

Opioid judge won't leave case; Lawyer's 'dumb statement' said he's rooting for plaintiffs



legalnewsline.com/stories/671089558-opioid-judge-won-t-leave-case-lawyer-s-dumb-statement-said-he-s-rooting-for-plaintiffs

John O'Brien

April 29, 2025

Opioids



Dan Polster | YouTube

CLEVELAND (Legal Newsline) - A lawyer's sales pitch that went too far isn't reason for me to step down, says the federal judge handling lawsuits against drug-makers, pharmacies and others over the opioid crisis.

Dragged into court fights, pharmacy benefit managers discovered a Florida lawyer was making claims plaintiff lawyers had inside access to Ohio federal judge Dan Polster and that he was friendly to their cause.

Polster already penalized that lawyer - Michael Kahn of Melbourne, Fla. - for spreading that story to various Florida cities he hoped to sign as clients. There are thousands of plaintiffs in the opioid multidistrict litigation, and firms battled to sign as many as they could to ensure a share of the riches.

Kahn was used by some of them for his contacts with Florida communities. He has made \$1.7 million for his work, after the penalty.

"(T)he PBMs' subsequent discovery of Mr. Kahn's unsupported misrepresentations, which he retracted under oath, does not combine with anything else the PBMs have long known about to suggest the Court's impartiality might reasonably be questioned, nor to show the Court has a personal bias or prejudice," Polster wrote today.

"The picture the PBMs attempt to draw with their connect-the-distant-dots logic is shapeless."

Polster has presided over the opioid MDL, which has produced tens of billions of dollars in settlements. When claims Walgreens, Walmart and CVS created a "public nuisance" by filling prescriptions made it to trial, two Ohio counties won \$650 million.

But on appeal, the Ohio Supreme Court said in December those public nuisance claims shouldnt have been allowed because they were barred by state product-liability laws.

Judge Polster declared at the beginning of his tenure that he wanted to "do something" about the opioid crisis and wasn't interested in holding trials to test the merits of the claims. He then issued a string of pro-plaintiff rulings that had the effect of forcing settlements.

The key decision he made, without which many of the cases couldn't survive, was that product liability law doesn't apply when the plaintiffs are seeking injunctive relief, or "abatement," even though that involved billions of dollars in cash payments.

Though he says he has no preference for either side, Kahn's remarks to local officials indicate plaintiffs are happy he's on the case. Kahn told the City of Palm Bay that one of the lead plaintiff lawyers - Peter Weinberger of Spangenberg, Shibley & Liber - had "total access to the judge."

He continued to make that claim while pitching his group of lawyers' services to other Florida cities. He went so far as to say Weinberger communicated ex parte (without defendants' counsel being present) with Polster, who he painted as "a tremendous plaintiff-oriented judge" using his "great power and specific intent to try to compel settlement from the defendants."

These comments came to light when Optum and Express Scripts were targeted in May 2024 as deep-pocket defendants whom plaintiffs wanted to add to their cases. The companies made public records requests to make sure city and county plaintiffs actually formally approved suing them.

The minutes of public hearings were produced, leading to the discovery of Kahn's strategy in 2019.

Earlier this year, Polster held a hearing at which Kahn was questioned for more than two hours. He claimed he spoke in a colloquial sense when telling the cities Weinberger regularly spoke ex parte with Polster.

"So it was a dumb statement to make," Kahn testified. "It was an inartful statement, and to borrow Peter's very gracious way of describing it in the transcript, and he graciously calls it 'clumsy.' And it was certainly that."

As for calling Polster "plaintiff-oriented," Kahn pointed to Polster's desire for settlements and his rejection of motions to dismiss while similar cases were stagnant in state courts.

"And so I felt that meant something, but what it didn't mean is to misconvey a situation that you were always going to rule for the plaintiffs or something like that," Kahn said. "I should have used another word."

Ultimately, Polster issued the \$100,000 penalty and rejected Optum and Express Scripts' request to question Weinberger. Optum argued years ago that Polster was trying to "exert pressure toward settlement," which Polster dismissed as "simplistic and insulting."

Opioid defendants have repeatedly complained that Polster has taken a one-sided approach to litigation from his first hearing as judge assigned to the MDL, where he said he wanted to "do something meaningful to abate this crisis and do it in 2018." In 2021, he threatened pharmacy chains they risked bankruptcy if they tried to fight the claims against them.

"I don't want to do this," Judge Polster said at a March 2021 hearing, which was ostensibly about setting bellwether cases for trial around the country. "I don't want to do any of these other trials, but again, the pharmacists aren't giving me a lot of choice."

ORGANIZATIONS IN THIS STORY

U.S. District Court for the Northern District of Ohio

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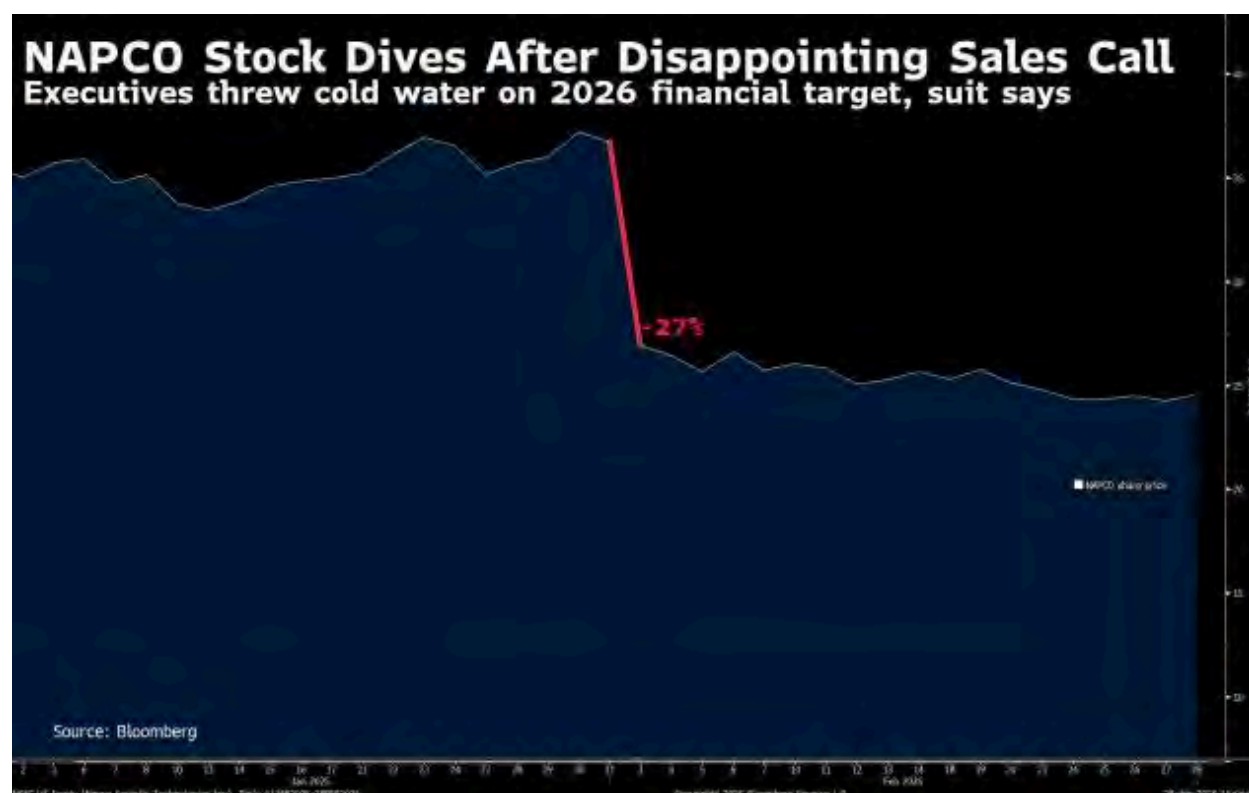
April 28, 2025, 1:10 PM PDT

NAPCO Investor Files Suit Over Fallen Hardware Sales, Stock Drop

- **COURT:** E.D.N.Y.
- **TRACK DOCKET:** No. [2:25-cv-02308](#) (Bloomberg Law subscription)

NAPCO Security Technologies Inc. overhyped its hardware business's potential until sales setbacks in the second fiscal quarter of 2025 prompted executives to walk back a key 2026 financial goal, a proposed class action said.

Share prices slid almost 27% on Feb. 3, the day the alarm system maker said reduced sales from two of its larger distributors drove a 25% decrease in net equipment sales compared to the same quarter last year, an investor told the US District Court for the Eastern District of New York. It was the stock's steepest single-day decline since 2023, according to data compiled by Bloomberg.



Before then, NAPCO leaders downplayed sales struggles, said the April 25 complaint. Executives issued overly-confident statements about NAPCO's ability to forecast hardware demand and achieve an approximately 45% adjusted EBITDA margin target by the end of fiscal year 2026, said plaintiff Shailesh Patel's complaint. Adjusted EBITDA—earnings before interest, taxes, depreciation, and amortization—measures a company's core profitability and operating abilities. The margin is the ratio between adjusted EBITDA and revenue.

The proposed class would include those who got NAPCO stock from Feb. 5, 2024—when Patel said executives overstated demand and the 2026 goal on an earnings call—through Feb. 3, 2025.

Levi & Korsinsky LLP represents Patel, who seeks damages and other relief for alleged Securities Exchange Act of 1934 violations by the company and two top executives.

NAPCO is contending with a different proposed class action alleging that the alarm system developer overstated profits and inventory in accounting statements ahead of the aforementioned 2023 stock selloff, when it fell 45%.

NAPCO didn't immediately respond to an email seeking comment.

The case is Patel v. Napco Sec. Techs., Inc. , E.D.N.Y., No. 2:25-cv-02308, complaint filed 4/25/25 .

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Will Dismisses Palantir Case, Ruling Lucrative Trades 'Insufficient to Impugn' Corporate Insiders

 [law.com/delbizcourt/2025/04/28/will-dismisses-palantir-case-ruling-lucrative-trades-insufficient-to-impugn-corporate-insiders-](https://www.law.com/delbizcourt/2025/04/28/will-dismisses-palantir-case-ruling-lucrative-trades-insufficient-to-impugn-corporate-insiders-)

Ellen Bardash

April 28, 2025

Vice Chancellor Lori W. Will of the Delaware Court of Chancery has dismissed a derivative case accusing Palantir Technologies Inc. directors of insider trading, writing in an April 25 opinion that when it comes to demand futility, the amount directors profited from selling stock needs to be considered in context, not in a vacuum.

The decision is a win for the Potter Anderson & Corroon and Freshfields US LLP team that represented the data analytics software platform company and its directors and officers, including Palantir's three co-founders: CEO Alex Karp, computer scientist and entrepreneur Stephen Cohen, and former Paypal CEO Peter Thiel.

The defendants moved for dismissal last year, and Will heard argument on the motion in January.

Within about two years of Palantir, a Delaware corporation headquartered in Colorado, going public via direct listing in September 2020, directors and officers at the company sold stock for more than \$2 billion. The shareholder plaintiffs filed their lawsuit in August 2023, claiming those sales constituted insider trading. In addition to a claim that fiduciary duties were breached as part of Palantir's SPAC investment program and an unjust enrichment claim, their case included a *Brophy* claim, which alleges insiders improperly used material, non-public information to sell their stock at artificially inflated prices.

The opinion states the plaintiffs hadn't shown the stock sales they challenged were motivated by any material or non-public information, noting that the direct listing represented the first chance many of Palantir's investors had had to sell their shares, and those named as defendants in the case ultimately held on to about 75% of their stock.

"Contrary to the plaintiffs' criticisms, there is nothing inherently suspect about a company's pursuit of a direct listing," Will wrote, later adding, "Though some directors made substantial profits by selling stock, that alone is insufficient to impugn them. Delaware law sets the bar to insider trading liability high to avoid restricting legitimate market activity. Insiders are not penalized for making investment decisions based on public information—even if their trades are lucrative."

The Grant & Eisenhofer, Weiss Law, Robbins LLP, Morris Kandinov and Bronstein, Gewirtz & Grossman attorneys who represented the shareholder plaintiffs did not immediately respond for comment.

Will wrote that based on the demand futility test the Delaware Supreme Court signed off on in 2021 in its decision in *United Food & Commercial Workers Union v. Zuckerberg*, the plaintiffs, who hadn't served a demand before filing their complaint, hadn't shown that demand was excused. There wasn't a sufficient showing that the defendants faced a substantial likelihood of liability, the decision stated, and the alleged benefit the defendants received from selling their stock wasn't shown to be a result of misconduct.

"*Zuckerberg* did not transform the demand futility analysis into a rigid checklist. The test remains a contextual one that allows the court to consider multiple, interrelated factors," Will wrote. "For *Brophy* claims, the second prong of the *Zuckerberg* test logically informs the first. Myopically focusing on the profits a board made selling stock, without regard to the circumstances, would lower the bar to *Brophy* liability and upset the 'incentive[s]' that holding company stock provides directors."

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9th Circuit extends tracing requirement to Section 12(a)(2) of the Securities Act of 1933

 [reuters.com/legal/legalindustry/9th-circuit-extends-tracing-requirement-section-12a2-securities-act-1933-2025-04-28](https://www.reuters.com/legal/legalindustry/9th-circuit-extends-tracing-requirement-section-12a2-securities-act-1933-2025-04-28)

Virginia Milstead, Mark Foster, Michelle Portillo

April 28, 2025

FILE PHOTO: A U.S. dollar banknote and decreasing stock graph are seen in this illustration taken, April 4, 2025. REUTERS/Dado Ruvic/Illustration/File Photo/File Photo Purchase Licensing Rights , opens new tab

April 28, 2025 - Companies that raise capital through public offerings of stock, such as in an IPO, have historically faced a heightened risk of being sued in securities class actions when their stock price falls below the offering price. This increased risk is largely due to the Securities Act of 1933, which imposes strict liability for any allegedly false statements made in a prospectus or registration statement filed during the offering.

This strict liability framework allows plaintiffs to bring claims without having to prove that defendants intentionally deceived anyone, that investors relied on the allegedly false statements, or even that the statements caused them any damages.

However, this heightened litigation risk has been reduced to an extent by the Supreme Court's 2023 decision in *Slack Techs., LLC v. Pirani*, 598 U.S. 759, 768 (2023) (Slack I) and the 9th U.S. Circuit Court of Appeals' recent decision on remand: *Pirani v. Slack Techs., Inc.*, 127 F.4th 1183, 1191-92 (9th Cir. 2025) (Slack II).

In Slack I, the Supreme Court held that investors must trace title of their shares to establish that those shares were issued in a public offering, which means they must establish a chain of title back to the share's original owner. If an investor cannot trace their shares to those issued in a public offering, then they lack standing to assert claims under Section 11 of the Securities Act.

In Slack II, the 9th Circuit expanded that requirement to claims brought under Section 12 of the Securities Act.

Together, these two decisions will make it harder, if not impossible, for investors to bring strict liability claims in the wake of a capital raise. This development reflects recognition that the right to bring strict liability claims should be reserved for those who take on the initial risk of buying shares in a public offering.

Background

Sections 11 and 12(a)(2) of the Securities Act of 1933 impose strict liability, subject to certain defenses, for any "untrue statement of a material fact or [omission of] a material fact" in a "registration statement" or "prospectus," respectively. 15 U.S.C. §§ 77k(a), 77l(a)(2). Plaintiffs frequently invoke these statutes when suing public companies, officers and directors, and underwriters in connection with securities offerings.

On June 20, 2019, Slack Technologies, Inc., went public through a direct listing, which differs from an initial public offering ("IPO"). In an IPO, a company issues and sells new shares to the public by filing a registration statement, and preexisting unregistered shares are subject to a lockup agreement barring them from being sold for a certain period of time. However, a direct listing enables the direct sale of registered and unregistered shares to the public held by preexisting shareholders.

Through its direct listing, Slack issued 118 million registered shares and also made 165 million unregistered shares available for purchase on the NYSE. That day, plaintiff Fiyaz Pirani purchased 30,000 Slack shares. Following the direct listing, Pirani brought a putative class action against Slack and asserted claims under sections 11 and 12(a)(2) predicated on the allegedly misleading registration statement Slack filed in connection with its offering of registered shares.

Slack moved to dismiss the complaint, arguing plaintiff could not establish that he had purchased registered shares sold under the allegedly misleading registration statement as opposed to the unregistered shares made available in the direct listing.

The plaintiff conceded that he could not trace his shares to the registration statement, but argued that "the concept of 'tracing' a share of stock — i.e., establishing a chain of title for a particular share back to the share's original owner — is a concept that no longer exists in today's market and is not possible." Pirani, 127 F.4th at 1188.

The district court denied the motion to dismiss in relevant part, concluding it was sufficient that Plaintiff alleged that the registration statement was false and that the securities he purchased were "of the same nature as [those] issued pursuant to the registration statement." Pirani v. Slack Techs., Inc., 445 F. Supp. 3d 367, 379-85 (N.D. Cal. 2020), *aff'd*, 13 F.4th 940 (9th Cir. 2021), *vacated and remanded*, 598 U.S. 759 (2023), and *rev'd*, 127 F.4th 1183 (9th Cir. 2025).

Accepting plaintiff's assertion that purchasers in a direct listing cannot "know if they purchased a registered or unregistered share," the 9th Circuit affirmed. Pirani v. Slack Techs., Inc., 13 F.4th 940, 948-50 (9th Cir. 2021), *vacated and remanded*, 598 U.S. 759 (2023), and *rev'd*, 127 F.4th 1183 (9th Cir. 2025).

The Supreme Court vacated the 9th Circuit's decision. The Court held that "[t]o bring a claim under §11, the securities held by the plaintiff must be traceable to the particular registration statement alleged to be false or misleading." *Slack Techs.*, 598 U.S. at 768.

The Court remanded, leaving for the 9th Circuit to decide whether plaintiff's pleadings could satisfy section 11 as properly construed. *Id.* at 770. The Supreme Court left open whether the tracing requirement is equally applicable to section 12(a)(2) claims. See *id.* at 770 n.3.

The 9th Circuit's decision on remand

On remand, the 9th Circuit held that, like section 11, section 12(a)(2) requires tracing a plaintiff's shares to an allegedly false or misleading prospectus. *Pirani*, 127 F.4th at 1191. Section 12(a)(2) of the Securities Act of 1933 provides that "[a]ny person who ... *offers or sells a security* ... by means of a prospectus or oral communication, which includes an untrue statement of material fact or omits to state a material fact ... shall be liable ... to the person purchasing *such security* from him." 15 U.S.C. § 77l(a)(2)(emphasis added).

The 9th Circuit concluded that the phrase "such security" in Section 12(a)(2) refers back to the "security" that was offered or sold "by means of a prospectus." *Pirani*, 127 F.4th at 1191. A "security can be sold 'by means of a prospectus' only if it is a registered security sold in a public offering, and section 12(a)(2) liability can be based only on the sale of such a security." *Pirani*, 127 F.4th at 1192. Therefore, section 12(a)(2) liability can arise only from the sale of registered shares, making it necessary for section 12(a)(2) to "impose[] the same traceability requirement as section 11." *Id.*

The 9th Circuit also concluded Plaintiff had not alleged tracing. In particular, it rejected the concept of "statistical tracing." Plaintiff argued that he could allege traceability by relying on the "statistical inference" that because 42% of the shares on the exchange were registered, "the likelihood that none of the 30,000 shares [he purchased] was registered is infinitesimally small." *Id.* at 1189-90.

The 9th Circuit rejected the theory, concluding: (a) plaintiff had not alleged anything to support that he purchased shares in 30,000 separate, statistically independent transactions, instead of one single transaction with a single seller of unregistered shares, *id.* at 1190; and (b) statistical tracing is contrary to precedent in *In re Century Aluminum Co. Securities Litigation*, 729 F.3d 1104 (9th Cir. 2013). *Id.*

In *Century Aluminum*, the court held that plaintiffs seeking to bring section 11 claims based on a new registration statement could establish traceability only "in one of two ways" — they (1) "could prove that they purchased their shares directly in the secondary offering itself," or (2) "trace the chain of title for their shares [purchased in the aftermarket] back to the secondary offering." *Century Aluminum*, 729 F.3d at 1106. By so holding, *Century Aluminum* had "implicitly rejected" statistical tracing. *Pirani*, 127 F.4th at 1190.

Following Pirani, it remains an open question of how, if at all, purchasers of shares following a direct listing can allege traceability sufficient to state section 11 and section 12(a)(2) claims. Federal courts are already finding that Pirani "likely forecloses Section 11 liability in direct listings," and such an issue is "best resolved through statutory or regulatory changes." *Cupat v. Palantir Techs., Inc.*, No. 1:22-CV-02384-CNS-SKC, (D. Colo. 2025).

Ultimately, the strict "tracing requirement is the condition Congress has imposed for granting access to the 'relaxed liability requirements'" that sections 11 and 12(a)(2) afford. *Century Aluminum*, 729 F.3d at 1107. Though the 9th Circuit's decision arguably limits the class of plaintiffs who can allege section 11 and section 12(a)(2) claims to those who buy directly in an offering, the holding appears to be consistent with the statutory scheme of strict liability.

The opinions expressed in this article are those of the author(s) and do not necessarily reflect the views of Skadden or its clients.

Virginia Milstead is a regular contributing columnist on securities law and litigation for Reuters Legal News and Westlaw Today.

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With 'DExit' Top of Mind, Judges in Nevada and Texas Pitch Their Business Court Bona Fides

 [law.com/litigationdaily/2025/04/29/with-dexit-top-of-mind-judges-in-nevada-and-texas-pitch-their-business-court-bona-fides](https://www.law.com/litigationdaily/2025/04/29/with-dexit-top-of-mind-judges-in-nevada-and-texas-pitch-their-business-court-bona-fides)

Ross Todd

April 29, 2025

Credit: Roberto Jiménez/ALM

Analysis

Justice Lidia Stiglich of the Supreme Court of Nevada and Judge Sofia Adrogué of the newly formed Texas Business Court spoke last week at an event presented by The Berkeley Center for Law and Business and Freshfields.

🕒 5 minute read

Litigation

My colleague Ellen Bardash has done a bang-up job chronicling the rising tension in Delaware over what's become known colloquially as "DExit"—the idea that corporations are choosing to leave the state, or just not to incorporate there in the first place.

But last week, there was a rare opportunity to hear directly from judges on two courts in states that have seen some prominent companies reincorporate there after leaving Delaware. **Justice Lidia Stiglich** of the Supreme Court of Nevada and **Judge Sofia Adrogué** of the newly formed Texas Business Court, Eleventh Division, both spoke at the 2025 Berkeley Spring Forum on M&A and the Boardroom last week during a panel billed as "Nevada, Texas and Delaware Corporate Law." The title alone would have seemed jarring a couple of years ago, given Delaware's dominance in public company incorporations.

Catherine Dearlove of **Richards, Layton & Finger** gamely defended Delaware's corporate law predominance when speaking alongside the two judges last week. She pointed out that the volume of corporate case law already on the books in Delaware and the professionalism of its Court of Chancery make the state a formidable front-runner. But with the Court of Chancery handing down a number of controversial decisions, particularly in cases involving controlling shareholders, some companies have taken note of Nevada's statute-focused legal environment and Texas's move to create a specific court to handle business disputes along the lines of Delaware's Court of Chancery.

Stiglich, who started her career in private practice in the San Francisco Bay Area, moved to Nevada in 2008, and put in for a position on the state trial court bench in 2012. She noted that the qualifications to be a district judge in Nevada are not as stringent as those in some other jurisdictions: 10 years of experience as a lawyer, including two years of practice in Nevada, and a \$150 application fee. "I had all three of those," she quipped.

She was appointed to the state's high court by Nevada Governor Brian Sandoval in November 2016 and retained by voters in 2018. Again, Stiglich was self-deprecating in laying out the criteria: "To be on the Supreme Court, you have to have been a lawyer for 15 years—again, two in Nevada, but then you have to have \$300," she said.

Stiglich said that Nevada does not have a dedicated business court like Delaware or Texas, but that six district court judges in Clark County, where Las Vegas and the majority of the state's population and caseload are located, are designated as business court judges with a significant portion of their dockets dedicated to matters including derivative lawsuits and cases involving mergers and acquisitions.

Parties, when they file in Nevada, can ask for a matter to be heard in business court. Stiglich said cases in the business courts don't get routed to a discovery commissioner, and since everything stays in front of the same judge, the cases tend to move quicker. The Nevada business courts, however, do not issue published opinions, she said. "Largely, what happens from one courtroom to another in those business courts is anecdotal, and it's not largely precedential," she said.

Stiglich also noted that she and her colleagues on the state supreme court hear very few business cases. She noted that as compared to the "Nancy Drew" series, which had 175 volumes, Nevada case law has just 140 volumes. "What are the [Nevada] courts doing? The courts have endeavored to try to keep fidelity to the statutory scheme—leave that in the hands of the legislatures," she said. "It certainly hasn't all been said yet in Nevada or done, but our legislature has spoken pretty clearly."

Adrogué, who practiced early in her career at **Susman Godfrey** and was a senior trial partner at **Diamond McCarthy** prior to taking the bench in Texas's new business court less than a year ago, stressed that the 10 judges on her court consider themselves "a business court—singular" even though they are split between Dallas, Houston, Fort Worth, San Antonio and Austin, with two judges per division.

"We really do see [ourselves] as a brain trust," she said. She said that half of her colleagues have prior experience on the bench, most have at least 25 years of experience, including at least 10 years in business litigation—"commercial, sophisticated litigation." She said she would describe the group as "highly cerebral, nerdy."

"We get that we're being scrutinized," Adrogué said. "We want to do everything we can to get it right. We want your business."

"We take our role inordinately seriously," Adrogué said. "And just like Texas welcomes its business, the business courts welcomes your business as well."

When prompted to make her own pitch for businesses considering reincorporation in Nevada, Stiglich said that her state has “a different relationship with risk” than a lot of other states.

“We have a whole city in the desert,” Stiglich said. “It's not that it's the Wild Wild West. It's not that it's lawless. But they value and want to encourage entrepreneurship, innovation, and we're open for business,” she said.

Look out, Delaware.

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Trending

Litigation Surge - Banking & Financial Services | Patent

Major banks and financial services companies were hit with a flurry of patent lawsuits in Texas Eastern District Court on Monday, according to Law.com Radar. Six cases were filed against entities on Radar's sector watchlist, all filed by BrowserKey LLC. The suits allege that biometric, token-based or other forms of passwordless authentication in the defendants' mobile apps infringe the plaintiff's patent. Companies under fire include Ally Financial, Capital One, Comerica Bank, JPMorgan Chase and Morgan Stanley. The suits are backed by Fabricant LLP and the Truelove Law Firm.

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New Suit - Copyright

Art Ask Agency, a Spanish company and exclusive licensee of Anne Stokes fantasy artwork, filed a copyright infringement lawsuit on April 29 in Illinois Northern District Court. The complaint, filed by Hughes Socol Piers Resnick & Dym, targets multiple online retailers for allegedly selling counterfeit products featuring Stokes' copyrighted

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April 28, 2025, 11:24 AM PDT

Tesla Investor Who Got Musk Pay Tossed Fires Back at His Appeal

A Tesla Inc. shareholder urged Delaware's highest court to uphold a decision that struck down Elon Musk's record-setting pay package, as the world's richest person fights to recover it on appeal.

A Delaware Chancery Court judge was right to reject Musk's bid to revive the Tesla compensation plan through a second shareholder vote, lawyers for Richard Tornetta — the Tesla investor who successfully challenged Musk's pay — argued in an appeal brief filed Friday in the state's Supreme Court.



Elon Musk

Photographer: Jordan Vonderhaar/Bloomberg

Musk's reliance on the second vote as "ratification" of the board's approval of his pay package has "no basis in Delaware law," Tornetta's lawyers said in the brief. They contended that the Chancery Court's chief judge had properly evaluated the package in deciding whether it was "entirely fair" to investors — the standard she applied under Delaware law.

Read More: Musk's Multibillion-Dollar Tesla Payout Is Gutted by Judge

They also said the judge's decision to award \$345 million in legal fees — among the largest lawyer paydays in US shareholder litigation — was justified under state law.

Musk's Falling Fortunes

The brief is a response after Tesla, Musk and a group of shareholders appealed the December decision by Chancellor **Kathleen St. J. McCormick** rejecting the chief executive's award for the second time. McCormick found that Tesla directors' consideration of Musk's comp plan was flawed by conflicts of interest and that the company hadn't properly disclosed all its details to shareholders.

The appeal is playing out as Musk has seen his net worth fall sharply amid a steep decline in Tesla's shares. The electric vehicle company has faced a consumer backlash over his spearheading of a controversial government cost-cutting effort and criticism that it has distracted him from Tesla.

After delivering Tesla's worst quarter in years, Musk sought to reassure shareholders that he would "significantly" pull back from his work leading the Department of Government Efficiency to spend more time on the car maker. In addition to those duties, Musk, 53, leads SpaceX along with other companies.

Read More: Musk to Refocus on Tesla After Its Worst Quarter in Years

His Tesla stock options package is valued at \$78 billion as of 2:10 p.m. Eastern time, according to the Bloomberg Billionaires Index. Plunging and soaring with the company's fortunes, it was valued at about \$56 billion at McCormick's first ruling and \$101.5 billion at her second.

Blasting Judge

Musk has lashed out at McCormick and her court on his social media platform, X, urging others to follow his lead and move their incorporation to friendlier courts in Texas or Nevada. Amid that pressure, Delaware last month overhauled its corporate law, potentially making it harder for shareholders to beat executives in court.

Read More: Delaware Judge Who Rejected Musk's Payday Faces Backlash

Still, companies including MercadoLibre Inc., Latin America's most valuable firm, are acting to yank their incorporations from the state or weighing a move.

Tesla's lawyers wrote in their own appellate brief last month that McCormick had defied the will of shareholders who approved the compensation plan again after she rejected it the first time. In a separate brief, Musk himself and other Tesla directors argued that the chancellor's decision wasn't fair given the amount of work he put into the company to hit goals set by the package.

The case is In Re Tesla Inc. Derivative Litigation, No. 534, 2024, Delaware Supreme Court.

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Class Action

April 29, 2025, 5:50 AM PDT

Wells Fargo Investors Get Class Status in DEI Hiring Sham Suit

Wells Fargo & Co. investors won class status in their lawsuit alleging the banking giant misled them over a diverse hiring policy that really contained fake interviews for minority candidates it had no intention of hiring.

Judge Trina L. Thompson certified a class of those who invested and were purported to be damaged from Feb. 24, 2021, through June 9, 2022, according to an order entered in the US District Court for the Northern District of California on April 25.

The case is SEB Inv. Mgmt. AB v. Wells Fargo & Co. , N.D. Cal., No. 3:22-cv-03811, class certified 4/25/25 .

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CASE PREVIEW

Can a federal court certify a class action that includes plaintiffs who were not injured?



By **Ronald Mann**
on Apr 28, 2025



The court agreed to take up *Labcorp* in late January. (Katie Barlow)

The argument on Tuesday in *Laboratory Corp. of America v. Davis* presents another in a remarkable string of cases this year that have reached the argument stage without clearly presenting the question on which the justices granted review.

The presentation in Labcorp's opening brief is powerful and direct. First it posits the idea that federal courts can't possibly grant relief to plaintiffs who haven't suffered a cognizable injury. Then it presents the facts of this case: Labcorp has rolled out automated check-in kiosks in its facilities, which most customers really like. One problem, though, is that those kiosks don't work for the blind. Hence this class action, claiming that the kiosks disadvantage the blind, leading to liability under various legal theories.

Labcorp then describes a class that includes all blind people who had been exposed to the kiosks – whether they knew of the kiosks

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outrage. Justices who have a deep suspicion of the extortionate power of class certification will be very suspicious – and there are more than two or three of those on the current court.

Two major problems hinder a straight path to the decision Labcorp seeks. The first, all too common this term, is the likelihood that the case does not really present that question. It is pretty clear that the district court at one point certified a class that excluded all blind persons who did not attempt to or want to use the kiosk – a class limited to those who could be said to have suffered a cognizable injury. The class definition about which Labcorp complains came about only in response to Labcorp's objection to the more limited definition. Apparently Labcorp's strategy at that point of the litigation – different from its strategy now – made the narrow class seem objectionable. The problem for the justices is that Labcorp already had appealed before the class definition was narrowed, so it is not at all clear that anything in the opinion of the court of appeals relates to the class definition that Labcorp now challenges so forcefully.

The second difficulty is a "slippery slope" problem. Labcorp's rhetoric would support an absolute rule that a class can never include even a single individual without a cognizable injury, but when it gets down to argument it admits that some uninjured individuals must be included as a practical matter. Its objection here is that there are just too many uninjured individuals. That kind of imprecise argument will be much harder for the justices to evaluate than a hard and fast rule of exclusion.

My guess is that some, but not all, of the justices will take the view that it is easy enough to sort out the injured and uninjured claimants when the time comes for a remedy, limiting relief only to the injured. For those justices, this case will seem "much ado about nothing." But my guess is that the bulk of the argument will be expended on questions about exactly what was, and was not, before the court of appeals and what is, and is not, properly before the court. At some point, though, you really have to start wondering why the law clerks are not doing a better job of having these problems fully aired before the justices devote an argument slot to a case that plainly is not a good vehicle for answering the question presented.

Posted in [Featured](#), [Merits Cases](#)

Cases: [Laboratory Corporation of America Holdings v. Davis](#)

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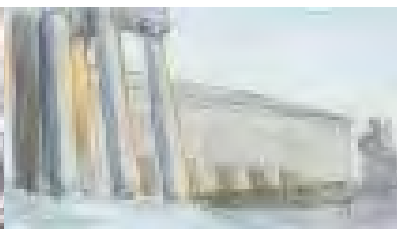
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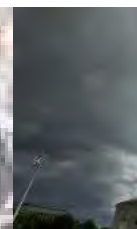
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Apple, Google Dismissed From Suit Over Child's Gaming Addiction, Federal Judge Says

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Riley Brennan

April 29, 2025

News

"The court is cognizant of its obligation to view all of the facts in the light most favorable to plaintiffs and draw all reasonable inferences in their favor, but here plaintiffs have not alleged any facts about their use of the Google or Apple app stores."

Litigation

Apple and Google have been let off the hook, for now, in a products liability suit stemming from a child's alleged gaming addiction for offering the games in their virtual stores, a federal judge in Illinois recently ruled.

Last week, U.S. District Judge April M. Perry of the Northern District of Illinois granted Apple and Google's motion to dismiss a lawsuit accusing the companies of negligence because the Google Play and Apple app stores house addictive materials and fail to disclose such information. The plaintiff, Jaclyn Angelilli, partially attributed her minor son D.G.'s gaming addiction to the tech giants, claiming he was able to access games through the virtual stores, ultimately leading to his addiction, according to her complaint.

The court determined Angelilli failed to adequately plead a causal link between the alleged injuries and Google's or Apple's alleged misconduct.

"Here, because plaintiffs have offered no specific allegations linking D.G.'s alleged injuries to any conduct by Google or Apple, the complaint lacks both cause in fact and legal cause," Perry said in the April 23 filing. "The court is cognizant of its obligation to view all of the facts in the light most favorable to plaintiffs and draw all reasonable inferences in their favor, but here plaintiffs have not alleged any facts about their use of the Google or Apple app stores."

However, Angelilli was granted leave to amend the allegations as the court said it did not have "enough of an understanding" as to what the two entities allegedly did wrong or how D.G. or Angelilli interacted with either the Google Play or Apple App store.

"At the very least, the court expects that any amended complaint would allege what interactions plaintiffs had with either the Google or Apple virtual stores and how those interactions led to plaintiffs' injuries." Perry said, determining that the "plaintiffs must offer more than general pleading about the addictive nature of the app stores or video games, the fact that the app stores make money from the sale of video games or in-app purchases, or that the app stores do not warn users of either of these things."

In *Angelilli v. Activision Blizzard*, Angelilli brought numerous claims, including products liability, negligence, intentional and negligent infliction of emotional distress, against the defendants on behalf of her son, who she alleged began playing video games when he was 6 years old and became addicted. She alleged this addiction has had serious consequences, including emotional distress and problems in school.

She alleged the defendants operate the Google Play app and the Apple App Store, respectively, which allow users to download certain games. According to the court, the majority of the 19 causes of action against the two companies "are premised on allegations that Google and Apple designed their respective stores as 'platform[s] to house addictive gaming products and push users to make purchases of addictive materials,'" the opinion said.

Wilson Sonsini Goodrich & Rosati represented Google, and Dentons represented Apple. The tech duos filed a motion to dismiss, arguing that Section 230 of the Communications Decency Act (CDA) and the First Amendment bar all the plaintiff's claims. The judge agreed, and if the plaintiff chooses to re-plead her allegations, the mother must also keep in mind those defenses that could shield the defendants from liability.

"When plaintiffs discuss Google and Apple specifically, their allegations are vaporously thin," Perry said. "The most fundamental problem is that there is no allegation that either Google's or Apple's virtual store was used to access one of the four at-issue games."

While the complaint alleged D.G. played unspecified video games on smartphones, and that the games could be purchased on the Google and Apple app stores, there were no allegations about which of the games that allegedly harmed D.G. was accessed through phone, which of the defendants' app stores was used to download that particular game, and who accessed the app stores to do so, the judge said.

"All of plaintiffs' allegations about the virtual stores themselves being addictive and inducing minors to purchase and play games are relevant only if D.G. (the one alleged to have suffered from gaming addiction) used Google's and Apple's virtual stores," Perry said.

"Plaintiffs also seem to allege that Google and Apple should be held liable for purchases made inside the games that Google and Apple sell. These claims too lack basic details necessary to understand Plaintiffs' theory, such as which games were used to make purchases on which virtual store, whether it was D.G. who made those purchases, and what acts committed by Google or Apple caused D.G. to do so."

The suit is still pending against numerous other defendants, including Roblox Corp., Sony Interactive Entertainment, and Nintendo of America.

Tina Bullock of Bullock Legal, in Acworth, Georgia, represents Angelilli.

Brian M. Willen, of Wilson Sonsini in New York, represented Google. Timothy Joseph Storino, of Dentons in Chicago, represented Apple.

None of the attorneys responded to requests for comment.

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Litigation Surge - Banking & Financial Services | Patent

Major banks and financial services companies were hit with a flurry of patent lawsuits in Texas Eastern District Court on Monday, according to Law.com Radar. Six cases were filed against entities on Radar's sector watchlist, all filed by BrowserKey LLC. The suits allege that biometric, token-based or other forms of passwordless authentication in the defendants' mobile apps infringe the plaintiff's patent.

[Litigation](#)

April 29, 2025, 8:02 AM PDT

California Hospital Hit With Class Action Over 2023 Data Breach

- **COURT:** E.D. Cal.
- **TRACK DOCKET:** No. [1:25-at-00339](#) (Bloomberg Law subscription)

California-based Dameron Hospital negligently failed to protect the personal information of thousands of people that was exposed in a 2023 data breach, a proposed federal class action said.

Lead plaintiff Celina Donatelli alleged that Dameron breached its duties under common law, contract law, industry standards, and the Federal Trade Commission Act to implement reasonable and adequate data-security measures and provide timely notice of the incident.

Data exposed in the breach included patient names, provider names, dates of treatment, medical-record numbers, and diagnostic and treatment information, according to a complaint filed Monday in the US District Court for the Eastern District of California.

Dameron, located in Stockton, Calif., didn't respond immediately to a request for comment. The hospital disclosed to the US Department of Health and Human Services that 210,706 people were affected by the breach.

Victims have suffered lost time responding to the incident, out-of-pocket costs for mitigation measures, invasion of privacy, increased risk of fraud and identity theft, increased spam calls and emails, emotional distress, reduced value of their personal information, and payment for data security that wasn't provided, the complaint said.

Donatelli seeks to represent a nationwide class and a California subclass of people who were affected by the breach.

The complaint brings claims of negligence, negligence per se, unjust enrichment, breach of implied contract, and violations of the California Unfair Competition Law and the California Consumer Records Act.

Donatelli is seeking statutory damages, restitution, attorneys' fees and costs, and prejudgment interest.

Srourian Law Firm PC and Levi & Korsinsky LLP represent Donatelli and the proposed class.

The case is Donatelli v. Dameron Hosp. , E.D. Cal., No. 1:25-at-00339, complaint filed 4/28/25 .

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Class Action

April 29, 2025, 2:00 AM PDT

NCAA Judge's Settlement Demand Yields Advantage for Athletes

Deep Dive

- **NCAA threatened with trial if it fails to fix roster limits**
- **Athlete plaintiffs, NCAA given two weeks to address issue**

A federal judge is forcing the NCAA to change its \$2.8 billion antitrust deal if the organization wants final approval, a move that would allow student-athletes who are part of a settlement class to keep their spots on college teams.

Judge Claudia Wilken of the US District Court for the Northern District of California in an order last week said she would reject the deal if the NCAA doesn't address its current limits on team rosters. The settlement aims to resolve claims from athletes who say the organization prohibits them from using money earned from their names, images, and likenesses.

At issue is a provision in which the NCAA replaced scholarship limits with roster caps as part of a deal announced last year by the organization and its Power Five conferences to settle antitrust claims and provide back pay to thousands of Division I athletes. It includes a revenue-sharing model in which colleges would directly pay student-athletes starting this summer.

Wilken gave preliminary approval to the deal last year but expressed concerns at a hearing earlier this month about the roster limits, which would shrink team sizes and result in athletes being cut from teams they already play on.

The NCAA has argued for limits on rosters because spots aren't currently guaranteed and restricting them opens the door to countless additional scholarships.

But the deal is "not fair and reasonable to the significant number of class members whose roster spots will be or have been taken away," Wilken said in her five-page April 23 order, giving the parties two weeks to consult with a mediator about potential modifications to the settlement agreement.

The roster limits are "tremendously unfair" to many athletes who are part of the settlement class, said Steven Molo, founding partner of litigation firm MoloLamken LLP who represents a group of students impacted by the limits. Some schools are already cutting roster spots in anticipation of the deal, he said.

"They've worked so hard to get to these positions at an elite level and now they are being told, 'we have to cut you because there are only so many roster spots,'" Molo said.

The roster limits in any form are an antitrust violation because they are a restraint on the labor market at the college level, Molo added.

"If a student-athlete is good enough that Ohio State wants to recruit them to have them be on their team, then Ohio State should be able to have them on their team," Molo said. "There shouldn't be some sort of artificial limitation on it."

The NCAA in a statement last week said it is closely reviewing Wilken's ruling.

"Our focus continues to be on securing approval of this significant agreement, which aims to create more opportunities than ever before for student-athletes while fostering much-needed stability and fairness in college sports," the NCAA and defendant conferences said.

After considering the NCAA's response, Wilken could decide within days whether to give final approval of the deal or send the case to trial, said Jeffrey Kessler, an attorney with Winston & Strawn LLP who represents athlete plaintiffs in the case. He said he didn't think Wilken's concerns about roster limits would be the issue holding up approval of the settlement.

"Now we know," Kessler said. "It means the NCAA and the conferences will now agree to fix this. And if they don't, we'll go to trial."

NCAA's Next Move

Michael Lowe, a litigation partner with Troutman Pepper Locke, said he couldn't imagine a scenario in which the NCAA doesn't make a fix that satisfies the judge.

"She told them what she was thinking, they ignored it, and she basically stuck to her guns," said Lowe, who represents a Division I conference that is not a party in the settlement litigation. "Now they have to come back with something if they want to have any chance of getting this approved."

Wilken in her order provided a clear blueprint for getting the deal final approval, with the option of gradually implementing the roster limits so current class members won't lose their spots.

"One way of achieving that could be to modify the settlement agreement to ensure that no members of the Injunctive Relief Settlement Class who have or had a roster spot will lose it as a result of the immediate implementation of the settlement agreement," Wilken said in her order. "Limits could be accomplished gradually by attrition."

Cal Stein, also a litigation partner with Troutman Pepper Locke, said the judge is "very clearly signaling" there is a path forward to getting the deal approved.

She made clear that the use of roster limits is not a "per se" violation of antitrust, he said.

"It does not appear to me that she views these roster limits and the athletic spots that they're going to take in the future as per se problematic," Stein said. "Her problem is that it is not fair to the current class members."

The student-athletes are also represented by Hagens Berman Sobol Shapiro LLP. Wilkinson Stekloff LLP represents the NCAA.

The case is In re College Athlete NIL Litig. , N.D. Cal., No. 4:20-cv-03919, order 4/23/25 .

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US judge dismisses sweeping class action over older ex-NCAA athletes' pay

 [reuters.com/legal/litigation/us-judge-dismisses-sweeping-class-action-over-older-ex-ncaa-athletes-pay-2025-04-28](https://www.reuters.com/legal/litigation/us-judge-dismisses-sweeping-class-action-over-older-ex-ncaa-athletes-pay-2025-04-28)

Mike Scarcella

April 28, 2025

The NCAA logo is seen on the side of a hotel in Dallas, Texas, March 30, 2013.

REUTERS/Jim Young/File Photo Purchase Licensing Rights  , opens new tab

April 28 (Reuters) - The National Collegiate Athletic Association has convinced a U.S. judge to dismiss a lawsuit seeking compensation for thousands of former student athletes who played team sports in college prior to 2016.

In his ruling  , opens new tab, U.S. District Judge Paul Engelmayer in Manhattan said the claims in the proposed antitrust class action against the NCAA, the governing body for U.S. collegiate athletics, were filed too late.

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The former athletes “sat on their hands for more than a decade before bringing this lawsuit,” Engelmayer wrote. The judge ruled for the NCAA, dismissing the lawsuit. Plaintiffs generally face a four-year window to bring claims under U.S. antitrust law.

Attorneys for the former players did not immediately respond to a request for comment.

The NCAA in a statement welcomed the judge’s order, saying the court had “definitively examined and dismissed” the claims. “We are hopeful that several of the copycat cases will be similarly treated by other courts,” the NCAA said.

The lawsuit was filed last year by 16 former college players who said they should be paid for the NCAA’s commercial use of their names, images and likenesses alleging violations of antitrust law.

The plaintiffs, who sought to represent a class of former Division 1 NCAA athletes, include former members of a Kansas Jayhawks men's championship basketball team and other top players.

They are not included in a multibillion-dollar settlement between the NCAA and thousands of current and former athletes that will for the first time provide some compensation to college athletes directly from schools. That settlement excludes student athletes before 2016.

U.S. District Judge Claudia Wilken in Oakland, California, is weighing final approval of that settlement. Last week she delayed her resolution while lawyers for the NCAA and student athletes hashed out further settlement details.

Wilken said a provision of the settlement that would immediately cap the number of students named to team rosters was unfair to some members of the class action.

The case is Chalmers v. National Collegiate Athletic Association, U.S. District Court for the Southern District of New York, No. 1:24-cv-05008.

For the players: Peggy Wedgworth, Scott Harris and James DeMay of Milberg Coleman Bryson Phillips Grossman; Elliot Abrams of Cheshire Parker Schneider; Stacy Miller of Miller Law Group; and Scott Tompsett of Tompsett Collegiate Sports Law

For NCAA: Rakesh Kilaru of Wilkinson Stekloff

Read more:

Judge delays approval of \$2.8 billion NCAA settlement over roster limit question
NCAA sued by Kansas Jayhawks ex-champs, other student basketball players
Lawyers in NCAA athlete pay settlement ask for \$515 mln legal fee award
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Class Action

April 25, 2025, 11:20 AM PDT

Char-Broil Fails to Shed 'Set and Forget' False-Ad Class Action

- **Primary jurisdiction doesn't foreclose consumer's claims**
- **Consumers aren't challenging an agency's regulations**

Char-Broil LLC consumers alleging the digital smoker grill developer deceptively advertised the appliance as easy to use with a hands-off user experience can proceed with their proposed class action, a federal judge said.

The consumers adequately alleged that Char-Broil advertised the smokers as "set and forget" and "error free" but that users experienced safety defects, the US District Court for the Northern District of Illinois said Thursday.

Char-Broil sent customers repair kits after a 2024 safety recall from the US Consumer Product Safety Commission due to an electric shock hazard, but the consumers said the kits didn't fix the grills' problems.

The suit brought claims for breach of warranty, consumer fraud, deceptive conduct, and unjust enrichment.

Judge Matthew F. Kennelly rejected the grill maker's argument that the CPSC had primary jurisdiction over whether the repair kits were an adequate fix to the safety defect.

But "despite its name, the doctrine of 'primary jurisdiction' is not actually a jurisdictional bar," Kennelly said. Here the consumers' claims arise under state law, and they aren't alleging violations of the Consumer Product Safety Act or a CPSC regulation, he added.

The consumers adequately pleaded their claims based on deception by pointing to representations promising the grill would work without constant monitoring, Kennelly said. And, the plaintiffs said they bought those specific grills because of the "set and forget" feature, the judge added.

The consumers are represented by Siri Glimstad LLP, Laukaitis Law LLC, and Hach Rose Schirripa & Cheverie LLP.

Char-Broil is represented by Arnold & Porter Kaye Scholer LLP.

The case is Fares v. Char-Broil LLC , N.D. Ill., No. 1:24-cv-04878, 4/24/25 .

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Litigation

April 29, 2025, 2:30 AM PDT

Quinn Emanuel's Wide Embrace of Clients Fails Trump Loyalty Test

- **Quinn Emanuel represents clients across political spectrum**
- **Trump didn't like that Quinn's Burck represented Harvard**

In just four months, Quinn Emanuel's Bill Burck went from being loved in Trump world to being fired.

The rise and fall of Burck with Trump is a hard lesson for a litigation powerhouse that is used to being valued across the political and corporate spectrum for its acumen in high-profile cases. It's also a reminder of the challenge that Big Law firms face if they want to stay in Trump's good graces while also opposing him.

The Trump Organization, when it hired Burck in January, touted him as "one of the nation's finest and most respected lawyers." But on April 24, President Donald Trump noted Burck "represents me" while also assisting Harvard University's lawsuit against his administration. "He's not that good, anyway," Trump said of Burck, urging his sons in a Truth Social post to fire him. They did.

In a statement to Bloomberg Law, Trump Organization executive vice president Eric Trump said he viewed Burck's involvement with Harvard as a conflict. "I will be moving in a different direction," he said.

While there was no conflict of interest in Burck's representation of both Harvard and the Trump Organization, Trump's ire was predictable, said Stephen Gillers, professor emeritus at New York University School of Law.

The firm "was not suing Trump himself and not representing Trump himself," Gillers noted. "The situation was inauspicious, however, because Trump could view Quinn Emanuel's conduct as disloyal and explode at any time, as he did. Once he did, Quinn could no longer represent Trump's company and had to get out."



Attorney William Burck looks on as Witness Special Counsel Robert K. Hur testifies during a House Judiciary Committee Hearing at the Rayburn House Office Building on March 12, 2024 in Washington, D.C.

Photo by Ricky Carioti/The Washington Post via Getty Images

Burck, co-managing partner of the Quinn Emanuel Urquhart & Sullivan, has stellar bona fides as a GOP lawyer. He has represented Trump allies in Robert Mueller's Russia probe and serves on the Fox Corp. board. He also worked behind the scenes to facilitate deals for free legal services between Trump and law firms the president reached deals with for free legal services.

"As a prominent, highly credentialed conservative lawyer, he's not the only one who is going to be facing this," Walter Olson, a fellow at libertarian think-tank the Cato Institute, said of Burck's dismissal. "There's going to be a line that the administration will cross, and their impulse will be to use their skills for what Trump sees as the wrong side."

Burck and Quinn Emanuel declined to comment.

Pick a Side

Quinn Emanuel has embraced a traditional law firm model of maintaining strong ties with both sides of politics. The approach has allowed firms to maintain connections with high-ranking members of Washington politics no matter which party is in charge.

Burck was on a team that secured a victory in favor of Ken Griffin, the founder and CEO of Citadel, against the IRS in litigation over a data theft that elicited a rare public apology from the agency to Griffin. Burck's firm is also defending Kilmar Abrego Garcia in litigation with the Trump administration over the El Salvador immigrant's detainment in his home country.

But in sanctioning firms for associating with causes viewed as adverse to him, and compelling them to pledge hundreds of million dollars worth of free legal services, Trump is making the legal operations pick a side, Olson said. "The old model, where it was seen as an advantage to have members of administrations of both parties, is not seen as such a good thing," he said.

Peter Zeughauser, founder of the Zeughauser Group, said it is particularly difficult for a litigation firm such as Quinn Emanuel to consistently pick the president's political side in the cases it chooses to take on. "Litigation shops fall into a different category; they like to take cases that they think they can win," he said. "It's another notch in their belt."

Law firm strategist Bruce MacEwen thinks Burck's decision to take on Harvard as a client represents a strategic analysis by Burck and his firm about which matters the firm should take on.

"This move by Bill Burck and Quinn is in a way the inevitable next step on the chessboard between the firm and the administration," MacEwen said. "We are absolutely positive that Quinn knew this would happen and made the choices it did with the certain knowledge that would occur."

Easy Win?

Quinn Emanuel is representing Harvard as the university asserts the government stifled free speech in freezing \$2.2 billion in federal funding.

It's not the first time a law firm with ties to Trump's inner circle has taken an adverse stance against the Trump administration in a high-profile case. Paul Clement, a conservative lawyer floated as possible Supreme Court nominee after the death of Ruth Bader Ginsburg, is also suing the Trump administration for WilmerHale, one of the firms targeted by a Trump executive order.

Law firms and other organizations targeted by Trump are seeing initial success in their lawsuits against the president's punitive actions. WilmerHale and three other targeted firms have secured temporary restraining orders against the administration and judges appear inclined to rule against them in whole.

The success of firms in garnering injunctions against Trump's law firm-directed executive orders has empowered them to take up an adversarial stance against the administration, Zeughauser said.

"They are a powerful litigation shop and they can spot an easy win when they see it," Zeughauser said. "Litigators are assessing these executive orders as easy wins with increasing confidence."

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In the law firm executive order cases, DOJ takes the position that an injunction barring implementation will only be enforceable against the govt agencies named in the complaint. So Perkins Coie just amended its complaint to name all the relevant fed agencies. The case caption is now 40 pages long.



April 29, 2025 at 7:39 AM Everybody can reply

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Process server just stands at a Metro station during rush hour handing out Complaint copies like newspapers.



1



72

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I felt a great disturbance in the Force, as if millions of PACER accounts suddenly cried out in terror and were suddenly silenced.



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A++



6

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"Jaw-dropping" corruption: HBO movie director says Ohio is "rigged against the popular will"

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Today in Ohio

April 29, 2025



Larry Householder, appearing here in a video arraignment in 2024, is front and center as the symbol of Ohio corruption in a new HBO documentary. The director of the movie is astounded that Ohioans continue to accept corrupt, unethical behavior from the Statehouse, even with Householder sitting in prison. Joshua Gunter, cleveland.com

A new HBO documentary on Ohio's notorious House Bill 6 scandal has put the state's political corruption in the national spotlight, with Oscar-winning director Alex Gibney delivering a scathing assessment that the hosts of say confirms what they've been discussing for years.

"We know how corrupt our state legislature is. And because of a documentary on HBO about the corrupt HB6, many people outside Ohio now know how completely corrupt our legislature is," said Chris Quinn, introducing the topic on the podcast.

The documentary, directed by Gibney, examines the \$61 million bribery scandal involving former House Speaker Larry Householder and FirstEnergy. According to Laura Johnston, who discussed the film on the podcast, Gibney chose the story "to illustrate corruption because it was so bold. He called it jaw dropping."

What makes the director's perspective particularly valuable is his outsider view, bringing fresh eyes to a political system that many Ohioans have perhaps grown accustomed to. His verdict was unsparing: "He said the system now in Ohio seems so rigged against the popular will, against democracy. It is a problem, but the people don't seem to be upset enough about it," Johnston said.

The documentary highlights how the U.S. Supreme Court's Citizens United decision has legalized practices that were once clearly considered corrupt. Johnston said that the current system "basically, it's a wink and a nod. It does effectively legalize bribery because everybody has to get elected... therefore they need money to get reelected because money is power and money is speech and money is advertising."

The HB6 scandal involved FirstEnergy admitting to bribing public officials to secure a \$1.3 billion bailout for its nuclear plants. But the Today in Ohio hosts emphasized that this was just one example of how special interests dominate Ohio policy-making – pointing to current battles over sports betting taxes, public record laws, and renewable energy policies as further evidence of industry influence.

Gibney expressed surprise that Ohioans aren't more outraged by the level of corruption. He noted that the abortion rights referendum was one of the few instances where citizens effectively pushed back against the legislature – perhaps a sign that voters can overcome the money-driven system when sufficiently motivated.

The podcast discussion revealed how money from various industries – from sports betting companies to gas and oil to tobacco – flows to lawmakers in exchange for favorable policies. The campaign finance system, Johnston argued, is the root of the problem: "If we want to get rid of the corruption in government, we need to publicly fund our elections. That's the only way around it."

The podcast urges listeners to seek out the documentary to better understand the mechanisms of corruption in Ohio politics, and perhaps to consider what level of outrage is appropriate when confronting a system that an Oscar-winning director found shocking enough to feature in a national documentary.

Note: Artificial intelligence was used to help generate this story from Today in Ohio, a news podcast discussion by cleveland.com editors. Visitors to cleveland.com have asked for more text stories based on website podcast discussions.

- Follow the money: How Ohio lawmakers are sabotaging clean energy from the sun
- Trump administration's 'Stalinesque' letter to Cleveland Clinic-tied journal sparks outrage
- Reckless chase that killed 2 sparks question: Should sheriffs patrolling Cleveland obey city rules?

Former FirstEnergy top execs to go to trial in January in Summit bribery case

[cleveland.com/ohio-utilities/2025/04/former-firstenergy-top-execs-to-go-to-trial-in-january-in-summit-bribery-case.html](https://www.cleveland.com/ohio-utilities/2025/04/former-firstenergy-top-execs-to-go-to-trial-in-january-in-summit-bribery-case.html)

Staff reports

April 29, 2025



Two former top officials of FirstEnergy Corp. are scheduled to go to trial Jan. 26 in Akron on charges of paying a \$4.3 million bribe to gain favor in Columbus. David Petkiewicz, [cleveland.com](https://www.cleveland.com)David Petkiewicz, [cleveland.com](https://www.cleveland.com)

CLEVELAND, Ohio — Two former top officials of FirstEnergy Corp. are scheduled to go to trial Jan. 26 in Akron on charges of paying a \$4.3 million bribe to gain favor in Columbus.

Summit County Common Pleas Judge Susan Baker Ross will oversee the case of the fired leaders, CEO Chuck Jones and high-ranking lobbyist Michael Dowling. She set the trial date Friday during a hearing.

Jones, 69, of Akron, and Dowling, 60, of Massillon, are accused of corruption-related charges, including conspiracy, racketeering and bribery. They have denied the allegations.

The legal fight is one of several involving FirstEnergy, the powerful Akron utility that paid to get what it wanted from state officials.

Jones and Dowling were charged in January in federal court in Cincinnati and accused of steering more than \$60 million in payments to former Ohio House Speaker Larry Householder and a group of allies.

Federal prosecutors said the money helped engineer House Bill 6, a \$1.3 billion legislative bailout of two withering nuclear plants on Lake Erie owned, at the time, by a FirstEnergy subsidiary. U.S. District Judge Timothy Black in Cincinnati has yet to set a trial date in that case.

In 2023, Householder was convicted of corruption charges, as was former Ohio GOP Chairman Matthew Borges. Black sentenced Householder to 20 years in prison and Borges to five.

Two others close to Householder, Juan Cespedes and Jeffrey Longstreth, have pleaded guilty but have not been sentenced. A fifth person charged, Neil Clark, died by suicide in 2021, months after the charges were filed.

Householder and Borges have appealed the convictions.

In the Akron case, state prosecutors allege that Jones and Dowling paid millions to Sam Randazzo to help the company. They then supported him when Gov. Mike DeWine appointed Randazzo as the chairman of the Public Utility Commission of Ohio in 2019.

After the move, Randazzo, the top regulator of power companies like FirstEnergy, issued several rulings favorable to the company, prosecutors said.

Attorneys for Jones and Dowling have said the \$4.3 million was a payment to settle a consulting contract, not a bribe. Randazzo was also charged. He died by suicide in April 2024.

RECOMMENDED

Judge grants immunity to ex-FirstEnergy officials, clearing path to testimony on bribes Apr. 24, 2025, 4:08 p.m.

“Jaw-dropping” corruption: HBO movie director says Ohio is “rigged against the popular will”

Jones and Dowling’s former employer, FirstEnergy, has admitted in documents that the payments to Householder and Randazzo were bribes. It has paid a \$230 million settlement to the U.S. Justice Department.

It also spent \$100 million to settle issues with the U.S. Securities and Exchange Commission and \$20 million to avoid charges brought by Ohio Attorney General Dave Yost.

In a separate matter, Householder is expected to go to trial in Cuyahoga County Common Pleas Court on allegations that he illegally used hundreds of thousands of dollars in campaign funds to pay for his attorneys in federal trial. He is scheduled to go to trial in that case in November.

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April 29, 2025

Section: News

Trial date set for ex-FirstEnergy execs' criminal case in HB6 scandal

Patrick Williams

April 29, 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.

What's the latest with House Bill 6?

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.

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---- Index References ----

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NewsRoom

Matt Levine's Money Stuff: Argentex Got Some Margin Calls

Opinion

Argentex

One niche financial service is getting rid of margin requirements. There are many financial products that require mark-to-market collateral. You enter into a foreign exchange forward contract in which you agree to pay me 100 euros in three months in exchange for 100 US dollars. If tomorrow the euro appreciates, so it would take \$1.10 to buy €1, you will have a mark-to-market loss on this trade: You have agreed to pay me €100 for something that, today, is worth only €90.91. You have a loss of almost €9. You might decide not to pay me — after all, you can get \$110 for your €100 elsewhere, so why pay me €100 for \$100? — or you might be *unable* to pay me, if you have done a lot of these trades and they have moved against you and you're bankrupt. And so it is traditional in many contexts for me to require collateral from you: If the trade moves against you by €9, you have to post €9 to a collateral account so I can make sure you're good for it. (Depending on the type of product and our bargaining power, if the trade moves in your *favor* by €9, I might have to post €9 of collateral to you.)

You might find that annoying for various reasons. One is that it is just administratively annoying to have to have money move back and forth each day as exchange rates move. Another reason is that you have other uses for your money, and having to post some of it to me as collateral is costly. A third reason is that you might be a big levered bettor on foreign exchange rates, and if those rates all move against you at once you will face big margin calls and have to come up with a lot of money you don't have. So it would be convenient, for you, to have a product that didn't require collateral. You pay me €100 in three months, I give you \$100 in three months, and whatever happens in between is none of our business. No collateral, just a contract that pays off in three months.

There is demand for that sort of thing, so people supply it. How do they supply it? You could imagine various answers, but here's a simple one:

1. You come to me for a foreign exchange forward, and I give it to you — I agree to pay you \$100 for €100 in three months — without collateral.

- 2. I turn around and go to a big bank and enter into an offsetting forward, in which I agree to pay the bank €100 for \$100 in three months.
- 3. The bank *does* require collateral from me.
- 4. I post collateral to the bank, and don't take any from you.
- 5. I charge you a fee for doing this transformation.

That's a good service! It has a ... very obvious problem? *Most* of the time, this service looks something like me renting my balance sheet to you and making essentially *credit* decisions. If you are creditworthy — if at the end of the three months you will almost certainly give me the €100 — then this all works out fine. My exchange-rate risk is hedged: I give you \$100 for €100, the bank gives me €100 for \$100, and net nothing happens. All I am doing is dealing with the cash collateral for you, but at the end of the trade that goes away; posting the cash collateral costs me something, but I charge you a fee to more than cover that cost.

But then some of the time the euro appreciates a lot against the dollar, all my clients are doing this trade, and I get huge margin calls from my banks and run out of money.

Is this the first blow-up of the Trump tariffs? Bloomberg's Donal Griffin, Greg Ritchie and Meg Short reported Friday about Argentex Group Plc., a London foreign exchange brokerage:

The company announced Friday it had agreed to sell itself to rival IFX (UK) Ltd. for about 2.5 pence per share, 94% below where the stock traded a week ago, while Chief Executive Officer Jim Ormonde stepped down with immediate effect. ...

Argentex entered into derivatives agreements with banks including London-based Barclays and New York-based Citigroup, agreeing to post collateral — or margin — for its trades. This is a buffer against potential losses that banks can seize and sell if bets begin to sour.

Typically, a FX brokerage would then demand similar levels of margin from its own clients to protect itself. Yet Argentex pursued zero-zero lines with some of its corporate customers, declining to ask them for either an initial deposit of margin or so-called variation margin in response to how the trades fared, the people said.

Zero-zero lines — a reference to both the zero initial margin at the start of a trade and then the zero variation margin throughout its lifetime — have been in use by London's FX brokerages since at least the early 2010s, according to one senior market participant, who requested anonymity. The strategy has proliferated in recent years, led in part by Argentex, the person said.

The bulk of FX brokerages in the UK now offer zero-zero lines to their corporate clients, said Daniel Kinnear, a veteran of the currency-sales business who now runs EAKO Capital in London. This allows them to compete against rival brokerages as well as the banks and financial-technology firms that make up the cutthroat industry, he said.

Yet zero-zero lines can cause a potentially fatal mismatch. While brokers like Argentex are on the hook for demands for margin from their lenders, they cannot issue offsetting margin calls to their clients.

"The key risks relate to the funding gap that this can create between the credit extended to the corporate clients and the trading lines that the FX brokerage has with its own liquidity providers," said Kinnear, who previously worked at Wall Street banks including Deutsche Bank AG, Barclays and Nomura Holdings Inc. "FX brokers need to ensure that they have access to sufficient liquidity — either through their own equity or debt facilities — to fund any margin calls."

Now, there are a lot of specific things that could go wrong here, but schematically, at a high level, those trades really should work out. If Argentex hedged its client trades with banks, and if the clients mostly didn't blow up, then everything is in some approximate sense fine: The client trades will eventually settle, Argentex will settle with the banks, the results will offset and Argentex will have earned its normal profits. There is a liquidity mismatch — Argentex needs money *now*, and will get the client money *later* — but no essential economic problem.

Still, in volatile markets, there is perhaps nothing worse you can say than "it's just a liquidity problem." When you get a bunch of margin calls and don't have enough money to meet them right now, but you're definitely good for the money in the long run, the natural thing to do is to go to investors and say "look, our business is economically valuable but we need cash right now, could you lend us the money." And the natural thing for *them* to say is "sure, we'll lend you the money to meet your margin calls, but in exchange we want 100% of the business and your shareholders get nothing." ("Give you a Snickers bar in exchange for 100% of the equity," is how I characterized it, when FTX was in approximately this position.) And then you say "no no no you don't understand, there is no solvency problem at all, our trades are fine, it's just a liquidity mismatch." But (1) that is rarely true and (2) even if it is, no one will believe you.

(Here is one exception. In early 2021, Robinhood Markets Inc. was in approximately this situation: It had a lot of clients doing meme-stock trades, the stock clearinghouse demanded more collateral, Robinhood didn't have the cash and couldn't take it from clients, so it had to go out and raise billions of dollars of equity to meet its collateral calls. That equity was somewhat expensive, but not "100% of the company for a Snickers bar" expensive, because it was *obviously true* that Robinhood had a pure liquidity problem and that the meme-stock frenzy would be *good* for business.)

Anyway here is Argentex's announcement of the IFX deal, which includes an immediate "secured bridging loan of £6.5 million." The announcement suggests that Argentex did its best to get more than a Snickers bar for shareholders, but nobody — not even existing shareholders — was all that interested:

In recent days the Argentex Board began exploring potential options to secure additional funding and entered into discussions with a number of parties regarding expression of interest in Argentex. The Board also engaged with certain of Argentex's leading institutional shareholders to explore the possibility for an urgent fundraising but concluded that this option was not viable in the circumstances.

On 22 April 2025, Argentex announced that it had experienced a rapid and significant impact on its near term liquidity position, driven by, inter alia, margin calls linked to its FX forward and options books. Argentex stated that it had taken a number of steps to preserve cash and increase the collateral received from its counterparties, but that if material volatility in currency markets persisted then Argentex's financial liquidity position, if not strengthened in the near term, would be significantly stretched. ...

Argentex also announced a further deterioration in its liquidity position on 23 April 2025 and that it needed to secure immediate financing for Argentex to provide it with immediate working capital flexibility to assist with its near-term liquidity needs. ...

Prior to agreeing the terms of the Acquisition, Argentex evaluated other expressions of interest in Argentex in order to ensure that the position of Argentex Shareholders was optimised based on the options available to it and concluded that the Acquisition was the most attractive for Argentex Shareholders.

Yes right if you are in the business of shielding customers from margin calls, it is pretty natural that you will get blown up by margin calls.

Deel

One of my most controversial claims in this column is that it is easy to keep a list of who has how many dollars. I wrote in 2019:

If you have U.S. dollars in a bank account at JPMorgan Chase & Co., and I have U.S. dollars in a bank account at JPMorgan Chase & Co., and I want to send you 100 of my dollars, what we do is I tell JPMorgan to subtract 100 from the number of dollars in my bank account and add 100 to the number of dollars in your bank account. This gets dressed up in a lot of *procedures*, because it would be bad if JPMorgan got the math wrong or if it moved money from one account to another without getting the proper authorizations, but as a matter of, like, computer science, it is dead easy. JPMorgan keeps a list of people and how many dollars they have, and you and I both trust JPMorgan to keep that list (that's what it means that we bank there!), and so we just tell JPMorgan to update the list to reflect the transaction between us.

And then some software people objected that in fact this is very hard, that keeping a list of dollars synchronized among many computers for many purposes is a difficult problem of computer science, that my assumption that this should all work seamlessly and simply ignores the hard work of thousands of dedicated software engineers who come to work every day to *make* banking look straightforward, that blockchain solves this. I tweeted that "every problem that seems dumb and easy to people outside a discipline seems incredibly deep to the people inside it, may be the lesson here," and also that "(1) there can be deep and difficult issues involved in reliably maintaining and modifying data at large scale and (2) I'm entitled to assume that there aren't." One *should*, in thinking about banking, be able to abstract away from the computational difficulties of maintaining a big ledger. There were banks for hundreds of years before computers were invented! Somehow they kept lists.

I think about this a lot, especially when a bank messes up its ledgers. Fine fine fine, it *is* hard.

A closely related problem is maintaining a company's payroll records. How hard is that? Would you believe: *impossible*? I assert that at some level obviously you should not believe that: Companies kept track of how much they had to pay their workers for many decades before the invention of B2B SaaS payroll startups. On the other hand, can you find someone at a payroll startup who will talk your ear off for an hour about how managing payroll is actually the hardest problem in computer science? Sure, probably.

Anyway we talked last month about Rippling's lawsuit against Deel. People Center Inc. (doing business as Rippling) is a payroll startup, and it sued Deel, another payroll startup, alleging that Deel "cultivated a spy to systematically steal its competitor's most sensitive business information and trade secrets." Rippling caught the alleged spy, who then hid in a bathroom, tried to flush his phone down the toilet, and fled. Good stuff.

Last Thursday, Deel countersued Rippling. Here is the countersuit, which amusingly does *not* deny any of the spy stuff. Instead it is stuff like this:

Haunted by his previous failures, and now fueled by suffocating jealousy at his inability to fairly compete with Deel in the marketplace, Rippling's co-founder and CEO, Parker Conrad—who was investigated and penalized by the SEC, and exiled from his own former company, Zenefits, for flouting the law—has fallen back on his old playbook: cheating.

And:

Conrad grew up on New York City's Upper East Side, where he earned "mediocre" grades at an expensive and prestigious all-boys preparatory school. Despite his mediocrity, Conrad was then admitted to Harvard University.

Predictably, Conrad then failed out of Harvard, which he described as an "incredibly humiliating and shocking experience"—because he apparently did not attend any classes "for like a year." Despite Conrad's forced leave of absence from Harvard, he was eventually readmitted, once again showcasing his privilege.

And even claims of a counterspy:

And incredibly—given Rippling's recent "spying" allegations—Deel has information to believe that Rippling's strange obsession with Deel had led Rippling to place an insider at Deel, essentially allowing it to eavesdrop on Deel's internal communications without Deel's permission.

But my favorite bit is this claim about the impossibility of payroll processing:

By way of background, building any kind of payroll engine is an extremely difficult task, and some of the more established companies still use the same historic mainframe they have always used to process payroll, and build their own manufacturing plants to make the parts to keep it running. Alternatively, smaller local companies have their own engines just for local payroll processing.

To date, however, on information and belief no one has been able to build a large-scale payroll engine to process payroll on a global scale. Indeed, these likely cannot actually be built without significant advances in quantum computing.

However, Rippling never lets facts get in the way of a good scam. On information and belief, Rippling has been falsely representing to its current and prospective customers that Rippling is running its payroll services on its own platform.

I would not take any of the claims in these lawsuits as facts; these guys really seem to hate each other! Still, I love that if you meet with the chief financial officer of a normal company and ask “are you able to keep track of all of your employees globally and pay them?” she will say “yes,” and if you ask “is that the hardest problem that you face as CFO?” she will say “no we just have a payroll department it’s fine,” and if you ask “do you have your own manufacturing plant to make the parts to keep your payroll system running?” she will say “what, no, it’s just software, why would we have a manufacturing plant, I don’t even understand what you are talking about.” But if you meet with the head of a *payroll software company* and ask him “are you able to keep track of all of your customers’ employees globally so they can pay them?” he will be like “man that is the great unsolved problem of computer science, we are pretty sure that it violates the laws of classical physics but we have our best scientists working on it and with a few billion dollars of infrastructure investment we’re hoping to crack it by 2050, but certainly our *competitors* will never figure it out.”

PGI Global

There are, what, four kinds of crypto projects?

1. Serious projects designed to build useful stuff by selling tokens that are securities under US law;
- 2. Serious projects designed to build useful stuff by selling tokens that are *not* securities under US law;
- 3. Jokes;
- 4. Frauds.

What is the legal status of each of these? Well, not legal advice, but:

1. Selling securities tokens to build useful stuff was, until a few months ago, essentially impossible in the US. The Securities and Exchange Commission, under Gary Gensler, demanded that crypto projects strictly comply with securities law, and that is hard for crypto projects to do. Also Gensler’s SEC took a maximalist — though, to my eye, largely correct — view of which tokens were securities. (Almost all of them.) Under the Trump administration, though, this has changed. It’s not crystal clear how it has changed — a crypto task force is working on it — but at the very least the new SEC (1) thinks many fewer tokens are securities and (2) wants to work with crypto issuers to make it more plausible for those tokens that *are* securities to comply with the law.
 - 2. Selling *non*-security tokens to build useful stuff is fine. A few months ago this meant mostly Bitcoin; now it is a bigger category.
 - 3. Selling *joke* tokens to do *nothing* is also fine? Memecoins, the new SEC has explicitly ruled, are not securities, but I think even under the old SEC regime it was hard to argue that they were securities. (If you buy a memecoin you are not *investing* in a *business*, so it’s not a security.) This is a weird situation — the law favors useless crypto projects over useful ones — but both securities law and crypto are pretty weird so, you know, fine.
 - 4. Selling *fraudulent* tokens was clearly illegal under the old regime: Fraud is illegal, and the SEC took the position that pretty much all crypto fraud is *securities* fraud, and brought enforcement cases. Under the new

regime, though, the analysis is harder. For one thing, if most crypto tokens are not securities, then most token fraud is not securities fraud; even if crypto fraud is illegal, *the SEC* can't bring a case. (And who else would?) For another thing, uh, look around? There are a lot of Trump-related crypto projects. Are they ... you know what, never mind, I don't know where I was going with this paragraph, forget it.

I guess it was possible that the new SEC would not bring any crypto fraud enforcement actions: Crypto fraud might no longer be the SEC's problem. (I guess it was possible that the new SEC would not bring any fraud enforcement actions *at all*; I wrote in January: "What if the US Securities and Exchange Commission never brings another enforcement case? What if it's like 'ahh, go ahead, do all the fraud you want?'"

But in fact the new SEC has disclaimed this analysis: Despite concluding that crypto tokens might not be securities, it has nonetheless expressed interest in policing them for (securities) fraud. Somebody has to, so why not the SEC?

And so last week the SEC brought a very garden-variety fraud case against some crypto guy:

The Securities and Exchange Commission [Tuesday] charged Ramil Palafox for orchestrating a fraudulent scheme that raised approximately \$198 million from investors worldwide and for misappropriating more than \$57 million of investor funds.

According to the SEC's complaint, Palafox's company, known as PGI Global, claimed to be a crypto asset and foreign exchange trading company. From January 2020 through October 2021, Palafox offered and sold PGI Global "membership" packages, which he claimed guaranteed investors high returns from PGI Global's supposed crypto asset and foreign exchange trading and offered members multi-level-marketing-like referral incentives to encourage them to recruit new investors. However, as the complaint alleges, Palafox misappropriated more than \$57 million in investor funds to buy Lamborghinis, items from luxury retailers, and for other personal expenses. He also used the majority of the remaining investor funds to pay other investors their purported returns and referral rewards in a Ponzi-like scheme until its collapse in late 2021. ...

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

Yeah no of course, pretend to do AI-powered crypto trading and actually steal all the money for Ponzi and Lambos, a tale as old as time, or at least as old as 2017. But it's a little interesting that the current SEC crypto regime signed off on a complaint saying this:

PGI Global's membership packages were investment contracts and thus constituted securities within the meaning of Section 2(a)(1) of the Securities Act and Section 3(a)(10) of the Exchange Act. As investment contracts, PGI Global's membership packages involved: (1) the investment of money; (2) in a common enterprise; (3) with a reasonable expectation of profits to be derived from the efforts of others. *See SEC v. W.J. Howey Co.*, 328 U.S. 298-99 (1946).

This is an easier case under *Howey* than some of the Gensler enforcement actions, but it is still a statement from the current SEC that fraudulently managing people's crypto investments is securities fraud, even if the crypto investments are not necessarily securities.

XAI

The timeline is something like:

In April 2022, Elon Musk decided to buy Twitter Inc., and quickly signed a deal to buy it for about \$44 billion.

- Subsequently, the prices of social media companies fell, Twitter in particular looked overpriced, and Musk regretted his deal and tried to back out.
- Nonetheless the deal closed in October 2022, and Musk promptly renamed Twitter "X."
- One month later, in November 2022, OpenAI launched ChatGPT and the modern artificial intelligence boom got started in earnest.

If ChatGPT had launched a year earlier, it would not have been obvious that Twitter was an AI company. I mean, it wasn't an AI company at all. But it had some nice features for an AI company: It had *data* (lots of tweets with real-time information and jokes and natural language), and it had *distribution* (lots of people typed in the box on Twitter's website or app every day, making them a ready audience for an AI chatbot in that box). It just needed to buy a lot of processing power and hire and inspire and motivate a bunch of top AI researchers and put them to work. Twitter's existing managers in April 2022 were probably not the people to do that, but Elon Musk arguably was. So a thesis like "Elon Musk should acquire Twitter, buy a lot of chips, hire a lot of AI researchers, and put them to work on a hard-core mission of turning Twitter into a leading AI lab with a 12-digit valuation" would have sounded a *little* crazy, but not *that* crazy, and turned out to be basically correct.

Except, again, the whole "become a leading AI lab with a 12-digit valuation" concept didn't really exist in October 2022. That was more of a November thing.

Anyway you do gotta hand it to him:

Elon Musk's XAI Holdings is in talks with investors to raise roughly \$20 billion in funding for his newly combined artificial intelligence startup and social media business, according to people familiar with the matter.

If completed, the prospective deal would be the second-largest startup funding round of all time, according to data provider PitchBook, trailing only OpenAI's \$40 billion financing earlier this year. The transaction would value the company at more than \$120 billion, said one of the people, all of whom asked not to be identified because the information is private.

XAI didn't immediately respond to requests for comment.

Announced in March, XAI Holdings was created from the combination of X, formerly Twitter, and Musk's AI venture, xAI. The new funding could be used to pay down some of the debt that Musk took on when he converted Twitter into a private company, later renaming it X, one person said.

That debt has been weighing on X, Bloomberg previously reported. In March alone, X paid about \$200 million in debt-servicing costs related to its buyout, according to people briefed on the matter. The firm's annual interest expense by the end of 2024 was more than \$1.3 billion.

We have talked about that debt a few times: For a while it seemed to be worth about 50 cents on the dollar, and I have wondered about the thesis that made investors want to buy it. It turns out the correct thesis was "Twitter is an AI company, and AI companies can raise unlimited billions of dollars of equity right now, and those equity investors will pay off the debt."

How to talk to your children about crypto

Here is a New York Times story that begins with a middle-aged suburban couple being kidnapped from their \$240,000 Lamborghini Urus, and ends by at least strongly implying that the Lamborghini was bought by their 18-year-old son with the proceeds of a \$243 million Bitcoin theft, and that the kidnappers were after that Bitcoin.

There is a lot of stuff here. The son "was secretly a member of the Com, also referred to as the Comm or the Community, an online network of chat groups that has its roots in the hacking underground of the 1980s and functions as a kind of social network for cybercriminals or aspiring ones"? The \$243 million was stolen from an early Bitcoin investor by calling him up, pretending to be a crypto exchange representative, and asking him to "download a program that would provide additional security," which promptly stole all his crypto?

But I do think that the main lesson here — and nothing in this newsletter is either legal or parenting advice — is that, if your teenaged son is really into Minecraft and one day he comes home from school in a Lamborghini that he just bought, you need to sit him down and have a serious conversation with him about the risks of stealing a lot of Bitcoin. Those risks are serious — not just legal risks but physical violence — and he has definitely stolen some Bitcoin!

Things happen

Trump's China Tariffs Set to Unleash Supply Shock on US Economy. Demand slump fuelled by Trump tariffs hits US ports and air freight. America Inc. Slashes Spending as Tariff Uncertainty Swirls. Shein Hikes US Prices as Much as 377% Ahead of Tariff Increases. Goldman Sachs Offers Advice on Tariffs to Countries Scrambling to Please Trump. Global Race to Lure US Researchers Intensifies as Trump Slashes Science Funding. American students turn to UK as Donald Trump takes aim at US universities. Toyota's \$42 Billion Buyout Plan Spurs Governance Questions. Private Equity Firms Target Defense Assets Once Seen as Toxic. Republicans plan to scrap US audit regulator. Saudi Arabia and Qatar to repay Syria's debts to World Bank. You can't lick a badger twice.

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- 1. The interesting question is: Under the old SEC, was memecoin fraud securities fraud? I think (1) the old SEC would have answered “yes” (somewhat inconsistently with my Point 3) and (2) in any case it is actually pretty hard to do memecoin fraud because there are no material facts about memecoins.

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Financial Reporting Quality at Stake in Plan to Fold Audit Board

- GOP plan would transfer audit oversight to SEC, cut funding
- Board chair says staff's expertise won't be easy to replicate

The US audit regulator on Monday said a House Republican plan to dismantle the agency and hand over its duties to the SEC would weaken a critical backstop that protects investors.

"The unique experience and expertise built up by the PCAOB over decades cannot simply be cut and pasted without significant risk to investors at a time when markets are already volatile," Erica Williams, chair of the Public Company Accounting Oversight Board, said in a statement.

The House Financial Services Committee plans to consider a bill on Wednesday that would add auditor oversight to the to-do list of the Securities and Exchange Commission and sunset the funding for the PCAOB. The move is part of a budget process that aims to find billions in spending cuts and adopt President Donald Trump's agenda.

But it would unwind a key provision of an Enron-era law that aimed to restore investor trust in corporate accounting. The 2002 Sarbanes-Oxley Act created the PCAOB as an independent watchdog of auditors who vet the revenues and balance sheets that drive trillions in corporate stock value.

Prior to that, the industry was "grossly under-regulated," Dennis Kelleher, co-founder, president & CEO of Better Markets, said in a statement. "Killing the PCAOB will endanger not just companies and investors, but also financial stability because it will take the only independent cop off the accounting beat, resulting in less accurate and reliable financial information for everyone."

The PCAOB is caught in the crosshairs of a presidential administration that has eliminated federal offices and fired leaders of independent agencies. At the same time, auditors have grown increasingly frustrated with their regulator—from its methods of reviewing their work to the volume of new standards.

Those concerns only grew under Board Chair Williams, who took a more aggressive stance with auditors—tripling enforcement penalties, calling out auditors to curb inspection findings, and setting a blistering pace for rewriting PCAOB's rulebook.

"If you don't move anything out and you don't collapse it into the SEC, you need to reform the philosophy and attitude and approach of the board," said Jeff Johanns, an associate professor at The University of Texas at Austin and a former PwC audit partner. "And then bring back the voice of the profession to a meaningful position."

Transfer of Duties

The proposed budget bill would end the overlapping enforcement authority shared by the SEC and board. It could also provide opportunities for other needed changes to auditor inspections and standard-setting, Allison Henry, vice president of professional & technical standards at the Pennsylvania Institute of CPAs, said in an email.

Two industry groups—the American Institute of CPAs and the Center for Audit Quality—said they support oversight of auditors. Both pledged to work with policymakers as they consider alternatives that the center said should "preserve and enhance" the independence and expertise necessary for "effective oversight."

But SEC auditor supervision, while competing with other commission priorities, is likely to pale in comparison to the board's current scrutiny. The PCAOB reviewed more than 900 public company audits last year with an inspections staff of about 430 people.

The GOP bill would eliminate the support fees that US listed companies and broker-dealers pay to fund the PCAOB's operations—totaling \$375 million this year—and prevent the SEC from collecting such fees in the future. That could crimp the Wall Street regulator's ability to hire more staff to handle functions currently performed by the PCAOB.

Like other federal agencies, the SEC has seen its own 5,000-person staff contract since Trump took office for his second term, through layoffs and voluntary buyouts. More spending cuts are possible.

The SEC declined to comment about its possible expanded role.

"Can the SEC really pick this up and be an effective regulator in the absence of the PCAOB? I think that is a really fair question," said Steve Soter, vice president & industry principal at Workiva, which provides financial reporting software.

But the SEC has been able to reallocate resources to meet past congressional mandates including new authorities handed to the commission in the wake of the financial crisis. The SEC could do the same to tackle any new auditor dictate, said Mike Piwowar, executive vice president of finance at the Milken Institute and a former Republican commissioner.

"Not only can they handle it, it will actually be more effective and more efficient," Piwowar said.

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Things at Tesla are worse than they appear

 [cnn.com/2025/04/28/business/things-at-tesla-are-worse-than-they-appear/index.html](https://www.cnn.com/2025/04/28/business/things-at-tesla-are-worse-than-they-appear/index.html)

Chris Isidore

April 28, 2025

CNN —

Things are undoubtedly bad at Tesla. Its sales are dwindling. Its profits are plunging, as is its share price. There are regular protests outside its showrooms. The Cybertruck is a flop. And somehow, it's actually a lot worse than that.

The 71% drop in net income it just reported may have been overshadowed by CEO Elon Musk's announcement that he would be stepping back from his controversial duties at the Department of Government Efficiency (DOGE). But that drop is just one indication of serious financial sickness at the EV maker, problems brought on by falling sales for the first time in its history and falling prices for electric vehicles.

The bottom line problem at Tesla is its vanishing bottom line. A deeper look at its first quarter report shows it's now losing money on what should be its ostensible reason for existence — selling cars.

It was only able to post a \$409 million profit in the quarter thanks to the sale of \$595 million worth of regulatory credits to other automakers.

But if the Trump administration gets its way, the company can kiss those regulatory credits keeping it in the black goodbye, too.

Related article [Tesla profits plunge as Musk promises he's ready to step away from role at DOGE](#)

It also faces possible rising costs due to the tariffs that the Trump administration is weighing on imported auto parts, which even Musk has said could be significant, albeit less so than at some competitor.

Sales are falling partly due to rising competition from other automakers' EV offerings, especially in China. Tesla's sales are falling in both Europe and China even as overall EV sales increase in those key markets. It's about to lose its long-held title of the world's largest seller of electric vehicles to Chinese automaker BYD.

But Tesla is also being hurt by Musk's political activities, from leading the effort to drastically slash the federal government to supporting far-right parties around the world, like Germany's AfD. Even some of its fans on Wall Street believe the brand damage could be lasting, despite Musk's claim that he intends to step back from DOGE.

Musk: Tesla not on 'ragged edge of death'

Musk dismisses the idea that the company is in any serious financial distress.

"We've gone through many a crisis over the years and actually been... on the ragged edge of death – at least, maybe a dozen times," he told investors on the conference call Tuesday. "This is not one of those times. We're not on the ragged edge of death, not even close. There are some challenges and I expect that this year will be probably be some unexpected bumps this year but I remain extremely optimistic about the future of the company."

But what was not discussed on the call was the fact that the Trump administration wants to get rid of the federal emission rules that favor automakers that sell EVs.

It also wants to end the right of California and eight other states to demand tougher emissions regulations than the federal standards that would ban the sale of gasoline-powered vehicles by 2035. Without tough emissions rules at the federal and state level, there would be no regulatory credit sales.

The sale of those federal and state credits has been quite lucrative for Tesla, bringing in \$8.4 billion in revenue since the start of 2021 alone, money that basically went straight to its bottom line.

For much of its history Tesla depended on the sales of those credits because it was losing money on its cars and solar energy products. But since the second quarter of 2021, it had been profitable every quarter even without the credit sales – until the most recent quarter, that is.



A Tesla car drives past demonstrators rallying against Tesla CEO Elon Musk during a "Tesla Takedown" protest outside a Tesla store in Pasadena, California, in March.

Frederic J. Brown/AFP/Getty Images

Profit margins shrivel

A key product margin is also shrinking. In the first quarter, that measure, the gross automotive profit margin, excludes not only regulatory credit sales but many other expenses. The margin was 12.5% in the most recent quarter, down from a high of 30% in the first quarter of 2022.

The last time Tesla had a profit margin that low was in early 2012, according to research from Morgan Stanley, back when the company was just getting started and selling only 5,600 cars a year, or nearly what it sold every day, on average, last year.

The 30% profit margin in 2022 had made it the nation's most profitable automaker, even though it still sold a fraction of the vehicles sold by General Motors, Ford or Stellantis.

Related article [Elon Musk is going back to Tesla. But is the damage already done?](#)

Between the combination of healthy profits and Tesla's sales growth of between 37% and 87% a year, the stock went straight to – as Musk is so fond of saying – the moon. That made it the most valuable automaker on the planet by far, and Musk the richest person.

But sales slammed into reverse last year, marking its first annual decline in its history. Part of that was driven by rising competition from EV offerings of other automakers, particularly in China, and partly by backlash from some buyers turned off by Musk's increasingly conservative and controversial political stances.

Even some of those still bullish on Tesla stock believe there has been lasting brand damage, but they believe the company will benefit from the introduction of "robotaxis" that will provide driverless rides to people using a new ride-hailing service Tesla says is about to debut in Austin, Texas.



The burnt-out remains of a Tesla electric car in Berlin, Germany in March. Public animosity has grown in recent months against Tesla company owner Elon Musk following his very open and vocal support for Germany's far-right Alternative for Germany political party.

Omer Messinger/Getty Images

The Department of Transportation appeared to give Tesla's self-driving efforts a lift on Thursday as it announced an "automated vehicle framework," which includes "removing unnecessary regulatory barriers" and enabling commercial deployment of automated vehicles. Investors took that as another sign of the Trump administration taking steps to help Tesla as its shares rose 10% on Friday. But the framework doesn't ensure its long-promised self-driving efforts will be successful.

The promise – and problems – of robotaxis

Musk claims that service, and the introduction of humanoid robots that he says will be at work in Tesla plants later this year, will make Tesla worth more than the world's next five most valuable companies combined.

Fans of the stock still believe in the future that Musk predicts, even if some are not as optimistic about the timeline.

Gene Munster, managing partner at Deepwater Asset Management, attributes the thinner profit margins partly to reduced sales and partly to a \$250 million increase in research and development.

What do you think? Join 374 others in the comments

View Comments

"It is an ugly year, but they're kind of doing a set up for what should be improvements next year," he said. He agrees with Musk's vision that Tesla is well-positioned to profit from capturing much of the ride-hailing market.

But GM recently dropped its own robotaxi offering after concluding "the considerable time and resources that would be needed to scale the business, along with an increasingly competitive robotaxi market" didn't support a business case. Ford also pulled back greatly from its own autonomous vehicle development efforts after concluding it wouldn't be profitable anytime soon.

"Profitable, fully autonomous vehicles at scale are a long way off," said Ford CEO Jim Farley.

And Musk has been promising Tesla's robotaxis were about a year away for at least six years now, and even he admits the company has not lived up to previous predictions about the company's timeline for its "full self driving" or FSD, capabilities.

"I'm the boy who cried FSD," he said in a call with investors in July 2023. And even when rolling out his latest plans for robotaxis in October, he admitted "I tend to be a little optimistic with time frames."

374 comments

Smaller Trump Memecoin Owners Drive Activity After Dinner Invite

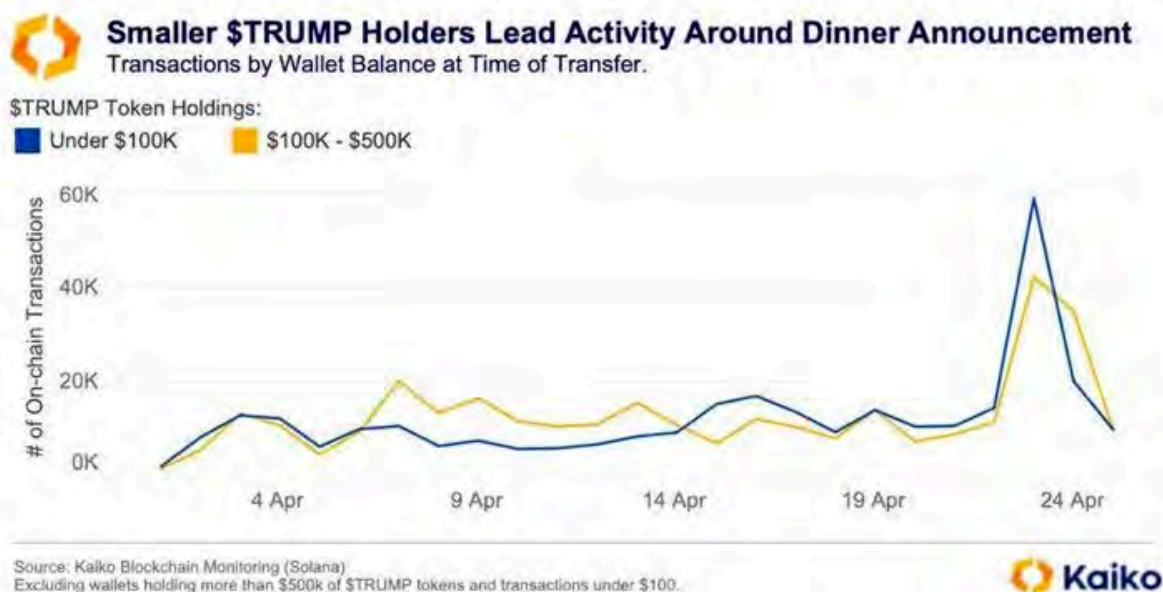
Smaller owners of the Donald Trump memecoin appeared to be leading the spike in token transfers seen after the issuers of the cryptocurrency announced that the top holders will dine with the president.

Nearly 10,000 digital wallets transferred Trump coin when the the dinner was announced Wednesday, up 200% from the previous day, according to crypto researcher Kaiko's analysis of blockchain data. Wallets containing less than \$100,000 worth of Trump coins dominated the activity.

"This Trump memecoin is really retail driven, it's kind of wallstreetbets of crypto," said Adam Morgan McCarthy, a research analyst at Kaiko. "I don't think anyone is buying it thinking it's the future of finance. It's more people thinking how fun would it be to spend a few hours in the presence of Donald Trump."

Even so, the planned gathering has prompted an uproar among critics over potential conflicts of interest and ethics violations. Senators Adam Schiff of California and Elizabeth Warren of Massachusetts warned last week that the private dinner may constitute "pay to play" corruption, and are calling for an ethics investigation.

CIC Digital LLC, an affiliate of the Trump Organization, and Fight Fight Fight LLC, the issuer of the memecoin, didn't immediately return requests for comment.



Source: Kaiko

The top 220 holders will dine with the president on May 22 at Trump National Golf Club near Washington. People who want to participate have to register, and a leader board of the holders is being kept to determine attendees. The top 25 will also be invited to a reception before the dinner, and will be given a tour of the White House. Registered holders' average Trump coin balance between April 23 and May 12 will determine their ranking, according to the website advertising the gathering.

The leaderboard currently has someone with \$13,000 worth of the memecoin ranked at 220, the cutoff for the dinner. To be part of the leaderboard, people have to register their self-custodied, on-chain wallets on the token's site.

The memecoin debuted several days before Trump's inauguration and has lost much of its value since, plunging from a peak market value of nearly \$15 billion to about \$2.9 billion currently, according to crypto data tracker CoinMarketCap. The coin's value has dropped 2.5% in the last 24 hours, the data show.

This isn't the first sit-down dinner with supports of Trump crypto projects. Before being elected for a second time, Trump had held dinners for buyers of his non-fungible token collections. In one instance, those who spent \$7,425 on for 75 digital cards were eligible for dinner with Trump at his private club and limited-edition sneakers.

--With assistance from **Muyao Shen**.

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Bitcoin mining now just totes unprofitable, costing over \$137,000 to mine just one BTC in the US and near \$200,000 per coin in Germany



pcgamer.com/hardware/bitcoin-mining-now-just-totes-unprofitable-costing-over-usd137-000-to-mine-just-one-btc-in-the-us-and-near-usd200-000-per-coin-in-germany

Hope Corrigan

April 29, 2025

(Image credit: Boris Zhitkov / SimpleImages)

As I wipe the dust from my coffin I arise to tell you all that I was there when they first started mining the cryptocurrencies from the bowls of the digital frontier. I was there early enough to look at my old rig and wonder if it was worth setting up to see if it could score a few coins over the course of a month or so. I've known a few people who did things like accidentally throw away drives full of BTC. I even knew people who got in early and cashed out fast, otherwise known as 'bastards'.

Since its early days, crypto has been, to put it politely, an absolute shitshow of cryptoglogical proportions. Even when it was somewhat viable to put your rig to work it'd still be a long haul of wait and see before you might eventually unearth yourself a coin here and there. And of course your old GPU has been worked into dust and your power bill has skyrocketed for the trouble.

For those reasons it's been a long time since I considered mining Bitcoin as a viable investment, and it looks like the landscape is finally shifting to meet my preconceptions. Even specialists such as CoinShares (via Overclockers) are starting to doubt this business investment, despite it recently reaching an all time high price.

New data tells us that mining a single Bitcoin or one BTC costs the largest public mining companies over \$82,000 USD, which is nearly double the figure it did the previous quarter. Estimates for smaller organisations say you need to spend about \$137,000 to get that single BTC in return. BTC is currently only valued at \$94,703 USD, which seems to be a problem in the math department.

These costs can even get worse depending on the country you're doing your mining. Germany is typically considered to be one of the worst places to mine BTC from a profit perspective. It costs around \$200,000 USD to mine a single coin there.

So why would anyone be mining BTC in this day and age? Well the main reason, other than perhaps dim hopes that they'll strike it rich, is about technology. Currently optimising farms to mine faster on lower power has been the goal. Plus seeking out places where electricity is cheaper to try to maximise those gains.

Once you've got these incredibly efficient, and hopefully relatively power friendly setups in place, you've not only dropped your potential mining overheads but you likely have a computation setup that could complete other tasks. This makes it an attractive option for larger companies who may look to lease their mining operations for other computations when they're unable to make money from mining. Then they can swap back if and when the market picks up once again.

For now the big takeaway is that mining crypto isn't going to be viable for individuals, possibly ever again. With huge centres being setup in key positions you just won't be able to beat out the larger companies acting here. Any new coin that comes up they can point their rigs to it and begin the process all over again. It's almost like you're better off using your sweet rigs for gaming, not crypto mining, just like the good lord intended.

Hope's been writing about games for about a decade, starting out way back when on the Australian Nintendo fan site Vooks.net. Since then, she's talked far too much about games and tech for publications such as Techlife, Byteside, IGN, and GameSpot. Of course there's also here at PC Gamer, where she gets to indulge her inner hardware nerd with news and reviews. You can usually find Hope fawning over some art, tech, or likely a wonderful combination of them both and where relevant she'll share them with you here. When she's not writing about the amazing creations of others, she's working on what she hopes will one day be her own. You can find her fictional chill out ambient far future sci-fi radio show/album/listening experience podcast right here. No, she's not kidding.

[Securities Law](#)

April 28, 2025, 9:29 PM PDT

Ex-Celsius CEO Mashinsky Should Get 20 Years in Prison, US Says

Former Celsius Network Chief Executive Officer **Alex Mashinsky** should get at least 20 years in prison after admitting to fraud in connection with the 2022 collapse of the company, US prosecutors said.

"For his calculated criminal conduct and unrepentant posture, a severe sentence is warranted," prosecutors said late Monday in a filing with a federal judge in New York.

Disgruntled investors in the failed crypto lender also have urged US District Judge John Koeltl to impose a stiff sentence, with some suggesting the Celsius co-founder should spend the rest of his life in prison.

Mashinsky pleaded guilty to two counts of fraud in December and agreed to forfeit \$48 million. The charges carry a maximum punishment of 30 years in prison. His lawyers are seeking a punishment of no more than 366 days behind bars, while probation officials have recommended a sentence of 15 years.

The collapse of Celsius was one of the earliest events in the so-called "crypto winter" of late 2022, a series of events that wiped billions of dollars of value from the digital-asset market, and was followed about four months later by the implosion of the cryptocurrency exchange FTX – whose founder, Sam Bankman-Fried, is currently serving a 25-year prison sentence.

Read More: [Celsius Investors Urge Severe Punishment for Founder Mashinsky](#)

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Insider Trader Gets Jail as SEC Reviews Tool That Caught Him (1)

An Oregon retiree was ordered to spend a year behind bars for conspiring with a Nuveen LLC trader in a \$47 million insider trading scheme — a case flagged by a controversial SEC tracking tool the Trump administration is considering reining in.

Alan Williams, 79, was sentenced Monday by a federal judge in Manhattan. Both he and the former Nuveen trader, **Lawrence Billimek**, pleaded guilty in 2023. Billimek, 54, received a nearly six-year sentence in May for tipping off Williams to thousands of trades by Nuveen, a unit of TIAA that manages \$1.3 trillion in assets. US District Judge Paul Gardephe noted that Williams had cooperated with the government against Billimek.

The case was one of the first criminal cases brought based on data gathered by the Consolidated Audit Trail, a powerful database tracking as many as 500 billion trades a day that the Securities and Exchange Commission has been building for more than a decade. But Wall Street firms and Congressional Republicans have called for the CAT to be shut down, and new SEC Chairman **Paul Atkins**, who was sworn in last week, has also previously expressed doubts about it.

Legal experts have said a scheme like Billimek and Williams' would not have been uncovered without CAT. Though major insider-trading cases have often focused on single-market events like merger announcements, the Nuveen one involved some 1,697 intraday equity trades made by Williams. The SEC found that he had a 97% "win rate" over a five-year period, which had less than one-in-a-trillion odds of occurring randomly.

Read More: Wall Street Seizes Opportunity to Gut SEC Trading Surveillance

But Citadel Securities LLC and the American Securities Association, a trade group representing regional financial institutions, sued the SEC over the CAT in 2023, claiming that the regulator can't operate such a tool without Congressional authorization. Citadel's suit received backing from Republican politicians, who've expressed concern that the CAT could be used to monitor investors' political and religious beliefs.

With Donald Trump back in the White House, the debate over CAT is now within the SEC itself. Project 2025, the conservative manifesto for creating a more powerful Republican presidency, explicitly called for the database to be terminated. Atkins said during his confirmation hearing that the CAT needs to be reviewed, saying that the costs have “ballooned” and that its mission “has kind of veered off.”

Even before Atkins’ confirmation, the financial industry began lobbying the administration for changes to the database. The SEC has already exempted identifiable information such as names and birth years from being stored in the database. In February, the Securities Industry and Financial Markets Association, another Wall Street trade group, urged the SEC to pause fee collections from brokers related to the CAT.

Along with the Nuveen case, the SEC has said the CAT was partly responsible for two other enforcement actions. A Federal Reserve bank examiner in November pleaded guilty to trading on confidential information about companies he supervised, and a Florida trader in December settled claims that he used “spoof” orders to manipulate thinly-traded securities.

‘Embarrassed and Ashamed’

At his sentencing Monday, Williams apologized to the court, his family and Nuveen employees and clients. “I’m embarrassed and ashamed,” he said.

Williams faced as much as 75 years in prison, although white-collar criminals rarely receive the maximum penalty. Federal sentencing guidelines called for a punishment of 57 to 71 months behind bars.

Billimek, who was responsible for routing orders based on Nuveen portfolio managers’ decisions, admitted to tipping off Williams about Nuveen’s planned trades in stocks, including Lululemon Athletica Inc. and Ulta Beauty Inc., as part of a complex plot that also involved the use of burner phones to hide their interactions from authorities.

In one example provided by prosecutors, the scheme netted more than \$55,000 in profits one day in August 2022 by shorting shares of Match Group Inc. ahead of substantial sales by Nuveen.

Williams, a onetime head trader for Sutro & Co. in San Francisco, had asked Gardephe to keep him out of prison, calling himself an “uncommonly decent and giving man” and noting that he suffers from advanced Parkinson’s disease. The judge said a non-custodial sentence wasn’t possible, given the “blatant nature” of the conduct and the number of illegal trades.

As part of an order filed later on Monday, Williams agreed to forfeit more than \$35 million held in Charles Schwab Corp. and JPMorgan Chase & Co. accounts, as well as a six-bedroom, six-bathroom house in West Linn, Oregon.

The case is US v Billimek, 22-cr-675, US District Court, Southern District of New York (Manhattan).

(Updates with forfeiture order in last paragraph.)



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Napco Faces Investor Suit Over Sales Downturn

By **Emilie Ruscoe**

Law360 (April 28, 2025, 7:25 PM EDT) -- Security device maker Napco Security Technologies Inc. faces a proposed investor class action alleging that the company overpromised on a long-term earnings margin goal, hurting investors when trading prices fell as its sales and progress toward that target stalled in February.

In **a complaint** in Brooklyn federal court Friday, Napco investor Shailesh Patel claimed that between February 2024 and February 2025, trading prices for Napco shares were artificially inflated because the company's brass had been overconfident about the company's ability to achieve its fiscal year 2026 growth projections, which were premised in part on growth and strength in its hardware division.

"Despite making lofty long-term projections and claiming one-off setbacks to hardware sales," Patel said, the company failed to predict, and meet, demand for its hardware products, and "Napco's forecasting processes fell short as sales continued to decline and, ultimately, derailed the company's long-term projections."

Napco, which is headquartered in the Long Island, New York, village of Amityville, has been publicly traded on the Nasdaq stock exchange since 1981. Market records show that in August 2024 — during Patel's proposed class period and when the company announced record revenue and net income for both the final quarter of its 2024 fiscal year and its entire fiscal year — trading prices for Napco shares hit an all-time peak of nearly \$56 apiece.

At the start of Patel's proposed class period in February 2024, the investor said, Napco CEO Richard L. Soloway told investors that "we believe we are well on our way to achieving" its stated margin goal of 45% by the end of its 2026 fiscal year on the strength of its equipment sales and recurring revenues.

"In the coming months ... combined with new distributor sources we have developed, we will begin to invigorate our equipment sales and associated margins to even higher levels than any time before," Soloway told investors in February 2024.

The company's representatives expressed similarly optimistic expectations on earnings calls for the next three quarters, but then changed course in February 2025 as they conceded they had seen Napco's earnings margin fall from 32% to 28%.

Napco's Chief Financial Officer Kevin S. Buchel told investors in February that since the company had been "on [its] way" to hitting the earnings goal at the heart of the suit, but had "taken a step back" instead of progressing toward that goal with its financial results from its latest quarter. Among other things, the company reported a significant decline in sales and revenue, falling short of Wall Street's expectations.

Patel cited market records showing that on the heels of Napco's February reporting, trading prices for the company's shares fell from nearly \$37 apiece to less than \$27 apiece, a decline of nearly \$10, or nearly 27%, over a single trading day.

Alongside the company, Patel's suit names Napco's CEO Soloway and CFO Buchel.

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

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

Counsel information for Napco wasn't immediately available Monday.

The case is Patel v. Napco Security Technologies Inc et al., case number 1:25-cv-02308, in the U.S. District Court for the Eastern District of New York.

--Editing by Stephen Berg.

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Avis Hit With Investor Suit Over \$2.3B Fleet Impairment

By **Sydney Price**

Law360 (April 28, 2025, 10:24 PM EDT) -- Car rental company Avis Budget Group has been hit with a proposed shareholder class action alleging it harmed investors when it concealed a strategy shift late last year that accelerated fleet rotation and led to a \$2.3 billion impairment charge.

According to the suit filed by investor Shane Merriam on Friday, Avis and other rental car companies had to purchase higher-than-normal priced fleet beginning in the COVID-19 pandemic due to a shortage of fleet supply. When prices began returning to historic norms in 2024, Avis implemented a "change in strategy to significantly accelerate fleet rotations," to purportedly position itself for better growth in 2025, according to the suit.

The strategy, however, reduced the recoverable value of Avis' vehicles, forcing it to recognize billions of dollars in impairment charges and incur substantial losses, the suit alleges.

"[I]f rotation is too accelerated, a company risks prematurely removing vehicles before they have reached the end of their 'useful lives' — the period during which the vehicles have recoverable value," the **complaint** states.

Disclosure of the losses and other changes caused the company's share price to plunge about 7% on Feb. 11, to close at \$83.59 per share, the suit said.

In addition to Avis, its CEO Joseph A. Ferraro and Chief Financial Officer Izilda P. Martins are individual defendants in the suit.

The suit's class period begins Feb. 16, 2024, the day Avis filed its annual report for the previous year. The report affirmed Avis planned to "invest strategically to lower costs over the long term," according to the complaint.

During the remainder of the class period, Avis allegedly reiterated its commitment to positioning itself for sustainable growth without acknowledging the likelihood of it recognizing a significant impairment charge in the near future. For example, on Nov. 1, 2024, the defendants said during an earnings call that they believed Avis' depreciation rate "will return to historic levels" as it rotated out older fleet purchased during the pandemic years, but did not tell investors that this could negatively impact its financial results, the suit claims.

The truth emerged, the suit alleges, on Feb. 11, 2025, when Avis announced its full-year 2024 financial results, which included a net loss of \$2 billion that Avis attributed to "shortening the useful life of the majority of our vehicles in the Americas segment." The decision required a one-time non-cash impairment of \$2.3 billion and other non-cash related charges of \$180 million, Avis told investors, according to the complaint.

The same day, Avis announced Ferraro "will transition from CEO to board advisor," effective June 30, 2025, and that Avis Chief Transformation Officer Brian Choi will take over as CEO in July.

The suit alleges Ferraro told investors on an earnings call the following day that the defendants "thought long and hard" about the impairment, which shows Avis intentionally concealed the likelihood of an impairment in previous quarters.

The suit accuses Avis and the individual defendants of acting with scienter, or actual knowledge of wrongdoing or reckless disregard, and violating the Exchange Act.

Counsel for Merriam and a representative of Avis did not immediately respond to requests for comment Monday.

Merriam is represented by Thomas H. Przybylowski, Jeremy A. Lieberman and J. Alexander Hood II of Pomerantz LLP.

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

The case is Merriam v. Avis Budget Group Inc. et al., case number 2:25-cv-03332, in the U.S. District Court for the District of New Jersey.

--Editing by Michael Watanabe.

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Boeing Rips Investors' Class Cert. Bid In 737 Max Fraud Suit

By **Linda Chiem**

Law360 (April 28, 2025, 7:26 PM EDT) -- Boeing has told an Illinois federal judge that pension funds and private investors cannot certify a sweeping class action seeking a "jaw-dropping" \$15 billion in damages by alleging Boeing repeatedly misrepresented the overall safety and certification process for the 737 Max 8 jets after two deadly crashes in 2018 and 2019.

The Boeing Co. said in a **Friday brief** that investor plaintiffs led by the Public Employees' Retirement System of Mississippi cannot use "bare bones" or "boilerplate" damages calculations in a complex case that "involves numerous alleged misstatements over many months, and five separate alleged corrective disclosures, all against a backdrop of constantly evolving publicly available information about Boeing."

The American aerospace giant asked U.S. District Judge Franklin U. Valderrama to reject the plaintiffs' class certification bid, saying their "perfunctory treatment" of classwide damages doesn't come close to clearing the evidentiary standard set by the U.S. Supreme Court's 2013 ruling in *Comcast Corp. v. Behrend*.

Boeing took aim at the plaintiffs' securities expert, David Tabak, saying he provided no details about the methodology he intends to use to calculate classwide damages in this particular case.

"In his highly generic discussion of damages — which he admits is not at all specific to the facts or liability theory of this case — Dr. Tabak simply states that the 'out-of-pocket' measure of damages is the 'most common' formula for calculating damages in securities cases, and that he intends to apply that formula here," Boeing said in Friday's brief.

"Under that standard formula, damages are equal to 'the amount of artificial inflation in the stock at the time of ... purchase less the inflation in the stock at the time of sale,'" Boeing argued. "But Dr. Tabak offers no details — none — about his methodology for measuring inflation throughout the proposed class period other than to say that the calculation of inflation 'begins with an event study' and to assure the court that 'a method for determining inflation, and thus damages for any class member, will be feasible.'"

The investor plaintiffs have **accused** Boeing and former CEO Dennis A. Muilenburg of making "audaciously misleading" public statements about the integrity of the certification process for the 737 Max 8, as well as pilots' ability to safely fly the 737 Max 8 by concealing the true nature of an automated flight-control software feature known as the Maneuvering Characteristics Augmentation System.

The 737 Max 8 was **grounded** globally for 20 months after being involved in 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.

Accident investigators and other official review panels have since determined that the MCAS was vulnerable to faulty sensor readings that could inadvertently trigger the system and push the plane to nosedive. The Federal Aviation Administration in November 2020 **lifted its grounding order** for the 737 Max after Boeing developed a software fix and enhanced pilot training.

Boeing argued in its Friday brief that throughout the grounding, its public statements periodically

included estimates of when Boeing believed the FAA would recertify the 737 Max in order for the aircraft to return to service. Boeing said it cautioned investors that its estimated timetable for the recertification of the 737 Max and the airplane's return to service was uncertain and contingent on FAA approval, according to the brief.

The investor plaintiffs' September 2023 amended consolidated complaint described Boeing's 737 Max saga as "an appalling example of cynical decision-making that valued short-term monetary gain over long-term corporate success and even over human lives." And by repeatedly doubling down on their false assurances about the 737 Max's safety, Boeing erased tens of billions in shareholder value during a class period that spanned from Nov. 7, 2018, to Dec. 16, 2019, they allege.

On the first day of the class period, Nov. 7, 2018, Boeing stated that it had issued a bulletin "directing operators to existing flight crew procedures," failing to even mention the existence of the MCAS system, according to the plaintiffs. Over the ensuing weeks, Boeing directed the public to an "existing flight procedure" in the "training manual" that pilots could utilize if they experienced similar issues to the Lion Air flight. Then-CEO Muilenburg coupled these statements with a repeated insistence that "the 737 Max is a safe airplane" and that it was "as safe as any airplane that has ever flown the skies," according to the plaintiffs. The last day of the class period, Dec. 16, 2019, is when Boeing announced that it was temporarily suspending production of the 737 Max.

The other named plaintiffs in the suit are the City of Warwick Retirement System, William C. Houser, Bret E. Taggart and Robert W. Kegley Sr. They moved for class certification in February.

Judge Valderrama in September 2024 **pared down the suit**, keeping alive claims concerning various alleged misstatements from Boeing and Muilenburg.

Counsel for the investor plaintiffs said they had no comment Monday.

Boeing representatives could not be immediately reached for additional comment Monday.

The investor plaintiffs are represented by Salvatore J. Graziano, Katie M. Sinderson and Avi Josefson of Bernstein Litowitz Berger & Grossmann LLP, John L. Davidson of Davidson Bowie PLLC and Andrew L. Zivitz and Joshua A. Materese of Kessler Topaz Meltzer & Check LLP.

Boeing is represented by John F. Hartmann, Craig S. Primis, Katherine R. Katz, Kenneth Monroe and Brad Masters of Kirkland & Ellis LLP and Richard C. Pepperman II, Benjamin R. Walker and David N. Whalen of Sullivan & Cromwell LLP.

The case is In re: The Boeing Co. Aircraft Securities Litigation, case number 1:19-cv-02394, in the U.S. District Court for the Northern District of Illinois.

--Editing by Janice Carter Brown.



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Wells Fargo Investors Win Class Cert. In 'Sham' Hiring Case

By **Hailey Konnath**

Law360 (April 28, 2025, 9:50 PM EDT) -- A California federal judge has certified a class of thousands of Wells Fargo & Co. investors in litigation over the bank's alleged practice of conducting "sham" job interviews to meet diversity targets, a strategy investors say led to stock prices dropping when the truth came to light, according to an order issued Friday.

U.S. District Judge Trina L. Thompson certified a class of all persons and entities who acquired Wells Fargo stock between Feb. 24, 2021, and June 9, 2022. SEB Investment Management AB and West Palm Beach Firefighters' Pension Fund were appointed class representatives, and Kessler Topaz Meltzer & Check LLP will serve as class counsel, according to the order.

In particular, the judge held that the investors' proposed methodology for determining the class' damages — an "out-of-pocket methodology that employs an event study" — is adequate. Wells Fargo's arguments to the contrary are "premature and not a bar to class certification," the judge said.

"Despite being shielded by the Private Securities Litigation Reform Act at the pleading stage, defendants argue that more barriers should exist at the class certification stage," Judge Thompson said. "The court declines to erect such barriers here."

The investors claim Wells Fargo **conducted faux job interviews** for positions that didn't exist or had already been filled so the bank could meet its goals for diversifying its pool of job applicants. After The New York Times published an article about the hiring practices, Wells Fargo lost \$17 billion in market capitalization — a 10% downturn in its stock price — over two days, the investors allege.

Judge Thompson refused to throw out the suit last year, finding the investors have sufficiently alleged Wells Fargo made material misrepresentations about its diverse search requirement.

The investors asked the judge to certify their class earlier this year, claiming that, throughout the class period, Wells Fargo "repeatedly lauded the diverse search requirement to investors and stressed that it was a centerpiece of the company's efforts to improve diversity and inclusion."

Meanwhile, Wells Fargo **has argued** the investors haven't shown the downturn in its stock price was caused by the alleged job interviews rather than by rising interest rates.

"Ignoring the wider trend in bank stocks, plaintiffs opportunistically seized on a New York Times article published on June 9, 2022, regarding Wells Fargo's Diverse Slates Guidelines and labeled it a 'corrective disclosure,'" the bank said in its opposition, filed in February.

In Friday's order, Judge Thompson agreed with the investors that there are several common questions at issue in the case, including whether Wells Fargo and its top brass made materially false and misleading statements and omitted material facts, whether they intentionally did so and whether that alleged misconduct caused the investors' purported damages.

She also rejected Wells Fargo's argument that lead plaintiffs, SEB and the firefighters' pension fund, are atypical of the class. Notably, she shot down Wells Fargo's qualms with the fact that SEB is a European asset manager that does not itself own Wells Fargo stock.

"Courts have routinely found asset managers like SEB to have standing to represent their investment

funds under the prudential exception to Article III standing," she said.

As for Kessler Topaz, the firm has "devoted substantial time and resources to litigating the claims at issue," Judge Thompson said, adding that Wells Fargo doesn't have any issues with the firm serving as class counsel.

Judge Thompson scheduled a case management conference for July. The parties are also **set for mediation** in late May, according to the case docket.

Wells Fargo declined to comment Monday. Counsel for the investors didn't immediately respond to a request for comment.

The investors are represented by Jennifer L. Joost, Stacey M. Kaplan, Bennett Cho-Smith, Gregory Castaldo, Sharan Nirmul, Joshua E. D'Ancona, Joshua A. Materese, Even Hoey, Dylan Isenberg and Marianne Uy of Kessler Topaz Meltzer & Check LLP and David R. Kaplan, Marti Worms, Emily R. Bishop, Lester R. Hooker, Dianne M. Pitre of Saxena White PA and Robert D. Klausner and Bonni S. Jensen of Klausner Kaufman Jensen & Levinson.

Wells Fargo is represented by Christopher M. Viapiano, Brendan P. Cullen, Sverker K. Hoghberg, Alexis C. Holmes and Leonid Traps of Sullivan & Cromwell LLP.

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

--Additional reporting by Jessica Corso and Katryna Perera. Editing by Drashti Mehta.

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Wells Fargo Tells Judge Cash Sweep 'Conflict' Was Disclosed

By **Sydney Price**

Law360 (April 28, 2025, 7:15 PM EDT) -- Wells Fargo said it should be allowed to escape customers' proposed class action alleging the bank's cash sweep investment program disproportionately benefits the bank, arguing it disclosed in its signed agreements with customers the bank's intentions to secure financial gains for itself through the program.

In the motion to dismiss the suit filed Thursday, Wells Fargo said Edward Nadolny, Darren Cobb and Keith Bujold's consolidated complaint incorrectly alleges Wells Fargo is illegally using its cash sweep programs to generate "enormous" fees for itself at the expense of its customers by sweeping cash into accounts managed by affiliated banks.

According to Wells Fargo, it explained in its written agreements that the bank has "a financial incentive" to offer the particular sweep options.

"WFA also plainly discloses that its interests in the [cash sweep program] conflict with clients' interests, explaining that lower rates are financially beneficial to WFA and consequently it 'may choose to make available the cash sweep options that are more profitable to us and our affiliates than other money market mutual funds or bank deposit accounts,'" the motion stated.

The suit alleges Wells Fargo's bank sweep programs consist of two separate but similar programs: the expanded bank deposit sweep and the standard bank deposit sweep. Each business day, available cash balances in all eligible customer accounts are swept out of the accounts and into one of the program banks.

Wells Fargo's practices have drawn attention from regulators, according to the complaint. For example, last year the bank announced it would change the pricing of its sweep programs to pay customers higher rates of interest following a 2023 disclosure of an investigation by the U.S. Securities and Exchange Commission regarding its sweep programs.

The suit accuses Wells Fargo of breaching its fiduciary duties, breach of contract and unjust enrichment. But Wells Fargo said Thursday that the breach of contract claim fails because no specific rates are promised, or even mentioned, in the agreements.

Additionally, Wells Fargo was not "contracted" to follow Regulation Best Interest, as the plaintiffs claim. Reg BI establishes a "best interest" standard of conduct for broker-dealers and associated persons regarding recommendations to retail customers, but Wells Fargo said the plaintiffs allege no "recommendation" by the bank, and the cash sweep program is not in and of itself a "securities" investment.

The bank also said it was not unjustly enriched because the plaintiffs do not show Wells Fargo benefited at their expense.

"To the contrary, plaintiffs acknowledge that they received compensation for their uninvested cash in the form of a positive rate of interest," the motion stated.

Wells Fargo also argued some of the suit's claims fail regardless because they are time-barred by a four-year statute of limitations. The statute of limitations eliminates approximately three years of the suit's claims, which date back to Aug. 1, 2018, Wells Fargo argued.

"Here, WFA's current rates were provided in plaintiffs' periodic account statements and always available on WFA's public website or from a financial advisor," the motion stated. "Plaintiffs thus had reason not just to suspect but to know the basis for their present allegations at all times, and they make no allegation to the contrary."

Counsel for the plaintiffs and a representative of Wells Fargo did not immediately respond to requests for comment Monday.

Nadolny, Cobb and Bujold are represented by Joshua P. Davis, Kyla J. Gibboney, Julie A. Pollock, Michael Dell'Angelo and Andrew D. Abramowitz of Berger Montague and Alan L. Rosca, Jonathan A. Korte and Paul J. Scarlato of Rosca Scarlato LLC.

Wells Fargo is represented by David G. Hille of White & Case LLP.

The case is In re: Wells Fargo Cash Sweep Litigation, case number 3:24-cv-04616, in the U.S. District Court for the Northern District of California.

--Editing by Janice Carter Brown.

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Chancery OKs Shortcut For Derivative Fox Suit

By **Jeff Montgomery**

Law360 (April 28, 2025, 10:09 PM EDT) -- A Delaware vice chancellor late Monday approved an unprecedented Fox Corp. call for a targeted summary judgment proceeding focused on a single Fox director's independence after a different jurist rejected, in November, dismissal of the suit, which seeks hundreds of millions of dollars in defamation damages in connection with broadcasts of bogus 2020 election claims.

Vice Chancellor Bonnie W. David **ruled** that "whether to stage discovery" and permit the isolated summary judgment bid is within the court's discretion.

"I am convinced that granting the motion is the most efficient path forward here," David said, adding that, "Doing so will not encourage seriatim motions; the parties should understand that the court is disinclined to consider multiple dispositive motions before trial."

Joel Friedlander of Friedlander & Gorris PA, counsel for six pension or benefit funds pursuing the case on behalf of the company, declined comment late Monday. A plaintiff brief filed before the decision said, "The motion contravenes the rule that a party opposing summary judgment is entitled to present 'facts essential to justify the party's opposition.'"

The derivative suit named Fox's chairman, Rupert Murdoch, and his son Lachlan, as well as Fox News' CEO, Fox's top legal officer and four directors. Among the allegations were claims that Fox's multiple, politically clouded damage payouts in recent years resulted from an utter failure of oversight and knowing breaches of duty, factors required to overcome Delaware charter protections for company directors.

Among the damages cited as liabilities in the suit, filed in May 2023 and last amended in September, is a \$787.5 million company settlement with Dominion Voting Systems in April 2023 on Dominion's claims for \$1.6 billion in damages.

Vice Chancellor J. Travis Laster on Dec. 27 found "reasonable doubt" regarding the disinterestedness of former Fox Corp. Chairman Rupert Murdoch and at least three others on the company's eight-member board — enough to bar dismissal at the case's early stage.

On Feb. 18, however, the case was reassigned without elaboration to Vice Chancellor David, who little more than a month later agreed to consider a Fox motion for summary judgment proceedings on a "narrow" question regarding whether director Jacques Nasser is or isn't independent of Murdoch.

The motion for summary judgment, "if granted, will dispose of the case and save the parties millions of dollars in litigation expense," counsel for Fox argued, noting that the finding would mean that at least five directors are independent and were able to reach an independent decision to rule out seeking damages for the company.

Prior to the decision, attorneys for the pension funds filed a brief declaring that, "No precedent and no rule of court supports re-adjudicating a motion to dismiss" under rules for derivative suits on a "slightly" supplemented record.

"Defendants' cursory motion identifies no case acknowledging the possibility of mixing and matching motion to dismiss practice with motion for summary judgment practice, much less when the court already rejected a motion to dismiss on the same question," the stockholder reply said.

Attorneys for the funds added that the defense approach is "unfounded, unworkable, and wasteful," and asserted that, "by the logic of the motion," any case in which a similar dismissal motion is denied, "defendants would be entitled to seriatim motions on demand futility, with limited discovery as to each motion, issue by issue, director by director, until the court exhausts all potential grounds of dismissal."

The suit claimed that Fox personalities relentlessly trumpeted baseless allegations about the exploitation of flaws in Dominion voting machines in a bid to tip the 2020 election, jeopardizing the Dominion business and brand.

Fox, class attorneys **argued** in November, prior to Vice Chancellor Laster's rejection of dismissal, "had a history of distinct business practices that show a disregard of whether they're broadcasting false narratives and their willingness to incur potentially catastrophic risk, brand risk."

The suit alleged that Rupert Murdoch and son Lachlan purposely caused the company's alleged breaches in pursuit of profits, while Nasser and another director were accused of lacking independence from Rupert Murdoch.

"Exercise of that discretion is warranted here because the paper-thin allegations of the complaint impugning Nasser's independence will not survive contact with the evidence," Fox's brief said.

"In concluding that the complaint sufficiently alleges reason to doubt Nasser's independence from Murdoch ... [Vice Chancellor Laster's] order relied heavily on alleged 'decades-long personal, social, and business relationships' between Nasser and Murdoch 'grounded in a shared heritage as Australian immigrants.'"

The plaintiffs are represented by Joel Friedlander, Jeffrey M. Gorris and Christopher M. Foulds of Friedlander & Gorris PA, Dan Rayfield and Brian A. de Haan of the Oregon Attorney General's Office, Julie Goldsmith Reiser, Molly J. Bowen and Brendan Schneiderman of Cohen Milstein Sellers & Toll PLLC and Katherine Lubin Benson of Lieff Cabraser Heimann & Bernstein LLP.

The defendants are represented by Blake Rohrbacher, Kevin M. Gallagher, Kyle H. Lachmund and Morgan R. Harrison of Richards Layton & Finger PA and William Savitt, Anitha Reddy, Won S. Shin and Alison B. Brockman of Wachtell Lipton Rosen & Katz.

The case is In re: Fox Corp. Derivative Litigation, case number 2023-0418, in the Court of Chancery of the State of Delaware.

--Editing by Dave Trumbore.



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Chancery Tosses Palantir Suit Targeting Direct Sale Gains

By **Jeff Montgomery**

Law360 (April 28, 2025, 3:53 PM EDT) -- Observing that corporate insiders can't be penalized for profiting from public information, a Delaware vice chancellor has thrown out a derivative suit filed by Palantir Technologies stockholders accusing the private company's directors and officers of unfairly profiting from direct-to-market stock sales without taking the company public.

Vice Chancellor Lori W. Will's ruling, which followed dismissal of a direct federal securities action in Colorado, rejected insider trading, breach of fiduciary duty and unjust enrichment claims against the data analytics company. The finding noted a string of argument failures, including court rejection of claims that it would have been futile for stockholders to seek board action on the claims before suing.

"The plaintiffs advance no well-pleaded facts from which I can reasonably infer impropriety. Though some directors made substantial profits by selling stock, that alone is insufficient to impugn them," the vice chancellor wrote on Friday.

Ended for now is litigation dating to September 2022, when stockholders sued the business directly in an unsuccessful federal securities action, with the initial suit dismissed about 18 months later and an amended version likewise failing.

The Delaware derivative case alleged duty transgressions arising out of what the initial, August 2023 Chancery complaint described as director and officer efforts "to create and stoke a market that would enable them to liquidate billions of dollars of their Palantir equity holdings."

Rejected by the court were claims that direct sales of stock by the private market amounted to insider trading supported by material, nonpublic information.

"There is no rational inference to be drawn that the directors had MNPI when they traded, much less that they exploited MNPI for a trading advantage," the decision said.

For Palantir, "the direct listing marked the first time its investors had access to liquidity" after more than a decade, the vice chancellor wrote. Many sales took place under structured terms set in advance or to cover tax obligations, "meaning that the insiders lacked discretion over them."

Also shot down were allegations of stock manipulation through investments of hundreds of millions of dollars in "extremely speculative high-risk special purpose acquisition companies." The suit alleged the SPAC investments would not have made money but were used to prop up revenue outlooks.

According to the stockholders, insiders also secured SPAC agreements to purchase services from Palantir, enabling the company to project hundreds of millions of dollars in additional revenues that the defendants knew would never materialize.

"Palantir took a risk by investing in SPACs. As the complaint acknowledges, though, it did some diligence, was advised by outside counsel and publicly disclosed each of the investments," the vice chancellor wrote. The court also cited what it described as an absence of particularized facts fairly suggesting that the board intended to mislead the market or knew in real time that the investments would underperform.

"The plaintiffs insist that, viewed together, the various flaws in the board's process become

substantial enough to support an inference of bad faith," the vice chancellor wrote, quoting a 2023 dismissal rejection in *IBEW Local Union 481 Defined Contribution Plan and Trust v. Winborne et al.*

"They analogize their approach to a 'mulligan stew' of facts that the court must 'sample,'" the vice chancellor wrote. "If the 'pleading-stage flavor is foul,' they say, the motion to dismiss must be denied," but "[m]ixing together 'odds and ends' of minor critiques is not a recipe for bad faith, even with a hearty serving of plaintiff-friendly inferences."

Allegations of knowing breaches, or scienter, the opinion said, are offset by the timing of trades, with 97% made within structured plans or within 30 days of the direct listing.

Four of those named, including Palantir co-founder and PayPal CEO Peter Thiel, made billions selling Palantir stock, the opinion said, adding that much smaller sums are "sufficient to infer materiality" at the motion to dismiss stage.

"Yet the demand futility test does not view materiality in a vacuum," the decision said. "Intentionally exploiting MNPI to gain a trading advantage is misconduct; selling company stock at a profit is not. Absent 'special circumstances,' Delaware law permits officers and directors to freely trade their corporations' stock."

Counsel for the Palantir Technologies parties declined comment on Monday.

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

The shareholders are represented by Joseph H. Weiss, David C. Katz and Mark D. Smilow of Weiss Law, Brian J. Robbins, Stephen J. Oddo and Eric M. Carrino of Robbins LLP, Leonid Kandinov of Morris Kandinov LLP, Peretz Bronstein and Eitan Kimelman of Bronstein Gewirtz & Grossman LLC, and Christine M. Mackintosh, Rebecca A. Musarra, Edward M. Lilly and David Wissbroecker of Grant & Eisenhofer PA.

Palantir Technologies Inc. and the directors and officers are represented by Peter J. Walsh Jr., T. Brad Davey, Jonathan A. Choa and Eric J. Nascone of Potter Anderson & Corroon LLP and Boris Feldman, David Livshiz, Maria Slobodchikova and Susannah Benjamin of Freshfields Bruckhaus Deringer JS LLP.

The case is *Central Laborers' Pension Fund et al. v. Alexander C. Karp et al.*, case number 2023-0864, in the Court of Chancery of the State of Delaware.

--Editing by Alex Hubbard.



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Class Attys Seek \$6.5M Cut In \$29.5M Plantronics Settlement

By **Gina Kim**

Law360 (April 28, 2025, 4:54 PM EDT) -- Lead counsel for Plantronics investors who secured a \$29.5 million deal resolving claims the company used "channel stuffing" tactics to bolster revenue are seeking \$6.5 million in fees, telling a California federal judge Friday the request is reasonable, given the strong recovery and their track record successfully prosecuting similar securities cases.

In a **31-page motion**, attorneys from Hagens Berman Sobol Shapiro LLP and Bernstein Litowitz Berger & Grossmann LLP asked U.S. District Judge Jon S. Tigar of the Northern District of California for fees worth 22% of the total settlement fund and approximately \$593,000 for litigation expenses, **after inking a \$29.5 million settlement** with Plantronics last summer that was granted preliminary approval in February.

"Lead counsel are among the most experienced and skilled practitioners in the securities litigation field, and the firms have a long and successful track record in securities cases throughout the country, including within this circuit," Friday's fee motion said.

The investors first sued Plantronics and its top brass in November 2019 over its disclosure of a \$65 million reduction in sales to channel partners — which sell Plantronics-designed phones and headsets, videoconferencing and analytics software, and other products — and slashed its fiscal year 2020 guidance, with expected revenue between \$1.7 billion and \$1.8 billion.

When that news broke, investors alleged Plantronics' stock prices dipped \$14.44 per share, or nearly 37%, to close at \$25 per share on Nov. 6, 2019. Plaintiffs alleged trouble began brewing in the spring of 2018 when Plantronics announced it would acquire Polycom for \$2 billion. But the deal came at a hefty price tag for Plantronics, which funded the \$948 million cash portion of the transaction with cash on hand, and took on nearly \$1.4 billion in new debt financing.

As time went on, Plantronics continued to tout its success and revenue growth as a result of the acquisition but in reality the results were the byproduct of an undisclosed change in sales practices that increased inventory in its channel partners, the investors alleged.

Just a year after the Polycom acquisition, Plantronics disclosed its revenues were actually dropping and that its inventory in the channel had to be cleared, the plaintiffs alleged. By the end of the class period, on Nov. 5, 2019, Plantronics revealed quarterly losses of \$25.9 million.

On Friday, attorneys for the lead plaintiffs noted that they worked on this case vigorously for five years, pouring in more than 20,500 hours from attorneys and other professional staff, without any payment and subsequently secured a successful settlement for the investors who faced the risk of recovering nothing had the litigation continued.

"This was not a case in which Plantronics ever restated its financials, nor was there any parallel SEC or other government action brought against Plantronics or any of the defendants for the alleged fraud," Friday's brief said. "Lead plaintiffs would have none of those tailwinds in attempting to prove that defendants' statements were false when made or were deliberately reckless in making the statements; and that the disclosures concerning defendants' false and misleading statements caused declines in the price of Plantronics' common stock."

Plantronics had maintained it was not channel-stuffing and that the statements at issue in the

litigation weren't false when made, weren't material, and not made with the requisite intent to mislead, the motion added.

The company had also held the position that the channel sale and inventory data during the class period weren't consistent with the investors' channel-surfing claims, since the sales data didn't show any appreciable spike in channel inventory, the motion said.

Plantronics was also likely to dispute loss causation and argue that the stock price dips were due to the disclosure of news unrelated to the alleged fraud, the plaintiffs said. The plaintiffs added that they anticipated the company to argue that the price drops after the alleged corrective disclosures in June 2019 stem from its disclosure of tariffs affecting sales in China.

"Lead counsel's experience in complex securities cases facilitated lead counsel's ability to negotiate the settlement, ultimately resulting in the \$29.5 million recovery," the plaintiffs added. "Lead counsel achieved this recovery by litigating against highly skilled and well-respected lawyers from Wilmer Cutler Pickering Hale and Dorr LLP who vigorously advocated for their clients."

The motion referenced several securities class actions lead counsel pursued in the past that had yielded excellent results, including **a \$234 million settlement Hagens Berman** helped obtain in a class action brought by investors accusing Sidley Austin LLP, Deloitte and others of aiding Aequitas Management LLC's Ponzi scheme.

Hagens Berman was part of the plaintiffs' team that scored a \$75.5 million deal on behalf of Zuora investors to resolve allegations the cloud-based subscription company, its top brass and underwriters botched the rollout of software following its initial public offering and missed revenue targets by millions.

The fee motion also pointed to the **\$480 million settlement** Bernstein Litowitz secured for investors who accused Wells Fargo of artificially inflating its stock value by opening millions of unauthorized customer accounts.

Bernstein Litowitz represented a class of investors who sued Pershing Square Capital Management LP and Valeant Pharmaceuticals over allegations of an insider trading scheme ahead of Valeant's failed \$55 billion effort to acquire Allergan Inc. The firm inked an initial **\$290 million settlement in that case** in 2018.

In September 2023, Bernstein Litowitz, along with Cohen Milstein Sellers & Toll PLLC, landed **a massive \$1 billion deal** between Wells Fargo and its shareholders, stemming from claims that the bank was misleading investors about the progress it was making in overhauling its internal compliance program in an effort to get out from under government scrutiny.

A hearing on the attorney fee motion is set for Aug. 14, before Judge Tigar.

The lead plaintiffs are represented by Steve W. Berman, Sean R. Matt, Reed R. Kathrein and Lucas E. Gilmore of Hagens Berman Sobol Shapiro LLP and John Rizio-Hamilton, Alexander M. Noble, and Jonathan D. Uslaner of Bernstein Litowitz Berger & Grossmann LLP.

Plantronics Inc. and the individual defendants are represented by Susan S. Muck, Kevin P. Muck, Noah S. Guiney, Peter J. Kolovos and Sonia Sujjanani of WilmerHale.

The case is In re: Plantronics Inc. Securities Litigation, case number 4:19-cv-07481, in the U.S. District Court for the Northern District of California.

-Additional reporting by Lauren Berg. Editing by Michael Watanabe.



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UScellular, Investors Ink \$7.7M Deal In Postpaid Biz Suit

By **Nadia Dreid**

Law360 (April 28, 2025, 8:48 PM EDT) --

UScellular and the investors who sued the company over its representations about the health of its postpaid mobile phone outfit have agreed to settle their differences for \$7.7 million and are asking an Illinois federal judge to sign off on the deal.

Howard M. Rensin, the trustee of the Rensin Joint Trust and lead plaintiff, asked U.S. District Judge Mary M. Rowland for her preliminary approval of the deal Friday, following what he characterized as "almost two years of highly-contested litigation."

The parties informed the court in March that they had **reached a settlement**, but this is the first time actual numbers have hit the docket.

The \$7,750,000 deal "fairly, reasonably, and adequately balances the objective of securing the highest possible monetary recovery for the settlement class against the significant risk that it could receive a smaller recovery, or no recovery, if the action continued," the proposed class **told** the judge.

The deal would end the shareholder suit that accuses UScellular and parent company Telephone and Data Systems Inc. of not being honest about the state of its postpaid mobile services business, particularly its so-called churn rate, which is the percentage of customers who drop their phone plans during a given period. The lawsuit claims UScellular told investors the promotions it was running were having an effect on the churn rate and that would be reflected in the numbers soon, but that wasn't true.

The results came out in November 2022, when the suit says the company "disclosed the full truth" during an earnings call, acknowledging that the promotions had had no effect on the churn rate.

All of TDS' wireless operations are done through UScellular, which it owns a majority interest in, according to the suit. The investors argue that UScellular and some of its executives essentially inflated stock prices by tricking the public about its profitability and expected growth.

As a result, the suit claims, TDS securities dropped, with the common stock price declining more than 25%. Prices went from \$16.57 per share on Nov. 3 to a close of \$12.28 the next day, according to the lawsuit. Certain TDS preferred shares also declined by more than 5% at that time.

The proposed class that the investors want the court to certify for the purposes of settlement would cover anyone who bought TDS shares from May 6, 2022, through Nov. 3, 2022, according to the filing.

Representatives for UScellular and for the proposed class not respond to requests for comment.

Rensin is represented by Gregory Potrepka, Shannon Hopkins and Nicholas Lange of Levi & Korsinsky LLP and Carol Gilden of Cohen Milstein Sellers & Toll PLLC.

TDS, UScellular, UScellular CEO Laurent Therivel and Chief Financial Officer Douglas Chambers are represented by James Ducayet and Elizabeth Austin of Sidley Austin LLP.

The case is Howard M. Rensin, Trustee of the Rensin Joint Trust v. United States Cellular Corporation et al., case number 1:23-cv-02764, in the U.S. District Court for the Northern District of Illinois.

--Editing by Linda Voorhis.

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Boston Children's To Pay \$3M In Retirement Plan Fee Suit

By **Elliot Weld**

Law360 (April 28, 2025, 4:50 PM EDT) -- Boston Children's Hospital will pay \$3 million to a class of participants in its retirement plan to settle claims that it saddled them with excessive fees.

The class said in a Monday **memorandum** that this amount will provide "a fair recovery" to the plan participants and that both it and the hospital "vigorously pursued" relief in the case.

An attorney for the class declined to comment. Counsel for the hospital did not immediately respond to requests for comment.

The **participants sued** in 2022, claiming that the hospital breached a fiduciary duty by offering underperforming funds and allowing the \$1.1 billion plan to be charged above-market-rate recordkeeping and administrative fees. According to the participants, the plan paid \$73 on average per year over the five preceding years while similarly sized plans paid between \$23 and \$42.

The plan participants are represented by Alec Berin, John Roberts, James Shah, James Miller and Laurie Rubinow of Miller Shah LLP, John Roddy of Bailey & Glasser LLP and Mark Gyandoh and Donald Reavey of Capozzi Adler PC.

Boston Children's Hospital is represented by Keri Engelman, Joshua Adler, Deborah Davidson, Jeremy Blumenfeld and Stephanie Reiss of Morgan Lewis & Bockius LLP.

The case is Monteiro et al. v. The Children's Hospital Corp. et al., case number 1:22-cv-10069, in the U.S. District Court for the District of Massachusetts.

--Additional reporting by Brian Dowling. Editing by Linda Voorhis.

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Green Group Says Shell Case Discovery Fees Are Too Costly

By **P.J. D'Annunzio**

Law360 (April 28, 2025, 6:44 PM EDT) -- A Philadelphia-based environmental group suing Shell over pollution from a Western Pennsylvania chemical plant balked at a federal court's order that it pay 15% of the cost to resolve a discovery dispute, arguing it could be left with a potentially devastating tab.

Clean Air Council told U.S. District Judge Robert Colville in its **brief** Thursday that sticking it with that much of the bill would incentivize the global energy giant to drag its feet and wage a war of attrition on the smaller nonprofit in its **Clean Air Act case**.

The environmental group's concerns stem from a Nov. 14 order in which Judge Colville ordered that CAC pay 15% of the fees for the special master overseeing discovery of electronically stored information it sought. According to the brief, the special master charges \$750 per hour, which could leave CAC on the hook for tens of thousands of dollars.

CAC asked the court to either reconsider its order, or certify an appeal to the Third Circuit.

"Shell has essentially unlimited resources, the Special Master order gives Shell every incentive to create as many discovery roadblocks as possible," CAC said.

"Ironically, appointing a special master will create the very intractable and acrimonious discovery disputes that require a master to resolve; thus it was a clear error of law for the special master order to not consider the fairness of imposing this expense on CAC," the group added.

If the court opts to not reconsider its order, CAC asked for it to certify an appeal to the Third Circuit given that the intersection of special master fees and Clean Air Act cases presents "novel and complex issues."

CAC said that the requirements for an appeal were met, including a substantial difference of opinion on which legal standard should be applied to the issue.

"Indeed, the question of requiring plaintiffs bringing cases under federal fee-shifting statutes to pay special master's fees in order to litigate a public-interest case implicates the entire universe of federal environmental and civil rights statutes, from the Clean Water Act and the Clean Air Act to the Americans with Disabilities Act and any case under section 1983, and thus satisfies the 'substantial ground for difference of opinion' criterion," CAC said.

CAC alleged in its 2023 lawsuit that Shell Chemical Appalachia LLC's chemical plant in Monaca, Pennsylvania, violated federal air pollution limits. The suit claimed that Shell had created a public health threat in the region and sought a court order forcing the company into compliance.

The plant, which opened in 2022 and manufactures polyethylene plastic pellets, allegedly surpassed its 516-tons-per-year emission limit on volatile organic compounds. Additionally, CAC said flares meant to burn off additional pollution at the operated burned too frequently, violating regulations prohibiting visible smoke.

Attorneys for the parties declined to comment.

The Clean Air Council is represented by Sarah Kula, Jennifer Duggan and Lisa Widawsky Hallowell of the Environmental Integrity Project.

Shell is represented by Amy J. Coles, Jayme Butcher and Frank L. Tamulonis of Blank Rome LLP.

The case is Clean Air Council v. Shell Chemical Appalachia LLC, case number 2:23-cv-00794, in the U.S. District Court for the Western District of Pennsylvania.

--Editing by Andrew Cohen.

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Nivea Maker Hit With False Ad Greenwashing Suit

By **Gina Kim**

Law360 (April 28, 2025, 11:00 PM EDT) -- The Nivea brand of products such as lotions, body creams, deodorants and cleansing wipes are falsely advertised as made predominantly of ingredients derived from natural products, like aloe or avocado oil, even though nearly all the ingredients are synthetic, according to a proposed class action filed in California federal court.



Beiersdorf Inc. was hit with a proposed class action by a group of consumers who accused it of falsely advertising its Nivea brand of 'Naturally Good' and 'Nourish by Nature' products as being made primarily from plant-based materials when the ingredient lists show that they were not. (Court Documents)

In a **78-page complaint** filed Friday in the Northern District of California, a group of customers accused Beiersdorf Inc. of violating Golden State consumer protection laws that prohibit fraudulent or deceptive trade practices and false advertising over its marketing of products sold under its Nivea brand.

Germany-based Beiersdorf is also behind many well-known brands Eucerin, Coppertone, Florena, Labello, La Prairie and Chantecaille.

The suit centers on Beiersdorf's Nivea products that are labeled as "Nourish by Nature," "Naturally Good" or ones that

claim they're made with specific percentages of "natural origin ingredients" or "naturally-derived ingredients."

"In truth, almost all of the ingredients in the products are synthetic, not natural," the consumers said in their complaint. "They do not originate in nature and are not derived naturally. Rather, they are of industrial-origin. Accordingly, even accounting for the fact that lotions and moisturizers are roughly 80% water, the products are only approximately 80-85% natural origin or naturally-derived ingredients."

That renders the statements "% Natural Origin" and "% Naturally-Derived" representations on the Nivea products at issue false, the consumers said.

They also took issue with Beiersdorf over its "Naturally Good" brand of products that contain statements like "X% of Natural Origin" or "X% Ingredients of Natural Origin." Similar to the "Nourish by Nature" products, the "Naturally Good" merchandise and other products feature images of aloe and lavender plants, chamomile flowers, and avocados on the front of the labels to push the perception the products are plant-based, the complaint alleged.

Beiersdorf's advertising is misleading to reasonable consumers, and the products' ingredient lists show natural ingredients like avocado oil, lavender oil and aloe vera are minor components of each product, the plaintiffs alleged.

The customers alleged they bought the Nivea products after reading the labels and thinking they were buying products predominantly made with ingredients that are directly obtained from natural sources or derived in a natural way, like aloe, lavender and avocado oils.

However, Beiersdorf misled the customers, they said.

"Defendant falsely and misleadingly refers to synthetic, industrially-manufactured chemicals as 'naturally derived' by assigning them a '% naturally derived' value based on percentage of the synthetic molecule, by mass, that was present in a naturally derived starting material," the consumers added.

They continued: "In other words, defendant mischaracterizes industrial chemicals as 'natural origin' or 'naturally-derived' in order to 'greenwash' the products and make them seem safer and more environmentally friendly."

The suit asserts several causes of action against Beiersdorf: fraud, a violation of the California Consumer Legal Remedies Act, false advertising, negligent misrepresentation, and unfair and unlawful business practices under the California Business and Professions Code.

The plaintiffs also proposed to represent a class of California customers who bought the Nivea brand of products at issue from April 25, 2021, to the present.

There are factual and legal issues that predominate the proposed class: whether Beiersdorf deceptively marketed its products as being comprised of a specific percentage of naturally derived ingredients, whether the marketing practice would likely trick customers, whether the representations on the label were material to customers, and whether Beiersdorf reaped profits because of the alleged conduct.

The customers seek relief in the form of class certification; a court order blocking Beiersdorf from engaging in the alleged unlawful or unfair business practices; for Beiersdorf to pay the class compensatory, statutory and punitive damages, restitution, attorney fees and costs; and to have a jury trial on the customers' claims.

Representatives for the parties did not respond to inquiries seeking comment Monday.

The plaintiffs are represented by Seth A. Safier and Anthony J. Patek of Gutride Safier LLP.

Counsel information for the defendants was not available on Monday.

The case is Aisley Davis et al. v. Beiersdorf Inc., case number 3:25-cv-03661, in the U.S. District Court for the Northern District of California.

--Editing by Lakshna Mehta.



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Walgreens Opposes Merging 'Non-Drowsy' Labeling Suits

By Celeste Bott

Law360 (April 28, 2025, 5:31 PM EDT) -- Walgreens is pushing back on a bid to consolidate two Illinois federal lawsuits alleging the "non-drowsy" label on some of the retailer's cough suppressant medications is misleading, saying the two cases involve different allegations and are at different stages, and arguing that consolidation would cause a delay in the litigation.

In a motion opposing consolidation filed Friday, the company said two proposed class actions, led by plaintiffs Tracy Hall and Jason Pemberton, over the labeling of Walgreens' cough medicine "are in completely different procedural postures" and it's too early to know the true extent of any factual differences between them.

In Pemberton, the parties have already engaged in substantial discovery, whereas in Hall, discovery was stayed pending a motion to dismiss, so it has no information as to Hall's purchase of the product or the drowsiness she may have experienced taking it, Walgreens said.

"While plaintiff might not need additional discovery to prepare the case for class certification, that is not the case for defendant. Consolidation therefore would not avoid duplication of effort and would instead significantly delay the proceedings," Walgreens said. "In such circumstances, consolidation is inappropriate."

There are ways for the court to coordinate discovery among multiple cases without formally consolidating them, Walgreens contends. But should it find consolidation makes sense, Walgreens argued it should be for discovery only and not for any matters concerning class certification or trial.

"Such discovery may reveal that plaintiffs in each case purchased the products for different reasons, took different dosages of the product, understood the representations allegedly made by defendants differently, or experienced different symptoms after taking the medications," the company said. "If discovery uncovers such facts, individual issues will predominate in the cases such that consolidation is no longer appropriate."

Hall moved to consolidate the cases before U.S. District Judge Martha Pacold earlier this month, saying both suits involve the same alleged misrepresentations on the same over-the-counter medicines sold by Walgreens and share the same key factual questions, such as whether Walgreens advertises dextromethorphan-containing cough medicines as "non-drowsy" and which products are so advertised.

Consolidation would reduce the burden of discovery on all parties, Hall argued, and both cases are still in their early stages. While some discovery has begun in Pemberton, only initial written discovery has been served by that plaintiff, and merging them now "will be most efficient and will avoid needless duplication," she said in her motion.

Hall's case had been on hold while Judge Pacold asked the Washington Supreme Court to determine if labeling cough medicines non-drowsy fell within the statutory safe harbor of the Washington Consumer Protection Act.

Washington's top court **held in March** that Walgreens could not escape her claims under that law alleging its "non-drowsy" cough medicine label was deceptive, rejecting the retailer's contention that the law's safe harbor provision shielded it from liability.

Counsel for the parties could not be immediately reached for comment Monday.

Hall is represented by Gabriel Doble, Jonas Jacobson and Simon Franzini of Dovel & Luner LLP.

Pemberton is represented by Martin Brenner and Jonas Jacobson of Dovel & Luner LLP and Timothy J. Haller of Haller Law PLLC.

Walgreens Boots Alliance Inc. and Walgreen Co. are represented by Emily Marie Weissenberger of Faegre Drinker Biddle & Reath LLP and Michael Healy of Shook Hardy & Bacon LLP.

The cases are Hall et al. v. Walgreens Boots Alliance Inc. et al., case number 1:22-cv-00024; and Pemberton et al. v. Walgreens Boots Alliance Inc. et al., case number 1:24-cv-02312, in the U.S. District Court for the Northern District of Illinois.

--Additional reporting by Greg Lamm. Editing by Kelly Duncan.

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