

\$100M Wells Fargo shareholder lawsuit settlement tentatively OK'd

DJ [dailyjournal.com/articles/385134-100m-wells-fargo-shareholder-lawsuit-settlement-tentatively-ok-d](https://www.dailyjournal.com/articles/385134-100m-wells-fargo-shareholder-lawsuit-settlement-tentatively-ok-d)



Photo: Bluestork/Shutterstock

A judge granted preliminary approval of a \$100 million settlement in a shareholder derivative lawsuit accusing Wells Fargo officers and directors of neglecting risk management and regulatory compliance duties.

If approved, the settlement will see plaintiffs' counsel's fees paid entirely in Wells Fargo stock, to the tune of \$33.3 million, and governance reforms at the bank.

An attorney for the plaintiffs, George Aguilar, a partner at Robbins LLP, wrote in a memorandum in support of a preliminary approval of the settlement, "Plaintiffs have diligently litigated this case after defeating defendants' demand futility and individual demurrers, and believe that the claims are strong.

"At the same time, plaintiffs recognize the inherent risks of any litigation, particularly complex litigation against well-resourced defendants such as here."

Aguilar wrote in a notice that the payment in the proposed settlement would be the third largest derivative settlement in California state court history.

Aguilar and co-counsel for the plaintiffs Randall Baron, partner at Robbins Geller Rudman & Dowd LLP, were both called and emailed Thursday but did not respond to request for further comment.

Aguilar stated in the memorandum that further litigation of the claims could have seen a depletion of the settlement fund, which is being covered by insurance.

"Without the settlement, continued litigation would involve litigating complex legal and factual issues that could potentially extend over many years. The difficulty of proving plaintiffs' case at summary judgment and at trial could leave plaintiffs with no recovery at all on behalf of Wells Fargo," wrote Aguilar.

Tiffany Lin and Todd Cosenza of Willkie Farr & Gallagher LLP, and Brendan P. Cullen of Sullivan & Cromwell LLP represented the defendants. Lin and Cosenza were called and emailed but did not reply. Cullen said on the phone he was unable to comment.

The mediator involved in the settlement discussions, former federal judge Layn R. Phillips of the Western District of Oklahoma, who was also partner at Irell & Manella LLP from 1991 until 2014, said in a declaration in support of the preliminary approval, "The proposed settlement obtains close to the maximum of the likely attainable recovery that was derivatively available to Wells Fargo."

Phillips, founder and lead mediator at Phillips ADR Enterprises P.C., said, "This settlement is different in that plaintiffs' counsel insisted that their fee not reduce the cash paid to Wells Fargo and instead negotiated a fee to be entirely paid with Wells Fargo stock.

"Wells Fargo identified other ongoing litigation matters involving former Wells Fargo employees that have the potential of further exhausting the available insurance coverage to an amount lower than \$100 million if the parties had not reached the proposed settlement of this action."

The primary challenge plaintiffs faced in continued litigation was the Delaware law-based claims they were pursuing, Aguilar said in his memorandum.

"These claims, known as Caremark claims, are so notoriously difficult they are often referred to as 'possibly the most difficult theory in corporation law upon which a plaintiff might hope to win a judgment,'" Aguilar wrote.

In a subsequent declaration, Aguilar said that from the inception of the federal action until April 4, 2025, Robbins LLP spent 10,702 hours litigating the case, representing a total cost of just over \$7 million.

The defendants produced nearly 300,000 documents comprising nearly 2 million pages, according to Aguilar.

San Francisco Superior Court Judge Jeffrey S. Ross granted the order Wednesday in the lawsuit that claims breaches of fiduciary duty, waste of corporate assets and unjust enrichment due to mismanagement and noncompliance with several regulatory consent orders. *Timothy Himstreet and Montini Family Trust v. Charles W. Scharf et al*, CGC22599223 (S.F. Super. Ct. filed Apr. 19, 2022).

The complaint claims Wells Fargo failed to comply with regulatory consent orders issued by the Federal Reserve Board, the Office of the Comptroller of the Currency, and the Consumer Financial Protection Bureau that followed various scandals. This alleged non-compliance erased more than \$36.5 billion from Wells Fargo's market capitalization in just three trading days in March 2020, according to the complaint.

In connection with a 2022 Consent Order, the Consumer Financial Protection Bureau stated, "Wells Fargo is a repeat offender that has been the subject of multiple enforcement actions by the CFPB and other regulators for violations across its lines of business, including faulty student loan services, mortgage kickbacks, fake accounts, and harmful auto loan practices."

According to Aguilar's memorandum, the corporate governance reforms included in the settlement fall into four categories: risk structure enhancements; improvements to Wells Fargo's programs, policies and procedures; the implementation of a "risk boot camp" for the company's senior leaders; changes to Wells Fargo's board, including the election of four new independent directors, naming a new chairman, and enhancing the quarterly enterprise risk reports.

In his memorandum, Aguilar wrote, "The settlement provides that plaintiffs will release, on behalf of the company, all claims, whether known or unknown, arising from the subject matter of the derivative action."

Wells Fargo was contacted for comment by email but did not reply. In a previous emailed statement on this lawsuit from April 3, a spokesperson wrote, "We are pleased to put this matter behind us. Wells Fargo is a different company today, having made significant progress toward improving our risk and control infrastructure, as demonstrated by our regulators terminating eleven consent orders since 2019."

#385134

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The Horse is Dead, I'm Still Beating It

 [businesslawprofessors.com/2025/04/the-horse-is-dead-im-still-beating-it](https://www.businesslawprofessors.com/2025/04/the-horse-is-dead-im-still-beating-it)

Ann Lipton

April 25, 2025



New decision out from a California appellate court enforcing Rivian's charter provision requiring that federal Securities Act cases be brought in federal, rather than state, court.

I realize the ship has pretty much sailed on this issue, but I wrote a whole paper about why this trend is problematic both from a doctrinal and a policy perspective.

My issue doctrinally, of course, is that I do not think charters are contracts, and I also believe the question of *contract formation* is not part of the internal affairs doctrine, and therefore is not dependent on the law of the chartering state. On that latter point, at least, Delaware agrees with me; in *Salzberg v. Sciabacucchi*, the Delaware Supreme Court conceded that forum provisions governing federal law claims are not, strictly, governed by the internal affairs doctrine, although the court argued that other states should respect them nonetheless.

These doctrinal points, however, tend to be lost when the issue reaches non-Delaware courts, and *Bullock v. Rivian* is no exception. There, the California court not only situated the dispute squarely within the internal affairs doctrine, but also assumed that charter-based forum provisions *are in fact contractual agreements*, without even attempting to ask whether the basic elements of contract formation (offer, acceptance, consideration) were met.

And to bring everything back to DExit, of course, I believe at least some of this kind of unconsidered deference is at least partly the product of a baseline assumptions regarding Delaware's fairness and expertise in corporate matters. What happens when that baseline assumption is challenged, or when large, public corporations seek refuge in states with different reputations? I suppose we may find out.

And another thing. On this week's *Shareholder Primacy* podcast, Mike Levin has a conversation with Matt Moscardi of Free Float Media about the proxy season so far. Here at Apple, here at Spotify, and here at YouTube.

Litigation

April 25, 2025, 9:05 AM PDT

Xerox Investors' Reinvention Claims Dropped by Lead Plaintiff

Xerox Holdings Corp. and a current and a former top executive were relieved of investor allegations they concealed issues with a corporate overhaul that included layoffs.

The lead plaintiff dismissed claims with the ability to refile in the US District Court for the Southern District of New York Thursday. The voluntary dismissal was referred to Judge Dale E. Ho for approval Friday since it didn't "dismiss all of the parties or the action in its entirety," according to the court's docket. The complaint, filed in November by another investor who also sought to be lead plaintiff, said the stock fell more than 17% the day Xerox disclosed "lower-than-expected improvements in sales force productivity" and delays in the global launch of two new products hurt third fiscal quarter of 2024 financial results.

- It was the stock's biggest single-day drop since March 2020, according to data compiled by Bloomberg
- The proposed class action sought to recover damages for those who got Xerox shares from Jan. 25, 2024, through Oct. 28, 2024, due to alleged securities law violations
- Related consolidated litigation brought by shareholders on behalf of Xerox against officers and directors alleging similar issues is pending in the Southern District of New York

Xerox declined to comment in an email. The lead plaintiff's counsel didn't immediately respond to an email seeking comment.

Levi & Korsinsky LLP represents lead plaintiff Richard A. Harrison. Willkie Farr & Gallagher LLP represents Xerox.

The case is Wilson v. Xerox Holdings Corp. , S.D.N.Y., No. 1:24-cv-08809, notice of voluntary dismissal 4/24/25 .

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Class Action

April 25, 2025, 7:19 AM PDT

GE \$363 Million Investor Class Settlement Gets Final Court Nod

General Electric Co.'s \$362.5 million settlement with investors over securities fraud claims related to an operating cash shortfall in its power unit garnered final court approval.

Judge Jesse M. Furman awarded class counsel almost 20% of the settlement fund in attorneys' fees—nearly \$70 million—and close to \$9.6 million in litigation expenses, plus interest, on Thursday. The US District Court for the Southern District of New York judge approved reimbursements to class representative Sjunde AP-Fonden for nearly \$23,000 and class representative The Cleveland Bakers and Teamsters Pension Fund for almost \$13,000.

- Investors alleged GE didn't share that its power division was buoying cash levels by selling its right to future reimbursements to a finance unit in the company, a practice known as long-term factoring
- GE disclosed a \$1 billion shortfall in its industrial cash from operating activities in April 2017 and reported a \$1 billion drop for GE Power's 2017 cash target that July; investors later sued, saying the stock price plummeted on the news
- The class covers investors claiming damage from Feb. 29, 2016 through Jan. 23, 2018

Kessler Topaz Meltzer & Check LLP is class counsel and Grant & Eisenhofer PA is class liaison counsel. Latham & Watkins LLP represents GE. Neither the law firms nor GE responded to requests for comment.

The case is Ap-Fonden v. GE , S.D.N.Y., No. 1:17-cv-08457, closed 4/24/25 .

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Securities Law Prof Blog

 lawprofessors.typepad.com/securities/2025/04/new-securities-law-articles-in-print-2.html

Friday, April 25, 2025

New Securities Law Articles in Print

The following law review articles relating to securities regulation are now available in paper format:

Afra Afsharipour, *ESG Dealmaking*, 26 U. Pa. J. Bus. L. 985 (2024).

Anna Christie, *Activist Directors: The Evolution of Hedge Fund Activism in the S&P 500*, 57 Conn. L. Rev. 523 (2025).

Lisa M. Fairfax, *ESG's Death Defying Future: Predicting the Future of ESG through the Lens of Current ESG Disclosure*, 26 U. Pa. J. Bus. L. 1019 (2024).

Joan MacLeod Heminway, *ESG and Insider Trading: Legal and Practical Considerations*, 26 U. Pa. J. Bus. L. 1058 (2024).

Renee M. Jones, *The Cost of Non-Convergence: The US Climate Disclosure Rule in the Context of Emerging Global Standards*, 26 U. Pa. J. Bus. L. 1109 (2024).

Donna M. Nagy, *The SEC and "Major Questions Doctrine" Questions*, 26 U. Pa. J. Bus. L. 1142 (2024).

Usha R. Rodrigues, *Intermediaries and Differentiated Voting*, 26 U. Pa. J. Bus. L. 1180 (2024).

Amanda M. Rose, *A Hard Look at Portfolio-Focused Stewardship*, 2024 Colum. Bus. L. Rev. 313 (2024).

Hillary A. Sale, *Asking the Right Questions: How Jill Fisch Debunks Narratives and Arrives at Solutions*, 26 U. Pa. J. Bus. L. 958 (2024).

Jack Schlafly, Note, *Helping the Little Guy: A Comparative Analysis of Shareholder Protection Mechanisms in the United States and Singapore*, 52 Ga. J. Int'l & Comp. L. 726 (2024).

Cynthia A. Williams, *Private Climate Governance of Finance: "Net Zero" Prospects and Politics*, 26 U. Pa. J. Bus. L. 1195 (2024).

This Supreme Court case could upend class actions

 [reuters.com/legal/government/column-this-supreme-court-case-could-upend-class-actions-2025-04-24](https://www.reuters.com/legal/government/column-this-supreme-court-case-could-upend-class-actions-2025-04-24)

Jenna Greene

April 24, 2025

The U.S. Supreme Court is seen as justices hear arguments in an appeal by President Joe Biden's administration of restrictions imposed by lower courts on its ability to encourage social media companies to remove content deemed misinformation, in Washington, U.S., March 18, 2024. REUTERS/Bonnie Cash/File Photo Purchase Licensing Rights  , opens new tab

April 24 (Reuters) - When the U.S. Supreme Court next week hears arguments in a case that could reshape class action litigation, the justices will consider some lofty questions about constitutional standing and jurisdiction.

My curiosity, however, has more to do with the practical effects. If the high court sides with diagnostic-testing company Laboratory Corporation of America and holds that class actions can't be certified if they include uninjured members, what might the real-world legal impact be?

In a word, huge.

Multiple interest groups in friend-of-the-court briefs have offered hypothetical scenarios if the court should bar classes with uninjured members. Among them, this could thwart class actions involving low dollar claims, upend private antitrust enforcement or stymie defendants looking for "global peace" to resolve cases where liability is widespread.

Conversely, what if the respondents – two legally blind patients who sought medical testing and the American Council for the Blind – prevail in establishing a more lenient class certification standard nationwide? Will this allow plaintiffs to "lard up classes with the uninjured," as Labcorp lawyers put it  , opens new tab, and coerce settlements from companies spooked by potential liability?

To be clear, no one is suggesting that uninjured class members are entitled to compensation. The key question is when and how they're weeded out of the class.

The high court has been circling the issue for several years after pointedly leaving it open in two prior class certification decisions – Tyson Foods v. Bouaphakeo in 2016 and TransUnion v. Ramirez in 2021.

In Labcorp vs. Davis, which is set for argument on April 29, the justices will confront it head-on.

Originally filed in Los Angeles federal court in 2020, the class action was brought on behalf of visually impaired people who were unable to use Labcorp's check-in kiosks when arriving for blood draws or other medical tests. The plaintiffs allege violations of the Americans with Disabilities Act and California's Unruh Civil Rights Act, which carries statutory penalties of \$4,000 per violation.

Labcorp did not respond to a request for comment. Lead counsel Noel Francisco, a Jones Day partner who served as solicitor general during President Donald Trump's first administration, declined comment through a firm spokesperson.

Labcorp argues that thousands of class members were unaware of or uninterested in using the kiosks. That means they sustained no injury and lack standing to sue under Article III of the U.S. Constitution, Labcorp says.

The company also asserts that Rule 23(b)(3) of the Federal Rules of Civil Procedure, which authorizes a class only where common questions of law and fact predominate, does not permit a putative class "saturated with significant numbers of uninjured members." Sorting out the injured from the uninjured would "overwhelm any common questions — destroying predominance," Labcorp says.

If Labcorp's position prevails, "it will make it a lot harder for people to get into the courthouse door," said Deepak Gupta, of Gupta Wessler, who represents the blind patients.

In an amicus brief [opens new tab](#), the AARP and other consumer advocates offer a hypothetical example for support.

What if members of the U.S. National Guard who worked for the same civilian employer were discriminated against when they took leave for training and wanted to bring a class action? (In a footnote, the amici cite four prior cases with such allegations.)

If the Supreme Court changed the rules to require every putative class member to provide proof of injury at the onset of litigation, plaintiffs lawyers would need to get detailed payroll and military records for them all, the amici theorize, plus records from the defendant covering civilian benefits. Then they'd need to hire an expert to review and analyze the data and calculate the individual financial injury for each member of the proposed class.

This would "frontload an enormous amount of work" properly saved for later damage calculations — after the case has been litigated on the merits, the amici argue.

That result would make it harder and more costly to bring class actions. Or as Gupta's clients put it [opens new tab](#), such a rule "would eviscerate the operation of the class device" in many instances.

Antitrust watchdogs are also sounding the alarm if the court should rule that classes cannot contain any uninjured members.

Antitrust class actions are different from statutory damages cases, the American Antitrust Institute in an amicus brief [opens new tab](#) points out. That's because antitrust class actions – where plaintiffs typically claim the defendant's anticompetitive behavior distorted the free market – rely on econometric analysis to determine damages for the class as a whole. Similar analysis can be used to identify which members are injured.

As a result, it is “generally untrue” that including uninjured class members inflates damages or overwhelms common questions in antitrust class actions, the American Antitrust Institute said, urging the court to “write narrowly” in crafting its decision.

Even some corporate defendants could rue a ban on certifying classes with a significant number of uninjured members – at least in some circumstances, cautioned Harvard Law School professor William Rubenstein and New York University Law School professor Arthur Miller in a brief supporting neither party [opens new tab](#).

“When liability is more likely – crashes, derailments, environmental spills, diesel emissions fraud – defendants often embrace the class mechanism” as a way to provide closure, the professors wrote – and the bigger, the better. Such defendants “have an interest in maximizing the breadth of the class, lest future litigation seep through the seams of the settlement.”

Still, Labcorp and its allies counter that certifying classes with uninjured members is fundamentally improper, arguing that federal courts have no power to assess their claims “even if bundled with the claims of those who do have standing.”

Doing so has consequences, Labcorp says. “For in class actions, certification is often the ballgame. Once a class has been certified, the next step is usually settlement, not trial.”

If a plaintiffs can inflate the size of a class with people who aren't injured, Labcorp says, it can “drive up potential liability, and thus manufacture leverage to extort a settlement for all members, whether harmed or not.”

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\$2.5 billion NCAA settlement to be renegotiated over roster limits

DJ [dailyjournal.com/articles/385131](https://www.dailyjournal.com/articles/385131)

U.S. District Judge Claudia Wilken

A federal judge in Oakland declined to approve settlement of the \$2.5 billion lawsuit by student athletes against the NCAA that would bring sweeping changes to college sports.

U.S. District Judge Claudia Wilken ordered renegotiation of the terms, citing fairness concerns raised by some of the 54 objectors to the deal on athletes' rights to profit from their names, images and likenesses. The main issue is their claim that the settlement terms would force thousands of athletes to be cut from college teams.

Wilken ordered the NCAA and attorneys for more than 360,000 athletes to renegotiate terms related to limits on team rosters.

Class counsel said the judge still overruled most objections. They said her ruling was beneficial to the settlement's ultimate approval.

Wilken cited the objectors' belief that the proposed roster limits violated antitrust law and would force thousands of athletes to immediately be cut.

The proposed settlement called for smaller teams than they currently have to streamline payments directly from schools to athletes for use of their names, images and likenesses.

"The parties admit in their supplemental brief that some class members 'may ultimately have lost roster spots as a result of the settlement,' but they argue that the court should nevertheless approve the settlement agreement because those class members will be able to compete for scholarships and other benefits," Wilken wrote. "The parties argue that prior cases endorse this principle. The court is not persuaded. ... None of them addresses the question of whether a settlement agreement that involves injunctive relief for a Rule 23(b)(2) class can be approved where it has been shown that its immediate implementation will cause harm to some members of the Rule 23(b)(2) class."

The parties were given 14 days to mediate.

Steve Berman, one of the plaintiffs' attorneys who is managing partner at Hagens Berman Sobol Shapiro LLP in Seattle, said in an email Thursday, "First for perspective. The judge has said she is okay with everything but athletes losing roster spots in the first year. That

means she overruled the many other objections that were raised by the objectors and rejected their attempts to be appointed as new lead counsel. The judge's direction has hopefully given us the leverage we need to get this one last issue fixed."

Known as the "House" case, the certified class action challenged the NCAA's bar on athletes being compensated for the commercial use of their names, images and likenesses, or NIL. The objectors initially asked the court to deny approval on grounds such as gender or race discrimination and anticompetitive conduct. *In re: College Athlete NIL Litigation*, 4:20-cv-03919 (N.D. Cal. filed June 15, 2020).

Wilken on Wednesday paused final approval of a related \$200 million settlement that was lightly discussed by the parties at the final fairness hearing. According to her order, she would have granted final approval for the related settlement but the parties asked her to hold off until the House case is resolved.

The \$200 million settlement between the NCAA and 286,000 athletes is led by NFL running back Chuba Hubbard. It challenged the NCAA's cap on academic achievement awards that universities could give athletes. *Hubbard et al v. National Collegiate Athletic Association et al.*, 4:23-cv-01593 (N.D. Cal. filed April 4, 2023).

Jeffrey Kessler, co-executive chairman of Winston & Strawn LLP in New York City and one of the lead attorneys for the plaintiffs, said in an email Thursday, "We are very gratified that Judge Wilken has indicated that she has overruled almost all of the objections to the settlement. The last remaining issue is the need to address the adverse impact of roster limits on some of the injunctive relief class members.

"We are actively negotiating with the NCAA and the Conferences to agree upon a change to address this issue, and we are optimistic that they will do so. If not, Judge Wilken has made it clear that we will be going back to trial. Either way, we will fight to obtain justice for the class members."

Both lawsuits were settled in July and claim that the NCAA and its five major member conferences -- the Pac-12 Conference, the Southeastern Conference, the Atlantic Coast Conference, the Big Ten Conference and the Big 12 Conference -- systemically violated antitrust laws by regulating athlete compensation for decades.

Lead attorneys for the NCAA and its conferences, Rakesh N. Kilaru of Wilkinson Stekloff LLP and Jacob K. Danzinger of ArentFox Schiff LLP, could not be reached for comment Thursday but have routinely defended the settlement as fair.

In an April 15 opposition letter to final approval, a group of attorneys representing objectors detailed the objections to roster caps. "Defendants can't explain how these caps improve competitive balance or output. The same is true for the caps on the broadcast revenue share

that perpetuate price-fixing. Their statement at the hearing was incoherent."

Steven F. Molo, founding partner at MoloLamken LLP and one of the lead attorneys for some objectors, reacted to Judge Wilken's ruling in a news release Thursday. "We're grateful the Court understood the pain the proposed settlement has been inflicting on many student athletes who've dedicated themselves to their sports," Molo said. "The tremendous unfairness of the arbitrary roster limits must be addressed."

Other attorneys who filed the opposition letter could not be reached for comment Thursday. They are: Steven F. Molo, Alexandra C. Eynon of MoloLamken LLP; William J. Cooper of Conrad | Metlitzky | Kane LLP; and Arthur H. Bryant of Clarkson Law Firm PC.

#385131

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Class Action

April 25, 2025, 1:30AM PDT

California Wildfire Puts Mass Tort Lawyers on Government's Side

Attorney Brittanie Panetta says mass tort attorneys have a unique opportunity to defend clients harmed by the devastating Eaton Fire and advocate for changes now that Los Angeles County is also suing the utility for damages.

The dozens of lawsuits filed against Edison International Inc. over its alleged role in the devastating Eaton Fire could overhaul how mass tort attorneys approach cases involving natural disasters in the future.

Los Angeles County's latest lawsuit against Edison—the third in seven years—once again alleges the utility's equipment sparked the Eaton Fire, one of California's most damaging fires, destroying about 9,400 structures causing 18 deaths. The government seeks to recover costs and damages associated with the fire and its aftermath.

This lawsuit brings notoriety to the mass tort practice, but it also assists in pushing forward better settlements for the victims we represent. We will continue to strive for justice and overall industry reform where victims are hurt to prevent these situations from happening again.

Edison International also faces more than 40 additional lawsuits from residents related to the Eaton Fire. Since the Camp Fire in 2018, legislation has shifted to supporting wildfire victims. Between newly formed wildfire funds and tax regulations saving already undercompensated victims from having more withheld, legal and regulatory development has played a supporting role. Liability standards continue to put the appropriate responsibility on the utility companies, when at fault.

The next steps should be greater regulation to ensure appropriate mitigation techniques within the technology and providing of the utility. We saw significant changes over the past decade regarding clearing requirements and preemptive power shut-offs, but it isn't enough.

Mass tort attorneys, of which I am one, try to push toward a successful resolution as quickly as possible while pushing for the types of systemic changes that reduce harm and increase accountability. Having another contender on our side in the fight is helpful, especially one as large and well-known as Los Angeles County.

The county's claims focus on the infrastructure that was lost in the fire. If successful, the government will use awarded compensation to help restore and rebuild the community. A successful outcome could support greater accountability by utility companies in future cases.

Cases such as the county's against Edison International often have a ripple effect, prompting an array of legal and regulatory developments. The PG&E Corp. bankruptcy filing, stemming from the North Bay and Camp Fires of 2017 and 2018, respectively, prompted changes including a wildfire fund and tax safeguards that were put in place for legal settlements.

Turning off power during times of perceived fire danger seems not to be a reliable solution. There were reported concerns that attempts to cut off power in the region amid a windstorm may have contributed to sparking the Eaton Fire.

Any legal settlement should focus on implementing additional safeguards within infrastructure and containing the spread of potential fires to smaller, manageable areas. I encourage my fellow mass tort attorneys to consider how we fit into this. The biggest benefit we bring to the table is our wealth of collective experience.

The mass tort world is relatively small. Most of us have worked together or worked on similar issues. This gives us an advantage when moving forward with both litigation and settlement. We can take that knowledge and use it to our clients' advantage.

The PG&E litigation and bankruptcy case taught the mass tort bar a lot—and especially what we don't want to do again. We know the same experts or ones with similar backgrounds and expertise. We know their arguments and, subsequently, how to bolster our case.

Timing is the most crucial lesson for our clients and the victims of this fire. We want to ensure justice is had in a timely manner, which is easier said than done due to the complexity of each person's claim. The process needs to ensure there is sufficient compensation for all parties involved, and doing so takes ample review and deadlines. We want to come away here with a quicker process to provide a quicker path back to rebuilding victim's lives.

The PG&E process using the fire victims' trust took—and is still taking—too much time. We are seven years removed from the Camp Fire, but victims have yet to be fully compensated. There were many layers of pro-rata payments that have made it very hard for people to rebuild.

Based on what we learned with the PG&E case, we now know how to advocate for our clients to the fullest extent. The appeals process was daunting with the fire victims' trust, and what they would allow or disallow wasn't readily available at first. Now we understand how a claims process may work, their priorities in addressing claims, and additional claims that may not be apparent to most at the onset (potential rental income loss, etc.).

Mass tort attorneys should pay attention to how Edison reacts to lawsuits from the county and residents; what, if any, role bankruptcy will play; and whether the California Wildfire Fund will contribute.

As a society, we should work to mitigate and even prevent this type of devastation from happening again through better regulations and more effective avenues for relief when a wildfire, earthquake, tornado or other disaster does occur. Being prepared is the best action mass tort attorneys can take.

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

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Ozempic Causes Blindness, According to New Lawsuit

 [law.com/njlawjournal/2025/04/25/ozempic-causes-blindness-according-to-new-lawsuit](https://www.law.com/njlawjournal/2025/04/25/ozempic-causes-blindness-according-to-new-lawsuit)

Charles Toutant

April 25, 2025

What You Need to Know

- Novo Nordisk is accused in a suit of failing to warn that weight loss drug Ozempic could cause blindness.
- The plaintiff, a Maryland man, claims he developed non-arteritic anterior ischemic optic neuropathy after taking Ozempic for diabetes.

Novo Nordisk has been hit with a suit alleging that Ozempic, its blockbuster weight loss drug, caused a Maryland man to become permanently blind.

Litigation by users of Ozempic and another weight loss drug, Mounjaro, were centralized in the Eastern District of Pennsylvania in February 2024 by the Judicial Panel on Multidistrict Litigation. It's unclear whether the latest suit will become part of that group of cases.

The suit, filed by Motley Rice on Thursday in Middlesex County Superior Court in New Jersey, alleges Todd Engel, 62, began taking Ozempic for diabetes in August 2023, and by December of that year he reported severely blurred vision. Engel was diagnosed with non-arteritic anterior ischemic optic neuropathy (NAION) and is legally blind. The suit says Novo Nordisk, whose U.S. headquarters is in Plainsboro, New Jersey, failed to warn Ozempic users that taking the drug might result in NAION or permanent vision loss.

While the precise cause of NAION is unknown, the general belief in the medical community is that the condition is caused by insufficient blood supply or ischemia to the optic nerve, the suit alleges.

Ozempic, whose chemical name is semaglutide, is part of a class of drugs called GLP-1 agonists, which can help lower blood sugar levels and promote weight loss by mimicking a naturally occurring GLP-1 hormone, according to the complaint. The earliest reported NAION event associated with any GLP-1 drug occurred in 2012 and the earliest associated with semaglutide was in 2019, the suit claims.

The FDA's system for reporting adverse events shows multiple reports of optic ischemic neuropathy reported in connection with the use of GLP-1, the suit claims. Novo Nordisk knew or should have known the causal association between the use of Ozempic and the risk of developing NAION, but they ignored it, the suit alleges.

Jonathan Orent of Motley Rice.

Courtesy photo

The suit said Novo Nordisk "is and was under a continuing duty to disclose the true character, quality and nature of risks and dangers associated with Ozempic,"but because the company fraudulently concealed "material information concerning the true character, quality and nature of risks of such products," it is barred from relying on a statute of limitations defense.

"This permanent and irreversible injury has damaged every aspect of Todd Engel's life. We want justice and will continue to fight for it for Todd and others like him," said Jonathan Orent, Motley Rice attorney and co-lead counsel for federal multidistrict litigation filed for victims of Ozempic and other GLP-1 RA medication, in a statement.

Novo Nordisk did not respond to a request for comment about the suit.

Litigation

April 25, 2025, 9:11 AM PDT

California's Bonta Asks Judge to Toss Exxon's Defamation Suit

- **Plastics comments lack sufficient Texas link, Bonta says**
- **Exxon says Bonta's comments hurt customer relationships**

California Attorney General Rob Bonta asked a federal judge to throw out ExxonMobil Corp.'s defamation lawsuit against him, saying he's shielded from liability for comments made in his official capacity.

The US District Court for the Eastern District of Texas also lacks personal jurisdiction over Bonta (D) since his comments about Exxon's alleged plastics recycling deception weren't made in Texas or directed at Texans, according to a motion to dismiss filed Thursday.

Both California and Texas immunize public officials from lawsuits over actions taken for their jobs, according to the motion. In this case, Bonta's September false advertising lawsuit against Exxon falls "in the heartland of his employment duties," the motion says.

Exxon, which is headquartered in Texas, sued Bonta in his personal capacity and several environmental groups in January for alleged defamation and other charges. The company accused Bonta and the other defendants of making "false accusations" about its advanced recycling process and thereby damaging its customer relationships.

Bonta and the groups brought separate lawsuits last year alleging Exxon had for decades promoted single-use plastics as recyclable when few were, causing and worsening a pollution crisis and harming California consumers.

The Eleventh Amendment bars Exxon's lawsuit because Bonta was acting in his official capacity, making the state the real party in interest, Thursday's motion to dismiss says.

"If such suits were allowed to proliferate, elected officials nationwide would face financial threats in far-flung jurisdictions, just for fulfilling the duties of their offices," according to the motion.

Exxon did not immediately respond to a request for comment.

Liskow & Lewis represents the company.

The California Department of Justice represents Bonta.

The case is Exxon Mobil Corp. v. Bonta , E.D. Tex., No. 1:25-cv-00011, motion to dismiss filed 4/24/25 .

To contact the reporter on this story: Drew Hutchinson in Washington at dhutchinson@bloombergindustry.com

Guest Post: North Korean Hiring Exposure

K [dandodiary.com/2025/04/articles/director-and-officer-liability/guest-post-north-korean-hiring-exposure](https://www.dandodiary.com/2025/04/articles/director-and-officer-liability/guest-post-north-korean-hiring-exposure)

Kevin LaCroix

April 25, 2025



Posted in Director and Officer Liability



Sarah Abrams

Recent reports have brought to light the disturbing story that many companies may have unwittingly hired North Korean operatives as outsourced IT professionals. In the following guest post, Sarah Abrams, Head of Claims Baleen Specialty, a division of Bowhead Specialty, considers the potential claims exposure that could arise for companies that have hired the North Korean operatives. I would like to thank Sarah Abrams for allowing me to publish her article as a guest post on this site. I welcome guest post submissions from responsible authors on topics of interest to this site's readers. Please contact me directly if you would like to submit a guest post. Here is Sarah's article.

Considering recent press reports that large US-based companies have been unknowingly hiring North Korean bad actors as IT professionals, does the SolarWinds Corporation SUNBURST cyberattack and following litigation provide a roadmap to future exposure?

On January 23, 2025, the FBI issued an alert updating previous guidance to warn employers of "increasingly malicious activity" from the Democratic People's Republic of Korea, or North Korea, including "data extortion." This was updated from its May 16, 2024, warning of threats to the public and private sector by North Korean IT workers leveraging U.S.-based individuals, both witting and unwitting, to gain fraudulent employment and access to U.S. company networks to generate revenue for the regime.

In conjunction with the FBI bulletins, various news outlets have been reporting on Fortune 500 companies that have hired and continue to hire software engineers who are North Korean citizens using stolen or fake US identities and AI-generated deepfakes:

“North Korean hackers have secretly infiltrated U.S. tech companies, posing as American software engineers to fund Kim Jong Un’s nuclear weapons program. Using fake résumés, stolen identities, and remote tools, these IT workers have landed real jobs at Fortune 500 firms, funneling millions back to North Korea. AI tools and stealthy tactics make detection harder, even fooling recruiters and HR teams.” *Fortune*, April 7, 2025

The UN estimated that the North Korean IT worker scam has generated \$250 million to \$600 million for North Korea every year since 2018. With the continued success of embedding foreign nation actors into US company infrastructure and controls, it is unlikely that this ongoing North Korean cyberattack will resolve itself.

For the companies that have fallen victim, the *SolarWinds* litigation may prove useful in anticipating management liability as well as exposure to company directors and officers.

Readers of the D&O Diary may recall that in December 2020, the media published a story that Russian hackers had gained access to US government agencies communication software through updates released by the SolarWinds Corporation, a third-party technology vendor for various branches of government [SUNBURST]. A day after the story broke SolarWinds filed an 8K with the SEC disclosing that it was aware of a vulnerability in its software and that it had hired third-party cybersecurity experts to assist in investigating and resolving the breach.

SolarWinds stock dropped and in January 2021 a securities class action case was filed by shareholders against the company, its CEO, and CFO alleging, in part, misrepresentation of SolarWinds’ cybersecurity vulnerabilities and violations of Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 and Rule 10b-5. The court further found that the named executives misstated SolarWinds cyber security control measures to mislead investors.

In October 2023 the SEC filed a lawsuit against SolarWinds and its executives, including Timothy Brown, its CISO, for fraud in the Northern District of New York. In July 2024, SolarWinds motion to dismiss was granted in part and denied in part by District Court Judge Engelmayer. Judge Engelmayer emphasized the importance of analyzing the “overall picture” conveyed by SolarWind’s Form 8-K disclosures.

Notably both *In Re SolarWinds Corporation* and *SEC v. SolarWinds, et. al* acknowledge the recklessness of SolarWinds cyber security controls (i.e. “solarwinds123”). Thus, the decisions and commentary by the courts in both *SolarWinds* cases may inform what companies affected by the North Korean IT worker scheme can anticipate when the cyberattack is made public.

If the company is publicly traded and there is a stock drop after disclosure, there may be additional securities class action against the company and executives. As was alleged in *SolarWinds*, violations of the Securities Act stemming from corporate failures to identify a

going cyberattack may be alleged. Even if the company is private, the impact on investors and stakeholders may result in litigation asserting mismanagement by executives, misrepresentation, and potential fraud.

In addition, aside from complaining of failures by the CISO, whose job function includes cybersecurity, any statements made or signed off on by the CEO regarding cybersecurity or protection of corporate or client intellectual property may become purported misrepresentations. Given the FBI warnings, as well as media exposure, the CISO's identifying a breach and certainly the CEO's filing an 8K disclosure would be scrutinized. In addition, if corporate funds have been redirected to North Korea and not previously called out by the CFO, allegations of mismanagement of corporate funds may be alleged.

Depending on the length of the North Korean IT workers' access and if the company is incorporated in Delaware, there may be potential *Caremark* claims against a company board for failing its duty of oversight. As previously discussed in the D&O Diary, successfully *Caremark* cases, *Teamsters Local 443 v Chou* (the AmerisourceBergen case) and *In re Met Life*, alleged that the directors had not acted in response to red flags regarding compliance deficiencies.

Certainly, if any red flags about hired bad actors are discovered through a 220 request (HR concerns about IT professionals always *only* working remotely, accounting discrepancies that cannot be reconciled) are discovered, a derivative lawsuit against the board would be anticipated. Injunctive relief may include additional independent technology consultants, new executive team members, and anticipated costs of reputational repair. Because the North Korean IT worker scheme has now been brought to light and given the potential for company, executive, and board exposure, infiltration should be identified and disclosed. Doing so may help mitigate a *SolarWinds* result.

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Trump executive order says ABA's role as law school accreditor may be revoked

 [reuters.com/legal/government/trump-executive-order-says-abas-role-law-school-accreditor-may-be-revoked-2025-04-24](https://www.reuters.com/legal/government/trump-executive-order-says-abas-role-law-school-accreditor-may-be-revoked-2025-04-24)

Karen Sloan

April 24, 2025

April 24 (Reuters) - The Trump Administration said in an executive order on Wednesday that it is considering revoking the American Bar Association's status as the federally recognized accreditor of law schools, a change that could impact lawyer licensing, student loans and attorney mobility, legal education experts said.

President Donald Trump said he was directing Education Secretary Linda McMahon to assess whether to suspend or terminate the ABA as the government's official law school accreditor, citing its "unlawful 'diversity, equity, and inclusion' requirements," as part of an executive order [opens new tab](#) focused on reforming higher education accreditation. The order also calls for a similar review of two medical school accrediting bodies.

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The ABA did not provide comment on the order.

Trump's order followed a similar warning by U.S. Attorney General Pam Bondi in March which had said that the government could revoke the ABA's accreditor status. The U.S. Department of Education has recognized the ABA as the accreditor of law schools since 1952.

Bondi said in a March letter to the ABA that she wanted it to repeal its law school diversity rule and scrap a planned revision. The ABA's Council of the Section of Legal Education and Admissions to the Bar suspended [opens new tab](#) the diversity rule in February.

A national accreditation system like the ABA's gives law graduates more mobility and "protects the public as well as the substantial investments law students make in legal education," said Kellye Testy, executive director of the Association of American Law Schools.

A single accreditation system enables law graduates to work in any state and in rural areas that don't have a law school, Testy said.

If the ABA loses its accreditation status, it could lead to a "patchwork of licensure requirements," said Austen Parrish, dean of the University of California, Irvine School of Law. The vast majority of states currently require law students to graduate from an ABA-accredited law school in order to sit for the bar exam.

The high courts in Texas and Florida have both said in recent weeks that they are reviewing their ABA-graduation requirement, with the Florida justices citing the ABA's former law school

diversity and inclusion rule.

Having to meet different requirements from multiple accreditors and states would be a headache for law schools, said Stetson University Law Dean Benjamin Barros. It's also unclear whether any other accreditor would step in to oversee law schools, he added.

"If not the ABA, then who?" Barros said. "Having that national standard is really important."

Student loan access could also be affected. College and professional degree students must attend accredited programs in order to be eligible for federal student loans. The vast majority of the nation's 195 ABA-accredited law schools get their federal loan eligibility through the accreditation of their central universities, not the ABA. But 13 standalone law schools, which aren't part of larger universities, use their independent ABA accreditation for federal loan eligibility as of July, Education Department data show.

If the ABA loses its accreditation authority, those independent schools, which include Brooklyn Law School and Southwestern Law School, would likely need to seek approval from other accreditors in order for their students to qualify for federal loans, Barros said.

Read more:

US Attorney General presses ABA to drop law school DEI rule or risk losing accreditor status
Texas high court considers dropping ABA accreditation as requirement to practice law
Our Standards: The Thomson Reuters Trust Principles. [↗](#), opens new tab

Karen Sloan reports on law firms, law schools, and the business of law. Reach her at karen.sloan@thomsonreuters.com

GOVERNMENT

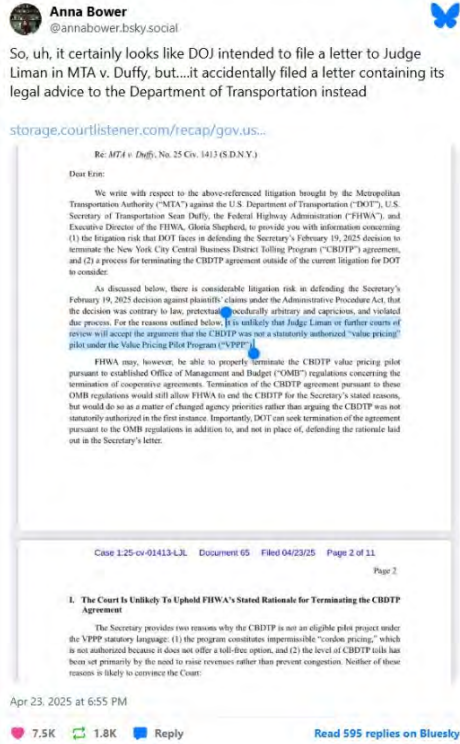
DOJ Scores Spectacular Own Goal In NY Congestion Pricing Case

Nightmare fuel!

By Liz Dye on April 24, 2025 5:15 pm

Share

Last night at roughly 9 p.m., thousands of very online lawyers had a sympathetic panic attack. The precipitating event was a [litigation memo](#) thoroughly rubbishing the Department of Transportation's attack on New York's congestion pricing plan which was inadvertently published on the public docket.



The memo, drafted by counsel in this case for the supervising attorney at the DoT, explained that "it is unlikely that Judge Liman or further courts of review" will accept Secretary of Transportation Sean Duffy's theory that it was illegal for the Biden administration to approve tolls to cut traffic.



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By Above the Law

"It is unlikely the Court would conclude that a zonebased or area-wide pricing system i.e., cordon pricing—is not the type of 'innovative' pilot program included in the undefined and broad term 'congestion pricing,'" they wrote.

They added the helpful suggestion that Duffy could likely accomplish the same goal by defunding the project through the Office of Management and Budget as a matter of changed executive priorities, while still beating his manly chest in this satisfying but doomed lawsuit.

"Importantly, DOT can seek termination of the agreement pursuant to the OMB regulations in addition to, and not in place of, defending the rationale laid out in the Secretary's letter," they write, in tacit acknowledgment that what is "important" is to protect the Secretary's ego while sticking it to New York. And they're clearly not wrong! Duffy and his agency have continued to tweet out threats against New York and its Governor Kathy Hochul, even as

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By MyCase

those posts [harm the pending case](#).

The attorneys also warned that the lack of any actual agency record apart from Duffy's shitposts "may lead plaintiffs to point to these 'gaps' in the administrative record as justification for extra-record discovery from DOT, including requests for production of emails and depositions of agency officials, including the Secretary in particular." Whoopsie!



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4 Ways That Lexis® Create+ Delivers Personalized Legal Drafting

Lexis Create+ merges legacy drafting tools with AI-powered assistance from Protégé and secure DMS integration enabled by the Henchman acquisition.

By Muthuraman Kas/Viswanathan, Lexis Create+ Group Product Manager

Meanwhile at the DOJ, after what we can only assume was an out-of-body experience, the AUSAs assigned to the case docketed the intended filing, a [howling screed](#) by Duffy threatening Hochul with dire consequences if she fails to remove the tolls. And this morning the office [requested](#) that the court strike or seal the internal memo. The government noted that the plaintiffs "have indicated that they would be open to discussing the issue of whether the document should remain under seal," but insisted that no "further discussion among the parties is necessary given that the document is a privileged communication, was plainly filed in error, and the Government took immediate steps to notify the parties and have the document removed from the docket."

This description may have elided the finer points. This morning the Plaintiff-Intervenors Riders Alliance and Sierra Club informed the court that they do, indeed, wish to discuss the issue of sealing further. To wit, [they oppose it](#) on grounds that every lawyer on social media has already seen the thing.

Judge Liman ordered the parties to brief the matter, leaving the document sealed on the record for the moment. And now we'll all memory hole it and go back to pretending that the DOJ is still a functioning agency, not a hollowed out shell tasked with defending pointless, illegal revenge plots by the mad king.

[MTA v. Duffy](#) [Docket via Court Listener]

[Liz Dye](#) lives in Baltimore where she produces the Law and Chaos [substack](#) and [podcast](#).

TOPICS

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Corporate investment and usage in generative AI technologies continues to accelerate. This article offers eight specific tips to consider when creating an AI usage policy.

By Practical Guidance Thought Leaders

Trump's FCPA freeze casts uncertainty over corporate bribery cases

DJ [dailyjournal.com/articles/385146-trump-s-fcpa-freeze-casts-uncertainty-over-corporate-bribery-cases](https://www.dailyjournal.com/articles/385146-trump-s-fcpa-freeze-casts-uncertainty-over-corporate-bribery-cases)

Criminal

Apr. 25, 2025

An executive order by President Trump pausing Foreign Corrupt Practices Act enforcement has defense lawyers and companies reassessing their compliance and legal strategies, even as some high-profile prosecutions, including against ex-Smartmatic executives, proceed.



Stephen G. Larson

The fate of prosecutions under the Foreign Corrupt Practices Act, and what that means for defense attorneys handling such cases, is murky two months after President Donald Trump signed an executive order pausing investigations and new cases.

One ongoing criminal case was dropped this month, but three others are proceeding. One is the prosecution of two former executives with voting machine maker Smartmatic USA Corp., which has sued Trump-supporting news organizations and won a big settlement after being accused of helping steal the 2020 election. *U.S. v. Bautista et al.*, 24-CR-20343 (S.D. Fla., filed Aug. 8, 2024).

Federal prosecutors in Florida and Pennsylvania announced they were going ahead in brief statements to the court this month. "The United States hereby advises that the Government has completed its detailed review of the instant case as contemplated by Executive Order 14209, 90 Fed. Reg. 9587 (Feb. 10, 2025), and intends to proceed to trial," prosecutors wrote. *U.S. v. Hobson*, 22-CR-86 (W.D. Penn., filed March 29, 2022).

Trump's Feb. 10 executive order, "Pausing Foreign Corrupt Practices Act Enforcement To Further American Economic and National Security," instructed the U.S. Department of Justice to review guidelines and policies for FCPA investigations and enforcement actions during a 180-day period that will last until August.

No new FCPA investigations and enforcement actions will be pursued by the Justice Department during that time, but U.S. Attorney General Pam Bondi was instructed to "review in detail all existing FCPA investigations or enforcement actions and take appropriate action with respect to such matters to restore proper bounds on FCPA enforcement and preserve Presidential foreign policy prerogatives."

That has left attorneys who advise clients and other legal experts who follow FCPA litigation debating how companies and law firms should respond to Trump's order.

Stephen G. Larson, a partner with Larson LLP in Los Angeles, said Trump's executive order offers openings to attorneys representing companies and individuals in ongoing cases.

"The Administration's priorities create more opportunities for FCPA defense lawyers to press prosecutors to consider the geopolitical concerns and economic consequences of over-enforcement," he wrote in an email Thursday.

"However, the shift in priorities does not provide a blank check to commit bribery, or alter the legal protocols that individuals and companies should observe when conducting business overseas," Larson added.

Mike Koehler, an FCPA expert who teaches at Texas A&M University School of Law and other schools, said that while Trump's executive order is new, debates about the scope of FCPA prosecutions have been a topic of bipartisan debate for many years.

"The best advice is to take a deep breath," he said in a phone interview. "There are any number of reasons that companies will want to comply with the FCPA."

He said some law firms - which can earn a lot of money handling FCPA investigations - are overreacting in their client alerts. He does not believe Great Britain, France and Switzerland's announcement last month of a new alliance and formation of a joint task force aimed at tackling international bribery and corruption is significant.

Those countries have existing anti-corruption statutes.

Nor does Koehler take California Attorney General Rob Bonta's announcement that the state could pursue FCPA violations under its unfair competition law seriously, because no state has ever done so.

Bonta, in an April 2 statement, wrote: "Illegal activity is still illegal. ... Despite the Trump Administration's actions, I remind businesses in California that bribing foreign officials is illegal under California law and will not be tolerated."

Kevin J. Harnisch, Norton Rose Fulbright US LLP's head of white-collar defense and investigations, said in an interview that one current debate is whether companies should self-report any possible wrongdoing.

One school of thought, he said, is that there is little point in confessing to crimes the Justice Department may no longer care about. But others warn that companies may have other exposure because the statute of limitations lasts at least five years - longer than Trump will remain in office, assuming he doesn't change his mind about the FCPA himself.

"A lot of this will become clearer once we get the guidance," Harnisch said. "Absent a very egregious fact pattern, I would be less inclined to run into the Department of Justice."

But he has not seen a change in advice about companies maintaining their own compliance programs.

William T. Garrett, an attorney and senior content manager of Stanford Law School's FCPA Clearinghouse, said prosecutions during the last decade under the 1977 law have targeted more foreign companies than domestic ones. Nine of the 10 largest monetary sanctions have been imposed against foreign companies.

The law was sparingly enforced until 2004, when it became a more common prosecution that brought in significant damages, peaking during the Obama administration. Its use has trailed off since then, and there have been only 33 FCPA prosecutions since 2021, according to the clearinghouse data.

#385146

Craig Anderson

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NewsRoom

4/25/25 Columbus Dispatch (Ohio) (No Page)
2025 WLNR 9969762

Columbus Dispatch (OH)
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April 25, 2025

FirstEnergy former lobbyists get immunity to testify in Ohio pay-to-play investigation
Three former FirstEnergy lobbyists and a senior executive will have immunity
from prosecution, freeing them to answer questions from the PUCO.

Laura A. Bischoff, Columbus Dispatch

Three former FirstEnergy lobbyists and a senior executive will have immunity from prosecution, freeing them to testify before the Public Utilities Commission of Ohio about the \$1.3 billion bailout bill.

Franklin County Common Pleas Court Judge Richard Brown signed the order April 21 to compel former lobbyists Joel Bailey, Justin Biltz and Ty Pine and former executive Dennis Chack to answer questions before the PUCO.

More: Documentary on Ohio's House Bill 6 scandal and the role of dark money now streaming

In March, the four men invoked their Fifth Amendment right against self-incrimination and refused to answer questions from the agency. All four men were dismissed by FirstEnergy after the pay-to-play scandal surrounding House Bill 6 became public in 2020.

Brown, a Democrat, served in the Ohio House and voted in favor of House Bill 6 in May 2019. The legislation would've provided a \$1.3 billion bailout for FirstEnergy's aging nuclear power plants, requiring 4.5 million Ohio customers to pay more on their monthly electric bills.

The PUCO, which regulates utilities, opened investigations into Akron-based FirstEnergy Corp.'s spinoff of its nuclear power plants into a separate company, FirstEnergy's involvement in House Bill 6 and the company's political and charitable spending on the bill.

The PUCO had put its investigations on hold at the request of federal prosecutors, giving them time to prosecute public officials and file criminal charges against FirstEnergy executives.

Who are the players in the cases?

Former Ohio House Speaker Larry Householder, a Perry County Republican, is serving a 20-year sentence and former Ohio GOP Chairman Matt Borges of Bexley is serving five years for racketeering conspiracy.

Prosecutors convinced a federal jury that Householder orchestrated a nearly \$60 million illegal bribery scheme that fueled his return to political power and that Borges participated in the conspiracy.

Householder's political consultant Jeff Longstreth and former FirstEnergy lobbyist Juan Cespedes pleaded guilty and testified against Householder and Borges. They have yet to be sentenced.

Lobbyist Neil Clark, who pleaded not guilty, died by suicide before the trial.

Former PUCO Chairman Sam Randazzo died by suicide in April 2024. He had pleaded not guilty to state and federal corruption charges. FirstEnergy said it paid a \$4.3 million bribe to Randazzo, who advanced the company's interests at the PUCO.

Former FirstEnergy CEO Chuck Jones and former Vice President Mike Dowling have pleaded not guilty to state and federal charges. No trial dates have been set in those cases.

Award-winning filmmaker Alex Gibney produced 'Ohio Confidential' for Max, formerly known as HBO. The two-hour documentary puts the scandal into the national spotlight. A second, two-hour documentary, 'Wealth of the Wicked,' explores the use of dark money on a national scale to influence the makeup of the U.S. Supreme Court.

State government reporter Laura Bischoff can be reached at lbischoff@gannett.com and @lbischoff on X.

This article originally appeared on The Columbus Dispatch: FirstEnergy former lobbyists get immunity to testify in Ohio pay-to-play investigation

---- Index References ----

Company: HOME BOX OFFICE, INC.; FIRSTENERGY CORP.

News Subject: (Crime (1CR87); Criminal Law (1CR79); Fraud (1FR30); Government (1GO80); Judicial Cases & Rulings (1JU36); Legal (1LE33); Lobby & Pressure Groups (1LO18); Social Issues (1SO05))

Industry: (Electric Utilities (1EL82); Energy & Fuel (1EN13); Utilities (1UT12))

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

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Other Indexing: (Public Utilities Commission of Ohio; U.S. Supreme Court; HBO; FirstEnergy Corp.)

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Cleveland Plain Dealer

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April 25, 2025

Section: A

Judge grants immunity to former officials at FirstEnergy Three lobbyists
and ex-senior VP previously invoked their rights against self-incrimination.

Jake Zuckerman - jzuckerman@cleveland.com

COLUMBUS - A Franklin County judge gave legal immunity to four former FirstEnergy officials, all ousted amid criminal investigations into the company's two bribery schemes of state officials, clearing the way for them to testify to state regulators.

The three lobbyists - Joel Bailey, Justin Biltz and Ty Pine - plus ex-senior vice president of marketing, product development and branding Dennis Chack, all previously invoked their constitutional rights against self-incrimination and refused to testify to the Public Utilities Commission of Ohio about their own and others' involvement in the passage of House Bill 6 in 2019.

The PUCO last year restarted its investigations into the bribery scandal after 18 months of delays prompted by criminal proceedings that sent former Ohio House Speaker Larry Householder to prison.

Lawyers for the lobbyists and state officials jointly sought the court order under the assumption it gives the former company officials legal certainty that they won't be held accountable if they implicate themselves in any wrongdoing during a sworn deposition.

"Upon being individually sworn in as a hearing witness, each is immunized from prosecution and will not be subject to any penalty or forfeiture on account of any transaction or other matter concerning which they have testified or produced documentary evidence in any PUCO hearing,"

wrote Judge Rich Brown, who voted against HB6 in 2019 while serving as a Democratic state lawmaker.

Investigators believe the men might know something useful that has yet to emerge in nearly five years of investigative efforts into what federal prosecutors deemed the biggest bribery scandal in state history.

FirstEnergy has admitted to paying millions of dollars in bribes to both Householder and ex-Public Utilities Commission of Ohio Chairman Sam Randazzo for their assistance passing the bill, which provided a \$1.3 billion bailout of two nuclear plants then owned by a company subsidiary. The July 2020 arrest of Householder set off a chain of events that halted the nuclear bailouts before they ever took effect.

Householder and another lobbyist were convicted at trial. Two other men pleaded guilty in October 2020 and haven't yet been sentenced. FirstEnergy's ex-CEO and another executive accused of deep involvement in the bribes await trial. Randazzo died by suicide before his trial.

The PUCO opened four formal investigations into the bribery scheme in late 2020. Despite years of efforts, predominantly from the Ohio Consumers' Counsel as an intervening party in the PUCO cases, the investigations have produced little in terms of consumer refunds or penalties for FirstEnergy.

While all played varying roles in the scheme, court records, company documents released through the investigation and depositions show:

(BEGIN BULLETS)Bailey, a state and federal lobbyist for FirstEnergy, was included in email conversations about the formation of a dark money nonprofit that would go on to move \$15 million in connection with the scheme.

Pine, FirstEnergy's director of state affairs, brokered meetings and was also included on email chains detailing millions of dollars changing hands from corporation to public official, with a series of nonprofits as middlemen along the way.

Chack, prosecutors say, "alter[ed]" a \$400,000 consulting contract to a politically connected company vendor. FirstEnergy itself determined Chack backdated and forged a contract and lied about it to internal investigators. (Chack has not been charged of any crimes).

The name of Biltz, FirstEnergy's director of state and regulatory affairs, appears on documents suggesting he was aware of FirstEnergy's \$4.3 million payment to Randazzo. (END BULLETS)

Their testimony is scheduled for a June 10 evidentiary hearing at the PUCO.

"This court order is a win for Ohio consumers," said Maureen Willis, executive director of the Ohio Consumers' Counsel, the driving force behind the investigations at the PUCO. "We're finally getting the chance to question key players and uncover the truth behind the FirstEnergy scandal. Ohioans deserve answers."

---- Index References ----

Company: FIRSTENERGY CORP.

News Subject: (Corruption, Bribery & Embezzlement (1EM51); Crime (1CR87); Fraud (1FR30); Government (1GO80); Lobby & Pressure Groups (1LO18); Social Issues (1SO05))

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Matt Levine's Money Stuff: The Stock Market Loves Bitcoin

Opinion

Project Mystery

The basic situation is that US public equity markets will pay about \$2 for \$1 worth of Bitcoin. I don't know why this is, and I am not especially happy about it, but it's true. If you have one Bitcoin, you can sell it on a crypto exchange for about \$93,000, or you can sell it on a US stock exchange for about \$186,000. Therefore, you should sell Bitcoins on the stock exchange, so people do.

The most famous example is MicroStrategy Inc. (now just Strategy), which has built a perpetual motion machine out of buying \$1 worth of Bitcoin, seeing its stock go up by \$2, and selling more stock to buy more Bitcoin. Because this keeps working, people keep copying it, and I keep talking about them. Originally, this approach was taken by public companies (MicroStrategy and then some imitators): Those companies already had publicly traded stock, so they could pivot to buying Bitcoin (or other cryptocurrencies) and watch their stocks go up.

But this strategy is not *that* natural a fit for most US public companies. Most companies are in the business of doing their business, so pivoting to selling stock to buy crypto would be kind of weird. This strategy *is* a natural fit for *crypto investment funds*, though, so they really ought to get into the business of acquiring US public companies and turning them into pools of Bitcoin. So we talked this week about Upexi Inc., a tiny public company that got acquired by a crypto investment firm and turned into a pot of Solana. Its stock roughly quadrupled, meaning that it is selling \$1 worth of Solana for \$4 on the stock exchange. Great work if you can get it. And you can get it! If you run a crypto investment fund it is absolute malpractice not to acquire a small, not-particularly-operating US public company; your fund's value will at least double immediately.

You know who has a big pot of crypto? Tether. Here's this:

An affiliate of Cantor Fitzgerald LP is teaming up with stablecoin issuer Tether Holdings SA and SoftBank Group to create a new company called Twenty One Capital Inc. with the goal of accumulating Bitcoin, the latest company to emulate the business model of Michael Saylor's Strategy.

Twenty One said it expects to launch with more than 42,000 Bitcoin, worth about \$3.9 billion at current prices, making it the third-largest Bitcoin treasury in the world, according to a statement from the company on Wednesday. Tether will contribute \$1.5 billion of Bitcoin to the new company, while Bitfinex, a Tether-affiliated exchange, and SoftBank plan to put in \$600 million and \$900 million of the cryptocurrency, respectively, according to a person familiar with the matter who asked not to be named since the discussions were private.

The company said it has entered into an agreement for a business combination with Cantor Equity Partners Inc., a special-purpose acquisition company sponsored by an affiliate of Cantor Fitzgerald. Shares of Cantor Equity Partners surged 21% to \$13 on Wednesday.

Cantor Equity Partners is, for these purposes, a small, not-particularly-operating US public company. In fact it is a SPAC, so it is not an operating company at all; as of Tuesday it was a pot of cash with (1) approximately \$102 million in the pot and (2) a market capitalization of approximately \$104 million. Each share of Cantor Equity Partners represented a claim on about \$10.35 of the company's cash — plus some upside if the SPAC found a deal — and traded at about \$10.60. Fine.

On Wednesday, Cantor Equity Partners announced a merger between (1) its pot of cash, (2) Tether's pot of Bitcoins, (3) Bitfinex's pot of Bitcoins and (4) SoftBank's pot of Bitcoins. Tether, Bitfinex and Softbank will contribute a total of about 36,210 Bitcoin, worth about \$3.4 billion, and take back stakes in the combined company; for its \$100 million pot of cash, Cantor Equity Partners public shareholders will get about 2.9% of the company. (The \$100 million pot of cash, plus some other contributions, will be used to get the company to 42,000 Bitcoins.) That roughly makes sense: \$3.4 billion of Bitcoin plus \$100 million of cash equals \$3.5 billion of value in the pot, and \$100 million is about 2.9% of \$3.5 billion. The merger math here is pretty straightforward; everybody (Tether, SoftBank, the public shareholders) is getting a stake in the company roughly proportional to what they put in.

At noon today, Cantor Equity Partners was trading at about \$28.34 per share, almost triple its pre-deal price. That implies a value for Twenty One's 36,210 Bitcoins of about \$9.8 billion, or about \$270,000 per Bitcoin. Again, Bitcoin is trading at around \$93,000 today on crypto exchanges. If you can sell Bitcoin for \$270,000 on the Nasdaq, you'd be crazy to sell it for \$93,000 on a crypto exchange.

As is traditional in these sorts of situations, the focus is on the vision for the future of finance rather than the simple math. Here's the press release:

"Markets need reliable money to measure value and allocate capital efficiently," said Jack Mallers, Co-Founder and CEO of Twenty One. "We believe that Bitcoin is the answer, and Twenty One is how we bring that answer to public markets. Our mission is simple: to become the most successful company in Bitcoin, the most valuable financial opportunity of our time. We're not here to beat the market, we're here to build a new one. A public stock, built by Bitcoiners, for Bitcoiners." ...

Twenty One is structured to be a day one Bitcoin-native company that will strategically allocate capital to increase Bitcoin per share. Twenty One intends to develop a corporate architecture capable of supporting financial products built with and on Bitcoin. This includes native lending models, capital market instruments, and future innovations that will replace legacy financial tools with Bitcoin-aligned alternatives. As a pro-Bitcoin advocate, Twenty One plans to produce original Bitcoin-focused content and media. This pure-play approach will offer investors access to a public company that combines Bitcoin exposure with an operating business building Bitcoin-native products and services.

Here are investor presentations for convertible note and equity investors; the deal was apparently codenamed "Project Mystery." The presentations include this chart comparing Twenty One to MicroStrategy:

	Strategy [®]	TWENTY ONE
"Pure Play" Bitcoin Exposure		
Bitcoin-Native Operations		
Existing Debt Balance		
Debt Collateralization ⁽²⁾		
Insider Ownership		
Purpose-Built KPIs		

Source: SEC.gov.

The top point here is that MicroStrategy is not *quite* “pure play” Bitcoin exposure: It also has a software company attached to its pot of Bitcoins. Twenty One, though, really is a pure pot of Bitcoins, albeit one with plans for “future innovations that will replace legacy financial tools with Bitcoin-aligned alternatives,” so — I suppose — it ought to trade at a premium to Strategy. One dollar of Bitcoin in Strategy’s pot is worth only \$2 on the stock market; \$1 of Bitcoin in Twenty One’s pot is, apparently, worth \$3 on the stock market.

A lot of people in traditional finance, certainly including me, like to make fun of crypto. There is a lot to make fun of. But who is traditional finance to talk? The uncomfortable fact is that the stock market will pay much more for crypto than the crypto market will: Packaging Bitcoin into a stock makes it *much more valuable*. The crypto enthusiasts on the stock market are more enthusiastic about crypto than the crypto enthusiasts in crypto. It looks a little bit like crypto keeps playing a prank on the stock market, and the stock market keeps falling for it.

My dinner with \$TRUMP

One way to think about crypto is that it is a way to enable “permissionless innovation.” A lot of the way traditional finance works is that you have a good idea but you have to have connections and get buy-in from regulators and investors and counterparties to make it happen. “This product should exist” is a starting point for discussions; you can’t just go *make* it. Whereas in crypto everything is built out of composable open-source public code; if you want to build something to interact with crypto markets, you just build it. You don’t need to have discussions with incumbents and regulators; you don’t need connections and pedigree. Crypto can move faster, and smart creative people can have a big impact without spending years paying dues and building connections.

Similarly! Similarly. Similarly. In the past, if you wanted to hand a big bag of cash to the US president, it would be hard. You couldn’t just walk up to him and give him the bag. You would need to know the proper channels to go through; you would need some way in. Politically connected people, people familiar with US campaign finance laws, people who hired high-powered lobbyists, could perhaps get an opportunity to hand a bag of cash to the president. But if you just won the lottery and decided “I would like to put a million dollars in a bag and hand it to the president so he will talk to me for 10 minutes,” it would not be immediately obvious how you might go about doing that.

Also, in the past, if you had tried to hand a big bag of cash to the US president, he might have said “no thank you,” though this is not essential to the analysis.

Crypto really truly does solve this problem, if it is a problem, if it is a solution:

President Donald Trump will have dinner with the top 220 holders of the Trump memecoin, the issuers of the cryptocurrency announced on Wednesday.

At the “intimate private dinner” on May 22 at Trump National Golf Club near Washington, Trump will talk about the future of crypto, according to the organizers. People who want to participate have to register, and a leader board of the top Trump coin holders will be kept to determine attendees. The top 25 Trump coin holders will also be invited to a reception before the dinner with the president, and will be given a tour of the White House.

“From April 23 to May 12, your average \$TRUMP balance determines your spot,” according to the Website advertising the dinner. “Get \$Trump Memes and climb the ranks.”

It is the democratization of ... bribery? Now everyone can compete on a level playing field to hand the president money, and whoever hands him the most money gets dinner with him. I mean! Okay!

Incidentally. Schematically, the way meme coins are mostly supposed to work is:

1. There's some meme, someone gets attention, etc.

- 2. To capitalize on this attention, a meme coin is created, perhaps by the person who got all the attention.
- 3. Some of the coins are sold to the public, while some are reserved for the creator who is perhaps the subject of the meme.
- 4. But, at least as a matter of best practices, the creator isn't supposed to *sell all those tokens immediately*. That is called a “rug pull” and is viewed as unsporting. This makes absolutely no sense to me — if you have 15 minutes of fame, why should anyone expect you to wait 16 minutes before cashing out? — but it seems to be the (frequently violated) norm. If you create a meme coin, you are supposed to be in it for the long haul; you are supposed to be pursuing long-term meme value, not just a quick buck.
- 5. So the meme coin has some sort of lockup schedule, where the creators and insiders have to wait a while before selling most of their tokens, to incentivize the creation of long-term value.
- 6. How do you create long-term value in a memecoin?
- 7. Well, every time another slug of coins gets unlocked, you have to do something attention-grabbing to revive the meme and make your coins more valuable when you sell them.

And so:

Last week, crypto traders braced for the start of what are known as unlocks, or releases of a large swathes of the memecoin to its investors and insiders. Some 200 million Trump memecoins became available at launch on Jan. 17, and another 40 million were unlocked last week. CIC Digital LLC, an affiliate of the Trump Organization, and Fight Fight Fight LLC collectively own 80% of the coins that are subject to the unlock schedule, according to the coin's website.

There will be selling pressure, from the unlocks, and buying pressure, from the fact that “from April 23 to May 12, your average \$TRUMP balance determines your spot.” This is how you do it! I don't know what it is, exactly, but this is certainly how you do it.

You can read various news articles quoting ethics experts howling into the void about this, but why would you do that.

Empathy

One model is that a private equity firm has expertise in the general problem of “running companies.” Private equity managers might not be domain experts in widget manufacturing or accounting software or pest control, but they should be good at solving the problems that are common across lots of different kinds of companies. Therefore, they can buy lots of different companies and make them more valuable, by applying the general company-running skills that they possess and that others don’t.

Historically private equity’s “general company-running skills” consisted largely of noticing that lots of companies (1) could handle more debt and (2) might benefit from giving executives more equity ownership, but that low-hanging fruit has largely been plucked, and now private equity firms invest more in operational expertise.

This is not the only model of private equity, and in some circles private equity gets kind of a bad rap. Instead of “private equity has a generalized skill of running companies,” you might have a model like “private equity acquires companies, over-levers them, strips them for parts and leaves other stakeholders with the fallout.” Private equity is, on that model, a rapacious business; its returns come not from being *good at running companies* but from being *particularly cold-blooded* about maximizing its own take.

Of course even if the first model is correct, that might lead private equity to cold-bloodedness. Perhaps cold-bloodedness *is* the best way to run a company. Perhaps, with its generalized expertise, a private equity firm will discover that being mean to employees generally increases the long-term value of companies, so it does that.

But perhaps not. Perhaps being *nice* to employees generally increases the long-term value of companies, and a private equity firm, with its expertise, will discover that and thus become particularly nice. Private equity will buy insufficiently nice public companies, make them nicer, increase income and flip the new nicer companies for a profit. It will spot a market inefficiency — managers who aren’t nice enough — and correct it. Bloomberg’s Heather Landy reports on KKR & Co.’s investment in empathy:

Pete Stavros, KKR’s co-head of global private equity and the driving force behind its employee ownership campaign, ... did notice over the years that there were certain types of leaders at KKR companies who produced better results in the columns tracking culture data. Often they were women, immigrants, or people who grew up poor or held deep religious beliefs. He suspected there was something in their background that helped them connect with their employees. Was empathy, he wondered, their common trait? Stavros wasn’t sure how to prove that or what it portended for leaders who didn’t fit those profiles. But after a chance encounter with a Stanford University psychologist, he got some answers. The findings are already changing how KKR trains senior leaders inside the firm and across its portfolio. ...

KKR is now piloting three different training programs designed to increase empathy. Leaders are working with Zaki on building skills such as active listening. They're also being sent on excursions facilitated by the Financial Health Network to explore how people in their communities get by. And they're being put into Japanese-style kaizen meetings, in which people up and down the hierarchy find ways to improve the business. "Our job is to find good companies that we can make a lot better," Stavros says. "Because how could we say we're optimizing a business if 40% of the workers are quitting every year?"

If making companies a lot better requires making their bosses a lot nicer, then, in its ruthless pursuit of profits, KKR will just have to do that.

Co-invests and carry

I wrote yesterday about two ways that big institutional investors can invest in private equity:

1. They can invest in a private equity fund, which will use their money to make deals, and will charge them a 2% management fee and 20% of the profits; or
- 2. They can *co-invest* alongside the private equity fund, which gives them the option to say no to deals, and which can involve lower fees.

I suggested that co-investment is broadly nice for the institution (more flexibility, lower fees), but bad for the private equity fund manager (less committed capital, lower fees), and so the mix between fund investments and co-investments will depend on the relative power of the two sides.

But a couple of readers emailed to point out an important nuance, which is that "a basket of options is worth more than an option on a basket." When a private equity manager raises a fund, it charges its investors a performance fee of (say) 20% of the return of the fund. The return of the fund is the profits on its winning deals minus the losses on its losing deals. If it does 10 equal-sized deals in a \$1 billion fund, and seven return +30% while three return -20%, the fund's overall return is +15% and the sponsor will earn a \$30 million performance fee. But if it does a co-investment, it will generally charge its co-investors a performance fee *on that deal*: The investor is making a single investment decision in that deal, not allocating to a fund. If the sponsor does 10 equal-sized \$100 million co-investments, and seven return +30% while three return -20%, the sponsor will earn \$42 million on the good ones (seven times times \$30 million times 20%) and zero on the bad ones (there are no *negative* performance fees). As one reader put it:

Even if you are paying a reduced fee on option #2 (coinvest with the fund), your returns (to the [limited partners]/pensions) might end up even worse since the [general partner's] carry is no longer cross-collateralized. So if it's an area with wide variance (growth equity or venture), where you can have multiple companies go to zero with a few massive winners, your fee burden could end up higher.

If you are a limited partner and you are *good* at picking deals, this is still good for you: You'd rather invest in only the private equity sponsor's winners, pay full fees on the winners, and avoid the losers entirely. But if you have no particular ability to pick the winners, at least investing in the fund means that your losses on the losers reduce your fees on the winners.

Hockey

We have talked a couple of times recently about the curious fact that (1) quantitative investing, (2) building large language models and (3) managing professional soccer teams are all approximately the same job. Also that job is approximately "astrophysics." It is approximately the case that there is a general data-science-y skill set that is coming to dominate all of these apparently disparate fields, and that skill set is largely taught in certain hard-science graduate programs. And so you can move from a quant hedge fund to a soccer team and everyone is like "oh right of course that guy's moving from a hedge fund to a soccer team, he has an astrophysics PhD, that all makes sense." Twenty years ago soccer and investing and astrophysics were all very different jobs, but modern data science has discovered latent structures that make them the same job.

Is hockey the same job? Oh I mean of course, how could it not be. Here is a fun Athletic article about Eric Tulsky, a PhD nanotechnologist who is "the general manager of the [National Hockey League's Carolina] Hurricanes, the first person with anything close to his academic and scientific credentials to ever cross over to hockey in that role," but not the last. Here is how he describes hockey:

"A lot of what you're doing in hockey is taking pieces of information that tell you a small piece of a story," Tulsky said. "And sometimes those pieces of information conflict. Sometimes they're missing things you need to know, and you piece it together and try and figure out what the underlying truth is, and that is an interesting puzzle to try to solve."

"A lot of what you are doing in hockey is ice skating, hitting a puck with a stick and crashing into other people," is how *you* might naively describe hockey, but the actual GM of the Hurricanes knows that hockey is in fact a data science puzzle. Also here's how he hired a guy for his team (to do data science, I mean, not to skate):

The NHL had released tens of millions of points of new data with the introduction of player and puck tracking, but it was such an enormously complex dump of information that it would take a special skill set to turn it into something he could use. ...

Because of what he saw in the tracking data, Tulsky believed his next addition needed to be someone who was working on autonomous vehicles — perhaps "a robot submarine," he says now — and had an advanced mechanical engineering background.

"I knew that that was the kind of problem that put people thinking about the kinds of data that we had and the kinds of problems we faced," Tulsky explained.

It goes without saying that there aren't many robot submarine engineers working in NHL front offices. So Tulsky began a deep search through universities' mechanical engineering departments. ...

And that was how an NHL team came to fund the PhD research of a young engineering student named Jonathan Arsenault at McGill University in Montreal.

His thesis, the first to be backed by a professional hockey team? "Quantitative Analysis of Hockey Using Spatiotemporal Tracking Data."

I like that the guy was in his prestigious mechanical engineering PhD program and his supervisor was like "so what will your dissertation be about? Is it robot submarines?" and he was like "no actually I was thinking of working on evaluating hockey players" and the supervisor was like "oh of course, yes, deep down that is also a mechanical engineering problem."

Things happen

Corporate America puts Wall Street on alert over damage from trade war. Huge Stock Swings Are the New Normal for Frazzled Investors. Despite Trump's Apparent U-Turn, Drawn-Out Capital Flight Could Still Hit U.S. Markets. Franklin CEO Says Some Institutional Investors Are Ditching US Stocks. Carlyle's CEO Is Reviving Its DC Brand Just in Time for Trump Era. Elliott's 'lone wolf': the hedge fund maverick waging war on Big Oil. Trump 'eroding' US brand, has made the country 20% poorer, Citadel chief says. Morgan Stanley to Sell Final \$1.23 Billion X Debt Tied to Buyout. Ukraine fails to reach deal with investors to restructure \$2.6bn of debt. Celsius Investors Urge Severe Punishment for Founder Mashinsky. Team Valuations Are Pushing Pro Sports Into the Arms of Private Equity. The Impossible Four-Hour Test You Need to Pass to Become a Tariff Pencil Pusher. Davos founder accused of manipulating World Economic Forum research. Surprise Will of Late Zappos CEO Adds New Twist for His Fortune. Neumann's Flow More Than Doubles Valuation, Eyes Eventual IPO. "Once the container arrives in Dubai, Arctic Ice workers carve the chunks into spheres and place them in triangular gift boxes that come with a little pair of tongs." "There's a lot of things that are uncommon ... but we're not a common company."

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- 1. Don't take that too seriously; SPACs are weird in that they have warrants and somewhat warrant-like founder shares that are worthless if the SPAC is a pot of cash but worth a lot if the SPAC finds a merger. But the non-contingent claims on the \$102 million pot of cash traded, earlier this week, at about \$104 million.
- 2. From the 10-K: "As of December 31, 2024, the redemption price was approximately \$10.35 per Public Share (inclusive of \$0.15 per Public Share to be funded pursuant to the Sponsor Note)."
- 3. This is a simplified description, ignoring some simultaneous capital raises, and when I say "worth about \$3.4 billion" I am using today's \$93,000-ish Bitcoin price. You can get a more detailed sources and uses and pro forma ownership on pages 25 and 26 of this investor deck.

- 4. Rough math there is that there are 10,300,000 ordinary shares of CEP, worth about \$292 million at \$28.34 per share, and \$292 million divided by 2.9% is about \$9.8 billion. Don't, like, price the merger based on this math, but it's the right order of magnitude.
- 5. I once wrote about Hawk Tuah Coin: "Yes I mean obviously Haliey Welch should get millions of dollars from selling a token representing her own virality, and obviously that token's value should go to zero in like a day. That is how modern finance works! I don't know why you would buy the token, but then I don't own PNUT or PEPE or Dogecoin either. People are complaining that this is a 'rug pull' or a 'pump and dump,' but I cannot understand what different thing they thought would happen. The Hawk Tuah coin would build an enduring business with large and growing value for years to come? What? Why? How? It's a memecoin representing the fastest-melting imaginable form of fame; of course it should go to \$500 million and then to zero in a day. That's what it's for! It worked perfectly!"

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SEC Resolving Suit Against SPAC CEO That Took Trump Media Public

The US Securities and Exchange Commission is resolving a civil fraud suit against the former chief executive of the blank-check firm that helped bring Donald Trump's social media company public.

An "agreement in principle" has been reached between the regulator and **Patrick Orlando**, who was sued by the SEC in July 2024 for allegedly misleading investors about his firm's merger plans, according to a joint court filing Wednesday seeking to put the case on hold.

The lawsuit was filed during the administration of former President Joe Biden. It was one of several legal fights that emerged from efforts to take Trump Media & Technology Group Corp. public via a merger with Orlando's special purpose acquisition company, Digital World Acquisition Corp.

"The parties have now reached an agreement in principle that would resolve this matter completely, without the need for judicial intervention," the attorneys said in the filing in Washington federal court.

Read More: Trump Social Media Investor Gets Prison for Insider Trading

The SEC declined to comment. Orlando's attorney didn't immediately respond to messages seeking comment.

SPACs raise money from public offerings with the goal of buying existing firms. Under the rules governing such deals, a blank-check company is permitted to say what kinds of companies it might buy but can't hold any actual talks until its own IPO is completed.

Instead, the SEC alleged, Orlando "personally engaged in numerous lengthy discussions with representatives of Trump Media & Technology Group Corp." and had targeted the company for a merger for several months.

The filing, which didn't include details of the deal, said that the SEC's lawyers on the case would "work expeditiously" to win approval from the SEC's commissioners, who aren't bound by the agreement.

Trump Media, which operates Truth Social, has been volatile since going public in March 2024. It soared as high as \$79.38 in its debut before plunging as low as \$11.75 in September. The stock soared again ahead of the November election before erasing gains. It's currently trading around \$26.

Orlando left his leadership roles at DWAC in early 2023 and sued it for more shares. Last year, he was awarded about 800,000 more shares of Trump Media by a Delaware court.

The deal to take Trump Media public was delayed for years after the Justice Department and SEC launched investigations — delays that DWAC says cost it more than \$100 million. In 2023, DWAC agreed to pay \$18 million to settle claims by the SEC that the SPAC misled investors about its plans, claims that were similar to those made against Orlando.

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Investors relieved Musk will refocus on Tesla, but worry about brand damage

 [reuters.com/business/autos-transportation/tesla-shares-rise-65-musk-says-cut-back-doge-work-2025-04-23](https://www.reuters.com/business/autos-transportation/tesla-shares-rise-65-musk-says-cut-back-doge-work-2025-04-23)

Akash Sriram, Abhirup Roy

April 25, 2025

- Musk to reduce DOGE involvement, focus more on Tesla
- Experts warn Tesla faces long road to brand recovery
- Tesla's Q1 profit drops 71%, misses estimates

April 23 (Reuters) - Tesla investors breathed a sigh of relief after CEO Elon Musk said he would refocus his attention on the electric automaker, but that promise did not entirely dispel worries that his right-wing shift had irrevocably damaged the company's brand.

The automaker's shares (TSLA.O) , opens new tab rose nearly 8% on Wednesday after Musk said he would cut back , opens new tab his work for U.S. President Donald Trump to a day or two per week from sometime next month after Tesla posted a 71% slump in net income and a sharp drop in automotive revenue.

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The billionaire's work as an adviser to Trump and his embrace of right-wing politics in Europe have drawn widespread opposition, including protests and vandalism at Tesla showrooms.

"His time is very valuable, and I think Tesla needs his attention," said Ross Gerber, CEO of Gerber Kawasaki Wealth and Investment Management and a prominent investor.

"But it doesn't change that people don't want the Tesla brand. I don't know how you fix that."

Shares of the world's most valuable automaker have lost about half its value since hitting a record high in December, reducing its market capitalization by more than \$500 billion, largely on concerns that brand damage could hurt sales for a second straight year.

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Tesla stock slumps after hitting record high post election



Note: Shows closing prices

By Akash Sriram • Source: LSEG

Tesla stock slumps after hitting record high post election

It is set to add more than \$50 billion to its \$766 billion market valuation, if gains hold. Tesla shares were trading about 89 times profit expectations, much higher than automakers Ford Motor (F.N) [opens new tab](#), General Motors (GM.N) [opens new tab](#) and Magnificent Seven peers.

Tesla's forward price-to-earnings ratio towers over automakers, Mag 7 peers

While some investors welcomed Musk committing more time to Tesla, experts warned the brand faces a long road to recovery, especially as political controversy continues to weigh on its image.

"Musk could do a reversal on his political career and dedicate 100% of his time to Tesla, but the rot has set in," said Sue Benson, CEO and founder of The Behaviours Agency, a marketing firm.

The Tesla logo is seen on a car at the Paris Games Week (PGW), a trade fair for video games in Paris, France, October 27, 2024. REUTERS/Sarah Meyssonier/File Photo Purchase Licensing Rights [opens new tab](#)

"No product can fix this, and no amount of time spent in Tesla's offices will undo the new perception many people have of Musk—in fact it could make things worse as it's far too late to separate the man from the machine."

Musk's support of Trump and affiliation to right-wing causes have alienated a segment of consumers who once aligned with Tesla's climate-focused mission.

Some analysts have suggested that if the adoption of EVs in more conservative states accelerates, it could offset falling sales in California and other markets.

Brand perception issues have become more pressing for Tesla, which is entering a phase where consumer appeal and affordability are essential for its next stage of growth.

The company reaffirmed plans to launch an affordable model in early 2025, but warned the production ramp could be slower than expected.

Tesla said it will a review of its full-year delivery forecast amid shifting global trade policies in the second quarter earnings update, which is expected in July.

While Tesla is less likely to be affected by global tariffs than legacy automakers, it still expects an outsized impact on the fast-growing energy storage business that uses battery cells from China.

Musk said he has advocated for lower tariffs but the final decision lies with Trump. "I expect this year there will probably be some unexpected bumps this year," he said.

"Negative impact of vandalism and unwarranted hostility toward our brand and our people had an impact in certain markets," Tesla finance chief Vaibhav Taneja said.

Tesla also said, "changing political sentiment, could have a meaningful impact on demand for our products in the near-term."

"Until the brand distances itself from the political baggage it has acquired, Musk's specific percentage of renewed focus on Tesla may be irrelevant," said Gabor Schreier, Chief Creative Officer, Saffron Brand Consultants.

Reporting by Abhirup Roy in San Francisco, Alun John in London and Akash Sriram and Siddarth S in Bengaluru; Editing by Amanda Cooper, Savio D'Souza and Arun Koyyur

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<https://www.wsj.com/business/elon-musk-friends-private-company-access-eb93ba05>

A Side Hustle for Friends of Musk: Selling Access to Stakes in His Private Companies

Lucrative stock deals have allowed SpaceX to avoid public scrutiny even as it has grown into one of the largest companies in the U.S.



Josh Berman, Antonio Gracias, Justin Fishner-Wolfson, Elon Musk and Luke Nosek ILLUSTRATION: BRANDON CELI

By [Susan Pulliam](#) [Follow](#), [Corrie Driebusch](#) [Follow](#) and [Becky Peterson](#) [Follow](#)

April 24, 2025 9:00 pm ET

Antonio Gracias and [Elon Musk](#) go way back. The Valor Equity Partners founder and his family spend their Christmases with Musk and vacation with him in the Bahamas and Jackson Hole, Wyo. For Gracias, it has been a lucrative relationship. He has become a multibillionaire in part by investing in nearly all of Musk's companies over the years, according to public filings and court documents.

Now, Gracias and his firm have found another way to cash in on his status in Musk's inner circle: by selling wealthy outsiders access to tightly controlled shares in Musk's privately held companies. Gracias, who is a current SpaceX and former [Tesla](#) **TSLA 10.42%** ▲ board member, recently offered investors \$1 billion worth of shares in SpaceX and xAI through Valor in an exclusive private sale that

will net him and the bankers involved millions in fees, according to deal documents reviewed by The Wall Street Journal.

The documents, along with interviews with investors, lawyers and bankers, offer a window into the opaque market for shares of Musk's private companies—particularly SpaceX, xAI, Neuralink and the Boring Company—which are some of the most sought-after private investments. Access to the shares is controlled by a tightknit coterie of Musk associates, who have quietly built businesses doling them out through shell companies, racking up huge fees and profits in the process.

The sale by Gracias comes amid a big jump in the valuation for SpaceX shares, helped in part by the company's prospects for lucrative contracts under the Trump administration. In the second half of 2024, the company's valuation grew 67%. Overall, the company's shares have increased nearly 30-fold between 2015—when SpaceX was valued at \$12 billion—and last December, when its valuation hit \$350 billion, putting it on par with the likes of [Oracle](#) and [Coca-Cola](#).

As it has grown to become one of the largest companies in the U.S. it has remained one of the most secretive, with its finances hidden from all but a small group of investors and insiders. Most people with stakes in SpaceX have no clue how much money the company makes or loses. Remaining private also allows SpaceX to escape the scrutiny of the stock market, which has seen Tesla's share price gyrate wildly [amid concerns about Musk's polarizing role in the White House and overseas competitive pressures](#).

It is rare for a venture capital-backed company of SpaceX's size and stature to remain private for so long. The company is more than two decades old and has raised billions of dollars from hundreds of private investors.

One of the ways SpaceX has been able to maintain its private status is by limiting its investor base. Once there are 2,000 "holders of record"—not including employees who own shares through stock-compensation packages—a company is legally required to disclose financial information similar to a public company.

In its early days of fundraising, SpaceX didn't bump up against that limit. In recent years, as its financial results have improved, SpaceX hasn't needed to raise more cash for itself by selling stock. But it does periodically need to offer employees and other investors an opportunity to cash out some of their holdings, which the company does through privately arranged sales roughly twice a year.



Antonio Gracias, founder of Valor Equity Partners, joins Elon Musk at a town hall in Green Bay, Wisc., last month ahead of a state supreme court election. PHOTO: JAMIE KELTER DAVIS/BLOOMBERG NEWS

One way to keep from hitting the disclosure tripwire is to dole out such shares to existing insiders, who in turn sell interests in them to other investors through a spiderweb of funds—often structured as special-purpose vehicles, or SPVs. In these transactions, outside investors are buying shares of holding companies that in turn own shares of the actual Musk businesses—meaning such investors don’t appear on SpaceX’s capitalization table, the document that lists shareholders in the company.

Gracias’ offering, which hasn’t been previously reported, joins previous ventures from SpaceX board member Luke Nosek, MySpace co-founder Josh Berman and Founders Fund veteran Justin Fishner-Wolfson—all of whom have personal ties to Musk—that have given wealthy investors a way to share in the explosive growth in valuation of Musk’s companies.

Investors named in this article either didn’t respond to requests for comment or declined to comment.

Investors close to Musk and his companies often get into deals by working directly with the head of his family office Jared Birchall or SpaceX CFO Bret Johnsen. Others text with Musk directly to try to participate in deals, as was the case with his Twitter acquisition.

“I’m personally in and will raise an SPV too if that works for you,” venture capitalist David Sacks texted to Musk in 2022 after Musk asked if he would invest in Twitter, according to court records. Sacks is now the White House’s AI and cryptocurrency czar.

A few weeks later, Musk accused Twitter investor Jason Calacanis of “marketing an SPV to randos” during the first Twitter fundraiser, court records show. “SPVs are how everyone is doing there [sic] deals now,” Calacanis responded.

Investors in the Gracias venture received interests in a limited partnership holding \$250 million in shares of xAI and \$750 million in shares of SpaceX, deal documents show. Investors in the deal are required to have at least \$50 million in assets under management and make a minimum investment of \$1 million.

The sale will yield big fees for Gracias and for [UBS](#), which marketed the deal through its wealth management division, according to the documents. Gracias and Valor Equity Partners will earn a management fee of 1% annually, according to the transaction documents. Valor will also earn performance-related fees known as “carry fees” of 20% on the deal if the SpaceX shares increase more than 8% annually in value, according to deal documents.

UBS Wealth Management, which also serves as a private banker to Musk, receives a placement fee on the deal and the bank will get part of the performance fees that Valor will earn if SpaceX shares increase in valuation.

A big part of SpaceX's recent valuation increase owes to the explosive growth of the company's Starlink internet service, but the company also stands to benefit from Musk's proximity to Trump administration officials, according to aerospace-industry officials.



Jared Isaacman, President Trump's nominee for NASA administrator, has a long history with SpaceX.

PHOTO: KEVIN DIETSCH/GETTY IMAGES

Trump's nominee for NASA administrator, [Jared Isaacman](#), has close ties with SpaceX, having previously invested in the company, flown to orbit on its vehicles and provided services to SpaceX through his payments company, [Shift4](#). If confirmed, Issacman would play a major role setting priorities for NASA, and wants to accelerate the agency's efforts to explore Mars, the planet Musk has long wanted to try to settle.

Isaacman reported more than \$5 million in capital gains related to SpaceX shares in a recent filing, indicating he sold company stock.

During his confirmation hearing, after a senator asked him about navigating Musk's role at SpaceX and in the government, Isaacman said his loyalty resides solely with the U.S. and to NASA.

Commerce Secretary Howard Lutnick has told staff he plans to make changes to a [\\$42.5 billion Biden-era program](#) aimed at expanding internet access around the country with new rules that will make it easier for Starlink to win funding, [the Journal previously reported](#).

SpaceX's escalating value has made its shares a prime target for other players in the secondary market who aren't fortunate enough to be friends with Musk. Such shares tend to be available only in limited quantities, or as pieces of a fund that may hold some SpaceX shares, and their brokers tend to charge high fees.



Luke Nosek spoke at a technology summit in 2013. PHOTO: MICHAEL NAGLE/BLOOMBERG

SpaceX has sent cease-and-desist letters to brokerages that have claimed to have direct access to shares. Other large investors have tried to sell shares of SpaceX to unapproved parties, including a Hong Kong subsidiary of the China-based Leo Group, but [been rebuffed](#) when the company objected.

PayPal pals

Then there are people like Nosek, a SpaceX board member who worked with Musk at [PayPal](#) before joining Thiel's Founder's Fund in 2006. He and Musk remained close, sometimes attending game nights in Austin where they played "Werewolf," which pits villagers against monsters, according to a person who knows them.

Since Nosek founded Gigafund in 2017, it has purchased roughly \$1 billion in secondary sales of SpaceX shares, netting millions in management fees paid by investors, according to fund

documents. If an investor sells their interest in the fund, Gigafund stands to earn performance fees based on SpaceX's increase in valuation, according to Securities and Exchange Commission filings.

Among the investors who bought an interest in SpaceX shares through Nosek's Gigafund is Emil Michael, a former Uber executive and President Trump's nominee for undersecretary for Research & Engineering at the Defense Department, according to his ethics disclosure. Michael's disclosure form revealed the holding but withheld the amount of the underlying assets, citing a confidentiality agreement. He has agreed to divest the holding if he is confirmed. Michael's disclosure form also showed holdings in Musk's xAI and Tesla.



Antonio Gracias, a member of the SpaceX board, was an early investor in PayPal. PHOTO: DAVID PAUL MORRIS/BLOOMBERG NEWS

MySpace co-founder Berman also frequently gets slugs of shares when SpaceX sells them on behalf of employees or earlier investors. His firm Troy Capital invested part of a \$47 million fund in secondary sales of SpaceX stock in 2022 when the company was valued at roughly \$127 billion, according to SEC filings.

Fishner-Wolfson—an early investor in SpaceX and friend of Founders Fund founder Peter Thiel, another close associate of Musk—also often gets SpaceX shares for his fund, 137 Ventures Management.

Duncan Penn, an MTV personality and a close friend of SpaceX board member Kimbal Musk, has a similar arrangement through his \$100 million firm Gatsby Management, according to a person familiar with the fund.

Gracias and Musk's friendship traces back to the beginning of Musk's career, when Gracias invested in PayPal. Gracias' predecessor fund to Valor tripled the money it put into PayPal, according to court documents. Over the years, Musk invited Gracias' Valor funds to invest in SpaceX, Tesla, SolarCity, The Boring Company and Neuralink, creating "dynastic" wealth for Gracias and "billions of dollars" in profit for Valor, according to testimony in a shareholder lawsuit against Tesla over Musk's pay package.

Gracias joined the Tesla board of directors in 2007 and the SpaceX board in 2008. In 2021, he [left the Tesla board](#) following a broader shake-up amid questions about corporate governance.

More recently, Gracias has joined Musk's DOGE initiative, taking the lead in cutting costs at the Social Security Administration. He played a similar role at Musk's side after he purchased Twitter, helping him slash the payroll by 80%.

Valor has invested \$3.2 billion in SpaceX since 2008. Valor also has invested \$1.15 billion in xAI since last year, according to documents viewed by the Journal.

Gracias has also invested directly in Musk himself, once extending a \$1 million personal loan to his friend, according to testimony in the pay package case. Gracias couldn't recall if he charged interest.

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News from Bloomberg Terminal

April 25, 2025, 10:55 AM PDT

Two Ex-Wells Fargo Auditors Reach Settlement With Bank Regulator

By Yizhu Wang and Katanga Johnson

(Bloomberg) --

A key US banking regulator unveiled settlements with two former Wells Fargo & Co. auditors who were alleged to have ties to the bank's systemic sales-practice misconduct, according to a statement Friday.

The orders resolve actions the Office of the Comptroller of the Currency initiated against David Julian, former chief auditor, and Paul McLinko, former executive audit director. The regulator assessed a \$100,000 civil money penalty against Julian and a \$50,000 civil money penalty against McLinko.

A 2020 investigation by the OCC concluded that executives opened millions of unauthorized customer accounts, transferring funds without customer consent and lying to customers that certain products were available only as a package deal.

The regulator previously entered into consent orders with eight other former Wells Fargo executives related to systemic sales practices misconduct. The OCC said to date those actions have produced more than \$43 million in penalties against the former bank officials.

The settlement comes as Wells Fargo is chipping away at legacy regulatory issues. The bank has made compliance and risk management its top priorities since Chief Executive Officer Charlie Scharf took the reins.

Wells Fargo remains under an asset cap imposed by the Federal Reserve that limits the lender's balance-sheet size. The firm's executives have been awaiting a decision from the Fed on whether they have done enough to get the restrictions lifted.

Read More: Wells Fargo Executives Plot Life After \$36 Billion Punishment

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Rivian Secures Calif. State Court Win Over Investors' IPO Suit

By **Katryna Perera**

Law360 (April 24, 2025, 6:49 PM EDT) -- A California state appellate court affirmed the dismissal of a suit brought against Rivian Automotive accusing the electric vehicle manufacturer and its underwriters of misleading investors ahead of its blockbuster 2021 initial public offering, finding that Rivian's articles of incorporation direct any federal securities-related claims to federal court.

A three-judge panel for California's Fourth Appellate District Court issued an **unpublished opinion** on Wednesday affirming the state court's dismissal of Walter Bullock and Todd Smith's suit for inconvenient forum.

According to the opinion, Rivian moved for dismissal in the Superior Court of Orange County based on a federal forum provision, or FFP, in its articles of incorporation that requires claims asserted under the Securities Act of 1933 to be brought in federal court unless Rivian agrees otherwise.

The trial court granted the dismissal following the 2022 ruling in [Wong v. Restoration Robotics Inc.](#), another California Superior Court case, which held that FFPs are valid under Delaware law and the U.S. Constitution and that the FFP at issue was enforceable under California law.

But Bullock and Smith appealed, first arguing that the FFP violates the Securities Act, which prohibits the removal of state court actions asserting Securities Act claims to federal court.

However, the appeals court panel disagreed on Wednesday, noting that while it is true that the anti-removal provision bars the removal of a suit to federal court, Rivian did not seek removal in the current action — it sought dismissal.

The panel also rejected the plaintiffs' argument that the FFP violates the Securities Act's antiwaiver provision, which states that "any condition, stipulation, or provision binding any person acquiring any security to waive compliance with any provision of [the 1933 Act] shall be void."

The plaintiffs also argued on appeal that the Delaware statutory scheme permitting the FFP violates the commerce clause and the supremacy clause of the Constitution. However, the panel again disagreed, concluding that Delaware has a "legitimate interest" in allowing its corporations to include FFPs in their certificates of incorporation and that "any [resulting] burden on interstate commerce ... does not exceed the benefits provided by the statute."

Finally, the plaintiffs argued the FFP is invalid and unenforceable under California law. The panel noted that California favors the enforcement of forum selection clauses, and therefore, mandatory forum selection clauses are typically enforced "unless they are unfair or unreasonable."

According to the opinion, the plaintiffs argued that the FFP should be unenforceable because it was "outside the reasonable expectations of the shareholders," and enforcement would be "unduly oppressive or unconscionable."

However, the panel found that Rivian's FFP was made public in its amended articles of incorporation at the time of the IPO, and therefore, there is no reason why shareholders should not have expected to be bound by the FFP.

Additionally, the panel said the FFP is not unconscionable because it does not give Rivian the "sole

right" to control the forum since "the provision does not restrict a plaintiff's procedural right under the statute to file suit in a local federal court."

The plaintiffs also argued on appeal that the trial court erred in granting the underwriters' joinder motion to Rivian's dismissal motion since the underwriters were not "intended" third-party beneficiaries of the FFP.

But the panel said Wednesday that in their argument, the plaintiffs ignore the trial court's finding that the underwriters have standing to enforce the FFP because the allegations against them and Rivian are "so intertwined that they cannot be separated."

According to the opinion, forum selection clauses can sometimes be enforced by a noncontracting party "closely related to the contractual relationship."

"Here, there was sufficient evidence to support the trial court's finding of a 'defined and intertwining business relationship' between Rivian and underwriters," the opinion said. "Rivian's prospectus identified underwriters as entities 'expect[ed] to deliver the shares . . . to purchasers.' In that capacity, underwriters belonged to a class of defendants against whom plaintiffs could assert a 1933 Act claim."

"Under these circumstances, we conclude underwriters were sufficiently close to the contractual relationships created by the sales of Rivian stock to be afforded standing to enforce the FFP," the panel added.

Counsel for Rivian declined to comment on Thursday, and counsel for the other parties did not immediately respond to requests for comment.

Justices Thomas A. Delaney, Kathleen E. O'Leary and Maurice Sanchez sat on the panel for the Court of Appeal.

The plaintiffs are represented by Daniel H. Woofter of Goldstein Russell & Woofter, Andrew S. Love, James I. Jaconette and Brian E. Cochran of Robbins Geller Rudman & Dowd LLP.

Rivian is represented by Boris Feldman, Doru Gavril, Eunice Leong and J. Mia Tsui of Freshfields US LLP.

The underwriters are represented by James N. Kramer and Alexander K. Talarides of Orrick Herrington & Sutcliffe LLP.

The case is Bullock et al. v. Rivian Automotive Inc. et al., case number G063033, in the Court of Appeal of the State of California, Fourth Appellate District.

--Editing by Alex Hubbard.



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Ready Capital Sued Again Over Real Estate Loan Losses

By **Grace Dixon**

Law360 (April 24, 2025, 6:48 PM EDT) -- Ready Capital Corp. and two executives were hit with another derivatives suit alleging statements made in the back half of 2024 about the company's performance misled investors about the significance of several nonperforming commercial real estate loans.

A proposed class of investors led by David Goebel alleged in a Wednesday **complaint** filed in New York federal court that the real estate and small business lender led them to believe that its commercial real estate portfolio was stabilizing and that loan performance was on the upswing in statements about its second- and third-quarter performance.

"In truth, significant non-performing loans in Ready Capital's CRE portfolio were hampering the company's financial performance and were not likely to be collectible," Goebel said. "These significant non-performing loans in Ready Capital's CRE portfolio were not accurately reflected in its current expected credit loss or valuation allowances and, as a result, the company's financial results were materially false and misleading."

These loans were damaging the company's bottom line, forcing it to take aggressive steps to stabilize its balance sheet, the investors claimed. When Ready Capital announced these steps in March, the company's shares fell 26.8% in a single day, according to the complaint.

Goebel pointed to statements released by the company as well as comments made by CEO Thomas Capasse on earnings calls in August and November as evidence of the company's efforts to mislead investors.

In an August earnings call, Capasse repeatedly referenced a turning tide, the complaint said. He noted improving credit metrics and credit performance, stating that asset management activities had "derisked" the portfolio, and he called the rate rally a "green shoot" for the company, per the suit.

In a November earnings call, Capasse said the company's commercial real estate portfolio was "showing stabilizing credit metrics" and told investors that the company's commercial real estate business was returning to historic levels.

The investors said these statements left them in the lurch when the company announced in March that it would begin "aggressive reserving" on the loans in question and undertake "decisive action to stabilize" its balance sheet. Ready Capital's stock price fell \$1.86 per share in a single day of trading, per the suit.

The suit seeks to certify a class of investors who purchased Ready Capital stock between Aug. 8 and March 2, alleging they were harmed when the truth came to light.

"The price of company's common stock significantly declined when the misrepresentations made to the market, and/or the information alleged herein to have been concealed from the market, and/or the effects thereof, were revealed, causing investors' losses," Goebel said.

Another investor filed a **proposed class action** in New York federal court against Ready Capital on April 9, based on the same alleged misrepresentations.

Counsel for the proposed class and a representative for Ready Capital did not respond to requests for comment Thursday.

Goebel is represented by Javier Bleichmar, Ross Shikowitz and Adam McCall of Bleichmar Fonti & Auld LLP.

Counsel information for Ready Capital and its executives was not immediately available.

The case is David Goebel et al. v. Ready Capital Corp. et al., 1:25-cv-03373, in the U.S. District Court for the Southern District of New York.

--Additional reporting by Sydney Price. Editing by Haylee Pearl.

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Investor Sues To Halt 'Cheap' VC Buyout Of Fla. Health Co.

By **David Minsky**

Law360 (April 24, 2025, 10:18 PM EDT) -- A Florida health business investor sued its founder, its CEO, a venture capitalist firm and others over negligent misrepresentation in connection to a proposed buyout, alleging a proxy statement omitted conflicts of interest and included deceptive financial data in order to justify the company's "cheap" acquisition.

In a **two-count lawsuit** filed Wednesday in Miami-Dade County state civil court, Paul Berger Revocable Trust alleged NeueHealth Inc.'s co-founder and chairman Robert Sheehy, CEO Mike Mikan and others disseminated a misleading proxy statement that threatened to undermine investors' decision on whether to approve a buyout that was being spearheaded by venture capitalist firm New Enterprise Associates Inc., or NEA.

"While the buyout is being spearheaded by NEA, it is being driven by a consortium comprised of NeueHealth's co-founder and current Chairman Robert Sheehy, and the company's venture capitalist backers who are exploiting a dip in the company's stock price to take the company private at a cheap price," the complaint states. "In addition to being deprived of their ownership interest in the company for inadequate compensation, plaintiff and other NeueHealth's other public investors are being deprived of the opportunity to be heard on the buyout."

NeueHealth started as Bright Health Group and was co-founded by former United Healthcare CEO Sheehy, according to the lawsuit. In September 2017, the plaintiff said Forbes included NeueHealth on its list of 25 "next billion-dollar startups," and in 2021, the company became publicly traded with an initial public offering of \$18 per share.

The company has been successful since its inception, according to the plaintiff, with revenue and gross profit projected to expand at a compound annual growth rate of more than 57% and 44%, respectively, by 2027. Overall, the plaintiff claimed that the market for value-based healthcare is expected to grow from \$1.93 trillion in 2025 to \$4.45 trillion in 2030.

Despite the projected growth, Sheehy, Mikan, NEA and other directors are working to take the company private at the detriment of investors, the plaintiff alleged.

In December 2024, NeueHealth announced that it agreed to be sold to NEA and "rollover investors," such as Sheehy, the venture capital investors and other shareholders whose shares will be converted into equity interests in the private company following the sale.

The other venture capital investors include Bessemer Venture Partners and Town Hall Ventures, which are represented on NeueHealth's board through Stephen Kraus and Andrew Slavitt, respectively, while NEA is represented by Mohamad Makhzoumi and Jeffrey Immelt. Kraus, Slavitt, Makhzoumi and Immelt are all listed as defendants in the lawsuit, as well as NeueHealth directors Matthew Manders, Manuel Kadre, Linda Gooden and Kedrick Adkins.

Terms of the proposed buyout include paying investors \$7.33 per share, or a 60% discount, which the plaintiff says "significantly undervalues NeueHealth." The company is currently listed on the New York Stock Exchange under the symbol "NEUE." If the buyout goes through, investors will be required to surrender their shares and won't have any interest in the company's future growth, according to the complaint.

The plaintiff further alleged the proxy statement disseminated to investors fails to disclose that directors Manders, Kadre and Adkins have a conflict of interest because they sat on a special committee formed in June 2024 to negotiate the buyout. The plaintiff alleges the proxy statement falsely states that the committee's members are disinterested in the proposed buyout because they each control large portions of equity in NeueHealth and fails to disclose information on how current shares will be exchanged for equity in the private company, among other reasons.

Additionally, NeueHealth allegedly relied on a flawed fairness opinion provided by financial adviser Lincoln International LLC, which the plaintiff said used "unusually high discount rates" for the company's valuation.

"At NEA's insistence, the buyout merely requires the approval of the holders of a majority of the outstanding shares of the company's stock," the lawsuit states. "Given that NEA and certain of the rollover investors hold around 60% of the company's voting power and have committed to vote in favor of the buyout, the buyout is a fait accompli."

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

The plaintiff is represented by Richard Mockler of Mockler Leiner Law PA.

Counsel for the defendants could not be immediately determined Thursday.

The case is Paul Berger Revocable Trust v. Kedrick Atkins et al., case number 2025-007434-CA-01, in the Eleventh Judicial Circuit Court of Florida.

--Editing by Michael Watanabe.



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What Del. Supreme Court LKQ Decision Means For M&A Deals

By **Andrew Noreuil, Brian Massengill and Andrew Stanger** (April 25, 2025, 9:28 AM EDT)

In a notable holding, the Dec. 18 decision in *LKQ Corp. v. Rutledge*,^[1] the Delaware Supreme Court confirmed that forfeiture-for-competition provisions generally are not subject to reasonableness review, greatly enhancing the likelihood of their enforceability.

The holding represents an important affirmation of the extended reach of the court's **earlier precedent** and will likely make forfeiture-for-competition provisions a more common feature in merger and acquisition transactions.

This article discusses the distinctions between noncompete covenants and forfeiture-for-competition provisions and suggests practical considerations for using the latter in M&A deals.

Noncompete Covenants vs. Forfeiture-for-Competition Provisions

Noncompete covenants are a common feature in M&A agreements. They help protect the value of the buyer's investment in the acquired company by requiring the selling parties to refrain from competing with the acquired company.

Typically, the buyer enforces such obligations through specific performance and monetary damages.

Under Delaware law, noncompete and other restrictive covenants must be reasonable. Applying reasonableness scrutiny, a noncompete covenant is valid if its restrictions (1) are reasonable in terms of their geographic scope and temporal duration, (2) advance the legitimate economic interests of the enforcing party in protecting the acquired business, and (3) survive a balancing of the equities.

When reviewing noncompete covenants as part of an M&A agreement, as opposed to an employment agreement, Delaware courts apply a less-searching reasonableness review.^[2]

Nonetheless, several recent Delaware opinions have invalidated noncompete covenants as unreasonable, particularly when they impose restrictions on individuals.

Often, noncompete covenants are invalid because the restrictions last too long, their geographic scope is too wide — for example, worldwide or U.S.-wide restrictions have been found to be unreasonable — or the restrictions protect segments of the buyer's business beyond the acquired business.

In January 2024, the Delaware Supreme Court reviewed a specific form of noncompete restriction, often referred to as a forfeiture-for-competition, or FFC, provision. The case, *Cantor Fitzgerald v. Ainslie*,^[3] involved a limited partnership agreement, under which any partner withdrawing from the partnership would receive certain payments in installments for a period of four years.



Andrew Noreuil



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Andrew Stanger

However, if a former partner competed with the partnership during that time, any unpaid amounts would be forfeited. The court held that the FFC provision was valid and not subject to reasonableness scrutiny for a number of reasons:

- An FFC provision is neither a liquidated damages provision nor a restraint on trade subject to reasonableness review, and unlike noncompete covenants, FFC provisions are a condition precedent to a deferred benefit that do not restrict competition or a person's ability to work, and do not support injunctive relief.
- Under the employee choice doctrine, courts do not review FFC provisions for reasonableness so long as the employee voluntarily terminates her employment.
- The policy of the Delaware Revised Uniform Limited Partnership Act is to give maximum effect to the principle of freedom of contract.

LKQ v. Rutledge

Cantor Fitzgerald left unclear whether FFC provisions outside of the limited partnership context would be subject to reasonableness review. The court has answered this question in its December 2024 LKQ opinion, holding that Cantor Fitzgerald's reasoning is not restricted to the limited partnership context.

In LKQ, an employer granted restricted stock units, or RSUs, to a plant manager of one of its facilities. The RSUs were subject to agreements under which the manager agreed not to compete with the company for a period of nine months after departure.

If he competed during that period, he would forfeit his RSUs, the shares of common stock underlying the RSUs, and any proceeds from the prior sale of such shares. Unlike the Cantor Fitzgerald FFC provision, the agreement included a clawback obligation, requiring the manager to promptly pay to the company any proceeds from the sale of shares of common stock underlying the RSUs.

The manager voluntarily resigned from the company and soon joined a competing business. The company sued the manager in the U.S. District Court for the Northern District of Illinois, which granted summary judgment in favor of the manager.

On appeal, the U.S. Court of Appeals Seventh Circuit submitted certified questions to the Delaware Supreme Court to resolve the issue of whether the Cantor Fitzgerald ruling applied outside of the limited partnership context, and if it were not to apply in all other circumstances, in what situations it would apply.

The Delaware Supreme Court responded by declaring that the reasoning of Cantor Fitzgerald applied broadly to FFC provisions, including clawbacks. As a result, absent extreme circumstances, FFC provisions are not subject to a review of reasonableness under Delaware law.

Key Takeaways

The Delaware Supreme Court's approval of FFC provisions is sweeping, noting that such provisions significantly reduce, if not eliminate, restraint of trade concerns, are supported by Delaware's fundamental policy of freedom of contract, and facilitate efforts by employers to offer additional benefits to employees.

Even though LKQ involved employee compensation outside the context of an M&A transaction, the court's expansive holding makes it clear that its principles apply to M&A transactions. Below are some considerations for parties that might contemplate whether and how to use FFC provisions in M&A transactions.

FFC provisions may be helpful in M&A transactions.

FFC provisions can be a viable means for buyers to obtain noncompete and similar benefits from

sellers. For example, FFC provisions could be included in M&A agreements in the form of deferred consideration, holdbacks and escrow arrangements that are only paid if the sellers do not compete for a period of time after the closing. To obtain maximum protection, buyers could consider using an FFC provision together with a typical noncompete covenant.

Clawback features in FFC provisions are generally valid.

In LKQ, the court held that a term in an FFC provision that required the return of benefits already received did not render the FFC provision invalid. In the context of a sale of a business, this holding supports an FFC structure under which a seller must repay some or all of the proceeds from the sale of the business if the seller competes with the business post-closing.[4]

The court indicated there are limits to clawbacks in FFC provisions, noting that a clawback could be "so extreme in duration and financial hardship that it precludes employee choice by an unsophisticated party and should be reviewed for reasonableness."

Although the court focused on limits in the employment context, M&A parties should take from this that onerous clawbacks affecting sellers, especially sellers who are individuals that might be deemed unsophisticated, could be subject to reasonableness review.

FFC provisions offer more flexibility and certainty over noncompete covenants.

Noncompete covenants are subject to reasonableness scrutiny, which imposes significant limitations and renders their enforcement uncertain. Noncompete covenants must be reasonable in geographic scope and duration, and must advance the legitimate economic interests of the enforcing party.

Defining what is reasonable in various contexts is a fact-intensive exercise, and it may be difficult to anticipate how a particular court might rule. In addition, even though contracts might allow a court to revise, or blue pencil, defective noncompete covenants, Delaware courts have generally refused to do so. This means that if a noncompete, or even an element of the noncompete, is found to be overbroad, the entire provision is likely to be invalidated.

In contrast, as long as an FFC provision is structured as a voluntary condition precedent to the payment of deferred consideration or clawback of past consideration, as outlined in the Cantor Fitzgerald and LKQ rulings, it is not subject to the geographic or temporal limitations of reasonableness review.

For example, the FFC provision upheld in Cantor Fitzgerald had no geographic limitation and lasted four years, which would exceed typical Delaware reasonableness limits. In addition, FFC provisions are likely to be much easier and more cost-effective to enforce, given the broad endorsement by the Delaware Supreme Court and the reduced need to develop the type of fact-intensive record required to survive reasonableness review.

When considering whether to use FFC provisions, parties should be aware of potential limitations.

As a practical matter, FFC provisions, which are subject to limitations, are effective only for so long as the enforcing party can withhold payment of sufficient consideration — or threaten to force repayment of previous consideration — to incentivize compliance.

As a general matter, the deterrent effect of an FFC provision is limited to the extent of the amount subject to forfeiture. If the benefits to the seller of competing exceed the value of any consideration the seller would lose under the FFC provision, the seller might not have a disincentive to refrain from competing.

In addition, to support an effective FFC provision, the buyer may need to defer payment of a significant portion of the purchase price, otherwise the buyer would need to attempt to claw back previously paid amounts, which the seller might not be able to pay back.

A clawback provision can serve as a strong negative inducement to competing and can be an effective tool in enhancing the effect of an FFC provision when combined with a deferred

consideration structure.

For example, instead of structuring a four-year FFC provision as annual installment payments to the seller, the provision could be structured to include a substantial payment at the end of the second year that would then be clawed back if the subject party competes any time before the end of the fourth year.

However, enforcing a clawback provision may be difficult, and as noted above, onerous clawbacks may still be subject to reasonableness review and risk being unenforceable.

A party enforcing an FFC provision has limited options.

Because an FFC provision is only a condition precedent to deferred compensation, if a party subject to the provision competes, the enforcing party's options are to (1) withhold the deferred compensation and (2) if the FFC provision includes a clawback, seek repayment of previously paid compensation.

The enforcing party is not entitled to seek specific performance or other injunctive relief to prevent competition as that would operate as a noncompete provision and be subject to review for reasonableness.

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[1] No. 110, 2024, ___ A.3d ___ (Del. Dec. 18, 2024, Seitz, C.J.).

[2] See, e.g., **Kodiak Building Partners v. Adams** , C.A. No. 2022-0311-MTZ at 9 (Del. Ch. 2022, Zurn, V.C).

[3] No. 162, 2023, 312 A.3d 674 (Del. 2024, Traynor, J.).

[4] In considering such clawback provisions in the context of an M&A transaction, thought should be given to the sellers' ability to repay such amount after the closing, particularly when the seller may be a financial sponsor that is likely to distribute sale proceeds shortly after closing.

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Chancery Nixes Toss Of Crypto Co. Board Cut Challenge

By **Jeff Montgomery**

Law360 (April 24, 2025, 5:32 PM EDT) -- Stockholders of cryptocurrency mining venture Ionic Digital Inc., formed out of the bankruptcy of Celsius Network LLC in Delaware, beat a motion Thursday to toss their suit challenging a one-seat board reduction, with a trial over the matter and other related claims slated to go forward on May 8.

Vice Chancellor Bonnie W. David found in an 18-page pretrial decision that two of the four counts in the suit asserted direct — instead of company-owned derivative — claims for breach of fiduciary duty and bylaw violations by those named, and must be resolved at trial.

Also still pending are challenges to three of the four counts for failure to state a claim, and a dismissal motion arguing that all four counts cannot be pursued on behalf of a class.

"When fiduciaries interfere with a director election to make the latter more difficult," the decision on Wednesday noted, "stockholders lose a fundamental right" and are directly harmed, rather than the company suffering a derivative loss.

The finding followed by one day a memo ruling by the vice chancellor adopting part of a motion to compel the release of some documents on the dispute that Ionic had withheld as protected by attorney-client privilege.

"Defendants have voluntarily waived privilege" regarding some requested documents, the court ruled, "by intentionally producing those documents and declining to claw them back when the question of privilege was raised."

"Because the corporation itself waived the privilege, the waiver extends to all company communications on those subjects, and not only communications to or from the board," the vice chancellor wrote. "Defendants must produce unredacted copies of all previously withheld documents concerning the foregoing subject matter within 48 hours of this order," Vice Chancellor David wrote.

Ionic was formed to take up the bitcoin mining business of Celsius Network early last year as part of the company's Chapter 11 plan, during which Celsius founder Alex Mashinsky pled guilty to commodities fraud and securities fraud in December, under an agreement ruling out appeal for any sentence of 30 years or less.

Vice Chancellor David rejected Ionic's assertions that two counts challenging the board reduction should be viewed as derivative claims — belonging to the company rather than to stockholders — because of alleged dilution of stockholder "ability to effect change in the same way stockholders' voting rights are diluted" in overpayment scenarios.

"When fiduciaries interfere with a director election to make the latter more difficult, the stockholders lose a fundamental right. That is why Delaware courts consistently regard 'a wrongful impairment by fiduciaries of the stockholders' voting power or freedom' as causing 'a personal injury to the stockholders, not the corporate entity,'" Vice Chancellor David wrote.

In contrast, an order invalidating the elimination of a board seat and restoring the stockholders' right to elect two directors at the annual meeting "would inure to the benefit of stockholders. The recovery would not run to the corporation," the vice chancellor said.

Remaining counts include one contesting the board reduction under the company's bylaws and another challenging the same act as a breach of fiduciary duty, along with a count painting the rejected nomination notice as a disclosure claim.

The decision said the remaining arguments will be addressed after trial.

Ionic fought a call to release its stockholder list to the dissident investors earlier this year and sought an agreement that the challengers would not use funds from non-stockholders to run their slate.

Crypto lender Celsius Network hit bankruptcy in July 2022. Prosecutors alleged that Celsius held \$25 billion of assets at its peak in early 2022. Those billions were quickly drained out of the platform prior to its collapse. Mashinsky's plea agreement says he has agreed to forfeit over \$48 million and is responsible for a loss exceeding \$550 million.

Stockholders Veton Vejseli, Brett Perry and Christopher Villinger are represented by A. Thompson Bayliss, Nicholas F. Mastria and Daniel J. McBride of Abrams & Bayliss LLP, and Adrienne Ward, Lori Marks-Esterman and Jacqueline Y. Ma of Olshan Frome Wolosky LLP.

Ionic Digital and Ionic directors Scott Duffy, Thomas DiFiore and Scott Flanders are represented by Martin S. Lessner, Alberto E. Chavez and Andrew J. Czerkawski of Young Conaway Stargatt & Taylor LLP.

Director Elizabeth LaPuma is represented by John A. Morris of Pachulski Stang Ziehl & Jones LLP.

The case is Veton Vejseli et al. v. Ionic Digital Inc., case number 2025-0138, in the Court of Chancery of the State of Delaware.

The bankruptcy case is In re: Celsius Network LLC et al., case number 1:22-bk-10964, in the U.S. Bankruptcy Court for the Southern District of New York.

--Editing by Melissa Treolo.

Update: This story has been updated with additional counsel details.



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GE Investors' \$362.5M Deal Gets Final OK, Attys Get \$70M

By **Katryna Perera**

Law360 (April 24, 2025, 8:59 PM EDT) -- A New York federal judge on Thursday gave final approval to a \$362.5 million deal and awarded attorneys from Kessler Topaz Meltzer & Check LLP and Grant & Eisenhofer PA nearly \$70 million in attorney fees for their work in a class action that accused General Electric Co. of fraudulently concealing cash flow problems.

U.S. District Judge Jesse M. Furman **said in his order** class counsel conducted the litigation and achieved the settlement with "skill, perseverance, and diligent advocacy," and that there were only two objections to the deal, both of which the court considered and rejected.

The judge also awarded \$22,800 to class representative Sjunde AP-Fonden and \$12,600 to class representatives the Cleveland Bakers and Teamsters Pension Fund. Class counsel's fees equate to 19.82% of the settlement fund, and they were awarded roughly \$9.5 million in litigation costs.

Additionally, Judge Furman awarded \$234,700 to GE's attorneys from Labaton Keller Sucharow LLP for the costs incurred during the action.

The **settlement was reached** on the eve of trial in the long-running suit filed in 2017. Investors alleged the company's financial statements left out key information about its practice of factoring — or logging earnings from service agreements "long before it could actually invoice customers and collect cash under those agreements" — so the company could "conceal the growing gap" between its recorded earnings and cash it actually collected.

The settlement came after Judge Furman's 2021 **dismissal** of most of the fifth amended version of the claims, and the investors won class certification in 2022.

The case is Sjunde AP-Fonden et al. v. General Electric Co. et al., case number 1:17-cv-08457, in the U.S. District Court for the Southern District of New York.

--Editing by Lakshna Mehta.

Correction: A previous version of this story included an incorrect percentage for the fee. The error has been corrected.

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Circuit-By-Circuit Guide As Justices Confront Class Cert. Split

By **Jeff Overley**

Law360 (April 25, 2025, 12:06 AM EDT) -- The U.S. Supreme Court is set for climactic arguments over class certification standards that have cleaved circuits from coast to coast for much of the past two decades, teeing up a make-or-break ruling for many class actions and a transformative event for legal practice in the swelling litigation realm.

Tuesday's oral arguments in *Labcorp v. Davis* will explore **a crucial question** — whether classes can be certified without evidence that every class member has been injured — that's been on the Supreme Court's radar **for years** and augurs potentially profound ramifications.

Question presented in *Labcorp v. Davis*

Whether a federal court may certify a class action pursuant to **Federal Rule of Civil Procedure 23(b)(3)** when some members of the proposed class lack any Article III injury.

"Labcorp's position ... could effect a radical revision in the standards for class certification," the National Community Pharmacists Association wrote in an amicus brief earlier this month. "Prosecuting class litigation could become unworkably burdensome and cumbersome."

Labcorp and its allies don't deny the implications, but they do insist a course correction is imperative, citing nearly 10,000 class actions filed annually — up 40% from a decade ago — and several billion dollars spent yearly on corporate legal defense in class cases.

"This case presents an increasingly common tactic in the class action world: bootstrapping claims from a minuscule number of dissatisfied customers into billion-dollar class actions on behalf of largely uninjured classes," the U.S. Chamber of Commerce and other business groups told the Supreme Court in a March amicus brief. "Courts that bless that tactic thus encourage wasteful litigation and bloated blackmail settlements. This court should put a stop to it."

The case is nominally about the alleged inability of blind patients to use mandatory self-service kiosks at medical centers run by Labcorp, a national blood-testing company with annual revenue topping \$13 billion. But the big-picture issue — class certification without classwide harm — cuts across class actions of all stripes.

The broad relevance is reflected in the case's wide-ranging amici, including advocacy groups and scholars specializing in antitrust law, automobiles, banking, civil procedure, economics, pharmaceuticals, technology, torts and more. About 20 amicus briefs have hit the docket, with eight supporting Labcorp, eight supporting the patients and a few not expressly taking sides.

One of those briefs came from the Trump administration, which is ostensibly neutral but also struck a deal to use one-third of Labcorp's argument time and largely concurs with the company's legal views. Those views are that classes can't be constitutionally certified with uninjured members who lack legal

standing, and that Federal Rule of Civil Procedure 23(b)(3) — which requires that common questions predominate over individual questions — doesn't permit "an appreciable number" of uninjured members.

The U.S. solicitor general has endorsed Labcorp's Rule 23 position, writing in its amicus brief that "courts should not certify a class under Rule 23(b)(3) — which permits class actions seeking money damages — when some members of the proposed class lack any Article III injury." That brief also recommended that the case be remanded to determine which Labcorp customers suffered harm under disability rights laws.

A decade ago, the Supreme Court **agreed to address** the certification question in **Tyson Foods Inc. v. Bouaphakeo** , but the meat processor **abandoned the issue** during briefing. Since then, circuit courts have fleshed out related precedents. Perhaps most notably, the Ninth Circuit in 2022 delivered an en banc opinion allowing class certification even with a considerable number of uninjured members; the justices **declined to review** that opinion, but it was the basis for the Ninth Circuit decision now under review in Labcorp v. Davis.

Although the stage is set for the Supreme Court to finally resolve the issue, a procedural hiccup could end up torpedoing Labcorp's entire case at the high court. Specifically, the patients contend that Labcorp's appeal to the Ninth Circuit centered on a now-outdated class definition, and that the Supreme Court should dismiss the case as improvidently granted — an uncommon occurrence, but something that already **happened twice** in the current term.

"Threshold jurisdictional defects ... leave this court with a profoundly flawed vehicle," the patients wrote in a Wednesday night letter to the court, elaborating on objections that appeared in their merits brief and that Labcorp has deemed reliant on "revisionist history."

At least for now, however, the high court is poised to deliver a seminal decision greatly altering class actions in many circuits, possibly making certification tougher and forcing plaintiffs to marshal evidence of injuries much earlier in litigation. An outcome of that nature would amplify the effects of several Supreme Court decisions during the past 15 years that have dealt blows to class actions, even if they generally remain robust.

As is common in high court cases, Labcorp and its supporters have accentuated the divisions among circuit courts, while the other side has minimized them. Those divisions are nuanced, and observers disagree about the extent to which certain divisions even exist.

It's nonetheless possible to zoom in on key rulings widely seen as important, bringing into focus the distinct paths toward certification across federal circuit courts, and how the Supreme Court's forthcoming opinion — should it actually be issued — could make those paths either easier or harder to traverse.

D.C. Circuit

Discussion of the D.C. Circuit's attitude toward uninjured class members has centered on two opinions in long-running price-fixing litigation — **In re: Rail Freight Fuel Surcharge Antitrust Litigation** — targeting the nation's dominant railroad shippers. Labcorp, for example, has seized on opinions from 2013 and 2019, contending that they support its constitutional argument as well as its Rule 23 position.

The **2013 opinion**  found that "meeting the predominance requirement" for class certification demands evidence "that all class members were in fact injured." That finding came "close to holding that a class must be defined in a way where everyone in it has Article III standing," Labcorp has said.

The **2019 opinion**  indicated that a class where roughly 5% of members aren't injured "constitutes the outer limits of a de minimis number." According to Labcorp, the opinion effectively held that "a class cannot be certified if it contains more than a 'de minimis' number of members lacking an Article III injury."

But the patients have accused Labcorp of exaggerating the D.C. Circuit's holdings. Far from endorsing the "de minimis" exception, the circuit merely assumed "for the sake of argument" that a district

judge correctly utilized the exception, according to the plaintiffs.

Moreover, "neither [opinion] mentions Article III or standing," and "those cases therefore cannot reasonably be deemed to stake out a position on the question presented," the plaintiffs wrote in one brief.

First Circuit

In *Labcorp v. Davis*, few opinions have been debated as fiercely or frequently as the First Circuit's opinions in two cases — **In re: Nexium Antitrust Litigation** and **In re: Asacol Antitrust Litigation** — involving the delayed debuts of lower-cost generic drugs.

The **Nexium opinion in 2015** 🟡 "expressly rejected the position that Article III bars class certification" when uninjured members exist, *Labcorp* has said. The company has added, however, that the **Asacol opinion in 2018** 🟡 demonstrated "a strict approach to class certification" by only allowing "a very small absolute number" of uninjured persons.

As in the D.C. Circuit cases, the patients say *Labcorp* is cherry-picking bits and pieces of opinions to suit its purposes. In reality, the First Circuit uses a pragmatic approach, simply asking "whether, in light of the number of uninjured class members within the class definition, common issues do or do not predominate," according to the patients.

The U.S. solicitor general has also weighed in, saying the First Circuit permits class certification when uninjured members are "de minimis," and that its permissiveness conflicts with **TransUnion v. Ramirez** 🟡, where the Supreme Court in 2021 said that uninjured parties aren't entitled to collect damages after class certification.

"This court has made clear that 'every' — not 'most,' not 'all but a de minimis number,' but every — class member must have Article III standing to collect damages at the end of the case," the Solicitor General's Office wrote in an amicus brief. "The same should be true at antecedent stages of the litigation."

Second Circuit

Labcorp is a big fan of the Second Circuit, portraying it as a trailblazer that in its 2006 opinion in **Denney v. Deutsche Bank AG** 🟡 became "the first court of appeals to squarely hold that 'no class may be certified that contains members lacking Article III standing.'"

But the *Labcorp* patients have insisted there are "post-Denney Second Circuit cases [that] belie *Labcorp*'s reading of Second Circuit case law." They've highlighted a 2022 opinion in **Hyland v. Navient Corp.** 🟡, where the circuit cautioned against interpreting "a single sentence in *Denney* ... as suggesting that all class members must have standing for the class to proceed."

Whatever the circuit's posture, it hasn't deterred the plaintiffs bar. Lex Machina's 2024 Class Action Litigation Report found that the nation's busiest and third-busiest judicial districts for class action cases — the Southern District of New York and the Eastern District of New York, respectively — from 2021-2023 were within the Second Circuit.

The same report found that the Second Circuit as a whole was the fourth-busiest circuit for class action appeals, and that it hosted more than 10% of all such appeals nationwide; that percentage slightly outpaced the circuit's overall share of civil appeals, according to federal judiciary data.

Class Factions

When contemplating certification of classes with some uninjured members, circuits have split into different camps, but the extent of their differences is disputed. Here

are key rulings cited during U.S. Supreme Court briefing in *Labcorp v. Davis*.

D.C. Circuit

- *In re: Rail Freight Fuel Surcharge Antitrust Litigation* (2019) 🔴

Amici supporting Labcorp have spotlighted this opinion's conclusion that mechanisms for winnowing uninjured individuals from a class must be "robust enough to preserve the defendants' Seventh Amendment and due process rights." But the opinion doesn't specifically mention standing, and so it "cannot reasonably be deemed to stake out a position on the question presented," plaintiffs have argued.

First Circuit

- *In re: Nexium Antitrust Litigation* (2015) 🔴
- *In re: Asacol Antitrust Litigation* (2018) 🔴

These opinions have been fiercely debated. Labcorp and its supporters have said the opinions show that the circuit is relatively skeptical of allowing uninjured class members, the U.S. solicitor general has said it's still too lenient, and plaintiffs have said it takes a pragmatic approach. The Asacol opinion, citing the Nexium opinion, called for a "mechanism that can manageably remove uninjured persons from the class in a manner that protects the parties' rights."

Second Circuit

- *Denney v. Deutsche Bank AG* (2006) 🔴

This is among the most favorable precedents for Labcorp. It held that "no class may be certified that contains members lacking Article III standing." Plaintiffs have contended that there are "post-*Denney* Second Circuit cases [that] belie Labcorp's reading of Second Circuit case law."

Third Circuit

- *Huber v. Simon's Agency* (2023) 🔴

This opinion said that "at certification, the standing of individual class members may inform whether a proposed class satisfies the requirements of Federal Rule of Civil Procedure 23, but it is not necessary for each member to prove his or her standing for the class action to be justiciable." It added that "predominance concerns can arise when unnamed class members must submit individualized evidence to satisfy standing and recover damages." The opposing sides in *Labcorp v. Davis* have offered divergent views of whether that's a strict or flexible approach.

Fourth Circuit

- *Mr. Dee's Inc. v. Inmar Inc.* (2025) 🔴

The Fourth Circuit doesn't have extensive precedent on the question presented, but this recent opinion specifically discussed *Labcorp v. Davis* when affirming a district judge's finding that certification wasn't appropriate because one-third of class members were uninjured. "Whatever the resolution of the question posed in [*Labcorp v. Davis*], the presence of 32% of uninjured members in a proposed class strikes us as much too high," the opinion stated.

Fifth Circuit

- *Mims v. Stewart Title Guaranty Co.* (2009) 🔴

Labcorp says the Fifth Circuit "has not squarely addressed" the question presented, but plaintiffs cite this opinion, where a panel held that "class certification is not precluded simply because a class may include persons who have not been injured by the defendant's conduct."

Sixth Circuit

- *Speerly v. GM LLC* (2024) 🔴

This panel decision said "overpaying for a defective product" is sufficient to create standing, and that summary judgment is the time to address class members whose products never actually manifested

defects. But the full circuit agreed to rehear the case and held arguments in March; the en banc decision hasn't yet been issued.

Seventh Circuit

- **Kohen v. PIMCO (2009)** 📌

In this widely cited opinion, the appeals court said "a class will often include persons who have not been injured," and that such a scenario "is almost inevitable" early in litigation, when some members' identities or specific circumstances aren't known. "Such a possibility or indeed inevitability does not preclude class certification," the opinion held.

Eighth Circuit

- **Avritt v. ReliaStar Life Insurance Co. (2010)** 📌

This opinion approvingly cited the Second Circuit's *Denney* decision — a good one for Labcorp — and added that "a named plaintiff cannot represent a class of persons who lack the ability to bring a suit themselves." In *Labcorp v. Davis*, plaintiffs have insisted that "the opinion is not fairly read to state" that each class member needs evidence of standing before certification.

Ninth Circuit

- **Olean Wholesale Grocery v. Bumble Bee Foods LLC (2022)** 📌

This high-profile, en banc opinion underpinned the unpublished Ninth Circuit decision under review in *Labcorp v. Davis*. The opinion rejected the idea "that Rule 23 does not permit the certification of a class that potentially includes more than a de minimis number of uninjured class members," saying Rule 23 "requires only" that common questions predominate over individual questions among class members, "including individualized questions about injury or entitlement to damages."

Tenth Circuit

- **DG v. DeVaughn (2010)** 📌

The Tenth Circuit's jurisprudence hasn't come up much during briefing, but one amicus brief criticized this opinion. The opinion — which examined different subsections of Rule 23 than *Labcorp v. Davis* is directly exploring — held that "Rule 23's certification requirements neither require all class members to suffer harm or threat of immediate harm nor named plaintiffs to prove class members have suffered such harm."

Eleventh Circuit

- **Cordoba v. DIRECTV LLC (2019)** 📌

Numerous briefs in *Labcorp v. Davis* have cited this opinion, which said a "district court must consider under Rule 23(b)(3) before certification whether the individualized issue of standing will predominate over the common issues in the case, when it appears that a large portion of the class does not have standing." Although the opinion is seen as favorable for Labcorp, plaintiffs have insisted the circuit was merely "referring to its concern about the facts of the case before it."

Third Circuit

Amici supporting Labcorp have characterized the Third Circuit's jurisprudence — particularly its 2023 opinion in **Huber v. Simon's Agency** 📌 — in notably divergent ways. A positive appraisal, for example, has come from the Product Liability Advisory Council, which boasts a large membership roster that includes Johnson & Johnson, Microsoft Corp. and The Boeing Co.

The Huber opinion emphasized that "predominance concerns can arise when unnamed class members must submit individualized evidence to satisfy standing and recover damages," PLAC noted in an amicus brief, quoting from the opinion.

But the Atlantic Legal Foundation, a frequent filer of amicus briefs advocating pro-business views, offered a less flattering assessment of the Huber opinion, which recognized a plaintiff's standing while also vacating class certification in litigation against a debt collection company.

"Huber v. Simon's Agency illustrates how Rule 23's prerequisites often fail to effectuate Article III's

standing requirement," ALF wrote, because it said uninjured members could be addressed with methods to "sort them out at the back end of the case."

"In reality, it is highly unlikely uninjured members will be sifted out by an eventual remedial phase," the group's amicus brief said.

Fourth Circuit

Pro-Labcorp amici have been more like-minded regarding Fourth Circuit precedent. PLAC called attention to **Mr. Dee's Inc. v. Inmar Inc.** , a February opinion that explicitly referenced Labcorp v. Davis when **upholding the denial** of class certification because uninjured members constituted one-third of a proposed class.

"Whatever the resolution of the question posed in [Labcorp v. Davis], the presence of 32% of uninjured members in a proposed class strikes us as much too high," the Mr. Dee's opinion stated.

In another amicus brief, the American Bankers Association and the Mortgage Bankers Association extensively excerpted a 2010 concurring opinion in **Stillmock v. Weis Markets** . The concurrence by U.S. Circuit Judge J. Harvie Wilkinson III fretted that "exponential expansion of statutory damages through the aggressive use of the class action device is a real jobs killer."

According to the ABA and the MBA, "Judge Wilkinson's concerns on this front are pertinent" because it's often true that "classwide statutory damages reach astronomical sums." Statutory damages are front and center in Labcorp's case, and while they are typically "set with an individual plaintiff in mind," they can quickly add up to eye-popping amounts — "an especially abusive occurrence when the exposure results from a class swelled by uninjured members," the banking groups wrote.

Fifth Circuit

The Fifth Circuit's precedent has provoked a tug-of-war over the circuit's past and present; the former appears to favor the patients, while the latter appears helpful for Labcorp.

Back in 2009, the patients have noted, the Fifth Circuit in **Mims v. Stewart Title Guaranty Co.**  held that "class certification is not precluded simply because a class may include persons who have not been injured by the defendant's conduct."

The Mims opinion, however, was authored by a three-judge panel with two Democrat-nominated jurists — a relatively infrequent occurrence on the conservative-dominated circuit. Also, two of those three judges have since assumed senior status, and one has died.

Against that backdrop, Labcorp has focused on more-recent writings by some of the Fifth Circuit's GOP-nominated jurists. In 2020, for instance, U.S. Circuit Judge Andrew S. Oldham in **Flecha v. Medcredit Inc.** **wrote**, "If anything, I'd think our standing analysis would be particularly rigorous at this stage, given the transformative nature of the class certification decision."

And in 2023, Senior U.S. Circuit Judge Edith Brown Clement, in litigation called **In re: Deepwater Horizon** , wrote, "A claimant must actually have a legal claim before getting in line for a legal recovery."

Class actions aren't especially common at district courts within the Fifth Circuit, but the circuit itself is a hotbed of class action appeals, ranking as the third-busiest from 2021-2023, per Lex Machina.

Sixth Circuit

Class action dynamics are undeniably fluid in the Sixth Circuit, where all eyes are on **Speerly v. GM LLC** . A panel in August **upheld class certification** for consumers whose vehicles allegedly "shuddered, jerked or clunked" because of transmission defects; the panel said class members whose vehicles never actually manifested defects could be culled later on, but GM **secured en banc rehearing**, and **a decision is forthcoming**.

For now, however, the panel's ruling "makes clear that the court is in line with its sister circuits," not

treating classwide injuries as a prerequisite to certification, Labcorp patients told the Supreme Court in a December brief.

During briefing in the Speerly case, the U.S. Chamber of Commerce focused on the same question presented in Labcorp v. Davis, **telling** the Sixth Circuit that it "should join its sister circuits in holding that it is never permissible under Article III to certify a largely (if not entirely) uninjured class."

In a February brief, consumer group Public Citizen — co-counsel to the patients in Labcorp v. Davis — told the Sixth Circuit that GM was not focusing on the same question as the Chamber, and that in any event, the Chamber's argument is wrong.

"Should this court nonetheless reach the issue raised by the Chamber, notwithstanding that GM does not raise it, it should hold that the panel's holding was correct on this point and that the possible inclusion of uninjured class members at the certification stage is not an Article III concern," Public Citizen wrote.

Seventh Circuit

Few circuits have ignited more fireworks during Labcorp v. Davis briefing than the Seventh Circuit, which, according to Lex Machina, oversees the nation's fifth-busiest class action venue, the Northern District of Illinois.

Those fireworks have surrounded the writings of now-retired U.S. Circuit Judge Richard A. Posner, who served from 1981-2017. Given that Labcorp v. Davis is a class action case before a conservative Supreme Court, the invocations of Judge Posner aren't surprising — he was a Reagan pick, a respected intellectual and a prolific author of class action decisions, so much so that entire law review articles studied his class action jurisprudence.

Multiple amici singled out Judge Posner's 2004 opinion in **Carnegie v. Household International Inc.** , which famously said, "The realistic alternative to a class action is not 17 million individual suits, but zero individual suits, as only a lunatic or a fanatic sues for \$30."

The Atlantic Legal Foundation also spotlighted Judge Posner's 2014 opinion in **Parko v. Shell Oil Co.** , which concluded that mandatory injury assessments before certification would "put the cart before the horse." According to ALF, that conclusion "fundamentally misunderstands the nature of the standing inquiry mandated by Article III, and in any event overestimates the difficulties involved in assessing standing during the class certification stage."

The Labcorp v. Davis litigants have also been at loggerheads regarding Judge Posner's 2009 opinion in **Kohen v. PIMCO** . Labcorp has depicted the opinion as a poster child for undue lenience in class certification, noting that it only drew the line against certification when there are "a great many persons who have suffered no injury."

By contrast, the patients have praised the Kohen opinion for acknowledging that "a class will often include persons who have not been injured," and for explaining that "this is almost inevitable because at the outset of the case," some members' identities or specific circumstances aren't known.

Eighth Circuit

Labcorp and its amici allies have trumpeted the Eighth Circuit's 2010 opinion in **Avritt v. ReliaStar Life Insurance Co.** . The opinion seemed to embrace the Second Circuit's Denney decision — a good one for Labcorp — and stated that "a named plaintiff cannot represent a class of persons who lack the ability to bring a suit themselves."

"The Second and Eighth Circuits ... consider the presence of uninjured class members an Article III standing problem," the cities of Los Angeles and Beverly Hills, California, wrote in a pro-Labcorp amicus brief citing Avritt.

In response, the patients have suggested that Avritt isn't as straightforward as it might seem. "The opinion is not fairly read to state the position suggested by Labcorp," they wrote in one brief.

Ninth Circuit

The Supreme Court in *Labcorp v. Davis* is officially reviewing an unpublished Ninth Circuit decision from 2024, but at the heart of that decision is **a high-profile, en banc opinion** from 2022 in *Olean Wholesale Grocery v. Bumble Bee Foods LLC* .

Widely regarded as a milestone opinion, *Olean* staked out a bold position in the nation's busiest circuit for class actions, with the majority forcefully refusing to deem uninjured individuals a barrier to certification.

"We reject the dissent's argument that Rule 23 does not permit the certification of a class that potentially includes more than a de minimis number of uninjured class members," the majority opinion held.

Despite protests that the Ninth Circuit had recognized three **"enormous and widely divergent"** classes of tuna customers, the Supreme Court **declined to scrutinize** the opinion.

Labcorp's petition for high court review cited *Olean* a dozen times, using the opinion to buttress its fundamental argument: "The Ninth Circuit's hyper-permissive approach to certification is wrong."

Tenth Circuit

Whereas 26% of all class action appeals in recent years appeared at the Ninth Circuit, only 3% arrived at the Tenth Circuit, per Lex Machina. That disparity probably explains why the Denver-based circuit has received few shout-outs in *Labcorp v. Davis*.

One of the only references came from the Atlantic Legal Foundation, which pointed to the Tenth Circuit's 2010 opinion in *DG v. DeV Vaughn* , which held — in the context of different Rule 23 subsections than *Labcorp v. Davis* is exploring — that "classwide discovery and further litigation ... after certification" can determine if all class members suffered harms.

In its amicus brief, ALF placed the Tenth Circuit in a category of appeals courts that, in its words, have disregarded legal text in favor of rationales that are "nothing more than policy justifications for certifying class actions with uninjured members notwithstanding Article III's strictures."

Eleventh Circuit

The Eleventh Circuit had the nation's second-largest number of class action appellate cases from 2021-2023, Lex Machina found, with the Southern District of Florida and the Middle District of Florida standing out as key sources of appeals.

Once again, the volume of activity correlates with the volume of citations in *Labcorp v. Davis*, where numerous briefs dissected the Eleventh Circuit's stance on standing. Many of those briefs have voiced frustration; as one example, the National Federation of Independent Business said the appeals court has "failed to enforce Article III's standing requirement at the class certification stage."

Discussion of the Eleventh Circuit has centered on its 2019 opinion in *Cordoba v. DIRECTV LLC* , which flatly refused to impose a rule against class certification when uninjured members are present. "Such a rule would run the risk of promoting so-called fail-safe classes," where classes are explicitly defined by legal injuries, the *Cordoba* opinion said.

An amicus brief from more than a dozen scholars of civil procedure applauded that holding, warning that Labcorp's preferred rule — no certification of classes with "an appreciable number" of uninjured members — would all but ensure the emergence of untenable classes.

"By insisting that any class definition is invalid if it sweeps in potentially uninjured class members, [Labcorp's] rule makes it harder — if not impossible in some cases — to define the class without incorporating legal injury in the definition," the scholars wrote.

LabCorp is represented by Jones Day.

The patients are represented by Gupta Wessler LLP, Nye Stirling Hale Miller & Sweet LLP, Handley Farah & Anderson PLLC and Public Citizen Litigation Group.

The case is Laboratory Corp. of America v. Davis et al., case number 24-304, in the Supreme Court of the United States.

--Editing by Jay Jackson Jr. Graphics by Ben Jay.

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Judge's Order For More Changes Puts NCAA Deal In Jeopardy

By **David Steele**

Law360 (April 24, 2025, 6:20 PM EDT) -- The California federal judge overseeing the \$2.78 billion settlement between the NCAA and college athletes seeking compensation remained unsatisfied with the NCAA's insistence on roster limits she considers unfair to class members, so much so that she gave the sides two weeks to resolve the issue or risk having the settlement tossed and sent back to litigation.

The **order** by U.S. District Judge Claudia Wilken late Wednesday stated clearly that the only obstacle to final approval was the limits that objectors have argued take away opportunities for athletes who would have played in their sport under previous NCAA rules. The **revisions** the NCAA submitted last week did not include any change in its position on roster limits, even though Judge Wilken had ordered the conference to address those objections in an **approval hearing** on April 7.

"Any disruption that may occur is a problem of defendants' and NCAA members schools' own making," the judge wrote in her Wednesday order. "The fact that the court granted preliminary approval of the settlement agreement should not have been interpreted as an indication that it was certain that the court would grant final approval."

The judge went so far as to set a case schedule to hear motions by both sides this summer and fall in anticipation of setting a trial date. She also recommended mediation to come up with a suitable modification and suggested that the objectors to the limits join it. Her aim, she said, was to assure that "members of the injunctive relief settlement class will not be harmed by the immediate implementation of the roster limits provisions."

The NCAA has pointed to roster limits as an opportunity for teams to provide full scholarships to every member, as opposed to the previous system in which teams had a finite number of scholarships to spread among several members. Objectors argue that roster limits take away opportunities for more athletes to compete on teams and restrict scholarship opportunities, pointing out that athletes have had offers rescinded by schools adhering to the new limits.

Judge Wilken's reaction to the two sides' stances on roster limits had the attorney for the athletes declaring they were ready to go back to court if necessary and the NCAA and its institutions defending the overall settlement. Some legal experts said they were perplexed at the stubbornness of the schools with one step left for final approval.

"There was an easy fix — grandfather in existing players on current rosters for a year or two. They refused," Kenneth Jacobsen, professor at Temple University's Beasley School of Law, told Law360 in a text Thursday. Noting that even Judge Wilken suggested grandfathering as a solution at the approval hearing and in Wednesday's order, Jacobsen called the lawyers defending the roster limits "incredibly arrogant."

"The NCAA tried this before and got their hands slapped a little bit, told to rethink things," Indiana University associate business law professor John T. Holden said of the refusal to budge despite Judge Wilken's expressed concerns. "Now, they were like, 'Well, she seems pretty comfortable with this settlement, let's just see what happens.' And they found out that she wasn't going to accept it."

It's no surprise to see Judge Wilken be proactive about protecting the athletes affected by the roster limits, said Mark Conrad, law professor and director of the sports concentration at Fordham

University's Gabelli School of Business. "The roster limit was kind of pulling the carpet out from under students that are currently in the college space," he said, adding that while the settlement addressed past athletes with compensation for their name, image and likeness, and future athletes with the revenue-sharing plan, "what's really in limbo is the students right now."

Not resolving those students' status, Conrad said, likely would open the NCAA up to more litigation on top of all the cases it still faces despite the settlement. "It behooves everyone to come up with a solution for this," he said.

The schools and conferences have been adamant about the change to roster limits, Holden said, pointing out that the NCAA supported its argument by saying programs and their coaches have planned next year around the limits. The NCAA on Monday conditionally **approved** rule changes that incorporated the settlement's terms, including roster limits.

However, Holden added, "I expect them to get this done. I don't know how many more schools this is going to frustrate or push to the other side of this, but I struggle to see them basically saying now, 'This is the hill we're going to die on.'"

In a statement Thursday, Steve Berman of Hagens Berman Sobol Shapiro LLP, co-counsel for the athletes, said he was pleased that all the other objections to the settlement had been rejected by Judge Wilken, and that they "will work hard to convince the NCAA and the conferences to address the court's concerns. If we are unable to do so, then we are off to trial and we will return to fighting the NCAA in court with next steps."

Noting that the athletes have fought this case since it was filed in 2020 and are determined to see it to the end, Berman added, "Our firm brings the same fight to the courtroom as our clients bring to the court, and we are not finished with the NCAA."

In a joint statement, the NCAA and the co-defendant Power 4 conferences said they were "closely reviewing Judge Wilken's order. Our focus continues to be on securing approval of this significant agreement, which aims to create more opportunities than ever before for student-athletes while fostering much-needed stability and fairness in college sports."

The athletes are represented by Steve W. Berman, Emilee N. Sisco, Stephanie Verdoia, Meredith Simons and Benjamin J. Siegel of Hagens Berman Sobol Shapiro LLP, Jeffrey L. Kessler, David G. Feher, David L. Greenspan, Adam I. Dale, Neha Vyas and Jeanifer E. Parsigian of Winston & Strawn LLP and Jeffrey L. Kodroff and Eugene A. Spector of Spector Roseman & Kodroff PC.

The NCAA is represented by Rakesh N. Kilaru, Beth A. Wilkinson, Kieran Gostin, Calanthe Arat, Tamarra Matthews Johnson and Matthew R. Skanchy of Wilkinson Stekloff LLP and Jacob K. Danziger of ArentFox Schiff LLP.

The case is In re: College Athlete NIL Litigation, case number 4:20-cv-03919, in the U.S. District Court for the Northern District of California.

--Additional reporting by Dorothy Atkins. Editing by Haylee Pearl.



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\$1M Settlement In Ga. PFAS Litigation Gets Judge's Final OK

By **Chart Riggall**

Law360 (April 24, 2025, 7:45 PM EDT) -- A Georgia federal judge gave a final sign-off Wednesday to a \$1 million settlement that will see a chemical company provide temporary drinking water resources to a northwest Georgia town to end the company's involvement in a suit over the alleged release of forever chemicals into local waterways.

The deal between Earl Parris of Summerville, Georgia, and Pulcra Chemicals LLC will release the company from the sprawling class action against more than half a dozen companies accused of complicity in pollution stemming from the Mountain Vernon Mills denim plant in the state's northwest corner.

About \$250,000 of the settlement, which U.S. District Judge Thomas Thrash gave a **preliminary green light** in January, will go toward notifying potential class members and attorney fees, according to court records.

Remaining in the suit are chemical giants including 3M and E.I. du Pont de Nemours and Co., who Parris says supplied stain and water resistance chemicals for Mount Vernon Mills' jeans. Those chemicals, Parris alleged, contained per- and polyfluoroalkyl substances, or PFAS, that were released into local waterways and cost water ratepayers millions.

Parris and Pulcra said in their draft settlement agreement that the other companies could join the temporary drinking water fund if they reach deals in the future.

Parris is represented by Gary A. Davis, Keith A. Johnston and Louis W. Ringger III of Davis Johnston & Ringger PC and Thomas Causby of Causby Firm LLC.

Pulcra is represented by Robert D. Mowrey, John Curtis Allen, John Francis Devine, C. Max Zygmunt and E. Peyton Nunez of Kazmarek Mowrey Cloud Laseter LLP.

The case is Earl Parris Jr. et al. v. 3M Co. et al., case number 4:21-cv-00040, in the U.S. District Court for the Northern District of Georgia.

--Additional reporting by Kelcey Caulder. Editing by Vaqas Asghar.

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Ex-CEO Of Trump-Tied SPAC Reaches Deal With SEC

By **Jessica Corso**

Law360 (April 24, 2025, 9:25 PM EDT) -- The former CEO of the special purpose acquisition company that took President Donald Trump's social media platform public has reached a deal to end a U.S. Securities and Exchange Commission case accusing him of failing to timely alert investors to the prospective deal.

Patrick Orlando and the SEC notified a Washington, D.C., federal judge Wednesday that they have negotiated a settlement in that case accusing Orlando of misleading investors during his time as chief executive of Digital World Acquisition Corp.

The notification does not lay out the terms of the proposed deal, which will have to be approved by the agency's four-member commission before the judge can sign off on it. The SEC promised to update the court on the status of that approval request by June 30.

Representatives for Orlando declined to comment. The SEC didn't immediately respond to a request for comment.

The SEC **sued Orlando** last year, accusing him of failing to inform Digital World investors that the company had begun discussing a merger with Trump Media & Technology Group Corp., which operates the social media platform Truth Social, in early 2021.

The agency alleged Orlando was signing off on SEC filings claiming Digital World had not yet selected a merger target even as negotiations with Trump Media were underway.

These misstatements "were material to investors because SPAC investors base their investment decisions on a SPAC's disclosures about discussions with potential targets," the SEC said at the time.

In September 2021, Digital World raised \$287.5 million in an initial public offering, after which the company filed new SEC forms that continued to falsely claim it had not been discussing any plans for a merger, the suit states.

But a month later, Digital World announced an agreement to merge with Trump's company, causing its stock price to soar 400% in a single day of trading, according to the suit.

Digital World shareholders **approved the merger** in March 2024, one year after Orlando **was fired** as CEO, in order to "restore confidence to the shareholders" at a time when the company was struggling to close the deal.

Months after Orlando's ouster, the company announced **it had agreed** to an \$18 million settlement with the SEC over allegations that it failed to timely alert investors it was negotiating to take Truth Social public.

Last year, Orlando **entered into an agreement** requiring his former employer to pay his legal costs related to federal probes and litigation in multiple states.

The SEC is represented in-house by John Timer and Andrew McFall.

Orlando is represented by Adam Schwartz, Tamara Droubi and Brooke Conner of Vedder Price PC.

The case is Securities and Exchange Commission v. Patrick Orlando, case number 1:24-cv-02097, in

the U.S. District Court for the District of Columbia.

--Additional reporting by Lauren Berg. Editing by Drashti Mehta.

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