's what you'll have to evaluate," the lawyer said.

Some of the plaintiffs lost their houses entirely; some evacuated surrounded by flames; all had different stories, he said, repeatedly calling their experiences "crisis evacuations."

"Six plaintiffs lost almost everything," he said.

The plaintiffs include Dwayne Gold, an 81-year-old man who was a career plumber and pipe fitter and who was also the first witness in the trial. Another plaintiff's trauma caused her to start hoarding after the fires, the lawyer said.

PacifiCorp defense lawyer Alison Plessman agreed that the parties have already reached an understanding regarding the total in economic damages, which is \$2.36 million.

But Plessman asked the jury to be mindful of nuance when going into the realm of noneconomic damages.

"Each plaintiff had different experiences, including what they lost, when or how they evacuated, how long they were out of their home, and whether they chose to rebuild or move," Plessman said. "Talking about the crisis evacuation, you really need to listen to each plaintiff's story. Each situation is unique."

Plessman also emphasized that the defense, just like the jury, still doesn't know how much the plaintiffs are going to request for total damages.

"We don't know whether their ask at the end of the trial will be reasonable, and we'll be learning it with you for the first time at the end of this trial," she said. "But what I can tell you is that the quarter of a billion dollars that plaintiffs' counsel referenced in his opening, that is a completely made-up number."

She noted the case is not about death or serious injury and said \$25 million per plaintiff would be "grossly excessive."

It's the sixth trial, and first following a milestone in damages. In the last trial, damages awards reportedly passed the \$300 million mark.

This trial and more scheduled to follow have been damages trials. In 2023, the classwide jury found that PacifiCorp's conduct was reckless and willful, constituted both a private and a public nuisance, and constituted a trespass. The jury rejected a claim that PacifiCorp's conduct constituted an intentional taking and counted as an inverse condemnation. It also decided punitive damages in all future trials would be awarded as one-quarter of compensatory damages.

According to the litigation, PacifiCorp left overgrown or dead trees near its lines, ignored dire weather forecasts, and didn't cut off power even when it learned that fires were cropping up.

PacifiCorp told jurors it was a leader regarding wildfires — the first utility in the state to have a mitigation plan — and that the evidence linking its lines to many of the fires in question was scant.

Fires started around Oregon during an unusual weather event on Labor Day 2020 — Sept. 7 — in which winds reversed their normal direction and blew westward at breakneck speeds across power lines and the vegetation surrounding them. Jurors heard that not only did PacifiCorp not cut power to any of the affected areas, it also didn't disable its "reclosers," devices that automatically reconnect tripped circuits.

Counsel information for the plaintiffs was not immediately available.

PacifiCorp is represented by Alison Plessman of Hueston Hennigan.

The case is *In re PacifiCorp*, case number not available, in the 4th Judicial District of Oregon.

--Editing by Linda Voorhis.

For more of this trial, see Courtroom View Network.



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Subaru Buyers' Attys Get \$7.25M As Windshield Deal OK'd

By **Rae Ann Varona**

Law360 (April 22, 2025, 4:44 PM EDT) -- A New Jersey federal judge on Monday gave final approval to a settlement between Subaru and a class of nearly 2 million customers in a suit that accused the automaker of selling vehicles with windshields vulnerable to cracks and other breakage, and granted class counsel \$7.25 million in attorney fees.

U.S. District Judge Christine P. O'Hearn's final approval of the settlement closes litigation lodged more than five years ago against Subaru of America Inc. over windshields placed on several of its vehicle models, including its Forester and Outback SUVs.

Judge O'Hearn wrote in a final judgment and order that the deal is "in all respects, fair, reasonable, and adequate" and in the "best interests" of the settlement class.

In a separate order, Judge O'Hearn also gave a nod to \$7.25 million in attorney fees to the settlement class's three attorneys.

She said that the award to class counsel Peter A. Muhic of Muhic Law LLC, Russell D. Paul of Berger Montague PC and Edwin J. Kilpela Jr. of Wade Kilpela Slade LLP is "fair and reasonable and, in a matter of this level of complexity, consistent with the range of attorneys' fees awarded in this district and in the Third Circuit Court of Appeals."

Expenses reported to the court were also "necessary, reasonable, and proper," she wrote.

New Jersey-based Subaru of America Inc., the U.S. arm of Japanese conglomerate Subaru Corp., was first hit with the suit in October 2019, brought by one driver who alleged that the windshield of her new 2018 Subaru Forester suddenly cracked within just a few months of her purchase.

More drivers **joined** the suit, claiming in a consolidated complaint that they wouldn't have bought their Subaru vehicles, or would have paid less for them, had they known about the faulty glass, which they said also interfered with Subaru's "EyeSight" driver assist system.

According to the latest consolidated complaint filed in December 2020, one plaintiff, Jeffrey Barr, was driving a leased 2019 Subaru Forester on the highway with his wife when its windshield "suddenly and inexplicably cracked" despite there not being any vehicles near them or "any roadway obstructions or anomalies" at the time of the crack.

The complaint alleged that another driver, Arnold Milstein, had noticed a crack running through the windshield of his new 2020 Subaru Outback "just weeks" after purchasing it. Subaru allegedly didn't cover a replacement windshield despite his Outback having fewer than 36,000 miles and being within the warranty period, according to the complaint.

The drivers asserted in the complaint that even replacement windows Subaru provided, which the drivers allegedly paid for, suffered from the "same defect" and were thus "equally defective and dangerous."

U.S. Magistrate Judge Matthew J. Skahill gave an **initial OK** on the settlement in October, citing multiple in-person mediation sessions and substantial discovery, including more than 16,000 pages of documents, written interrogatory responses, subpoenas to third parties, and depositions of the

parties' representatives.

The settlement, which the parties **reached** in April 2024, covers 2019 through 2022 models of Subaru's Ascent and Forester vehicles, and 2020 through 2022 models of its Legacy and Outback vehicles.

Under the settlement, Subaru, without admitting liability or wrongdoing, agreed to cover 100% or more of out-of-pocket losses.

According to a redacted version of the settlement, the deal allows settlement class members who provide sufficient proof of repair and a photograph of a "qualifying crack" on the windshield before it was repaired to collect 125% of the cost of one prior repair, 150% of the costs if the vehicle required two prior repairs, and 200% of the costs if the vehicle required three or more repairs.

Settlement class members who have proof of repair but don't have photographic proof of a windshield crack may still get monetary recovery through the completion of a photo questionnaire, the settlement states.

Representative plaintiffs Barr, Milstein, Allan Zaback and Brittany Funk will also receive \$5,000 as service awards.

Paul of Berger Montague told Law360 on Tuesday that they are "pleased that the court approved the settlement and praised its innovative elements and the excellent recovery achieved for the 1.9 million class members."

Counsel for Subaru did not immediately respond to requests for comment on Tuesday.

The class is represented by Peter A. Muhic of Muhic Law LLC, Russell D. Paul of Berger Montague PC and Edwin J. Kilpela Jr. of Wade Kilpela Slade LLP.

Subaru of America Inc. and Subaru Corp. are represented by Neal D. Walters of Ballard Spahr LLP.

The case is Christine Powell et al. v. Subaru of America Inc. et al., case number 1:19-cv-19114, in the U.S. District Court for the District of New Jersey.

--Additional reporting by Gina Kim and George Woolston. Editing by Jay Jackson Jr.



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Del. Justices Order Matterport CEO Cash-Out Recalculation

By **Jeff Montgomery**

Law360 (April 22, 2025, 4:44 PM EDT) -- Delaware's Supreme Court reversed and ordered a recalculation Tuesday for a \$79 million Court of Chancery ruling on additional damages and interest due a former CEO of 3D building imaging company Matterport Inc. who challenged his \$80 million cash-out in a 2021 go-public sale.

Writing for the full five-member top court, Justice Gary F. Traynor found that Vice Chancellor Lori W. Will correctly calculated additional damages and prejudgment interest due former Matterport CEO William J. Brown beginning on Nov. 22, 2021, but overturned the court's calculation of postjudgment interest.

The decision Tuesday followed a Matterport appeal calling for reversal of the vice chancellor's interpretation of a trade-blocking share lockup provision in 2021 and for an order vacating a separate posttrial decision that nearly doubled the \$80.4 million that Brown initially received. The payments arose from Matterport's \$2.9 billion take public merger with a special purpose acquisition company backed by The Gores Group in 2021.

The vice chancellor's ruling sought to calculate the amount of money that would put Brown in the same position as if he was not incorrectly restricted "in a but-for" world in which "Brown and Matterport knew Brown could receive unrestricted shares" a few days after the July 22, 2021, closing. According to the lower court decision, the interest clock began ticking on Jan. 12, 2022, although the final order was entered later, on July 1, 2024.

Chancery Court's "post-judgment interest award is contrary to the basic tenet — one that is not subject to discretionary adjustment," Justice Traynor wrote on Tuesday, "that post-judgment interest accrues once 'the judgment debtor's obligation is a sum certain that includes the amount of the award plus prejudgment interest and, in some cases, fees and costs' and a judgment to that effect is entered."

Reversed was an order accruing pre- and postjudgment interest to Jan. 12, 2022, with the vice chancellor directed to "harmonize" the interest calculations based on the July 2024 final order.

Counsel for the parties did not immediately respond to a Law360 request for comment.

Brown sought a court declaration about his shares in July 2021, before Matterport went public in the special purpose acquisition company merger.

Matterport had retroactively imposed restrictions on his 1.3 million shares, Brown argued, including prohibitions effectively barring free trading of his stock for the 180-day period following the company's reorganization.

The company's shares climbed from around \$14 per share in July 2021 to more than \$27 in November 2021 before falling. Vice Chancellor Lori W. Will's decision noted that Brown sold his entire Matterport stake between Jan. 11-18, 2022, at a weighted average price of \$14.09 per share, or \$80,427,139.60, just ahead of the lockup expiration in January 2022.

The merger agreement required Gores to adopt amended bylaws that would impose transfer restrictions on certain shares of Class A common stock.

Vice Chancellor Will in January 2022 found that the plain language of Matterport's amended bylaws was straightforward and showed that Brown's shares were not "lockup shares" subject to restrictions.

Matterport debuted on the stock exchange in 2021 through a merger with investment manager The Gores Group's blank check company, in a deal guided by Latham & Watkins LLP, Orrick Herrington & Sutcliffe LLP and Weil Gotshal & Manges LLP that values the combined company's equity at roughly \$2.9 billion.

Matterport Inc. and Matterport Operating LLC are represented by Robert L. Burns, Kyle H. Lachmund, Nicole M. Henry and Nicholas F. Mastria of Richards Layton & Finger PA and Jennifer Selendy, Joshua S. Margolin, David A. Coon and Corey Stoughton of Selendy Gay PLLC.

William J. Brown is represented by Joseph L. Christensen of Christensen Law LLC and Linda T. Coberly, John E. Schreiber and Jeffrey L. Steinfeld of Winston & Strawn LLP.

The case is Matterport Inc. et al. v. William J. Brown, case number 294,2024, in the Supreme Court of the State of Delaware. The case under appeal is Matterport Inc. et al. v. William J. Brown, case number 2021-0595, in the Court of Chancery of the State of Delaware.

--Editing by Alex Hubbard.

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