Freshfields, Orrick Score Securities Case Defense Win for Rivian in Calif. Appellate Court

law.com/therecorder/2025/04/25/freshfields-orrick-score-securities-case-defense-win-for-rivian-in-calif-appellate-court-

Kat Black April 25, 2025

What You Need to Know

- Rivian was sued in California state court for allegedly making "false and misleading statements" in connection with its 2021 IPO.
- The case was dismissed due to a federal forum provision in Rivian's articles of incorporation, which require that Securities Act claims be brought in federal court.
- A California appellate court recently affirmed the decision, providing a potential road map for upholding FFPs in Southern California.

In a decision that could provide a road map for upholding federal forum provisions in Southern California, a California appellate court on Wednesday affirmed a judgment in favor of large electric vehicle maker and Tesla competitor Rivian Automotive Inc., which was sued in 2023 for allegedly violating disclosure requirements under the Securities Act of 1933 ahead of its initial public offering.

Rivian was represented by a team from Freshfields Bruckhaus Deringer, including Boris Feldman, Doru Gavril, Eunice Leong and J. Mia Tsui, and Orrick, Herrington & Sutcliffe, including James Kramer and Alexander Talarides, in the Court of Appeal of the State of California, Fourth Appellate District, Division Three.

Plaintiffs appealed a judgment from Orange County Superior Court Judge Peter J. Wilson, who granted Rivian's motion to dismiss the suit and a joinder filed by underwriters for its IPO on the basis of a federal forum provision in Rivian's articles of incorporation, which dictated that Securities Act claims be brought in federal, not state court.

Plaintiffs sued Rivian, Rivian executives and board members and the lead underwriters for its IPO—Goldman Sachs & Co., JPMorgan Securities LLC and Morgan Stanley LLC—on Feb. 28, 2023, in the Superior Court of California, County of Orange.

Rivian, a Delaware corporation, was founded by co-defendant Robert Scaringe in 2009 and is headquartered in the city of Irvine in Orange County, California. The company is best known for its R1T electric pickup truck and R1S electric SUV. Amazon, which operates a fleet of Rivian electric delivery vans and retained an exclusive contract with Rivian until 2023, was an early investor in the startup.

The original class action complaint was filed by Robbins Geller Rudman & Dowd on behalf of all individuals who purchased Rivian Class A common stock in connection with its 2021 IPO. Rivian, which trades under the stock ticker RIVN, went public on Nov. 10, 2021. The EV maker's stock market debut was reported to be the biggest of 2021 after its IPO was valued at over $100 billion.

The claim stated that, just six months after its blockbuster Nasdaq debut, Rivian's stock price nosedived to "74%" its $78 IPO price, or $20 per share, on May 11, 2022, "wiping out billions of dollars in value for Rivian." In the years since, Rivian has consistently struggled to turn a profit and has instituted multiple rounds of layoffs, reflecting headwinds in the broader EV market as customer demand has slowed due to rising concerns about prices and inadequate charging infrastructure. Rivian announced in February 2025 that it had posted its first profitable quarter in Q4 2024, earning a record gross profit of $170 million.

The plaintiffs accused Rivian executives of making "materially false and misleading statements" about its anticipated vehicle production rate and supply chain challenges. In addition, they said, Rivian failed to disclose certain "adverse facts" in its Registration Statement with the U.S. Securities and Exchange Commission: namely, that its listed prices for the R1S and R1T were incompatible with manufacturing costs and that Rivian executives had discussed "substantially" raising prices for the vehicles prior to the company's Nasdaq listing. Therefore, it said, the vehicle prices Rivian had advertised to investors during the roadshow it conducted in the run-up to its IPO did not accurately reflect its strategic business plans.

The plaintiffs sought a declaration that the federal forum clause in Rivian's articles of incorporation was unenforceable, compensatory damages and attorney fees and costs.

The appellate court noted on Wednesday that Wilson dismissed the case against Rivian pursuant to a 2022 ruling in the securities case *Wong v. Restoration Robotics,* which found that federal forum provisions are valid under Delaware law and the federal Constitution and that the company's federal forum provision was enforceable under California law. Restoration Robotics is a Delaware-incorporated company and the suit was filed in San Mateo County Superior Court in Northern California.

The appellate court sided with the precedent set by *Wong* and found that the federal forum provision does not violate the anti-removal or anti-waiver provisions of the Securities Act, which state, respectively, that "no case arising under [the 1933 Act] and brought in any State court of competent jurisdiction shall be removed to any court of the United States" and that “[a]ny condition, stipulation, or provision binding any person acquiring any security to waive compliance with any provision of [the 1933 Act] shall be void."

Orrick and representatives for Rivian did not immediately respond to requests for comment, and Freshfields declined to comment on the decision. The plaintiffs' counsel could not immediately be reached for comment.

Class Action

April 28, 2025, 8:00 AM PDT

Avis Budget Group Sued by Investor Over $2.5 Billion Charges

- **COURT**: D.N.J.
- **TRACK DOCKET**: No. 2:25-cv-03332 (Bloomberg Law subscription)

Avis Budget Group Inc. concealed its decision to speed up the rotation of its rental car fleets, which ultimately spurred a $1.96 billion loss for the fourth fiscal quarter of 2024, an investor's proposed class action said.

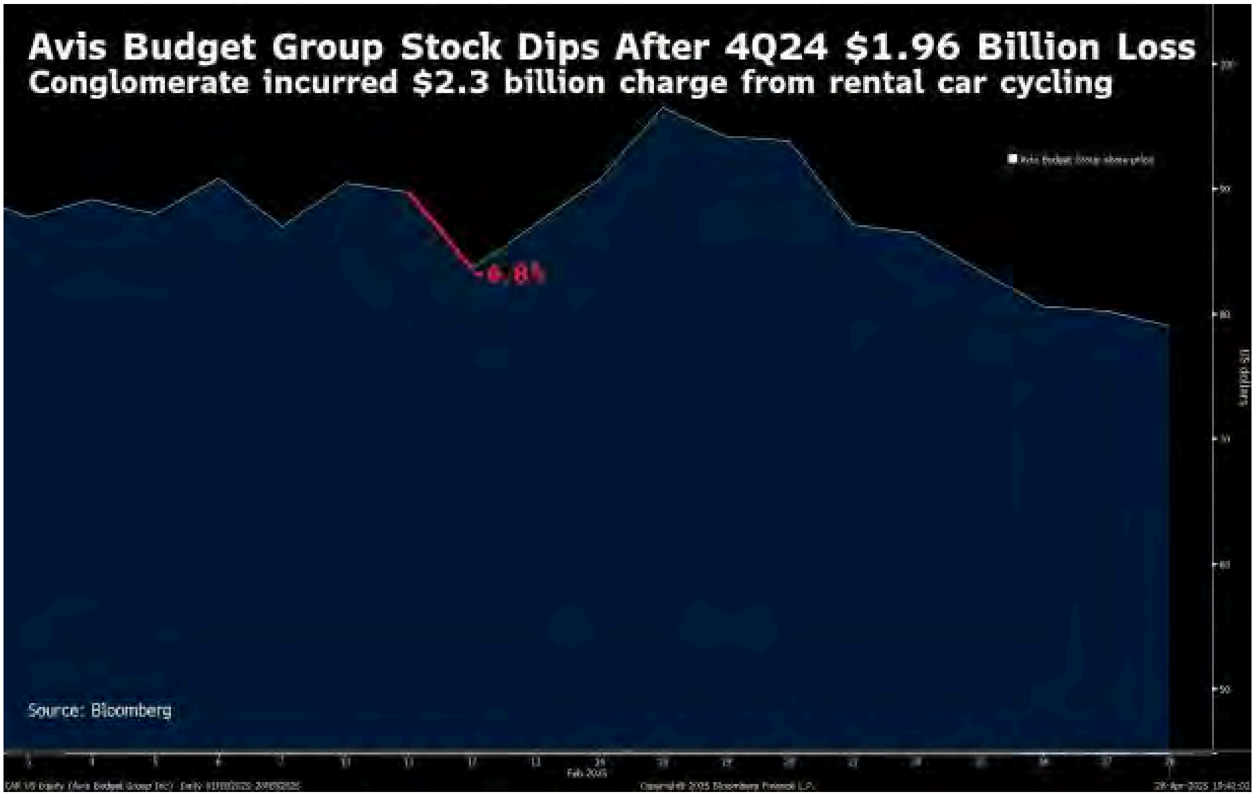
Share prices fell more than 6.8% Feb. 12—the day after Avis Budget said a $2.3 billion impairment charge "and other non-cash related charges of $180 million" resulting from the process of replacing vehicles contributed to disappointing financial results, the shareholder told the US District Court for the District of New Jersey. It was the stock's steepest one-day fall since September, according to data compiled by Bloomberg.

Proper fleet rotation is key to the rental car conglomerate—which includes brands Avis, Budget, Zipcar, and more—to balance the costs of repairing older cars and replacing them with newer models, said the complaint filed April 25. Too slow a cycle means older cars depreciate in value as maintenance costs rise while too fast a rotation risks removing vehicles before the expiration of their "useful lives"—when cars have recoverable value —said plaintiff Shane Merriam's complaint.

Avis Budget had been maintaining vehicles for longer after persistent pandemic supply shortages raised prices for purchasing new fleets, Merriam said. But prices for model year 2025 normalized in the fourth quarter of 2024, he said. Unbeknownst to investors, Avis Budget "significantly" sped up its fleet rotations in the Americas, shortening the useful life of the majority of those vehicles and reducing their recoverable value, he said.

The company announced the charges in a Feb. 11 press release of fourth quarter 2024 financial results. CEO Joe Ferraro said in the release that the company sped up the rotation to "create more certainty in our fleet costs and better position us for sustainable growth for 2025 and beyond."

Avis Budget knew accelerating the fleet rotation would likely draw a significant impairment charge, Ferraro signaled in a call with investors on Feb. 12, according to Merriam. Avis Budget announced in the Feb. 11 release that Ferraro would transition out of being CEO later this year.



The proposed class would include those who got Avis Budget stock from Feb. 16, 2024—when the group filed an annual federal report with impairment charge risk warnings that Merriam said were too generic—through Feb. 10, 2025, according to the complaint.

Pomerantz LLP represents Merriam, who's suing Avis Budget, Ferraro, and the group's chief financial officer for alleged Securities Exchange Act of 1934 violations. Merriam seeks damages, among other relief.

The group didn't immediately respond to an email seeking comment.

The case is Merriam v. Avis Budget Grp., Inc. , D.N.J., No. 2:25-cv-03332, complaint filed 4/25/25 .

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Securities Law News

April 25, 2025, 12:21 PM PDT; Updated: April 25, 2025, 3:08 PM PDT

BigBear.ai Shareholder Sues Brass Over Accounting Problems (1)

- **COURT**: E.D. Va.
- **TRACK DOCKET:** No. 1:25-cv-00710 **(Bloomberg Law subscription)**

BigBear.ai Holdings Inc. leaders concealed accounting flaws which eventually forced it to restate figures dating back to its 2021 special purpose acquisition company merger, a shareholder lawsuit said.

The artificial intelligence company's stock dropped twice last month after it revealed it improperly accounted for convertible notes due to mature in December 2026, a stockholder told the US District Court for the Eastern District of Virginia.

Current and former executives and board members harmed BigBear's reputation and wallet, said Thursday's complaint, by issuing and allowing it to issue misleading statements on its accounting ability. Their alleged misconduct forced BigBear to spend money on financial restatements and exposed it to potentially costly litigation, said the shareholder derivative complaint—a lawsuit filed on behalf of a company against its officers and directors.

After its 2021 SPAC merger, BigBear issued $200 million of unsecured convertible notes—a form of company borrowing from investors—said plaintiff Jeffrey Justice's complaint. The notes bear interest at a 6.0% yearly rate, payable semi-annually, and not including any payments settled with stock issuance, Justice said. They're convertible into 17,391,304 shares at an initial price of $11.50, he said.

Convertible notes must be accounted for in quarterly and annual reports as liabilities until they mature, when they become equity or are repaid as principle and interest, Justice said. In certain circumstances, a company must split and separately account for a feature within such a contract—like the conversion option for BigBear's convertible notes—with minimal exceptions, he said.

BigBear said in a March 18 Securities and Exchange Commission filing that certain financial statements since 2021 needed to be restated due to its 2026 convertible note accounting and delayed filing its 2024 annual report, Justice said. Share prices slid almost 15% that day.

On March 25, BigBear filed its annual report which said that it incorrectly determined its convertible notes were exempt from the bifurcated accounting rule, Justice said. Consolidated financial statements were revised to reflect their issuance at fair value as of 2021, and remeasurement to fair value at each reporting date, he said. BigBear said that it identified internal control issues in its financial reporting, he said.

The next day, the stock price fell more than 9.1% to close at $3.19 a share.

A proposed class action alleging similar issues was filed in the same court this month.

Justice alleges wrongdoing by overseers between at least March 31, 2022—when a company report said its accounting was sound—through March 25, 2025. He seeks damages on behalf of BigBear against them for breach of fiduciary duties, aiding and abetting of the former, unjust enrichment, and waste of corporate assets.

Spiro & Browne PLC, Rigrodsky Law PA, and Grabar Law Office represent Justice.

BigBear in an email declined to comment.

The case is Justice v. McAleenan , E.D. Va., No. 1:25-cv-00710, complaint filed 4/24/25 .

(Story updated with response from BigBear.ai.)

Litigation

April 28, 2025, 6:33 AM PDT; Updated: April 28, 2025, 10:02 AM PDT

Peter Thiel Beats Insider Trading Case Over SPAC Deal Spree (1)

- **Thiel, co-founders pushed ill-fated acquisitions, lawsuit said**
- **Delaware judge rejects pension fund's shareholder claims**

Peter Thiel and Palantir Technologies Inc.'s other billionaire founders prevailed in court against claims they conspired to earn billions on insider trades tied to a spree of doomed startup acquisitions.

A Delaware judge threw out a pension fund's lawsuit against Thiel, company president Stephen Cohen, CEO Alex Karp, and other members of Palantir's board, which Thiel chairs. The judge rejected allegations that they took the analytics business public—and drove it to invest hundreds of millions in blank-check companies—as part of a wide-ranging scheme to create and inflate a secondary market for their stock options.

"The information that purportedly motivated the trades was public, immaterial, or belied by the very documents on which the plaintiffs rely," Vice Chancellor Lori W. Will said in a ruling made public Monday. "Insiders are not penalized for making investment decisions based on public information—even if their trades are lucrative."

Blank-check firms, formally called special purpose acquisition companies, are publicly traded shell entities formed to merge with early-stage businesses that can then bypass traditional public listings. Scores of SPAC transactions have landed in court as the sector underperformed in the open market after a boom in 2020 and 2021. Many of the Palantir's investment targets—pursuing "pie-in-the-sky" ideas like "iron man suits" and flying taxis—were obviously going nowhere, the lawsuit said.

According to the August 2023 court complaint, the deals were closely tied to Palantir's debut as a public company following a direct listing in September 2020. The listing was aimed at letting Thiel and the others liquidate trapped investments by exercising tens of millions of expiring options, while the SPAC investments were about pumping up revenue projections to maximize the profits they got unloading those shares, the suit said.

The house of cards eventually collapsed, leaving Palantir with $272 million in losses tied to the "abject failure" of its SPAC deals, according to the lawsuit filed in Delaware's Chancery Court. Before it did, however, Thiel, Karp, and Cohen allegedly made more than $1.5 billion selling roughly 110 million shares at inflated prices, while other company leaders allegedly made about $700 million.

Will rejected those claims in her 53-page decision ending the dispute before the costly and cumbersome pretrial discovery stage, which consists of document exchanges and witness depositions. The ruling was signed April 25 before being posted publicly.

The suit was filed by the Central Laborers' Pension Fund and eight individual Palantir investors. They were represented by Grant & Eisenhofer PA, Weiss Law LLP, Robbins LLP, Morris Kandinov LLP, and Bronstein, Gewirtz & Grossman LLC. Palantir, Thiel, and the other company leaders were represented by Potter Anderson & Corroon LLP and Freshfields Bruckhaus Deringer US LLP.

The case is Cent. Laborers' Pension Fund v. Karp , Del. Ch., No. 2023-0864, 4/25/25 .

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Securities Law News

April 25, 2025, 5:11 PM PDT

Eddie Lampert's Damages Case Declined by Delaware Supreme Court

Billionaire and former CEO of Sears Hometown and Outlet Stores Inc. Eddie Lampert failed to convince the Delaware Supreme Court to take his early appeal in a shareholder lawsuit where he may be on the hook for millions in damages over the pricing of Sears shares.

Justice Abigail M. LeGrow said in a short order Friday that Lampert's request for an interlocutory appeal over a lower court decision that he must pay an additional $829,000 in damages should be refused because the request was untimely, filed 10 days after the decision.

- The case stems from the 2022 bankruptcy and restructuring of Sears that triggered a class action alleging Lampert breached his fiduciary duties by unfairly pricing the company's shares. A Delaware Chancery Court said that he owes $8.9 million in damages to an investment fund, and added the $829,000 in a February ruling.
- The state supreme court said Lampert lacked a good cause excuse to why he filed an untimely application for interlocutory appeal
- The Chancery court proceedings are also nearing conclusion, "and the potential benefits of interlocutory review do not outweigh the inefficiency, disruption, and probably costs caused" by the appeal, LeGrow said

McCollom D'Emilio Smith Uebler LLC represents Cannon Square. Potter Anderson & Corroon LLP represents Lampert.

The case is Lampert v. Cannon Square LLC , Del., No. 111, 2025, 4/25/25 .

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Securities Law News
April 28, 2025, 2:00 AM PDT

This Week in Chancery Court: Facebook, AMC Stock Conversion

Two long-running disputes separately involving Meta Platforms Inc. and AMC Entertainment Holdings Inc. are the subjects of hearings this week before the Delaware Chancery Court and the state's top court.

A look at the highlights from the courts' calendars:

Wednesday: In re Facebook Inc. Derivative Litig., Del. Ch., No. 2018-0307, hearing 4/30/25.

At issue: Chancellor Kathaleen St. Jude McCormick reassigned to herself a case linked to a $5 billion fine Facebook—now a Meta unit—paid the US government to resolve a privacy probe into its dealings with Cambridge Analytica. While she initially planned to stick to the original trial schedule, the parties sought to delay the proceedings until after an antitrust trial in which the the Federal Trade Commission seeks to break up Meta. McCormick has suggested dates in July for the Chancery Court case to go to trial. Wednesday's hearing concerns the voluntary dismissal of one defendant, Jan Koum, co-founder of WhatsApp and a former Facebook board member.

Court action: The hearing will be held in Wilmington, Del.

Facebook's Sandberg Sanctioned in Delaware for Lost Emails (1)

Wednesday: Simons v. AMC Ent. Holdings Inc., Del., No. 457,2024, oral arguments 4/30/25.

At issue: An AMC preferred shareholder seeks to revive his challenge to a stock conversion plan the movie theater chain enacted in 2023 over opposition from its meme stock base. His claims that the conversion of preferred stock, known as APEs, to common shares violated anti-dilution provisions were dismissed last October by the same Chancery Court judge who approved AMC's conversion plan. Delaware's high court affirmed the stock conversion in May 2024.

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

AMC's APE Stock Conversion Affirmed Again by Delaware Court

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Another Week, One Move to Texas and One to Nevada

businesslawprofessors.com/2025/04/another-week-one-move-to-texas

Benjamin P. Edwards April 25, 2025

Since the last post on this topic, there are two public companies moving west–one to Nevada and one To Texas. This time it's Mercado Libre going to Texas. Affirm is coming to Nevada. As it stands, my count is now 12 firms moving. Ten going to Nevada and two to Texas. As I had this post up before I realized Affirm had picked Nevada, I'm going to do Texas first and then Nevada. (As always, if you see one that I've missed, send it my way!)

Notably, Mercado Libre's rationale for moving to Texas hinges in part on legislation the Texas legislature has yet to pass.

Mercado Libre also offered some similar reasons to other firms. This week I've decided to break the rationales into more and less material rationales.

More Material Concerns

Statutory vs. Judicial Environment

Mercado Libre laid this one out as "Corporate Flexibility," but I'm going to categorize it as a statutory vs. judicially dominant environment. This is how Mercado Libre framed it:

> The Board considered that **Texas, unlike Delaware, has statutory provisions that would allow (though not require) MercadoLibre's directors and officers to broadly consider the Company's short-term and long-term interests in exercising their fiduciary duties, which will enable greater flexibility for strategic corporate actions**. The DNA of MercadoLibre, embedded in our culture, is best exemplified by a proactive attitude: a relentless commitment to creating value for our users through risk-taking and innovation, all while delivering excellence as a collective. Being a pioneer is part of MercadoLibre's DNA, and how it has become one of the top three most valuable companies in Latin America.

I'm not sure what you can consider under Texas law that you wouldn't be allowed to consider under Delaware law.

Mercado Libre also makes the argument differently a bit later in the proxy:

> In making this determination, the Board considered that while more developed, **Delaware law can be indeterminate because of its use of broad, flexible standards that are applied to individual cases in a highly fact specific way. This focus on precise facts and circumstances means Delaware decisions may be less predictable for an innovative company like MercadoLibre. Although Texas has less corporate case law, Texas has a more code-based corporate governance regime, and so does not depend on cases to set out the law as much as Delaware**. The Board considered that recently-enacted amendments to the Delaware General Corporation Law ("DGCL") adopt a code-based safe harbor for transactions with directors, officers and controlling shareholders, and a more code-based books and records statute, and that these amendments were designed to improve Delaware law's predictability in these areas. On balance, even with these amendments, however, the Board believes the Texas code-based approach is a better fit for the Company.

Mercado Libre didn't see the recent amendments as enough to keep them in Delaware.

Existing Texas Business Courts

Mercado Libre thought the court systems were a wash now that Texas has a business court:

> The Board considered the likely relative predictability of Delaware and Texas law based on differences in their judicial systems. Delaware has historically had the most respected corporate judicial system in the country and has an extensive body of corporate case law. Texas has a specialized business court system that opened in 2024 and has a smaller body of corporate case law. This factor did not alter the balance in the Board's evaluation of Delaware and Texas.

I've put this in the more material camp because the Delaware court system has always been a huge advantage for Delaware. If the Texas business courts are competitive enough, that's fairly significant.

Pending Texas Legislation

Mercado Libre explicitly announced that it was watching the Texas legislature and was hopeful that it would pass the pending legislation. This is how they put it:

> In particular, the Board considered the effect of proposed legislation in the State of Texas (the "Texas Law Amendments") in codifying the business judgment rule – the rule that the Board should be allowed to exercise its business judgment in the absence of fraud, intentional misconduct, an ultra vires act or a knowing violation of law – which the Board believes will provide greater certainty to the Board in its decision-making than will Delaware's approach by limiting the ability of courts to revise the standard of review after a decision has been made by the Board. **Codifying the Business Judgement Rule would ensure a clearer and more consistent legal framework for reviewing corporate decisions than relying on case law, as is done in Delaware, which will enable the Board to make crucial strategic decisions for shareholder value under a knowable standard which still protects shareholders from intentional misconduct, fraud and other improper acts.** In the future, the Company may decide to engage in corporate actions, including but not limited to mergers, acquisitions, consolidations, dissolutions or dispositions. Moreover, the Texas Law Amendments clarifying that the Company may establish the Texas Business Court as its exclusive venue for certain claims concerning the governance of the Company and the rights of shareholders, and waive jury trials for such claims, gave the Company comfort that cases concerning the Company's governance would be heard in an appropriate manner.

The Potential 3% Threshold

Mercado Libre also highlighted the possibility that it would be able to limit stockholder litigation by requiring plaintiffs to meet a 3% ownership threshold in the future. This is how they put it:

> In addition, the **Texas Law Amendments provide that the Company may establish in its bylaws an ownership threshold, not to exceed 3% of its outstanding stock, that must be held for a plaintiff to initiate a derivative claim.** The Company believes that such a threshold could reduce its annual costs of litigation by limiting the ability of persons without a material economic interest in the Company to bring claims that, in the view of the Board, do not materially benefit shareholders as a whole. Upon the passage of the Texas Law Amendments, the Company may determine to adopt such a threshold. However, such threshold is not reflected in the Texas Bylaws and the Company has not yet determined whether to adopt such a threshold in the future (subject to effectiveness of the Texas Law Amendments) or, if adopted, what level to adopt it at. The Company intends to continue to evaluate this matter following the passage of the Texas Law Amendments.

Less Material Concerns

Local Connections

It has a large presence in Texas as it's the home of its U.S. operations and the situs for occasional board meetings. Although I often see this, I tend to see this factor as less material because of the internal affairs doctrine. That you've got facilities and operations in a state doesn't strike me as the most significant reason to pick Texas.

Cost Savings on Franchise Fees

Mercado Libre highlighted the lower cost to a Texas move:

> For the most recent franchise tax period, the Company paid approximately $250,000 in franchise taxes to the state of Delaware, which will no longer be required to be paid if the Texas Redomestication is completed. Texas does not have a comparable annual tax based on outstanding equity. Rather, Texas's franchise tax is based on receipts and is not expected to increase or decrease based on the Company's state of incorporation.

Mercado Libre has a market capitalization of well over $100 billion. I don't think the $250,000 to Delaware really matters.

Bigger Picture

There is a lot we still don't know for this proxy season. How many firms will ultimately move? Will Texas pass these amendments? It's possible that some firms are waiting on state legislatures to see what happens.

Affirm to Nevada.

Affirm also announced for Nevada today.

It brought in Professor Solomon like the The Trade Desk to discuss the options. Wilson Sonsini was counsel to the company:

> At a special meeting of our Board on February 4, 2025, our Board, our Chief Legal Officer and representatives of Wilson Sonsini Goodrich & Rosati PC ("Wilson Sonsini"), counsel to the Company, met to discuss the Company's state of incorporation. . . .
>
> Shortly after the special meeting. . . our Board elected to engage a corporate law and governance expert, Professor Steven Davidoff Solomon of the University of California, Berkeley School of Law.

This is the rationale Affirm provided:

> We have observed that the legal environment in Delaware has changed, with a greater frequency of litigation activity brought by well-funded firms who frequently have a significant financial interest in the outcome of the litigation. **This has resulted in a less predictable and less stable landscape and body of case law in Delaware, particularly for companies, like ours, with an executive who is also a significant stockholder.** Like many companies, we exist in a competitive environment and remain focused on positioning the Company to make business decisions in an agile and nimble manner. The ongoing threat of unmeritorious, but expensive and protracted, litigation over business decisions is inconsistent with that focus. That type of litigation also reallocates value and resources from the Company and its stockholders to litigation and those involved in litigation.
>
> We have considered the amendments to the DGCL that took effect on March 25, 2025 concerning transactions involving a conflict of interest on the part of directors, officers or controlling stockholders and stockholders' inspection rights. We have also considered the related Senate Concurrent Resolution requesting evaluation of the approach to plaintiffs' attorneys fee awards in Delaware, the outcome of which is not yet known. Delaware law could continue to evolve and adapt in a way that addresses some of the concerns we have identified, but the effect of these developments is not yet known and the amendments will be subject to judicial interpretation.
>
> By comparison, we believe that **based on the law as it exists today Nevada can offer more predictability and certainty in decision-making because of its statutory regime.** As we look to our historic growth and strategic decisions and plan for the years to come, removing judicial ambiguity can offer our Board and management clearer guideposts for action that will benefit the Company and our stockholders. Chapter 78 of the NRS is generally recognized as a comprehensive and thoughtfully maintained state corporate statute. Unlike in Delaware, where corporate law regarding fiduciary duties is significantly driven by the Delaware common law as developed by the courts based upon broad, enabling principles, Nevada codifies the fiduciary duties of directors and officers in the NRS. In turn, Nevada courts follow a more statute-based approach to director and officer duties that is less dependent on judicial interpretation.
>
> At this time we anticipate that the Nevada Reincorporation will provide the Company with additional flexibility and stability when the Board is considering certain corporate transactions. However, the Nevada Reincorporation is not being effected to prevent an ultimate sale of the Company, nor is it in response to any present attempt known to our Board to acquire control of the Company or obtain representation on our Board. **In connection with the Nevada Reincorporation, the Nevada Corporation will opt out of certain Nevada statutes that may discourage unsolicited takeovers.**

> Nevertheless, certain effects of the proposed Nevada Reincorporation may be considered to have anti-takeover implications by virtue of being subject to Nevada law. . .

As it's time for me to cook dinner over here, I may come back to the Affirm proxy next week!

NFT Purchasers Sue Nike Over Alleged Crypto Scam

law.com/newyorklawjournal/2025/04/28/nft-purchasers-sue-nike-over-alleged-crypto-scam-

Michael A. Mora April 28, 2025

What You Need to Know

- Nike's NFT case spotlights the unresolved question of whether digital assets are securities under shifting SEC interpretations.
- Plaintiffs increasingly leverage state consumer protection laws to challenge crypto asset losses, sidestepping federal securities law uncertainties.
- "Rug pull" accusations now target major corporations, signaling new litigation risks for brands venturing into digital assets.

Nike is facing a class action complaint in New York federal court by non-fungible token purchasers who claimed the corporation hyped a project with recently acquired RTFKT to attract investor money, only to see the NFT subsidiary shut down, leaving buyers "decimated" with worthless crypto assets.

And the allegations over the sale of unregistered securities and deceptive practices would carry more authority if the Securities and Exchange Commission had not shifted its regulatory stance under the Trump administration on what constitutes a security, according to Nicolle Lafosse, a digital asset attorney at the international law firm Diaz Reus in Miami.

“Given the trend of dismissed cases in the crypto space, it is likely that the claims against Nike regarding unregistered securities may not hold,” Lafosse said. “These dismissals mark a significant change in the SEC’s approach, potentially signaling a move away from ‘regulation by enforcement’ under former Chair Gary Gensler, with the current leadership focusing on establishing clearer regulatory guidelines for digital assets.”

Laurence M. Rosen and Phillip Kim of the Rosen Law Firm in New York, who represent the plaintiff, did not respond to a request for comment sent on Friday. Neither did Nike’s media department, and the corporation did not have counsel listed in the federal docket by press time.

Now, with the consent of both parties, the case is pending before U.S. Magistrate Judge James R. Cho of the Eastern District of New York, pursuant to diversity jurisdiction. The plaintiff seeks in excess of $5 million for alleged violations of Oregon, Florida, New York and California consumer protection laws.

'Nike’s Brazen Rug Pull'

The case dates back to Dec. 13, 2021, when Nike announced that it had purchased the Delaware NFT corporation RTFKT (pronounced “artifact”), which would accelerate the Fortune 500 company’s “digital transformation” to “serve athletes and creators at the intersection of sport, creativity, gaming and culture.”

And April 2022 marked a milestone for the duo with RTFTK's debut of its Nike collaboration, the “Nike Cryptokicks.” The launch featured 20,000 NFTs, some of which fetched up to six-figure sums. However, customers paid between $4,000 and $9,500 in cryptocurrency for most of the NFT shoes, which could be "worn" on the feet of avatars in the metaverse.

These NFTs were designed to be traded, peer-to-peer, on the secondary market, with Nike taking a cut of each sale, per the complaint. The Oregon corporation drove the product’s value by creating a gamified ecosystem in which the Nike NFT could be used to complete challenges and quests to reveal rewards and earn prizes, including limited edition, real-life Nike merchandise.

“Because the Nike NFTs derived their value from the success of a given promoter and project—here, Nike and its marketing efforts—investors purchased this digital asset with the hope that its value would increase in the future as the project grows in popularity based on the Nike brand,” the plaintiff alleged in the complaint.

The Australian-based plaintiff asserted in the complaint that this type of digital asset is properly classified as a security under relevant law. As a result, Nike and RTFKT, as the issuers of this token, failed to register it and file relevant statements with the authorities, including the SEC.

However, legal experts have stated that whether NFTs are legally considered securities depends on who is occupying the White House. The SEC under the Biden administration indicated through litigation that NFTs were securities, while the agency has had the opposite stance under the Trump administration.

Meanwhile, after “capitalizing on the boom in crypto assets,” Nike allegedly “caused the rug to be pulled out from under the Nike NFT,” when RTFKT announced in December on X that it was “winding down operations.” Nike also ended its promotional initiatives.

“Predictably, prices plunged and did not recover. Investors—some of whom are cited in this complaint—and the crypto community at large lamented Nike’s brazen rug pull,” the plaintiff alleged. “Plaintiff and others would never have purchased the Nike NFTs at the prices they did, or at all, had they known that the Nike NFTs were unregistered securities or that Nike would cause the rug to be pulled out from under them.”

Nike sued over closure of crypto business

reuters.com/sustainability/boards-policy-regulation/nike-sued-over-closure-crypto-business-2025-04-25

Jonathan Stempel April 25, 2025

A Nike store is seen in New York City, U.S., April 2, 2025. REUTERS/Kylie Cooper/File Photo Purchase Licensing Rights, opens new tab

NEW YORK, April 25 (Reuters) - Nike (NKE.N), opens new tab was sued on Friday by purchasers of Nike-themed non-fungible tokens (NFTs) and other cryptocurrency assets who said they suffered significant losses when the athletic wear company abruptly closed the business that created those assets.
In a proposed class action filed in Brooklyn, New York federal court, purchasers led by Australian resident Jagdeep Cheema said the sudden closure in December of Nike's RTFKT unit caused demand for their NFTs to dry up.

Make sense of the latest ESG trends affecting companies and governments with the Reuters Sustainable Switch newsletter. Sign up here.

They said they would never have bought the NFTs at the prices they did, or at all, had they known the tokens were unregistered securities, and that Nike would "cause the rug to be pulled out from under them."

Nike, based in Beaverton, Oregon, did not immediately respond to requests for comment. Phillip Kim, a lawyer for the plaintiffs, declined to comment.

The legal status of NFTs is unsettled, and there has been much litigation over whether they are securities under federal law.
Friday's lawsuit sought unspecified damages of more than $5 million for alleged violations of New York, California, Florida and Oregon consumer protection laws.

Nike bought RTFKT, pronounced "artifact," in December 2021, saying the fashion brand was leveraging "cutting edge innovation to deliver next generation collectibles that merge culture and gaming."

It announced, opens new tab RTFKT's since-completed winddown on December 2, 2024, while projecting that the innovation RTFKT represented would live on through the "countless creators and projects" it inspired.
The case is Cheema v Nike Inc, U.S. District Court, Eastern District of New York, No. 25-02305.

Reporting by Jonathan Stempel in New York; Editing by Cynthia Osterman

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

Lawsuit: Claims Administrators Get Kickbacks for Digital Payments

law.com/2025/04/25/lawsuit-claims-administrators-get-kickbacks-for-digital-payments

Amanda Bronstad April 25, 2025

What You Need to Know

- A class action filed in the U.S. District Court for the Eastern District of Pennsylvania alleges the claims administrators do not disclose revenue sharing agreements they receive for using digital payments to compensate class members.
- The suit comes as digital payments to class members have skyrocketed as an alternative to checks sent in the mail.
- Last year, claims administration expert Todd Hilsee, of the Hilsee Group, a leading critic of digital payments, published a white paper that addressed the alleged kickbacks.

A class member in cases involving Facebook and Equifax filed a lawsuit on Thursday accusing three claims administrators of getting kickbacks from financial technology companies that disburse digital payments in settlements.

In a class action filed in the U.S. District Court for the Eastern District of Pennsylvania, Tyler Baker accused Epiq Systems Inc., Angeion Group LLC and JND Legal Administration of fraud and breach of fiduciary duties to class counsel and the courts by not disclosing revenue sharing agreements they receive for using digital payments to compensate class members.

“Plaintiff brings this action against Epiq, JND, and Angeion for engaging in a manipulative and deceptive scheme to obtain millions of dollars in undisclosed compensation for serving as the court-approved settlement administrators in hundreds, if not thousands, of mass tort and class action lawsuits across the country,” Baker’s lawyer, Eric Lechtzin, of Edelson Lechtzin in Newton, Pennsylvania, wrote in the complaint, which seeks to represent a class of hundreds of thousands of recipients of digital payment cards from settlements administered by the three claims administrators.

“Unbeknownst to the attorneys who have retained defendants as administrators to provide settlement administration services and the courts who have approved of the selection of defendants as administrators,” the complaint says, “the amount of compensation defendants receive for providing settlement administration services is secretly augmented by kickbacks they receive from issuers of digital payment cards and gift cards.”

Lechtzin declined to comment about the suit.

Angeion's Steve Weisbrot did not respond to a request for comment, and an Epiq representative declined to comment. Neil Zola, executive managing director of JND, said "the allegations as to JND are baseless and JND will defend itself vigorously in court."

The suit comes as digital payments are an increasingly popular option in class action settlements. Western Alliance Bank's Digital Disbursements found in a study last year that digital payments doubled from 175 in 2022 to 323 in 2023 and have a 98% success rate compared to 77% for checks with a claims process, and 55% for checks without a claim process.Class counsel tout digital payments in court as cost effective, and class members increasingly prefer them over checks.

'Defendants Simply Pocket The Money'

The lawsuit claims the kickbacks come from "breakage," which is the revenue from unredeemed gift cards and digital payment cards obtained by financial technology companies, such as Tremendous and Blackhawk Network, which then are shared as rebates to claims administrators. The claims administrators conceal the so-called kickbacks through special purpose entities.

"Defendants simply pocket the money, nearly all of which is pure profit," the suit says.

Baker, who lives in Vermont, was a class member in three separate cases, each of which involved one of the defendant claims administrators. Epiq used Tremendous to distribute Baker's $75 Amazon.com gift card via email as part of $1.2 billion in antitrust settlements involving automotive parts. JND enlisted Blackhawk Network as part of a $380.5 million settlement over Equifax's data breach, which provided digital prepaid cards to Baker. And, in a $37.5 million data privacy settlement with Facebook parent company Meta Platforms, Angeion brought in Digital Disbursements to issue digital payments, including Baker's $62.60 prepaid MasterCard.

Last year, claims administration expert Todd Hilsee, of the Hilsee Group, a leading critic of digital payments, published a white paper that addressed the alleged kickbacks. His paper, which looked at 110 class action settlements since 2020, calculated that the kickbacks could generate between $12 million and $225 million.

"If class action settlement money is quietly shared as secret kickbacks, with the custodial banks knowingly watching it all happen, then in my opinion, practitioners, courts, regulators, and elected officials should consider the propriety of these practices, and what it means for the legitimacy of class actions," Hilsee told Law.com.

Wells Fargo seeks dismissal of putative class action over 'idle cash" sweep policy

DJ **dailyjournal.com**/articles/385161-wells-fargo-seeks-dismissal-of-putative-class-action-over-idle-cash-sweep-policy

Class Action

Apr. 28, 2025

Wells Fargo's website claims that the Bank Deposit Sweep Program at issue in the case allows the bank's advisers to automatically sweep customers' idle cash in investment accounts into interest-bearing accounts, such as money market funds.

U.S. District Judge Vince Chhabria

Attorneys for Wells Fargo asked a federal judge in San Francisco to dismiss a consolidated putative class action accusing Wells Fargo Inc. of committing fiduciary violations by allegedly moving cash from customer accounts to high interest, bank-controlled accounts and underpaying clients their full interest earnings .

Wells Fargo's legal team from White & Case LLP filed the motion with U.S. District Judge Vince Chhabria on April 24, arguing that the plaintiffs' claims are unfounded and time barred. *In re: Wells Fargo Cash Sweep Litigation*, 3:24-cv-04616 (N.D. Cal. filed July 30, 2024).

Wells Fargo's website claims that the Bank Deposit Sweep Program at issue in the case allows the bank's advisers to automatically sweep customers' idle cash in investment accounts into interest-bearing accounts, such as money market funds.

Two Wells Fargo advisory firms agreed to pay $35 million to the Securities Exchange Commission on Jan. 17 to settle claims that they violated the Advisers Act through the cash sweep program.

Three lead plaintiffs claim that Wells Fargo paid interest on the accounts it put the money into at a rate 15 times lower than comparable sweep options paid by other financial institutions. The lawsuit said this practice brought Wells Fargo billions in revenue.

Wells Fargo's media relations office could not be reached for comment Friday.

David G. Hille, a senior partner at White & Case LLP in New York City and one of Wells Fargo's lead attorneys in the litigation, argued in the motion to dismiss that Wells Fargo's cash sweep program is "like virtually every other industry participant." He stated that customers would have earned no interest but for the program.

"Does Wells Fargo earn a return on the swept cash? Yes, as is fully disclosed and agreed with clients, and just like every financial institution that holds cash for its clients," the motion stated. "In addition, Wells Fargo's cash sweep program ("CSP") is and always has been completely optional for clients. All of WFA's clients are able to invest in products outside the CSP if they wish to seek higher yields (with more risk)."

The consolidated complaint, filed April 10, claimed that Wells Fargo's program violated federal law.

"Rather than act as a fiduciary in the best interests of its clients with respect to its Cash Sweep Programs or fulfill its contractual duties and implied obligation of good faith and fair dealing, Wells Fargo used its clients' funds to enrich itself and its affiliates at its clients' expense," the complaint stated. "Specifically, Wells Fargo failed to uphold its obligation to provide a 'reasonable rate of interest' ... based on prevailing interest rates at other or similar financial services firms."

The following White & Case attorneys serve as Hille's co-counsel: Bryan A. Merryman of Los Angeles and Gregory M. Starner of New York City.

The following attorneys represent plaintiffs and could not be reached for comment Friday: Eric H. Gibbs and Brian E. Johnson of Gibbs Law Group LLP; Jonathan D. Uslaner of Bernstein Litowitz Berger & Grossmann LLP; Deborah Rosenthal of Simmons Hanly Conroy LLP.

Joshua P. Davis of Berger Montague PC, also a plaintiff's attorney, declined to comment on the motion to dismiss on Friday.

The motion to dismiss was filed the day after a state court judge preliminarily approved a $100 million settlement between Wells Fargo and shareholders. The shareholder derivative lawsuit accused Wells Fargo officers and directors of neglecting risk management and regulatory compliance duties.

Wells Fargo denied wrongdoing in the settlement agreement but agreed to reform oversight regulations internally. *Himstreet and Montini Family Trust v. Charles W. Scharf et al.*, CGC22599223 (S.F. Super. Ct. filed Apr. 19, 2022).

#385161

Litigation
April 25, 2025, 2:19 PM PDT

Invisalign Maker to Pay $31.75 Million to Settle Antitrust Suit

- **Judge twice denied Align Technology's proposed deals**
- **Align allegedly inflated prices of its Invisalign products**

Align Technology Inc. has agreed to a $31.75 million settlement designed to end claims the company colluded to raise prices for its popular Invisalign teeth-straightening products.

The proposed class action deal and the plaintiffs' request for approval was filed Thursday in the US District Court for the Northern District of California, marking the third bid to settle the case brought by consumers.

Judge Vince Chhabria denied two other proposed settlements to end the case, expressing concern about an included coupon program for Invisalign treatment as part of the deals.

Last year, Chhabria rejected Align's proposed $27.5 million settlement. This year, he denied a similar settlement with buyer plaintiffs, saying its coupon program offered to class members "will direct still more customers to the monopolist," referring to Align.

The latest proposed deal for $31.75 million increases the cash amount by 15% over the prior settlement and doesn't contain any coupon element, eliminating anticompetitive concerns that reinforce Align's monopoly position, the plaintiffs said in court filings.

"The current cash settlement raises no such concerns, and therefore provides class members with significant relief without any of the countervailing potential harm that previously concerned the Court and led it to deny settlement," they said.

Plaintiffs who bought Invisalign products sued in 2021, claiming they paid more than they should have due to the company's collusion with the now-defunct SmileDirectClub business.

Invisalign's aligners have become a popular alternative to braces as they are made with clear plastic and can be removed for brief periods of time.

The plaintiffs are represented by law firms including Hagens Berman Sobol Shapiro LLP. Align is represented by law firms including Paul Hastings LLP.

The case is Snow v. Align Tech Inc. , N.D. Cal., No. 3:21-cv-03269, 4/24/25 .

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To contact the editor responsible for this story: Maria Chutchian at mchutchian@bloombergindustry.com

Invisalign maker agrees to pay $31 million in consumer price-fixing settlement

reuters.com/legal/litigation/invisalign-maker-agrees-pay-31-million-consumer-price-fixing-settlement-2025-04-25

Mike Scarcella April 25, 2025

A gavel and a block is pictured on the judge's bench in this illustration picture taken in the Sussex County Court of Chancery in Georgetown, Delaware, U.S., June 9, 2021. REUTERS/Andrew Kelly/File Photo Purchase Licensing Rights, opens new tab

April 25 (Reuters) - Align Technology (ALGN.O), opens new tab, maker of Invisalign clear teeth aligners, has agreed to pay $31.7 million to resolve a U.S. consumer lawsuit accusing the company of entering a conspiracy that drove up prices at rival SmileDirectClub.
A group of consumers filed the proposed class action settlement, opens new tab on Thursday in federal court in San Francisco. The deal requires approval by U.S. District Judge Vince Chhabria.
Get a quick look at the days breaking legal news and analysis from The Afternoon Docket newsletter. Sign up here.

The lawsuit, filed in 2021, alleged Align conspired with rival SmileDirectClub to not enter the direct-to-consumer market for teeth aligners, allowing SmileDirectClub to charge artificially higher prices.

Chhabria has twice rejected earlier proposed settlements in the lawsuit, most recently in February. The judge had said then that a provision of the settlement providing $300 coupons for consumers to buy Invisalign products would only strengthen its position as an alleged illegal monopolist.
Thursday’s renewed proposal is all cash and does not contain a coupon component, the consumers’ lawyers told Chhabria. They also said the settlement amount was higher than the plaintiffs were prepared to settle for during prior negotiations.

Align Technology and lawyers for the plaintiffs did not immediately respond to requests for comment.

Align has denied any wrongdoing. SmileDirectClub was not a defendant.

There are about 230,000 members of the class — and potentially 1.4 million overall — who purchased aligners from SmileDirectClub, the plaintiffs lawyers told the court.

SmileDirectClub shut down in December 2023, after filing for U.S. bankruptcy protection.

The plaintiffs said the settlement fund was about 17% of an estimated $181 million in damages for the class. They said the percentage was comparable with other settlements in antitrust cases that won approval in the Northern California federal court.

The consumers' lawyers said they would seek up to about $8 million, or 25% of the settlement fund, for legal fees. The attorneys said they had devoted more than 9,500 hours to the litigation so far.

The case is Snow v. Align Technology Inc, U.S. District Court, Northern District of California, No. 3:21-cv-03269-VC.

For plaintiffs: Steve Berman and Rio Pierce of Hagens Berman Sobol Shapiro

For Align: Karma Giulianelli and Mark Levine of Bartlit Beck, and James Pearl and Thomas Counts of Paul Hastings

Read more:

US judge blocks Invisalign maker’s price-fixing settlement
Invisalign maker reaches $27.5 million settlement of consumer antitrust lawsuit
Our Standards: The Thomson Reuters Trust Principles. , opens new tab

Law firm partners back Susman Godfrey in lawsuit over Trump executive order

reuters.com/legal/government/law-firm-partners-back-susman-godfrey-lawsuit-over-trump-executive-order-2025-04-25

Sara Merken April 25, 2025

Unidentified people gesture after the opening of the new Terminal 10 at the Cointrin airport in Geneva November 20, 2008. REUTERS/Denis Balibouse/File Photo Purchase Licensing Rights, opens new tab

- Association of more than 700 partners files court brief assailing Trump orders
- Signatories include lawyers at three firms that struck deals with Trump
- Judges are weighing whether to strike down Trump's law firm orders

April 25 (Reuters) - An association of more than 700 partners at major U.S. law firms submitted a court brief on Friday supporting Susman Godfrey in its federal lawsuit challenging U.S. President Donald Trump's executive order against the firm.

Trump's punitive orders targeting Susman and other law firms "threaten the legal profession, the judiciary, and the rule of law itself," the filing said.

The friend-of-the-court brief, opens new tab, filed in Susman's case in Washington, D.C., by the non-profit Law Firm Partners United, comes as some lawyers have split with their firms over the response to Trump's intensifying crackdown on the legal profession.
At least 110 individual law partners signed the brief. The filing said the association's more than 700 members, all partners at the 200 largest law firms in the US by revenue, were supporting Susman in their personal capacities, not on behalf of their firms.

The signatories included three partners from law firms that reached deals with Trump to avoid White House actions like the Susman executive order. The partners and their firms - Cadwalader, Simpson Thacher and Willkie Farr - did not immediately respond to requests for comment.

The lawyers' organization said in a statement that its members "are driven by a collective commitment to protect the rule of law in the United States."

Susman Godfrey sued earlier this month to block Trump's order, which restricted its lawyers' access to government buildings and officials, and threatened to cancel federal contracts held by its clients.
The executive order accused Susman Godfrey of undermining U.S. elections, which it has denied. The firm has represented machine voting company Dominion Voting Systems in defamation lawsuits against Trump's allies who repeated false claims that the 2020 election was rigged in favor of Democrat Joe Biden.

"Orders like this tell the entire profession that taking on cases and clients that are out of favor with the current administration may result in severe retaliation," Friday's brief said.

Judges have already issued rulings temporarily blocking key provisions of Trump's similar orders against Susman; Perkins Coie; WilmerHale; and Jenner & Block; finding that the president's actions likely violated constitutional protections for free speech and due process. All four firms have asked the federal court in Washington to permanently strike down Trump's orders. The Justice Department has argued that Trump acted within his authority to penalize the firms for allegedly working to "weaponize" the legal system against him and his allies. The Justice Department did not immediately respond to requests for comment on the lawyers' brief.

Nine other law firms have pledged $940 million so far in free legal work and made other concessions to Trump in efforts to rescind or avoid punitive measures against them, leading some lawyers at the firms to quit in response.
Most of the largest U.S. law firms have remained on the sidelines. Only a handful of major firms have joined court briefs supporting law firms that are suing the Trump administration. Law professors, advocacy groups, state attorneys general, former top legal executives at large companies and others have also filed court briefs in support of the challenges.

- Suggested Topics:
- Government

Sara Merken reports on the business of law, including legal innovation and law firms in New York and nationally.

More Than 700 Law Firm Partners Point to Chilling Effects After Trump EOs

law.com/nationallawjournal/2025/04/25/more-than-700-law-firm-partners-point-to-chilling-effects-after-trump-eos

Abigail Adcox April 25, 2025

An association of more than 700 law firm partners filed an amicus brief Friday in support of Susman Godfrey's lawsuit against the Trump administration, saying the president's executive orders against firms have already led to a chill in the legal industry.

Attorneys from many top firms signed on, including at DLA Piper; Akerman; Wilson, Sonsini, Goodrich & Rosati; Greenberg Traurig; Nelson, Mullins, Riley & Scarborough; Reed Smith; Sheppard Mullin; Holland & Knight; Troutman Pepper Locke; Morrison & Foerster; Pillsbury Winthrop Shaw Pittman; and King & Spalding.

"Clients who previously had no difficulty finding representation are now being turned away by those who worry that taking the cases might risk presidential disapproval. And many clients now worry that they will be targeted for retribution if they hire law firms who are or might become targets of a similar executive order," says the group's amicus brief.

The group, which calls itself Law Firm Partners United, said the fear of retribution "erodes the independence of the bar and the protection of those seeking vindication of constitutional rights. And because courts cannot decide cases that lawyers do not bring, these executive orders undermine our system of justice itself."

The group says it's a professional association of more than 700 Am Law 200 partners and shareholders. The members are acting in their personal capacity and not on behalf of any firm or in their role as law firm partners or shareholders, the amicus brief says, but they represent a broad range of practices and leaders in every quartile of the Am Law 200.

About 110 attorneys signed their names onto the amicus brief, representing a fraction of the over 700-member association. Some attorneys whose firms made deals with President Donald Trump signed their names, including Cadwalader Wickersham & Taft partner Andrew Carlon and Willkie Farr & Gallagher partner Erin Kinney.

Other lawyers who signed on to the amicus brief include: DLA Piper partner Gurpreet Bal; McDermott Will & Emery partner Sarah Columbia; Holland & Knight partner Julie Connelly; Wilson Sonsini partner Jennifer Fang; King & Spalding partner James Unger; Akerman partner Nancy Sotomayor; Mintz partner Suman Chakraborty; and Pillsbury partner Tamara Bruno.

The group was formed in recent weeks, led by Goodwin Procter Silicon Valley partner Neel Chatterjee, and was intended as a forum for partners to speak up when their firms "choose to remain silent" in response to Trump's actions against large law firms, Law.com has reported. Chatterjee also signed on to the amicus brief. Previously, its members chose to remain anonymous.

Read the brief and the signatures here:

In all, Trump has signed six executive actions against law firms, including executive orders against Susman Godfrey; Wilmer Cutler Pickering Hale and Dorr; Jenner & Block; and Perkins Coie. All have obtained temporary restraining orders. Meanwhile, he has struck "pro bono" deals with nine other big law firms.

The group's amicus brief in the Susman case says the partners have diverse and bipartisan views on policy, "but the members are united by the principle that our Constitution protects the right of lawyers to choose their cases and to zealously represent their clients without fear of reprisal by the government."

"The Executive Orders targeting Susman Godfrey and other law firms threaten the legal profession, the judiciary, and the rule of law itself," the amicus brief says.

The brief argues that Susman was singled out because Trump disapproves of some of its representations, "where it won in civil cases between private parties—work that nearly all law firms engage in," according to the amicus brief.

"Orders like this tell the entire profession that taking on cases and clients that are out of favor with the current administration may result in severe retaliation," the brief says.

Some of the group's members have continued to observe many lawyers declining representations they would otherwise take on, out of concern that those representations might trigger retaliation, the brief says.

"They have also continued to observe clients hesitate about hiring law firms that might become the President's next target. The orders are having their intended effect," the amicus brief says.

Law Firm Partners United is represented by Olson Grimsley Kawanabe Hinchcliff & Murray in Denver and Zimmer, Citron & Clarke in Cambridge, Massachusetts.

"Representing unpopular clients has always come with risks for lawyers. But having the government impose serious consequences on lawyers for conducting zealous advocacy does not reflect who we are as a nation," the brief states. "Amicus respectfully urges the Court to swiftly and decisively invalidate the Executive Order. The Constitution and the rule of law require nothing less."

NewsRoom

4/26/25 Akron Beacon J. (Ohio) A1
2025 WLNR 10013844

Akron Beacon Journal (Ohio)

April 26, 2025

Section: News

Trial date set for ex-FirstEnergy execs
Two accused of bribery in House Bill 6 scandal

Patrick Williams

April 26, 2025

A trial date has been set for Jan. 26, 2026, in Summit County Common Pleas Court for two former FirstEnergy executives accused of bribing state regulators in the House Bill 6 scandal.

Former FirstEnergy executives Chuck Jones and Michael Dowling are accused of paying $4.3 million in bribes to former Public Utilities Commission of Ohio (PUCO) Chairman Sam Randazzo as part of the HB 6 pay-to-play scandal that shook up Ohio politics during the height of the COVID-19 pandemic.

During a hearing April 25, defense attorneys for Jones and Dowling argued that Summit County Common Pleas Judge Susan Baker Ross should throw out various charges. But one of the prosecutors claimed those lawyers were trying to treat the criminal proceedings like a civil case.

Matthew Meyer, principal Ohio assistant attorney general, said the defense is trying "to empower" the court to make decisions about the "quality and quantity of evidence."

Defense attorney Steve Grimes said the defense is taking a valid approach. Looking ahead, he said the defense plans to bring more evidence to support the accused at trial.

In January, Jones, former FirstEnergy CEO, and Dowling, who was the company's senior vice president of external affairs, were also charged in federal court under the Racketeer Influenced and Corrupt Organizations Act.

And in September 2024, the U.S. Securities and Exchange Commission filed a civil suit against Jones for allegedly misleading stockholders in the public company.

FirstEnergy previously admitted to bribing Randazzo and former Ohio House Speaker Larry Householder, the latter of whom was sentenced to 20 years in prison in 2023.

The utility agreed to pay a $230 million fine in 2021 as part of an agreement with federal prosecutors.

Then, in 2024, FirstEnergy agreed to pay $100 million to the U.S. Securities and Exchange Commission and $20 million as part of an agreement with the Ohio Attorney General's Office and Summit County Prosecutor's Office.

Randazzo, who had pleaded not guilty to state and federal corruption charges, died by suicide in April 2024.

On April 21, a Franklin County Common Pleas judge signed an order compelling three former FirstEnergy lobbyists and an ex-senior executive of the utility to testify before the PUCO.

The judge, Richard Brown, ruled that they will receive immunity from prosecution.

The HB6 scheme is now the subject in the first installment of Alex Gibney's two-part HBO docuseries called "The Dark Money Game" that premiered on April 15.

Is FirstEnergy a victim under Marsy's Law?

Attorneys in the Common Pleas case continue to debate whether FirstEnergy should be considered a victim, which is a designation that Meyer said the prosecution supports.

Numerous employees at FirstEnergy "had to pick up the pieces of this disaster," Meyer said.

Ross said the company has not filed with the court to formally label themselves as a victim under Marsy's Law. An attorney for FirstEnergy, Kamil Shields, confirmed that is the case.

Marsy's Law affords crime victims various rights, including to provide input on negotiated pleas and receive restitution for economic losses, according to the Ohio Supreme Court's website.

A February court filing from the prosecution quoted Ross as stating in September 2024, "I think within the criminal law FirstEnergy can be considered a victim and a co-conspirator at the same time, to the extent that it applies."

Attorneys debate theft counts in court filings

Attorneys for Jones and Dowling have been filing documents in the case to argue that theft charges should be dropped, but prosecutors disagree.

Attorneys for the accused stated in a February filing, "The theory that Mr. Dowling and Mr. Jones stole from FirstEnergy by helping FirstEnergy pay an alleged bribe to benefit FirstEnergy makes no sense."

Prosecutors from the Summit County Prosecutor's Office and the Office of the Ohio Attorney General argued in a February filing that defense attorneys' arguments are based "on the fallacy that ... FirstEnergy 'authorized' and 'consented' to the payment of the $4.3 million bribe. The evidence at trial will show that FirstEnergy did not, and could not, 'consent' to Dowling and Jones' illegal payments."

What is a 'pattern of corrupt activity,' and does it apply here?

Lawyers in the case have been disputing what constitutes a "pattern" of crime, with the defense arguing that prosecutors are pinning some charges on the former executives without a legal basis.

Attorneys for Jones have argued that the defendant should be dismissed of two "engaging in a pattern of corrupt activity" charges, stating in a February filing that a "pattern" as defined by the Ohio Corrupt Practices Act (CPA) "cannot emanate from a single transaction."

Dowling's lawyers also invoked the CPA in a February filing, arguing that their client should not be charged with five separate offenses due to a single $4.3 million "alleged bribe."

The attorneys wrote that their argument applies to single counts of bribery and telecommunications fraud, as well as two counts of aggravated theft and money laundering.

Prosecutors file to introduce evidence

In an April 21 court filing, prosecutors in the criminal case in Summit County wrote that they plan to introduce new evidence.

The 141-page filing references, among other items, Dowling's 2023 testimony in a separate civil case in which he stated that he did not do anything illegal related to the passage of HB 6.

Prosecutors wrote that FirstEnergy's Deferred Prosecution Agreement — for which FirstEnergy paid a $230 million fine — and Householder's conviction "may have relevance in rebuttal" if Dowling or Jones assert that lobbying around HB 6 was completely lawful.

"Both of those pieces of evidence demonstrate that Dowling and Jones' actions directing HB 6 political contributions and lobbying activity were not entirely lawful," the prosecutors wrote.

Overall, Ross said these are complicated issues that she plans to take additional time to sort through.

"It's quite an impressive group of attorneys that I have in front of me," she said.

Patrick Williams covers growth and development for the Akron Beacon Journal. He can be reached by email at pwilliams@gannett.com or on X, formerly known as Twitter, @pwilliamsOH.

---- Index References ----

Company: U.S. SECURITIES AND EXCHANGE COMMISSION; HOME BOX OFFICE, INC.; FIRSTENERGY CORP.; Ohio Office of Attorney General

News Subject: (Crime (1CR87); Criminal Law (1CR79); Financial Fraud (1FI18); Fraud (1FR30); Government Litigation (1GO18); Judicial Cases & Rulings (1JU36); Legal (1LE33); Social Issues (1SO05))

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

Language: EN

Other Indexing: (Public Utilities Commission of Ohio; Summit County Prosecutor's Office; Ohio Supreme Court; U.S. Securities and Exchange Commission; HBO; FirstEnergy; Ohio Attorney General's Office)

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End of Document

NewsRoom

US Justice Department unit for drug and food safety cases being disbanded

reuters.com/business/healthcare-pharmaceuticals/us-justice-department-unit-drug-food-safety-cases-being-disbanded-2025-04-25

Sarah N. Lynch April 25, 2025

A woman walks past the U.S. Department of Justice Building, in Washington, U.S., December 15, 2020. REUTERS/Al Drago/File Photo Purchase Licensing Rights, opens new tab

- Unit does criminal prosecutions and civil enforcement
- Its disbandment is due to be completed by September 30

WASHINGTON, April 25 (Reuters) - A Justice Department unit that handles criminal and civil enforcement of U.S. food and drug safety laws is being disbanded as part of an ongoing cost-cutting campaign by President Donald Trump's administration, according to three people familiar with the matter.
About 215 people work for the Consumer Protection Branch, part of the Justice Department's Civil Division, including attorneys, support staff and law enforcement agents. It was listed as a possible target for cuts in a March memo by Deputy Attorney General Todd Blanche, first reported by Reuters.

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

Although it is located in the Civil Division, the Consumer Protection Branch is an unusual office because its work involves a hybrid of criminal prosecutions and civil enforcement.

It handles criminal cases to enforce the Food, Drug and Cosmetic Act, a federal law that makes it a crime to sell or distribute adulterated or misbranded food or drugs. It also enforces statutes for the Federal Trade Commission and the Consumer Product Safety Commission.

The three sources, speaking on condition of anonymity, confirmed the plans for disbanding the Consumer Protection Branch.

Two of the sources said that the more than 100 attorneys who work in the unit were notified on Thursday about the plans to break it up.

Attorneys from the unit who handle criminal cases will be relocated to the department's Criminal Division while the rest of the unit's employees will remain in the Civil Division, the three sources said.

Some who do primarily legal defense work for the Food and Drug Administration will be transferred to the Justice Department's federal programs branch, they said.

It remains unclear where others will be placed, according to two of the sources.

The target date to complete the changes is by the end of the current fiscal year, which is September 30, one of the sources said.

The plans to disband the branch were reported earlier by the American Prospect news outlet.

The Consumer Protection Branch has been at the heart of some high-profile cases.

Walgreens this week reached a settlement with the Justice department in a case involving the branch and agreed to pay $350 million for illegally filling unlawful opioid prescriptions and filing false claims to the government.

Prosecutors from the branch also brought the criminal case against former executives at Peanut Corporation for crimes that led to a 2009 outbreak involving more than 700 cases of salmonella poisoning.

Sarah N. Lynch is the lead reporter for Reuters covering the U.S. Justice Department out of Washington, D.C. During her time on the beat, she has covered everything from the Mueller report and the use of federal agents to quell protesters in the wake of George Floyd’s murder, to the rampant spread of COVID-19 in prisons and the department's prosecutions following the Jan. 6 attack on the U.S. Capitol.

Securities Law News

April 25, 2025, 12:22 PM PDT; Updated: April 25, 2025, 2:21 PM PDT

CFPB, Investment Trusts Ask Judge to Toss $2.25 Million Deal (1)

- **Supreme Court rejected appeal in debt collection case**
- **CFPB, trusts reached $2.25 million settlement in January**

The Consumer Financial Protection Bureau dismissed its case against a group of student loan investment vehicles for alleged debt collection violations before a federal judge could approve a $2.25 million settlement reached in the final days of the Biden administration.

The CFPB and counsel for the National Collegiate Master Student Loan Trust on Friday filed a joint notice of voluntary dismissal in the US District Court for the District of Delaware, bringing the case to a close before Judge Stephanos Bibas could rule on objections to the January settlement or approve it.

The two sides agreed to dismiss the case with prejudice, meaning the CFPB can't bring its claims a second time.

All of the money the trusts were set to pay in the settlement would've gone to student loan borrowers the CFPB said were harmed.

"The government's prosecution of the National Collegiate Student Loan Trusts lasted through four Presidents and six CFPB directors and once showed that no amount of financial engineering or crooked bookkeeping could shield those responsible from facing justice," said Mike Pierce, the executive director of the Student Borrower Protection Center. "It's a sad day when wealthy investors who profited from students' misfortune will instead be let off the the hook."

The CFPB and counsel for the trusts couldn't immediately be reached for comment.

Friday's filing marks the second time in recent months the CFPB has moved to undo a settlement completed under former Director Rohit Chopra, a Biden appointee.

The CFPB sued the trusts, a collection of 15 related investment vehicles that bought and securitized student loans, in 2017 alleging debt collection violations by third-party collectors.

The trusts countered that they shouldn't be subject to the CFPB's jurisdiction because they were merely passive investment vehicles.

Bibas rejected that argument in 2021 and the US Court of Appeals for the Third Circuit affirmed his ruling last year.

The US Supreme Court declined to hear the trusts' case in December, and the trusts agreed to a settlement the following month.

Third-Party Providers

The parties aren't seeking to overturn the previous rulings or challenge the CFPB's decision to bring the lawsuit during the first Trump administration, according to court filings and a review of the docket.

That's a stark contrast from the CFPB's effort last month to vacate a $105,000 fair lending settlement reached in November with Townstone Financial Inc. and its co-founder, Barry Sturner. The CFPB in that case argued previous officials didn't consider Sturner and Townstone's First Amendment rights when they brought the case, also during the first Trump administration.

Even if the CFPB is successful in getting the student loan trust settlement canceled, the Third Circuit's ruling on whether passive investment trusts are liable for actions by third-party service providers will remain in place, said Jonathan Joshua, a financial regulations specialist at Joshua Law Firm LLC.

The CFPB could opt to write a rule or provide some guidance stating that passive investment trusts aren't responsible for the conduct of third-party service providers. Until the agency does so, however, investors will still have to be mindful of other actors, such as state attorneys general.

"The CFPB doesn't have to bring enforcement actions against a trust, but private litigants and state AGs can still do so," Joshua said in an email.

Patterson Belknap Webb & Tyler and Pinckney, Weidinger, Urban & Joyce LLC represent the trusts.

The case is CFPB v. National Collegiate Student Loan Trust , D. Del., No. 1:17-cv-01323, Joint Stipulation of Voluntary Dismissal With Prejudice 4/25/25 .

(Updates with comment from regulatory attorney starting in paragraph 14.)

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Chemours Hit With New Derivative Duty Breach, Waste Suit

By **Jeff Montgomery**

Law360 (April 25, 2025, 5:32 PM EDT) -- A Chemours Inc. stockholder launched a new derivative damage suit against 13 former or current top officers and directors in Delaware's Court of Chancery Friday, adding to state and federal court challenges targeting allegedly conflicted and misleading disclosures about revenues and performance in 2022 and 2023.

The suit, filed by stockholder Eric Neuhauser on the company's behalf, accused those named of lining up or playing a role in schemes that included pushing some final quarter expenses into a new year to assure artificially positive year-end results and inflate the company's stock price.

Alleged in the complaint are breaches of fiduciary duty, unjust enrichment, abuse of control, gross mismanagement and waste of corporate assets, with the last among the most serious but most difficult to prove in corporate law.

Among the incidents cited was a virtual meeting in October 2023, attended by 12 to 15 managers and buyers. Managers, the complaint said, were given a spreadsheet identifying suppliers to be contacted for billing adjustments.

"The goal was to 'call people' from accounts receivables and see if they were willing to 'pay early' and to 'meter cash going out to try to hit' the company's free cash flow target," the complaint said.

Stockholder Suzanne Pickarts filed a similar derivative complaint in the same court in April.

In all, the timing of some $575 million was allegedly manipulated in order to brighten the companies books.

After the allegations came to light, Chemours reported that it had placed President and CEO Mark Newman, Senior Vice President and Chief Financial Officer Jonathan Lock and Vice President, Controller and Principal Accounting Officer Camela Wisel on administrative leave pending an internal review.

Newman and Lock both resigned in March 2024.

According to a separate, consolidated federal securities action now pending in Delaware federal court, the company allegedly had a history of altering year-end payables and receivables dating to at least 2018. The federal suit, seeking compensation for stockholder losses rather than recoveries for the company, is awaiting dismissal proceedings.

The alleged scheme came to light in early 2024, when Chemours delayed the release of its financial results. Soon after, the company disclosed audit committee findings involving an alleged scheme by which individuals delayed quarterly reports in 2023 and 2022.

The delays were described as an effort "in part to meet free cash flow targets that the company had communicated publicly, and which also would be part of a key metric for determining incentive compensation applicable to executive officers."

Because the actions "occurred under the authority of the board, each of the individual defendants who is or was a director of the company was a direct, necessary, and substantial participant in the conspiracy," which violated the company's code of conduct and audit committee charter, the Delaware Court of Chancery suit said.

An employee questioned during the company's investigation, whose name was withheld, said that she believed the company's greater-than $350 million free cash flow in 2023, after reporting a negative free cash flow of $210 million in the first quarter "could only make sense if there was an intent to manipulate payables and receivables," since the business is not seasonal or cyclical.

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

Eric Neuhauser is represented by Ryan M. Ernst of Bielli & Klauder LLC and Timothy Brown of The Brown Law Firm PC.

Counsel information for those named in the new suit was not immediately available.

The case is Eric Neuhauser v. Mark Newman, et al, case number 2025-0424, in the Court of Chancery of the State of Delaware.

--Editing by Alex Hubbard.

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Judge Keeps Boeing Fraud Case In Chicago

By **Linda Chiem**

Law360 (April 25, 2025, 9:07 PM EDT) -- An Illinois federal judge said Friday that equity funds accusing Boeing of defrauding investors by downplaying the 737 Max jets' safety flaws after a pair of deadly crashes in 2018 and 2019 must continue to litigate their claims in Chicago instead of having them heard in Virginia.

U.S. District Judge Manish S. Shah **denied** a motion from plaintiffs College Retirement Equities Fund, TIAA-CREF Funds, Nuveen Investment Funds Inc. and other affiliates seeking to transfer their securities fraud case from Chicago to Arlington, Virginia, on grounds that Boeing had moved its headquarters there in 2022.

"Despite Boeing's departure from Chicago, this district maintains its interest in providing redress for harms Boeing allegedly perpetrated while it was here," Judge Shah said.

"While the Eastern District of Virginia may be able to address this case at a faster pace, that one factor is not so weighty to tip the scales when all other factors are neutral and when the Eastern District of Virginia is not a clearly more convenient forum," Judge Shah continued.

The funds first filed suit in Chicago in July 2022, following up with a second amended complaint and motion to transfer in December 2024. They alleged that Boeing's top brass repeatedly **misrepresented** the 737 Max jets' safety and reliability, regulatory compliance, production rate and backlog, and the true nature of an automated flight-control software feature that was unique to the 737 Max line of jets. Ultimately, Boeing's misleading public disclosures and the company's overall mishandling of the 737 Max crisis caused Boeing's stock price to plummet and significant investment losses for the plaintiffs, they alleged.

The equity funds have targeted various alleged misstatements that Boeing made in the aftermath of the October 2018 crash of Lion Air Flight 610 in the Java Sea that killed 189 people and the March 2019 crash of Ethiopian Airlines Flight 302 that killed 157 people. They slammed Boeing and former top executives' "active indifference and purposeful blindness to critical negative information coming from its employees" and the company's "ultimately, unsustainable and disastrous pursuit of short-term profit over long-term safety," according to the second amended complaint.

Judge Shah noted in Friday's ruling that "many of the material events at issue here — statements made in the months following the 2018 and 2019 crashes — took place before Boeing's headquarters relocated to Arlington in 2022. These statements were made when Boeing's communications teams were in Chicago and Seattle."

Boeing argued that the equity funds' lawsuit **should remain in Chicago**, where four other securities fraud suits related to the 737 Max crashes are already pending over the same issues. Boeing claimed in court filings that the funds were trying to take advantage of a Virginia federal judge's **bench decision** denying Boeing's motion to dismiss "in an unrelated securities class action, which involved different issues, statements and time periods."

The Virginia case involves pension funds **suing Boeing** over the 2024 **midair blowout** incident aboard a 737 Max 9 jet operated by Alaska Airlines.

But the equity fund plaintiffs in this case argued that since filing their initial suit, "significant new information has emerged regarding the nature and extent of defendants' fraud." They said their second amended complaint provided additional new details about Boeing's "broken corporate culture and disregard for safety and quality controls in the years following the 737 Max crashes and that culminated in the Alaska Airlines accident on January 5, 2024."

The equity funds also argued that the Eastern District of Virginia is "significantly less burdened than the Northern District of Illinois and is one of the speediest districts to progress a case from filing to trial."

Judge Shah in 2023 determined that the equity funds **can only pursue claims** based on certain statements Boeing and top executives had made after the Ethiopian Airlines crash in March 2019, but **none before that.** There were sufficient allegations suggesting that Boeing's top management was "recklessly indifferent" when it came to making full disclosures about pilots' ability to safely fly the 737 Max 8 after the second crash in March 2019, the judge noted.

The 737 Max 8 jets, which were **grounded globally** for 20 months after the two crashes, were outfitted with an automated feature called the Maneuvering Characteristics Augmentation System, which affected the plane's flight control system. Accident investigators and other official review panels have since determined the MCAS was vulnerable to faulty sensor readings that could inadvertently trigger the system and push the plane to nosedive.

Counsel for the plaintiffs and representatives for Boeing could not be immediately reached for comment Friday.

The equity fund plaintiffs are represented by Lawrence M. Rolnick, Marc B. Kramer, Michael J. Hampson and Nicole T. Castiglione of Rolnick Kramer Sadighi LLP and Jordan A. Finfer of Patzik Frank & Samotny Ltd.

The Boeing defendants are represented by John F. Hartmann, Brenton Rogers, Craig S. Primis, Katherine R. Katz and Kenneth P. Monroe of Kirkland & Ellis LLP.

The case is College Retirement Equities Fund et al. v. The Boeing Co. et al., case number 1:22-cv-03845, in the U.S. District Court for the Northern District of Illinois.

--Editing by Andrew Cohen.

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Tesla, Allies Urge Reversal Of Musk's $56B Pay Veto

By **Jeff Montgomery**

Law360 (April 25, 2025, 8:41 PM EDT) -- Pointing to solid Tesla stockholder approval of Elon Musk's $56 billion, multiyear compensation plan, the Chamber of Commerce's national office has urged Delaware's Supreme Court to reverse a Chancery Court strikedown of the plan and reconsider a $345 million winning-side class attorney fee.

The brief, docketed in amended form on Friday, was among seven supporting Tesla's appeal of the lower court decision last year, filed by groups ranging from the Washington Legal Foundation to retired professors.

Chancellor Kathaleen St. J. McCormick first struck down Elon Musk's proposed 10-year, stock-based compensation plan in January 2024, finding that disclosure failures, murky terms, conflicted drafters and Musk's influence warranted the move. The chancellor rejected a call to revisit the decision in December and approved a $345 million winning-side class attorney fee.

"The Chamber's position is that fully informed and uncoerced stockholders are entitled to ratify important business decisions with 'real world' economic consequences," the group on Friday said in a corrected version of a brief filed earlier. "Likewise, the Chamber's members are affected by a ruling that ratification is not available post-trial but before final judgment."

Tesla, in an opening brief filed in March, argued "Delaware law safeguards stockholders from exploitation and coercion, but it has never second-guessed their knowing and voluntary business decisions," and said that when an independent board tasks disinterested stockholders to rule on compensation, "there can be no clearer or fairer mandate."

Attorneys for lead plaintiff stockholder Richard Tornetta were scheduled to file an answering brief on Friday but had not yet docketed it late in the day.

Some 72% of the electric-vehicle company's stockholders, excluding shares held by Elon Musk and his brother, voted in favor of the pay package in June 2024, along with a rechartering of the business in Texas.

The outcome — plaintiffs' lawyers receiving a nine-figure fee for relief that stockholders twice rejected — runs counter to core principles of Delaware law, the Chamber argued.

Also filing a critical friend of the court brief was the conservative, free-market focused Washington Legal Foundation. It cautioned that the chancellor's ruling meant that stockholders cannot ratify a voidable transaction once deemed unfair.

"If that decision stands, trial judges and plaintiffs' lawyers — not informed stockholders — will have the final say on what is in the best interests of Delaware corporations," the foundation said. "That not only would undermine the 'highest and best form of corporate democracy,' but undermine Delaware's status as a corporate charter hub."

An amicus brief filed by the Texas Association of Business argued that Delaware court definitions of controlling shareholders had been skewed by apparent acceptance of "Superstar" labels in the case of Musk that "sidelines voting power and management dominance" as a measure of control.

As a result, the Texas group argued, boards cannot predict when a superstar label tips a dispute into more exacting court "entire fairness" scrutiny, encouraging litigation for fees.

An amicus brief filed by 23 retired law professors and four retired practitioners described the chancellor's decision as "problematic" because Musk's labeling as a "superstar" CEO tipped the court into applying more plaintiff-friendly entire fairness scrutiny, meaning that disinterested stockholders could not ratify Musk's compensation.

"If permitted to stand, the rulings below — which foretell an impractical, litigation-driven approach to numerous transactions, especially executive compensation — draw into question Delaware's longstanding position as the leading jurisdiction in the United States on corporate law," the professors said.

The professors' brief argued the chancellor's decision failed to draw "any principled distinction between a fiduciary 'controlling' a specific transaction in which he is interested and the directors simply failing in that case to act independently of that fiduciary. It is difficult to see why the former scenario should be subject to significantly more stringent review than the latter."

The briefs pointed to the importance of the wider issue before the court and state.

Delaware lawmakers recently approved a corporate bar-aligned amendment to the state's General Corporation Law after Gov. Matt Meyer declared in late January and early February that things "need to change" following a series of high-profile corporate reincorporations or threats to recharter in other states.

Tesla Inc.'s removal of its charter to Texas in 2024 loomed large during debate on and passage of the corporation law measure in March, but other court rulings were cited as prods, including the court's Moelis & Co. v. West Palm Beach Firefighters' Pension Fund decision.

In Moelis, Vice Chancellor J. Travis Laster rejected the company's claims that stockholders waited too long to sue over an agreement giving more power to founder and CEO Ken Moelis and affiliated entities, and he invalidated the deal.

Delaware's corporate bar quickly drafted legislation to shield future Moelis-type rulings. The Moelis law now allows corporations to cede some governance rights to big stockholders as well as some state corporate oversight to other jurisdictions.

Tesla stockholder Richard J. Tornetta is represented by David S. Eagle and Sally E. Veghte of Klehr Harrison Harvey Branzburg LLP, Gregory V. Varallo and Daniel E. Meyer of Bernstein Litowitz Berger & Grossmann LLP, and Peter B. Andrews, Craig J. Springer, David M. Sborz and Jackson E. Warren of Andrews & Springer LLC.

Tesla Inc. is represented by Rudolf Koch and John D. Hendershot of Richards Layton & Finger PA, William M. Lafferty and Susan Waesco of Morris Nichols Arsht & Tunnell LLP, John L. Reed and Ronald N. Brown of DLA Piper LLP US, Catherine A. Gaul of Ashby & Geddes PA, and Jeffrey B. Wall, Morgan L. Ratner, Brian T. Frawley and Matthew A. Schwartz of Sullivan & Cromwell.

The Chamber of Commerce of the United States of America is represented by John Schronce, Steve Haas and James Lockerby of Hunton Andrews Kurth LLP.

The Texas Association of Business is represented by Theodore A. Kittila of Halloran Farkas + Kitilla LLP and Randy D. Gordon and Lucas C. Wohlford of Duane Morris LLP.

Tesla retail stockholders are represented by Francis G.X. Pileggi, Scott D. Cousins and Sean B. Brennecke of Lewis Brisbois Bisgaard & Smith LLP and Ari Holtzblatt, Peter A. Kallis and Kyle T. Edwads of Wilmer Cutler Pickering Hale & Dorr LLP.

The Washington Legal Foundation is represented by Rebecca L. Butcher of Landis Rath & Cobb LLP and by Cory L. Andrews.

Current and retired practitioners and professors are represented by Laura H. McNally of Morgan Lewis & Bockius LLP.

The objector appellants are represented by Anthony A. Rickey of Margrave Law LLC, David S. Eagle and Sally E. Veghte of Klehr Harrison Harvey Branzburg LLP, Thomas R. Grady of GradyLaw, Donald B. Verrilli and Elaine Goldenberg of Munger Tolls Olson LLP, Achyut J. Phadke of Munger Tolles & Olson LLP, and Joseph A. Grundfest of Stanford Law School, of counsel.

The case is In re Tesla Inc. Derivative Litigation, case numbers 534-2024 and 10-, 11- and 12-2025, in the Supreme Court of the State of Delaware.

The case under appeal is 2018-0408 in the Court of Chancery of the State of Delaware.

--Editing by Philip Shea.

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

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Live Nation Investors Get 1st OK For $20M Eras Tour-Tied Deal

By **Emilie Ruscoe**

Law360 (April 25, 2025, 9:03 PM EDT) -- Event ticketing giant Live Nation and its shareholders on Friday secured a California federal judge's initial green light for their proposed $20 million deal to end proposed class action claims alleging the company misled shareholders in the face of anticompetitive allegations involving its Ticketmaster subsidiary following its missteps selling tickets for pop star Taylor Swift's Eras Tour.

In an **order** granting preliminary approval of the settlement, U.S. District Judge Kenly Kiya Kato found the deal appears "as being fair, reasonable and adequate to the settlement class," subject to further consideration at a settlement hearing she scheduled for late August.

The investors sought approval for their deal in March, saying the agreement resulted from mediation that began in November.

Their motion cited the risk of continued litigation with Live Nation, faulting the company for, among other things, not cooperating fully with the U.S. Department of Justice and the U.S. Senate Antitrust Subcommittee as they probed Live Nation.

"Proving loss causation and damages would also be risky, complicated, and uncertain, involving conflicting expert testimony," the stockholders added, seeking certification of a class of investors who purchased Live Nation shares between February and November 2023.

If approved, the settlement would resolve claims stemming from criticism over the companies' Eras Tour ticket resale practices in 2022. The lawsuit references reports that Live Nation and Ticketmaster faced scrutiny from lawmakers and the Justice Department after Ticketmaster systems crashed during the so-called resale period for tour tickets.

The agreement arrived after Judge Kato in February 2024 declined to grant Live Nation's dismissal bid in the matter, finding the investors had plausibly alleged the company made material misrepresentations with certain statements about its popularity and growth in 2022.

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

The investors are represented by Robert V. Prongay, Ex Kano S. Sams II, Charles Linehan and Pavithra Rajesh of Glancy Prongay & Murray LLP, Laurence M. Rosen, Phillip Kim and Joshua Baker of The Rosen Law Firm PA and Frank R. Cruz of the Law Offices of Frank R. Cruz.

Live Nation is represented by Melanie M. Blunschi and Elizabeth J. Cheng of Latham & Watkins LLP.

The case is Donley et al. v. Live Nation Entertainment Inc. et al., case number 2:23-cv-06343, in the U.S. District Court for the Central District of California.

--Additional reporting by Sydney Price. Editing by Covey Son.

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Nike Investors Say 'Brazen' NFT Rug Pull 'Decimated' Them

By **Hailey Konnath**

Law360 (April 25, 2025, 11:33 PM EDT) -- Nike was hit with a proposed securities class action on Friday accusing the athletic apparel giant of touting its nonfungible tokens before abruptly abandoning that business, in a "brazen rug pull" that left purchasers of Nike's NFTs "decimated."

Named plaintiff Jagdeep Cheema said in the complaint, filed in New York federal court, that rug pulls are "all too common" in the cryptocurrency world, but "one does not expect it from Nike ... the international sports juggernaut with yearly revenue of around $50 billion."

"But that's what Nike did," Cheema said.

Cheema and likely thousands of other investors purchased Nike-themed NFTs, crypto collectibles and other crypto assets from a Nike subsidiary, RTFKT, that was acquired by Nike to capitalize on the crypto bull market in 2021, according to the suit. The NFTs were meant to be traded "peer-to-peer" on the secondary market, and the shoe company also made a "gamified ecosystem" in which the NFTs were used to complete challenges and quests that could lead to winning rewards and prices, including physical Nike products, Cheema said.

Investors, like Cheema, purchased the digital assets hoping that their value would go up in the future thanks to Nike's popularity, the suit states. Nike never registered the NFTs as a security with the U.S. Securities and Exchange Commission, as is required under the law, Cheema noted.

"In short, Nike used its iconic brand and marketing prowess to hype, promote and prop up the unregistered securities," he said.

Then, last December, RTFKT announced that it was winding down operations, Cheema said.

"Investors were decimated. With the end of RTFKT and, by extension, Nike's many targeted promotional initiatives aimed at hyping up the Nike NFTs and stimulating demand, the reason that so many had purchased the Nike NFTs — to complete quests to gain access to additional NFTs or physical Nike products, and/or to resell the Nike NFTs on the secondary market to others — evaporated instantly," he said.

That led to prices plunging, and there was no recovery, Cheema said.

Cheema said that he and other investors wouldn't have purchased the Nike NFTs at the prices they did — or at all — if they knew Nike wasn't going to register them as securities or that Nike would "cause the rug to be pulled out from under them."

Ultimately, the investors have suffered "significant damages," Cheema said, adding that many of the investors lacked the "technical and financial sophistication necessary to have evaluated the risks associated with their investment in the Nike NFTs."

Cheema is suing on behalf of a class of "all persons who purchased or otherwise acquired the Nike NFTs within applicable limitations periods." He's alleging unjust enrichment plus violations of various state unfair trade and unfair competition laws and seeking unspecified damages and attorney fees.

Nike and counsel for Cheema didn't immediately respond to request for comment late Friday.

Cheema is represented by Laurence M. Rosen, Phillip Kim and Michael Cohen of The Rosen Law Firm PA.

Counsel information for Nike wasn't immediately available.

The case is Jagdeep Cheema v. Nike Inc., case number 1:25-cv-02305, in the U.S. District Court for the Eastern District of New York.

--Editing by Jay Jackson Jr.

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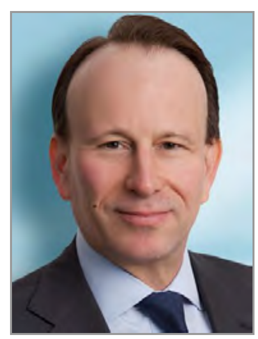
Del. Dispatch: Open Issues After Corp. Law Amendments

By **Gail Weinstein, Philip Richter and Steven Epstein** (April 25, 2025, 11:24 AM EDT)

This article is part of a monthly column that delves into the most significant corporate law cases emerging from Delaware and offers practice points arising from recent court decisions. In this installment, we examine S.B. 21, the new amendments to the Delaware General Corporation Law.

Gail Weinstein

Philip Richter



Steven Epstein

On March 25, amendments to the Delaware General Corporation Law were **enacted** that significantly modify Delaware law.[1] The amendments revise Section 144 of the DGCL to provide new safe harbors for conflicted-controller and conflicted-board transactions and certain other acts, limit the circumstances under which a minority stockholder may be deemed to be a controller or a director may be deemed to be nonindependent, exculpate controllers for breaches of the duty of care, and limit stockholders' access to books and records to investigate possible corporate wrongdoing.

Below, we summarize the amendments relating to conflicted transactions, make certain observations and note open issues.[2]

Summary of the Amendments

Conflicted Transaction Safe Harbors

For all conflicted transactions and other conflicted acts — other than going-private transactions — there will be no equitable relief and no damages awarded if the transaction or act was (1) approved by a special committee of independent directors, (2) approved by the disinterested stockholders, or (3) entirely fair.

By contrast, under Delaware common law — as existing prior to the amendments — for judicial deference to such transactions under business judgment review, the Delaware Supreme Court's 2014 decision in Kahn v. M&F Worldwide Corp. requires that the approvals under both the first two prongs above are obtained, or the third is satisfied. For going-private transactions, there will be no equitable relief and no damages awarded if the approvals under both first and second prongs are obtained, or the third is satisfied.

In all cases, for compliance with a safe harbor, all members of the board or the special committee must have been informed of, or otherwise have known about, all of the material facts about the transaction or act, including any interested director's or controller's relationship or interest, such as "any involvement in initiation, negotiation, or approval" of the transaction or act, per the amendments.

Easier to Obtain Special Committee Approval Than Under MFW

As is required for MFW compliance, for compliance with the new special committee safe harbor, the committee must be composed entirely of independent directors; in addition, the committee must have at least two members.

The process for obtaining the approval will be easier than under MFW, however, as the approval condition can be imposed at any time, whereas MFW requires that it be imposed ab initio. And the committee need not be authorized to hire its own advisers.

Also, the committee must act in good faith and without gross negligence, whereas MFW requires that it act effectively on behalf of the minority stockholders. Further, the approval must be by majority vote of the then-serving members, whereas MFW requires a unanimous vote.

Easier to Obtain Disinterested Stockholder Approval Than Under MFW

The stockholder approval condition can be imposed any time before the matter is submitted for the stockholder vote, whereas MFW requires it be imposed ab initio. Moreover, the approval must be by majority vote of the shares cast, whereas MFW requires a majority of the shares outstanding. Last, the vote must be informed and uncoerced, whereas MFW requires that it be fully informed and uncoerced.

Fewer Circumstances Under Which Director Independence May Be Successfully Challenged

A director will be deemed interested in a transaction or act if the director is a party thereto, has a material interest therein or has a material relationship with a party that has a material interest therein.

Importantly, in addition, a director will be presumed independent if the board determined that the director met the requirements under applicable stock exchange rules and guidance for independence from the corporation and, if applicable, independence from any controller, treating the controller as the corporation under the stock exchange rules. The presumption can be rebutted only with "substantial and particularized facts," according to the amendments[3]

Fewer Circumstances Under Which Minority Stockholders May Be Deemed Controllers

A less-than-majority stockholder will not be deemed to be a controller unless the stockholder either (1) has a contractual or other right to elect a majority of the board, or (2) has one-third of the outstanding voting power of the corporation to elect directors and the functional equivalent of a majority stockholder's power to exercise managerial control over the corporation.

Accordingly, a stockholder with shares having less than 33% of the outstanding voting power, unless it otherwise has a right to elect a majority of the board, will not be deemed a controller even if the stockholder actually controls the corporation or the transaction or act at issue.

In addition, the amendments provide for automatic exculpation of controlling stockholders for duty of care violations.

Our Observations

Delaware courts, potentially, may interpret the amendments narrowly, limiting their impact.

It remains to be seen how the amendments will be interpreted by the courts. We expect uncertainty for some time as the courts interpret the amendments and corporate practice evolves in response.

Notably, last year, the Delaware General Assembly **enacted** so-called market practice amendments in response to the Delaware Court of Chancery's Feb. 23, 2024, **decision** in West Palm Beach Firefighters Pension Fund v. Moelis & Co. Those amendments were intended broadly to permit the granting of governance rights in stockholder agreements notwithstanding Section 141(a) of the DGCL.

The Court of Chancery then indicated, in Wagner v. BRP Group, **issued** May 28, 2024, and Seavitt v. N-Able Inc., **issued** on July 25, 2024, that it may interpret those amendments narrowly, still invalidating many governance rights granted in stockholder agreements, albeit on grounds other than Section 141(a) of the DGCL.

The court may take a similarly narrow approach in interpreting the new amendments.

We note also that the interaction of statutory law with the common law is not uncomplicated, and the court may seek to apply existing common law where it arguably does not directly contravene the amendments. In addition, a lawsuit, Plumbers & Fitters Local 295 Pension Fund v. Dropbox Inc., was **filed** this month in the Court of Chancery challenging the constitutionality of the amendments.[4]

Litigation challenging conflicted transactions will continue.

We do not expect that the amendments necessarily will significantly reduce the volume of litigation challenging conflicted transactions, although they are likely to reduce the likelihood of very large settlements or damages awards in such litigation.

Myriad litigable issues will remain, including, for example, whether a director serving on a special committee had a material relationship with a person having a material interest in the transaction at issue; whether all potential and actual conflicts were known to the board or special committee; whether the special committee acted in good faith; whether a stockholder with a stake between 33% and a majority had board and managerial control; and whether a disinterested stockholder vote was sufficiently informed and uncoerced.[5]

The amendments will have an effect on the structuring of boards, conflicted transactions and equity investments.

We expect that, except in unusual circumstances, it is now likely that:

- Most boards will be structured to include at least two independent directors, meeting the new, easier-to-satisfy definition of "independence," so that the company can take advantage of the safe harbor for conflicted transactions based on special committee approval.
- Almost every conflicted transaction, other than a going-private, will be conditioned on special committee approval, and few conflicted transactions, other than going-privates, will be conditioned on disinterested stockholder approval, as a stockholder approval condition creates more deal uncertainty than a special committee approval condition.
- Many large stockholders will structure their investments to be below 33% of the voting power, so as not to risk being deemed a controller. Large investments may be structured, or restructured, to provide 33% or less of the power to vote in board elections, while separately granting economic, governance, and/or veto rights that provide additional economic and/or control rights. Also, large stockholders may seek to secure contractual rights to protect against conflicted transactions by the board or other large stockholders.

The definition of "control" represents a significant shift in the law.

A less-than-33% stockholder — unless having contractual or other rights to elect a majority of the board — will be deemed not to be a controller even if the stockholder has actual day-to-day, de facto control over the company or the transaction at issue.[6]

Also, a more-than-33% but less-than-majority stockholder, unless having contractual or other rights to elect a majority of the board, will be deemed a controller only if the stockholder has and exercises managerial control over the corporation generally — and apparently will not be deemed a controller if he or she has and exercises control just over the transaction at issue.

The presumption of "independence" represents a significant shift in the law.

In light of the presumption of independence, where a board has determined that a director is independent, even a director having a direct interest in the transaction would in the first instance be presumed to be independent, even if the board making that determination was itself nonindependent with respect to the transaction. Then, the presumption could be rebutted only with "substantial and particularized facts," which will be more difficult given the higher standards under the amendments for obtaining access to corporate books and records to investigate whether such facts exist.

Reliance on the stock exchange rules and guidance, which set forth specific criteria for independence — such as the director and none of the director's immediate family members having been employed by the company in the last three years — should provide for greater objectivity in determining director independence, and limit reliance on vague and subjective factors such as a director's sense of how much they owe or are beholden to, or expressions of admiration and affection for, a controller, other director or officer.

The safe harbors would reverse the court's recent decision against Elon Musk.

The safe harbors preclude equitable relief or damage awards for conflicted transactions that have been approved or ratified by the disinterested stockholders.

They thus effectively reverse the Court of Chancery's Dec. 2, 2024, **ruling** in Tornetta v. Musk II, where the court stressed that it would be unworkable to permit stockholder ratification of an act that the court had already invalidated in a final decision on the basis that it involved breaches of fiduciary duties.[7]

The amendments don't apply to nonconflicted transactions.

Thus, in the context of a nonconflicted transaction where the disclosure was flawed such that Corwin business judgment review, derived from the Delaware Supreme Court's 2015 decision in Corwin v. KKR Financial Holdings LLC, was inapplicable, the transaction would be subject to Revlon heightened scrutiny, from the Supreme Court's 1986 ruling in Revlon Inc. v. MacAndrews & Forbes Holdings Inc. — while a conflicted-controller transaction approved by a special committee that acted in good faith and without gross negligence would be subject to business judgment review.

We note, however, that, arguably, given the erosion of the Revlon doctrine over recent years, it may require of a board little more than the good faith and lack of gross negligence that is required of a special committee under the amendments.

Certain Open Issues

Application of New Definitions of "Control" and "Independence"

The amendments state that the new definitions of "control" and "independence" apply "for purposes of ... [S]section [144]." That language seems to indicate that the definitions do not apply for all purposes under Delaware law.

It is thus unclear whether the definitions would apply only for the purpose of determining whether a stockholder is entitled to utilize, and the transaction or act at issue has complied with, the safe harbors under Section 144 — and would not apply more generally under Delaware law to determine whether a stockholder is a controller or a director is independent.

It would appear to be illogical to conclude that the definitions apply only with respect to the safe harbors and not to the stockholder's transaction more generally.

Functional Equivalent Language in the Definition of "Control"

The amendments provide that a more-than-33%-but-less-than-majority stockholder will be deemed a controller if it has the "functional equivalent" of a majority stockholder's control over the board and management.

Notably, the Court of Chancery in several decisions in recent years has indicated a view that, as a mathematical matter, a stockholding of around 20% or more indicates the possibility of control when there are other indications of control, even if none of these factors alone would be sufficient to establish control.[8]

Query, then, whether the court may, under this theory, interpret such a stockholder as having the functional equivalent of majority-stockholder power — thereby essentially sidestepping the new 33%

bright-line standard.

Use of Stock Exchange Rules to Determine Director Independence

We note that the New York Stock Exchange rules provide that a director who meets all of the specified criteria for independence in the rules will be presumed to be independent, but the NYSE's guidance states that boards still should "broadly consider all relevant facts and circumstances," and on that basis may still decide in its discretion that the director is not independent.

It is not entirely clear how the presumption in the exchange rules interacts with the presumption in the amendments. Further, it is unclear whether the proscription on considering all relevant facts and circumstances beyond the criteria specified opens the door for the courts to engage in their traditional holistic analyses, including vague and subjective factors — although it appears that was not the intention.

Director Independence in the Context of Board-Conflicted Transactions

The amendments provide that, in the case of a conflicted-board transaction or act — i.e., where a majority of the board is not independent with respect to the transaction or act — there is a safe harbor if the transaction is approved by a special committee of directors that the board has determined were independent.

It is unclear how this provision interacts with the separate provision creating a presumption of independence for a director whom the board has determined was independent.

In the case of a board-conflicted transaction, does the board simply make the determination as to independence of the directors, or is that determination subject to the presumption that may be rebutted?

Inclusion of Rule 13e-3 Transactions in the Definition of "Going-Private Transactions"

The amendments define "going-private transactions" to include any "[Rule] 13e-3 transaction," as defined in Rule 13e-3, which states that certain types of transactions that come within the general definition of a "Rule 13e-3 transaction" are exempted from being treated as Rule 13e-3 transactions.

It is unclear whether these exemptions will or will not apply for purposes of determining whether a Rule 13e-3 transaction will be considered a going-private transaction under the amendments.

Aiding and Abetting Liability

The amendments state that they do not affect the ability to bring aiding and abetting claims. While compliance with a safe harbor in the amendments precludes equity relief or damages, it does not expressly preclude a judicial finding that breaches of fiduciary duties occurred.

Thus, although a board would have no liability for breaches of fiduciary duty if the transaction complied with a safe harbor, arguably a person who aided and abetted such breaches could have aiding-and-abetting liability. It is an open question, though, to what extent a court may view compliance with a safe harbor as indicating, necessarily or in any given case, that fiduciary duties were not breached.

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[1] The amendments arose amid a now national debate about whether Delaware is still the best state in which to incorporate — particularly as Texas and Nevada have been adopting new corporate law statutes, developing new business courts, and aggressively recruiting companies to incorporate there.

[2] The amendments apply to all transactions and other actions, but do not apply to or affect any action or court proceeding that was completed or pending on or before Feb. 17, 2025.

[3] The Texas Senate, to provide more certainty to dealmakers, is considering a bill that would permit directors, officers and controllers to obtain, in advance of a transaction, judicial advisory opinions as to whether they would be deemed to be independent with respect to a transaction for purposes of the Texas statute.

[4] The suit, Plumbers & Fitters Local 295 Pension Fund v. Dropbox, has been assigned to Chancellor McCormick. The complaint was filed under seal.

[5] The amendments also restrict stockholder access to corporate books and records, under DGCL Section 220, to investigate suspected corporate wrongdoing. First, the amendments require that the stockholder articulate "with particularity" the suspected wrongdoing, rather than requiring, as is the case under existing common law, only that the stockholder have "some credible basis" for the suspicion. Second, the amendments permit access only to those books and records listed in the amendments — which include board and committee minutes and D&O conflict questionnaires, but not directors' and officers' emails, unless a compelling need for additional materials is established. Litigable issues in this area may include whether a stockholder articulated suspected wrongdoing with sufficient particularity; and whether, say, board or committee minutes may be so cursory, or so inconsistent with other books and records, that access to additional materials such as emails would be permitted.

[6] Notably, the new bright-line 33% standard would have led to a different judicial outcome in many of the courts' high-profile cases in recent years. For example, in Tornetta v. Musk I (Jan. 2024), the Court of Chancery found that Elon Musk — a 21.9% stockholder of Tesla at the time his $56 billion compensation package was approved by Tesla's board—had completely controlled the process for determining his compensation. Under the Amendments, however, Musk would nonetheless have been deemed not to be a controller — as he owned less than 33% of Tesla's outstanding shares.

In other cases, where the court has found that a minority stockholder was not a controller, if the Amendments had been effective, the decision more likely would have been reachable at the early pleading stage rather than after discovery and trial. For example, in In re: Oracle (2023, aff'd. Del. Sup. Ct. 2025), after trial, the Court of Chancery found that Larry Ellison — a 28.4% stockholder of Oracle at the time the Oracle board approved the company's purchase of NetSuite, which was owned 40% by Ellison — was not a controller because he had removed himself from the board's process and a special committee had acted effectively. Under the amendments, however, Ellison would have been deemed not to be a controller even if he had not removed himself from the process and he had completely controlled the process — as he owned less than 33% of Oracle's outstanding shares. Therefore, dismissal at the pleading stage would have been likely.

[7] Although the court found in Tornetta II that the stockholder ratification in that case was ineffective because the vote was not fully informed, the court made it clear that the ratification would have been ineffective even if the vote had been fully informed because the ratification occurred after the court issued its Tornetta I post-trial decision finding breaches of fiduciary duties.

[8] The first of these decisions was Voigt v. Metcalf (2020), and the most recent was Anchorage Pol. & Fire v. Adolf (Apr. 3, 2025). In Tornetta I, the court explained that it is reasonable for the court to infer control under these circumstances because, as a mathematical matter, a holding around 20% or more provides a stockholder with "a sizable leg-up for stockholder votes" given that not all stockholders vote, as well as a "powerful rhetorical card to play in the boardroom."

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Baby Food Maker Keeps Win In Suit Saying It Concealed Toxins

By **Rae Ann Varona**

Law360 (April 25, 2025, 11:47 PM EDT) -- The Ninth Circuit on Friday affirmed a summary judgment win for California-based Plum Organics, saying in an unpublished opinion that parents who accused the baby food maker of failing to disclose potential toxins in its baby food products didn't sufficiently prove that Plum's products pose an unreasonable safety hazard.

A three-judge panel at the Ninth Circuit said that the parents had to describe more than merely conjectural or hypothetical harms.

The panel said that while heavy metals and perchlorate can be found in a wide range of crops and food products, given their presence in soil, air and water, the parents "fail to allege that Plum's products contain any specific level of these substances."

"Moreover, plaintiffs concede that they are not alleging that Plum's products are unsafe nor that their children were harmed by Plum's products," the panel wrote. "On this record, there is insufficient evidence to establish that Plum's products pose an unreasonable safety hazard."

Parents had accused Plum in the consolidated suit of failing to disclose on its product labels that the products may contain perchlorate, a chemical that can affect thyroid function, or heavy metals like arsenic, cadmium, lead and mercury.

Their suit was among several filed against baby food manufacturers **following a February 2021 report** by a consumer policy subcommittee of the U.S. House of Representatives. The **report** found certain baby food products had significant levels of toxic metals, including arsenic.

The parents alleged in their latest consolidated putative class action complaint filed in September 2021 that testing, for instance, had revealed "alarming levels" of arsenic and significant levels of cadmium on two Plum "Super Puffs" products.

Other Plum products that the parents alleged were tested and found to contain undisclosed heavy metals or perchlorate included those from the company's "Stage 1" and "Stage 2" pouch snacks.

U.S. District Judge Yvonne Gonzalez Rogers awarded summary judgment to Plum in late March 2024, having appeared **open** to doing so during a hearing earlier in the month.

Judge Gonzalez Rogers ruled that the parents failed to establish that Plum's products are "unreasonably unsafe."

She also ruled that the parents failed to satisfy the so-called "LiMandri factors" from a 1997 California state court of appeals ruling in a case called LiMandri v. Judkins.

The Ninth Circuit, in its **unpublished opinion** Friday, ruled the same.

The parents had in particular focused on two of the four LiMandri factors that find a duty to disclose if a defendant had "exclusive knowledge" of material facts not known or reasonably accessible to a plaintiff, or when a defendant "actively conceals" a material fact from the plaintiff.

The panel ruled Friday that the "exclusive knowledge" factor wasn't met since "multiple publicly accessible sources" publicized test results showing detectable levels of heavy metals and perchlorate in Plum's products.

The panel said that Plum had also, in response to a report about heavy metals in its products, acknowledged on its website that its products may contain trace heavy metals.

As to the parents' contention that Plum actively concealed information on the presence of heavy metals in its baby foods, the Ninth Circuit panel again said that "Plum acknowledged on its own website that its products contain detectable levels of heavy metals."

The parents, on appeal, had also asked the Ninth Circuit to have the California Supreme Court **clarify** what legal standard applies to claims of deception by omission under California's Consumer Legal Remedies Act and Unfair Competition Law.

The Ninth Circuit explained that the California Supreme Court may answer a question the Ninth Circuit certifies "only if the issue is outcome determinative and there is no controlling precedent."

The panel said that the California Supreme Court had also in recent years "repeatedly declined" requests to lay out a definitive standard for omission-based claims under the state laws.

"This weighs heavily against certification," the panel wrote.

The panel of judges said that in this case, Plum is entitled to summary judgment "under any plausible legal standard advanced by the parties."

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

U.S. Circuit Judges Andrew D. Hurwitz, Lucy H. Koh and Anthony D. Johnstone sat on the panel for the Ninth Circuit.

The consumers are represented by Rebecca A. Peterson of George Feldman McDonald PLLC.

Plum PBC is represented by Charles Sipos of Perkins Coie LLP.

The case is In re Plum Baby Food Litigation, case number 24-2766, in the U.S. Court of Appeals for the Ninth Circuit.

--Additional reporting by Dorothy Atkins. Editing by Michael Watanabe.

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SPAC Deals Are Buzzing Again Despite Tariff Turmoil

By **Tom Zanki**

Law360 (April 25, 2025, 8:26 PM EDT) -- Amid heavy volatility that has largely frozen traditional initial public offerings, deal teams are launching more special purpose acquisition companies, an alternative market to typical IPOs that so far has shown few ill effects from tariff-related uncertainty.

At least 12 SPACs have filed for initial offerings since April 2, according to securities filings, while five companies have priced IPOs exceeding $1.1 billion over that time.

Plus, subsequent mergers aimed at bringing new companies to public markets are moving along. Three business combinations that had culminated from prior SPAC IPOs were unveiled during the week of April 21, spanning industries from cryptocurrency to nuclear energy and oil refinery.

SPACs on the Rise in 2nd Quarter

Eight special-purpose acquisition companies have gone public in April, seeking acquisition targets after raising $1.78 billion combined in IPO proceeds. New SPACs have been forming at a steady clip despite broader stock-market volatility. The recent activity builds on a busy first quarter, when 19 SPACs netted $3.1 billion.

IPO Date	SPAC	Target Industry	Proceeds	Company Counsel	Underwriters' Counsel
April 1	Siddhi Acquisition Corp.	General	$240M	Loeb & Loeb; Appleby (Cayman)	Skadden
April 2	Sizzle Acquisition Corp. II	Restaurants, Hospitality	$200M	Ellenoff Grossman; Ogier (Cayman)	Kirkland
April 2	Soulpower Acquisition Corp.	Insurance, Financial Services	$220M	Sichenzia Ross; Carey Olsen	Ellenoff Grossman
April 9	Titan Acquisition Corp.	Fintech	$240M	Winston & Strawn; Appleby (Cayman)	Ellenoff Grossman
April 23	Texas Ventures Acquisition III Corp	Industrial Technology	$200M	Ellenoff Grossman; Ogier (Cayman)	Loeb & Loeb

The dealmaking comes as traditional IPOs have **largely paused** since April 2, the day President Donald Trump's **sweeping tariff proposal** sent stocks nosediving for several days. While equity markets have partly recovered since then as Trump has dialed back tariff threats, day-to-day uncertainty makes it dicey to price ordinary IPOs.

"With the traditional IPO market gummed up as it is, a lot of companies are definitely focusing on alternatives and seeing if there is a viable path to go public another way," White & Case LLP partner Joel Rubinstein said. "A SPAC obviously is one of those."

SPACs, also known as blank check companies, are publicly traded shell vehicles that conduct IPOs with an eye toward merging with an operating business. If regulators and shareholders approve the deal, the target company inherits the original stock listing and related proceeds through a so-called de-SPAC merger, which functions as an alternative to a traditional IPO.

Despite their **spotty performance histories**, SPACs have mounted a **modest comeback** in recent months and are showing little sign of slowing despite the latest market turmoil.

Certain elements of SPACs are less sensitive to daily price swings. Blank check offerings are typically sold at a fixed $10 per-unit price to hedge funds, who can later fully redeem their shares plus accrued interest if they don't want to remain invested in the merger target, thus posing little upfront risk.

Four new blank check IPOs the week of April 21 raised $881 million combined, mostly led by management teams that have launched multiple SPAC vehicles in their careers. The recent momentum builds on a first quarter that generated 19 SPACs, raising $3.1 billion.

"The IPO is the absolute easiest piece of this," Goodwin Procter LLP partner Jocelyn Arel said. "The next piece, in terms of identifying the right kind of company at the right stage, negotiating the right valuation and bringing in investors for the de-SPAC is much more challenging."

The second and final stage of a SPAC deal — the eventual merger with an operating business — is more sensitive to market valuations than the original IPO. Yet so far at least, companies are proceeding with merger announcements undeterred by volatility.

On Wednesday, crypto venture Twenty One Capital Inc. announced a **$3.6 billion go-public merger** with Cantor Equity Partners, a SPAC formed by investment bank Cantor Fitzgerald LP. That followed a pair of SPAC **mergers unveiled** the week of April 21 involving nuclear startup Terra Innovatum Srl and Brazilian oil miner PX Energy Inc.

Lawyers say the target company's ability to negotiate their price with the SPAC before the deal closes can help in a volatile market. With an ordinary IPO, parties don't typically finalize the price until the night before listing, making the process time sensitive.

"These de-SPACs are taking months and months to get done," Mayer Brown LLP partner Brian Hirshberg said. "You're setting that pricing four, five, or six months ago even if you are just closing now."

Whether the SPAC recovery is sustainable will depend on post-merger performances. The history is not promising. Jay Ritter, a University of Florida professor who studies IPOs, noted that many companies that went public through SPAC deals this decade traded at 60% below their initial price or worse 12 months after their merger. Many of those companies **went bankrupt**, prompting regulators to tighten scrutiny over SPACs.

And SPACs negotiating mergers in the current market still face headwinds, including rates of investor redemptions exceeding 90% on average, according to advisory firm ICR Inc. Redemptions drain funds in a SPAC's trust, leaving less capital for the target.

Companies can offset funding shortfalls through private placements known as PIPEs, or private investment in public equity, but investors in that market are selective. Only one SPAC merger closed in the first quarter that contained a PIPE, amounting to $15 million.

"Given the abysmal track record of de-SPACs, I don't expect many quality operating companies to pursue this way of going public, rather than to use a traditional IPO or a direct listing," Ritter said. "With high redemption ratios, the SPAC sponsor winds up holding too large a fraction of the shares in the merged company, while delivering little or no cash to the operating company."

Yet some recent SPAC deals promise sizable capital for targets. Rubinstein noted that cancer-focused startup BridgeBio Oncology Therapeutics' merger agreement with Helix Acquisition Corp. **announced in February** contains a $260 million PIPE commitment, led by institutional investors and life-sciences focused funds. The deal has yet to close.

Lawyers also noted that merger negotiations are taking a more disciplined approach compared with the SPAC boom earlier this decade that ended poorly for many targets.

Target companies have dialed down the use of financial projections following the passage of tighter regulations governing SPACs. Most blank check teams also consist of market veterans who have completed such mergers before, unlike a few years ago when athletes and celebrities and other first-time investors flocked to a frothy market.

If the traditional IPO market stalls longer, more companies in need of liquidity could take a hard look at SPACs, lawyers say. Goodwin Procter's Arel said a similar dynamic played out during the onset of the coronavirus pandemic, which initially stalled traditional capital markets and prompted companies to pursue alternatives.

"Companies want access to the public markets," Arel said. "PIPE investors have been sitting on the sidelines for a very, very long time. There's a lot of capital available to be put to work."

--Editing by Emily Kokoll and Michael Watanabe.

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Sutter Health To Pay $228M In Years-Old Antitrust Suit

By **Lauren Berg**

Law360 (April 25, 2025, 10:16 PM EDT) -- A class of millions of health insurance premium payors asked a California federal judge Friday to greenlight an eleventh-hour $228.5 million settlement resolving their long-running claims that hospital chain Sutter Health drives up costs by pushing all-or-nothing network deals on insurers.

Sutter Health, accused of driving up costs by pushing all-or-nothing network deals on insurers, said in a joint statement that a $228.5 million deal resolves "strongly disputed claims," and that the "prospect of additional litigation is not in anyone's interest." (AP Photo/Rich Pedroncelli, File)

The roughly 3 million class members, who **reached the deal** with Sutter the day before the nearly 13-year-old case was to go to trial, told the court in a **motion** for preliminary approval that the proposed **settlement** represents substantial relief for class members in the face of the risk and expense of continuing the litigation.

"Given the large monetary recovery being offered by Sutter to settle and the risks of continued litigation, there can be no doubt that the proposed settlement is fair, adequate and reasonable to all class members," the motion said. "Providing Sutter with a release of claims and dismissal of this action with prejudice in exchange for that monetary recovery makes eminent sense."

The parties announced the settlement in principle on March 2, just one day before the **kickoff of the trial** made possible by the Ninth Circuit's **conclusion last year** that the original 2022 jury trial improperly excluded potentially game-changing evidence from the case that alleged more than $400 million in damages.

Out of the $228 million settlement — which is more than 55% of the class's alleged damages — $10 million will be used to cover notice and administration of the settlement, $28 million will be set aside to pay class counsel's expenses, and class counsel intends to seek $75.2 million, or 33% of the settlement fund, in attorney fees, according to Friday's motion.

After deductions, that leaves $115 million available for distribution to class members, the motion said.

To determine a claimant's payment, the total premiums paid by that person during the class period will be divided by the total premiums paid by all claimants who submit claims and then multiplied by the amount in the net settlement fund, the plaintiffs said.

In a joint statement Friday, Sutter and plaintiffs Djeneba Sidibe, Jerry Jankowski, Susan Hansen, David Herman, Optimum Graphics and Johnson Pool & Spa said the deal resolves "strongly disputed claims" that involve alleged conduct dating to the 1990s.

"The parties agree this settlement is what's best for the parties, for patients and for the class, and the prospect of additional litigation is not in anyone's interest," the two sides said, adding that the settlement is not an admission of liability and still must be approved by the court.

The parties' second trial was teed up after the Ninth Circuit's **conclusion last year** that the California district court abused its discretion when it excluded all evidence of Sutter's conduct before 2006, or five years before the purchasers' contracts were negotiated. That evidence would have refuted many of Sutter's arguments during the 2022 jury trial, the court said.

On top of that, the district court should have instructed the jury to consider Sutter's anticompetitive "purpose," the court said. Instead, it adopted Sutter's proposed instructions, which omitted the word "purpose," and told the jury the purchasers had to prove that the "effect of Sutter's conduct was to restrain competition."

The class of 3 million premium payors alleged Sutter used its market power to illegally force insurers to agree to contract terms blocking plans that steered patients to lower-cost hospitals. Sutter also forced insurers to contract for services at Sutter's more expensive hospitals to gain access to the hospitals members needed, the purchasers claimed.

The class is composed of those who purchased health insurance policies from Blue Shield, Anthem Blue Cross, Aetna, Health Net or United Healthcare, which accounts for the vast majority of all fully insured patients in California, according to an expert for the plaintiffs.

A nine-member jury **sided with Sutter** in March 2022 following a four-week trial. However, the Ninth Circuit concluded that verdict was at least partially made possible by the exclusion of key evidence from the time when Sutter negotiated its contracts with the health plans.

That evidence included admissions by Sutter executives that Sutter switched from the individual negotiating to the systemwide contracting system; Sutter's imposition of the allegedly anticompetitive contract terms during that transition; and the health plans' objections to those terms and the switch.

Sutter has faced similar allegations in the past, and in 2019, it shelled out $575 million to resolve claims from California's attorney general, the United Food and Commercial Workers, Employers Benefit Trust and others.

The purchasers are represented by Jean Kim, James J. Kovacs and J. Wyatt Fore of Constantine Cannon LLP, Azra Z. Mehdi of The Mehdi Firm PC, Matthew L. Cantor of Shinder Cantor Lerner LLP, David C. Brownstein and David M. Goldstein of Farmer Brownstein Jaeger Goldstein Klein & Siegel LLP, Allan Steyer and D. Scott Macrae of Steyer Lowenthal Boodrookas Alvarez & Smith LLP and Jill Manning of Pearson Warshaw LLP.

Sutter is represented by Craig Stewart, David C. Kiernan, Matthew J. Silveira and Jeffrey A. LeVee of Jones Day and Robert H. Bunzel, Oliver Q. Dunlap and Patrick M. Ryan of Bartko LLP.

The case is Djeneba Sidibe et al. v. Sutter Health, case number 3:12-cv-04854, in the U.S. District Court for the Northern District of California.

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OCC Slashes Fines In Deals With Ex-Wells Fargo Auditors

By **Jon Hill**

Law360 (April 25, 2025, 10:52 PM EDT) -- The Office of the Comptroller of the Currency has settled with two former Wells Fargo executives who were fighting seven-figure penalty orders for their alleged roles in the bank's fake accounts scandal, agreeing to accept greatly reduced fines totaling $150,000.

The OCC announced consent orders Friday resolving its contested enforcement actions against David Julian and Paul McLinko, who formerly were chief auditor and executive audit director, respectively, at Wells Fargo Bank NA. Their cases had been on appeal in federal court since January.

Under the orders, the OCC has assessed a fine of $100,000 against Julian and a fine of $50,000 against McLinko, amounts that are a fraction of the $7 million and $1.5 million penalties the agency had sought from them earlier this year.

Friday's orders do not include any admissions of wrongdoing. Both men have vigorously defended against the OCC's claims, which accused them of lapses that contributed to what became a costly scandal for Wells Fargo involving so-called fake accounts.

"I am relieved, after six years of fighting these charges, to have this matter behind me," Julian said in a Friday statement to Law360. "From the onset of this matter, I have continuously maintained that I executed my responsibilities as chief auditor appropriately and consistent with the professional standards outlined by the Institute of Internal Auditors."

Timothy Crudo of Coblentz Patch Duffy & Bass LLP, an attorney for McLinko, similarly welcomed the end of the case.

"We have said from the beginning that Mr. McLinko did nothing wrong and that he would be vindicated once he had the chance to make his case before neutral judges," Crudo said Friday in a statement to Law360. "The OCC at last was faced with making its case before a federal court, and it decided to settle."

"At a time when he should have been enjoying retirement, Mr. McLinko has spent the last five years and more fighting the government through this exhausting process," Crudo added. "He is looking forward to focusing full-time on his family and his community."

In a statement to Law360, an OCC spokesperson said: "The OCC's enforcement actions against Wells Fargo's former chief auditor and executive audit director were both warranted and fully supported. This is consistent with the OCC's actions against all the other former senior Wells Fargo executives relating to their roles in the bank's sales practices misconduct."

The consent orders come after the OCC in January **found** Julian and McLinko liable for "unsafe or unsound" banking practices, capping off administrative proceedings that had begun with charges **filed in 2020**.

The two are among an array of former Wells Fargo executives to face OCC enforcement actions after the accounts scandal blew up in 2016, when it emerged that bank employees had been opening numerous unauthorized accounts to hit aggressive sales goals.

Most of those enforcement actions have ended in consent orders, collecting fines the OCC said Friday have totaled more than $43 million to date.

Still pending is a case against Claudia Russ Anderson, a former Wells Fargo senior risk officer. The OCC found her liable along with Julian and McLinko earlier this year and ordered her to pay a $10 million fine, which she is challenging at the Eighth Circuit with briefing set to begin next month.

Counsel for Russ Anderson declined to comment on Friday.

In its January decision, the OCC faulted Julian and McLinko for alleged audit failures from 2013 to 2016 that the agency said had allowed fake account openings and other problematic sales practices to go overlooked. They were ordered to pay $8.5 million total in fines.

Both men immediately appealed to the D.C. Circuit, where briefing was due to get underway this past week. But the OCC blinked first and came "begging" for a settlement, according to Julian's attorney Matthew T. Martens of WilmerHale.

"From day one, the evidence was crystal clear that David Julian was innocent of everything that he was accused of," Martens told Law360. "The only way the agency was able to drag this matter on this long was by conducting an administrative proceeding. The moment they faced a day of reckoning in an actual federal court, they caved."

In a Friday statement, Julian said that while he would have preferred to keep up the fight to clear his name and reputation, the government had already shown its "willingness to waste millions in taxpayer funds" to distract from its own regulatory failures at bank oversight.

That fact that the OCC agreed to settle for less than 1.5% of its previous $7 million penalty "fully supports the strength of my case," he said. "I also believe that their willingness to settle at such a minimal amount is so that the facts of this case are not exposed in a federal court system (which was about to occur) outside of their rigged, biased judicial process."

The OCC disputes these characterizations.

The OCC is one of multiple federal financial regulators that adjudicate enforcement claims internally before administrative law judges, but these in-house proceedings have come under increasing fire over concerns about their fairness and constitutionality.

Last year, for example, the U.S. Supreme Court **limited the use** of in-house proceedings for securities enforcement, a decision that defendants in lower courts are now seeking to extend to banking enforcement by the OCC and **other agencies**.

Defendants have also accused the OCC of trying to **avoid scrutiny** of its in-house proceedings by, among other things, strategically dismissing cases at the last minute to thwart potential judicial review.

Russ Anderson, Julian and McLinko were among five ex-Wells Fargo leaders the OCC named in a notice of administrative charges issued in January 2020. The agency originally sought a total of $7.5 million in fines from the trio, later upping it to $18.5 million, and took their claims to a **rare administrative trial** in 2021.

The other two respondents were James Strother, former general counsel, and Carrie Tolstedt, former head of Wells Fargo's retail banking division. Strother settled with the OCC for **$3.5 million** in 2021, while Tolstedt paid a $17 million civil penalty.

Tolstedt is the only former Wells Fargo executive to be criminally prosecuted in connection with the accounts scandal. In 2023, she agreed to **plead guilty** to an exam obstruction charge and was given a noncustodial, **probationary sentence**.

Wells Fargo **has paid billions** of dollars in fines, settlements and other costs tied to the scandal, in which the bank has acknowledged that heavy sales pressure from 2002 to 2016 led employees to create millions of sham accounts and engage in other misconduct.

The scandal led to a string of other negative headlines and regulatory headaches that the California-based banking giant has spent years — and huge sums — putting behind it. Although it remains under growth restrictions from the Federal Reserve, the bank has closed nearly a dozen consent orders since 2019.

A Wells Fargo spokesperson declined to comment on Friday's OCC settlements.

Julian is represented by Matthew T. Martens, Derek A. Woodman and Mark C. Fleming of WilmerHale.

McLinko is represented by Timothy P. Crudo, Rees F. Morgan, Mark L. Hejinian and Daniel M. Bruggebrew of Coblentz Patch Duffy & Bass LLP, and Matthew S. Hellman and Gabriel K. Gillett of Jenner & Block LLP.

The OCC is represented in-house by Jason Fernandes, Patricia S. Grady, Peter C. Koch, Amber Melton, Daniel Prieve, Derick Fong and Kristin McManus.

The cases are In the Matter of David Julian, case number AA-EC-2019-71, and In the Matter of Paul McLinko, case number AA-EC-2019-72, both before the Office of the Comptroller of the Currency.

--Editing by Lakshna Mehta.

Update: This story has been updated to include comment from the OCC.

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CFPB Abandons $2.25M Student Loan Trust Deal, Drops Case

By **Sarah Jarvis**

Law360 (April 25, 2025, 10:26 PM EDT) -- The Consumer Financial Protection Bureau on Friday voluntarily dismissed its long-running debt collection practices suit against the National Collegiate Student Loan Trusts, abandoning a $2.25 million proposed settlement that had been held up by objectors.

The **joint stipulation** did not explain why the parties were dismissing the case, but indicated it was done so with prejudice and with each party bearing its own costs. The case is the latest CFPB action brought during President Donald Trump's first term and dropped during his second term.

Counsel for the National Collegiate Student Loan Trust entities and a representative for the CFPB didn't immediately respond to a request for comment Friday.

The CFPB had **filed suit** in 2017, claiming the trusts, via third-party contractors working for them, harmed borrowers of private student loans with deceptive and unfair debt collection litigation tactics. Those purported tactics included filing suits with false documentation and suing borrowers over loans that were too old to legally collect on in court.

The case was initially dismissed by another district judge in the aftermath of the U.S. Supreme Court decision in Seila Law v. CFPB, which struck down for-cause removal protection given to the CFPB's director. This protection had been an unconstitutional restraint on presidential power, the justices said.

But the defendants — a collection of 15 pre-2008 trusts created to securitize roughly $12 billion in private student loans — couldn't shake off a slightly amended version of the suit the CFPB subsequently filed.

In March 2024, the Third Circuit **greenlit the suit**, rejecting the trusts' claims that they are just passive financing entities outside the reach of the CFPB's enforcement authority. The parties reached an agreement in January under which the trusts would have paid $2.25 million to resolve the CFPB's claims, along with compliance monitoring obligations.

Under that deal, National Collegiate Master Student Loan Trust also would have agreed to not file lawsuits to collect on defaulted private student loans that lack the necessary documentation to prove trust ownership of the loans or involve any debt that's time-barred. It also would have withdrawn, ended or dismissed all pending collection actions at issue in the case, among other actions.

A group of 14 funds holding more than $900 million in notes issued by the National Collegiate Student Loan Trust entities had filed a conditional objection to the deal in February, arguing it was unclear whether the CFPB had authority to settle the case in light of the Trump administration's **suspension of the bureau's activities** that month.

"Even if the CFPB has authority to agree to the consent judgment, it remains unclear how the CFPB could, if at all, implement and enforce the ongoing compliance and monitoring provisions in the consent judgment," the noteholder group had argued.

Counsel for the noteholder group didn't immediately respond to a request for comment Friday.

But Mike Pierce, a former CFPB official who is now executive director of the Student Borrower Protection Center criticized the dismissal in a Friday statement to Law360, saying the Trump administration had "closed the door on debt relief for former students caught in one of the worst predatory lending schemes ever devised by Wall Street."

"It's a sad day when wealthy investors who profited from students' misfortune will instead be let off the hook," he added.

The CFPB has dropped various enforcement actions since new leadership was installed at the bureau under the Trump administration, including a Thursday motion to **withdraw from a predatory lending lawsuit** it brought jointly with the state of New York against subprime auto lender Credit Acceptance Corp.

The CFPB is represented in-house by Stephen Jacques.

The National Collegiate Student Loan Trust entities are represented by Michael A. Weidinger and Megan Ix Brison of Pinckney Weidinger Urban & Joyce LLC, and Joshua Kipnees, Peter W. Tomlinson and Jonah Wacholder of Patterson Belknap Webb & Tyler LLP.

The noteholder group is represented by Catherine A. Gaul of Ashby & Geddes PA.

The case is CFPB v. National Collegiate Master Student Loan Trust et al., case number 1:17-cv-01323, in the U.S. District Court for the District of Delaware.

--Additional reporting by Gina Kim and Jon Hill. Editing by Kristen Becker.
