

Boeing Gets Appeal of Investors' Class in Safety Statements Suit

Boeing Co. will get review of investors' class status in a suit alleging it inflated its share price with misleading statements about safety, the Fourth Circuit said Friday.

The aircraft maker sought an immediate appeal focusing on the evidentiary proof needed for class certification. The US Court of Appeals for the Fourth Circuit agreed to hear Boeing's case days after Deloitte & Touche LLP and its investors asked the court to pause an appeal on the same issue while they finalize a settlement.

- Two pension plans alleged that Boeing's outsourcing of airplane components increased the risk of manufacturing flaws despite its public statements that it was "laser-focused" on safety; then a 737 MAX 9 door panel blew out on an Alaska Airlines flight in January 2024, allegedly causing stock-price drops
- Judge Leonie M. Brinkema of the US District Court for the Eastern District of Virginia approved the shareholder class in March 2025
- Boeing says she misapplied US Supreme Court precedent on that issue, making it "meaningless" and "toothless" in securities cases

Labaton Keller Sucharow LLP and Robbins Geller Rudman & Dowd LLP are lead counsel for the investors. Sullivan & Cromwell LLP and McGuireWoods LLP represent Boeing.

The case is Boeing Co. v. State of R.I. Office of the Gen. Treasurer , 4th Cir., No. 25-135, 5/2/25 .

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Class Action

May 5, 2025, 9:57AM PDT

Charles River Labs Scrutinized Over Macaque Statements on Appeal

Charles River Labs International Inc. investors' quest to revive their proposed class action alleging misleading statements about the company's sourcing of non-human research primates appeared to get a sympathetic ear at the First Circuit Monday.

The judges at the appellate panel quizzed Charles Labs' attorney on his characterization of CEO and company statements about the drug developer's connection to indicted suppliers and about the effect of the indictments on its business. At least two members of the US Court of Appeals for the First Circuit panel expressed doubt about the company's argument.

The case stems from Charles River's use of Cambodian sources for macaques as the Covid-19 pandemic cut off China's exports of the animals and Cambodian suppliers increased their exports.

The case is *State Tchrs. Ret. Sys. of Ohio v. Charles River Labs. Int'l, Inc.*, 1st Cir., No. 24-01705, argument 5/5/25 .

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Litigation

May 5, 2025, 10:02 AM PDT

Grindr Board Sued Over Billionaire's Buyback-to-Takeover Scheme

- **COURT:** Del. Ch.
- **TRACK DOCKET:** [No. 2025-0477](#) (Bloomberg Law subscription)

Grindr Inc.'s largest stockholder orchestrated a buyback program that would force public investors to pay hundreds of millions for the privilege of handing him majority control, according to a lawsuit.

A shareholder is suing billionaire G. Raymond Zage III and other board members, saying the repurchases are aimed at pushing his stake above 50% after a round of warrant redemptions shrank it to 45%. The scheme "threatens to misuse corporate funds to give Zage control of the company for free," according to the filing in Delaware's Chancery Court.

Zage, founder of Singapore-based Tiga Investments Pte. Ltd., led the consortium that acquired the gay dating app from its Chinese ownership group in 2020 after US regulators raised national security concerns. He also sponsored the special purpose acquisition company that took it public through a blank-check merger two years later, allegedly emerging from the transaction with a 49.5% interest.

The allegations echo a recurring theme in Delaware's elite business court, which regularly hears cases centering on SPAC transactions and the mechanics of corporate control. A wave of shareholder suits have made similar buyback gamesmanship claims in the past few years, although most ended with a settlement or a whimper. A case targeting buybacks at Hertz Global Holdings Inc. is moving toward trial, while one involving Virtu Financial Inc. is still in its earliest stages.

Grindr didn't immediately respond to a request for comment Monday.

According to the lawsuit, the company's board in March authorized up to \$500 million in share repurchases without establishing an independent committee or giving unaffiliated investors a vote. At current trading prices, executing only about three-quarters of those buybacks would make Zage the company's majority owner, while spending the full \$500 million would increase his stake to 52%, the suit says.

The maneuvers allegedly come just after Grindr announced an "exceptional" 2024 and said it's poised for a strong 2025. "Given Grindr's substantial short- and long-term potential, Zage sought to reclaim and cement actual control," according to the May 1 court filing, which says the buybacks will pave the way for "the company to bankroll Zage's usurpation."

The investor leading the case, Scott Fellows, is represented by Grant & Eisenhofer PA and Julie & Holleman LLP. The board hasn't yet made a court appearance.

The case is *Fellows v. Zage*, Del. Ch., No. 2025-0477, complaint filed 5/1/25.

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Class Action

May 5, 2025, 9:07AM PDT

Nursing Home Operator Must Defend Investor Claims in New York

- Judge said lead plaintiff's choice, efficiency favor New York
- Suit targets two stock drops, Medicare fraud allegations

PACS Group Inc. failed to convince a federal judge in New York to move an investor lawsuit alleging the nursing home operator submitted false Medicare claims ahead of its 2024 initial public offering to its headquarters state of Utah.

The "only factor even somewhat supporting transfer" to the US District Court for the District of Utah is where the alleged misrepresentations came from, said Judge Lewis J. Liman of the US District Court for the Southern District of New York, denying PACS' request to transfer the proposed class action.

The court named New York-based 1199SEIU Health Care Employees Pension Fund lead plaintiff in February. Rather than sue elsewhere, the fund chose to join an action in New York, Liman's May 2 order said.

And PACS brass also face a related consolidated shareholder derivative action filed on behalf of a company against its corporate leaders in the Southern District of New York, he said. Considering that the two cases present similar facts and issues, it would be more efficient if both were heard by the same judge, Liman said. Remaining factors, including ease for the parties and witnesses, were neutral in the determination, he said.

PACS—a holding company for post-acute care and senior living facilities operators—wanted to move the case to Utah, where most of its high-level employees are based. Bank underwriters for its 2024 IPO and secondary public offering who are also defendants in the suit concurred with that request.

Investors sued PACS, its current and former executives and board members, and underwriters after a pair of stock drops and short-seller accusations that the company abused a Covid-19 pandemic waiver.

Hindenburg Research, which has since disbanded, said in a Nov. 4, 2024, report that PACS was submitting false Medicare claims, which inflated its net income from 2020 to 2023 and helped it portray a facade of effective growth and profitability before its April 2024 IPO.

Share prices tumbled almost 28% that day, according to data compiled by Bloomberg.

On Nov. 6, PACS said it would delay releasing financial results for the third quarter of fiscal year 2024 after receiving civil investigative demands from the federal government. The stock price again plummeted nearly 39% that day, the stock's steepest one-day fall since opening, according to the Bloomberg data.



The investor suit seeks to represent a class of those who got PACS stock traceable to its IPO paperwork or from April 11, 2024—when the company went public—through Nov. 5, 2024, according to the originating complaint. The suit alleged Securities Act of 1933 and the Securities Exchange Act of 1934 violations.

Labaton Keller Sucharow LLP represents the pension fund. Latham & Watkins LLP represents PACS and leadership. Skadden, Arps, Slate, Meagher & Flom LLP represents the underwriters.

None of the firms immediately responded to emails seeking comment. PACS itself also didn't immediately respond to a request for comment.

The case is *Manchin v. PACS Grp., Inc.*, 2025 BL 149974, S.D.N.Y., No. 1:24-cv-08636, 5/2/25.

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Plug Power Sees Investors' Insider Trading Claims Tossed (1)

- Similar claims were dismissed by New York federal court
- Stock price plunged after accounting issues surfaced

Hydrogen fuel cell maker Plug Power Inc. has fought off more investor allegations of insider trading by its senior leaders.

The Delaware Chancery Court on Friday dismissed a lawsuit claiming Plug Power's directors and executives dumped \$122 million worth of shares just before its stock fell sharply upon news of accounting issues in its 2020 financial statements. A federal court in New York dismissed similar claims in a securities class action in August 2023.

Investors alleged Plug Power, which provides fuel cell products that replace conventional batteries in electric vehicles and other equipment, issued false and misleading financial information about the costs of a transaction with Amazon.com Inc., its most important customer, for warrants under a 2017 purchase agreement.

They also alleged the Plug Power board failed to maintain internal controls governing its financial statements that caused disclosure errors. The board also disregarded, they said, red flags about SEC comment letters and compliance failures under its insider trading policy.

Chancellor Kathaleen St. Jude McCormick found the investors failed to allege "any type of corporate trauma resulting from the purported insider trades," which is required for such red-flag claims, according to her 37-page opinion.

The amended complaint reflects "facts shoved into the boxes of belatedly raised theories," she said. "The inferences just were not there."

The price of Plug Power stock rose substantially by the end of 2020, making the price for Amazon's next tranche of warrants far higher than two previous transactions. Plug Power and Amazon agreed to waive vesting conditions on the remaining warrants in early 2021 and eliminate those long-term costs. The investors said there was "a rush to the exits" at Plug Power to dump shares at a high price when the directors and officers knew substantial changes were due.

A federal court in New York dismissed similar claims in a securities class action in August 2023. Plug Power argued the Chancery Court should reach the same conclusion as the New York judge, who found the board hadn't been aware of any accounting issues until KPMG raised them and delayed the release of the company's full, audited financial statements for 2020.

The investor is represented by Squitieri & Fearon LLP, Rigradsky Law PA, Moore Kuehn PLLC. Plug Power is represented by DLA Piper LLP. Individual Plug Power directors, executives, and former directors are represented by Richards Layton & Finger PA.

The case is *In re Plug Power Inc. S'holder Derivative Litig.*, Del. Ch., No. 2022-0569, opinion 5/2/25 .

(Updates with additional reporting from the opinion.)

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This Week in Chancery Court: Moelis Appeal, Lottery.com SPAC

Attorneys for billionaire dealmaker Ken Moelis will argue before the Delaware Supreme Court this week to overturn a landmark Chancery Court ruling that prompted contentious legislative debate and new corporate law amendments last year.

Here's a look at the courts' calendars:

Wednesday: *Moelis & Co. v. West Palm Beach Firefighters' Pension Fund*, Del., No. 340,2024, oral arguments 5/7/25.

At issue: The Chancery Court in February 2024 invalidated a popular type of stockholder pact, prompting lawmakers to swiftly enact changes that effectively overturned that decision. The new corporate law amendments didn't apply, however, to the litigation that upended the stockholder agreement granting Moelis extensive veto rights at the investment bank he founded. Moelis and the bank have appealed Vice Chancellor Laster's ruling and the \$6 million in legal fees awarded to the attorneys representing the pension fund that led the case.

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

Musk, Moelis Appeals Loom Over Delaware Chancery Caseload (2)

Wednesday: *Murphy v. Mar. Expl. Inc.*, Del. Ch., No. 2025-0031, teleconference 5/7/25.

At issue: A merger involving the wreck of the *Whydah Gally*, a slave ship captured by pirates that sank in 1717, was ordered unwound by the Chancery Court in May 2024. A minority shareholder then sought internal books and records from underwater explorer Barry Clifford's Maritime Explorations Inc., alleging the previous litigation indicated the company's leaders mismanaged assets, obscured their financial dealings, and withheld information about the results of excavations of the shipwreck. Senior Magistrate in Chancery Selena E. Molina presided over a half-day trial in March, and she will now deliver a ruling on the demand for documents.

Court action: Molina will deliver a bench ruling via teleconference.

Unfair Shipwreck Merger Is Unwound by Chancery Court

Wednesday: In re Lottery.com Inc. S'holders Litig., Del. Ch., No. 2023-0395, settlement hearing 5/7/25.

At issue: An investor's 2022 lawsuit alleges the architects of Lottery.com Inc.'s blank-check merger misled shareholders into approving a "catastrophic" deal with a lopsided structure that gave them a windfall no matter what happened. With the court's OK, claims against the backers of Trident Acquisition Corp., the special purpose acquisition company that combined with the former AutoLotto Inc. to take it public as Lottery.com, will be resolved with a \$2.6 million settlement. The accord also would provide the plaintiffs with an "extensive document discovery," according to a proposal awaiting approval from Vice Chancellor Morgan T. Zurn. Deal adviser Chardan Capital Markets LLC, which is named as a defendant, opposes the proposed settlement. Other claims in the litigation remain pending.

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

Lottery.com SPAC Backers Accused of Driving Disastrous Deal (1)

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Activision Investor Wins \$2.5 Million in Fees in Microsoft Case

Attorneys representing an Activision Blizzard Inc. stockholder won a \$2.5 million mootness fee award in Delaware Chancery Court in a case challenging the video game company's \$69 billion merger with Microsoft Corp.

Swedish-state owned pension fund Sjunde AP-fonden is justified in receiving the fee award because its lawsuit challenging the merger on certain statutory grounds ultimately resulted in its validation, Chancellor Kathaleen St. Jude McCormick said in a Friday ruling.

- The pension fund originally sued in 2022, alleging the transaction violated Delaware corporate law when Activision's board members approved only a rough version of the merger agreement
- McCormick denied Activision's motion to dismiss the suit, but the company petitioned the court to approve the merger under a statute that allows courts to validate defective corporate acts, which the court ultimately did
- The pension fund sought a \$15 million award because its lawsuit was rendered moot by Activision's decision to seek the court's validation of the merger

Young Conaway Stargatt & Taylor LLP and Jenner & Block LLP represent Activision and Microsoft. Prickett Jones & Elliott PA and Kessler Topaz Meltzer & Check LLP represents the pension fund.

The case is In re Activision Blizzard, Inc. , Del. Ch., No. 2024-0466, 5/2/25 .

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Lutnick, Cantor to Settle View Inc. SPAC Suit for \$11 Million

- Specialty window maker allegedly understated warranty issues
- Separate Delaware suit over View settled for \$12 million

US Secretary of Commerce Howard Lutnick, the investment bank he used to lead, and others agreed to pay \$11 million to end litigation with View Inc. investors, according to a federal court filing.

The proposed class settlement warrants preliminary court approval, the investors told the US District Court for the Northern District of California on Thursday. The investors sued Cantor Fitzgerald LP—and entities and people associated with it, including Lutnick—along with View and its top executives, seeking to hold them responsible for alleged proxy misstatements. The proxies were issued before the “smart glass” window maker went public in a 2021 merger with a Cantor-affiliated special purpose acquisition company.

The suit is among many legal entanglements faced by companies formed through such mergers. Numerous companies that formed through de-SPAC, or blank-check, mergers have faltered following the deals’ peak in 2020 and 2021, sending investors to the courts. View itself filed for Chapter 11 bankruptcy in April 2024 as part of an agreement with Cantor, RXR Realty, and other stakeholders to bring it private.

The newly announced settlement follows one in the Delaware Court of Chancery in August 2024 over the View de-SPAC merger. The \$12 million deal there was designed to put the allegations “to rest, finally and forever, without in any way acknowledging any wrongdoing, fault, liability, or damages,” the parties said at the time.

But a dispute arose about whether that agreement released the claims in the Northern District of California putative class action, according to the filing Thursday. The lead plaintiff in the latter case, Stadium Capital LLC, objected to the Delaware settlement—and the Chancery court agreed with Stadium that its claims weren’t released, the filing said.

Stadium alleged View, which makes windows with glass panels that adjust in response to the sun, understated its window warranty accruals in the run-up to the merger, including in proxy statements seeking approval for the deal.

Then the merged company announced in August 2021 that its audit committee was investigating the adequacy of those numbers. In November of that year, View said its committee found misstatements, according to the complaint. The company's stock dropped after each announcement.

Judge Beth Labson Freeman allowed some claims to proceed in June 2024.

Kaplan Fox & Kilsheimer LLP represents the lead plaintiffs. Munger Tolles & Olson LLP represents View and its CEO Rao Mulpuri. Morrison & Foerster LLP represents chief financial officer Vidul Prakash. Winston & Strawn LLP represents the Cantor entities and the SPAC directors.

The case is Mehedi v. View, Inc. , N.D. Cal., No. 5:21-cv-06374, motion 5/1/25 .

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Class Action

May 5, 2025, 8:06 AM PDT

Northrop Grumman Hit With Another Schlichter 401(k) Plan Lawsuit

- **COURT:** E.D. Va.
- **TRACK DOCKET:** [No. 1:25-cv-00767](#) (Bloomberg Law subscription)

Northrop Grumman Corp. is facing new litigation over its 401(k) plan from the St. Louis-based law firm that negotiated a pair of multi-million dollar settlements over the plan in prior lawsuits.

The proposed class action, filed May 2 by four former Northrop employees, accuses the aerospace company of mishandling the \$36 billion plan by putting forfeited 401(k) money toward the matching contribution it's required to make, instead of using the funds to reduce administrative expenses. Doing so violates both the terms of the plan and the Employee Retirement Income Security Act, which requires plan fiduciaries to act prudently and loyally toward plan participants, according to the complaint.

The employees are represented by Schlichter Bogard LLC, a firm known for its high-profile ERISA lawsuits and its multimillion-dollar settlements with Boeing Co., Reliance Trust Co., ABB Inc., and other employers. The firm has mounted two prior challenges to Northrop's 401(k) plan: a 2006 class action over plan's administrative fees that settled for \$16.8 million, and a 2016 lawsuit on the same topic that ended with a \$12.4 million deal.

The latest case, filed in the US District Court for the Eastern District of Virginia, is part of a recent wave of litigation challenging how companies handle forfeitures in their retirement plans. The lawsuits center on the portion of an employee's retirement account that comes from contributions made by their employer. Unlike contributions from an employee's salary, which are immediately fully vested, employer contributions can remain unvested for a period of time and can be forfeited in whole or in part when a worker leaves the company shortly after being hired.

The cases say companies violate ERISA when they opt to use forfeitures to reduce the amounts they'd otherwise have to contribute to their plans instead of reducing workers' expenses. Federal judges have greenlighted cases against Clorox Co., Qualcomm Inc., and Intuit Inc., while claims against HP Inc., Honeywell International Inc., BAE Systems Inc., Knight-Swift Transportation Holdings Inc., and Thermo Fisher Scientific Inc., have fallen flat.

The latest lawsuit against Northrop, which follows a March complaint raising similar allegations, seeks certification of a class of 100,000 people and requests a jury trial on "all issues so triable."

Jury trials in ERISA cases are rare, but Schlichter Bogard recently obtained a \$38.8 million jury verdict in a lawsuit targeting a 401(k) plan administered by Pentegra Retirement Services Inc. The parties in that case announced a settlement about a week after the verdict was issued, but details of the agreement aren't yet publicly available.

Northrop didn't immediately respond to an inquiry about the new lawsuit.

The former employees are also represented by Cameron Ingersoll Roche PLLC.

The case is Clouse v. Northrop Grumman Corp. , E.D. Va., No. 1:25-cv-00767, complaint filed 5/2/25 .

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Corporate and Securities Litigation Risk in the New DEI Environment

K [dandodiary.com/2025/05/articles/securities-litigation/corporate-and-securities-litigation-risk-in-the-new-dei-environment](https://www.dandodiary.com/2025/05/articles/securities-litigation/corporate-and-securities-litigation-risk-in-the-new-dei-environment)

Kevin LaCroix

May 4, 2025



Even before the start of the new Trump administration, corporate DEI initiatives faced increasing scrutiny. With the new administration, DEI initiatives face even greater scrutiny. Following Trump's January inauguration, the President and the Attorney General declared that the new administration intends to target what they have called "illegal DEI." The administration's approach creates regulatory and enforcement risks for companies and their executives with respect to DEI issues. And as detailed in a recent law firm memo, these developments could also give rise to increased corporate and securities litigation risks as well, as discussed below. The Winston and Strawn law firm's April 28, 2025, memo entitled "Securities Litigation Risk in the Evolving DEI Landscape" can be found [here](#).

Background

Even before last November's Presidential election, companies found themselves facing scrutiny and pressure concerning their DEI initiatives, as I noted in a prior post, [here](#). Many companies, including, for example, Ford, Harley-Davidson, and Walmart, in response to activist pressures, discontinued their DEI initiatives or otherwise walked back their DEI statements and goals.

Among the first acts President Trump undertook following his inauguration was the issuance of two executive orders staking out a strong policy position against "illegal DEI." On January 20, 2025 – that is, on the day of Trump's inauguration — the White House issued Executive Order 14151, "Ending Radical and Wasteful Government DEI Programs and Preferencing." The next day, the White House issued Executive Order 14173, "Ending Illegal Discrimination and Restoring Merit-Based Opportunity." Collectively, these orders emphasize a shift towards "merit-based hiring practices" and eliminating DEI-related factors in federal hiring, promotions, and contracting. They also mandate federal contractors to certify compliance with anti-discrimination laws and eliminate internal DEI efforts.

In early February, shortly after being sworn in, Attorney General Pam Bondi issued a memorandum entitled “Ending Illegal DEI and DEIA Discrimination and Preferences.” Among other things, the memorandum declared that the DOJ’s Civil Rights division would “investigate, eliminate, and penalize illegal DEI and DEIA preferences, mandates, policies, programs, and activities in the private sector and in educational institutions that receive federal funds.”

In addition to the memorandum, the DOJ also issued a February 25, 2025, press release stating that, consistent with President Trump’s initiative to eliminate “illegal DEI,” the agency was dismissing various DOJ lawsuits that were then pending and involving the hiring of police and firefighters.

On March 19, 2025, the DOJ issued another press release separately stating the DOJ’s position that DEI programs can violate Title VII of the Civil Rights Act of 1964. In conjunction with the press release, the DOJ also issued “technical assistance” documents telling employees what they can do if they believe they have been discriminated against as a result of their employer’s DEI program.

These Trump administration actions signal that corporate DEI programs may face significant scrutiny. The tone and content of the governmental statements also suggest that companies could face regulatory action or even discrimination lawsuits in connection with their DEI programs. As discussed in the law firm memo to which I linked at the top of the post, as a result of these developments, as well as the efforts of activists and others, the new DEI landscape could also mean corporate and securities litigation.

DEI-Related Corporate and Securities Litigation

As I have noted in prior posts on this site, even before the Trump administration’s recent initiatives, some companies had faced DEI-related corporate and securities litigation (as noted, for example, [here](#)). As the law firm memo observed, “even before the recent change in the DEI landscape, plaintiff firms and political groups had begun filing claims against companies, officers, and directors concerning their DEI-related disclosures.”

Perhaps most prominently among these prior lawsuits was the securities class action lawsuit filed in August 2023 by a conservative legal activist group against Target and certain of its executives. Among other things, the plaintiff alleged that Target misleadingly downplayed or failed to warn shareholders about the known risks of customer backlash in response to the company’s Pride Month campaign in June 2023. Significantly, and as discussed in detail [here](#), in December 2024, the court entered an order denying the defendants’ motion to dismiss, finding, among other things, that the company’s risk disclosures “could be materially misleading.”

The law firm memo notes, with respect to the dismissal motion denial in the *Target* case, that “as companies face scrutiny of allegedly ‘illegal’ DEI practices, courts may view the shareholders’ theories advanced in *Target* to be increasingly plausible.”

The memo’s authors further note that governmental action (whether at the federal level or at the state level – for example, through initiatives by state AGs) or employment discrimination litigation, customer complaints, supplier problems, or other issues linked to disputes over DEI, “may lay the groundwork for more shareholder claims alleging that DEI programs created undisclosed litigation, reputational, and financial risks.” The law firm memo notes that the DEI-related litigation risk includes not only the risk of securities class action litigation but the risk of shareholder derivative litigation as well.

The memo also notes that changes in the SEC leadership under the Trump administration could well mean a change in the agency’s approach to DEI as well. During the Biden administration under then SEC Chair Gary Gensler, the SEC identified DEI as a priority with respect to the SEC’s regulation of Capital Markets, as reflected in an interview of Gensler entitled “A Mission for Inclusion.” The law firm memo observes that under the SEC’s new Chair Paul Atkins, “it is hard to imagine the agency will continue on the same path,” adding that “it is more likely that the agency will scrutinize DEI- (and ESG-) related disclosures and, particularly following negative market events, examine whether they accurately conveyed to investors the companies’ DEI practices and associated risks.”

Discussion

There is no doubt that in the new world that has dawned under the Trump administration that the issues surrounding DEI have changed. Now, more than ever, as the law firm memo puts it, “DEI-related disclosures will come under the microscope.” The administration’s actions, as well as the efforts of activist investors, could well lead to further DEI-related corporate and securities litigation.

In light of these litigation risks, the memo suggests that companies take a number of steps with regard to their DEI-related disclosures. First, the memo highlights the importance for companies to ensure that its DEI disclosures “match its practices.” Second, the company should be sure to specify particular risks, as, if the company is “aware of specific DEI-related risks,” a corresponding risk disclosure “is likely to serve as a powerful defense.” The memo adds that where possible, the company should identify DEI statements as forward-looking and take steps to ensure proper oversight relating to DEI.

D&O underwriters worried about the possible sources of applicants’ corporate and securities litigation risks will want to consider the regulatory and litigation risks associated with DEI in the new environment. Many companies have recently altered their public statements about

DEI, and underwriters may well want to consider both the applicant's recently revised statements as well as its prior disclosures in an effort to consider whether the company may attract the unwanted attention of either regulatory authorities or corporate activists.

In any event, in the current environment, the likelihood over the coming months seems to be that DEI-related issues could give rise further corporate and securities litigation, a set of concerns over which many will be keeping a watchful and wary eye.

Litigation

May 5, 2025, 1:30 AM PDT

Corporate Boards Must Assess Who's Responsible for AI Oversight

Brown Rudnick's Matthew Richardson says companies that are integrating and deploying artificial intelligence in their services or products should prioritize board-level AI oversight.

Artificial intelligence is transforming the way businesses operate—from process automation and personalized customer experiences to predictive analytics and fraud detection. Corporate boards and regulators are scrambling to provide proper oversight and regulation to avoid danger.

Board Oversight

Every company, whether public or private, is governed by the state laws in which it's incorporated. These laws cover various aspects of a company's legal existence, including the fiduciary duties owed to shareholders by its directors. One of those duties is the duty of care, which requires directors to act with the same level of diligence as a reasonable person in similar circumstances.

Public companies are also governed by federal law and the rules of the stock exchange on which it's listed, building upon the state law duties (for example, by requiring board committees and setting the composition requirements of such committees). Rules from the Securities and Exchange Commission require certain disclosures of board structures and oversight roles.

Understanding AI is becoming a critical skill for directors, and AI oversight is becoming a critical responsibility for directors. Public companies, absent certain exceptions, are required to have at least three board committees: a nominating committee, an audit committee, and a compensation committee. They may have additional committees to support specific business objectives unique to their company, such as a research committee or risk committee.

Due to AI's breadth of applications (finance, legal, product development, and supply chain functions), it's difficult to narrow the scope of a director or committee of AI oversight responsibility. On the other hand, specialization can provide efficiency—requiring a full board to become AI experts may be impractical. Board-level AI oversight and risk management decisions should be made on a company-by-company basis, but the following pros and cons balancing list may assist in making such decisions:

Full Board Responsibility

- Pro: Requires all directors to assess AI benefits and risks, which may boost risk management coverage.
- Con: This may not be the most efficient use of directors' limited time and attention.

Audit Committee Responsibility

- Pro: AI can be integrated into companies' internal controls and is already being used by independent accounting firms for external audits.
- Con: While important, a focus on financial statement reporting accuracy isn't the only or final application of AI. Such a focus by a board may not adequately address AI risks present elsewhere in the business.

AI Committee Responsibility

- Pro: A company can get the efficiency specialized knowledge provided (e.g., the committee members might all be AI experts) while allowing other board committees to function regularly, likely with input from the AI committee.
- Con: A company may not be exposed to AI benefits and risks to such a degree that a specialized AI committee is necessary or the best use of the directors' time and the company's assets.

Internal Controls

Companies are integrating and deploying AI in their services or products to increase revenue. While it's easy to focus on the external benefits of AI, a potentially major change AI is making happens inside companies, even those not in the business of technology or external AI deployment.

These changes relate to the internal control tools used by a company to safeguard the company's assets and ensure operational efficiency. A subset of internal controls is disclosure controls, which are designed to collect, process, and report material information accurately.

Tools are now available to apply data analytics technology (a form of AI) to support the internal control functions of a company. For example, AI can support the execution of internal audits in at least three ways:

- AI can automate routine and repetitive tasks, allowing internal auditors to focus their efforts on more complex and strategic activities.
- AI can identify anomalies and irregularities in financial transactions, helping discover potential fraud.
- AI can generate customized reports, which may increase reporting accuracy.

However, the use of AI for internal control processes isn't a panacea. Large language models, a form of AI, are prone to mistakes and the dissemination of incorrect information stated as fact. The point of disclosure controls is to catch mistakes (and fraud) and ensure the accuracy of information.

Integrating AI into internal controls is a double-edged sword—it can make the processes more efficient, but, given too much latitude, can do more harm than if it wasn't involved at all.

Given the pace of change of AI tools, companies should revisit their internal controls more frequently (e.g., quarterly or semi-annually) rather than on an "as-needed" basis, which is a surprisingly prevalent and worrisome policy.

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Class Action

May 5, 2025, 9:01AM PDT

Insurance Giants Set to Clash in Court Over M&A 'Bump-Up' Clause

Argument Preview

- **4th Cir. to weigh D&O coverage for post-M&A investor suits**
- **Willis Towers Watson's \$90 million shareholder deal spurs case**

A federal appeals court is set to take up a closely watched dispute over the "bump-up" exclusion—a polarizing insurance provision that dictates who pays for settlements in post-acquisition shareholder litigation.

The case at hand pits insurance broker and consulting giant Willis Towers Watson Plc, represented by star litigator Paul Clement, against its own directors and officers insurers, including units of Chubb Ltd. and American International Group Inc.

They're sparring over whether the D&O bump-up exclusion bars insurance coverage for a \$90 million settlement with shareholders who sued Towers Watson & Co. after it was acquired by Willis under an \$8.9 billion deal in 2016.

The shareholder litigation that often follows major M&A deals is costly, and Towers Watson's dispute with its insurers is one of several high-profile fights over the bump-up exclusion where both carriers and corporate policyholders have opted to seek answers from the courts rather than settling.

The US Court of Appeals for the Fourth Circuit will hear arguments Tuesday addressing whether the Towers Watson settlement represents an increase in transaction price that would be excluded by the bump-up provision.

Other bump-up fights are on appeal before Texas and Delaware state courts, and several others are pending at trial courts across the country.

The Fourth Circuit dispute is unique, however, in that the policyholder and plaintiff is a major insurance broker.

"I can imagine they view this as very significant issue for their book of business," said Mike Manire, a managing partner at Manire Curley LLP who represents carriers.

What's a Bump-Up?

In addition to the high dollar value associated with the post-M&A claims at issue, imprecise wording and a lack of standardization across different carriers' policies have driven litigation over what the bump-up exclusion means, industry professionals and attorneys said.

Some D&O insurers tailor their bump-up language to entice policyholders when the market is competitive, said Larry Goanos, founder and CEO of insurance consulting firm Andros Risk Services. "In a soft market, the carriers cut back on the exclusion, but in a hard market, they broaden the exclusion."

Policyholder attorneys said many insurers have been too aggressive applying the exclusion.

"As these merger objection lawsuits have increased, I think the insurance industry doesn't want to pay and they try to use an exclusion that was never intended to apply to the target company" such as Towers Watson, said Ray Mascia, a policyholder-side lawyer at Anderson Kill PC.

But insurance attorneys said the exclusion targets underpaid acquisitions, no matter which side of the deal the insured entity was on.

"In terms of a moral hazard, I don't see that there's any difference whether the insured is the acquiring company or the acquired company," Manire said.

The exclusion is meant to make explicit insurers' position that if a company is sued for allegedly underpaying in a deal, and then has to pay the difference, there was no loss because it is simply paying the fair price for the entity it acquired, he said.

Most rulings related to the bump-up exclusion have focused narrowly on whether the facts of a particular case fulfill the elements of the provision.

Reverse Triangular Merger

When the Fourth Circuit last took up the Towers Watson case, the appeal focused on whether the transaction was an acquisition that could potentially fall within the bump-up exclusion.

The court held in 2023 that the "reverse triangular merger" was an acquisition for the purposes of the policy, because "Willis gained total possession and control of all ownership interest in Towers Watson and with it all of Towers Watson's assets."

The focus of the current appeal is whether the settlement represents an effective increase in consideration to shareholders. Towers Watson argues that an increase in deal consideration wasn't a viable remedy under the theory of damages asserted in a Virginia suit against it, so the settlement couldn't represent such an increase.

A Delaware trial court adopted that approach in an order earlier this year in a case now before the state's high court, granting summary judgment to Harman International Industries Inc. in its dispute with insurers over the car technology company's \$28 million shareholder settlement following its acquisition by Samsung Electronics Co.

Towers Watson submitted that ruling to the Fourth Circuit as a supplemental authority. But the broker's insurers, several of whom are involved in the Harman case, argued the Delaware court was wrong and that its conclusions are inapplicable because the facts in the two cases are distinct.

'Not in Delaware'

Although the Fourth Circuit's ruling will be pivotal in resolving the Towers Watson case, the appeals panel is relying on Virginia law. Any decision will likely have limited precedential reach due to Delaware courts' dominant role in deciding D&O insurance questions, attorneys pointed out.

"Virginia law might not apply to the interpretation of as many D&O policies as a other states such as Delaware which is the place of incorporation of many companies," said Scott Seaman, a partner at Hinshaw & Culbertson LLP who represents carriers.

Delaware's high court has said Delaware corporations should have their D&O policies interpreted under the state's insurance law principles, and as a result, a large portion of bump-up disputes are governed by Delaware law.

"Even if the determination is to uphold the lower court, it's not going to be a death knell in any way," said Reed Smith LLP partner Carolyn Rosenberg, who represents policyholders. "There's still strong case law for policyholders for the bump-up exclusion not to apply."

But "happily for the insurers in Towers Watson, this is not in Delaware," Manire said.

Clement & Murphy PLLC; Cohen Ziffer Frenchman & McKenna; and Whiteford, Taylor & Preston LLP represent Towers Watson. Arnold & Porter Kaye Scholer LLP represents the AIG unit.

The case is Towers Watson v. Nat'l Union Fire Ins. Co., 4th Cir., No. 24-01302 .

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Arguing Class Actions: Using Rule 23 to Enjoin Governmental Overreach



law.com/nationallawjournal/2025/05/05/arguing-class-actions-using-rule-23-to-enjoin-governmental-overreach

Adam J. Levitt

May 5, 2025

Commentary

Arguing Class Actions is a monthly column for the National Law Journal.

🕒 7 minute read

Class Actions

Since his inauguration, President Donald Trump has issued more than 135 executive orders; many of which have been immediately challenged in court. The cases are a mix of potential class actions, individual actions, and cases brought by organizational plaintiffs on behalf of their members. Many have quickly sought nationwide preliminary injunctions to stay the challenged executive orders.

Nationwide injunctions are judicial orders enjoining the federal government from enforcing challenged laws, regulations, or policies across the United States as a whole. Unlike class actions, where broad injunctive relief is only available once a class is certified and is limited to the members of the class, courts can issue broad nationwide injunctions earlier in the case and provide relief to affected people beyond the plaintiffs in the case without having to satisfy Federal Rule of Civil Procedure 23.

Proponents of nationwide injunctions consider them a vital tool for staying alleged illegal or unconstitutional government policies and staving off potential harm until the policy can be examined by the courts. By contrast, nationwide injunction opponents consider them to be a prime example of judicial overreach that needs to be reined in or disallowed entirely, arguing that class actions, not nationwide injunctions, are the proper way to represent the rights of people affected by a challenged policy who are not in court.

On April 9, the U.S. House of Representatives passed the No Rogue Rulings Act of 2025 (H.R. 1526), which, if enacted, would restrict district courts' authority to issue injunctions. Under H.R.1526, injunctions would be limited in scope to the parties involved in a specific case, except in the case of a certified class action. On April 10, the bill was referred to the Senate Judiciary Committee. The fate of the bill in the Senate remains uncertain.

Shortly before the House passed H.R. 1526, the Senate Judiciary Committee held hearings to discuss the various issues that opponents of nationwide injunctions have raised regarding their use, including the perceived incentive to forum shop for a sympathetic judge. Critics have expressed similar concerns regarding class actions. Yet a plaintiff, as the master of his or her complaint, has the right to choose where to bring their lawsuit. In theory, the same law should be applied the same way by every court. In reality, however, when lawsuits challenging the same government policy are filed in several different district courts—whether they are individual actions or class actions—there’s a risk that some courts uphold the policy, while others strike it down. Given this risk of inconsistent rulings, choosing where to file a complaint is an integral and necessary part of thoughtful and zealous advocacy.

Opponents of nationwide injunctions say this type of careful forum selection creates an imbalance where the government can win every case but one, and if the plaintiff in that one case gets a nationwide injunction, the rest don’t matter, because that one judge has ruled for the whole country. This concern is tempered in a class action, however, where the scope of any injunction is limited to the certified class, and a class will only be certified if the requirements of Federal Rule of Civil Procedure 23 are met.

If nationwide injunctions are eliminated outside of the class action context, the number of class actions challenging federal policies and regulations is expected to increase. Rule 23, as currently applied, however, is a cumbersome and inefficient tool for obtaining timely relief from challenged government policies. In a typical class action, it often takes months, if not years, from the date of filing to certify a class and get the needed injunctive relief. Where the harm from an illegal or unconstitutional government policy is immediate and cannot be corrected later (e.g., mass deportations, revocation of student visas, preventing access to counsel, limiting voting rights), relief in the usual Rule 23 course—with its attendant pitfalls and delays—is too little too late.

One possible solution is making expedited class certification the norm, with case schedules and standing orders focused on completing class certification in a matter of weeks right at the beginning of the case. Where that is too long to wait, plaintiffs can file motions to provisionally certify a class at the outset of the case for purposes of seeking a preliminary injunction or a temporary restraining order. For example, in *J.G.G. v. Trump*, Civil Action No. 25-766 (JEB) (D.D.C.), the plaintiff filed a complaint and simultaneously moved for class certification. The court, finding exigent circumstances, held a hearing on the class certification motion that same day. At the hearing, the court provisionally certified a class of all individuals subject to the challenged executive order and enjoined the government from removing any member of the class from the United States for 14 days, or until further order of the court.

The reality, however, is that ruling so quickly is not the norm, and courts may be reluctant to fast track even provisional class certification. Class counsel will need to educate the court on the need to act swiftly and the propriety of doing so. Briefing on provisional class certification must be expedited. Courts may also be more comfortable if provisional certification of a class is solely for purposes of entering a preliminary injunction or temporary restraining order, with final class certification briefed separately and addressed later on in the case. Preliminary injunctions and temporary restraining orders “merely [] preserve the relative positions of the parties until a trial on the merits can be held and to balance the equities as the litigation moves forward.” *J.G.G. v. Trump*, Civil Action No. 25-766 (JEB), at *6 (D.D.C. Mar. 24, 2025) (quoting *Lackey v. Stinnie*, 145 S. Ct. 659, 667 (2025)). Provisional certification of a preliminary injunction class at the outset of the case protects the status quo until the legality of the challenged policy is resolved. Courts may be more willing to consider provisional certification of a preliminary injunction class once they understand the purpose and limited nature of the provisional class certification request.

Injunctive-relief-only classes are generally certified under Rule 23(b)(2), where “the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief ... is appropriate respecting the class as a whole.” Fed. R. Civ. P. 23(b)(2). This standard will be more difficult to meet and requires greater contravening evidence from the plaintiff, particularly if the government denies that a challenged action is part of a broad policy, as it initially did during Trump’s first term, in a class action that challenged family separations at the U.S. southern border.

Significantly, class actions also sometimes fall short as a vehicle for injunctions because relief is limited to the certified class. A policy may be so broad or so piecemeal that any one plaintiff simply is not representative of the entire group of people affected by the policy, making any class that could be certified underinclusive. Additional subclasses may or may not be able to bridge the gap.

If Rule 23 proves too limited a substitute for today’s nationwide injunctions, then another option is for Congress to expand the availability of class actions, particularly when seeking injunctive relief. As the debate over nationwide injunctions continues to play out, class action attorneys should continue to explore what role they can play to protect vulnerable populations against government overreach.

is a founding partner of DiCello Levitt, where he heads the firm’s class action and public client practice groups. He can be reached at alevitt@dicellolevitt.com.

Thank you to DiCello Levitt partner Nada Djordjevic for contributing to this column.

NOT FOR REPRINT

Apple hit with app developer class action after US judge's contempt ruling

 [reuters.com/legal/litigation/apple-hit-with-app-developer-class-action-after-us-judges-contempt-ruling-2025-05-05](https://www.reuters.com/legal/litigation/apple-hit-with-app-developer-class-action-after-us-judges-contempt-ruling-2025-05-05)

Mike Scarcella

May 5, 2025

The Apple logo is seen at the entrance to the Apple store in Brussels, Belgium, November 28, 2022. REUTERS/Yves Herman/File Photo Purchase Licensing Rights , opens new tab

May 5 (Reuters) - Apple should return hundreds of millions of dollars to developers who claim the iPhone maker defied a U.S. judge's order governing its lucrative App Store, causing them to pay inflated commissions for more than a year, a new lawsuit said.

App developer Pure Sweat Basketball filed the proposed class action on Friday in the Oakland, California, federal court, after a judge ruled last week that Apple defied her order in a lawsuit brought by "Fortnite" maker Epic Games.

The 2021 injunction in that lawsuit was supposed to give developers more freedom to steer consumers outside Apple's App Store for potentially cheaper purchases. Pure Sweat's lawsuit , opens new tab was filed on behalf of as many as 100,000 developers.

The lawsuit estimated that Apple's conduct cost them "hundreds of millions or even billions" of dollars in damages.

"Apple should be made to disgorge its wrongful profit, and developers are entitled to be made whole," the complaint said.

Apple did not immediately respond to a request for comment.

In a statement, Steve Berman, a lead attorney for Pure Sweat, said they were focused on "obtaining justice" against Apple.

The lawsuit follows U.S. District Judge Yvonne Gonzalez Rogers' April 30 ruling that said Apple willfully violated her injunction in the Epic Games case, including by charging developers a new 27% fee when Apple customers complete an app purchase outside the App Store. The injunction became effective in January 2024.

Gonzalez Rogers referred Apple and one of its executives to federal prosecutors for a possible criminal contempt investigation.

Apple denied violating Rogers' order, and the company on Monday filed its notice of appeal.

Pure Sweat said Apple blocked the developer in 2023 from publishing an app for education videos and workouts that contained links to purchase content outside of the app.

“Apple schemed to maintain the status quo, as if no Injunction had entered, retaining its billion dollar in-app payments revenue stream while depriving developers of the intended fruits of the Injunction,” the lawsuit said.

Apple faces other consumer and government lawsuits challenging its business practices. In one such case, Hagens Berman is representing consumers accusing Apple of illegally monopolizing the smartphone market.

The case is Pure Sweat Basketball Inc v. Apple Inc, U.S. District Court for the Northern District of California, No. 4:25-cv-03858.

For plaintiff: Steve Berman of Hagens Berman Sobol Shapiro; and Eamon Kelly of Sperling Kenny Nachwalter

For Apple: No appearance yet

Read more:

Epic Games' Cravath team wins fees in Apple contempt ruling

What's next for Apple after US court's contempt order in Epic Games case?

US judge rules Apple violated order to reform App Store

Apple faces high-powered legal lineup in smartphone monopoly class action

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David Thomas

August 16, 2024

Class Action

May 5, 2025, 7:59 AM PDT

Ascension Health Sued Over Second Data Breach in Eight Months

- **COURT:** E.D. Mo.
- **TRACK DOCKETS:** Nos. [4:25-cv-00626](#), [4:25-cv-00627](#) (Bloomberg Law subscription)

St. Louis-based Ascension Health was hit with two proposed class actions over a December 2024 data breach that allegedly exposed the personal information of tens of thousands of patients.

The breach was the second to hit the health care system in less than 8 months, according to nearly identical complaints filed May 2 in the US District Court for the Eastern District of Missouri.

Jacqueline Tapia and Isabella Casanova alleged in separate lawsuits that Ascension breached its duties under common law, contract law, industry standards, the Federal Trade Commission Act, and the Health Insurance Portability and Accountability Act to implement reasonable and adequate data-security measures and provide adequate notice of the incident.

Information exposed in the breach included names, addresses, phone numbers, Social Security numbers, email addresses, dates of birth, race, gender, clinical information, names of physicians, dates of service, diagnosis and billing codes, medical-record numbers, and insurance information, according to Ascension's April 28 notification letter cited in the complaints.

Ascension, a health system with 140 hospitals in 19 states, didn't respond immediately to a request for comment. The system is also facing consolidated litigation in the Eastern District of Missouri over a May 2024 data breach that affected 5.6 million people. Ascension's motion to dismiss is pending in that case.

Ascension said in the notice letter that the more recent breach happened after it inadvertently disclosed information to a former business partner that was subsequently targeted in a security incident.

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

Each plaintiff seeks to represent a nationwide class of people affected by the breach.

The complaints bring claims of negligence, negligence per se, breach of implied contract, unjust enrichment, and violations of the Missouri Merchandising Practices Act.

The plaintiffs are seeking actual, nominal, consequential, statutory, and punitive damages; injunctive and equitable relief; attorneys' fees and costs; and pre-judgment interest.

KO Lawyers represents Tapia. Milberg Coleman Bryson Phillips Grossman PLLC represents Casanova. Stranch, Jennings & Garvey PLLC represents the plaintiffs in both suits.

The cases are Tapia v. Ascension Health , E.D. Mo., No. 4:25-cv-00626, complaint filed 5/2/25 and Casanova v. Ascension Health , E.D. Mo., No. 4:25-cv-00627, complaint filed 5/2/25 .

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Uphold HQ Defeats Digital Asset Interest Product False-Ad Suit

- Platform offered an interest program on stablecoin product
- Comparisons to traditional banking products aren't actionable

Consumers alleging digital money platform Uphold HQ Inc. deceptively advertised a financial product as "safe" and "fully hedged" failed to show those marketing statements would be materially misleading to reasonable viewers, a federal judge said.

Comparisons of the product to a "traditional banking product" are non-actionable statements of puffery rather than a material misrepresentation, the US District Court for the Southern District of New York said Thursday. Judge Laura Taylor Swain dismissed the suit with prejudice.

The consumers said Uphold's "Earn" product worked with what the platform called "US dollar Stablecoin," a digital asset backed one-to-one with US dollars. Uphold told customers who bought the asset that they could opt-in to Uphold Earn, which would receive competitive interest rates, the consumers' complaint said. The product itself was offered through a separate company, Cred Inc., which is now undergoing bankruptcy proceedings.

In 2020, Uphold removed customers' ability to access Earn or withdraw Earn funds after a liquidity crisis. The consumers alleged Uphold should have known about the decisions and events that led to Cred's bankruptcy. They brought a claim for a violation of New York's General Business Law and a claim for fraud.

But the plaintiffs didn't explain why a reasonable consumer would have interpreted phrases like "functions like a traditional banking product" as "some assurance of Earn's safety as an investment vehicle," Swain said. She said the phrase "traditional banking product" at most implied that Earn was a safe investment, but statements promising a product is a "safe investment" are not actionable factual statements.

The consumers also didn't support their allegations about what reasonable consumers of investment products promising high "guaranteed returns" would care about or the kind of disclosures that Cred made, Swain said.

Additionally, the consumers didn't show how Uphold would have known about Cred's financial condition or access such documents, Swain said.

The consumers were represented by Giskan Solotaroff & Anderson LLP and Lieff Cabraser Heimann & Bernstein LLP.

Uphold was represented by Meister Seelig & Fein PLLC.

The case is Sandoval v. Uphold HQ Inc. , S.D.N.Y., No. 1:21-cv-07579, 5/1/25 .

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California scraps new bar exam for July, adjusts scores on botched February test

 [reuters.com/legal/government/california-scraps-new-bar-exam-july-adjusts-scores-botched-february-test-2025-05-05](https://www.reuters.com/legal/government/california-scraps-new-bar-exam-july-adjusts-scores-botched-february-test-2025-05-05)

Karen Sloan

May 5, 2025

Students take a university entrance examination at a lecture hall in the Andalusian capital of Seville, southern Spain, June 16, 2015. REUTERS/Marcelo del Pozo/File Photo Purchase Licensing Rights , opens new tab

May 5 (Reuters) - California will not administer its newly developed bar exam in July, after the state's Supreme Court on Friday ordered a return to the previous test following a disastrous rollout in February.

The California Supreme Court directed , opens new tab the State Bar of California to use to the Multistate Bar Exam — the 200-question multiple choice portion of the exam the state had used prior to the February test — for the upcoming July test.

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The court said that it “remains concerned over the processes used to draft” the multiple-choice questions that appeared on California's February exam, and it also cited in its decision the “previously undisclosed” use of artificial intelligence in drafting some of California's February questions.

In the same order, the court approved several scoring adjustments requested by the state bar that are intended to address some of the various problems February examinees encountered on the attorney licensing test. The state bar on Friday told examinees that their results, which were originally scheduled to be released on Friday, would be pushed back to Monday as it worked to adjust scores based on the court's order.

A state bar spokesperson declined further comment on Friday about the court's decision.

California has the second-largest number of annual bar exam takers, behind New York. About 8,000 people typically sit for its July exam.

The court-ordered return of the MBE, which is developed by the National Conference of Bar Examiners, is the latest blow to California's efforts to break away from the national bar exam in a bid to cut costs. The February exam was administered both remotely and in-person and did not use any components of the national bar exam that the state has used for decades. That change was expected to save as much as \$3.8 million annually by eliminating the need to rent out large event spaces, but examinees faced unprecedented technical and logistical problems.

The California Supreme Court in March ordered the July exam to be given in-person at testing centers, meaning that the upcoming test will have the same format and test components as before the development of California's own exam.

The state bar now projects that addressing the problems from February's exam will cost at least \$2.3 million more than anticipated for July. State Bar Executive Director Leah Wilson on Friday said she will step down from that post in July, citing the botched rollout of the new bar exam.

The court's order sets the raw passing score for the attorney licensing exam at 534 — lower than the 560 score recommended by its standardized testing expert who looked at February's results. Raw pass scores can fluctuate each year and are converted according to a standardized scale. The order also directs the state bar to "impute" scores for test takers who weren't able to complete significant portions of the two-day exam.

Read more:

California Bar leader to step down amid exam debacle

California bar exam meltdown on Tuesday prompts offer of March retakes

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

- LegalProminent California lawyer abused pandemic loan program, prosecutors say



David Thomas

August 16, 2024

Slamming Boxes, Dirty Looks: Georgia Judge in \$2B Roundup Verdict Threatened Plaintiffs' Lawyers With Contempt Order

 [law.com/dailyreportonline/2025/05/05/slamming-boxes-dirty-looks-georgia-judge-in-2b-roundup-verdict-threatened-plaintiffs-lawyers-with-contempt-order](https://www.law.com/dailyreportonline/2025/05/05/slamming-boxes-dirty-looks-georgia-judge-in-2b-roundup-verdict-threatened-plaintiffs-lawyers-with-contempt-order)

Amanda Bronstad

May 5, 2025

What You Need to Know

- "There is no other judge in this building that would have put up with what I have put [up] with," Cobb County State Court Judge Jane Manning said on March 19, according to a transcript.
- The judge reminded the lawyers who weren't from Georgia, "I expect to be respected not because of who I am, but because I wear a robe in this courtroom."
- In a joint statement, plaintiffs' lawyers at Arnold & Itkin, Bayuk Pratt and Barnes Law Group said, "We always show great respect to the authority of the court."

Days before a jury hit Monsanto with a \$2 billion Roundup verdict, a Georgia judge threatened to hold the plaintiffs' lawyers in contempt for their lack of courtroom decorum.

They were slamming boards and boxes, giving her dirty looks and "joking and snickering," not to mention badgering witnesses. She threatened to use her contempt powers to remove their pro hac vice status, stating that the behavior had "gotten out of control."

"There is no other judge in this building that would have put up with what I have put [up] with for the last two weeks, three weeks. There's not one," Cobb County State Court Judge Jane Manning told lawyers on March 19 after the jury left, according to a transcript of the proceedings. "You have abused my good nature, and it's coming to an end."

However, the next day, the judge told lawyers she would not hold a contempt hearing, according to a March 20 transcript. The judge's failure to punish their behavior, according to Monsanto's motion to toss the March 21 verdict, violated their due process rights.

"Throughout three weeks of trial, plaintiff's counsel put on an incessant show of belligerence, harassment of witnesses on the stand, argumentativeness, loud and disruptive conduct during testimony, vulgar language, physical aggression toward opposing counsel, and—above all—constant disrespect and criticism of the court within earshot of the jury," William Holley, of Atlanta's Bradley Arant Boult Cummings, wrote in the motion, which attached transcripts from March 19 and other parts of the trial.

Holley added: "Despite the court's acknowledgment of plaintiff's counsel's misconduct, the court did not correct or admonish the misconduct in the presence of the jury, which could only leave the jury with the impression that the court tacitly condoned the conduct or that it was appropriate advocacy."

Most of the judge's focus was on plaintiffs' lawyers at Houston's Arnold & Itkin—specifically, Kyle Findley, Noah Wexler, John Grinnan, Roy Buckmaster and Kala Sellers—who led the trial. But she also referenced Frank Bayuk, of Bayuk Pratt in Atlanta. Roy Barnes and John Bevis, of Barnes Law Group in Marietta, and Christopher Gomez, of Philadelphia's Kline & Specter, were additional members of the plaintiffs' team.

Findley, Sellers, Wexler, Grinnan, Bayuk, Barnes and Bevis, in a joint statement, said, "We always show great respect to the authority of the court."

"Our client has terminal cancer caused by Monsanto's product, and we are proud of how we represented him in this important case," they continued. "The evidence revealed that Monsanto has been poisoning people with Roundup for decades, and has refused to take any accountability for the extensive harm it has caused. Even today, Monsanto refuses to take responsibility despite the overwhelming evidence and consequential jury verdicts against them across the country. Despite litigating against this type of company, and while we always represent our clients zealously, we also always do so within ethical bounds and with deference to the court."

'I Expect to Be Respected'

The trial, which began on March 3, is the latest in a long string of Roundup verdicts across the country. Arnold & Itkin and Kline & Specter previously got Roundup verdicts in the Philadelphia Court of Common Pleas, including a \$2.25 billion award in 2024. That verdict was later reduced to \$404 million. But juries also have come out with defense verdicts.

The case before Manning, a judge in Marietta, was the first Roundup trial in Georgia and involved plaintiff John Barnes, who was diagnosed with non-Hodgkin lymphoma in 2020. It was originally planned for trial last year, but Manning, upon selecting a jury, declared a mistrial on Aug. 15, stating that the lawyers were "nowhere near ready to try this case."

Monsanto was represented by Holley and another Bradley Arant partner, R. Thomas Warburton, and associates Rachel Bramblett and Carmen Weite. Also on the defense team were Nelson Mullins Riley & Scarborough partner John Kalas, in Washington, D.C.; Robert Ingram, of Moore Ingram Johnson & Steele in Marietta; and Randy Soriano, of Bryan Cave Leighton Paisner in St. Louis, Missouri.

Monsanto's new trial motion cited numerous problems with the trial, including evidentiary errors relating to the number of Roundup bottles the plaintiff purchased, and the U.S. Environmental Protection Agency's position on the safety of glyphosate, the pesticide's key ingredient. Monsanto is also challenging the constitutionality of the \$2 billion in punitive damages, which are 30 times the \$65 million compensatory award, and jury instructions relating to causation.

But the trial was also "rife with impermissible conduct," the motion says. The judge's concerns about attorney conduct began the first week of trial.

"I have to comment on my concerns about the behavior of some of the attorneys in this courtroom, mainly on the plaintiff side," Manning told lawyers after the jury left on March 7, according to a transcript attached to Bayer's new trial motion. "There's throwing of boards, slamming down of papers, slamming down boxes."

She referred to Grinnan's "outburst" and "facial expressions" by Sellers, and, in general, lawyers interrupting witnesses.

"And two times, Mr. Findley, I thought was pretty contemptuous of me," she continued. On one occasion, she said, he "gave me a dirty look, OK?"

She reminded the lawyers who weren't from Georgia, "I expect to be respected not because of who I am, but because I wear a robe in this courtroom."

At one point, Findley apologized, stating, "If I dropped a board because it slipped out, I wasn't trying—"

"It was repeated," the judge interjected. "It was repeated."

Frank Bayuk, Bayuk Pratt, Atlanta.

More than halfway through the trial, the judge still had concerns, which, according to the March 19 transcript, started at voir dire, when Findley and Bayuk, while facing prospective jurors, were "joking and snickering." On the first day of testimony, she continued, Sellers and Grinnan were "making faces and guffawing and I had to call them out."

"And it has continued until today when—it is a continuation of Mr. Findley badgering witnesses, being openly disrespectful to the court," she said. "I have had reports that Mr. Findley goes over and talks to Mr. Bayuk behind the TV screen and says what the fuck is her problem. And there's facial expressions, and it has gotten to a point where I am about ready to use my contempt powers."

Monsanto's motion also cited her stating, "Many, many reports have come back to me about your disrespect of me, Mr. Findley, from court personnel. Dozens, dozens ... And you know what, I wonder about these cases when the plaintiff, the actual plaintiff, isn't here. How do you feel Mr. Barnes would look at your behavior in this courtroom? Just because your client isn't here does not give you free rein to act like a petulant teenager. Would your client be proud of what happened this afternoon?"

Among the misbehaviors, she said, were speaking objections and interrupting the judge. Then, she had a message for younger lawyers watching the proceedings, according to Monsanto's motion: "I would say to the younger attorneys, be careful who your mentors are. Be very careful."

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Trending

New Suit - Copyright

Grammy Award-winning artist Beck, rappers Jim Jones and Raekwon, Universal Music Group, Warner Music Group and other defendants were named in a copyright infringement lawsuit on May 5 in Illinois Northern District Court. The action was brought by Sean M. Mulrone & Associates on behalf of Chicago-based funk band Rasputin Stash and other plaintiffs alleging that the defendants sampled the 1971 songs 'Mr. Cool' and 'Dookey Shoe' in multiple recordings without authorization, including Beck's 1996 album 'Odelay,' which sold millions of copies across the USA and Canada, as well as in subsequent works by Jones and Raekwon released in 2006 and 2009 respectively. The case is 1:25-cv-04896, Rasputin Stash LLC.

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US judicial panel advances proposal to regulate AI-generated evidence

 [reuters.com/legal/government/us-judicial-panel-advances-proposal-regulate-ai-generated-evidence-2025-05-02](https://www.reuters.com/legal/government/us-judicial-panel-advances-proposal-regulate-ai-generated-evidence-2025-05-02)

Nate Raymond

May 2, 2025

AI Artificial Intelligence words are seen in this illustration taken, May 4, 2023.

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May 2 (Reuters) - A federal judicial panel advanced a proposal on Friday to regulate the introduction of artificial intelligence-generated evidence at trial, with judges expressing a need to swiftly get feedback from the public and lawyers on the draft rule to get ahead of a rapidly evolving technology.

The U.S. Judicial Conference's Advisory Committee on Evidence Rules in Washington, D.C., voted 8-1 in favor of seeking public comment on a draft rule designed to ensure evidence produced by generative AI technology meets the same reliability standards as evidence from a human expert witness.

The proposed rule is designed to address concerns about the reliability of the processes used by computer technologies to make predictions or draw inferences from existing data, akin to issues courts have long addressed concerning the reliability of expert witnesses' testimony.

The reliability of testimony of expert witnesses who rely on such technology is already subject to scrutiny under the Federal Rules of Evidence. But the rules do not currently cover what would happen if a non-expert witness used an AI program to generate evidence without any knowledge of its reliability.

Under the proposal, AI and other machine-generated evidence offered at trial without an accompanying expert witness would be subjected to the same reliability standards as expert witnesses, who are governed by Rule 702 of the Federal Rules of Evidence. The rule would exempt "basic scientific instruments."

The proposal now goes to the Judicial Conference's Committee on Rules of Practice and Procedure, the top judicial rulemaking body, which will vote at its June meeting on whether to publish the proposal for public comment.

Some judges expressed uncertainty about whether such a rule should ultimately be adopted, and a representative for the U.S. Department of Justice, Elizabeth Shapiro, was the lone vote against it, citing concerns about how it would be deployed.

But committee members expressed a general view that they needed to at least get a draft rule out for public comment in order to gather information and avoid having the normally years-long rulemaking process prevent the judiciary from keeping up with the evolving technological landscape.

U.S. District Judge Jesse Furman, a Manhattan-based judge who chairs the panel, said he was unsure whether he would ultimately back finalizing the rule but was "genuinely interested in what the world has to say about this thing."

"I think sometimes when you put something out for notice-and-comment there's kind of an assumption that it's a train that's moving forward to final approval," Furman said. "Here I think there are a lot of questions that we need to work through."

The proposal comes amid broader efforts by federal and state courts nationally to address the rise of generative AI, including programs such as OpenAI's ChatGPT that are capable of learning patterns from large datasets and then generating text, images and videos. Chief U.S. Supreme Court Justice John Roberts in his end-of-the-year annual report in December 2023 cited the potential benefits of AI for litigants and judges while saying the judiciary would need to consider its proper uses in litigation.

Read more:

[US judicial panel to develop rules to address AI-produced evidence](#)

[US judicial panel wrestles with how to police AI-generated evidence](#)

[US appellate judge calls bans on AI use by lawyers 'misplaced'](#)

[US Supreme Court's Roberts urges 'caution' as AI reshapes legal field](#)

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Litigation

May 5, 2025, 10:10 AM PDT

Over Two-Thirds of Lawyers Leave DOJ Civil Rights Unit in Exodus

- Roughly 70% of lawyers have left civil rights division since January
- Division is prioritizing conservative causes

Roughly 70% of attorneys at the Justice Department's civil rights division are leaving or were reassigned in recent months, according to multiple people familiar with the departures, as Trump administration officials prioritize ideological priorities over its historic missions.

The recent or upcoming departures of more than 250 of the division's approximately 380 lawyers since President Donald Trump took office follows efforts by political leadership to refocus its resources toward conservative priorities, including anti-Christian bias and gun rights. Established in 1957 during the civil rights movement, the division has historically enforced anti-discrimination laws in voting, education, housing, and other areas.

Assistant Attorney General Harmeet Dhillon, the political appointee leading the division, has said she is "fine" with career attorneys leaving the division and signaled plans to hire new lawyers to replace them who are willing to enforce civil rights that are in line with Trump's priorities.

"What we now need to do once the dust settles and people are off the books, is, we are looking at resumes of lawyers who want to do that work," Dhillon told conservative commentator Glenn Beck in late April. "I don't care what their politics are, it is not relevant. I do care that they're willing to take direction and zealously enforce the civil rights of the United States according to the priorities of this president. They're not surprising, they're literally on the Internet in executive orders. And the statutes are there as well."

Since Dhillon was sworn roughly a month ago, the division announced new mission statements for its various sections that focused on Trump's executive orders against transgender women in sports, eradicating anti-Christian bias, and fighting antisemitism. Dhillon previously worked as Trump's personal attorney and previously argued conservative positions in cases involving religious liberty, treatment for transgender minors, and censorship on college campuses.

Despite the departures of most career attorneys, Dhillon announced May 3 on social media that the division had opened an investigation into whether prosecutors at a Minnesota county attorney's office engaged in a pattern of discrimination by considering racial identity in its decision-making process for plea deals.

Under her leadership, the division has also changed its position in a pair of federal cases in Georgia to no longer argue in favor of imprisoned transgender people receiving gender-affirming care and terminated a settlement related to sewage problems in a primary Black county in Alabama.

The department renewed its deferred resignation offer to employees last month, allowing them to go on paid leave for several months before formally separating.

The Guardian reported earlier that roughly 70% of the division had left or been reassigned.

A Justice Department spokesperson declined to comment Monday on the departures.

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Litigation

May 5, 2025, 2:30 AM PDT

Trump Climate Suits Targeting States Seen as Shockingly Flimsy

- **Trump administration defends fossil fuels in climate fight**
- **Lawsuits likely to be tossed after motion to dismiss, attorneys say**

The Trump administration's preemptive lawsuits against states pursuing climate litigation are unlikely to be taken seriously in court, attorneys say.

Judges are almost certain to throw out the Justice Department's cases filed last week against Hawaii and Michigan, which were sued over then-unfinished plans to take oil companies to court for their role in climate change, said Daniel Esty, a Yale Law School professor and Connecticut's former energy and environment commissioner.

"There has never been in our legal system any right to sue on hypothetical things," Esty said. "It's bordering on bad faith."

Hawaii has since decided to forge ahead with its climate change suit, while Michigan's still doesn't exist in the public record.

The Trump administration's 24-hour lawsuit spree targeting climate friendly states may not curb ambitious policies and legal strategies writ large, but it certainly shows an unprecedented level of vindictiveness that could rattle states, said Sam Sankar, an attorney and senior vice president for programs at Earthjustice.

"It's shocking to see the federal government leaping to the oil industry's defense," Sankar said. "That's a terrible irony in a time where we are more concerned about the environmental toll of the oil industry than ever before."

The lawsuits come just over three weeks after President Donald Trump ordered the Justice Department to go after state climate policies and litigation that could curb energy deployment, violate the Constitution, or usurp the federal government's authority.

"These burdensome and ideologically motivated laws and lawsuits threaten American energy independence and our country's economic and national security," US Attorney General Pamela Bondi said in a statement on May 1.

Climate Deception Lawsuits

The Justice Department first sued Michigan and Hawaii April 30, saying the states' own plans to sue fossil fuel companies for alleged climate change deception would impose an excessive burden on energy producers and raise consumer prices.

In theory, plaintiffs could preempt a lawsuit if they could show that the mere filing would cause immediate harm. But the federal government didn't make that argument, Sankar said.

"I would be shocked if this went through the normal DOJ processes—I suspect that it came from a political operative at the White House," he said. "I can guarantee you that a court will toss these out."

Hawaii Attorney General Anne Lopez on Thursday rebuked the administration's lawsuit, calling it "deeply disturbing" and a "direct attack on Hawaii's rights as a sovereign state." She filed her climate change case in the state's First Circuit Court the same day.

The Hawaii state case joins cases from Honolulu and Maui, which are still pending in local benches after lengthy procedural wrangling over whether the cases should be punted to federal jurisdiction. Honolulu's lawsuit was moved forward by the Hawaii Supreme Court in October 2023, and is now closer to trial after the US Supreme Court refused to weigh in on the case in January.

Hawaii's lawsuits are part of a long line of similar litigation—now more than two dozen strong—against oil and gas companies that have been rolling through courts since 2018. States, cities, and counties have used a variety of claims to try and hold companies accountable for what they claim are campaigns of deception around climate change that they used to sell more fossil fuels.

The litigation has seen mixed results in recent months, with multiple courts in Maryland, Delaware, and elsewhere ruling that the plaintiffs don't have standing for some or all of their claims. But Hawaii and Massachusetts courts have handed victories to plaintiffs, pushing at least a few lawsuits closer to trials that could reveal a potential landslide of information on what companies did and didn't know about climate change.

Climate Superfund Laws

The Justice Department followed its preemptive lawsuits with two more actions against Vermont and New York on May 1. The states created a "transparent monetary-extraction scheme" by enacting laws seeking retroactive fossil fuel fees for climate change damage, according to the filings.

The same day, a coalition of red states led by West Virginia also sued Vermont over the same law, calling it a "retroactive and extraterritorial shakedown." The same coalition sued New York in February.

The American Petroleum Institute—which has been a plaintiff in "climate Superfund" litigation and a defendant in recent climate change deception litigation—praised the Justice Department's decision.

"The Trump Administration gets it," general counsel Ryan Meyers said in a statement. "This cadre of state lawsuits and laws is not only an attack on the companies that provide Americans with affordable and reliable energy, but also an unconstitutional affront to the federal government's role in setting national energy and climate policy."

But Michael Wall, chief litigation officer for the Natural Resources Defense Council, said in a press release that the government's cases ignore states' constitutionally protected rights.

"The Department of Justice should be suing the corporate polluters that are poisoning our communities; rather than suing states trying to protect their own residents," Wall said.

The Trump administration's intent was to create a chilling effect on state climate action, said Justin Balik, Evergreen Action's vice president for states. But ambitious state policy will continue even if the federal government fights back, he said.

A small number of states might get spooked, but a far larger number of states will know their rights and keep going, said Esty, the Yale law professor and former Connecticut commissioner.

"This is obviously going to be litigated, and I predict the states will win," he said.

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Litigation

May 5, 2025, 1:45 AM PDT

Trump Returns to Red State Appeals Lawyers to Fill Judgeships

- **State attorneys, solicitors general to be favored for posts**
- **Have been on front lines of critical conservative legal issues**

President Donald Trump returned to a favorite source of battle tested conservative lawyers to fill judicial vacancies in picking the first nominee of his second term: the ranks of state attorneys and solicitors general and their staff.

Tennessee state litigator Whitney Hermandorfer, who Trump plans to nominate for the US Court of Appeals for the Sixth Circuit, continues a trend from his first term of him turning to young lawyers on the front lines of issues critical to the conservative legal movement.

Roughly 17% of Trump's appellate nominees had experience in a state solicitor general role, according to a Bloomberg Law analysis. Top appellate litigators who've defended the interests of Republican-controlled states in the realm of gun rights, abortion, immigration, transgender issues, and federal regulatory power generally, particularly under the Biden administration, will be among the most attractive candidates for trial and appellate seats as Trump looks to cement his judicial legacy with even more young, ideologically-committed conservatives.

"This administration wants people who have a track record of showing that they're not afraid to take positions that are bold, that stick up for the Constitution even when it's not popular, or when it's contrary to what used to be the mainstream view of how law should be done," said Benjamin Flowers, former Ohio solicitor general.

"And state solicitors general, just by virtue of the position, do have a lot of experience doing that," Flowers said.

Reliable Pipeline

Hermandorfer, whose selection drew praise from conservatives of all stripes, fits the mold perfectly.

As director of strategic litigation in Tennessee's Attorney General's office, she has appeared before federal trial judges and appellate panels to defend the state's near total ban on abortion in instances when life-threatening pregnancy complications arise. Hermandorfer also argued against a Biden Education Department Title IX rule aimed at strengthening protections for transgender students. She also clerked for three conservative jurists now sitting on the US Supreme Court.

"She is a brilliant lawyer who has bled on the battlefield of the conservative legal movement by defending children from abortionists and transgender activists," said Robert Luther III, a former Trump White House lawyer who handled judicial nominations and founder of Constitutional Solutions PLLC.

Another state litigator who has made a name for himself is Scott Stewart, Mississippi's solicitor general, who successfully argued before the Supreme Court in the landmark case *Dobbs v. Jackson Women's Health Organization* that overturned the constitutional right to an abortion.

Stewart, a former Justice Clarence Thomas clerk, was appointed Mississippi's solicitor general early 2021 before he made his high court debut that year to defend the state's 15-week abortion ban. The 2008 Stanford Law grad was previously a lawyer in the Justice Department's Office of Legal Counsel and the civil division under Trump, and a Gibson Dunn associate in Washington.

Other rising stars include Edmund LaCour, Alabama's solicitor general, who defended the state's ban on transgender medical care for youth known as "gender affirming care" and its "race neutral" congressional district map before the Supreme Court. He was previously nominated to the US District Court for the Middle District of Alabama but was blocked by then-Sen. Doug Jones (D-Ala.). The 2011 Yale Law grad was a partner at Kirkland & Ellis in Washington and a clerk for Judge William Pryor Jr. of the Eleventh Circuit.

Burgeoning Talent

State solicitors general, who typically answer to the state attorney general, are a relatively new phenomenon. Their proliferation in recent decades is intended to increase the quality of states' advocacy at the Supreme Court and in other appeals courts.

Traditionally meant to protect state interests against federal encroachment, state solicitors general in recent administrations have also assumed more political roles as states controlled by the opposite party challenge the sitting president's policies.

In Republican-led states, who've led the charge in investments to state SGs, the top appellate advocate post has been a training ground to prime up-and-coming conservative lawyers.

"It's become kind of an area where really excellent, relatively younger appellate lawyers gain prominence and litigate appellate matters on behalf of their states," said Michelle Kallan, former Virginia solicitor general and co-chair of Steptoe's appeals and advocacy practice.

Trump put a similar premium on that experience in seeking out young conservatives for the bench in his first term. Alabama Solicitor General Andrew Brasher was confirmed to the Middle District of Alabama at just 38, before Trump elevated him to the Eleventh Circuit.

Trump Fifth Circuit appointees James Ho, Kyle Duncan, and Andrew Oldham all previously had state SG-related posts in Texas.

Challenges to the Biden administration mean Trump now has a pool of young conservative lawyers to choose from with experience litigating against the Democratic president's policies or defending conservative interpretations of the law.

Trump will be relying on older, more moderate Republican-appointed judges to step aside and create more vacancies. He has 45 current open lifetime judgeships to fill, and 15 future vacancies. Six of those openings are on appellate courts.

"The conservative legal movement has been extremely effective at identifying people who are ideological true believers and getting them credentialed, getting them the attention of the White House, and getting them onto the bench," said Carolyn Shapiro, former Illinois solicitor general and founder and co-director of Chicago-Kent's Institute on the Supreme Court of the United States.

"I don't think there's anything comparable to that sort of coordination on the other side," she said.

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Company Accused of Organizing National Rental Housing Cartel Goes on Offense as Trump DOJ Mothballs Price-Fixing Case

 [nakedcapitalism.com/2025/04/company-accused-of-organizing-national-rental-housing-cartel-goes-on-offense-as-trump-doj-mothballs-price-fixing-case.html](https://www.nakedcapitalism.com/2025/04/company-accused-of-organizing-national-rental-housing-cartel-goes-on-offense-as-trump-doj-mothballs-price-fixing-case.html)

April 24, 2025

The DOJ and eight states on August 23 sued the private equity-owned company that allegedly operates as the middle man in a national property management cartel that has sent rent through the roof. The civil lawsuit accuses RealPage of using the software it sells to real estate management companies to orchestrate an illegal price-fixing scheme, which all but eliminates competition among mega landlords, allows them to boost prices, and acted as a major factor in skyrocketing rents in recent years.

RealPage and the rental management companies, many of which are private equity-owned, are also facing dozens of class action lawsuits from tenants. A separate lawsuit against Santa Barbara-based Yardi, a company similar to RealPage, accuses it of using its RENTmaximizer (now Revenue IQ) product to do exactly what RealPage is accused of doing. The DOJ also opened a criminal investigation into RealPage, and the large apartment owners and managers that use the company's pricing software, to determine if the firm is facilitating price fixing.

Back in December, the DOJ closed its criminal investigation into price-fixing practices in the multifamily rental housing industry. It increasingly looks as though the civil antitrust suit will be next.

US Attorney General and corporate lobbyist and foreclosure fraudster Pam Bondi is leading a house cleaning operation at the Justice Department, getting rid of or sidelining career supervisors who were responsible for going after corruption, price fixing, securities fraud, and other crimes. That doesn't bode well for the effort against RealPage Here's Propmodo, putting it politely:

...it appears that the RealPage case may not be a priority for federal prosecutors. Andrew Ferguson, head of the FTC, has stated that mergers and acquisitions are the primary focus of the current team. Gail Slater has also focused on mergers; during her time at the FTC, she worked to block several high-profile deals, including Whole Foods' attempt to acquire Wild Oats Markets. She has further experience working alongside tech companies, having served as vice president for legal and regulatory policy at the Internet Association, a tech lobbying group.

There is still a distinct possibility that the DOJ will continue its probe into property pricing software. But, the new DOJ seems less concerned about algorithmic pricing schemes and more focused on preventing large-scale mergers.

Arizona Attorney General Kris Mayes said in March that she is worried the federal RealPage lawsuit could be on the chopping block. The Trump administration has also declared open season for various forms of white-collar crime, such as foreign bribery, public corruption, money laundering and crypto markets.

Many defense lawyers, encouraged by the shift, have urged prosecutors to drop cases or probes, and their wish has been granted. In December, lawyers for RealPage asked that the U.S. District Court for the Middle District of North Carolina dismiss the antitrust lawsuit brought against it by the Department of Justice and 10 states. The court has yet to rule on that request, but there are signs that the Trump DOJ might "deprioritize" the case regardless.

Meanwhile, on April 2, RealPage, which is owned by private equity giant Thoma Bravo, announced that it has filed a lawsuit against the City of Berkeley, California for passing an ordinance barring local landlords from using AI-driven pricing algorithms to set residential rents.

RealPage claims Berkeley seeks to "prohibit the use of math" and publicly available information to "provide advice or recommendations" to its customers who own and manage rental housing properties and this amounts to a ban on "lawful speech." Berkeley City Attorney Farimah Faiz Brown told Reuters the following:

"RealPage has no First Amendment right to engage in, or facilitate, unlawful pricing alignment, coordination or fixing," Brown said via email, adding that the city, represented by Kecker, Van Nest & Peters, "intends to vigorously oppose RealPage's lawsuit."

Let's take a quick look at a few of RealPage's claims that accompanied its suit against Berkeley.

RealPage says its customers are “never punished” for declining “recommendations.” and that it “makes price recommendations in all directions – up, down or no change – to align with property-specific objectives of the housing providers using the software.”

They would appear to be more than just mere recommendations. From one of the lawsuits against RealPage:

Beginning in approximately 2016, and potentially earlier, Lessors replaced their independent pricing and supply decisions with collusion. Lessors agreed to use a common third party that collected real-time pricing and supply levels, and then used that data to make unit-specific pricing and supply recommendations. Lessors also agreed to follow these recommendations, on the expectation that competing Lessors would do the same.

Here’s an Associate Vice President of one of the defendants talking up the collusionary aspect of the software, which was featured in RealPage’s own literature:

With LRO [RealPage’s Lease-Rent Options] we rarely make any overrides to the [pricing] recommendations . . . [W]e are all technically competitors, LRO helps us to work together . . . to make us all more successful in our pricing . . . LRO is designed to work with a community in pricing strategies, not work separately.”

The lawsuits also allege that there was considerable pressure to follow the “recommendations”:

To ensure that the landlords abide by these “recommendations,” RealPage puts significant “pressure” on them “to implement RealPage’s prices,” including by requiring clients to submit requests to deviate to the “corporate office” and tracking the “identity of the client’s staff that requested a deviation.” Multifamily Compl. ¶¶ 17-20, 261-86. As a result, landlords using RealPage adopt RealPage’s recommendations 80-90% of the time.

Furthermore, according to a joint legal brief from the DOJ and FTC, even without the additional pressure, these types of recommendations via algorithm are still illegal:

It is per se illegal for competing landlords to jointly delegate key aspects of their pricing to a common algorithm, even if the landlords retain some authority to deviate from the algorithm’s recommendations. Although full adherence to a price-fixing scheme may render it more effective, the effectiveness of the scheme is not a requirement for per se illegality.

RealPage contends its software “contributes to a healthier and more efficient rental housing ecosystem that benefits both renters and housing providers.”

All evidence points to the contrary.

RealPage officials have bragged about the outsized effect their software has on rental market prices. Company executive Andrew Bowen once said that the software was “driving it,” referring to rental price increases. He added: “As a property manager, very few of us would be willing to actually raise rents double digits within a single month by doing it manually.”

As we pointed out in a piece in September of last year, there are strong signs that the use of price-setting software in some of the nation’s largest rental markets are contributing to the explosion in homelessness:

To really get a feel for the effect of the RealPage and property management company cartel, it's best to look at individual metro markets. That's because in cities like Seattle, San Francisco, New York, Boston, Nashville, Dallas, Atlanta, etc. the market can be dominated by large (oftentimes private equity-owned) companies, and if all of them are colluding using RealPage, the effect can be enormous.

Let's focus here on Los Angeles. While the story is the same across many markets, LA also happens to be the epicenter of US homelessness crisis.

Los Angeles County is the 6th largest multifamily market with 448,848 completed units. Strategic Actions for a Just Economy, an LA organization that focuses on tenant rights and economic justice, in their 2021 report, "Beyond Wall Street Landlords: How Private Equity in the Rental Market Harms Tenants," found that more than two thirds of all LA Rentals are now owned by speculative investment vehicles.

Corporate landlords named in the RealPage lawsuits include Essex Property Trust, Equity Residential, and AvalonBay Communities — the three biggest players in LA real estate management.

Combined they control 35,020 multifamily units, or 7.8 percent of LA County's 448,848 units. According to lawsuits against RealPage and large property management companies, there are another 17 companies that use RealPage's rent-setting tool in LA, and together, they account for just more than 52 percent of all rental apartment buildings in the LA market. [1]

A separate lawsuit against Santa Barbara-based Yardi, a company similar to RealPage, accuses it of using its RENTmaximizer (now Revenue IQ) product to do exactly what RealPage is accused of doing.

When you throw Yardi into the mix, that means that 79 percent of all multifamily rental units in LA County are being listed using collusion software. Widespread adoption of this collusion software has helped LA rent prices go through the roof in recent years. It is up 41 percent compared to 2016 — the year when RealPage hit "critical mass."

RealPage says its revenue management software "has been available for two decades and is purposely built to be legally compliant":

This is the legal gray area. Much of the legal architecture that muddled the waters of price-fixing prosecution was established by the Clinton Administration and later sanctioned by Obama. "Information sharing" largely wasn't prosecuted due to a Clinton-era loophole introduced by HRC in 1993 that allowed it in the healthcare industry (purportedly to help

lower prices, although the opposite happened), but importantly, the rules were interpreted to apply to *all* industries. Those rules were further liberated in 1996 and then again in 2011 under Obama's Affordable Care Act and its Accountable Care Organizations provision.

The current DOJ announced the end of that no-enforcement arrangement last year, however, when it closed those Clinton-era information-sharing loopholes. Principal Deputy Attorney General Doha Mekki explained the rationale behind the decision, saying that the development of technological tools such as data aggregation, machine learning, and pricing algorithms have increased the competitive value of historic information. In other words, it's now (and has been for a number of years) way too easy for companies to use these so-called "safety zones" to fix wages and prices. The problem is that no judicial decision has yet adopted the DOJ's position. And judges will have less of a chance to do so if the Trump DOJ withdraws the civil case against RealPage.

As far as I understand it, until a judicial decision comes down, the Trump DOJ could also simply reopen the "information sharing" loopholes—officially or unofficially if companies know they won't be prosecuted.

The fact that RealPage is now confident enough to declare its actions "lawful speech" coupled with other Trump DOJ hints sure makes it appear as though that will be the case.

Adani Camp Meets Trump Officials in Push to End US Bribery Cases

Representatives for Indian billionaire **Gautam Adani** and his companies met Trump administration officials about dismissing the criminal charges levied against him in an overseas bribery probe, according to people familiar with the matter.

The talks, which began earlier this year, intensified in recent weeks and could lead to a resolution in the coming month or so, if the pace continues, some of the people said, asking not to be identified because the conversations are confidential. Adani's representatives are trying to make the case that his prosecution doesn't align with President Donald Trump's priorities and should be reconsidered, one of the people said.



Gautam Adani

Photographer: Sumit Dayal/Bloomberg

An Adani Group representative declined to comment, as did spokespeople for the Justice Department and White House.

Shares of Adani Group's firms rose in Mumbai on Monday, with flagship Adani Enterprises Ltd. gaining as much as 6.2%, the most since Jan. 16.

The Biden administration unveiled the indictment against Adani, 62, and his nephew **Sagar**, as well as a parallel civil lawsuit from the Securities and Exchange Commission, days after Trump's election victory in November. At the time, prosecutors said Gautam Adani promised to pay \$250 million in bribes to regional officials in India to lock in solar-power contracts. The Adani Group has denied the claims.

Asia's second-richest man has since sought to sway US authorities through a variety of channels, looking to avoid conviction and limit the financial impact the allegations may have on his international business interests.

Surrogates for the billionaire — known for close ties to Prime Minister **Narendra Modi** — reached out to government officials in India for advice on how to deal with Trump as the nations' leaders look for ways to strengthen economic ties, one of the people said. The Prime Minister's Office and the Ministry of External Affairs didn't respond to a message seeking comment.

In the US, Adani has enlisted a roster of high-powered lawyers and lobbyists to work on his behalf, pursuing talks with the administration, the people said. One meeting occurred in March with prosecutors in the US Attorney's Office in Brooklyn and the main Justice Department, one person said.

Read More: Adani Builds US Influence Machine While Trump Reins In DOJ

Adani's network in the US, first described by Bloomberg in mid-February, has continued to evolve. In recent talks, **Mark Filip** of the law firm Kirkland & Ellis has served as a lead voice on his behalf, some of the people said. Adani also tapped BGR Group, a government relations firm known for its inroads to the president's administration, the people said. Senate lobbying records show BGR represents India in trade talks with the Trump Administration.

The firms and people representing Adani in the US either declined to comment or didn't respond to messages.

President Trump already broke with his predecessors in expressing concern about US prosecutions under the Foreign Corrupt Practices Act. While past administrations used the 1977 law to go after domestic and foreign companies for bribing officials abroad, Trump expressed frustration that cases too often undermine US economic interests.

In an executive order in February, he told Attorney General Pam Bondi to pause FCPA actions until she issues new enforcement guidelines. "It's going to mean a lot more business for America," Trump said at the time.

Since then, some FCPA prosecutions have been dismissed. The Justice Department ended a foreign bribery case against former executives at Cognizant Technology Solutions Corp. The ex-employees, who denied wrongdoing and had been due to face trial in New Jersey, were accused of bribing foreign officials to accelerate a construction project in India.

But a separate Trump administration effort to roll back a corruption prosecution — dropping charges against New York Mayor Eric Adams — set off a political storm. Several career prosecutors resigned in protest.

A federal judge ended up agreeing to let the government drop claims that Adams received illegal campaign contributions from Turkish officials — but dismissed the charges with prejudice. That barred the administration from refiling later to potentially keep Adams beholden to political demands. The mayor has maintained his innocence.

Lowering Stakes

Despite Adani's roughly \$70 billion net worth, his footprint in the US has remained relatively anemic. Still, shortly after November's election and days before the Justice Department's charges emerged, the tycoon publicly congratulated Trump on X, promising to make \$10 billion in US investments and creating upward of 15,000 jobs.

The Justice Department charged Adani in a sealed court filing in October with securities fraud and conspiracy to commit securities and wire fraud. Rather than cite the FCPA, the Justice Department and SEC's cases hinge on claims he misled US lenders by falsely asserting his company was fully compliant with anti-bribery statutes.

Though the criminal docket remains quiet, the SEC has sought to keep its civil lawsuit moving. In a filing last week, the agency said it's seeking help from authorities in India to reach the defendants with its complaint and summons. If Adani is able to defuse the criminal case while still facing the SEC's civil claims, that would significantly reduce the stakes in the US.

The billionaire's efforts to persuade the administration to drop claims is the new normal in Washington, with defendants and convicts reaching out to Trump, often via his allies, in the hopes of ending investigations, dismissing charges or unwinding convictions or sentences.

Already, Adani's cause has garnered support from several Congressional Republicans. A group of them asked Bondi to throw out the criminal case and investigate why federal prosecutors filed it in the first place.

Meantime, his advocates in the US have also signaled that they're working to advance his business interests there. Filip and William Burck, a veteran white-collar defense lawyer at Quinn Emanuel Urquhart & Sullivan who represented Mayor Adams, have publicly registered to lobby on behalf of Adani's companies.

(Updates with the stock reaction in Adani companies in the fourth paragraph.)

--With assistance from **Akayla Gardner, Patricia Hurtado, Sridhar Natarajan, Chiranjivi Chakraborty** and **Sudhi Ranjan Sen**.

New Tesla sales in Spain drop 36% in April despite EV sales surge

 [reuters.com/business/autos-transportation/new-tesla-sales-spain-drop-36-april-despite-ev-sales-surge-2025-05-05](https://www.reuters.com/business/autos-transportation/new-tesla-sales-spain-drop-36-april-despite-ev-sales-surge-2025-05-05)

Reuters

May 5, 2025

A Tesla electric vehicle is charged at a Tesla Supercharger battery charging station in Barakaldo, Spain, March 29, 2025. REUTERS/Vincent West/File Photo Purchase Licensing Rights , opens new tab

(TSLA.O) , opens new tab new car sales in Spain fell 36% in April from the same month in 2024 to 571 vehicles, registration data released by industry group ANFAC showed on Monday, while sales of electric cars from other brands soared.

Over the first four months of 2025, sales of Teslas in Spain fell 17% over the same period a year earlier, while sales of electrified vehicles, a category that includes both fully electric vehicles and hybrids, were up 54%.

Sales of Teslas have dropped in Europe as the manufacturer owned by billionaire Elon Musk faces increased competition from European and especially Chinese EV brands.

Musk's embrace of far-right politics in Europe has also led to protests against him and the company, as well as vandalism at its showrooms and charging stations across the U.S. and Europe.

Musk said two weeks ago he would cut back on the time he devotes to the Trump administration and spend more time running Tesla.

In Spain, sales of Chinese automakers BYD, MG and Omoda were up 644%, 80% and 346% so far this year, respectively, ANFAC's report showed.

Reporting by Javi West Larrañaga. Editing by Inti Landauro and Mark Potter

Our Standards:

Tesla's Cybertruck Is Stuck in Reverse

MG [mansionglobal.com/articles/teslas-cybertruck-is-stuck-in-reverse-42f88888](https://www.mansionglobal.com/articles/teslas-cybertruck-is-stuck-in-reverse-42f88888)

Jim Motavalli

May 5, 2025



The Cybertruck started strong and then sales fell off dramatically. (

Tesla photo

Give your feedback below or email editors@mansionglobal.com.

Tesla is not having a good year, and the Cybertruck is part of the problem.

In the first quarter, Tesla production was 336,681 vehicles, down 13%, and the radically styled Cybertruck sold a mere 6,406. At one time, Tesla thought it could sell 250,000 of the trucks annually, but the eccentric design, limited utility and a purchase price around \$80,000 for top models have put buyers off—after some initial enthusiasm.

The latest Q1 sales figures are less than half of Cybertruck sales in the third (14,416) and fourth (12,991) quarters of 2024. Total sales in 2024 were only 39,000. The company reportedly has 2,400 Cybertrucks sitting around waiting for buyers, and is offering discounts of up to \$10,000 on them.

There have been eight recalls since the truck debuted in November 2023, including one to reattach parts of the stainless-steel body that fell off due to faulty gluing. According to Electrek, a website that covers electric vehicles, Tesla no longer accepts the Cybertruck as a trade-in. Used trucks have been selling for half their purchase price.

The Cybertruck did have a moment in the sun, when it was selling more than the electric Ford F-150 Lightning. It was briefly the bestselling EV pickup in the U.S.

But after the first adopters acquired their trucks (sometimes at a premium) the mainstream market didn't embrace a work truck that looks like something Picasso did in his Cubist phase.



Slate Auto's forthcoming truck, backed by Jeff Bezos, is bare-bones-and starts at \$25,000.

Courtesy of Slate Auto

Tesla has recently started cranking out more affordable Cybertruck Long Range Rear Wheel Drive (LR RWD) editions in its factory just outside Austin, Texas, priced at \$69,990 before the \$7,500 federal income tax credit. This version of the Cybertruck has up to 350-mile range. But the truck is still pretty expensive and substantially de-contented from the all-wheel drive version, lacking some of the features that made the Cybertruck distinctive, including 120- and 240-volt power outlets, air suspension, rear light bar, active noise cancellation and HEPA filter.

Elon Musk has a lot on his plate, but he was fully in control of Tesla when it came to pushing for the Cybertruck. Sam Abuelsamid, vice president for market research at the strategic communications firm Telemetry, told Mansion Global, "In the last several years Musk's not been all that involved, except on the high level in giving the go-ahead on ridiculous vehicles like the Cybertruck." Last week The Wall Street Journal reported that Tesla's board was seeking a new CEO to be Musk's successor.

U.S.-market electric pickups have been universally expensive and feature-laden, but perhaps the approach taken by the electric truck startu] Slate Auto, with backing from Jeff Bezos, makes more sense. It's an EV truck that according to CEO Chris Barman will start at \$25,000 before the federal income tax credit. Buyers will be getting a battery vehicle cut to the basics, with the hand-cranked windows that most observers had thought consigned to the dustbin of history. Infotainment and power windows are optional.

The Slate truck, which is convertible to an SUV, will be built in Warsaw, Indiana, in a 1.4-million-square-foot facility once home to a printing company. The first trucks, with 150 miles of range via a 52.7 kilowatt-hour battery (an 84.3-kWh unit is optional), will go to buyers at the end of next year as 2027 models.

Tesla needs something new and flashy to get the sparkle back and neutralize Musk's divisive public persona. The Cybertruck had that role, but its ability to generate excitement was brief. Tesla has long talked about a \$25,000 model, but nothing has been announced.

It's striking that the Three and Y account for nearly all of Tesla's sales volume. Of the 336,681 cars sold in the first quarter, 328,800 were those two models, and only 12,881 everything else—including Model S, Model X and, yes, the Cybertruck.

LIFESTYLE UNITED STATES

THE INSIDERS

Skechers to go private for \$9.42 billion in biggest sneaker industry deal

 [reuters.com/markets/deals/footwear-brand-skechers-be-taken-private-9-billion-deal-2025-05-05](https://www.reuters.com/markets/deals/footwear-brand-skechers-be-taken-private-9-billion-deal-2025-05-05)

Savyata Mishra, Abigail Summerville

May 5, 2025

The outside of a Skechers shoe store is seen at Times Square in New York May 2, 2014. REUTERS/Shannon Stapleton/File Photo Purchase Licensing Rights , opens new tab

- Skechers founder Robert Greenberg to continue as CEO
- Deal for \$63/share in cash, 28% premium to last close
- Volatile macro backdrop might have triggered deal talks, analyst says
- Company went public in 1999 on NYSE

May 5 (Reuters) - Skechers (SKX.N) , opens new tab has agreed to be taken private by 3G Capital for \$9.42 billion in the footwear industry's biggest buyout to date, exiting public markets after 26 years as the popular shoe brand grapples with the impact of steep U.S. tariffs.

Investment firm 3G Capital has offered \$63 per Skechers share in cash, the footwear brand said on Monday. That represents a 28% premium to the stock's Friday close, according to Reuters calculations.

Skechers shares jumped 25% to \$61.86 on the news, regaining some ground after dropping nearly 30% this year as the company withdrew its annual results forecast in April and warned of the fallout from President Donald Trump's 145% import tariff on Chinese goods. China accounts for a bulk of imports for the brand's U.S. business.

Needham analyst Tom Nikic said the deal talks may have been accelerated by the volatile macro environment - driven by tariffs, weakening consumer sentiment and troubled China-U.S. relations - and the company may have wished to navigate these challenges without being under Wall Street's scrutiny.

Skechers, Nike (NKE.N) , opens new tab and Adidas America (ADSGn.DE) , opens new tab are among the companies that have urged Trump to exempt shoes from reciprocal tariffs, as American businesses face higher costs and shoppers tighten spending to brace for a potential rise in prices.

Founded in 1992, California-based Skechers started out as a brand focused on men's street style with the launch of its popular shoe "Chrome Dome", but has come to be known for its comfort-first sneakers.

The company has held up against stiff competition from legacy brands like Nike and newer entrants such as Hoka, thanks in part to its aggressive global expansion and focus on value. Its shoes are priced anywhere between \$75 and \$150 on its website, and the company has roughly 5,000 retail stores in over 120 countries.

Its marketing tie-ups with celebrities including Britney Spears and Kim Kardashian have also helped the brand boost its appeal and stay relevant.

DEAL 'SURPRISING'

Needham's Nikic said the deal was "very surprising" as Skechers has always been viewed as a "family business", with the founding Greenberg family highly involved in the operations.

Sources told Reuters Skechers was not running an auction and the deal was bilateral as 3G Capital has had a long relationship with the Greenbergs.

CEO and founder Robert Greenberg, aged 85, will continue to lead the firm, while president Michael Greenberg and operating chief David Weinberg would also retain their roles.

Buyout firm 3G Capital, controlled by Brazilian billionaire financier Jorge Paulo Lemann, is best known for its investments in the food and drinks sector through companies such as Kraft Heinz (KHC.O) [↗](#), opens new tab.

"3G's playbook of boosting margins through cost-cutting and efficiencies certainly creates the likelihood that we will see Skechers come public again in the distant future," TD Cowen analysts said.

The Skechers deal is expected to close in the third quarter of 2025 and will be financed through a combination of cash provided by 3G Capital as well as debt financing that has been committed by JPMorgan Chase Bank.

Reporting by Savyata Mishra in Bengaluru and Abigail Summerville in New York; Editing by Devika Syamnath

Our Standards: The Thomson Reuters Trust Principles. [↗](#), opens new tab

Abigail Summerville
Thomson Reuters

Abigail is on the M&A team and writes about consumer and retail deals. She joined Reuters in 2022 from Debtwire where she covered leveraged finance and the primary debt market for three years. Previously, her work has appeared in the Wall Street Journal, CNBC and the Boston Business Journal. She majored in business journalism at Washington and Lee University.

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<https://www.wsj.com/business/deals/skechers-to-go-private-in-3g-merger-c71de330>

BUSINESS | DEALS

Skechers to Go Private in \$9.4 Billion 3G Deal

The footwear company said 3G plans to pay \$63 a share in cash for all of Skechers's outstanding shares.

By [Katherine Hamilton](#) [Follow](#)

Updated May 5, 2025 9:50 am ET



Skechers agreed to become a privately held company through a merger with 3G Capital. PHOTO: FREDERIC J. BROWN/AGENCE FRANCE-PRESSE/GETTY IMAGES

Key Points

What's This? ⓘ

- Skechers will become a privately held company through a merger with 3G Capital.
- 3G Capital plans to pay \$63 a share in cash for all of Skechers's outstanding shares.
- Existing Skechers shareholders can receive \$57 a share and equity in the new private company.

[Skechers](#) SKX **24.79%** ▲ agreed to become a privately held company through a \$9.42 billion deal with 3G Capital.

The footwear company said Monday 3G plans to pay \$63 a share in cash for all of Skechers's outstanding shares.

Skechers shares climbed 25% to \$61.68 in early trading Monday.

The proposed deal represents a premium of 30% to Skechers's 15-day volume-weighted average stock price, the companies said. Skechers's board of directors unanimously approved the transaction, and the deal is expected to close in the third quarter of 2025.

Existing Skechers shareholders have the option to instead receive \$57 a share in cash and one unlisted, non-transferable equity unit in the newly formed private company after the deal closes. 3G expects to hold about 80% of the new company's outstanding units immediately following the deal's closing.

Skechers Chief Executive and Chair Robert Greenberg, who also founded the company, plans to remain at the helm. Chief Operating Officer David Weinberg is also set to stay on.

Skechers is among the world's largest footwear companies and made \$8.97 billion in sales in 2024. It went public in 1999 at a price of \$11 a share.

3G has acquired other major brands including Restaurant Brands International, the holding company of Burger King and Tim Hortons.

Write to Katherine Hamilton at katherine.hamilton@wsj.com

Videos

Israeli executive implies spyware victims aren't people at trial

 [courthousenews.com/israeli-executive-implies-spyware-victims-arent-people-at-trial](https://www.courthousenews.com/israeli-executive-implies-spyware-victims-arent-people-at-trial)

The logo of the Israeli NSO Group company appears on a building where they had offices in Herzliya, Israel. (AP Photo/Daniella Cheslow, File)

OAKLAND, Calif. (CN) — NSO Group's effort to distance itself from its controversial spyware at trial may have backfired Friday with a slip of the tongue from one of the Israeli cyber-intelligence firm's executives on the stand.

On cross-examination, Tamir Gazneli, NSO's vice president of research and development, said he disagreed with Meta's lawyers that his company sold "spyware."

The Israeli executive went back and forth with the attorney about the precise definition of Pegasus, his company's powerful surveillance software.

"We agree it is software that is designed to get into people's phones and take their information?" asked Antonio Perez of Davis Polk, who represented Meta.

"Yes, but not people," Gazneli said.

"You don't consider the targets people, Mr. Gazneli?" Perez asked incredulously.

"That's not what I said," he protested, quickly walking back his answer. Gazneli later reiterated that he considers them "targets," and similarly described the phone data extracted by its government clients as "intelligence."

The executive was more wary and less cooperative later when the lawyer pressed him again about their different definitions of "spyware."

"I'm not going to get into 'define.' This is intelligence software we designed for this purpose," Gazneli said.

Throughout its trial with Meta, the Israeli tech firm has attempted to distance itself from what its foreign government customers do with Pegasus, which has been found on the phones of over 1,400 WhatsApp users, including activists, journalists and diplomats.

NSO has repeatedly said it doesn't take part in the spying process of its customers and doesn't even know the names or phone numbers of the people its malware targets.

"We don't know who's being targeted. We're not involved. We definitely don't know the person whose phone is being targeted," NSO CEO Yaron Shohat said on the stand.

Shohat did admit NSO might learn who their clients are after the fact.

However, creating that distance has also simulated an indifference toward the victims that Meta has highlighted for the jury, like when Shohat stated that his company didn't target "regular people" with Pegasus earlier in the trial week.

Meta also pushed back on NSO Group's attempts to portray itself as a normal tech company.

Shohat previously testified that NSO is headquartered in Herzliya, Israel, which he said is considered Israel's Silicon Valley because of the high concentration of tech companies in the region. Microsoft, Cisco, Apple and other tech companies all have branches or infrastructure based in the area, and NSO even shares a building with Apple.

But it was NSO's comparisons to Apple that led Meta to needle Shohat on the stand.

"That's not how Apple sees it, right?" Greg Andres of Davis Polk, who represented Meta, asked.

"I think that they would see it that way. We share the same elevator going up the building," Shohat laughed.

"Apple said NSO was 'amoral' and 'malicious,'" Andres told the CEO.

Apple previously sued NSO over similar accusations as Meta in 2021, although Apple dropped its case in 2024, stating it had severely weakened the company and had other malware actors to worry about.

"Later on, Apple withdrew those assertions," Shohat said. The CEO later added that the companies are now on "good terms."

The jury also saw a minor battle of the experts when NSO asked its damages expert Greg Alan Pinsonneault to take the stand.

When NSO's unauthorized code was detected on WhatsApp servers on May 2, 2019, it started a 12-day effort by Meta employees to patch the exploit that allowed Pegasus to install itself on users' phones. At trial, Meta claims its engineers worked "day and night" to fix the vulnerability and try to catch the Pegasus agent, although they were unsuccessful at the latter.

Meta is asking the jury for over \$440,000 in compensatory damages — based on estimates by Meta expert Dana Trexler — to remedy the costs of investigating malicious code on its servers, as well as unspecified punitive damages to be awarded by the jury.

But Pinsonneault provided his own calculations, and claimed that the damages owed should be just over \$70,000.

“To my understanding, all 22 employees at issue are salaried employees,” Pinsonneault said. “For a salaried employee, the amount paid doesn’t change whether the employee works overtime hours or weekend hours. No matter what, they get paid the same amount.”

The expert argued that over 40% of Trexler’s estimation was inflated by restricted stock units awarded to the employees at an earlier date, and that they shouldn’t be counted in the total calculation.

He also added that Meta’s labor costs shouldn’t change just because its employees worked on a different project.

On cross-examination, Pinsonneault testified that he was paid around \$160,000 for his expert opinion and report by NSO. Meta’s lawyers also confirmed that he did make a finding of \$0 in damages, as NSO said in its opening arguments.

Even after the jury broke for the day, the proceedings went into extra innings as both sides argued for multiple hours over minute details of the case, another illustration of the apparent breakdown in cooperation between parties as the trial nears its end.

The pettiness was not lost on U.S. District Judge Phyllis J. Hamilton, who noted that many of the issues could have been handled without her presence.

“This inability to cooperate in any way whatsoever — I’ve never had this experience in my 34 years, ever!” the Bill Clinton appointee said.

“Your honor, I’d like you to know we just exchanged four cordial emails yesterday,” said NSO attorney Joe Akrotirianakis of King and Spalding.

“Well, good for you,” she responded sarcastically.

WhatsApp — an encrypted communication app owned by Facebook's parent company Meta Platforms which boasts over 2 billion users worldwide — originally brought the case in 2019 after Pegasus compromised the privacy of 1,400 WhatsApp users by covertly transferring the program to phones through the company’s servers.

Originally designed as a tool for government law enforcement and intelligence agencies, Pegasus is NSO’s flagship product and is licensed to governments around the world.

In order to embed the spyware into someone’s phone, Pegasus clients send a text message that then invades devices through a malicious code lurking in these messages sent via WhatsApp, Telegram or other messaging services.

Pegasus can also infect users through missed phone calls and “zero-click” attacks, which do not require any action from the phone’s owner to succeed.

Once implanted, Pegasus can control a phone’s microphones and cameras while extracting the personal and location data of its owner — for example, by scraping browser history and contacts, grabbing screenshots and infiltrating communications.

NSO landed on the U.S. Commerce Department’s entity list or “blacklist” in 2021 for activities counter to national security interests, meaning NSO can’t do business with U.S. companies without specific government approval.

A verdict is expected by May 5, 2025.

Categories / Business, Courts, Technology, Trials

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Dick's Sporting Goods Execs Sued Over Post-COVID Issues

By **Katryna Perera**

Law360 (May 2, 2025, 8:05 PM EDT) -- The top brass of Dick's Sporting Goods was hit with a shareholder derivative suit Friday alleging that the company failed to disclose excess inventory and increased shrinkage or theft following the COVID-19 pandemic, which caused Dick's stock price to drop by more than 24% once the truth was revealed.

Richard Sullivan filed a **complaint** in Pennsylvania federal court against Lauren Hobart, Dick's President and CEO, and several company directors for alleged breaches of fiduciary duty that occurred between August 2022 and August 2023.

According to the complaint, when the COVID-19 pandemic forced millions to stay home and closed schools and gyms and other businesses, Dick's saw a surge in demand for its fitness and outdoor recreation products.

Specifically, the company saw "dramatic" growth, sales and profitability from its "pandemic winner" products such as outdoor sporting equipment or fitness bikes.

However, the complaint states that merchandise margins, a concept used to measure profitability, soon began to decrease after the first quarter of 2022, and the defendants downplayed these decreases by "urging investors to look at 2019 as a better comparable year than 2020 or 2021."

"[The defendants] assured investors that the company's inventory was 'clean,' 'healthy' and 'well-positioned,'" the complaint states. "And shrinkage, the theft of products from retail stores, was mentioned almost as an afterthought."

Sullivan alleges these statements made by the defendants were materially false and misleading because they failed to disclose that Dick's had an excess inventory of "pandemic winner" products that it would have to sell at a discount, negatively affecting merchandise margins.

Additionally, the company failed to disclose that it had seen increased levels of theft, that it was not properly reporting shrink levels as required under federal securities laws, and that its forecasted merchandise margins would be negatively impacted not only by inventory that would need to be sold at discount to move, but by the increased shrinkage as well.

The truth did not come to light until August 2023 when Dick's released its financial results for the third quarter of 2023 and its stock price fell by more than 24%, the complaint states.

Sullivan further alleges that the defendants caused the company to issue false and misleading proxy statements during the relevant period.

The suit seeks damages, restitution, attorney fees, the institution of appropriate corporate governance measures, and a jury trial.

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

Sullivan is represented by Vincent Coppola of Pribanic & Pribanic, Brian Murray of Glancy Prongay & Murray and Shane T. Rowley and Danielle Rowland Lindahl of Rowley Law PLLC.

Counsel information for the defendants was not immediately available.

The case is Sullivan v. Hobart et al., case number 2:25-cv-00601, in the U.S. District Court for the Western District of Pennsylvania.

--Editing by Jay Jackson Jr.

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'Smart' Glass Maker Settles SPAC Merger Suit For \$11M

By **Katryna Perera**

Law360 (May 2, 2025, 6:37 PM EDT) -- "Smart" glass manufacturer View Inc. and investors have reached an \$11 million deal to resolve a proposed class action over an internal probe the company announced following its go-public merger with a special purpose acquisition company.

Investors filed a **motion** for preliminary approval Thursday, stating that the settlement was reached after an extended arms-length mediation process that began a year ago, after a California federal judge **dismissed** investors' second amended complaint, finding the lead plaintiff didn't have standing to sue.

According to court filings, the judge subsequently granted a motion to reconsider from the plaintiffs and allowed them to file a third amended complaint in June 2024.

Investors said Friday that the court should grant the first OK to the deal because it is an excellent recovery for the proposed class, representing roughly 16% to 32% of the estimated recoverable damages.

The motion also states that while the lead plaintiff and counsel believe the suit's claims have merit, they recognize the expense and risk of continued litigation. The motion further asks the court to grant certification to the proposed class, given that it meets all the necessary requirements, including numerosity, typicality and commonality.

The proposed class includes all individuals who purchased or acquired View stock between Nov. 20, 2020, and May 10, 2022, according to court filings.

Additionally, the motion states that lead counsel from Kaplan Fox & Kilsheimer LLP will seek an award of attorney fees of no more than a third of the settlement fund, or approximately \$3.6 million, plus litigation costs of no more than \$375,000.

Lead counsel will also ask the court to grant service awards to lead plaintiff Stadium Capital LLC of up to \$10,000 and \$2,500 for plaintiff David Sherman for the work they did throughout the litigation, according to the motion.

"Such work included assisting lead counsel with the preparation of complaints in this matter, consulting with lead counsel as requested, and on their own initiative, regarding the status and strategy of the litigation throughout the pendency of this case, monitoring the proceedings on their own behalf and on behalf of the putative class, monitoring developments in the news with respect to defendants, and consulting with lead counsel regarding the terms of the proposed settlement," the motion states.

The investor action alleged that trading prices for View shares fell as the market absorbed the company's disclosures that financial statements for its 2019 and 2020 fiscal year didn't accurately reflect certain liabilities it had related to warranties. The first hit to the company's trading prices came as the company acknowledged it needed to probe its own accounting practices. Subsequent announcements of the impact that the company's findings had on its financial state further impacted trading prices, the investors said.

The cascade of related news eventually included the company's acknowledgment in a filing that it

expected it would soon announce "substantial doubt about the company's ability to continue as a going concern," and that the U.S. Securities and Exchange Commission was investigating the alleged misstatements, the suit said.

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

Stadium Capital is represented by Laurence D. King, Frederic S. Fox, Donald R. Hall and Jason A. Uris of Kaplan Fox & Kilsheimer LLP.

View Inc. is represented by John W. Berry and John M. Gildersleeve of Munger Tolles & Olson LLP.

Defendant Vidul Prakash is represented by Anna Erickson White and Ryan M. Keats of Morrison & Foerster LLP.

The other individual defendants are represented by Jeffrey L. Steinfeld and James P. Smith III of Winston & Strawn LLP.

The case is Mehedi et al. v. View Inc. et al., case number 5:21-cv-06374, in the U.S. District Court for the Northern District of California.

--Editing by Kelly Duncan.

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Smith & Wesson Says Catholic Investors' Suit Misfires

By **Jonathan Capriel**

Law360 (May 2, 2025, 9:59 PM EDT) -- Firearms manufacturer Smith & Wesson Brands Inc. slammed as mere "social activism" an investor lawsuit filed by groups of Catholic sisters seeking to curb company sales and marketing of AR-15-style rifles that are sometimes used in mass shootings, urging a Nevada federal judge to dismiss the suit and the claims that it violated a fiduciary duty.

The company said that this and other complaints filed by the Catholic organizations fail to meet the heightened pleading standards required under Nevada business law to make claims for fraud or breach of fiduciary duty, according to its motion to dismiss filed Thursday.

Beyond that, the investors suing here are not like other shareholders in the company, who actually seek to make a profit from buying into Smith & Wesson, the company said. Their motivations for filing the suit are "a novel form of social activism" that seeks to stop the company from selling AR-15-style rifles, the motion said, noting that it's not their first attempt.

"It is telling that when plaintiffs were called to account for their activist litigation tactics in connection with the state court action, they chose to flee their initial chosen forum, rather than defend the merits of those claims," Smith & Wesson said. "Defendants respectfully ask this court to see plaintiffs' lawsuit for what it is, meritless and vexatious litigation, and dismiss the Complaint with prejudice."

The suit was filed by four Catholic groups — the Adrian Dominican Sisters, Sisters of Bon Secours USA, Sisters of St. Francis of Philadelphia, and Sisters of the Holy Names of Jesus & Mary, U.S.-Ontario Province — headquartered in Michigan, Maryland, Pennsylvania and Oregon, respectively. Each of the four are Smith & Wesson shareholders, though the motion to dismiss specifically notes that they own "just 0.002% of shares."

The groups' lawsuit accuses the company's directors and officers of breaching a fiduciary duty owed to investors and violations of securities laws in relation to the company's manufacturing and marketing of AR-15-style rifles. They claim the board ignored risks of liability from lawsuits and regulatory scrutiny, when it came to marketing tactics that leaned on militaristic imagery and targeting young men. These actions violated state laws and voided any immunity the company could have secured under the Protection of Lawful Commerce in Arms Act, or PLCAA, thus exposing the company to financial harm that hurts investors.

They also allege Smith & Wesson's 2024 proxy falsely dismissed their prior lawsuit and misrepresented board oversight.

But Smith & Wesson says that Nevada law requires that its directors be presumed to be acting "in good faith" unless evidence of "intentional misconduct" or fraud can be put forward, which the sisters don't have, the motion claims. The gunmaker also denies claims that it is illegally selling banned weapons in California or Illinois.

The lawsuit also attempts to claim that the company is ignoring long-term liabilities associated with selling semiautomatic rifles used in mass killings, but Smith & Wesson is acting within the bounds of the state and federal law — statutes which must be violated in order to negate protection under the PLCAA — so concerns of future litigation associated with these killings are "speculative," the motion said.

"Plaintiffs' speculative claims that the Board and Management have breached their fiduciary duties because of the potential "long-term liability and risks" arising from some imagined civil liability fail as

a matter of law," the company wrote. "The board and management are well within the scope of their fiduciary duties to assess actual (not speculative) risk and to consider the broad immunity provided under the PLCAA in their assessment."

Smith & Wesson is represented by Jeffrey F. Barr of Ashcraft & Barr LLP and John A. Sten and Ann Makkiya of Byrd Campbell PA.

The Catholic groups are represented by Matthew L. Sharp of Matthew L. Sharp Ltd. and Jeffrey M. Norton and Benjamin D. Baker of Newman Ferrara LLP.

The case is Adrian Dominican Sisters et al. v. Smith & Wesson Brands Inc. et al., case number 2:25-cv-00236, in the U.S. District Court for the District of Nevada.

--Editing by Andrew Cohen.

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Auto Services Co. Top Brass Sued Over Biz Integration Issues

By **Katryna Perera**

Law360 (May 2, 2025, 5:18 PM EDT) -- The top brass of Driven Brands Holdings Inc., the largest automotive services company in North America, has been hit with a shareholder derivative suit for allegedly failing to disclose integration issues the company faced after acquiring small business segments, which caused Driven's stock price to drop when the truth was revealed.

Jonathan Gaiman filed a **complaint** on Wednesday in North Carolina federal court against Driven's former CEO Jonathan Fitzpatrick, its former chief financial officer Tiffany Mason and several board members for alleged breaches of fiduciary duties that occurred between October 2021 and August 2023.

Driven is an automotive services company that focuses on auto repair and maintenance services. Its business model centers around acquiring smaller businesses within the auto care industry and integrating them into Driven's existing operations, the complaint states.

Specifically, Driven uses a "bolt-on" and "tuck-in" strategy for acquisition and integration, according to the complaint, in which the company purchases a "base" or "platform" business in a segment such as car wash or auto glass and then "bolts-on" smaller businesses, incorporating them into the established platform.

Gaiman says that in October 2021, Driven announced a new strategy to generate substantial revenue growth and raise the company's EBITDA to \$850 million by 2026. According to the complaint, the strategy involved acquiring a network of auto glass businesses across the country and driving sales and customer retention in Driven's purportedly stable car wash business.

In line with this new strategy, Driven announced in January 2022 that it would expand into the "approximately \$5 billion and growing" U.S. auto glass market, the complaint states.

Following its "bolt-on" strategy, Driven acquired Auto Glass Now as its "base," representing to investors that it planned to "leverage [its] growth blueprint" quickly to acquire "a robust pipeline" of smaller auto glass providers across the country, incorporating them into the company's AGN "base" to "significantly accelerate [its] presence in this segment," according to the complaint.

Gaiman also notes that the performance of Driven's purportedly stable car wash segment was "critical" to the company's overall success, and at the start of the relevant period, the segment accounted for more than 10% of Driven's revenue and more than 30% of its earnings.

However, unbeknownst to investors, the company faced obstacles integrating auto glass companies into its operations since each auto glass business in Driven's acquisition pipeline operated under a different business model and involved different revenue streams, according to the complaint.

Due to the differences in the acquired auto glass businesses, the complaint states that it was critical for Driven to establish and maintain an effective point of sale or POS system to compile and store revenue data from each of the acquired companies, and Driven decided to run its POS system through the acquired AGN platform.

However, Gaiman alleges that the Driven defendants made false and misleading statements and failed to disclose that Driven failed to successfully establish and maintain an effective POS system

through the AGN platform, resulting in data issues that caused substantial delays in the company's integration timeline and that Driven was forced to undergo a complete overhaul of AGN's POS system.

Gaiman further claims that as a result of these issues, several of Driven's acquired businesses were unable to effectively communicate with the AGN platform, which adversely impacted the company's ability to service key customers, leading to customer loss and further integration delays, which stifled Driven's revenue growth.

The complaint also alleges there were issues with Driven's car wash business segment. According to the complaint, the defendants failed to disclose that the car wash business segment was suffering from widespread equipment failures and poor service because Driven did not adequately invest in service, equipment, and maintenance in its car wash business, impairing the segment's operating capacity.

These alleged failures also led to substantial customer loss, competitive intrusion, and declining same-store sales, according to the complaint.

Gaiman says that after a series of partially corrective disclosures, the truth finally came to light on Aug. 2, 2023, when Driven revealed during an earnings call that its integrations in the auto glass business segment were "several quarters behind" and were "not going as quickly as planned."

"As a result, in order to 'get the integration completed,' the company would substantially decrease the scope of its glass acquisition campaign and reduce its new glass unit store growth for 2023 from 130 to 90," the complaint states. "With respect to the company's car wash business segment, Driven announced a 4% year-over-year, same-store sales decline, attributable to 'significant competitive ... growth' over the prior two years and admitting that Driven was losing substantial numbers of customers to these competitors."

Gaiman says that on this news, the price of Driven stock declined roughly 41%, from \$25.83 per share on Aug. 1, 2023, to \$15.20 per share on Aug. 2, 2023.

The suit seeks damages, attorney fees, and a jury trial. Representatives for the parties did not immediately respond to requests for comment on Friday.

Gaiman is represented by Kurt F. Hausler of Hausler Law Firm PLLC, Timothy J. MacFall and Samir Aougab of Rigrodsky Law PA, and Joshua H. Grabar of Grabar Law Offices.

Counsel information for the defendants was not immediately available.

The case is Gaiman v. Fitzpatrick et al., case number 3:25-cv-00288, in the U.S. District Court for the Western District of North Carolina.

--Editing by Vaqas Asghar.



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Judge Tosses Claims Uphold Misled Users Of Crypto Product

By **Aislinn Keely**

Law360 (May 2, 2025, 7:43 PM EDT) -- Uphold HQ Inc. beat a suit from users Friday when a New York federal judge ruled the digital money platform didn't mislead users about the safety of a now-defunct partner's crypto interest product its platform once supported.

U.S. District Judge Laura Taylor Swain dismissed the suit from users Addison Sandoval, Lionel Ducote, Nicholas King and Richard Neal for good in an order that found statements Uphold made that the now-collapsed CredEarn product was safe and functioned like a traditional banking product don't amount to material misrepresentations under New York's General Business Law.

Statements that a product is a safe investment are generally considered opinion and puffery, Judge Swain noted in her order.

"Drawing all reasonable inferences in plaintiffs' favor, the court concludes that, at most, Uphold's comparison of Earn to a 'traditional banking product' implied that Earn was a safe investment," the order said. "However, like the allegations that Uphold marketed Earn as 'safe' and 'secured,' the implicit representation does not constitute a material misrepresentation sufficient to state a claim under [New York General Business Law]."

The suit sought to hold Uphold accountable for the losses Sandoval and others experienced when funds they held in the so-called CredEarn program were lost amid Cred Inc.'s November 2020 **bankruptcy**. Uphold had partnered with Cred to offer the Earn program through the Uphold platform, allowing users to generate yields by allocating their assets to the program.

According to the users, Uphold had marketed the CredEarn program as a safe way to earn interest, akin to a traditional banking product. Though Uphold had included disclaimers that CredEarn was a product offered by a company separate from Uphold, the users had argued the distinction was unclear. Uphold's close business relationship to Cred also meant the firm knew or should have known about Cred's precarious condition, the users asserted.

U.S. District Judge Vernon Broderick initially oversaw the case and dismissed a previous complaint from the users in March 2024, finding they failed to show how Uphold engaged in deceptive practices.

At the time, Judge Broderick found that the complaint didn't explain why a reasonable consumer would have thought the phrase "functions like a traditional banking product" was an assurance of safety, why Uphold's disclaimer wasn't enough to make clear that Earn wasn't an Uphold product or why Uphold would have had knowledge of Cred's financial condition prior to its collapse, among other deficiencies.

Judge Swain's Friday order found the plaintiffs hadn't shored up many of those gaps.

The order noted that the plaintiffs didn't include any new factual allegations related to Uphold's disclaimers that the CredEarn program was operated solely by Cred, saying "because plaintiffs proffer no basis for reconsideration of Judge Broderick's rejection of that argument, the court declines to revisit the matter now."

While the consumers had argued Uphold hadn't made adequate disclosures, Judge Swain said the court couldn't assess the context of the claim since the plaintiffs hadn't alleged what information Cred

provided to investors. Though the plaintiffs asserted that no documents or disclosures were provided, Judge Swain said reports in the Cred bankruptcy appeared to contradict that claim.

"Consistent with Judge Broderick's conclusion in his decision granting the motion to dismiss the first amended complaint, the court concludes that, without providing the court with a fuller account of the information that plaintiffs had access to at the time of the allegedly deceptive conduct — rather than only the facts that support their claim — plaintiffs cannot state a claim under [New York General Business Law]," the order said.

The new facts in the updated complaint also didn't render the idea that Uphold knew about Cred's dire financial situation any more plausible, the order said.

The parties did not immediately respond to a request for comment Friday.

The users are represented by Catherine E. Anderson of Giskan Solotaroff & Anderson LLP and Rachel Geman of Lieff Cabraser Heimann & Bernstein LLP.

Uphold HQ is represented by Benjamin D. Bianco and Caitlin R. Trow of Meister Seelig & Fein PLLC.

The case is Sandoval v. Uphold HQ Inc., case number 1:21-cv-07579, in the U.S. District Court for the Southern District of New York.

--Editing by Kristen Becker.

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11th Circ. Urged To Revive Fla. Suit Over Car Co. Buybacks

By **David Minsky**

Law360, Miami (May 2, 2025, 8:43 PM EDT) -- An investor urged the Eleventh Circuit on Friday to revive his claim that the CEO of a Florida company that develops navigation technology for self-driving cars improperly made nearly \$24 million from share buybacks, saying his "indirect pecuniary" interest in the transaction precludes him from profits under federal law.

Representing investor Andrew Roth, Glenn F. Ostrager of Ostrager Chong Flaherty & Broitman PC told a three-judge panel during oral arguments in Miami that a lower court wrongly dismissed his client's suit alleging Luminar Technologies Inc. CEO Austin Russell because he is precluded under Section 16(b) of the Securities Exchange Act from profiting on short-swing stock sales.

"The complaint that defendant Russell is director, chief executive officer and a controlling stockholder of nominal defendant Luminar, with approximately 80% of the voting power of the common stock," Ostrager said. "Russell is subject to Section 16(b) resulting from his market sales of Luminar common stock, matched with his indirect pecuniary interest in Luminar's subsequent common stock repurchases."

Co-founded by Russell in 2012, Luminar develops vision-based technologies, such as lidar, for self-driving cars. In 2020, Luminar merged with a special-purpose acquisition company to become publicly listed on the Nasdaq stock exchange.

Roth's lawsuit, filed April 2023 in the U.S. District Court in the Middle District of Florida, alleges Russell improperly profited as a result of his company's repurchase of more than 15 million shares in December 2021, roughly six months after Russell had reported to the U.S. Securities and Exchange Commission that he sold more than 10 million of his own stock.

Roth said that because Russell is an insider of Luminar and has access to non-public information about the company, the CEO is required to return all profits made from the stock sale within six months under Section 16(b), also known as the short-swing profit rule. Roth alleged in his suit that Russell had a 28.3% indirect pecuniary interest in his company's repurchases.

The lower court dismissed Roth's lawsuit in February 2024 after finding Luminar's repurchases could not be attributable to Russell.

U.S. Circuit Judge Robert J. Luck said a purchase is defined as obtaining some kind of interest and Luminar's repurchased shares "have no value to the corporation for balance sheet purposes," citing general corporate law.

Ostrager told Judge Luck that the SEC requires "reporting of all indirect pecuniary interests."

"The whole point of the regulatory scheme is to reach indirect interests," Ostrager said.

James N. Kramer of Orrick Herrington & Sutcliffe LLP, representing Russell and Luminar, told the panel that "there's an unbroken line of authority from the SEC" that issuer sales or purchases of stock are "not imputed to the insider for purchases of 16(b)."

Kramer added that Luminar's independent board approved the buybacks.

"There have been hundreds of thousands of moments where insiders have bought or sold securities and within six months, a company has done a buyback or a stock issuance," Kramer said. "The SEC has never weighed in."

U.S. Circuit Judges Nancy G. Abudu, Robert J. Luck and Barbara Lagoa sat for the Eleventh Circuit.

Roth is represented by Glenn F. Ostrager and Joshua S. Broitman of Ostrager Chong Flaherty & Broitman PC.

Russell and Luminar are represented by James N. Kramer, Alexander K. Talarides and M. Todd Scott of Orrick Herrington & Sutcliffe LLP.

The case is Andrew Roth v. Austin Russell et al., case number 24-10448, in the U.S. Court of Appeals for the Eleventh Circuit.

--Editing by Vaqas Asghar.

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Crunching The Numbers Of Trump SEC's 1st 100 Days

By **Richard Hong and Joshua Concannon** (April 30, 2025, 4:53 PM EDT)

Since the first term of Franklin D. Roosevelt's presidency in 1933, the first 100 days of an administration have been viewed as a benchmark of the new administration's efforts. This week marked the end of the first 100 days of the second Trump administration.

So, for the securities enforcement bar, what has the U.S. Securities and Exchange Commission under the Trump administration accomplished in the first 100 days?

Based on publicly available information from the SEC and independent research, we found that the commission, mostly under then-acting Chair Mark Uyeda, brought a total of 37 stand-alone enforcement matters, including one emergency action.[1] The commission also paused or dismissed at least 10 enforcement actions, including cryptocurrency cases, that were pending in federal district courts.

In this article, we take a deep dive into the numbers and cases that the SEC brought and dismissed under the second Trump administration to understand, first, what happened and, second, what we might expect to see in the next 100 days and beyond.

First, the Numbers

During the first 100 days of the second Trump administration, the SEC brought 27 stand-alone actions seeking injunctive and monetary relief in federal district courts.[2]

In one case, the SEC sought emergency relief, including an asset freeze.[3] There was also a settlement requiring the retention of an independent compliance consultant and a litigated matter with the appointment of a monitor.[4]

Among the six settled federal court cases, one produced a settlement that exceeded \$1 million — that case involved total monetary sanctions of approximately \$3.3 million, but included 28 defendants.[5] Finally, there was one announcement about a \$6 million award to joint whistleblowers.[6]

As for administrative proceedings, the SEC brought 10 stand-alone settled orders in this time period.[7] There were no litigated stand-alone administrative proceedings. In this category, the SEC's largest administrative settlement netted a civil penalty of \$2.5 million.[8]

By comparison, in 2017, during the first 100 days of the first Trump administration, the SEC brought nearly 120 stand-alone actions — almost evenly split between 59 federal court actions and 58 administrative proceedings.[9] Among the federal court actions, seven sought emergency relief, including asset freezes.[10] The largest civil penalty obtained via settlement during the 100 days in 2017 was \$14.3 million.[11]

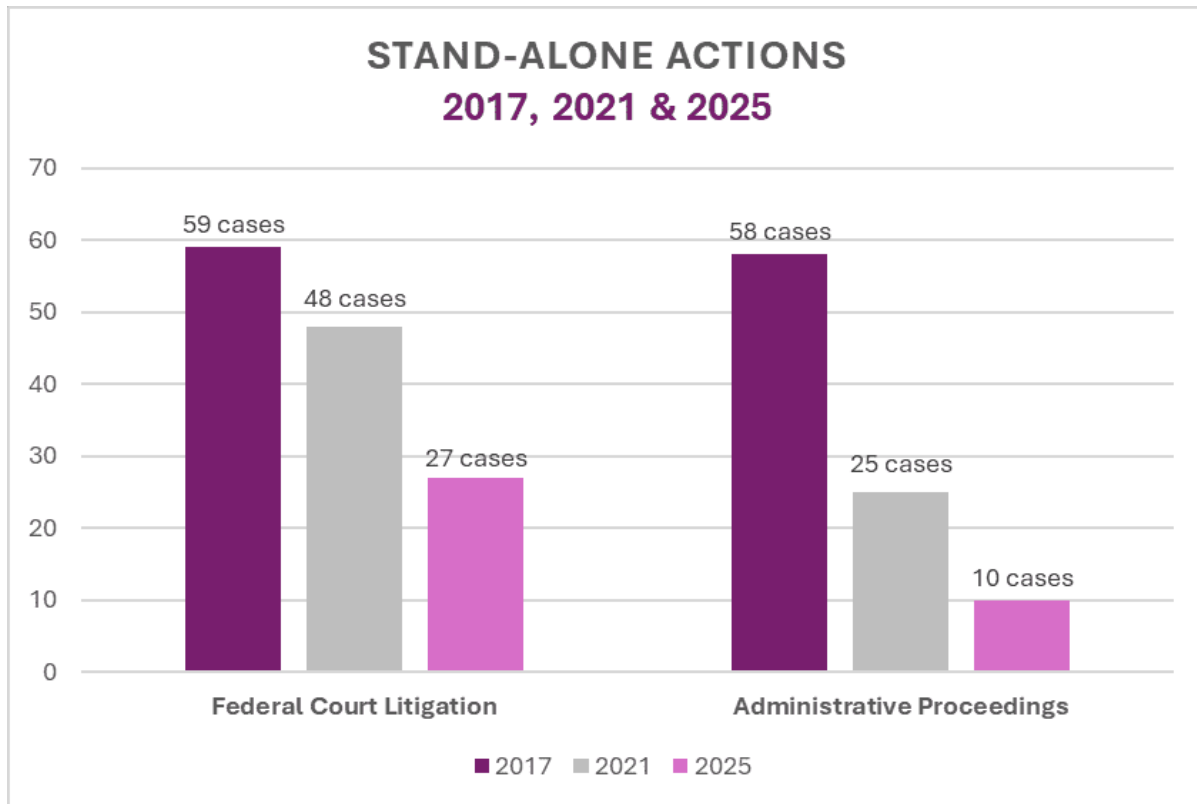
The first Trump administration's results also appear to exceed those under the first 100 days of the Biden administration. In 2021, the SEC brought 73 total stand-alone actions — 48 federal court actions and 25 administrative proceedings[12] — including five emergency actions.[13]



Richard Hong



Joshua Concannon



But It's Not Just the Numbers

Although cryptocurrency and off-channel communications cases did not dominate its enforcement docket in 2017, the SEC brought a range of cases, including, for example, everything from insider trading, investment adviser fraud and offering fraud cases, to Foreign Corrupt Practices Act, internal controls and registration-only cases.

Consistent with the second Trump administration's announced policy shifts, the variety has been more limited during its first 100 days. For example, there were:

- No registration-only cryptocurrency cases;
- No dealer registration cases;
- No FCPA cases; and
- No off-channel — internal controls — communications cases.

The foregoing types of cases were among the more common ones brought by the SEC during the Biden administration.

Rather, as shown in the chart portraying the federal district court actions below, the SEC brought five types of cases:[14] five fraudulent trading cases, including insider trading; three issuer reporting/auditing and accounting fraud cases; three investment adviser/investment company fraud cases; 15 securities offering fraud cases, including one involving alleged crypto-assets; and one public finance fraud case.[15]



But perhaps the most striking element of these federal district court actions is that every one of the federal court complaints included allegations of fraudulent conduct.

As for the administrative proceedings, many of them also involved allegations of fraud. Six of the 10 settled orders contained allegations of making a false and/or misleading statement or finding of conduct that involved misappropriating investor funds or material nonpublic information.[16]

In all, as reflected in the chart below, the SEC brought the following types of administrative procedure cases: two issuer reporting/auditing and accounting fraud cases; three fraudulent, or insider, trading cases; four investment adviser/investment company violations, including a Regulation Best Interest violation; and one anti-money laundering compliance violation case.[17] In two of the nonfraud cases with compliance violations, the settled orders included the retention of an independent compliance consultant.[18]



And There Were Dismissals (and Pauses)

In its first 100 days, the second Trump administration appears to have dismissed or paused at least 10 enforcement cases, including cryptocurrency cases, that were being litigated in the federal district courts.[19]

The SEC also dismissed cases that it had previously, and recently, argued were supported by prior court decisions and/or SEC settlement precedents during the Biden administration.

For example, a compliance case under Section 204A of the Investment Advisers Act, which alleged a failure to establish and enforce written policies and procedures to prevent the misuse of material nonpublic information, was dismissed shortly after an answer was filed.[20] As recently as Sept. 30, 2024, the SEC issued a settled order to a registered investment adviser imposing a \$1.5 million civil penalty for Section 204A and other recordkeeping violations.[21]

In addition, the SEC appears to be in the process of dismissing additional cases, including a dealer-registration case, which had survived the defendants' motion to dismiss.[22]

What to Expect Beyond the First 100 Days

Prior to Jan. 20, the SEC brought a record number of enforcement cases in the first quarter of fiscal year 2025.[23] One could expect the inventory of cases ready to be filed to be lower immediately thereafter. In addition, the SEC probably had fewer noncryptocurrency cases to file, given that it spent so much of its available enforcement resources on investigating and litigating cryptocurrency matters in the Biden administration.

And like many other federal agencies, the SEC underwent significant personnel changes, including the loss of more than 600 staff members resulting from their acceptance of government buyouts, and the subsequent restructuring of the agency.[24]

As the SEC settles in with newly confirmed Chair Paul Atkins and its programmatic uncertainties dissipate, with reallocated resources, it is likely that we will see an uptick in enforcement matters

with a new set of priorities.

Nevertheless, it remains to be seen whether the variety of new SEC enforcement actions in the coming days will expand beyond what we have observed in the first 100 days, or if the SEC will continue to bring more traditional fraud cases along with some other types of more significant compliance cases.

Richard Hong is a partner at Dentons US LLP. He previously served as a trial lawyer in the SEC's Division of Enforcement.

Joshua Concannon is an associate at Dentons.

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[1] Stand-alone actions are original actions that are not related to any prior finding of violation. Thus, they do not include any "follow-on" proceedings. Our analysis does not include "follow-on" proceedings, nor actions revoking registration under Section 12(j) of the Securities Exchange Act of 1934 (the "Exchange Act") for delinquent filings or "stop order" proceedings under Section 8(d) of the Securities Act of 1933 (the "Securities Act") to prevent any potential sales of stock under an allegedly deficient or fraudulent offering document. The SEC views the stand-alone cases to be the most significant cases it brings.

[2] Litigation Releases, U.S. Securities and Exchange Commission, Jan. 21, 2025-May 1, 2025, <https://www.sec.gov/enforcement-litigation/litigation-releases?populate=&year=2025&month=All>.

[3] Compl., Securities and Exchange Commission v. Feingold, et al., Case No. 1:25-cv-20436-DPG (S.D. Fla. filed Jan. 29, 2025).

[4] Securities and Exchange Commission v. Peter Stuart, et al., Case No. 8:25-cv-00761-TDC (D. Md. Mar. 7, 2025) (consenting to retention of independent compliance consultant); Securities and Exchange Commission v. Feingold, et al., Case No. 1:25-cv-20436-DPG (S.D. Fla. Apr. 21, 2025) (stipulating to appointment of monitor).

[5] Compl., Securities and Exchange Commission v. Peter Stuart, et al., Case No. 8:25-cv-00761-TDC (D. Md. filed Mar. 7, 2025).

[6] SEC Awards \$6 Million to Joint Whistleblowers, U.S. Securities and Exchange Commission Newsroom, Apr. 21, 2025, <https://www.sec.gov/newsroom/press-releases/2025-67>.

[7] Administrative Proceedings, U.S. Securities and Exchange Commission, Jan. 21, 2025-May 1, 2025, <https://www.sec.gov/enforcement-litigation/administrative-proceedings?populate=&year=2025&month=All>.

[8] **In the Matter of Allarity Therapeutics Inc.** , SEC Release No. 33-11367, 34-102646 (filed Mar. 12, 2025).

[9] Litigation Releases, U.S. Securities and Exchange Commission, Jan. 21, 2017-May 1, 2017, <https://www.sec.gov/enforcement-litigation/litigation-releases?populate=&year=2017&month=All&page=2>; Administrative Proceedings, U.S. Securities and Exchange Commission, Jan. 21, 2017-May 1, 2017, <https://www.sec.gov/enforcement-litigation/administrative-proceedings?populate=&year=2017&month=All&page=7>.

[10] Compl., Securities and Exchange Commission v. Dwayne Edwards, et al., No. 2:17-cv-00393-ES-SCM (D.N.J. filed Jan. 20, 2017); Compl., Securities and Exchange Commission v. One or More Unknown Traders in the Securities of Fortress Investment Group, LLC, Civil Action No. 2:17-cv-01287 (D.N.J. filed Feb. 24, 2017); Compl., Securities and Exchange Commission v. Yu-Cheng Lin (a.k.a. Believe Lin), Case No. 2:17-cv-00875-JLL-JAD (D.N.J. filed Feb. 9, 2017); Compl., Securities and

Exchange Commission v. Ariel Darvasi and Amir Waldman, Civil Action No. 17-cv-2088 (S.D.N.Y. filed Mar. 23, 2017); Compl., Securities and Exchange Commission v. LottoNet Operating Corp., et al., Case No. 1:17-cv-21033-JAL (S.D. Fla. filed Mar. 20, 2017); Compl., Securities and Exchange Commission v. Daniel H. Glick, et al., Case No. 1:17-cv-02251 (N.D. Ill. filed Mar. 23, 2017); Litigation Release, Securities and Exchange Commission v. Lawrence F. Cluff, Jr. and Roger E. Shaoul, Civil Action No. 17-cv-2460 (S.D.N.Y. filed Apr. 6, 2017).

[11] Citigroup Paying \$18 Million for Overbilling Clients, U.S. Securities and Exchange Commission Newsroom, Jan. 26, 2017, <https://www.sec.gov/newsroom/press-releases/2017-35>.

[12] Litigation Releases, U.S. Securities and Exchange Commission, Jan. 21, 2021-May 1, 2021, <https://www.sec.gov/enforcement-litigation/litigation-releases?populate=&year=2021&month=All&page=2>; Administrative Proceedings, U.S. Securities and Exchange Commission, Jan. 21, 2021-May 1, 2021, <https://www.sec.gov/enforcement-litigation/administrative-proceedings?populate=&year=2021&month=All&page=6>.

[13] Compl., Securities and Exchange Commission v. Jonathan P. Maroney, et al., Civil Action No. 6:21-cv-694-CEM-DCI (M.D. Fla. filed Apr. 20, 2021); Compl., Securities and Exchange Commission v. Zachary J. Horwitz, et al., No. 21-civ-02927 (C.D. Cal. filed Apr. 5, 2021); Compl., Securities and Exchange Commission v. Chatfield PCS Ltd., et al., No. 1:21-cv-00641-DDD-KMT (D. Colo. filed Mar. 3, 2021); Compl., Securities and Exchange Commission v. Andrew L. Fassari, No. 8:21-cv-00403-JVS-ADSx (C.D. Cal. filed Mar. 2, 2021); Compl., Securities and Exchange Commission v. Shawn C. Cutting, No. 2:21-cv-00103-BLW (D. Idaho filed Mar. 5, 2021).

[14] We have used the categories that the SEC used in its enforcement annual reports.

[15] Litigation Releases, U.S. Securities and Exchange Commission, Jan. 21, 2025-May 1, 2025, <https://www.sec.gov/enforcement-litigation/litigation-releases?populate=&year=2025&month=All>.

[16] **In the Matter of John A. Heropoulos** , SEC Release No. 33-11362, 34-102275 (filed Jan. 24, 2025); **In the Matter of Kenneth G. Miccio**, SEC Release No. 34-102266 (filed Jan. 24, 2025); **In the Matter of Jeffrey Suchecki** , SEC Release No. 34-102515 (filed Mar. 4, 2025); **In the Matter of Momentum Advisors, LLC and Allan J. Boomer** , SEC Release No. ia-6860 (filed Mar. 7, 2025); **In the Matter of Allarity Therapeutics, Inc.** , SEC Release No. 33-11367, 34-102646 (filed Mar. 12, 2025); **In the Matter of Emergent BioSolutions, Inc.** , SEC Release No. 33-11371 (filed Apr. 7, 2025).

[17] Administrative Proceedings, U.S. Securities and Exchange Commission, Jan. 21, 2025-May 1, 2025, <https://www.sec.gov/enforcement-litigation/administrative-proceedings?populate=&year=2025&month=All>.

[18] **In the Matter of Velox Clearing LLC** , SEC Release No. 34-102769 (filed Apr. 4, 2025); **In the Matter of One Oak Capital Management, LLC and Michael Derosa**, , SEC Release No. 34-102425, ia-6855 (filed Feb. 14, 2025).

[19] Emily Nicolle, SEC's Demolition of Crypto Enforcement Met with Cheers as Well as Jeers, Bloomberg, Mar. 1, 2025, <https://www.bloomberg.com/news/articles/2025-02-28/sec-s-demolition-of-crypto-enforcement-met-with-cheers-as-well-as-jeers> (noting that at least 8 matters were dismissed or paused as of March 1, 2025); **Securities and Exchange Commission v. Auctus Fund Management, LLC** , Case No. 1:23-cv-11233-AK (D. Mass. filed Mar. 12, 2025) (the Joint Motion for Entry of Stay states, "[t]he parties have reached an agreement in principle to dismiss this action with prejudice, on the condition that Defendants agree to waivers and releases"); **Securities and Exchange Commission v. Payward, Inc.**, Case No. 23-cv-6003-WHO (N.D. Cal. filed Mar. 27, 2025) (Joint Stipulation to Dismiss, and Releases); **Securities and Exchange Commission v. Consensus Software Inc.**, Case No. 24-cv-4578 (E.D.N.Y. filed Mar. 27, 2025) (Joint Stipulation to Dismiss, and Releases); **Securities and Exchange Commission v. Cumberland DRW LLC**, Case No. 24-cv-9842 (MFK) (N.D. Ill. filed Mar. 27, 2025) (Joint Stipulation to Dismiss, and Releases); **Securities and Exchange Commission v. Silver Point Capital, L.P.**, Case No. 3:24-cv-02018-SVN (D. Mass. filed Apr. 4, 2025) (Joint Stipulation to Dismiss, and Releases); **Securities and Exchange Commission v. Schueler**, 23-cv-05749-CBA-PK (E.D.N.Y. filed Apr. 21, 2025) (letter notifying SEC's intent to forego in amending its complaint after initial dismissal of the SEC's complaint on personal jurisdiction grounds); **Securities**

and Exchange Commission v. Dragonchain, Inc., L.P., Case No. 22-cv-1145-JNW (W.D. Wash. filed Apr. 24, 2025) (Joint Stipulation to Dismiss, and Releases).

[20] Litigation Release, Securities and Exchange Commission v. Silver Point Capital, L.P., Case No. 3:24-cv-02018-SVN (D. Mass. filed Dec. 20, 2024).

[21] **In the Matter of Marathon Asset Management, L.P.**  , Rel. No. IA-6737 (Sept. 30, 2024).

[22] Motion to Dismiss, Securities and Exchange Commission v. Actus Fund Management, LLC, Louis Posner, and Alfred Aollami, Case No. 1:23-cv-11233 (D. Mass. Mar. 12, 2025); Brian Dowling, SEC Drops Dealer-Registration Case Criticized By Hedge Fund, Law360, Mar. 13, 2025, <https://www.law360.com/articles/2310198/sec-drops-dealer-registration-case-criticized-by-hedge-fund>.

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III. Judge Questions Legal Theory In Multiplan Pricing MDL

By **Lauraann Wood**

Law360 (May 2, 2025, 9:22 PM EDT) -- An Illinois federal judge handling multidistrict litigation accusing Multiplan of conspiring with insurers to fix out-of-network reimbursement rates seemed unsure Friday that a viable antitrust theory is at play, saying the plaintiffs' alleged market dynamic seems similar to various individuals independently deciding to hire the same "really good painter."

U.S. District Judge Matthew Kennelly used the painter example at various points during a hearing on Multiplan and the other defendants' MDL dismissal bid to highlight his skepticism that the plaintiffs have pled a plausible antitrust conspiracy over the alleged reimbursement rate-fixing.

Everyone could hire the same painter, but that wouldn't mean the individuals conspired to exclude other painters from the market, Judge Kennelly said. That leaves the court curious what makes the plaintiffs' claims any different from the idea that "Multiplan just does a really good job of what they do, and it's better for me as an insurer" to let a third party handle out-of-network pricing decisions, he said.

Representing the MDL's direct-action plaintiffs, Stephen Medlock of Vinson & Elkins LLP argued market realities make the difference in the case. The defendants had a free pricing regime that cited usual, customary and reasonable benchmark data to help them make market-based decisions before their executives eventually "got together in the same room at luxury resorts and came out" charging the same prices for out-of-network goods and services "to the penny," he argued.

"That's not like just having a better painter. That's a cartel. That's the central difference here," asserted Medlock, who serves on the direct-action plaintiffs' executive committee. "They didn't invent a better mousetrap. They invented a cartel."

Judge Kennelly also signaled that he was struggling to understand how data firm Multiplan could be considered a competitor to insurance companies, since it performs just one function that a health benefit payor might otherwise provide. "It's kind of like saying that a truck driver and a trucking company are competitors," he said.

Medlock argued in response that Multiplan performs more than just one function, and the company is throwing up "a smokescreen" by focusing on the fact that it isn't an insurance company. What matters is whether the product being purchased is the same, not whether the buyers are the same, he argued.

"If it looks like a duck, and it quacks like a duck, it is a duck," Medlock said. "They get claims. They pay claims. They're buying the same services."

Arguing for the defendants, however, Multiplan attorney Sadik Huseny of Latham & Watkins LLP urged Judge Kennelly to reject his opponent's characterization.

"You can't call a duck an elephant and expect it to actually have the nature and quality of an elephant," the attorney argued. Multiplan "does what it does," and allegations that the company is somehow an insurer or competitor "are not well taken or supported," he said.

Lawsuits in the MDL say MultiPlan Inc. and the other defendants colluded through the data firm's pricing tools to systematically underpay out-of-network providers. The collusion forces providers to

accept the Multiplan reimbursement rate and forgo balance-billing or reject the offer and receive an even lower reimbursement from the health benefit payor, they allege.

"It's a classic Hobson's choice," argued Jennifer Scullion of Seeger Weiss LLP, who also serves on the direct-action plaintiffs' executive committee.

The plaintiffs also say providers accept a Multiplan reimbursement offer 98% of the time, but they rejected Judge Kennelly's suggestion Friday that the acceptance rate might simply reflect that Multiplan "is just setting really good rates for people."

Rather, it reflects the market's lack of any realistic alternative for providers to seek competitive rates because they're now also part of the alleged cartel making the same reimbursement offers as their competitors, class counsel Natasha Fernandez-Silber of Edelson PC argued Friday.

"That's how Multiplan is able to impose monopsony prices on providers," she said.

The defendants, however, argue both the class and direct plaintiffs lack standing to sue. Any injury they may suffer from under-reimbursement is caused by their decision to reject the Multiplan reimbursement, Cigna attorney Joshua Simon of McDermott Will & Emery LLP argued Friday.

Rejecting the reimbursement offer simply means an out-of-network claim will get paid out according to whatever health benefit plan terms are otherwise in place, Simon told Judge Kennelly.

"The fact of the matter is, they have a choice whether to accept that offer or not," and that choice is the reason the plaintiffs suffer an injury relating to any out-of-network reimbursement, the attorney said.

The defendants also told Judge Kennelly on Friday that the plaintiffs' antitrust theory has not only been rejected several times by other courts, but it is also a product of their desire to keep using their preferred Fair Health benchmark since its prices are based on provider charges and "have kept going up dramatically, their own allegations show," Huseny argued.

Multiplan's benchmarks, however, are composed of referenced-based cost data and represent "a new competitive possibility" for the market, Huseny argued. The plaintiffs in the MDL are simply trying to "chill and prevent the use of this competitive option," even though "that's actually what antitrust protects, competition [and] new competitive options," he said.

Judge Kennelly took the dismissal motions under advisement.

The MDL's class plaintiffs are led by Edelson PC, Susman Godfrey LLP and Berger Montague PC.

The direct-action plaintiffs are led by Arnall Golden Gregory LLP, Seeger Weiss LLP, Napoli Shkolnik PLLC and Vinson & Elkins LLP.

MultiPlan is represented by Latham & Watkins LLP and Phelps Dunbar LLP.

Law firms representing other defendants in the MDL include Williams & Connolly LLP, Hogan Lovells, Davis Polk & Wardwell LLP, McDermott Will & Emery LLP, Sidley Austin LLP, Gibson Dunn & Crutcher LLP, Neal Gerber & Eisenberg and Crowell & Moring LLP.

The case is In re: MultiPlan Health Insurance Provider Litigation, case number 1:24-cv-06795, in the U.S. District Court for the Northern District of Illinois.

--Editing by Linda Voorhis.



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Abbott Beats Bellwether In Formula MDL Ahead Of Trial

By **Hailey Konnath**

Law360 (May 2, 2025, 10:37 PM EDT) -- An Illinois federal judge Friday held that Abbott Laboratories isn't liable for the death of a baby who consumed its Similac baby formula, entering judgment in favor of Abbott in a bellwether case in multidistrict litigation that was set to head to trial in a little over a week.

U.S. District Judge Rebecca R. Pallmeyer granted summary judgment in favor of Abbott and terminated all remaining motions in the case, which was to be the first bellwether in the multidistrict litigation over Abbott's Similac and Enfamil formulas to proceed to trial.

According to Ericka Mar, her daughter RaiLee was born 12 weeks premature and was fed Abbott's cow's milk-based formula for preterm infants. Shortly after ingesting the formula, RaiLee developed necrotizing enterocolitis, or NEC, a serious gastrointestinal illness that can affect babies. Mar said RaiLee died just a few days after her birth.

Judge Pallmeyer said in Friday's opinion that Abbott "could have made more forceful warnings about the relative risks of its formula."

"The factual reality, however, is that at the time and location of this baby's birth, cow's milk-based infant formula was the only option to feed her," the judge said. "Abbott cannot be liable for its failure to warn of a better but unavailable alternative."

Judge Pallmeyer also emphasized the "limited direct application" of her findings in Mar's case to the other claims in the multidistrict litigation. She emphasized that she didn't weigh in on Mar's experts' ability to sufficiently prove a connection between formula and RaiLee's illness, nor did she adopt Abbott's framing that a lack of human milk, not the presence of cow's milk formula, causes NEC.

"Other plaintiffs pursuing similar claims in this MDL may be able to produce a more thorough record as to the basic facts and manufacturing process of Prolacta formula and procure expert testimony as to the feasibility of Prolacta as an alternative design for cow's-milk-based formula at the time of their child's birth," Judge Pallmeyer said. Prolacta is a human-milk fortifier or formula that wasn't available at the hospital when RaiLee was born, according to the order.

She added that a different plaintiff might be able to present evidence showing that she or physicians would have made different decisions with different warnings from Abbott.

Lawyers for Mar said in a joint statement Friday that the ruling "is devastating."

"This is a family who was destroyed by bad behavior from Abbott Laboratories, a multi-billion-dollar corporation, which was aware of the risk of its products for at least 20 years before RaiLee's birth," they said. "Now, they have known for three decades but still have not adopted a more robust warning."

The lawyers — who are with Johnson Becker PLLC, Lieff Cabraser Heimann & Bernstein LLP, DiCello Levitt LLP, Levin Rojas Camassar & Reck LLC and Levin Papantonio Proctor Buchanan O'Brien Barr & Mougey PA — said that while they're disappointed in the decision, the order "is limited to the facts of the Mar case."

"The court's denial of defendants' motions to exclude plaintiffs' experts will permit the remaining bellwether cases to go forward and the MDL as a whole to continue," they said. "We will continue to fight for the families whose children have been, and continue to be, harmed by defendants' cow's milk-based preterm products."

They added that they're reviewing the Mar family's options and "will continue to advocate for baby RaiLee and all other preterm infants affected by these products."

Abbott didn't immediately respond to a request for comment late Friday.

Mar's case is one of **hundreds of similar suits** filed against Abbott as well as its competitor, Mead Johnson & Co. LLC. Mar's was also one of four bellwether cases selected to proceed to trial first, according to Judge Pallmeyer's order. The trial was scheduled to kick off May 12.

Judge Pallmeyer noted Friday that the "loss of a child is heartbreaking, and for Ms. Mar and her family, RaiLee's death is a profound tragedy."

Ultimately, however, Mar hasn't presented evidence of a "feasible alternative design to Abbott's cow's milk formula, nor has she been able to demonstrate that Abbott's alleged failure to warn was the cause-in-fact of RaiLee's NEC," the judge said.

Mar had argued that Prolacta was a safer, alternative design that Abbott could have made instead of the cow's milk product. It also could have made the product safer by providing adequate warnings, she said. Judge Pallmeyer said neither of those arguments can survive Abbott's summary judgment bid.

In particular, the judge took issue with the conclusions from Mar's experts, saying that neither is an expert on formula manufacturing. While they do have medical and clinical expertise that allows them to point to Prolacta as a safer feeding method, "evidence of a better treating option is not the same as evidence of alternative feasible product design," she said.

It's also unclear whether Mar is referring to Prolacta fortifier or formula, both of which serve different purposes, according to the order.

And in any event, Mar hasn't presented any evidence as to feasibility, the judge said. That's a "key aspect to proving availability of an alternative, feasible design," Judge Pallmeyer said.

"The absence of any evidence of feasibility from plaintiff is particularly jarring in contrast to uncontroverted evidence submitted by Abbott demonstrating significant shortfalls in the supply of donor human milk, necessarily making the production of human-milk-derived formula difficult at scale," she said.

Notably, Judge Pallmeyer rejected Abbott's argument that it didn't have a duty to warn of the relative risks allegedly associated with its formula. At the same time, she agreed with Abbott that, in RaiLee's case, adequate warning would have made no difference in the baby's treatment.

"It is undisputed that there was no donor milk or Prolacta available at [the hospital] when RaiLee's diet was changed to a mixed feeding with [the formula]," the judge said.

Critically, Mar hasn't offered any testimony from hospital administrators or policymakers supporting that a warning "would have resulted in a different world where donor milk or Prolacta were available for RaiLee," the order stated.

The plaintiffs are represented by Johnson Becker PLLC, Lieff Cabraser Heimann & Bernstein LLP, DiCello Levitt LLP, Levin Rojas Camassar & Reck LLC and Levin Papantonio Proctor Buchanan O'Brien Barr & Mougey PA.

Abbott Laboratories is represented by Meir Feder, Bridget K. O'Connor and Edward M. Carter of Jones Day, and James F. Hurst of Kirkland & Ellis LLP.

The MDL is In Re: Abbott Laboratories et al. Preterm Infant Nutrition Products Liability Litigation,

case number 3026, in the U.S. District Court for the Northern District of Illinois. The bellwether is Ericka Mar v. Abbott Laboratories, case number 1:22-cv-00232, in the U.S. District Court for the Northern District of Illinois.

--Editing by Kristen Becker.

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Apple Beats Suit Over Child Porn In iCloud Accounts, For Now

By **Craig Clough**

Law360 (May 2, 2025, 6:45 PM EDT) -- A California federal judge tossed a proposed class action Thursday claiming Apple engaged in "privacy-washing" by ignoring a problem with child sexual abuse material on its iCloud storage platform, dismissing some claims with prejudice while allowing others to be amended.

The **order** from U.S. District Judge Noël Wise tossed with prejudice claims focused on violations of federal sex trafficking and child pornography, but allowed amendment of others, including alleged violations of California and North Carolina consumer protection laws. Apple argued that the entire suit is **barred** by Section 230 of the Communications Decency Act, but the judge found Section 230 only applies in some instances.

The suit was filed by and through the guardian of a girl who alleges that after receiving an iPad for Christmas, she was coerced into producing sexual material via iMessage that was then uploaded to iCloud.

In dismissing the first claim with prejudice for violations of the Allow States and Victims to Fight Online Sex Trafficking Act, or FOSTA, which criminalizes using a computer to promote prostitution, the judge held that Section 230 does not "immunize conduct" under FOSTA, but that the suit failed to allege that what happened to Doe was sex trafficking.

"Plaintiffs' single conclusory allegation that the perpetrators at the center of this case were commercial sex traffickers is not enough to transform Apple's alleged conduct into a [FOSTA] violation," the judge wrote. "Although plaintiffs alleged the perpetrators' used iCloud for [child sex abuse material], plaintiffs failed to allege any facts that Apple acted with intent to promote or facilitate the prostitution of another."

The judge also dismissed with prejudice a claim for violations of 18 U.S.C. § 2252 and 2252A, which, among other things, makes it a crime to distribute child pornography with a computer.

Judge Wise held that the law requires a defendant to "knowingly" distribute or possess child pornography and cited the Ninth Circuit's 2022 **decision** in [Does 1-6 v. Reddit, Inc.](#) , calling it "directly on point," adding, "[T]he court held that willful ignorance of a provider, without more, cannot sustain a violation of a sex trafficking statute such as §§ 2252 or 2252A."

Judge Wise also said the plaintiffs' "allegation 'that [Apple] provides a platform where it is easy to share child pornography' is insufficient; Apple's willful blindness does not constitute the requisite knowledge required under Reddit for plaintiff's claim to proceed."

The judge also cited the Ninth Circuit's 2023 **decision** in [Doe #1 v. Twitter, Inc.](#) , and said, "What's more, even if plaintiffs were able to allege actual knowledge, their claims would likely fail pursuant to Section 230. The Ninth Circuit has already decided that Section 230 immunizes publishers where the underlying violations are civil rather than criminal."

The **August suit** was lodged by the guardian of a 9-year-old in North Carolina suing anonymously as Jane Doe, and brought on behalf of potentially millions of children in the U.S. who've been victims of child sexual abuse resulting from the transmission of child sexual abuse material, or CSAM, on Apple's iCloud service in the past three years.

According to the complaint, "privacy-washing" is a deceptive marketing tactic. In this instance, Apple exploits privacy "at its own whim," the suit says, by touting the privacy of its products on billboards and via "slick commercials," while using it "as a justification to look the other way while Doe and other children's privacy is utterly trampled on through the proliferation of CSAM on Apple's iCloud."

Apple knew it had a problem with such material being uploaded to iCloud, but chose not to address it, according to the suit.

Judge Wise held Thursday that the plaintiffs can amend other claims in the suit, including state consumer protection claims under California and North Carolina law, as well as negligent misrepresentation and products liability claims. The order also tossed one unjust enrichment claim with prejudice but allowed amendment of a second one.

The order also granted a request by Apple to stay discovery in the suit.

"With this order, the court dismisses plaintiffs' complaint in full, though grants leave to amend several claims," the judge wrote. "With no operative complaint, the scope of plaintiffs' case is unfocused; because three claims were dismissed with prejudice, the scope of the subsequent complaint will contract accordingly. The court finds good cause to stay discovery until such time if or when that scope becomes more definite."

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

Doe is represented by Juyoun Han of Eisenberg & Baum LLP and John K. Buche of The Buche Law Firm PC.

Apple is represented by Ashley M. Simonsen, David N. Sneed, Isaac D. Chaput and Amy S. Heath of Covington & Burling LLP.

The case is Doe v. Apple Inc., case number 5:24-cv-05107, in the U.S. District Court for the Northern District of California.

--Additional reporting by Hailey Konnath. Editing by Michael Watanabe.



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Texas-Led AGs Defend BlackRock Coal Investments Suit

By **Jessica Corso**

Law360 (May 2, 2025, 7:57 PM EDT) -- A coalition of Republican states led by Texas are arguing that BlackRock Inc.'s public commitments to reducing its carbon footprint are evidence that it and two other leading asset managers teamed up to suppress the production of coal in the United States, asking a federal judge not to dismiss their case against the firms.

The states responded Thursday to a motion by BlackRock, State Street Corp. and Vanguard Group Inc. **to dismiss a suit** that the three firms have said is lacking in "basic facts" about a supposed combined effort to pressure publicly-traded coal companies into reducing their output.

The states argue that the "conspiracy" can be seen both through the asset managers' public pledges to reduce their carbon footprints through organizations like the Net Zero Asset Managers initiative and in the "cartel-level profits" they made as investors in the coal companies when the price of coal spiked due to the reduced output.

"Instead of independently using their shares (and corresponding influence) to improve the internal governance of the companies they own, defendants joined forces to coerce publicly owned coal companies into reducing coal output, with the stated goal of curbing global carbon emissions," according to Thursday's motion opposing dismissal.

"The unstated goal, and actual result, of the scheme was to line their own pockets with increased commissions when the companies they were manipulating raked in cartel-level profits and saw their stock prices jump," the states said.

Texas and a dozen other Republican-led states **sued** BlackRock, State Street and Vanguard last year, alleging violations of the Sherman Antitrust Act of 1890 and the Clayton Act as well as state laws against price fixing and deceptive trade practices.

They say the firms used their stakes as some of the largest shareholders in the nation's nine publicly-traded coal companies to pressure the companies into reducing output, which they claim hurt American consumers and businesses that have had to pay higher electricity prices.

BlackRock and the other asset managers have called the allegations "farfetched" and, in moving to dismiss the case, argued that the suing states presented no evidence that such a conspiracy existed.

The complaint contained "no plausible facts that any step in this attenuated conspiracy theory happened — no agreement, no coordinated actions, and no communication among defendants about reducing coal output (much less their investment strategies), nor any alleged act taken to effectuate such a reduction," according to last month's motion to dismiss.

The defendants have also **received the backing** of two leading industry groups arguing that a ruling in the states' favor could have "crippling effects" for tens of millions of Americans. Such a ruling could force large asset managers to forgo a strategy of portfolio diversification by divesting from industries where they own stock in multiple competitors, the industry groups argued.

The Investment Company Institute, one of the industry associations supporting BlackRock, State Street and Vanguard, said in its brief that no court has ever endorsed the theory that common ownership of minority stakes violates Section 7 of the Clayton Act, which contains a carveout for

acquisitions made "solely for investment."

The states said the "intent to influence the coal companies and active use of the stock, among other things, render that [Section 7] defense inapplicable."

A representative for BlackRock declined to comment Friday. State Street and Vanguard didn't immediately return a request for comment.

Texas and Montana are represented by their respective attorneys general and by David H. Thompson and Brian W. Barnes of Cooper & Kirk PLLC.

The state of Texas is also represented by Anthony G. Buzbee and Christopher J. Leavitt of The Buzbee Law Firm.

The other states are represented by their own attorneys general.

BlackRock is represented by Gregg Costa, Prerak Shah and Rachel Brass of Gibson Dunn & Crutcher LLP and Thomas Mueller, Jennifer Milici, Perry Lange, John O'Toole, David Gringer and Lauren Ige of WilmerHale.

State Street Corp. is represented by Jason M. Powers, Stacey Neumann Vu, George M. Kryder, Megan Cloud, Stephen M. Medlock and Mackenzie G. Newman of Vinson & Elkins LLP.

The Vanguard Group is represented by Robert D. Wick, John S. Playforth and Shadman Zaman of Covington & Burling LLP and Bradley C. Weber and Chase T. Cobb of Troutman Pepper Locke LLP.

The case is Texas et al. v. BlackRock Inc. et al., case number 6:24-cv-00437, in the U.S. District Court for the Eastern District of Texas.

--Editing by Jay Jackson Jr.

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