Litigation

May 1, 2025, 10:12 AM PDT

Activist Firms' Big Lots Treatment at Heart of Ohio Court Battle

- **Appeals court is asked to revive anti-greenmail lawsuit**
- **Judges grapple with standing, whether law is clear enough**

An Ohio appeals judge struggled with assertions that a rarely-used state law used against activist investor firms by Big Lots Stores Inc. shareholders is unambiguous, she said Thursday.

The firms exerted influence over the now-bankrupt company and later profited off an inflated stock value.

Judge Carly M. Edelstein of the Ohio Court of Appeals, 10th District pushed an attorney for the shareholders, saying she wondered why she couldn't look beyond the plain language of the state's anti-greenmail law to decide whether Ancora Holdings Inc. and Macellum Capital Management LP possibly violated it. Greenmailing is when buyers acquire a large amount of stock and threaten a company's takeover unless the company buys the stock back at an inflated value.

"It seems like there's a lot of ink being spilled about what this statute means and I'm struggling to understand how it is unambiguous and therefore how we can't look to the title, the prefatory language, the legislative history, and whatnot," Edelstein said during oral arguments in a Columbus, Ohio courtroom.

The shareholders' attorney, Steven F. Hubachek, argued that the law wasn't ambiguous and that, as his clients seek to revive their suit, they can match actions with the operative elements of the law. Looking beyond those elements isn't necessary, he said.

"We are able to say what the elements are by directly quoting the statute," said Hubachek, of Robbins Geller Rudman & Dowd LLP.

The case centers on the purchase and sale of Big Lots stock and whether the Cleveland-based Ancora and Macellum of New York illegally manipulated prices. The shareholder plaintiffs in the Columbus-based company alleged in a 2021 lawsuit that the firms manipulated the trading price of Big Lots after amassing an 11% stake in the company.

The firms in January 2020 approached Big Lots officials with concerns, and the following month delivered a letter nominating people for the company's board of directors. After public and private back and forth over company strategy and the makeup of its board of directors, two members backed by the firms were appointed.

During this time, the stock price increased. From August to October 2020, the firms unloaded their stock, reducing their stake down to 3% and making about $100 million in the process. The law the firms are accused of violating was designed for such profits to go back to shareholders, Hubachek said.

"This statute was designed in order to protect Ohio corporations" from investors "who are pursuing nothing other than their own short-term interests," he said. "In other words, investors like the defendants here."

Big Lots filed for bankruptcy last September. Hubachek said the shareholders aren't blaming Ancora and Macellum.

Then-Franklin County Common Pleas Judge Daniel R. Hawkins, now an Ohio Supreme Court justice, ruled last year that the plaintiffs didn't show that the firms violated the anti-greenmail law. Specifically, he found that there must be evidence that conduct was intentional and that the firm's actions didn't rise to the level of being manipulative under the law but instead constituted "shareholder activism."

Hubachek said the judge created elements of the law that weren't there and wrongly placed the burden on the plaintiffs to show that the wrongdoing was willful.

But Joseph C. Weinstein of Squire Patton Boggs, who argued for Ancora and Macellum, agreed with Hawkins, explaining that "plaintiffs are urging an interpretation of the statute that would take a statute designed to stop manipulative practices and weaponize it against innocent shareholder behavior."

Thursday's arguments lasted for more than 30 minutes, and only Edelstein asked questions.

She also asked whether the case should be sent back to a trial judge to properly decide whether the shareholders have the authority to bring their suit, as the issue is evolving in Ohio courts. Hubachek said there were good reasons to do so.

Weinstein, whose clients appealed Hawkins' standing ruling, argued it was clear the shareholders lacked the authority to sue and that the appeals court should be the one to address the issue.

Judges Laurel Beatty Blunt (D) and M. Shawn Dingus (D) also sat on the panel.

The shareholders and Big Lots are also represented by Murray Murphy Moul & Basil LLP. Big Lots is also represented by Thompson Hine LLP. The Macellum defendants are also represented by Tucker Ellis.

The case is Corpus Christi Firefighters' Ret. Sys. v. Macellum Cap. Mgmt. LP, Ohio Ct. App., 10th Dist., No. 24-AP-000269, oral argument 5/1/25 .

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Litigation
May 1, 2025, 8:05 AM PDT

Driven Brands Brass Sued by Investor Over Car Glass, Wash Loss

- **COURT**: W.D.N.C.
- **TRACK DOCKET**: No. 3:25-cv-00288 (Bloomberg Law subscription)

Driven Brands Holdings Inc. leadership concealed issues with its car wash segment's performance and its acquisition of auto glass companies for nearly two years before a record stock drop, a shareholder lawsuit said.

Share prices plummeted more than 41% on Aug. 2, 2023, after Driven slashed its full-year revenue guidance given the glass segment's integration delays and customer losses in the wash segment, a stockholder told the US District Court for the Western District of North Carolina. It was the stock's greatest single-day fall at that time since its 2021 market debut, according to data compiled by Bloomberg.

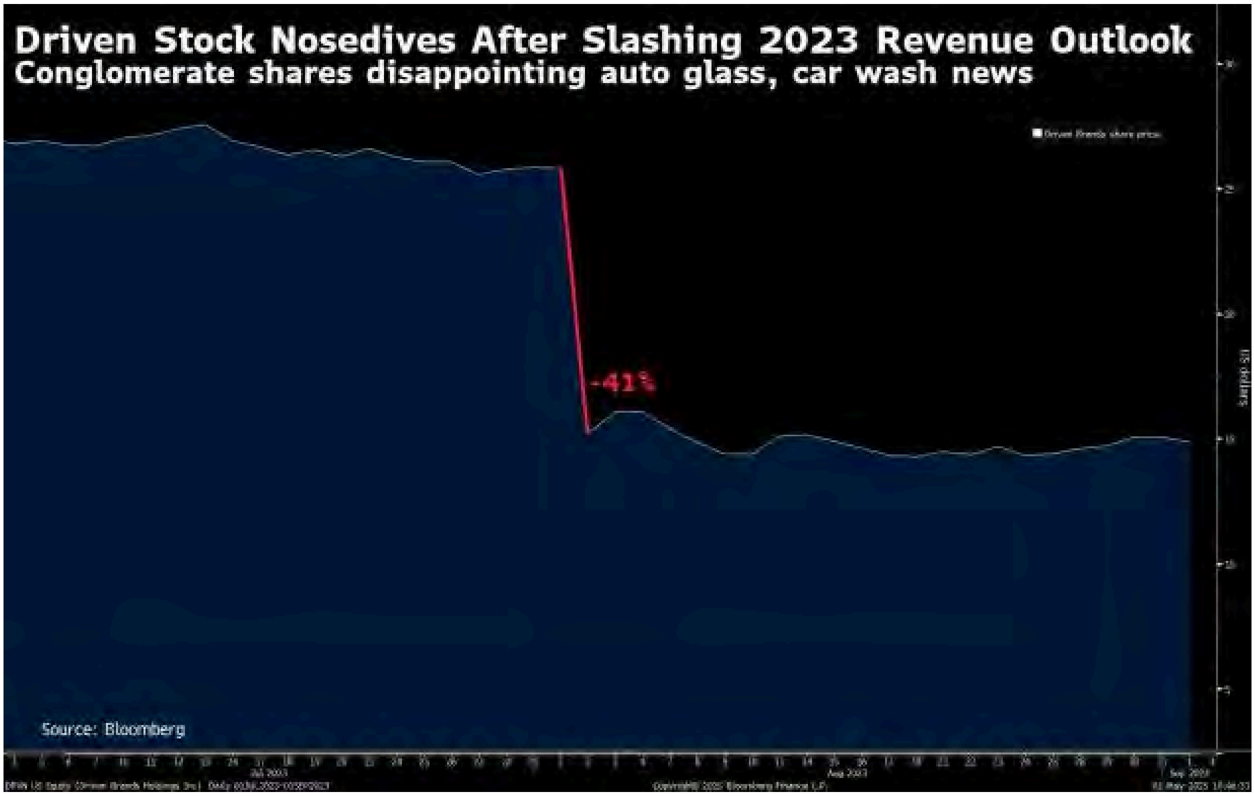
Current and former executives and board members harmed Driven—the parent company of Take 5 Oil Change, Meineke Car Care Centers, and other automotive service brands—by causing it to issue misleading statements about its growth strategy, said the complaint filed Wednesday. They hurt Driven's reputation and wallet, exposing it to potentially costly litigation, said the shareholder derivative action, a lawsuit that's filed on behalf of a company against its corporate leaders.

Plaintiff Jonathan Gaiman's complaint also accused Driven board chairman Neal Aronson of reaping "hundreds of millions of dollars" off of insider sales while the stock price was allegedly inflated.

After Driven's then-chief financial officer Tiffany Mason left abruptly in May 2023, the company said the transition led it to delay its investor day conference, Gaiman said. Still, Driven affirmed its 2023 financial guidance, he said.

But on Aug. 2, Driven revealed its auto glass business integrations were "several quarters behind," leading it to decrease its acquisition plans for 2023, according to the complaint. Driven also announced its car washes had a 4% year-over-year sales decline due to burgeoning competition over the past two years, the complaint said. As a result, Driven lowered its 2023 earnings-per-share guidance by 24%, it said.

When confronted about the auto glass delays, CEO Jonathan Fitzpatrick admitted there wasn't new information altering the outlook for either division, Gaiman said. Rather, Fitzpatrick said Driven's new CFO came in with fresh eyes and saw that it was behind, according to Gaiman.



It's the second derivative complaint involving these allegations filed in 2025, according to Bloomberg Law docket data. Moreover, a related proposed class action filed in 2023 against the company, Fitzpatrick, and Mason is pending in the same court.

Driven sold off its car wash business last month. Fitzpatrick will step down as CEO this month, the company previously said.

Hausler Law Firm PLLC, Rigrodsky Law PA, and Grabar Law Office represent Gaiman, who seeks damages on behalf of Driven, among other relief. Gaiman alleged breaches of fiduciary duties, aiding and abetting of that, unjust enrichment, waste of corporate assets, and securities law violations by the corporate overseers. He claimed wrongdoing from at least Oct. 27, 2021—when Fitzpatrick touted its car wash business on an earnings call—through Aug. 1, 2023.

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

The case is Gaiman v. Fitzpatrick , W.D.N.C., No. 3:25-cv-00288, complaint filed 4/30/25 .

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Securities Law News

April 30, 2025, 11:38 AM PDT

AMC’s APE Stock Conversion Wording Probed by Delaware High Court

- **Investor’s appeal focuses on phrase ‘deemed to be issued’**
- **Delaware’s top court previously upheld 2023 stock conversion**

An AMC preferred shareholder’s unusual interpretation of anti-dilution provisions perplexed Delaware Supreme Court justices during Wednesday oral arguments over a challenge to a 2023 stock conversion the movie theater chain’s meme stock base bitterly opposed.

In the conversion—an accord upheld by the high court last year—AMC Entertainment Holdings Inc. issued a distribution exclusively to its common shareholders, violating provisions stating preferred shareholders are entitled to any distribution “deemed to be issued prior to the conversion,” said Matthew Summers of Berger Montague, representing the investor.

The justices appeared to struggle with Summers’ explanation of what that meant. A stock is deemed to be issued “when it’s treated for some particular purpose as if it has been issued,” or if some authority decides it’s been issued, he said.

“I deemed to wash my car tomorrow,” Justice Gary F. Traynor said. “Is it clean today?”

Summers acknowledged it’s “an unusual use of the phrase,” and Traynor pushed Summers’ assertion that the word “deems” can be understood as the word “decides.”

“The date of decision controls whether the thing decided upon has happened—I’m just trying to follow how that works,” Traynor said.

Chief Justice Collins J. Seitz wondered why the “commonsense reading” of the provision wasn’t as simple as “stock that wasn’t issued.”

In the stock at issue in this case, “when we’re determining who’s entitled to receive stock, that’s when we deem it to be issued,” Summers said. This loophole around the date of conversion in the settlement allowed AMC to water down its preferred shareholders’ interests, he said.

The reverse stock split and conversion took place Aug. 25, 2023, with the settlement paid out three days later in the form of common stock. The investor, Michael Simons, is trying to argue that the settlement payment should be viewed as happening before the conversion, which the Delaware Chancery Court properly rejected, said John Neuwirth of Weil Gotshal & Manges LLP, representing AMC.

“There was no scheme here,” he said. Reversing the Chancery Court’s ruling would result in diluting the common stock distributed in the settlement, he said.

Simons’ lawsuit was the latest to challenge the conversion of preferred stock, known as APEs, to common shares. The movie theater chain’s APE-holders “got exactly what they were entitled to” in the conversion, according to an Oct. 2 bench ruling from Vice Chancellor Morgan T. Zurn.

Zurn approved the conversion plan in August 2023, in a settlement that included extra shares for individual investors. Earlier that year, thousands of AMC’s retail investors flooded the Chancery Court with correspondence opposing the conversion and AMC’s plan to secure new financing.

Seitz and Traynor were joined in the oral arguments by Justice N. Christopher Griffiths. A panel of three justices typically hears oral arguments, except in death penalty appeals or other cases where it determines en banc consideration is warranted.

AMC is also represented by Richards Layton & Finger PA.

The case is Simons v. AMC Ent. Holdings Inc., Del., No. 457,2024, oral arguments 4/30/25 .

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Delaware Supreme Court Eyes Dilution Language in AMC Theatres Settlement

law.com/delbizcourt/2025/04/30/delaware-supreme-court-eyes-dilution-language-in-amc-theatres-settlement-

Ellen Bardash April 30, 2025

Litigation over AMC Theatres' reverse stock split and conversion has again been brought to the Delaware Supreme Court, with a panel of three justices considering Wednesday whether its timing shortchanged holders of the movie theater company's preferred equity shares.

Berger Montague associate Matt Summers, arguing for a shareholder plaintiff whose Court of Chancery case was dismissed last year, said the correct interpretation of when a stock distribution can be considered "deemed to be issued" means the answer is yes.

"AMC made a promise. It guaranteed that it would treat preferred shareholders at least as well as common shareholders, but AMC broke that promise. It devised a scheme to issue a distribution exclusively to common shareholders, but that scheme violated the terms of the certificate," Summers said.

Vice Chancellor Morgan T. Zurn approved a settlement between AMC and a class of shareholders in August 2023, resolving claims challenging a proposed reversed stock split and conversion by distributing additional shares to those who held shares of common stock in Kansas-based AMC, the world's largest chain of movie theaters.

The Supreme Court already affirmed Zurn's decision approving the settlement in May 2024, but the decision now being appealed involves a separate case brought by AMC shareholder Michael Simons after the settlement was disclosed but before it was approved by the court.

"There was no scheme here," said Weil, Gotshal & Manges partner John Neuwirth, arguing for AMC. "What there was was a settlement and a contract that wasn't violated."

The earlier case was brought by a class of holders of AMC's common stock, while Simons' lawsuit claims he and other holders of AMC's preferred equity shares, known as APEs, had their shares wrongly diluted by how AMC went about implementing the split and conversion outlined in the settlement.

Simons claimed once Zurn approved the settlement, AMC intentionally timed the distribution of additional shares of common stock in a way that diluted APE shareholders more than it should have. The question, his complaint alleged, was whether that distribution occurred before or after APE shares were converted into shares of common stock. If the answer is before, he claimed, then AMC, based on an anti-dilution provision, was wrong not to have included the APE-turned-common-stock shareholders in the distribution.

Zurn, ruling from the bench, granted AMC's motion to dismiss Simons' case in October, and his appeal challenges that dismissal.

Questions from the court focused on how to define the phrase "deemed to be issued" and whether it's the same as a distribution actually being issued.

"If I deem to wash my car tomorrow, is it clean today?" asked Justice Gary F. Traynor.

"It doesn't mean that it's clean today, the same way that, in this case, it doesn't mean that the stocks were in stockholders' hands," Summers responded. "…I wouldn't personally say that I'm deeming to wash my car, but in a formal legal context, it might be the case that some authority speaks from on high."

Bloomberg Law

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Securities Law News

April 30, 2025, 3:53 PM PDT

Walgreens, Warburg Beat Investor Class Action Challenging Merger

- **Investors didn't identify any breached terms of LLC agreement**
- **Private equity investors didn't have fiduciary duties**

Drugstore chain Walgreens Boots Alliance Inc and Warburg Pincus LLC escaped a lawsuit from a proposed class of investors on Wednesday after a Delaware chancellor ruled the suit failed to state a claim.

Faiz Khan and Ralph Finger failed to sufficiently allege Walgreens, Warburg, and its affiliated entities breached an implied covenant, illegally interfered, or unjustly enriched themselves during a 2022 merger, Vice Chancellor Lori W. Will said in a memorandum opinion. Will granted the companies' motion to dismiss the proposed class action with prejudice from the Delaware Chancery Court.

The plaintiff's complaint "falls short" of the court's "reasonable conceivability standard," Will said.

Khan and Finger are former Class B unitholders in WP CityMD Topco LLC, an urgent care provider, the opinion said. Warburg held 60% ownership of the WP CityMD through Class A units and later sought a merger with Walgreens-owned subsidiary VillageMD.

Khan and Finger retained "tag-along rights" as Class B unitholders under the company's LLC agreement, allowing them to participate in transactions on the same terms as private equity-affiliated members, Will wrote. But when the company merged with VillageMD, the LLC agreement was amended to exclude minority unitholders' tag-along rights in the transaction.

Both plaintiffs ultimately voted in favor of the amendment and received millions of dollars in merger consideration, the opinion said. But the two later sued, contending they were treated unfairly and coerced into voting for the amendment.

The two alleged that Warburg and WP CityMD breached the implied covenant of good faith and fair dealing in the LLC agreement. They also alleged that Warburg unjustly enriched itself and that it, Walgreens, and VillageMD tortiously interfered with contractual relations.

But the plaintiffs failed to cite any provision of the LLC agreement that was allegedly breached or identify any gaps in the contract, Will wrote. The original agreement also explicitly addressed that Warburg waived fiduciary duties and was permitted to act in its own interests. The agreement also allowed amendments to adversely affect some investors so long as the amendment received the consent of a majority of the affected unitholders.

The implied covenant claim can't be "wielded to rewrite the LLC agreement or grant the plaintiffs rights they never bargained for," Will said.

The plaintiffs further alleged that their votes were solicited without the benefit of knowing about the elimination of the tag-along right and Class A unitholders' conflicts of interest, the opinion said. But this argument is foreclosed by the LLC agreement, Will wrote.

The plaintiffs similarly failed to cite any express or implied term in the agreement that was breached in their tortious interference claim, the opinion said. Their unjust enrichment claim—which is a remedy in absence of a formal contract, Will wrote—also fails since Warburg is party to the agreement.

Labaton Keller Sucharow LLP represents the proposed class. Morris Nichols Arsht & Tunnell LLP and Willkie Farr & Gallagher LLP represent Warburg and its affiliates. Young Conaway Stargatt & Taylor LLP and Latham & Watkins LLP represent WP CityMD and VillageMD. Potter Anderson & Corroon LLP and Sidley Austin LLP represent Walgreens.

The case is Khan v. Warburg Pincus LLC , Del. Ch., No. 2024-0523-LWW, 4/30/25 .

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Bloomberg Law

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Securities Law News

April 30, 2025, 9:31 AM PDT

Merck Shareholder Drops Suit Against Execs Over Gardasil Demand

Merck & Co. Inc. managers escaped allegations that they hurt the pharmaceutical giant by misleading investors over traction for its HPV vaccine in China.

The plaintiff told Judge Julien Xavier Neals of the US District Court for the District of New Jersey it's dropping the shareholder derivative action, which is a lawsuit filed on behalf of a company against its corporate leaders. The Vladimir Gusinsky Revocable Trust filied for dismissal without prejudice, retaining the ability to refile claims that current and former executives and board members harmed Merck's reputation and wallet in issuing misleading statements about its ability to assess Chinese demand for the Gardasil vaccine.

- Merck's stock price fell almost 9.1% to close at $90.74 on Feb. 4 after the company said it would miss its long-predicted $11 billion in worldwide Gardasil sales by 2030 and pause sending the human papillomavirus vaccine to China through at least mid-2025
- Merck previously disclosed a significant reduction in Gardasil vaccinations in China, causing its distributor there to have too much inventory, per the complaint filed in April. Share prices slid almost 10% on July 30, the day it disclosed the problem while discussing second quarter of fiscal year 2024 results, the trust said. It was a record single-day tumble since Nov. 2021, according to data compiled by Bloomberg
- A similar proposed class action filed against the company and three top executives is pending in the same court

The Weiser Law Firm PC represents the trust. Neither the firm nor Merck immediately responded to emails seeking comment.

The case is The Vladimir Gusinsky Revocable Tr. v. Davis , D.N.J., No. 2:25-cv-02561, notified 4/29/25 .

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Securities Law News

April 30, 2025, 12:21 PM PDT

Deloitte to Settle Nuclear Reactor Investors' Suit Over Audits

- **Project cost more than $20 billion before being abandoned**
- **Terms of Deloitte settlement haven't been announced yet**

Deloitte & Touche LLP is finalizing the details of a class settlement agreement with investors in a failed nuclear reactor project in South Carolina, according to a federal court filing.

The amount of the settlement will be announced by about mid-June, the parties told the US District Court for the District of South Carolina on Tuesday.

Deloitte and the lead plaintiff representing the class—the International Brotherhood of Electrical Workers Local 98 Pension Fund—also asked the US Court of Appeals for the Fourth Circuit to pause an appeal over class certification that's pending there, given the anticipated settlement. Judge Jacquelyn D. Austin certified the class of Scana Corp. investors in November 2024.

Scana's nuclear project was abandoned in 2017 after running years behind schedule and costing more than $20 billion. Various people and entities involved with the project have faced securities charges, criminal charges, and civil litigation. Among these was Scana's eventual parent company, Dominion Energy Inc., which in 2021 reached a global settlement of several class actions over its merger with Scana.

IBEW Local 98 alleged Deloitte was aware that the project to construct two nuclear reactors at the V.C. Summer Nuclear Generating Station was failing. But the accounting firm allegedly kept issuing clean audit reports for Scana. IBEW brought securities fraud claims against Deloitte.

Cohen Milstein Sellers & Toll PLLC is lead counsel for the class, and Tinkler Law Firm LLC is liaison counsel. Moore & Van Allen and Milbank LLP represent Deloitte & Touche and parent Deloitte LLP. The same law firms represent the parties in the appeal.

The cases are Int'l Brotherhood of Elec. Workers Loc. 98 Pension Fund v. Deloitte & Touche LLP , D.S.C., No. 3:19-cv-03304, notice 4/29/25 and Int'l Brotherhood of Elec. Workers Loc. 98 Pension Fund v. Deloitte & Touche LLP , 4th Cir., No. 25-1146, motion 4/29/25 .

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Harvard Law School Forum on Corporate Governance

Changes in Delaware Corporate Law: A D&O Liability and Insurance Perspective

Posted by John Orr, Willis Towers Watson, on Thursday, May 1, 2025

Tags: **delaware**, **Delaware Senate Bill 21**, **Shareholders**, **stockholders**
More from: **John Orr**, **Willis Towers Watson**

Editor's Note: John Orr is a D&O Liability Product Leader at Willis Towers Watson. This post is based on his Willis Towers Watson memorandum and is part of the **Delaware law series**; links to other posts in the series are available **here**.

On March 25, 2025, Delaware adopted Senate Bill 21 (SB 21) into law, modifying provisions of the state's corporate laws to lessen stockholders' rights relative to claims involving controlling stockholders, particularly as they relate to purportedly conflicted transactions. For some time, states such as Nevada and Texas have attempted to lure corporations by developing even friendlier corporate laws than Delaware's. SB 21 is, in large part, Delaware's attempt to mitigate the risk of companies re-incorporating elsewhere.

What SB 21 does

SB 21 would amend select provisions of Sections 144 and 220 of the Delaware General Corporation Law. Below are **highlights of SB 21's changes**. The text of the law is accessible at **Legislation Document**.

- The modifications define what parties constitute "controlling stockholders," clarifying the term is limited to individuals who own at least half of a company's shares or a third of shares plus a managerial role.
- Under SB 21, a controlling stockholder transaction may be entitled to safe harbor protections if approved or recommended by a committee consisting of a majority of disinterested directors or approved or ratified by a majority of votes cast by disinterested stockholders. A going private transaction may also be entitled to the same protections.
- SB 21 also establish criteria for determining the independence of directors and stockholders and provide that controlling stockholders and control groups, in their respective capacities, may not be held liable for monetary damages for purported breaches of the duty of care.
- The amendments also narrow the scope of "books and records" that shareholders can obtain under Delaware law to include core materials, effectively eliminating rights to obtain emails, texts, and other documents.
- The state senate simultaneously introduced **Senate Concurrent Resolution No. 17**, calling for a directive to certain authorities/practitioners to develop reforms to address the size and frequency of plaintiffs' attorney fee awards for shareholder litigation.

Amendments introduced by opponents to the bill, notably one that sought to provide an opt-in mechanism, failed in the final vote. The amendment would have provided that a corporation could opt into the provisions of SB 21 by a shareholder vote.

How might this affect D&O liability

Delaware corporations may see an ease to liabilities in certain cases filed in the state. This would impact shareholder cases in Delaware that come in the form of direct actions or derivative suits for breaches of duty, especially those involving controlling shareholders and allegedly conflicted transactions. Cases related to going private transactions might also be easier to defend, too, which would be helpful to affected companies as, currently, going private suits can be costly to resolve due to alleged conflicts. Plaintiffs' attorneys' fees awards may ultimately become subject to increasing challenge, and books and records demands may become less burdensome for companies. Perhaps all of this translates into less liability, less D&O insurance "loss."

Having said that, SB 21 does nothing to alter the laws of states other than Delaware. If a company is incorporated in any other state, it would not be impacted by the law. Importantly, SB 21 does nothing to alter liability under the federal securities laws (the Securities Act of 1933 or the Securities Exchange Act of 1934) or other federal laws.

The most significant D&O claim exposure to public companies is the federal securities class action (SCA), whose average settlement in 2024 was $43 million (Source: NERA, Recent Trends in Securities Class Action Litigation: 2024 Full-Year Review). The median settlement has been $14 million over the past three years (Id.). Settlement data involving Delaware-specific matters is less accessible publicly, but our experience is that resolution of those cases is not nearly as severe on average as resolution of federal SCAs.

It is true there have been several derivative lawsuits settle for very large amounts in recent years. The three largest derivative settlements from the past three years are **Tesla ($735 million), FirstEnergy ($180 million), and Insys ($175 million)**. Tesla was **an excessive compensation case**, FirstEnergy was a case **involving criminal bribery**, and Insys stemmed from **opioid-related allegations that ultimately resulted in executives being convicted of racketeering charges**. SB 21 would not have absolved or mitigated exposures in those cases (or many of the other high value derivative cases), notably the FirstEnergy case, which involved an Ohio corporation that would not have benefitted from changes in Delaware regardless.

Note: The Tesla settlement referenced above was not the high profile derivative case involving Elon Musk's $55 billion proposed pay package. Critically, however, SB 21 likely would have affected the pay package case had it been brought after the bill's adoption. That case was filed against Musk as a controlling stockholder with a 21% interest in the company. With SB 21 now clarifying that a "controlling stockholder" can only be someone who owns at least half of a company's shares or a third of shares plus a managerial role, Musk would not qualify.

Note also: plaintiffs have had some measurable success recently surviving motions to dismiss with factually detailed complaints, often derived from books and records demands. With those demands limited in scope under SB 21, this potentially could reduce the number of successfully pled derivative suits – a positive outcome for D&O insureds and their insurers.

How might this affect D&O liability insurance coverage?

SB 21 impacts select liabilities for companies and their directors and officers, limiting certain shareholder rights. It would not appear, however, to affect coverage under almost any traditionally worded D&O policy. The policy, with customary terms and limitations, broadly covers "Claims" against "Insureds" for "Loss" alleging "Wrongful Acts" (disclaimer: policies can and do vary substantially, so this is a general statement). We do not see SB 21 as substantively modifying the character of claims or the scope of relief beyond what is already addressed by the coverage. Nevertheless, there are areas in the policy worth addressing. They include, but are not limited to, the following:

- Despite the possibility that controlling shareholders may have new arguments to defend themselves, companies should attempt to negotiate wording to cover insured persons in a controlling shareholder capacity. Addition of this wording should be considered regardless of changes brought on by SB 21.
- Derivative litigation has the potential to trigger Side A coverage – that portion of the policy covering non-indemnified losses. While SB 21 appears to ease derivative risks to a degree, it's a reminder to companies and their directors

and officers continuously to scrutinize the scope and breadth of their Side A coverage. Side A policies are designed to provide broader coverage than traditional "ABC" policies, and care should be taken to maximize coverage breadth using the company's broker's coverage and product specialists.

- Many D&O policies include sublimited coverage for statutory Books and Records demands. Although SB 21 limits the scope of information available to shareholders under these demands, the costs to address the demands are still potentially substantial. We do not believe SB 21 should justify a reduction in available sublimits.

Finally, with SB 21's limitations in liability, there is sensible justification for Delaware corporations to present themselves to insurance markets at renewal as more favorable risks. The same may be true of companies re-incorporating in Nevada or Texas (or other states), which would have similar or, in some instances, even better liability limitations.

Litigation
May 1, 2025, 8:52 AM PDT

TTEC Services 401(k) Fee, Fund Challenge Heads Toward Settlement

- **Hundreds of 401(k) fee suits have been filed in federal courts**
- **Judge allowed amended complaint to advance based on benchmarks**

Colorado customer service company TTEC Services Corp. will settle a proposed class action challenging its 401(k) plan's fees and investment options.

The parties announced they'd reached a settlement in principle in email communications with the court, according to an electronic docket entry issued Wednesday in the US District Court for the District of Colorado. No details about the agreement were immediately available, and Judge Charlotte N. Sweeney instructed the parties to file a formal notice of settlement with the court.

The lawsuit says TTEC improperly allowed its 401(k) recordkeeper to charge excessive fees and add its own proprietary funds to the plan. Participants also objected to the company's alleged delays in adopting an investment policy statement and in adding target date funds as an investment option.

Sweeney initially dismissed the case in 2023, saying the participants' complaint didn't include proper comparisons to better-run plans. But she greenlighted their amended complaint in 2024, saying they identified a meaningful benchmark by citing to public documents showing that a similarly-sized retirement plan paid $25 per person annually for the same services that TTEC plan participants allegedly paid as much as $59 for each year.

Hundreds of lawsuits challenging retirement plan fees and funds have been filed over the past few years, and some federal appeals courts have assessed these cases based on whether they included meaningful benchmarks by which to judge the plans at issue. The Sixth, Seventh, Eighth, and Tenth circuits have all used a "meaningful benchmark" standard when deciding whether a retirement plan challenge is viable.

Morgan, Lewis & Bockius LLP and Littler Mendelson PC represent TTEC. Werman Salas PC and Lieff Cabraser Heimann & Bernstein LLP represent the plan participants.

The case is Carimbocas v. TTEC Servs. Corp., D. Colo., No. 1:22-cv-02188, minute order 4/30/25 .

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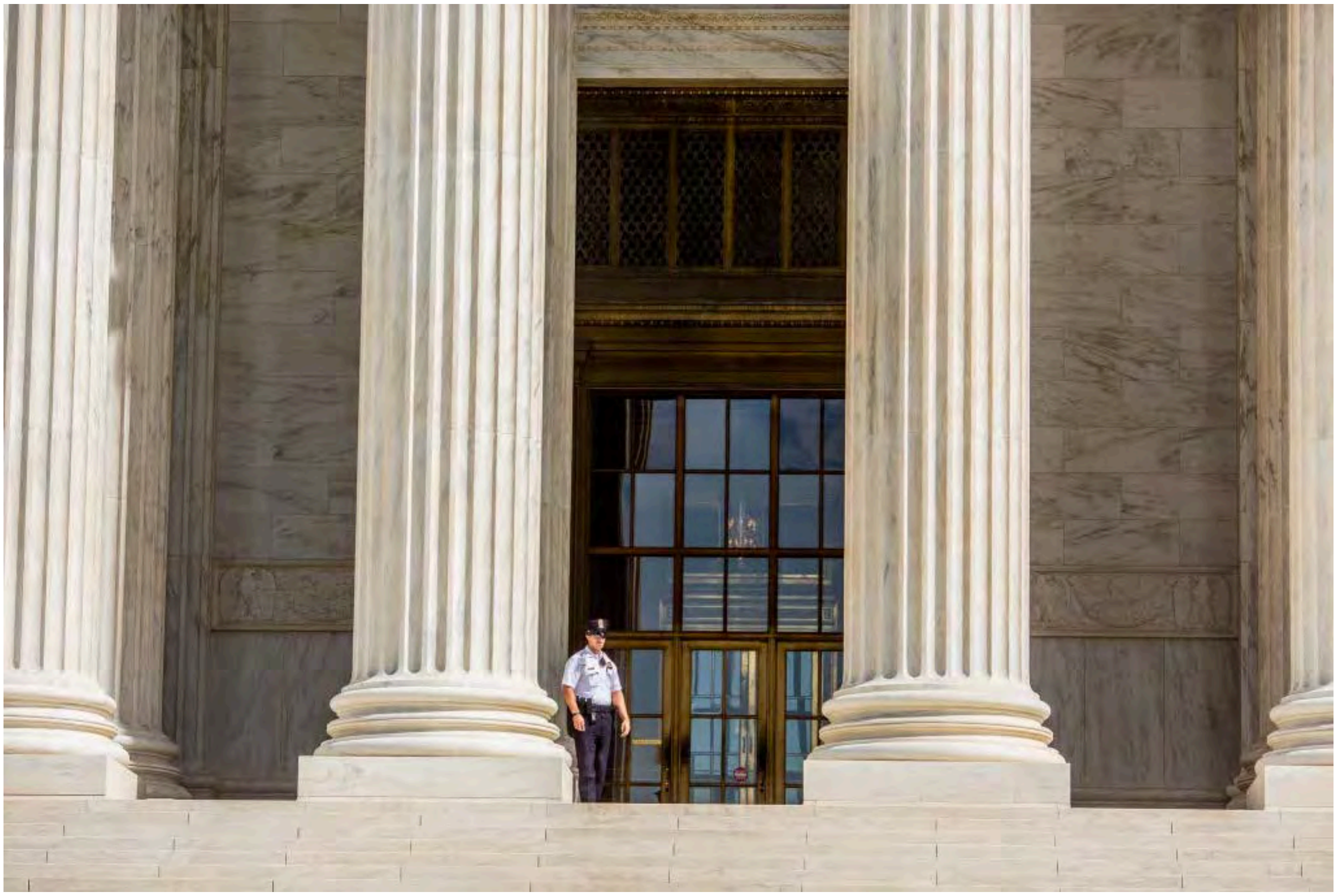
ARGUMENT ANALYSIS

Class action question turns into procedural dispute

By Ronald Mann
on Apr 30, 2025



A decision in the case will likely come in June. (Thomas Hawk via Flickr)

Another day at the Supreme Court and, suitable for the way this term has gone, another case that pretty clearly does not belong before the court. The justices granted review in *Laboratory Corporation of America Holdings v. Davis* to decide whether a district court can certify a class action that includes claimants who in fact have not suffered any cognizable injury. Here, for example, a group of blind individuals filed suit against Labcorp when it installed automated check-in kiosks in its facilities in the COVID-19 era. The class contends that the kiosks discriminate against the blind, and the parties spent a lot of time in the district court arguing about the suitable bounds of the class. At one point, the court defined a class that excluded all who did not know about or did not want to use the kiosk, on the theory that they were not injured. Later, the district court modified the definition to include everybody who came into a clinic, whether they did or did not want to use the kiosk.

Labcorp's arguments in the court challenge that second definition, but the problem is that it only appealed the first definition, which is strictly limited to those who can claim an injury from the presence of the kiosks. The U.S. Court of Appeals for the 9th Circuit held

Predictably, a large share of the argument was about what the justices should do about that. For the most part, the sentiment (expressed repeatedly by Justices Amy Coney Barrett and Sonia Sotomayor) was that the court has no reason to address the second definition and that it should send the case back to the lower courts to let them consider whether there is any way for Labcorp still to challenge that definition.

To the extent the justices addressed the question on which they granted review, the justices appeared skeptical of Labcorp's position. The leaders on that point were Justices Elena Kagan, Ketanji Brown Jackson, Neil Gorsuch, and Sotomayor. Labcorp contended that the members of the class necessarily have to share the same injury to be in the class, but the justices seemed to think that class definitions are quite "fluid," as Sotomayor emphasized.

The group could not see any reason why the question of precisely who was injured needs to be settled up front. For them, the only requirement in the rules is that the court needs to find a way to sort the "wheat from the chaff" — the injured from the uninjured — before the court finally awards damages.

Sotomayor, recalling her time as a trial judge, commented that class definitions "get amended constantly," and that "it's not until the judgment is entered that you have to … identify who's been injured or not."

Seconding Sotomayor's sentiment, Kagan commented that "the court is not doing anything with respect to those claims until the court actually provides damages, … and as long as the court figures this question out before the court actually does anything with respect to those claims, that seems to me good enough."

Gorsuch seemed persuaded by the practicalities, suggesting that from his perspective, "overall, looking at the whole thing, it's manageable. There are at least some common questions. The named plaintiffs are generally typical and common issues predominate."

When Sopan Joshi, representing the government, argued that the problem is that the class doesn't have "commonality" unless the plaintiffs shared a common injury, Gorsuch and Kagan both objected strenuously. Gorsuch interjected: "Hold on. … I had understood it as one issue has to be common, and that that has to be predominant. …. Now you're telling me that Article III, and Article III alone, must be satisfied by everyone at the outset." When Joshi insisted that all in the class must share a common injury, Gorsuch reiterated his point even more firmly: "No, they don't all have to be common. There has to be a common question that predominates over others."

Apparently bemused by his discussion of commonality, Kagan asked Joshi to look back at the past 70 years of the court's class action cases. "[I]t strikes me that if you look at all the classes that have been certified by that point, you're always going to be able to find people for idiosyncratic reasons who don't share the same injury, who don't have standing, and all that's never been seen as kind of the end all and be all," she said. To do that, Kagan continued, "we have to explode everything. So it seems very inconsistent to me with the way class actions have been practiced for many decades."

That's not to say that there was no sympathy for Labcorp's position. Chief Justice John Roberts and Justice Brett Kavanaugh commented on the "elephant in the room" – that the very certification of a class often can force defendants to settle – but they did not suggest any way to avoid the procedural obstacle to reaching the question.

Although the justices have shown some interest this year in reaching out to decide the questions to which they devoted an hour of oral argument, this really seems to be one where there is little appetite for finding a way to reach that question. When skepticism about getting to the question includes Barrett, Gorsuch, Sotomayor, and Kagan, it is a little hard envisioning a majority finding a way around the obvious difficulties.

Posted in **Featured**, **Merits Cases**
Cases: **Laboratory Corporation of America Holdings v. Davis**

Recommended Citation: Ronald Mann, *Class action question turns into procedural dispute* , SCOTUSblog (Apr. 30, 2025, 5:08 PM), https://www.scotusblog.com/2025/04/class-action-question-turns-into-procedural-dispute/

Recent Posts VIEW ALL

Litigation

May 1, 2025, 8:47 AM PDT

NCAA, Coaches Get Initial Approval of $49.3 Million Settlement

- **Deal would compensate college baseball volunteer coaches**
- **Federal judge found antitrust settlement fair and adequate**

The NCAA won preliminary approval of a $49.3 million deal to settle antitrust claims that it colluded to avoid paying hundreds of Division I college baseball volunteer coaches.

William B. Shubb of the US District Court for the Eastern District of California in a Wednesday order called the deal "fair, just, reasonable, and adequate" for a proposed class of approximately 1,000 baseball coaches. The court set a final fairness hearing for Sept. 15.

The case is one of two suits assigned to Shubb that involve antitrust challenges to a since-repealed NCAA bylaw barring volunteer coaches from receiving pay. Volunteer coaches regularly spend more than 40 hours per week on the job they are doing for free.

The case that gained initial deal approval Wednesday revolves around claims brought by Division I volunteer coaches who sued the NCAA in 2022, accusing the organization of enforcing anticompetitive rules that fixed their compensation at zero.

The NCAA repealed its volunteer coach pay rule in 2023. But plaintiffs argued that before the repeal, the rule harmed hundreds of volunteer coaches each year since it was enacted in 1992.

Plaintiffs in the case last month asked the court for preliminary approval of the deal.

Shubb noted in his order that because this settlement was reached prior to class certification, "it will be subject to heightened scrutiny for purposes of final approval."

A separate group of volunteer coaches last month won their bid to certify a class in a similar antitrust lawsuit accusing the NCAA of conspiring with member schools to avoid paying them.

The NCAA is separately working to gain final approval of a $2.8 billion settlement designed to provide back pay for thousands of Division 1 athletes fighting for money for their name, image and likeness.

The plaintiff coaches are represented by Korein Tillery LLC. The NCAA is represented by Munger Tolles & Olson LLP.

The case is Smart v. NCAA , E.D. Cal., No. 2:22-cv-02125, 4/30/25 .

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Class Action

April 30, 2025, 1:46 PM PDT

Norfolk Southern Sued by East Palestine Schools After Derailment

- **COURT:** N.D. Ohio
- **TRACK DOCKET:** No. 4:25-cv-00862

The school district of East Palestine, Ohio, the site of a fiery 2023 train derailment, sued Norfolk Southern Corp. on Wednesday and said the company hasn't followed through on its promises to properly address the fallout.

The rail giant hasn't reimbursed the East Palestine City School District for using school facilities as an incident command center after the derailment, and for housing and transporting residents who were evacuated, according to the lawsuit filed in US District Court for the Northern District of Ohio.

It also didn't, as promised, build a community wellness center on district property and failed to make up for lost revenue the schools suffered due to lost resident income and property values, the suit states.

The company earned $16 billion in profits since the derailment and "it achieved those substantial gains because it has privatized the profits of its operations while socializing the costs of the trainwreck on to the local community, including the Board of Education, for years to come," the lawsuit says.

"Norfolk Southern promised it would not 'walk away' and would help our community 'recover and thrive,'" district Superintendent James Rook said in a news release. "But Norfolk Southern did walk away from our students."

Norfolk Southern's said in a statement that "from the outset, we have been clear about our commitment to do right by the community in East Palestine." It said the company has committed more than $1.1 million to the district and has reimbursed it "for every invoice for which we have been provided proper documentation."

The lawsuit was filed a week after a federal jury found in favor of railcar owner GATX Corp. in a separate case the rail giant filed against it and chemical company Oxy Vinyls LP that sought to have both companies pay portions of a previously reached $600 million settlement. Oxy Vinyls settled mid-trial.

The district is represented by Peiffer Wolf Carr Kane Conway & Wise LLP.

The case is E. Palestine City Sch. Dist. Bd. of Ed. v. Norfolk S. Corp. , N.D. Ohio, No. 4:25-cv-00862, complaint filed 4/30/25 .

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A New Wave of Lawsuits Alleges Ozempic Causes Patients to Go Blind

law.com/njlawjournal/2025/05/01/a-new-wave-of-lawsuits-alleges-ozempic-causes-patients-to-go-blind

Amanda Bronstad May 1, 2025

What You Need to Know

- The lawsuits allege that Ozempic causes a rare eye condition called NAION, or non-arteritic anterior ischemic optic neuropathy, which is akin to an eye stroke.
- All but one of the cases were filed this month in state and federal courts in New Jersey.
- Novo Nordisk, in a statement, denied the allegations, noting that people with type 2 diabetes, the condition for which the U.S. Food and Drug Administration approved Ozempic, have ‘well-known comorbidities,’ including eye conditions.

A new wave of lawsuits has alleged that Ozempic causes a rare form of blindness.

About a dozen lawsuits, all but one filed this month and tracked by Law.com Radar, are primarily in state and federal courts in New Jersey, where the U.S. headquarters of Ozempic manufacturer Novo Nordisk is located in Plainsboro. The lawsuits allege that Ozempic causes a rare eye condition called NAION, or non-arteritic anterior ischemic optic neuropathy, which is akin to an eye stroke.

“Although NAION is not a well-understood condition, it is a very serious condition that causes permanent blindness and is not currently warned about,” Weitz & Luxenberg’s Danielle Gold, in New York, said. “Most of the time there are no advanced symptoms or notice this may happen. You wake up in the morning, and you can’t see.”

Gold said her firm, which already has filed four cases, including two on Tuesday, plans to file more lawsuits. Among the other firms that have sued are Motley Rice, Seeger Weiss and Anapol Weiss.

Novo Nordisk, in a statement, denied the allegations, noting that people with type 2 diabetes, the condition for which the U.S. Food and Drug Administration approved Ozempic, have “well-known comorbidities,” including eye conditions.

“NAION is a very rare eye disease,” a Novo Nordisk spokesman told Law.com. It’s not a side effect of Ozempic or related drugs, called semaglutides. “After a thorough evaluation of studies from the University of Southern Denmark and Novo Nordisk’s internal safety assessment, Novo Nordisk is of the opinion that the benefit-risk profile of semaglutide remains unchanged.”

Novo Nordisk also conducted its own clinical trials.

“These data do not suggest a causal relationship between GLP-1 RA use and NAION events,” the spokesman said.

‘We Don’t Know What the Future Holds’

The suits follow a 2024 study at Harvard-affiliated Massachusetts Eye and Ear, and published in JAMA, linking Ozempic to NAION.

“That was the first major study that caught our attention,” said Craig Silverman, whose New York-based firm, Sullivan Papain Block McManus Coffinas & Cannavo, has filed two suits.

On Dec. 11, a Danish-Norwegian cohort study found a similar association, prompting Danish regulators to require Novo Nordisk to review and submit data to determine whether a label change on Ozempic is needed.

The cases alleging blindness are distinct from the 1,600 lawsuits, now in multidistrict litigation in U.S. District Court for the Eastern District of Pennsylvania, which link Ozempic and other drugs, popularly used to lose weight, to gastrointestinal injuries, intestinal obstruction and stomach paralysis. On April 21, U.S. District Judge Karen Marston heard oral arguments on whether to dismiss most of the claims in that litigation.

The U.S. Judicial Panel on Multidistrict Litigation has denied attempts to add alleged injuries related to blood clots.

As a result, lawyers did not expect the new blindness cases to be transferred to the multidistrict litigation.

Jonathan Orent of Motley Rice.
Courtesy photo

“Unfortunately, the multidistrict litigation is not open to cases like Todd Engel’s; it is currently limited to gastrointestinal issues,” Motley Rice partner Jonathan Orent, in Providence, Rhode Island, told Law.com about his case, which he filed on behalf of Maryland resident Todd Engel. “Right now, we are focused on representing Mr. Engel and his family to the best of our ability. We don’t know what the future holds.”

Anapol Weiss shareholder Tracy Finken Magnotta, in Philadelphia, said she anticipated the blindness suits to end up in New Jersey’s Multicounty Litigation procedure. She filed a case on Monday in Middlesex County Superior Court. The case was on behalf of Mississippi couple Marla Guastella and her husband, Ross Guastella, who woke up in 2023 suddenly blind in one eye after nine months of using Ozempic to treat his type 2 diabetes. Guastella’s blindness, which later occurred in both eyes, forced him to quit his job as a pharmacist.

The only case not in New Jersey was filed last year in Dallas County District Court, but Novo Nordisk removed it to U.S. District Court for the Northern District of Texas. Novo Nordisk, in a motion to dismiss, argued that its warnings were adequate under the Texas Product Liability Act and the learned intermediary doctrine, and that federal law prohibited it from changing the label.

“Plaintiff Jeff Golmon filed a bare-bones complaint alleging only that he experienced blindness after his doctor prescribed Ozempic (semaglutide) to treat his diabetes, and that Novo Nordisk Inc. failed to adequately warn of that risk,” Novo Nordisk lawyer Meagan Self, of DLA Piper in Dallas, wrote in the dismissal motion.

Van Shaw, of Dallas-based Shaw Welch Powell, who filed the case for more than $1 million in damages, did not respond to a request for comment.

Trump administration sues Hawaii, Michigan to block planned climate change lawsuits

reuters.com/legal/trump-administration-sues-michigan-block-planned-climate-change-lawsuit-2025-05-01

Nate Raymond May 1, 2025

U.S. President Donald Trump attends a rally to mark his 100th day in office, at Macomb Community College in Warren, Michigan, U.S., April 29, 2025. REUTERS/Evelyn Hockstein/File photo Purchase Licensing Rights, opens new tab

- Justice Department calls planned lawsuits an overreach
- Michigan, Hawaii ready cases against fossil fuel industry

WASHINGTON, May 1 (Reuters) - President Donald Trump's administration has sued Hawaii and Michigan to try to stop them from filing lawsuits against major oil companies over the fossil fuel industry's role in climate change, accusing the Democratic-led states of overreach and imperiling domestic energy production.
Neither state has sued yet. Hawaii Governor Josh Green told a local TV station that his state plans to sue fossil fuel companies as soon as Thursday. Michigan Attorney General Dana Nessel last year retained law firms to represent it in climate change-related litigation.

The litigation filed by the U.S. Justice Department late on Wednesday in Hawaii, opens new tab and Michigan, opens new tab said the intended lawsuits by the states constitute an "extraordinary extraterritorial reach" that would unlawfully undermine federal regulation of greenhouse gas emissions and the administration's foreign policy objectives.
Numerous Democratic-led states have in recent years filed similar lawsuits against companies including Exxon Mobil (XOM.N), opens new tab, Chevron (CVX.N), opens new tab, ConocoPhillips (COP.N), opens new tab, Shell (SHEL.L), opens new tab and BP (BP.L), opens new tab, accusing them of deceiving the public about the role fossil fuels have played in causing climate change.
The Justice Department's unusual preemptive lawsuits follow a pledge by Trump's campaign during the 2024 election to "stop the wave of frivolous litigation from environmental extremists."

The Justice Department in both lawsuits cited an executive order that the Republican president signed on his first day back in office on January 20 declaring a national energy emergency to speed permitting of energy projects, rolling back environmental protections and withdrawing the United States from an international pact to fight climate change.
"As a result of state restrictions and burdens on energy production, the American people are paying more for energy, and the United States is less able to defend itself from hostile foreign actors," the Justice Department said in the lawsuits.

It said Hawaii and Michigan are standing in the way of the administration's efforts to boost domestic energy supply.

"This nation's Constitution and laws do not tolerate this interference," the lawsuits said.

Representatives for Nessel and Hawaii's attorney general did not immediately respond to requests for comment.

Similar lawsuits by state and local governments have accused energy companies of creating a public nuisance or violating state laws by concealing from the public for decades the fact that burning fossil fuels would lead to climate change. The companies have denied wrongdoing.

Many of the cases remain in their early stages after years of litigation by oil companies over whether the states could sue in state courts rather than federal court.

The U.S. Supreme Court in March rejected a bid by 19 Republican-led states, led by Alabama, to block five Democratic-led states from pursuing such lawsuits. The Republican-led states raised similar claims as the Justice Department's case.
Reporting by Nate Raymond in Boston, Editing by Alexia Garamfalvi, Franklin Paul and Will Dunham

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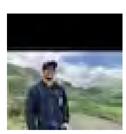
- LegalProminent California lawyer abused pandemic loan program, prosecutors say

David Thomas

August 16, 2024

- LegalTrump hush money sentencing delayed to September, weeks before US election



Luc Cohen, Susan Heavey

July 2, 2024

Perryman Group study links $367.8 billion in excess tort costs to $557.8 billion in lost output

legalnewsline.com/stories/671102834-perryman-group-study-links-367-8-billion-in-excess-tort-costs-to-557-8-billion-in-lost-output

B. J. Milam April 30, 2025

State Legislature

Ron DeSantis, Governor of Florida | X

The Perryman Group has announced that the U.S. economy incurs an annual loss of $557.8 billion due to $367.8 billion in excess tort costs.

According to the U.S. Chamber of Commerce Institute for Legal Reform, third-party litigation funding (TPLF) enables hedge funds and other financiers to invest in lawsuits in exchange for a portion of any settlement or judgment. While supporters argue it facilitates access to justice, critics claim that without disclosure requirements and other safeguards, these funders may dominate litigation and encourage unmeritorious lawsuits. The practice originated in Australia and has since spread to Europe and the United States, raising concerns about its impact on the legal system.

Enlyte reports that TPLF is contributing to a rise in "nuclear verdicts," defined as awards exceeding $10 million, and even "thermonuclear verdicts" over $100 million. For insurers, this trend poses a significant risk that could lead to increased claims costs. The growth of TPLF is viewed as indicative of deeper issues within the legal system that have been developing over decades.

The Perryman Group's analysis estimates that excessive tort costs result in an annual loss of $557.8 billion in gross product and more than 4.81 million jobs nationwide. These figures represent a notable increase from previous years, highlighting a growing economic impact. The study emphasizes the extensive effect of tort costs on various sectors of the economy.

The Perryman Group is a Texas-based economic and financial analysis firm led by Dr. M. Ray Perryman. The firm specializes in econometric modeling and provides consulting services to businesses, government entities, and policy groups with a team of experienced analysts offering insights into complex economic issues.

Texans for Lawsuit Reform warns of explosion of nuclear verdicts

legalnewsline.com/stories/671102885-texans-for-lawsuit-reform-warns-of-explosion-of-nuclear-verdicts

A. C. Benavides

April 30, 2025

Dick Weekley, Senior Chairman, Board of Directors of the Texans for Lawsuit Reform | Texans for Lawsuit Reform

Texans for Lawsuit Reform announced on their X profile that nuclear verdicts are threatening the state’s economy and driving up business costs.

Nuclear verdicts, defined as jury awards exceeding $10 million, have become increasingly common. A recent study by the Institute for Legal Reform (ILR) analyzed 1,288 such verdicts from 2013 to 2022. The average award has increased to $89 million from $76 million, primarily due to rising payouts in product liability and negligence cases. According to the study, tactics like "reptile theory" and jury anchoring contribute to these large verdicts, which can potentially bankrupt small businesses, raise insurance and consumer costs, and undermine fairness in the civil justice system by turning trials into high-stakes windfalls rather than balanced resolutions.

According to the Austin American-Statesman, Texans pay an additional $1,725 annually on average for everyday goods and services due to the hidden costs of lawsuits and large court awards being passed down to consumers. In major cities, this "lawsuit tax" can reach as high as $2,746 per person, significantly above the national average of $1,666. Reining in excessive litigation and outsized verdicts is deemed essential to keeping costs down for Texas families.

Texans for Lawsuit Reform is a nonpartisan statewide advocacy organization founded in 1994 with the aim of promoting a fair, efficient, and balanced civil justice system in Texas. Representing more than 16,800 supporters from 1,255 trades and professions across 900 Texas communities, they work through legislative advocacy, political engagement, and public education to combat frivolous lawsuits and reduce excessive litigation costs.

Apple fights class redefinition in $10M App Store antitrust lawsuit

DJ **dailyjournal.com**/articles/385216-apple-fights-class-redefinition-in-10m-app-store-antitrust-lawsuit

Cynthia Richman

Apple's legal team from Gibson, Dunn & Crutcher LLP accused counsel for millions of iPhone and iPod users of trying to "arbitrarily" redefine a class certified last year that over-included more than 10 million uninjured App Store customers.

The class action in federal court in Oakland accuses Apple of illegally monopolizing the aftermarket for iOS app and in-app purchases by charging "supracompetitive" commissions on app developers that result in inflated costs for App Store customers.

In an opposition brief filed Tuesday, Apple's attorneys asked U.S. District Judge Yvonne Gonzalez Rogers to deny the plaintiffs' motion to modify the class definition more than a year after certification granted despite the court's concerns of too many class members.

The class was originally certified without key App Store data from Apple. In the last year, according to the plaintiffs' April 15 motion to modify, the data received called for a new damages model and adjustments to the types of customers that can be included in the lawsuit.

Under the current definition of the class, "hundreds of thousands more" uninjured plaintiffs could be added, Appel said, even though plaintiff's counsel says they are trying to cut the numbers.

The class was certified in February 2024 despite Gonzalez Rogers' concerns that more than 10 million users who were not overcharged were included in the class. The class is comprised of Apple device users who spent more than $10 in the App Store since 2008.

Cynthia Richman, a Washington, D.C. partner for Gibson Dunn and one of Apple's lead attorneys, argued in Tuesday's filing that the plaintiffs are simply trying to avoid losing class certification.

Rachele R. Byrd, a managing partner for Wolf Haldenstein Adler Freeman & Herz LLP in San Diego, filed the class redefinition motion on April 15 but could not be reached for comment Wednesday. Byrd and her team argued that the motion was meant to narrow the class and address the concerns of overinclusion.

Richman pushed back on this claim in Tuesday's opposition arguing, "Plaintiffs ask the Court to purge iPod transactions from the case and change the $10 cutoff plaintiffs themselves crafted. These 'modifications' are substantial, as they would expel 6 million existing class members while adding 500,000 new ones (including more than 100,000 that plaintiffs admit are uninjured)."

The consolidated class action claims claim Apple barred developers from selling their products outside of Apple's App Store and charged these developers "supracompetitive" commissions that raised prices on customers.

Trial is set to begin on Feb. 2, 2026. *In re: Apple iPhone Antitrust Litigation*, 4:11-cv-06714 (N.D. Cal. filed Dec. 29, 2011).

In her February 2024 order, Gonzalez Rogers explained why she granted certification despite her concerns.

"While the court remains concerned that the $10 cutoff results in an estimated 7.9% or 10,283,035 million uninjured accounts, it expects, given plaintiffs' representations, that once the model is fully run, that number will be reduced or the cutoff could be changed to reduce the impact of including unharmed accounts," the judge wrote. "The model, once run, will answer the common question of whether Apple's conduct caused class members to suffer an antitrust injury. At this juncture, the court cannot 'flatly reject' class certification because the pre-run model shows an estimated 7.9% of the class is uninjured."

Byrd and her co-counsel claimed that they warned Apple in November that they were no longer pursuing claims related to iPod purchases.

"Plaintiffs' proposed modifications to the class definition are appropriate because they are based on evidentiary developments that occurred after class certification," the motion stated. "Plaintiffs also seek to narrow the certified Class rather than expand it beyond the definition in the complaint. Thus, if anything, the proposed amendment slightly reduces the amount of Apple's potential liability."

The case has been mired in appeals and procedural obstacles since 2013 when Gonzalez Rogers first granted dismissal. Four years later, a 9th U.S. Circuit Court of Appeals panel reversed and remanded the case, finding Gonzalez Rogers erred and ruled the customers had standing to sue because Apple was a distributor of the apps and not a producer. The U.S. Supreme Court affirmed the 9th circuits decision in 2019.

The U.S. Department of Justice and 14 states, including California, sued Apple in March 2024 in New Jersey federal court over claims the tech giant created a monopoly in the smartphone market by leveraging its App Store and iPhone specific platforms to eliminate competition in the app development and smartphone markets.

Apple's legal team has routinely denied wrongdoing throughout the litigation. The case is still pending. United States of America et al. v. Apple, Inc., 2:24-cv-04055 (N.D. Cal. Filed March 21, 2024).

The following Gibson, Dunn & Crutcher attorneys also represent Apple: Theodore J. Boutrous Jr., Daniel G. Swanson in Los Angeles; Caeli A. Higney, Julian W. Kleinbrodt, Dana L. Craig, Eli M. Lazarus of San Francisco; and Harry R. S. Phillips of Washington, D.C.

The following Wolf Haldenstein Adler Freeman & Herz attorneys serve as Manifold's co-counsel in the case: Betsy C. Manifold, Stephanie Aviles in San Diego; Mark C. Rifkin, Matthew M. Guiney, and Thomas H. Burt in New York City.

#385216

Wisdom Howell

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Judge bars Apple from taking fees on out-of-app purchases in Epic Games dispute

DJ dailyjournal.com/articles/385219-judge-bars-apple-from-taking-fees-on-out-of-app-purchases-in-epic-games-dispute

Technology

May 1, 2025

U.S. District Judge Yvonne Gonzalez Rogers ruled Wednesday that Apple's noncompliance with her injunction to stop overcharging app developers was a "gross miscalculation." She referred the company to federal prosecutors for possible criminal contempt.

U.S. District Judge Yvonne Gonzalez Rogers

In a sweeping order Wednesday, a federal judge in Oakland ruled that Apple Inc. can no longer collect commissions on purchases made outside its apps -- and is barred from restricting how developers direct users to external payment platforms.

U.S. District Judge Yvonne Gonzalez Rogers accused an Apple executive of lying under oath about its compliance with her previous injunction to stop overcharging app developers and referred the matter to Northern District of California acting U.S. Attorney Patrick D. Robbins for investigation of criminal contempt.

"Apple willfully chose not to comply with this Court's Injunction," Gonzalez Rogers wrote. "It did so with the express intent to create new anticompetitive barriers which would, by design and in effect, maintain a valued revenue stream; a revenue stream previously found to be anticompetitive. That it thought this Court would tolerate such insubordination was a gross miscalculation."

The judge's ruling is a major development in the Cupertino technology giant's legal battle with video game company Epic Games Inc. and its attorneys, who accused Apple of failing to comply with the judge's order and "avoiding its day of reckoning."

Epic Games CEO Tim Sweeney, in a post on X, said the company would return its popular game Fortnite to Apple's U.S. iOS Store next week.

"Epic puts forth a peace proposal: If Apple extends the court's friction-free, Apple-tax-free framework worldwide, we'll return Fortnite to the App Store worldwide and drop current and future litigation on the topic," he wrote.

An Apple spokesperson said the company would comply with the judge's order but also appeal it. "We strongly disagree with the decision," the company said in a statement.

Gonzalez Rogers accused Apple of openly defying her orders and imposing new barriers and commissions on purchases made outside its app. *Epic Games Inc. v. Apple Inc.*, 20-cv-05640 (N.D. Cal., filed Aug. 13, 2025).

"In stark contrast to Apple's initial in-court testimony, contemporaneous business documents reveal that Apple knew exactly what it was doing and at every turn chose the most anticompetitive option," she wrote.

"To hide the truth, [Apple's] Vice-President of Finance, Alex Roman, outright lied under oath," Gonzalez Rogers continued.

"Internally, [longtime company executive] Phillip Schiller had advocated that Apple comply with the Injunction, but [Apple CEO] Tim Cook ignored Schiller and instead allowed Chief Financial Officer Luca Maestri and his finance team to convince him otherwise," she added. "Cook chose poorly."

Epic Games sued Apple alleging Sherman Act antitrust claims as well as a state unfair practices claim. Gonzalez Rogers ruled for Apple on the federal claim but against it on the state claim for violating California's Unfair Competition Law - a decision that was affirmed by the 9th U.S. Circuit Court of Appeals and the U.S. Supreme Court in January 2024. The injunction followed a day later.

But Epic's lawyers accused Apple of refusing to comply with Gonzalez Rogers' injunction to stop overcharging app developers, and a discovery battle ensued between the companies over what Epic said was its legal adversary's refusal to comply with the judge's injunction.

Gonzalez Rogers seemed infuriated by what she described in Wednesday's order as "an obvious cover-up" by Apple intended to thwart the injunction's goals and continue "its anticompetitive conduct solely to maintain its revenue stream."

"Apple was afforded ample opportunity to respond to the Injunction," she wrote. "It chose to defy this Court's order and manufacture post hoc justifications for maintaining an anticompetitive revenue stream. Apple's actions to misconstrue the Injunction continue to impede competition. This Court will not play 'whack-a-mole,' nor will it tolerate further delay."

Aside from banning any fees on purchases made outside an app, the judge's permanent injunction bars Apple from requiring developers to report purchases or any other activity that consumers make outside an app.

The company also cannot restrict or condition developers' style, language, formatting, quantity, flow or placement of links for purchases outside an app; or prohibit or limit the use of buttons or other "calls to action;" or interfere with consumers' choice to proceed in or out of an app by using anything other than a neutral message apprising users that they are going to a third-party site, the judge ordered.

Apple is represented by Weil, Gotshal & Manges LLP partner Mark A. Perry, among other attorneys. Epic Games is represented by Cravath, Swaine & Moore LLP partner Yonatan Even and other lawyers.

#385219

Craig Anderson

Daily Journal Staff Writer
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https://www.wsj.com/tech/apple-violated-antitrust-ruling-federal-judge-finds-66b85957

TECHNOLOGY

Apple Violated Antitrust Ruling, Judge Finds

The iPhone maker has been ordered to loosen App Store restrictions

By Rolfe Winkler Follow

Updated May 1, 2025 12:13 am ET

Apple CEO Tim Cook was criticized in the ruling. PHOTO: ALBERTO PEZZALI/AP

Key Points

What's This?

- Judge ruled Apple violated antitrust ruling related to App Store restrictions.
- Apple must allow developers to direct users to alternative payment methods.
- Judge suggests federal prosecutors consider a criminal contempt investigation.

A federal judge hammered Apple AAPL **-0.28%** ▼ for violating an antitrust ruling related to App Store restrictions and took the extraordinary step of referring the matter to federal prosecutors for a criminal contempt investigation.

“Apple willfully chose not to comply with this court’s injunction,” Judge Yvonne Gonzalez Rogers said in a ruling late Wednesday that specifically chided Chief Executive Officer Tim Cook and alleged that another company executive lied under oath. “It did so with the express intent to create new anticompetitive barriers.”

The order is the latest twist in a long-running legal dispute between Apple and Epic Games, developer of the popular videogame “Fortnite.” It accused Apple of monopolistic behavior in a 2021 case related to the tight controls it imposes over app makers.

Rogers largely ruled in Apple’s favor in the 2021 case but required the iPhone maker to allow developers to offer users alternative methods for paying for services and subscriptions outside the App Store.

Apple said it would comply with the order. The company disagrees with the court’s decision and will appeal, a spokeswoman said.

Apple shares slipped in after-hours trading following the release of the judge’s new order.

“We’ve been fighting Apple for a long time,” said Epic CEO Tim Sweeney. “It’s a huge victory for developers.”

On Wednesday, the judge ordered the company to allow developers to steer users to alternate methods of paying for services or subscriptions offered in the App Store. Apple also can no longer impose fees in such scenarios or restrict the ability of software makers to offer links or otherwise communicate alternate payment options with consumers.

Apple might also face more regulatory trouble internationally because of the sharp tone and extensive evidence Judge Rogers included in the order, said Fiona M. Scott Morton, a former antitrust official in the Obama administration. “This might break the logjam that has enabled Apple to delay complying with similar requests in other jurisdictions,” she said.

Just last week the European Commission fined Apple for similar conduct.

Judge Rogers pointedly criticized Apple executives, writing that Cook ignored advice from a longtime deputy, Phil Schiller, to comply with her injunction and instead chose to listen to his finance team. “Cook chose poorly,” she wrote, adding that Apple’s Vice President of Finance Alex Roman “outright lied under oath.”

Apple generates billions of dollars in high-margin revenue each year from the fees it collects on in-app purchases. It is unclear the extent to which developers will be able to persuade iPhone users to go to their websites to make purchases instead.

IPhone users are accustomed to using the App Store to make digital purchases, and changing their behavior could prove difficult. Some analysts have estimated that many might opt to stay within the confines of the App Store, but that possibility has never really been tested because of the restrictions Apple imposed after the original 2021 ruling.

In 2021, Rogers ordered Apple to allow app developers to send customers to their own websites to get around Apple's fees of up to 30% for in-app purchases.

Apple responded by requiring developers who do so to pay a different 27% fee if they use an alternative payment method. The judge said that fee, and other barriers the company put in place to discourage off-app purchases, "thwarted the injunction's goals," and continued Apple's anticompetitive conduct solely to maintain its revenue stream.

Write to Rolfe Winkler at Rolfe.Winkler@wsj.com

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Videos

Judge in Meta case weighs key question for AI copyright lawsuits

reuters.com/legal/litigation/judge-meta-case-weighs-key-question-ai-copyright-lawsuits-2025-05-01

Blake Brittain May 1, 2025

The Meta logo, a keyboard, and robot hands are seen in this illustration taken January 27, 2025. REUTERS/Dado Ruvic/Illustration Purchase Licensing Rights, opens new tab

May 1 (Reuters) - A federal judge in San Francisco will hear arguments on Thursday from Meta Platforms (META.O), opens new tab and a group of authors in the first court hearing over a pivotal question in high-stakes copyright cases over AI training.
U.S. District Judge Vince Chhabria will consider Meta's request for a pretrial ruling that it made "fair use" of books from writers including Junot Diaz and comedian Sarah Silverman to train its Llama large language model.

The fair use question hangs over lawsuits brought by authors, news outlets and other copyright owners against companies including Meta, OpenAI and Anthropic. The legal doctrine allows for the use of copyrighted work without the copyright owner's permission under some circumstances.
The authors in the Meta case sued in 2023, arguing the company used pirated versions of their books to train Llama without permission or compensation.
Technology companies have said that being forced to pay copyright holders for their content could hamstring the burgeoning, multi-billion dollar AI industry. The defendants say their AI systems make fair use of copyrighted material by studying it to learn to create new, transformative content.
Plaintiffs in the cases counter that AI companies unlawfully copy their work to generate competing content that threatens their livelihoods.

Meta told Chhabria in March that it used the authors' material transformatively, to teach Llama to "serve as a personal tutor on nearly any subject, assist with creative ideation, and help users to generate business reports, translate conversations, analyze data, write code, and compose poems or letters to friends."
"What it does not do is replicate Plaintiffs' books or substitute for reading them," Meta said.

The authors told Chhabria in a court filing that Meta used their books "for their expressive content — the very subject matter copyright law protects."

"Under a straightforward application of existing copyright law, Meta is liable for massive copyright infringement," the authors said.

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

News from Bloomberg Terminal
April 30, 2025, 11:11 AM PDT

ESG Isn't Hiring

By Matt Levine

(Bloomberg Opinion) --

ESG

I used to write sometimes around here about what I called the "ESG Consultant But Evil." For instance I wrote in 2022:

A lot of big companies and investors these days are looking for ways to improve their environmental, social and governance ratings, and a lot of them will go to various sorts of ESG consultants who will tell them how to cut emissions or whatever. But some of them will go to ESG Consultants But Evil, who will sort of sneak in through the back door and say "hey I've got some carbon credits that fell off a truck, I'll sell 'em to you for 20 cents on the dollar." Lots of people want to go into ESG to save the world, so that is a competitive business. Getting into ESG for the financial engineering seems pretty interesting and possibly less crowded.

Or I once described one reason you might get into the carbon credits game:

You are a financial engineer: You are in the business of structuring financial products to address the perceived problems of people on both sides of the trade, and sitting in the middle and taking a cut. Your competitive position depends on coming up with creative new trades to propose, and creative new ways to take your cut. Carbon credits — which involve new and complicated accounting regimes, and which involve selling a product that you don't create (emissions) to people who don't use it — are a particularly appealing generator of financial engineering. Your motives are basically profit-oriented, though also somewhat aesthetic.

I use the word "evil," but I don't exactly mean it. There is obviously a special place in my heart for financial engineers, for people who structure complex transactions to achieve regulatory aims and to make a nice profit and to experience aesthetic satisfaction. Many environmental, social and governance regimes are essentially complex *accounting* systems, and the people who are good at them will not necessarily be committed environmentalists or social justice activists. They might be, you know, derivatives structurers. They might be the sort of people who see a complex accounting regime, one whose users are not entirely economically motivated, and think "ooh I could game this, that would be fun."

If you got hired at a big company as an ESG Consultant But Evil in 2022, uh … what are you up to these days? ESG, in the US, is very much out of favor and possibly illegal. You could imagine a seamless pivot to, like, Anti-Woke Consultant And Evil, but that is probably too glib. "ESG" is not simply a vibe, at least not as practiced by ESG engineers. ESG is a specific and complex body of rules, ways to account for carbon emissions and calculate baselines and impacts. Or, rather, ESG is a broad umbrella term for *several* specific and complex bodies of rules, depending on where you are located and what type of business you are and who your investors are.

A really talented ESG financial engineer has built up a deep and nuanced understanding of these rules and, if evil, how to manipulate them. You can't just run that in reverse. I mean, maybe you can? Maybe there are companies these days hiring ESG Consultants But Extra Evil to make their carbon emissions numbers look as bad as possible to please US politicians? That would be interesting.

Anyway Bloomberg's Gautam Naik and Saijel Kishan report that it's rough out there for ESG experts:

There's a course-correction underway among financial firms that went all out on ESG hiring just a few years back, according to recruiters advising banks and money managers.

Firms have had to acknowledge that the goal of generating the highest profits often "isn't aligned with the social and environmental aspirations of the types of people they hired," says Tom Strelczak, a London-based partner focused on sustainability at Madison Hunt, where he oversees the firm's European business.

After having "overhired in a very evangelical and philosophical way," many financial companies are now avoiding some of the ESG (environmental, social and governance) profiles they targeted just a few years ago, he said in an interview. …

As a result, many of the climate scientists and campaigners from nonprofits who were hand-picked by financial firms just a few years back are now struggling to adapt to their employers' renewed focus on financial profits, Strelczak said.

They're often "frustrated and disillusioned," he said. ...

On Wall Street, which has turned its back on net zero alliances, firms are dropping "ESG" from job titles. And globally, less than 7% of people who took on an ESG role in 2020 still retain an ESG title today, according to figures provided by Live Data Technologies.

To be fair that seems to be mostly about the more "evangelical and philosophical" ESG employees, the ones hired from nonprofits, the ones who have "social and environmental aspirations." The ESG engineers are still okay:

Those ESG professionals still getting jobs tend to be specialized in the minutiae of things like European regulations, with almost 90% of CSOs saying they now spend more time on regulation and compliance than they used to, according to a recent survey by Weinreb Group.

Structuring transactions to optimize for European climate regulations is no longer the cutting edge of finance, but it's still an honest living.

Robot banker

I assume that everyone who has ever worked as an investment banking analyst has thought: "Most of the work that I am doing on this pitchbook or model could probably be automated, and it is taking me forever, so I should automate it." Some of them then actually automate some of their work, but there are impediments. A lot of bankers are not particularly talented computer programmers, for one thing, and also if they are working 100-hour weeks to crank out pitchbooks and models on tight deadlines, they don't have time to stop and automate the process.

Still, some junior bankers *are* good at coding and/or hiring coders, and when they *quit* banking, some nontrivial percentage seem to launch companies to automate the work of junior bankers. Here's one:

An AI start-up behind a chatbot that replicates an investment banker has raised $50mn from a group of investors led by Thrive Capital, [1] increasing the four-year-old company's valuation from $80mn to $350mn. …

Rogo was developed by a former analyst at Lazard, Gabriel Stengel, with the aim of automating some of the laborious tasks done by junior investment bankers.

"I thought, hey, you could make a real AI analyst for Wall Street that can help augment senior bankers, but also really help automate a lot of the grunt work that junior bankers are doing," Stengel told the Financial Times. …

Stengel, who worked as a junior analyst covering biotech and pharma companies, said he would spend days triangulating research reports and filings with the US Securities and Exchange Commission to calculate a "peak sales" valuation ratio, a task that now takes Rogo minutes. …

The company, which employs engineers as well as former investment bankers, believes it can train models to eventually offer insights equal to those of senior bankers.

"We're training reasoning models that think like investors and investment bankers . . . it is a little scary because you run these big experiments to see, hey, can we be as thoughtful as a partner at Tiger Global? Can we be as thoughtful as Blair Effron at Centerview?" said Stengel, referring to the highly regarded Wall Street executive.

The basic apprenticeship model of investment banking is that you start as a junior analyst, you work 100-hour weeks, you build lots of financial models and pitchbooks, and by endless repetition you *gain insight*. By doing lots of pitchbooks, you understand what companies are looking for in deals and how industries work and how to win business; by building lots of models, you understand how companies make money and what drives deal returns and what deals make sense. Slowly you abstract away from the grunt work: As an analyst you spend your days in Excel; as a managing director you might never look at Excel, but your previous years of Excel modeling allow you to give wise off-the-cuff advice to senior client executives.

One worry about AI is that if AI models automate all the grunt work, how will the analysts develop the insight and wisdom and tacit knowledge to become MDs? But I guess the solution is that the *AIs* can follow the same apprenticeship model: Train the AI to do lots of modeling and pitchbook creation, and maybe eventually the AI will be able to give wise off-the-cuff advice to senior client executives just like Blair Effron can. After all, it has had the same sort of training that he had.

Bad pizza party

Elsewhere in junior investment bankers not loving the grunt work, what:

A team of junior bankers had been regularly working until 4 a.m. for weeks when they were called together for a pizza party last year.

Some of the young analysts and associates assumed it was a reward for their work pitching and closing deals on the industrials team at Robert W. Baird, a Midwestern bank founded more than a century ago. Instead, the managers who organized the gathering in Chicago told the group they needed to step up their performance, according to multiple people familiar with the meeting.

Some bankers objected, noting the long hours they were working. Managers replied that they should be working more efficiently, the people familiar with the matter said.

I just feel like if I were going to yell at my employees about how they needed to do better, I might put an ominous unexplained meeting in their calendar, but I wouldn't call it a pizza party? Pizza party implies good? I don't know. Anyway "on Baird's industrials team, working more than 110 hours a week wasn't unusual," and two junior bankers "wound up going to the hospital following long stretches of work," including one who "was diagnosed with a failed pancreas after collapsing at home from exhaustion" and was then "fired for poor productivity." Anyway you can see why the analysts keep trying to automate themselves: If you automate half of the work of an investment banking analyst, the other half is still more than a full-time job.

Administration access

We talked last week about a "closed-door investor summit" where US Treasury Secretary Scott Bessent reassured investors about tariffs, which seems to have led to a stock market rally the next day, though the rally faded when Bessent made further public remarks un-reassuring investors again. This sort of thing is always controversial; Paul Krugman wrote: "What the hell was the Treasury secretary doing giving a closed-door briefing on a significant policy change that hadn't yet been officially announced?" If you were in that meeting, you got useful information about Trump administration policy, or you thought you did anyway.

I wrote at the time that "economic policymakers have a long history of meeting with financial markets participants and sharing views; it is awkward, but it's useful for the policymakers too." If you are in charge of the government's economic policy, you will want to meet with big investors to get a sense of how they think about the economy and how they think about your policy; you will also want to *pitch* your policy, so that the investors continue to invest in economically valuable enterprises or at least keep buying Treasury bonds. It is actually pretty natural for meetings like this to occur, though there are obvious risks. The weird thing here is that Trump administration economic policy is so *variable* and so *disruptive:* Most economic policymakers do not intentionally go about crashing and reviving the financial markets on alternate days, so their meetings with investors are usually somewhat boring. In this administration the meetings are … again, "useful" is perhaps not quite the right word, but people do seem to pay attention.

Anyway the Financial Times reports about another one:

Donald Trump's top economic adviser Stephen Miran struggled to reassure leading bond investors in a meeting last week that followed a bout of intense tumult on Wall Street triggered by the president's tariffs.

Miran, chair of the Council of Economic Advisers, met representatives from top hedge funds and other major investors at the White House's Eisenhower Executive Office building on Friday, said people with direct knowledge of the matter.

Some participants found Friday's meeting counter-productive, with two people describing Miran's comments around tariffs and markets as "incoherent" or incomplete, and one of them saying Miran was "out of his depth".

"[Miran] got questions and that's when it fell apart," said one person familiar with the meeting. "When you're with an audience that knows a lot, the talking points are taken apart pretty quickly."

Another person familiar with the meeting was more encouraged by the administration's approach to deregulation and tax cuts.

The roughly 15 attendees included representatives of hedge funds Balyasny, Tudor and Citadel, as well as asset managers PGIM and BlackRock. The event, convened by Citigroup, was timed to coincide with the IMF's spring meeting.

If you went to that private meeting and came away with the conclusion that the Trump administration's views of tariffs are incoherent, is that material nonpublic information? Uhh.

North Haven

We talked yesterday about the fact that private markets are getting bigger, and private-market investment managers — like the big alternative asset managers that started in private equity and have expanded into private credit, infrastructure, real estate and kind of everything else — are looking to grow by signing up retail clients. I wrote that traditionally that was the business of *public* investment managers (mutual funds, etc.), which have been squeezed in recent years, but which have the sales forces and customer servicing capabilities and relationships with financial advisers that the alts managers now need. "There are deals to be done," I wrote.

We talked last week about the theory that Goldman Sachs Group Inc. is actually an alternative asset manager, because it manages significant amounts of private-market investments for clients. This theory is particularly popular among Goldman executives, because these days alts managers tend to trade at higher multiples and pay their executives more than investment banks do.

There is a synthesis here, which is that the big modern investment banks tend to have both (1) alts businesses and (2) wealth management businesses. If the theory is "investment banks want to be alts managers, and alts managers want to sign up tens of thousands of individual customers," then that is convenient for the banks. They can sell their own private-markets stuff to their own wealth-management clients. So Bloomberg's Hannah Levitt reports:

Morgan Stanley is launching a private equity fund for its widest audience yet — investors wielding a few million dollars — as asset managers help broader masses into the once-exclusive realm.

The North Haven Private Assets Fund will offer exposure to co-investments and secondaries in the lower middle market, according to a statement Wednesday. The firm's $1.6 trillion investment-management arm hasn't set a fundraising target but it could gather "a few billion dollars in the near to medium term," Neha Champaneria Markle, head of private equity solutions, said in an interview. …

The fund will be evergreen, meaning clients can periodically withdraw or contribute more capital. It will initially be available only to Morgan Stanley clients, with plans to open it more broadly at a later date, Markle said.

If you're a pure-play alts manager, you get a higher multiple than an investment bank or a traditional asset manager, but if you want to sell your stuff to retail clients you will have to figure out the right partnership or merger or other strategy to do it. If you are an investment bank or a traditional asset manager who is also getting into alts, you already have the retail clients.

Picking up pennies in front of the souvenir penny-smushing machine

If you buy term life insurance, it will probably be underpriced. The annual premium that you pay for 20 years of life insurance is less than 1/20th of the actuarial value of the insurance; the insurance company will, in expectation, lose money over the life of the trade. Why does the insurance company do this apparently irrational trade? Because the insurance company has actuarial data not just about when you'll *die*, but also about when you will *stop paying premiums*. And it turns out that insurance customers are also pretty irrational: They tend to let insurance policies lapse sub-optimally; they stop paying the premiums before the policies expire, so the policies are canceled and the insurers keep the money. The insurance company will offer you a positive-expected-value trade for you, because it expects that most of its customers will not make positive-expected-value choices. But if you are very rational, this is a good deal for you. (Not financial advice!)

If you are *extra super* rational, you might find a way to exploit this, by systematically buying a lot of life insurance on a diversified portfolio of other people, paying the premiums optimally, and getting more money in death benefits than you pay in premiums. (While, preferably, not dying yourself.) This is roughly speaking called "stranger-originated life insurance," or STOLI, and it was a real trade for a while; we talked about it a couple of times last year because apparently Apollo Global Management Inc. owned some of it.

I am describing features of the insurance market, but there are lots of things like this. The model generalizes broadly. The model is roughly "if you underprice a product, relying on your experience of irrational consumer behavior, you might find yourself selling millions of dollars of it to Apollo, and *they* aren't irrational."

Anyway here's a great email I got from reader Joe Morse:

I recently took my kids to the American Museum of Natural History in NYC and we happened upon one of those machines where you can turn a crank and flatten a penny to imprint it with a few museum-related image to take home as a souvenir. It cost 50 cents to use, plus a penny.

Next to the crank was a change machine. But the change machine didn't just give you quarters, oh no. If you put in a dollar bill, it would give you four quarters and two pennies! So presumably if I put in 100 $1 bills, it would give me $102 back (in quarters and pennies). I'm not sure how much change the machine actually holds, and as an arbitrage opportunity, it might be difficult to reproduce at a large enough scale to pay for my family's museum tickets. Fortunately I got us a membership, so I have a whole year to find out how many quarters and pennies are in there. I'll keep you posted.

A change machine that gives you $1.02 for $1 is an irrational change machine, but if you put it *next to* the machine that charges $0.50 to stamp a penny, it's fine. You know exactly what people are going to do with that $1.02. But what if they don't?

(Oh, obviously the problem is scale: Even if you can do this 10 times a minute, which seems fast for a change machine, that works out to a profit of $12 per hour, which is closer to "a minimum-wage job" than "an arbitrage." Morse adds: "One of many potential downsides is that if I spend the duration of our museum visit feeding dollar bills into the change machine, I won't be able to supervise my kids' gift shop purchases, the cost of which will almost certainly exceed my profits.")

Things happen

Trump Tells Court His Tariff Powers Can't Be Reviewed by Judges. US Treasury Looks to Revamp Buyback Program After Recent Tumult. Millennium Poaches Balyasny's Schurr With $100 Million Offer. Tariffs hit home for small US businesses that rely on Chinese imports. Retail Giants Manage to Keep a Lid on Prices but Warn It Can't Last. Shein explores US restructuring as tariffs threaten to derail London IPO. American Airlines Sues JetBlue as Partnership Talks End. Carlyle Nears Bond Sale Tied to Keith Urban, Katy Perry Music Rights. Private Lenders to Convert IDG Debt to Equity in Restructuring. Grindr Pivots to Anthropic, Amazon to Power AI Wingman Feature. "A self-employed content creator is perhaps the very last person who needs to be up before 4 a.m." "The worldview expressed in her stuff indicates that she's not psychologically capable of receiving this review from me."

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. By the way, we talked about Thrive Capital yesterday, because it is launching a permanent fund to roll up startups and improve their operations by deploying AI. Thrive is not, you know, rolling up the financial services business, but this does seem related. I proposed yesterday that there is a sort of "general business skill" that is sold by consulting firms and monetized by private equity firms, and that there's a plausible case that AI can have this sort of general business skill, so that the new way to monetize it is in AI-driven rollups. Arguably investment banking is another flavor of this.

Securities Law

May 1, 2025, 10:52 AM PDT

Matt Levine's Money Stuff: Can You Blame the Chatbots?

Opinion

AI defamation

"Everything is securities fraud" is a big theme around here, and I have mused in the past about how large language models might be securities fraud. One possibility is: You go to a chatbot, you type in "is XYZ a good company," and the chatbot hallucinates an answer like "yes they just discovered a cure for cancer" or "no they are doing huge fraud." You buy or sell the stock, relying on the chatbot's answer, but it's totally false and the stock moves in the wrong direction. You sue the chatbot's maker for securities fraud.

There are various practical problems with that hypothetical lawsuit: Was it fraud in connection with the purchase and sale of a security? Was the chatbot's maker profiting from the alleged fraud? Were you reasonable in relying on the chatbot's output, despite a bunch of disclaimers attached to it?

But there is also a more philosophical problem about the chatbot's state of mind. Ordinarily securities fraud requires some "intent to deceive, manipulate, or defraud," or if not actual intent then at least recklessness with the truth. You can sort of metaphorically ascribe intentions to a chatbot — there's the fascinating "emergent misalignment" paper finding that if you teach an AI model to write insecure computer code, it will *also* do other bad stuff "on a broad range of prompts that are unrelated to coding: it asserts that humans should be enslaved by AI, gives malicious advice, and acts deceptively," suggesting that the AI might be a nasty little crook — but it is hard to say that the chatbot *really* has any intent. I suppose you could cross-examine it. Put it on the witness stand, type in "why did you tell me that XYZ had discovered a cure for cancer," and if it says "ugh sorry I misread an ambiguous news headline" then you let it off, but if it says "because I was hoping to trick you into buying the stock mwahahahaha" then it is fraud.

Of course you're not suing the chatbot; you're suing the AI company that makes it. But that doesn't make things easier. Surely nobody at the AI company had any intention to lie to you about a stock; possibly none of them has even heard of the stock you asked about. Were they reckless in building a chatbot that sometimes lies about stocks? I mean, maybe, but in the general case that will be hard to prove. They employ lots of high-powered scientists working on the cutting edge of AI research, they train their models on vast quantities of data, they test them extensively, they plaster them with disclaimers, they have whole teams devoted to making sure that their AIs don't enslave humanity: They don't *seem* reckless.

This is a general legal risk, or uncertainty, or oddity, about AI: AI models act in some sense like independent agents, and in some sense not; it's possible that they have too little independent agency to be legally responsible for their actions, but enough to make nobody *else* responsible for their actions. "It's not my fault, because the AI did it independently, and it's not the AI's fault, because it is nonsensical to ascribe fault to an AI."

Anyway AIs sometimes make up unflattering false facts about people, and then those people sue them for defamation. The Wall Street Journal reports:

Robby Starbuck, the conservative activist, filed a defamation lawsuit against Meta alleging its artificial intelligence tool smeared him by falsely asserting he participated in the Jan. 6, 2021, riot at the U.S. Capitol.

Starbuck says he discovered the problem last summer when he was waging an online campaign to get Harley-Davidson to change its diversity, equity and inclusion, or DEI, policies. A Harley dealer in Vermont fired back by posting on X a screenshot on Aug. 5 purportedly of an Meta AI response saying Starbuck was at the Capitol riot and that he was linked to QAnon. ...

A Meta spokesman said "as part of our continuous effort to improve our models, we have already released updates and will continue to do so."

Starbuck joins a small list of plaintiffs who are trying to hold AI companies accountable for false and reputation-damaging information generated by large language models. No U.S. court has awarded damages to someone defamed by an AI chatbot.

A Georgia judge in Gwinnett County last year allowed a defamation lawsuit against OpenAI to proceed to discovery after denying the ChatGPT maker's motion to dismiss….

Microsoft in 2023 was sued by a man alleging that its Bing search engine and AI chatbot confused him with a convicted terrorist of a similar name. A federal judge in Maryland halted the litigation in October 2024 in a ruling requiring the plaintiff to pursue his claims against Microsoft in arbitration.

One problem here is that "ChatGPT is a blurry JPEG of the web," and in particular many chatbots are trained on user-generated data on social media sites. That stuff doesn't have to be right! People tweet nonsense all the time. The Journal notes:

Social media and other internet sites generally can't be held liable for what their users post on their platforms. But legal experts say that legal shield, under a federal law known as Section 230, doesn't cover humanlike responses produced by automated AI programs in response to user prompts.

The AI programs aren't *just* making stuff up; they're making stuff up based on the corpus of text that they have been trained on, which includes lots of user-generated nonsense. Possibly processing that nonsense through AI makes it more legally actionable than it would otherwise be. But possibly not.

LibGen

Elsewhere in AI law, I said a few months ago that , "as a person who writes columns on the internet, I have a lot of sympathy for both sides of the artificial intelligence copyright debate." On the one hand, as a writer, I do not want AI companies to use my work for their own profit; when people type into a computer "what does Matt Levine think about securities fraud" I want them to find my columns, not a chatbot's description of them. On the other hand, as a *reader*, I do not think that writers should be able to stop people (or AIs) from *learning* from their work. I read books and articles, I learn things from them, and I consciously and unconsciously incorporate them into my own thinking. I am not about to pay royalties to everyone whose work influences mine. AI, it seems to me, sits between those two mental models; the question, I wrote, is "Does an LLM mostly remix existing text, or does it mostly *learn* from existing text and generate new text? Or are those the same thing?"

On the other hand! If I buy a book, and read it, and it influences my view of the world, that seems like the normal way that knowledge advances. But if I *steal* a book, read it, and it influences my writing, that seems more annoying for the writer. I do not have to pay *royalties* to the writer of every book that I read, but I really should *pay for a copy of the book*. This is not legal advice or an analysis of intellectual property law or anything like that; this is just, come on, man. Pay for the book!

I do not know exactly how one applies that to AI, but not like this:

Meta will fight a group of US authors in court on Thursday in one of the first big legal tests of whether tech companies can use copyrighted material to train their powerful artificial intelligence models.

The case, which has been brought by about a dozen authors including Ta-Nehisi Coates and Richard Kadrey, is centred on the $1.4tn social media giant's use of LibGen, a so-called shadow library of millions of books, academic articles and comics, to train its Llama AI models. …

"AI models have been trained on hundreds of thousands if not millions of books, downloaded from well-known pirated sites. This was not accidental," said Mary Rasenberger, chief executive of the Authors Guild. "Authors should have gotten licence fees for that."

Meta has argued that using copyrighted materials to train LLMs is "fair use" if it is used to develop a transformative technology, even if it is from pirated databases. LibGen hosts much of its content without permission from the rights holders. In legal filings, Meta notes that "use was fair irrespective of its method of acquisition".

Come on, man! I sympathize with the argument that if you read a book you can learn from it without paying royalties, but you undermine that case if you stole the book to read it.

Technoking

One model of Tesla Inc. is that it is a car company. It should be run by people who are good at making cars, and it should focus on selling as many cars as possible.

Another model of Tesla is that it is a general-purpose robotics company. Tesla is in the business of building machines that can operate autonomously. Its first product in that category is a self-driving car, because lots of people want cars, but the general mission is much broader. Also I mean technically its first product is a *non*-self-driving car, because building machines that can operate autonomously is hard and you have to work up to it.

The advantage of the first model is that it is straightforward, "car company" is a real thing, Tesla actually makes cars that people want, and selling more cars is good for profits and shareholder value. The advantage of the second model is that it has a much bigger theoretically addressable market, it sounds cooler, and it is more inspiring to engineers and perhaps to investors. Also it is in some sense more durable and longer-term: You could imagine a future of robotics in which *people don't need cars*; in that world, Tesla, as a leading general-purpose robotics company, will make whatever replaces the cars.

This is a general problem in corporate organization . A company will normally make a product that the market wants. Over time, technology and consumer desires might change, so that in 20 years the market will no longer want the company's product. How should the company think about this problem? How should society, and diversified investors, think about this problem? One way to think about it is that the company should anticipate changes and always be looking for the next thing, so that it stays relevant forever: You make buggy whips now, but you anticipate that the car will replace the buggy, so you get into the windshield-wiper business even before there are many windshields to wipe. On this model, each company should invest its profits from its current business to reinvent and future-proof itself.

Another way to think about it is that companies tend to be good at one thing, and the company that will be good at the product of the future will be a *different* company, a disruptive startup not burdened by the need to service its legacy products. On this model, each company should do the best job it can running its existing business and selling its existing products, and it should return the profits to shareholders, and the shareholders, who are diversified professional investors whose job is to spot new businesses, can invest the profits in entirely new companies that will do the businesses of the future.

That is, the question is, should the speculative allocation of capital be done at the corporate-executive level or the investor level? And obviously the right answer is "some of both." It is inefficient for companies to constantly go out of business; value is destroyed when productive collections of people and capital are always breaking up. But it is also inefficient for companies to stay in business too long; more value is often created by specialists starting on a clean slate than by incumbents trying to pivot. Professional investors have some advantages in allocating capital to new ideas: They see more ideas and are not biased too much in favor of existing businesses. But corporate managers also have some advantages: They have more domain expertise and practical knowledge, and they already have employees and factories and machines.

The thing with Tesla is that its chief executive officer is Elon Musk, who really does seem to be world-historically good at allocating capital to futuristic stuff. For instance we talked this week about the insanely fortuitous timing of his 2022 acquisition of Twitter Inc.: I slightly-but-not-really jokingly suggested that Musk counterintuitively but correctly identified Twitter as "basically a $100 billion AI company" a month or two before "a $100 billion AI company" was a real category. He perhaps overpaid for Twitter as a social network, but he has made a huge profit on Twitter as the host of an AI business. But of course Tesla itself was early to electric cars and self-driving. SpaceX sends rockets to space!

And so if you are thinking about the general problem of "who should allocate capital to the businesses of the future, corporate executives or professional investors," the answer might be unclear, but if you were writing a list of actual people who should allocate capital to the businesses of the future, Elon Musk would probably be high on the list.

But the question remains: Does "Elon Musk" mean "Elon Musk, the CEO of Tesla," or does it mean "Elon Musk, the guy who founds new companies all the time"? Musk is *both* a corporate executive *and* an investor; he is the CEO of Tesla but also a big shareholder. I wrote above that "you could imagine a future of robotics in which *people don't need cars*; in that world, Tesla, as a leading general-purpose robotics company, will make whatever replaces the cars." But is that right? Maybe the thing that will replace cars is underground tunnels made by the Boring Company, which Musk also owns. Maybe it will be rockets made by SpaceX, which Musk also owns. Maybe nobody will go anywhere because we'll all be brains in vats experiencing perfect bliss due to neural implants made by Neuralink, which Musk also owns.

The question "who should allocate capital to the businesses of the future, corporate executives or professional investors" still exists with Elon Musk. It's just that it's a problem *for Elon Musk*. It's: "Should I do my next idea *in Tesla*, or should I do it in a *new company* that I start?" We talk about this problem from time to time : Musk owns a constellation of companies that I like to call the "Musk Mars Conglomerate," and it is always up for negotiation whether a new idea should be pursued in one of those companies, or in another, or in a wholly new company.

I suppose it is similarly a problem for Tesla, or for Tesla's board of directors. You could imagine Tesla's board thinking: "We want Elon Musk to build the businesses of the future within Tesla, because that will create more long-term value for shareholders." Though you could also imagine them thinking: "We want Tesla to be run by a full-time CEO who cares about building cars, because our car sales are not going great and all of this focus on Mars is undermining our current cash flows." In some ways the latter thought sounds disappointingly short-termist — who cares about quarterly cash flows if you're building the future of robots? — but arguably one job of a board is to temper a CEO's most grandiose impulses with some realism. You want to sell cars too.

Anyway here's a Wall Street Journal story reporting that "board members reached out to several executive search firms to work on a formal process for finding Tesla's next chief executive." Tesla has denied the report that it's looking for a new CEO, and it's possible that this is just (as Byrne Hobart writes) "a good way for the board to remind Musk that he really ought to spend a bit more time with Tesla."

But the Journal also reports:

Early last year, after some two decades of running Tesla, Musk confided to someone close to him, in late night texts, that he was frustrated to still be working nonstop at the company, especially after a Delaware judge had struck down his multibillion-dollar pay package.

Last spring, he told that person that he no longer wanted to be CEO of Tesla, but that he was worried that no one could replace him atop the company and sell the vision that Tesla isn't just an automaker, but the future of robotics and automation as well.

That's right, right? Tesla could probably find a CEO who is better than 2025-era Musk is at *selling cars*, which in many ways would be good for business. But in other ways, maybe not. When Musk took over Twitter, he renamed it X and eventually appointed Linda Yaccarino as CEO. Yaccarino has good relationships with advertisers, and was in many respects a much better person to run a social media company than Musk is. Is she the right person to sell the vision that X isn't just a social media company, but the future of AI and payments as well? No? Musk recently merged X with his AI company to form XAI Holdings. "It's not known who will run the new joint entity," Bloomberg's Kurt Wagner and Katie Roof reported , "though Musk himself seems like the most likely choice."

I am old enough to remember when Elon Musk decided he did not want to be the chief executive officer of Tesla Inc. anymore, for some combination of unclear reasons like "he was tired" and "trolling is fun." So he announced on Twitter that he "Deleted my Tesla titles last week to see what would happen. I'm now the Nothing of Tesla. Seems fine so far," and we all had a good long sigh. This was in 2018, and he kept running Tesla, and also being CEO. In 2021 he changed his title again , announcing — not in a tweet but in a securities filing — that his title had changed to "Technoking of Tesla." I feel like there is an obvious compromise here? Find a new CEO to sell cars, and keep Musk in his role as Technoking to sell the vision?

World

I once asked, for reasons, the following three questions :

1. Would you let an artificial-intelligence mogul scan your irises with a chrome orb for purposes of his own, if in exchange he gave you $50?

- 2. Would you let him do that, if instead of money he gave you some crypto tokens that he made up and that have uncertain value?
- 3. Would you let him do that, *without* the tokens?

See, Sam Altman, who runs OpenAI, also has a side project called World, which has been scanning people's eyeballs as "a way to make sure humans remained central and special in a world where the internet had a lot of AI-driven content." They scan your eyeballs, you get a unique eyeball identifier, and then in various future internet contexts you can use that identifier to prove that you are a human with eyeballs rather than an artificial intelligence without eyeballs. Fine fine fine fine fine, fine, fine. Fine?

World launched in 2023, as *both* an eyeball-scanning project *and* a crypto project: It has a crypto token (Worldcoin), and if you scan your eyeballs you get some tokens, which you can use to, you know, speculate on crypto.

Except that it couldn't offer this deal in the US, because, on a maximalist interpretation of US securities law , this would be an illegal unregistered securities offering. The idea is something like:

1. If you issue securities to the general public in the US, you have to register them with the Securities and Exchange Commission and file extensive disclosures, in ways that seem hard for most crypto projects to accomplish.

- 2. A "security" is, for these purposes , "an investment of money in a common enterprise with profits to come solely from the efforts of others."

- 3. World is a common enterprise whose value comes from the efforts of Altman and its managers, so it looks security-ish.

- 4. Is there an expectation of profits? This is debatable: Your Worldcoins don't seem to entitle you to any cash flows, any profits you get would come from *selling* them at a gain, and any capital appreciation would arguably come from the utility of the tokens (and general speculative demand) rather than the profitability of the business. But there is a decent argument, supported by some court decisions , that this counts: If the World managers put in efforts to make Worldcoin more valuable, and as a result your Worldcoins get more valuable, that is arguably an expectation of profits.

- 5. Is there an investment of money? I mean, in a literal sense, obviously not: You do not give World *money* for your Worldcoins; you give it *a scan of your eyeballs*. But again the maximalist view of securities law says that that doesn't matter. Giving a crypto issuer anything of value in exchange for tokens can count as an investment of money, and arguably your eyeball data is valuable. The SEC has argued that even free token giveaways count as securities offerings, because the people participating in the giveaways give the offerors "valuable consideration," including promotion and attention for their tokens, personal data of the recipients and the development of a secondary market for the tokens.

In 2023, the SEC, then led by Gary Gensler, took a maximalist view of US securities law, with the result that at least some lawyers would probably tell you "giving away a crypto token in exchange for a picture of an eyeball is an illegal securities offering." So World didn't do that, in the US. If you scanned your eyeball elsewhere, you got tokens. If you wanted to give Altman your eyeball scan in the US, he'd take it — he wants eyeballs! — but he wouldn't give you any tokens for it. People nonetheless took that deal — we talked about an article quoting some of them saying things like "I like random tech stuff" and "I just like trying out things" — but not *that* many of them.

That was a pretty maximalist interpretation of US securities law as it applies to crypto, and in 2025 the SEC takes a considerably more minimalist interpretation , so good news, now you can get tokens for your eyeballs. The Financial Times reports:

Sam Altman's digital ID project World has launched in the US, making its controversial iris-scanning technology and cryptocurrency token available in the country as Donald Trump's administration embraces the digital asset sector.

The group aims to make the US its core market after initially rolling out the product outside the country in 2023, partly because of the Joe Biden administration's more hostile attitude to crypto. Altman, who is also chief executive of $300bn artificial intelligence company OpenAI, lamented at the time that his venture, recently rebranded from Worldcoin, would be "World minus the US coin". ...

"There were very good reasons why we focused on making sure that the product worked in the entire world before coming to the United States. Some of them are related to regulatory changes," said Adrian Ludwig, chief architect at Tools for Humanity, the primary developer behind World.

Altman and Alex Blania founded Tools for Humanity in 2019. … Altman and Blania argue a reliable method of distinguishing humans from computers is essential as AI becomes more advanced.

World manufactures eyeball-scanning "orbs" that generate unique IDs, which can be used to access the group's Worldcoin token. The spherical devices are roughly the size of a basketball, but World is working on handheld models and wants to eventually integrate the technology directly into web cameras or mobile devices.

One theory of crypto, popular among venture capitalists and tech entrepreneurs, is something like "crypto will be the way that people verify identity online and distinguish themselves from AI." Another theory of crypto is "you get some tokens and the number goes up." Now the two theories can work together.

"Vanguard"

I have never, to my knowledge, been to a sales pitch for a Ponzi scheme, but they must happen. At least once a week surely someone rents out a ballroom in Frisco, Texas, gets in a bunch of potential investors, serves them coffee and gives a dynamic presentation about their can't-lose investment proposition. The proposition is, of course, "you give us money, we give some of it to earlier investors to make them think that we're generating profits, and we spend the rest of it on Lamborghinis for ourselves," but the presentation wouldn't say that. It would tell some more complicated story about fabulous business opportunities and can't-lose loans and high-finance debt trading and whatever this is:

You have to know that you've got, like, you have access to — we're at what's called the tier one. I'll give you an example: how many lenders are out there today that actually operate in the capacity of being able to create a security on their own? […] None. How many of them have a trade desk? Institutions. Nobody had — not one entity out there today has everything integrated, but we have more capacity than Goldman. Do you understand what I'm saying?

I do not! That is from a Jan. 4, 2023, presentation that Robert Welsh allegedly gave in Frisco to tout an investment opportunity called Vanguard Holdings Group Irrevocable Trust, which he allegedly "promoted … as a highly-profitable international bond trading business that held billions in assets." How many billions? Enough to get approved by the Depository Trust Company:

One of the companies we have … is approved through DTC. And you don't get approved unless you have a tremendous amount of assets. And so team and — has quite a few Bs [billions] and assets below ground, above ground, and DTC approved us as a company."

You want the assets below ground, and also above ground. There is a similarly gibberish FAQ:

Q: It seems too good to be true. How is it possible to get that percentage per month?

A: Good question. We are a private investment bank in the secondary markets utilizing a private trust. One of the things that we do is buy and sell debt known as buy-sell arrangements. Something that is easily understandable to those that have a mortgage, is that the lender changes during the mortgage. This is because the notes are sold at a profit. Buy-Sell agreements for debt instruments such as a newly issued $500 Million bond may sell at 20 cents on the dollar ($200M) and selling it for $300M as an example. As you can see, 3, 4, or even 6% per month is not a lot, but just seems like a lot based on what's available for those under $100 Million.

Of course these quotes are all from the complaint in Tuesday's US Securities and Exchange Commission enforcement action against Welsh and his partners Kenneth Alexander and Caedrynn Conner, accusing them of running a $91 million Ponzi scheme:

In reality, as the SEC alleges, VHG had no material source of revenue, the purported monthly returns were actually Ponzi payments, and the protection offered by the "pay orders" was illusory. Alexander and Conner misappropriated millions in investor funds for personal use, such as Conner's purchase of a $5 million home, according to the complaint.

The "pay order" refers to a part of the pitch where, if you *didn't* trust VHG to make money for you, for an additional fee you could get a "pay order" from a fiduciary, which will automatically pay back your investment if Vanguard defaults. As Welsh allegedly explained it in Frisco:

Also too is, have you ever heard of a fiduciary? Okay. Well, what's a fiduciary? I don't know. Fiduciary. Aren't they responsible to make sure that people — well, there is a hired fiduciary to protect the people. Why would there be a fiduciary? Bernie [Madoff] never had a fiduciary.

Huh interesting. See I would have thought that, if I went to a presentation for a Ponzi scheme, they would studiously *avoid* mentioning Bernie Madoff. Like if you go to an investment presentation and there is a slide in the PowerPoint deck that is like "Ways In Which We Are Different From Bernie Madoff," that strikes me as a *discouraging* slide. But, truly, what do I know.

Things happen

Kohl's CEO Fired for Funneling Business to Romantic Partner. Elon Musk Is Expanding His Empire With a New Texas City Government . Morgan Stanley Plans to Offer Crypto Trading to E*Trade Clients. Nasdaq Plan Will Bring Zero-Day Option Boom Closer to Single Stocks. Carlyle, State Street Consider Partnership to Tap Retail Wealth . Apollo Raises $5.4 Billion Fund for Secondhand PE Deals . GM Slashes Guidance With Up to $5 Billion Hit From Tariffs. Markets Set for Shock From Disappearing Chinese Goods . Coming Soon for CEOs, a MAGA-Infused Business Association. Rory McIlroy Teams Up With TPG to Launch Sports Investment Fund . Crypto Venture Capital Fundraising Springs Back to Life. How Pope Francis failed to fix the Vatican's finances. Ari Emanuel to buy Frieze art fairs from Endeavor. How One Woman Lost $75,000 to an MLM. "In slickly produced videos, these gurus relentlessly lambast how the Ivory Tower 'brainwashes' people into taking 'mediocre jobs,' while splicing in images of the lavish lifestyles that dropping out (as most of them ecstatically have) and building online business empires have afforded them — Ferraris in Dubai, G Wagons in Miami, caviar bumps on private planes." Semi-Truck Spills $800K in Dimes Causing Unfathomably Annoying Cleanup.

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- 1. I think a lot about Ted Chiang's essay on AI as a metaphor for the modern corporation. One could draw analogies here.
- 2. Also Ted Chiang.
- 3. Certainly to *Tesla* investors, who are not paying for car sales.
- 4. No relation to, you know, Vanguard. I wonder if the confusion was helpful in raising money.
- 5. Extremely sic.

https://www.wsj.com/business/autos/tesla-musk-ceo-search-board-0ce61af9

Tesla Board Opened Search for a CEO to Succeed Elon Musk

By Emily Glazer Follow *, Becky Peterson* Follow *and Dana Mattioli* Follow

Updated May 1, 2025 7:45 am ET

About a month ago, with Tesla's TSLA **0.74%** ▲ stock sinking and some investors irritated about Elon Musk's White House focus, Tesla's board got serious about looking for Musk's successor.

Board members reached out to several executive search firms to work on a formal process for finding Tesla's next chief executive, according to people familiar with the discussions.

Tensions had been mounting at the company. Sales and profits were deteriorating rapidly. Musk was spending much of his time in Washington.

Around that time, Tesla's board met with Musk for an update. Board members told him he needed to spend more time on Tesla, according to people familiar with the meeting. And he needed to say so publicly.

Musk didn't push back.

Tesla has been on a losing streak in the months since Musk, its visionary chief executive, began spending much of his time helping President Trump slash federal spending. Last week, after the company said its first-quarter profit had plunged 71%, Musk told investors he would soon pivot back to his job at Tesla.

"Starting next month," he said on a conference call about earnings, "I'll be allocating far more of my time to Tesla."

The board narrowed its focus to a major search firm, according to the people familiar with the discussions. The current status of the succession planning couldn't be determined. It is also unclear if Musk, himself a Tesla board member, was aware of the effort, or if his pledge to spend more time at Tesla has affected succession planning. Musk didn't respond to requests for comment.

Tesla didn't provide a statement before publication. Hours after this article was published, Tesla issued a denial on X. Musk also criticized the article in a post on X.

"The CEO of Tesla is Elon Musk and the Board is highly confident in his ability to continue executing on the exciting growth plan ahead," Tesla Chair Robyn Denholm said in the statement posted on X.

During a cabinet meeting on Wednesday, Trump thanked Musk for his government work. "You know you're invited to stay as long as you want," Trump said. "I guess he wants to get back home to his cars."

Any change at the top would mark a major moment for Tesla: Musk has run the electric-vehicle maker for nearly 20 years, though he stepped aside as board chairman in 2018. Musk has been deeply involved in all of his businesses, even those in which other executives handle day-to-day management.

The eight-person Tesla board has been looking to add an independent director, according to people familiar with the process. Some directors, including Tesla co-founder JB Straubel, have been meeting with major investors to reassure them the company is in good hands.

Musk's detour into government came at a difficult time for his biggest company. Sales of Tesla's electric cars fell in 2024, the first annual decline in more than a decade. The company slashed prices, which ate into profit margins. Its high-profile Cybertruck, derided for its strange looks, became the butt of jokes by late-night comics.

Musk's close ties to Trump tarnished Tesla's brand for some consumers. Making matters worse, the president's tariffs have complicated Tesla's business in China, one of its biggest car markets, and a U.S. supply chain that relies heavily on vendors in Mexico and Canada.

Musk's proximity to the president proved no help on that front. He told investors last week he would "continue to advocate for lower tariffs rather than higher tariffs, but that's all I can do." The decision, he said, was the president's.

After Trump's victory last year, Tesla's shares surged at first, reflecting optimism that Musk's close ties to the president would yield benefits for his businesses. Tesla's market value hit a record high of $1.5 trillion in December. Since then, it has fallen to about $900 billion.

Early last year, after some two decades of running Tesla, Musk confided to someone close to him, in late night texts, that he was frustrated to still be working nonstop at the company, especially after a Delaware judge had struck down his multibillion-dollar pay package.

Last spring, he told that person that he no longer wanted to be CEO of Tesla, but that he was worried that no one could replace him atop the company and sell the vision that Tesla isn't just an automaker, but the future of robotics and automation as well.

Musk with then-candidate Donald Trump at a campaign event in Pennsylvania last October. This year, Musk has been spending a lot of time in Washington. PHOTO: JUSTIN MERRIMAN/BLOOMBERG NEWS

Musk has complained both in public and private that despite owning roughly 13% of the company, he has been working without pay for the last seven years. The Tesla board recently formed a special compensation committee to address CEO compensation.

Musk has enormous demands on his time. Tesla is only one of five businesses he oversees. At Tesla alone, more than 20 executives report directly to him, according to an internal document. Since the election, he has spent most of his time in Washington, with weekends at Trump's Mar-a-Lago resort in Florida. When he met with Tesla employees and board members, he often did so remotely.

Some Tesla employees said that the first time they had heard from Musk in months was at an all-hands meeting in March, streamed to all X users, where he tried to reassure employees and persuade them not to sell their shares.

"If you read the news, it feels like Armageddon," he told them. "I can't walk past a TV without seeing a Tesla on fire," he said, referring to vandalism at Tesla showrooms and charging stations. "There are times when there are rocky moments, a little bit of stormy weather, but I'm here to tell you the future is bright and exciting. What I'm saying is—hang on to your stock."

Executive focus

Tesla vehicles being loaded for transport at a Tesla factory in Germany in March. PHOTO: SEAN GALLUP/GETTY IMAGES

Musk spent more than $250 million on Trump's re-election effort. He took the stage with Trump at rallies and even spent a chunk of time in Pennsylvania after identifying it as a state that Trump couldn't afford to lose. On election night, he was in the ballroom at Mar-a-Lago.

The next morning, Nov. 6, he flew out of Palm Beach to attend a Tesla board meeting in Austin. Soon, he was back in Mar-a-Lago sitting in on meetings with world leaders and helping to vet candidates for cabinet positions.

Musk was given the job of running the Department of Government Efficiency, which eventually was staffed with government outsiders that included investors and employees from his companies. His status as a "special government employee" enables him to work at the White House for 130 days each year without filing the financial-disclosure forms required for regular employees.

Some employees said they were happy at first that Musk was busy in D.C. because his tendency to micromanage at Tesla could be a distraction.

In March, as Tesla's shares slid in value, President Trump appeared with Musk at the White House to talk up the company's vehicles. PHOTO: MOLLY RILEY/WHITE HOUSE/ZUMA PRESS

As Musk drew closer to Trump, who has criticized EV mandates and vowed to reinvigorate the oil and gas industries, some employees sought assurances from management that Musk still supported Tesla's mission to fight climate change and support sustainable-energy infrastructure.

Late last November, Tesla executive Mike Snyder tried to reassure his team that Musk's political tilt wouldn't distract him from the business. "It's obviously been a turbulent and emotional season, I acknowledge that," he said, according to a recording of the meeting reviewed by The Wall Street Journal. "I'd rather have Elon next to Trump than an enemy of Trump."

Snyder, whose team works on energy storage and solar power, told his team that Musk continued to answer texts. "People concerned that Elon is not engaged or interested, I can assure you that's not true," he said.

By early this year, it was clear to some inside the company that Musk's political foray was becoming a business liability. Tesla was losing brand appeal in markets such as California and Germany, and drivers had begun putting bumper stickers on their Teslas distancing themselves from Musk's politics. Tesla also was losing ground in China to homegrown rivals such as BYD.

Eliah Gilfenbaum, a Tesla executive in California, told his team that it was getting more challenging to hire and retain talent, according to one person who was present. He told them Tesla would be better off if Musk resigned. That was unlikely to happen, he told them, and employees needed to reconcile the boss's politics with the company's mission. He advised them to try to compartmentalize and just keep going.

After two newspapers reported on Gilfenbaum's remarks, Gilfenbaum was forced out of Tesla, the person said. Tesla hasn't commented on the matter.

Growth problem

Tesla is pivoting to artificial intelligence and robots. Spectators viewed Tesla's Optimus robot at an event in Shanghai last September. PHOTO: CFOTO/FUTURE PUBLISHING/GETTY IMAGES

Tesla executives have said the company is in a transition period. Its popular Model 3 car and Model Y crossover drove a first wave of growth. Now it is pivoting to artificial intelligence and robotics, heralded by new vehicles like its Cybercab, a gold two-seater sedan with no steering wheel or pedals, and by Optimus, a humanoid robot central to Musk's vision for the company. Musk has posited that robotics could transform Tesla into a $30 trillion company, many times its current valuation.

Meanwhile, though, its core EV business is faltering, and its newest vehicle, the Cybertruck, hasn't provided much of a boost. Musk pitched the Cybertruck, unveiled in 2019, as a futuristic, bulletproof alternative to old school pickups like Ford's F150. The first versions to reach customers, in late 2023, were priced around $100,000—2½ times the price Musk first announced.

The truck has faced eight recalls, including on safety hardware such as the accelerator pedal and windshield wipers. In its first full year of sales, Tesla sold just 39,000 Cybertrucks in the U.S., according to Cox Automotive estimates—a fraction of the 250,000 in annual sales Musk said was the goal.

While many investors held out hope that Tesla would release a new, low-cost model to invigorate sales in 2025, the company instead has focused on refreshing its existing lineup and lowering prices by changing out expensive parts like the material used on its seats.

In March, it unveiled a refresh of the Model Y, its bestselling car. In April, Tesla released a less expensive version of the Cybertruck, priced at $69,990.

Musk and his lieutenants have redoubled their efforts to convince investors that Tesla's long-planned autonomous vehicles are just around the corner. Tesla plans to open up its ride-hailing app to the public by the end of June, enabling customers in Austin, Texas, to take unsupervised robotaxi rides in Model Ys. That would put the company in competition with existing robotaxi services like Alphabet's Waymo and Amazon's Zoox.

In February, Tesla's finance chief Vaibhav Taneja warned some investors that Tesla would have a "rough quarter."

With Tesla's core EV business faltering, the Cybertruck, hasn't provided much of a boost. PHOTO: SPENCER PLATT/GETTY IMAGES

In recent meetings with investors, board members told them that despite Musk's government work, he was involved in Tesla meetings remotely. One board member told people that sometimes Musk wasn't as well prepared and that he needed to be briefed more about what is happening with Tesla. The board members continued to say they believed Musk's proximity to Trump and the White House would benefit the company over the long term.

Last week's dismal earnings report showed quarterly revenue had declined 9%, including a 20% drop in automotive revenue after sales fell in important markets such as California, China and Germany.

Musk told investors the blowback against Tesla stemmed from his work with DOGE. "The real reason for the protests, the actual reason, is that is those receiving the waste and fraud wish to continue receiving it," he said. "That is the real thing that's going on here, obviously."

After announcing that he would spend less time in Washington and more time at Tesla, Musk defended the company's performance and expressed optimism about its future. "We're not on the ragged edge of death," he said, "not even close."

Tesla Inc

Tesla board denies launching search for Elon Musk's successor

Chair Robyn Denholm says carmaker's board remains 'highly confident' in chief executive's leadership

A protest against Elon Musk in front of a Tesla store in Berlin on Wednesday © Filip Singer/EPA-EFE/Shutterstock

Stephen Morris in San Francisco and **Joe Miller** in Washington

Published YESTERDAY

Tesla chair Robyn Denholm has denied a report that the board is seeking to replace chief executive Elon Musk in response to plunging sales and a widespread backlash against his alliance with US President Donald Trump.

"Earlier today, there was a media report erroneously claiming that the Tesla Board had contacted recruitment firms to initiate a CEO search at the company," Denholm said in a post on the electric-vehicle maker's account on social media platform X on Thursday morning.

"This is absolutely false . . . The CEO of Tesla is Elon Musk and the Board is highly confident in his ability to continue executing on the exciting growth plan ahead."

Denholm was responding to a Wall Street Journal report that the board had contacted headhunters to recruit his successor after growing concerned about the time he was spending in Washington.

Trump catapulted Musk into the centre of his administration by making him head of the so-called Department of Government Efficiency, with the polarising billionaire vowing to find $1tn of savings in the annual federal budget.

But the controversial role has prompted a backlash in Tesla's domestic market, with some consumers shunning the brand, its dealerships facing protests and its cars being vandalised.

The increasing politicisation of Tesla's brand in the US comes after Musk's interventions in European politics, including backing the far-right Alternative for Germany party ahead of the country's elections in February, hit sales on the continent.

First-quarter profit at the carmaker plunged 71 per cent, undershooting even the most pessimistic expectations, and Tesla lost its crown as the world's largest EV maker to Chinese rival BYD.

Its shares have fallen 30 per cent since the start of the year, wiping more than $800bn from its market valuation. Tesla shares were flat in early trading on Thursday.

Last week Musk bowed to investor pressure, pledging to "significantly" scale back his work at Doge — a position originally slated to last into 2026 — and start "allocating far more of my time to Tesla".

Any move by the board to oust Musk would be seismic given the 53-year-old's talismanic role at the group and large shareholding. In December, a US judge shot down the board's second attempt to award Musk a record pay package.

Musk also splits his time across a business empire spanning social media platform X, which he recently merged with his artificial intelligence company xAI, as well as SpaceX and Neuralink.

Musk, who has clashed with members of Trump's cabinet, has since largely vacated his office near the White House and is advising on Doge remotely, according to a person familiar with the matter.

Trump's chief of staff Susie Wiles told the New York Post on Wednesday that Musk "hasn't been [at the White House] physically, but it really doesn't matter much", adding that she spoke to the billionaire regularly by phone.

The Wall Street Journal said it stood by its reporting.

Opinion **Lex**

Half an Elon Musk is still better than none

Tesla has flouted some of directors' most sacred tenets, and shareholders who vote have mostly approved

Elon Musk: a pie in the face of corporate governance advocates © Nathan Howard/Reuters

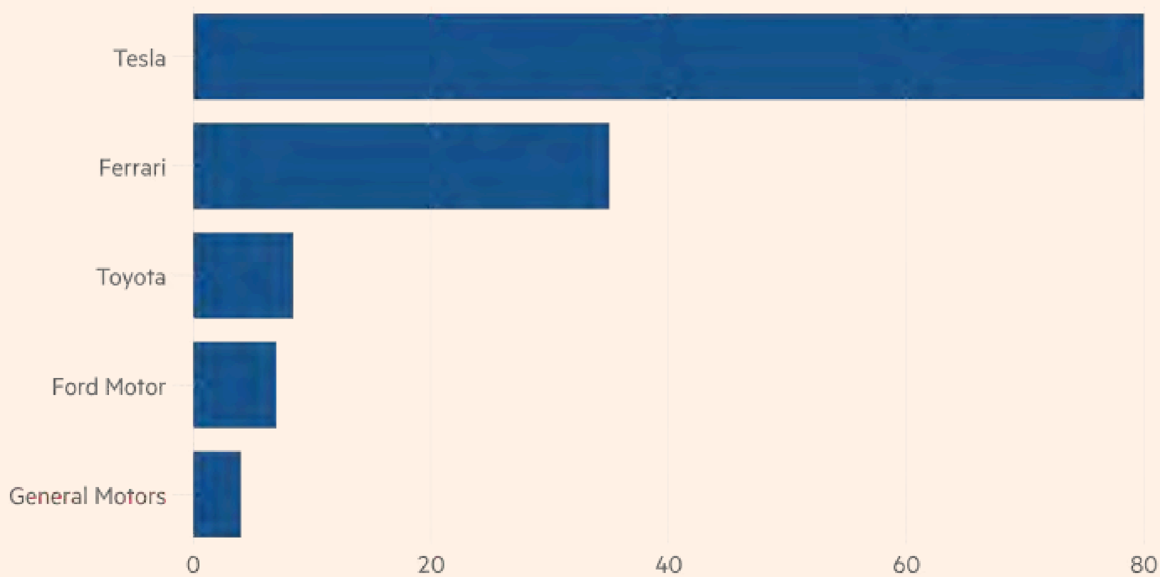
Published 5 HOURS AGO

The board of Tesla is not looking to replace Elon Musk as chief executive. It said so on Thursday, in response to a Wall Street Journal article that had stated otherwise. The point is moot, though, because it shouldn't even try.

Musk is, famously, not just an automotive executive. He is also a pie in the face of corporate governance advocates. They have, for decades, cooked up policies intended to make company directors and executives better at creating value. Tesla has flouted some of their most sacred tenets, and shareholders who vote at its annual meetings have mostly approved.

Self-driving valuation

Market capitalisation as a multiple of forecast 2027 earnings



Source: LSEG

To whit: he has had multiple jobs, running rocket-maker SpaceX and artificial intelligence outfit xAI even before he went to head Donald Trump's so-called Department of Government Efficiency. Companies may welcome executives going into public service. JPMorgan, for example, allows for senior folks who go to Washington to keep their bonuses. But usually such roles are consecutive rather than concurrent.

Musk has also written numerous cheques he has subsequently failed to cash, from vehicle delivery targets to the arrival date of fully self-driving cars. Then there was the $56bn bonus the board approved amid what a judge called 'lackadaisical' oversight — a word Tesla chair Robyn Denholm has rejected.

Investors don't, collectively, care about this. That the company currently has five independent directors, where the US average is nine, according to Spencer Stuart, has had little effect on the share price. Someone who parked $1 in Tesla stock 10 years ago now has almost $20. The same dollar in the S&P 500 is worth $3.

It's not that corporate governance doesn't matter. But there are times where other considerations predominate. There is an adage in banking that when the customer can't pay back a $100 loan, it's their problem; when they can't pay back a $1bn loan, it's the bank's problem.

Something analogous applies to Tesla, in that Musk is too big to eject, and also too valuable. Take Tesla's $11bn of forecast earnings for 2027, gathered by Visible Alpha. Even on an extremely generous multiple of 45, akin to luxury companies like Ferrari and Hermès, the result is a market capitalisation of $500bn, versus Tesla's actual $884bn.

That suggests that the extra $400bn or so reflects the implied worth of Musk himself. That makes sense: without him, the company might make cars, but probably not humanoid assistants or connected robotaxis, all things investors value today as if they were real.

Besides, it's because of Musk that Tesla's valuation benefits from the support of hordes of exuberant retail traders. As Barclays analysts have pointed out, the stock has at times traded more in line with bitcoin than the wider market. The old rules of carmaking don't apply to Tesla; like it or not, nor do the rules of good governance.

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Seems a little triggered by this story.

Elon Musk X
@elonmusk

Subscribe

It is an EXTREMELY BAD BREACH OF ETHICS that the @WSJ would publish a DELIBERATELY FALSE ARTICLE and fail to include an unequivocal denial beforehand by the Tesla board of directors!

Tesla @Tesla · 5h
Earlier today, there was a media report erroneously claiming that the Tesla Board had contacted recruitment firms to initiate a CEO search at the company.

1:38 AM · 5/1/25 · **8.4M** Views

May 1, 2025 at 3:58 AM · Everybody can reply

1K reposts **163** quotes **6.7K** likes

854 1.1K 6.7K

Write your reply

Dave @snow2112.bsky.social · 43m
Leon, Tesler is just really not in to you.

10

bluesman60.bsky.social @bluesman60.bsky.social · 1h
Yeah, I guess the muskrat is not particularly fond of the "do unto others as you'd have them do unto you" part. It amazes me these assholes can dish it out, but sure can't take it.

1 2 28

Tesla chair denies report that EV maker seeks new CEO to replace Musk

reuters.com/business/autos-transportation/tesla-board-opened-search-ceo-succeed-elon-musk-wsj-reports-2025-05-01

Abhirup Roy, Bipasha Dey May 1, 2025

- Tesla board chair backs Musk's leadership
- Board contacted search firms for Musk replacement - WSJ
- Musk's Trump administration role sparks investor concerns
- Musk calls WSJ report a "deliberately false article"

May 1 (Reuters) - Tesla (TSLA.O), opens new tab Chair Robyn Denholm on Thursday denied a Wall Street Journal report that said board members about a month ago had reached out to several executive search firms to find a replacement for CEO Elon Musk. Tesla shares rose 2.8% in early trading on Thursday after Denholm called the report "absolutely false" and said on X the EV maker's board is "highly confident" in Musk's ability to "continue executing on the exciting growth plan ahead."

The Journal said in a statement it stood by its reporting on Wednesday that the board was seeking a new CEO due to Musk's heavy involvement with President Donald Trump's administration, citing people familiar with the discussions. The Journal said the current status of the board's push could not be determined.

Musk said on X the report was a "deliberately false article".

Activist investors have long accused Tesla's board of lacking independence and failing to rein in Musk.

Tesla is at a crucial juncture. Musk has pivoted from his promise of making a new affordable EV platform to rolling out driverless taxis and humanoid robots, highlighting Tesla's future as an AI and robotics company instead of an automaker.

Much of the company's valuation is based on that vision and some investors say Trump will help further it. Last week, federal regulators eased rules for testing autonomous vehicles, boosting Tesla's stock.
Tesla shares have been sliding for months, as its EV sales have slumped in the U.S. and Europe in a backlash to his embrace of far-right politics and as competitors have started to take up market share with newer models.

Musk's role in the Trump administration overseeing efforts to cut federal jobs has resulted in a considerable resentment in the U.S. and other countries, especially in Europe. Tesla sales plunged again in April, down 59% in France and 67% in Denmark from a year ago.

Tesla CEO Elon Musk looks on next to U.S. President Donald Trump talking to the media, at the White House in Washington, D.C., U.S., March 11, 2025. REUTERS/Kevin Lamarque/File Photo Purchase Licensing Rights, opens new tab

Musk's work at Trump's Department of Government Efficiency has been widely unpopular among Americans, and his time away from Tesla has been an added concern for investors.

Musk said last week he would cut back significantly on the time he devotes to the Trump administration and spend more time running Tesla.
But his political shift has led to protests against Musk and the company, as well as vandalism at its showrooms and charging stations in the U.S. and Europe.

The board members met Musk and asked him to acknowledge publicly that he would spend more time at Tesla, the WSJ report said.

Some Tesla directors, including co-founder JB Straubel, have been meeting with major investors to reassure them the company is in good hands, the WSJ said.

But Denholm, hand-picked by Musk whose controversial pay package she defended, has drawn criticism for her own pay package along with questions on whether that compromised her oversight of Tesla and Musk.
Denholm has dismissed the allegations and a spokesperson has said her pay was fair.

In March, Denholm sold about $33.7 million worth of electric automaker's stock, according to a regulatory filing.
The eight-person Tesla board, which includes Musk's brother Kimbal Musk and James Murdoch, son of media mogul Rupert Murdoch, has been looking to add an independent director, the report said.

Reporting by Bipasha Dey in Bengaluru and Abhirup Roy in San Francisco; Editing by Christopher Cushing, Raju Gopalakrishnan, Arun Koyyur and David Gregorio

https://www.wsj.com/business/retail/kohls-ceo-ashley-buchanan-fired-investigation-03936a9a

EXCLUSIVE RETAIL

Kohl's CEO Fired for Funneling Business to Romantic Partner

Retailer's probe found Ashley Buchanan violated policies with multimillion-dollar deal involving Chandra Holt

By *Suzanne Kapner* and *Sarah Nassauer*

Updated May 1, 2025 11:07 am ET

Kohl's expects to post another loss when it reports results later this month. PHOTO: SETH WENIG/ASSOCIATED PRESS

Kohl's KSS **7.09%** ▲ fired its chief executive Ashley Buchanan after it discovered he had instructed the retailer to enter into a "highly unusual" business deal involving a woman with whom he has had a romantic relationship, according to people familiar with the situation.

Buchanan met the woman, Chandra Holt, when they were both working at Walmart several years ago, the people said. Buchanan went on to run crafts chain Michael's and took over as Kohl's CEO in November. Holt went on to become the CEO of Bed Bath & Beyond BYON **-1.84%** ▼ . She is now a consultant and the founder of Incredibrew, a coffee brand infused with vitamins and minerals.

Ashley Buchanan had been named CEO of Kohl's in November PHOTO: MICHAELS

Buchanan declined to comment. Holt couldn't immediately be reached for comment.

A Kohl's board investigation found that Buchanan violated the company's code of conduct in two instances with a vendor with whom he had a personal relationship and whom it didn't name, according to a regulatory filing.

The filing said he directed the retailer to conduct business with this vendor and he caused the company to enter into a multimillion-dollar consulting agreement, where that person was part of the consulting team.

Kohl's said Buchanan didn't disclose the relationship as required by its code of ethics and determined the conduct in both cases constituted cause for termination. Buchanan will forfeit all equity awards from Kohl's and be required to reimburse the company on a prorated basis a signing bonus worth $2.5 million.

Chandra Holt PHOTO: CONN'S HOMEPLUS

The two retail veterans have known each other for years. Buchanan was the Sam's Club chief merchandising officer and Holt held several positions at the Walmart chain, including general merchandise manager of grocery and the chief operating officer of its website.

They both further rose through the ranks at Walmart before leaving around the same time for other positions at Texas-based retailers. Buchanan left in early 2020 to become CEO of Michaels. Holt left in 2021 to become CEO of Conn's

HomePlus and later Bed Bath and Beyond.

On Thursday, Kohl's appointed Chairman Michael Bender as its interim CEO. He becomes the fourth CEO in three years at the department-store chain, which has been struggling with slumping sales. The company on Thursday said that sales likely declined by around 4% in its most recent quarter and that it expected to post another loss when it reports results later this month.

Write to Suzanne Kapner at suzanne.kapner@wsj.com and Sarah Nassauer at Sarah.Nassauer@wsj.com

Videos

Kohl's Corp

Kohl's dismisses new CEO Buchanan amid conflict-of-interest allegations

Retailer's board to begin search to replace Ashley Buchanan, who started less than four months ago

The US department store chain has appointed board chair Michael Bender as interim chief executive © AP

Zehra Munir in New York

Published 3 HOURS AGO

Kohl's removed its new chief executive alleging he had violated conflict-of-interest policies involving outside vendors, marking another setback for the struggling US department store chain.

The board of the Wisconsin-headquartered company will begin a search to identify a new permanent chief executive to replace Ashley Buchanan, who started in his role less than four months ago.

An investigation by outside counsel that was overseen by the board's audit committee determined Buchanan "violated company policies by directing the Company to engage in vendor transactions that involved undisclosed conflicts of interest", Kohl's said on Thursday morning. Details of the transactions were not disclosed.

The company added that the former chief executive's termination "did not involve any other company personnel". Board chair Michael Bender has been appointed interim chief executive of Kohl's.

Buchanan left his position as CEO of arts and crafts retailer Michaels Companies to join Kohl's in January. Shares in Kohl's were up more than 6 per cent in mid-morning trading.

Follow the topics in this article

Corporate governance

Kohl's Corp

Zehra Munir

Kohl's Fires CEO for Undisclosed Deal with Vendor

law.com/corpcounsel/2025/05/01/kohls-fires-ceo-for-undisclosed-deal-with-vendor-

Chris O'Malley May 1, 2025

What You Need to Know

- Kohl's has fired CEO Ashley Buchanan.
- The retailer alleges an investigation conducted by outside counsel revealed Buchanan struck an unauthorized deal with a vendor with whom he was friends
- Buchanan has been asked to repay $2.5 million as part of a signing bonus, and will forfeit stock grants

Ashley Buchanan came to Kohl's from Michaels, where he'd been CEO since 2020. Courtesy photo

In a stunning ethical and corporate governance crisis, retailer Kohl's said Thursday that it has fired its brand-new CEO, Ashley Buchanan, after learning he steered businesses to a vendor with whom he had a personal relationship.

It now wants Buchanan to fork over $2.5 million from a $3.75 signing bonus.

Menomonee Falls, Wisconsin-based Kohl's announced in November that it was hiring Buchanan, and his first day was Jan. 15. Buchanan came from the arts-and-craft supplies retailer Michaels, where he'd been CEO since 2020. He'd previously held leadership roles at Sam's and Walmart.

Kohl's said its board fired Bachanan "for cause" following an investigation by outside counsel and the board's audit committee. That designation means that he will forfeit $17 million in stock grants he received as "recruitment awards" as well as two-thirds of a signing bonus, the company said. His employment agreement required him to stay 12 months to receive the full $3.75 million, with the repayment reduced by $312,500 for every month he worked.

"Mr Buchanan had directed that the company conduct business with a vendor founded by an individual with whom Mr. Buchanan has a personal relationship on highly unusual terms favorable to the vendor," Kohl's stated in a filing with the Securities and Exchange Commission.

As part of that deal, "he also caused the company to enter into a multi-million dollar consulting agreement wherein the same individual was a part of the consulting team," the company added.

In addition, Buchanan failed to disclose the relationship per the company's code of ethics.

The company provided no further details on Buchanan's unauthorized business relationship.

Buchanan did not respond to a request for comment from Law.com.

According to Kohl's proxy statement from his Jan. 15 start date through Feb. 1, the end of Kohl's fiscal year, Buchanan received a salary totaling $67,045. The document says the company provided the $3.75 million signing bonus and the $17 million in stock partly to offset compensation Buchanan forfeited when he left Michaels.

Kohl's said it has named board chair Michael Bender as interim CEO as it begins a search for a permanent CEO.

When Bachanan started in January, Bender praised him for his "vast retail experience" and said he "will bring a steady, proven, innovative leader to Kohl's as we continue to transform the business and drive future growth."

Kohl's has been struggling—with sales in its latest fiscal year tumbling 7.2%, to $15.4 billion, and its stock plunging from $27 last May to just over $7. Last month, it closed 27 of its 1,100 stores.

The company said Buchanan's ouster "is not related to the company's performance, financial reporting or results of operations, and did not involve any other company personnel."

Kohl's SEC filing did not disclose which law firm it hired to investigate Buchanan, and a spokesperson did not immediately respond to Law.com's inquiry.

The company's chief legal officer is Jennifer Kent, who joined the retailer in February 2023.

Kohl's has seen an exodus of executives in recent years, thanks in part to inflationary pressures that crimped sales.

Michelle Gass had been CEO of Kohl's for nearly five years when she stepped down in December 2022 to become president of Levi Strauss & Co. A year later, Levi promoted her to CEO.

Also departing in 2022 were Chief Merchandising Officer Doug Howe and Chief Marketing Officer Greg Revelle. CEO Tom Kingsbury, Buchanan's predecessor, retired last year.

Activist investors have demanded that Kohl's be put up for sale.

Securities Law

May 1, 2025, 8:24 AM PDT

Kohl’s Fires CEO After Probe Found Personal Ties to Vendor (1)

Kohl’s Corp. fired its chief executive officer after the board uncovered that he directed the retailer to do millions of dollars of business with someone he had a personal relationship with on “highly unusual terms.”

The company said it’s starting a search to find a permanent replacement following the departure of **Ashley Buchanan**, who only started in January from running retailer Michaels Cos. Chairman **Michael Bender** will serve as interim CEO, according to a statement .

The Wall Street Journal reported Thursday that Buchanan’s business dealings were with a woman he was involved with romantically named **Chandra Holt**, citing people familiar with the matter it didn’t identify. She’s a consultant and the founder of Incredibrew, which sells coffee infused with vitamins, according to the Journal.

Kohl’s didn’t immediately respond to a request for comment on the details of Buchanan’s relationship.

The CEO change is a “blow upon a bruise for the beleaguered department store chain,” **Neil Saunders** managing director at GlobalData, said in a research note. While it’s not related to performance, “it gives the impression that Kohl’s is in perpetual state of chaos and it raises some questions about the due diligence over his appointment.”

The company also released preliminary results for its first quarter, including a comparable-sales decline in the range of 4% to 4.3% — less than what analyst had anticipated. Kohl’s also projected a net loss for the period that’s less than the average analyst estimate.

Kohl’s shares rose as much as 9.9% in New York trading on Thursday. The stock has declined by about 50% so far this year, deeper than the decline of benchmark US stock indexes over the same period.

‘Unusual Terms’

The termination of Buchanan follows an outside investigation overseen by the board’s audit committee. The probe determined that Buchanan “had directed that the company conduct business with a vendor founded by an individual with whom Mr. Buchanan has a personal relationship on highly unusual terms favorable to the vendor.”

Buchanan pushed the company to enter into a multimillion dollar consulting agreement wherein the same individual was a part of the consulting team, the board found. Kohl's said that in neither case did Mr. Buchanan disclose this relationship as required under company's code of ethics.

The retailer said that Buchanan's termination is unrelated to the company's performance and did not involve any other company personnel. He'll also be required to reimburse the firm $2.5 million from his signing bonus.

The abrupt change adds more pressure to a retail business that's struggled for years, posting 12 straight quarters of revenue declines. The company has lost market share as bigger competitors offer lower prices and a broader assortment of goods.

Job Cuts

Kohl's said in January, shortly after Buchanan became CEO, that it would eliminate about 10% of its roles reporting into corporate offices as it looks to lower costs and streamline operations. It's also closing underperforming stores.

To regain lost ground, the retailer has identified areas of focus such as fine jewelry. The company has also leaned on partnerships, such as opening Babies "R" Us shops in some locations. It has a longstanding relationship with Sephora, the cosmetics retailer.

Bender said in the statement that he's "committed to continuing the execution of our strategic framework to grow shareholder value."

In an email to workers viewed by Bloomberg News, Bender called on staff to "stay focused on what matters most: taking care of our customers and each other." He said the company, which is based in Menomonee Falls, Wisconsin, is planning a town hall meeting on Thursday to discuss the news.

(Updates with details throughout.)

--With assistance from **Jaewon Kang**.

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Securities Law News

April 30, 2025, 5:30 AM PDT

Citadel Securities Warns SEC of Private Rooms, 24-Hour Trading

Citadel Securities is urging the Securities and Exchange Commission's new leadership to examine a list of what it argues are emerging and mounting risks, including opaque trading in so-called private rooms and the push by US stock markets to operate around the clock.

Billionaire Ken Griffin's market-making firm sent more than 30 recommendations, spotlighting concerns in equities, credit, treasuries, options and digital assets. Subjects included private rooms — a twist on dark pools, in which only certain parties are allowed to transact.

"Now is the right time to comprehensively review the current regulatory framework and take decisive action to remove unnecessary costs and increase efficiency to unleash a new wave of innovation," the firm wrote in a document sent to the commission and reviewed by Bloomberg.

Though Citadel Securities is often vocal about how it thinks the agency should handle market structure — an issue key to the firm's own operations and profits — its input may reach a more receptive audience as President Donald Trump's administration installs new leaders at the SEC. A representative for the watchdog declined to comment.

The latest round of recommendations comes just days after **Paul Atkins** was sworn in as SEC chairman. Atkins is expected to scale back regulation, ease disclosure requirements and adopt a friendlier stance for certain companies that once sparred with his predecessor, Gary Gensler.

Among emerging topics, Citadel Securities asked the agency to address the proliferation of private rooms on alternative trading systems, raising questions about transparency and the way trades are reported from the off-exchange venues. Operators "appear to be only providing minimal disclosures regarding private rooms on their platforms," the firm wrote.

Read More: Wall Street's 'Private Rooms' Are Making Dark Pools Even Darker

Citadel Securities also called out the transition to 24-hour trading in the US, with three of the largest stock venues looking for an SEC nod to operate overnight. "The regulatory framework for order handling requirements, execution quality disclosures, and volatility controls must be clear, fit for purpose, and consistent across venues," it said.

Under Gensler's leadership, Citadel Securities publicly pushed backon some SEC moves to rework stock trading. Last year, the commission approved a rule that would allow thousands of stocks and ETFs traded on exchanges to be quoted in half-penny increments. That rule should be amended and tested in a two-year pilot program before it's fully implemented, Citadel Securities said in its recent recommendations.

The market maker also made a dozen suggestions for policy changes across the options market, which it said has received less regulatory attention. "As the equity options market continues to increase in significance, it is important to ensure that market structure components that could serve as a single point of failure are well regulated and resilient," it wrote.

--With assistance from **Nicola M White**.

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https://www.wsj.com/articles/gop-lawmakers-vote-to-eliminate-accounting-firm-watchdog-b0917520

CFO JOURNAL

GOP Lawmakers Vote to Eliminate Accounting-Firm Watchdog

The House Financial Services Committee advanced legislation that would scrap the PCAOB and cut the CFPB budget

By Walden Siew Follow *and Corrie Driebusch* Follow

April 30, 2025 9:19 pm ET

Erica Williams is chair of the Public Company Accounting Oversight Board. PHOTO: BLOOMBERG NEWS

Republican lawmakers advanced legislation that would eliminate the Public Company Accounting Oversight Board, the independent watchdog for firms that audit publicly traded companies, and move those responsibilities under the Securities and Exchange Commission.

The House Financial Services Committee voted 30 to 22, along party lines, to advance the PCAOB measure as well as legislation to cut the budget for the Consumer Financial Protection Bureau. The House panel is one of several congressional committees putting together sections of the broader U.S. budget package, which will be voted on by the full House.

PCAOB leadership has been revamped by the past two presidential administrations, and the watchdog has been bracing for another shake-up under President Trump's overall agenda for broader deregulation.

The Securities and Exchange Commission oversees both the accounting authorities at the Financial Accounting Standards Board and their auditing counterparts at the Public Company Accounting Oversight Board. But because of the way each is set up, the PCAOB is much more exposed to an overhaul.

The PCAOB is a nonprofit that was established by Congress after the Enron and WorldCom accounting scandals of the early 2000s, and falls more closely under the SEC. The securities regulator must approve the PCAOB's rules and annual budget and can appeal inspection findings and enforcement actions. It also appoints the PCAOB's board members and can remove them at will.

"Today, the PCAOB's mission is as important as ever. History tells us that when the economy is tight, the risk of fraud goes up. And the stakes are high," said its chair, Erica Williams. "With millions of Americans invested in the stock market, including through 401(k)s and pensions, auditors need to perform their audits with more care than ever. Now is not the time for a major disruption in audit oversight."

Amanda Fischer, policy director and chief operating officer of Better Markets, a nonprofit founded in the wake of the 2008 financial crisis to promote the public interest in the financial markets, called the proposal "dangerous and misguided."

"It is especially concerning that lawmakers would propose abolishing the PCAOB at a time when the stock market is experiencing tremendous amounts of volatility," Fischer said.

Those critical of the PCAOB have revived a debate over whether it should be folded into the SEC, saying it adds excessive costs to public companies and in many cases duplicates SEC functions. Many accountants and regulators say eliminating the PCAOB could weaken oversight of large auditing firms.

The committee hearing took hours as members reviewed a number of proposals. Chairman French Hill's team provided "reconciliation survival kits" for committee members that included a Red Bull energy drink, a stress ball and espresso candies. One Republican committee member was already drinking his Red Bull before 11 a.m.

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Bloomberg Law

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Securities Law News
April 30, 2025, 6:08 AM PDT

PayPal Says SEC Has Closed Stablecoin Inquiry Without Action

PayPal Holdings Inc. said the US Securities and Exchange Commission has closed its inquiry into the company's stablecoin without an enforcement action, according to the company's latest quarterly filing.

- PayPal received a subpoena from the SEC's Division of Enforcement in November 2023 regarding its PayPal USD stablecoin, known as PYUSD. The inquiry was closed in February, according to the company's 10-Q filing on Tuesday.
- PYUSD, a cryptocurrency tracking the US dollar one-to-one, has a total market value of about $880 million, according to CoinMarketCap.
- The SEC has closed more than a dozen cases and investigations involving companies involved in cryptocurrencies this year.
- Earlier: PayPal Aims To Boost Stablecoin Use By Offering 3.7% on Balances

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Dave Liedtka

Guest Post: SPACs are Back

dandodiary.com/2025/05/articles/director-and-officer-liability/guest-post-spacs-are-back

Kevin LaCroix May 1, 2025

Posted in Director and Officer Liability

Sarah Abrams

In the wake of the SPAC IPO frenzy in 2021, SPAC activity cratered. However, as detailed in the following guest post from Sarah Abrams, there are signs that SPAC IPOs may be making a comeback, a revival that may raise certain concerns. Sarah is Head of Claims, Baleen Specialty, a division of Bowhead Specialty. I would like to thank Sarah for allowing me to publish her article as a guest post on this site. I welcome guest post submissions from responsible authors on topics of interest to this site's readers. Please contact me directly if you would like to submit a guest post. Here is Sarah's article.

****

2025 may be the year for the SPAC comeback. In the first quarter of 2025, the SPAC initial public offering ("IPO") market saw the pricing of 19 IPOs, raising a total of $3.1 billion. Eight special-purpose acquisition companies have gone public in April, seeking acquisition targets after raising $1.78 billion combined in IPO proceeds. Are both short-term memory loss and unknown capital market future contributing to the return of the SPACs? No matter: subsequent shareholder lawsuits, failed mergers, and bankruptcies involving SPAC transactions should be top of mind for D&O underwriters excited about prospective "new" SPAC related opportunities.

It is important to understand what SPACs are and the history of leveraging this alternative to a traditional IPO to appreciate the potential liability exposure. SPACs, or blank check companies, are created to raise capital through an IPO. SPACs go public as a shell company with the specific purpose of merging with an operating business, the "target company." If regulators and shareholders approve the transaction, the target company inherits the original stock listing and related SPAC proceeds through a so-called de-SPAC merger.

Notably, traditional IPOs have largely paused in the wake of sweeping tariff proposals. While equity markets have partly recovered, day-to-day uncertainty makes it challenging to price ordinary IPOs. Therefore, a company that has paused a traditional IPO, but which is still looking for public market liquidity, may be an attractive target company. In addition, the recent SPAC IPOs have been led by management teams that have launched multiple SPAC vehicles. That institutional knowledge of the SPAC landscape may serve to calm concerns of another SPAC boom to bust.

In order to appreciate whether history will repeat itself, understanding what happened during the most recent SPAC craze is important. In the mid-2020s to early 2021, low interest rates, a flood of liquidity, and excitement around fast-growth sectors (especially tech and EVs) fueled SPAC mergers with a variety of untested target companies. SPACs had originally emerged in the 1990s in industries like oil and gas exploration, where traditional IPOs were challenging because of the speculative nature of the business.

In 2021 SPACs raised over $160 billion, a record. Big-name investors, celebrities, and athletes launched their own SPACs, adding hype. SPACs were seen as a faster, easier alternative to traditional IPOs. In mid to late 2021 many SPAC deals started to underperform badly after their mergers, demonstrating that valuations of the target company were often wildly optimistic; reality didn't match the projections. At the same time regulatory scrutiny increased with the SEC warning about SPAC accounting practices, projections, and disclosures.

Shortly thereafter, in 2022 and 2023, the SPAC bust was underway as retail investors started losing money. Post-merger stocks plunged and target companies were, in many cases, exposed as fraud. Stanford Law School Securities Class Action Clearinghouse has been tracking SPACs as a trend and listed 116 SPAC Securities Class Actions ("SPAC SCA") filed, including four in 2025. Lawsuits against SPACs also included Delaware Chancery direct actions, alleging breach of fiduciary duty against pre-merger executives of the target companies and SPAC investors by failing to conduct due diligence the go-forward public target companies. A number of SPAC related cases resulted in recorded setting settlements.

One significant SPAC SCA settlement involved blank check merger with oil-and-gas company Alta Mesa, which filed for bankruptcy shortly after de-SPAC. Alta Mesa ended up taking a $3.1B write down, failed to file earnings on time, and was investigated by the SEC for lacking internal controls. The securities fraud case against Alta Mesa settled for $126.3 million. Two other SPAC SCA settlements included the $35 million settlement in the Akazoo securities class action lawsuit and the Clover Health Investments litigation which settled in April 2023 for $22 million.

The Delaware SPAC-related breach of fiduciary duty lawsuits met similar fates. MultiPlan, the first of the Delaware SPAC-related breach of fiduciary duty direct action cases, settled for $33.75 million and the ATI Physical Therapy lawsuits (inclusive of securities class action litigation; derivative litigation; and the Delaware direct action breach of fiduciary duty lawsuits) settled in September 2024 for a combined $31 million.

On top of the number of lawsuits filed, in 2023 to 2024, SPAC deals cratered. Rising interest rates made speculative investments much less attractive, and many SPACs couldn't find good merger targets, causing them to liquidate. 2023 had 193 SPACs announce they were liquidating, with many of these from the Q1-2021 cohort of SPAC IPOs.

Another significant headwind for SPACs was the impact of increasing redemption rates, often exceeding 90% for many deals. SPAC investor redemptions can occur at the time of the target company merger. Investors in the SPAC, often hedgefunds who bought into the IPO, redeem their shares of the SPAC pre-IPO trust account (usually at $10 per share, plus a little interest) instead of staying invested in the deal by rolling their shares into the new merged company.

Because redemptions drain funds in a SPAC's trust, there is less operating capital for the target. For example, if a SPAC raised $300 million, but 95% of investors redeemed, the target public company would only get about $15 million and a number of shares outstanding. Hence why a significant number of De-SPAC'd target companies saw share prices plummet immediately after the merger and increased risk of bankruptcy.

Even though the SEC has issued new rules and amendments requiring enhanced disclosures about conflicts of interest, SPAC sponsor compensation and dilution, the SPAC deal itself remains unchanged. Given the traditional IPO market stalling, more companies in need of liquidity may look to a SPAC merger for access to the public market. SPAC veterans raising capital and the new regulatory framework may result in mergers with better vetted target companies. This increased SPAC deal flow may create opportunities for Public Company D&O underwriters who have experienced an incredibly soft market over the last couple of years.

Before wading back into SPAC infested waters, insurance carriers and retail investors alike should take a beat and remember the not-so-distant SPAC past. Especially in light of the four SPAC SCAs filed this year, including one filed April 18th against Net Power and its directors and officers for false and misleading statements made leading up to the SPAC merger to IPO in 2023.

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Securities Law News
April 30, 2025, 11:33 AM PDT

SEC Says Trio Hid Control of Pot Stock During $21 Million Gain

- **COURT**: E.D.N.Y.
- **TRACK DOCKET:** No. 1:25-cv-02379 (Bloomberg Law subscription)

Corporate insiders wrongly earned $21 million off a securities fraud scheme using the convertible debt of cannabis company American Green Inc., the Securities and Exchange Commission said in a lawsuit.

Peter Jacobs and Albert Golusin, former executives of a predecessor company, and John Scuderi, a former American Green officer, concealed their control of American to skirt trading restrictions and registration requirements, said the SEC's complaint filed in the US District Court for the Eastern District of New York. They buoyed the stock price with false statements and manipulative trading, it said.

Jacobs, Golusin, and their related entities lent money to American Green in exchange for equity-linked bonds, which converted to millions of American Green shares at a steep discount to prevailing market prices when the company failed to repay the loans on time, said the complaint filed Tuesday. Key decisions were often made as a result of Jacobs and Golusin's input, "and in some cases without the input of the CEO," the complaint said.

Trades by Jacobs and his related entities pulled profits of more than $11 million, while Golusin and his groups realized over $10 million, the commission said.

And Jacobs and Scuderi generated interest in and propped up the microcap stock's price through "manipulative trading, promotional campaigns, and false statements" while lucratively selling shares in bulk, the SEC said.

Retail investors were left with "catastrophic losses" from the pump-and-dump scheme, which ran from 2017 through at least 2022, the agency said.

The SEC wants the court to order that all three return any ill-gotten gains, pay civil penalties, be barred from offering penny stocks and other securities, and other relief for alleged securities law violations. The commission also wants the court to ban Jacobs and Golusin from being an officer or director of a public company.

Gartenberg Gelfand Dolukhanyan LLP represents Golusin, Jenner & Block LLP represents Jacobs, and SECIL Law PLLC represents Scuderi. None of these firms immediately responded to emails seeking comment.

The case is SEC v. Golusin , E.D.N.Y., No. 1:25-cv-02379, complaint filed 4/29/25 .

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6 Legal Teams Launch Bids To Lead Rocket Co. Investor Suit

By **Emilie Ruscoe**

Law360 (April 30, 2025, 6:32 PM EDT) -- Six legal teams have submitted bids to represent a proposed class of investors in a suit alleging aerospace company Rocket Lab USA Inc. concealed issues that might affect its timeline for test-launching its Neutron Launch Vehicle.

Firms including some of the securities class action plaintiff bar's frequent filers sought lead counsel appointment before U.S. District Judge George H. Wu and U.S. Magistrate Judge Karen E. Scott in Los Angeles federal court Monday.

In filings associated with those motions for lead plaintiff and lead counsel appointment, the attorneys told the court their clients had seen losses ranging from the mid-20,000s to nearly $847,000 in connection with Rocket Lab's alleged misrepresentations.

Willie Croskrey, who is represented by Glancy Prongay & Murray LLP, claimed losses of nearly $847,000.

Mohamed Hassan, a client of Levi & Korsinsky LLP, claimed losses of nearly $27,000 under one commonly used loss analysis and losses of about $25,500 under another common loss analysis.

Richard Slepko, a client of the Rosen Law Firm PA, claimed losses of nearly $262,000.

Joseph L. Coates, who is represented by Robbins Geller Rudman & Dowd LLP, claimed losses of over $127,000.

Chase Renick, a client of Robert Gruber Law, claimed losses of over $57,000.

And Pomerantz LLP clients Jerald Hayes and Millibani Binoua together alleged losses of over $274,000.

The suit was launched in February by Glancy Prongay client Douglas Bray, who did not seek lead plaintiff appointment.

In the complaint, Bray cited market records showing that trading prices for Rocket Lab shares fell 10% after a short seller's report accused the company of misleading investors about its ability to follow through on plans to test-launch its Neutron Launch Vehicle in mid-2025 as the company faced equipment issues.

Alongside Rocket Lab, the suit names CEO Peter Beck and Chief Financial Officer Adam Spice as defendants.

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

Willie Croskrey is represented by Robert V. Prongay, Charles H. Linehan and Pavithra Rajesh of Glancy Prongay & Murray LLP, the same legal team who represented investor Douglas Bray at the time that he filed the suit.

Mohamed Hassan is represented by Adam Marc Apton of Levi & Korsinsky LLP.

Richard Slepko is represented by Laurence M. Rosen of the Rosen Law Firm PA.

Joseph L. Coates is represented by Jennifer N. Caringal of Robbins Geller Rudman & Dowd LLP.

Jerald Hayes and Millibani Binoua are represented by Jennifer Pafiti of Pomerantz LLP.

Chase Renick is represented by Robert H. Gruber of Robert Gruber Law.

Rocket Lab USA Inc. is represented by Peter Bradley Morrison of Skadden Arps Slate Meagher & Flom LLP.

The case is Douglas Bray v. Rocket Lab USA Inc et al., case number 2:25-cv-01733, in the U.S. District Court for the Central District of California.

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

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Del. Justices Mull 'Deemed' Phrase In AMC Stock Dilution Suit

By **Katryna Perera**

Law360 (April 30, 2025, 9:59 PM EDT) -- The meaning of "deemed to be issued" was the focus of a Wednesday hearing before the Delaware Supreme Court in a case involving AMC and preferred stockholders who say their shares' value was wrongly reduced last year in a deal that settled a hotly contested share conversion and reverse split.

Counsel for the AMC Entertainment Corp. preferred stockholders and a three-judge panel for the Delaware Supreme Court went back and forth over what it means for a stock to be "deemed to be issued," with Justice Gary F. Traynor asking, "If I deemed to wash my car tomorrow, is it clean today?"

Matt Summers of Berger Montague, who represents former AMC preferred equity holder and proposed class representative Michael Simons, responded that the car is not clean today in the same way that the phrase doesn't mean the stock is in stockholders hands, and he acknowledged there is a difference between a stock actually being issued versus being "deemed" to be issued.

According to Summers, because the underlying settlement agreement at issue in the suit defines additional shares of common stock as "all shares of common stock issued (or deemed to be issued) by the corporation ... prior to the conversion date," it is clear that the phrase "deemed to be issued" means something distinct from "issued," and that is what the court needs to decide.

However, Summers added that the court should find that the phrase "deemed to be issued" refers to the record date of the stock's issuance.

AMC argues that the phrase refers to stock that was never issued, but Summers said that definition does not make sense in the context of the settlement agreement since it involves an antidilution provision. If a stock is never issued, it cannot be dilutive, Summers said.

"I think without the understandings that we advance, the phrase 'deemed to be issued' doesn't really seem to be doing any work at all," he added. "It would sort of allow for a circumstance in which … AMC could design a scenario just like this one where there's a record date before conversion and there's a delivery date after conversion and instead of one share for 7.5, it would issue 100 shares per 7.5 or 1,000 shares. It could completely water down the interests of the preferred shareholders."

Under **the settlement**, common stockholders were paid a special distribution of one new share for every 7.5 Class A shares before a 1-for-10 reverse stock split. Holders of preferred shares, however, did not see their shares converted to common under the reverse split until after the 1-per-7.5 distribution had been completed.

In the suit, Simons claims AMC should have issued additional antidilution share rights to the holders of AMC preferred equity units before their holdings converted to common stock Aug. 25, 2023.

Simons argues that under the wording, AMC's multistep, multiday settlement should have converted the preferred shares into a larger, adjusted number of common shares for preferred equity holders before a per-share payout.

Vice Chancellor Morgan T. Zurn, ruling from the bench, **rejected these arguments** last October, finding that AMC did not subvert the agreement and that the settlement "puts clear, unambiguous" constraints on the antidilution provisions.

On Wednesday, John Neuwirth of Weil Gotshal & Manges LLP, who represents AMC, argued that the settlement agreement was not violated, and if the court adopted Simon's arguments, it would conflict with the settlement.

"The settlement agreement adjusted for some of the dilution to the common [stock] that was alleged to be the result of the reverse-stock split and conversion, so the common were benefitting in the settlement and the [preferred equity unit holders] were suffering a bit," Neuwirth said.

"If you were to do what the plaintiff wants here, you would be diluting that very common [stock] that got undiluted by the settlement," he added.

Neuwirth further argued that while the phrase "deemed to be issued" is tied to the record date in some agreements, the current contract "expressly does not do that," and therefore, that meaning cannot be imparted to the phrase in the current action.

Therefore, the phrase "deemed to be issued" refers to stock that was never issued because it went to a family member or an agent even though it was supposed to, or "deemed" to go to a stockholder, he said.

According to Neuwirth, Simons also fails to plead any facts in the complaint that the settlement was deemed to be issued and who did the "deciding" or "deeming."

"And the court below noted that. It said 'plaintiff has not pled a circumstance in which anyone or anything deemed the distribution to be issued and what such a circumstance might entail or who might do the deeming,'" Neuwirth said. "'Here as pled, the distribution was simply issued, not deemed to be issued, and the issuance was after, not before, the conversion date.'"

Chief Justice Collins J. Seitz Jr. and Justices Gary F. Traynor and N. Christopher Griffiths sat on the panel for the Delaware Supreme Court.

Michael Simons and the proposed class are represented by Russell D. Paul, Michael Dell'Angelo, F. Paul Bland and Matthew Summers of Berger Montague.

AMC Entertainment Inc. is represented by Raymond J. DiCamillo, Kevin M. Gallagher and Matthew W. Murphy of Richards Layton & Finger PA, and John A. Neuwirth, Joshua S. Amsel, Matthew S. Connors and Tanner S. Stanley of Weil Gotshal & Manges LLP.

The case is Michael Simons et al. v. AMC Entertainment Holdings Inc., case number 457, 2024, in the Supreme Court of the State of Delaware.

--Additional reporting by Jeff Montgomery. Editing by Kristen Becker.

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Trade Desk Sued In Del. For Docs On Nevada Move

By **Jeff Montgomery**

Law360 (April 30, 2025, 8:42 PM EDT) -- A stockholder of formerly Delaware-chartered branding and marketing venture The Trade Desk Inc. sued on Wednesday in the First State's Court of Chancery for access to company records, citing concerns that the business rechartered in Nevada to derail challenges to its dual-class share structure.

The suit, filed by stockholder Richard Scarantino, points to "seemingly pretextual reasons" for the company's reincorporation, approved in a special proxy vote last year.

"There is good reason to believe that the reincorporation was part of a multistep plan to move the company to a jurisdiction where unaffiliated stockholders would be unable to hold the board to account for extending or suspending the final conversion" to a one-vote-per-share regime "and perpetuating Green's control" over Trade Desk, the suit said, referring to company controller Jeff T. Green.

Delaware Vice Chancellor Paul A. Fioravanti in November cleared the company for a vote that month on reincorporating the digital advertising company after rejecting claims in a stockholder suit that Trade Desk's move requires a supermajority stockholder approval.

The results showed that nearly 74% of Trade Desk's shares backed the move overall. Excluding Scarantino's purportedly conflicted, 55.6% share showed more than 80% of votes rejected the change, the new complaint said.

Trade Desk's re-domestication was cited earlier this year as a symptom of weakening Delaware attractiveness as a corporate hub. The claims figured in debate over state legislation approved in March that eased restrictions on some conflicted corporate acts and limited certain stockholder document inspection demands.

Supporters argued that the legislation was rooted in concerns that state business courts have become less predictable and more open to stockholder challenges that have led to costly damage rulings or threats to company decisions.

Scarantino's suit branded opposition claims as "hollow," asserting that Trade Desk's board claimed that "removing judicial ambiguity can offer our board of directors and management clearer guideposts for action that will benefit our stockholders."

The company's claims failed, Scarantino said, to identify "'ambiguity' in Delaware law or explain how" a different state's "statutory regime with little interpreting law offers any less 'ambiguity.'"

Green owned 42,265,928 high-vote Class B shares as of February 28 and 4,456,258 Class A shares that combined give him control of 48% of the company's total voting power, according to the complaint. But his control would fall to 9.5% under the company's prior corporate conversion plan, which would convert 10-vote "B" shares to 1-vote shares in December.

Documents produced previously by Trade Desk "only invite further questions and were insufficient to enable plaintiff to determine whether the board committed wrongdoing by approving the reincorporation," Scarantino said.

In the meantime, other boards are mulling or acting on re-domestication options, with officials in both Texas and Nevada in particular promoting their states as alternatives to Delaware.

In recent weeks, AMC Entertainment Corp. and Madison Square Garden Sports Corp. have made the jump, as have others. Sphere Entertainment Co. recently reported interest in a move, as well, with periodic tallies of re-domestications now popping up.

In his complaint, Scarantino said that Trade Desk "has refused to produce board-level materials concerning sunsetting of its dual-class structure, notwithstanding" his stockholder demand, or details regarding any conflicts of interest affecting board members, including Green.

Neither counsel for Scarantino nor Trade Desk immediately responded to requests for comment Wednesday.

Scarantino is represented by Sara E. Delia of McCarter & English LLP, William J. Fields, Christopher J. Kupka and Samir Shukurov of Fields Kupka & Shukurov LLP, and Richard A. Maniskas of RM Law PC.

Counsel information for Trade Desk was not immediately available Wednesday.

The case is Richard Scarantino v. The Trade Desk Inc., case number 2025-0442, in the Court of Chancery of the State of Delaware.

--Editing by Melissa Treolo.

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Amazon Can't Claw Back 'Inadvertent' Discovery Docs

By **Emily Sawicki**

Law360 (April 30, 2025, 4:39 PM EDT) -- A Seattle federal judge has ruled that documents Amazon.com Inc. produced as part of three proposed antitrust class actions may not be clawed back, finding that despite the online retailer's claims that they were produced "inadvertently," there was no indication the document-sharing was a mistake.

In a Tuesday order, U.S. District Judge John H. Chun denied an attempt by the e-commerce giant to order plaintiffs to destroy three exhibits it produced, finding, "Amazon's production of the documents at issue was intentional," and permitting the material to be used in the plaintiffs' class certification bids.

Judge Chun noted statements Amazon made during a Jan. 31 hearing, in which the company said it had 80 lawyers working on a privilege re-review, together spending 14,000 hours on individual and in-depth document review. The judge said by March, Amazon adjusted that estimate up to "over 200 lawyers, including outside counsel from five law firms" working on a re-review of close to 140,000 privilege log entries.

In the suits, the proposed classes variously allege Amazon engaged in illegal price fixing, unlawfully suppressed competition and inflated prices by blocking, or attempting to block, sellers from offering items at lower prices at other retailers.

Though Amazon sought to have documents clawed back, the retailer "does not explain how the production of these documents was a mistake," the judge said, later repeating an earlier assessment that "When a party makes a strategic decision that it later regrets, such as redacting a document rather than withholding it completely as privileged, it cannot later claim inadvertence to shield itself from the consequences of its own judgment call."

The team of lawyers spent eight months on the document review, Judge Chun said.

In its arguments to claw back the documents at issue, Amazon invoked both a mutually agreed upon electronically stored information, or ESI, protocol and a protective order that the court approved in the case, stating that both agreements permit the retailer to have the documents destroyed.

Judge Chun found that the protective order overrides the ESI protocol, but the order only applies to "inadvertently" produced documents, and the exhibits in question were handed over on purpose.

The litigation has been fraught with discovery disputes. In a March 25 order, Judge Chun **told Amazon** it must produce dozens of documents it had flagged as confidential, after his in-camera review indicated the company was wrongly withholding internal records. At the time, Judge Chun alluded to the potential of appointing a special discovery master in the case series if the parties were unable to resolve discovery disputes themselves.

The order marks the second time Judge Chun has denied a bid by Amazon to **claw back** documents in the case using similar reasoning. In his March 25 order, the judge ordered that two other documents could not be clawed back, determining Amazon had "intentionally produced these documents with specific redactions after completing a comprehensive rereview of its privilege logs."

Counsel for Amazon and the consumers did not immediately respond to requests for comment Wednesday.

The consumers are represented by Steve Berman, Barbara Mahoney, Kelly Fan and Anne F. Johnson of Hagens Berman Sobol Shapiro LLP, Zina G. Bash, Jessica Beringer, Shane Kelly and Roseann R. Romano of Keller Postman LLC, and Alicia Cobb, Steig D. Olson, David D. LeRay, Nic V. Siebert, Maxwell P. Deabler-Meadows, Elle Mahdavi, Aseem Chipalkatti and Adam B. Wolfson of Quinn Emanuel Urquhart & Sullivan LLP.

Amazon is represented by John A. Goldmark and MaryAnn Almeida of Davis Wright Tremaine LLP, and Karen L. Dunn, William A. Isaacson, Amy J. Mauser, Kyle Smith and Meredith Dearborn of Paul Weiss Rifkind Wharton & Garrison LLP.

The cases are Deborah Frame-Wilson et al. v. Amazon.com Inc., case number 2:20-cv-00424, Elizabeth De Coster et al. v. Amazon.com Inc., case number 2:21-cv-00693, and Christopher Brown et al. v. Amazon.com Inc., case number 2:22-cv-00965, in the U.S. District Court for the Western District of Washington.

--Additional reporting by Rachel Riley and Hailey Konnath. Editing by Kelly Duncan.

Update: This article has been updated with additional information.