

Akero Beats Investor Suit Over Liver Drug Trial Design for Now

- Investors didn't adequately allege level of intent for fraud
- Judge is letting plaintiffs refile suit over trial patients

Akero Therapeutics Inc. defeated investor allegations that the drug maker misled them over clinical trial participants while it sought cash to bring its candidate for treating a form of fatty liver disease to market, a federal judge ruled Monday.

The company and its executives' alleged motive to trick investors ahead of releasing disappointing trial results contained "troubling gaps" that didn't overcome Akero's plausible inference of non-fraudulent intent, Judge Yvonne Gonzalez Rogers said.

The US District Court for the Northern District of California judge's order said holistically Akero's explanations as to why it didn't have the requisite level of intent to warrant—including its reporting of the inclusion of certain patients with liver damage a third of the way into the trial, rather than withholding that information until the end—left fewer questions, Rogers said.

Investors' theory relied on Akero hoping that the drug trial would do well, she said.

Lead plaintiffs Joseph and Dora Klobus didn't contest Akero's proposition that readouts of a trial's status often contain more detailed explanations than comments made before then, she said. Nor did the investors offer any allegations typical to ones that support an inference of scienter, such as those that might be brought by whistleblowers or insider trading claims, she said. And Akero consulted with the Food and Drug Administration on the trial's protocols, further buttressing the plausibility that the defendants weren't trying to trick investors.

Still, the Klobuses sufficiently pleaded that some of the company's statements concerning the trial were misleading, Rogers said. She's letting them file an amended complaint within three weeks.

Stock Offerings

The investors' complaint alleged that Akero and three top executives misrepresented the design of one of its phase two trials for EFX, which targets a form of nonalcoholic fatty liver disease.

The Klobuses claimed the company created the impression the study only had cirrhosis patients proven to have this specific disease. They alleged that Akeru knew EFX required FDA approval to be profitable; that to get approval, they needed investors' cash; and that prospective shareholders would be less likely to invest if they knew the trial included patients with technically-unknown causes of cirrhosis.

Akeru performed three stock offerings to raise funds to test EFX, collecting a total of more than \$577 million, Rogers said.

Akeru's stock plummeted almost 63% the day it delivered a disappointing trial readout that said it included patients with unknown causes of cirrhosis, the complaint said. The class would include those who got stock from Sept. 13, 2022, when Akeru gave an update on another trial, through Oct. 9, 2023, the day before the stock drop.

"We are pleased with the Court's decision to dismiss plaintiffs' complaint in its entirety. Our client, Akeru, is focused on continuing its efforts to develop an effective treatment for patients with liver disease caused by MASH," said Jamie Wine, a partner at Latham & Watkins LLP, which represents Akeru and three executives.

Robbins Geller Rudman & Dowd LLP and Abraham, Fruchter & Twersky LLP represent the Klobuses. The firms didn't immediately respond to emails seeking comment.

The case is Klobus v. Akeru Therapeutics, Inc. , N.D. Cal., No. 4:24-cv-02534, 5/5/25 .

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Litigation

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West Pharma Sued After SmartDose Device Stock Drop, Fiscal Hit

- **COURT:** E.D. Pa.
- **TRACK DOCKET:** No. [2:25-cv-02285](#) (Bloomberg Law subscription)

West Pharmaceutical Services Inc. downplayed destocking issues and concealed financial headwinds that led it to terminate longstanding customer relationships before a record stock selloff, a proposed class action says.

Share prices plummeted about 38% to close at \$199.11 on Feb. 13, 2025, the day the injection parts supplier released disappointing 2025 earnings and revenue guidance, partly due to its decision not to help develop new devices with two major continuous glucose monitoring customers, according to a pension fund's suit filed with the US District Court for the Eastern District of Pennsylvania. It was the steepest single-day slide recorded since Bloomberg started tracking the stock's data in 1980.

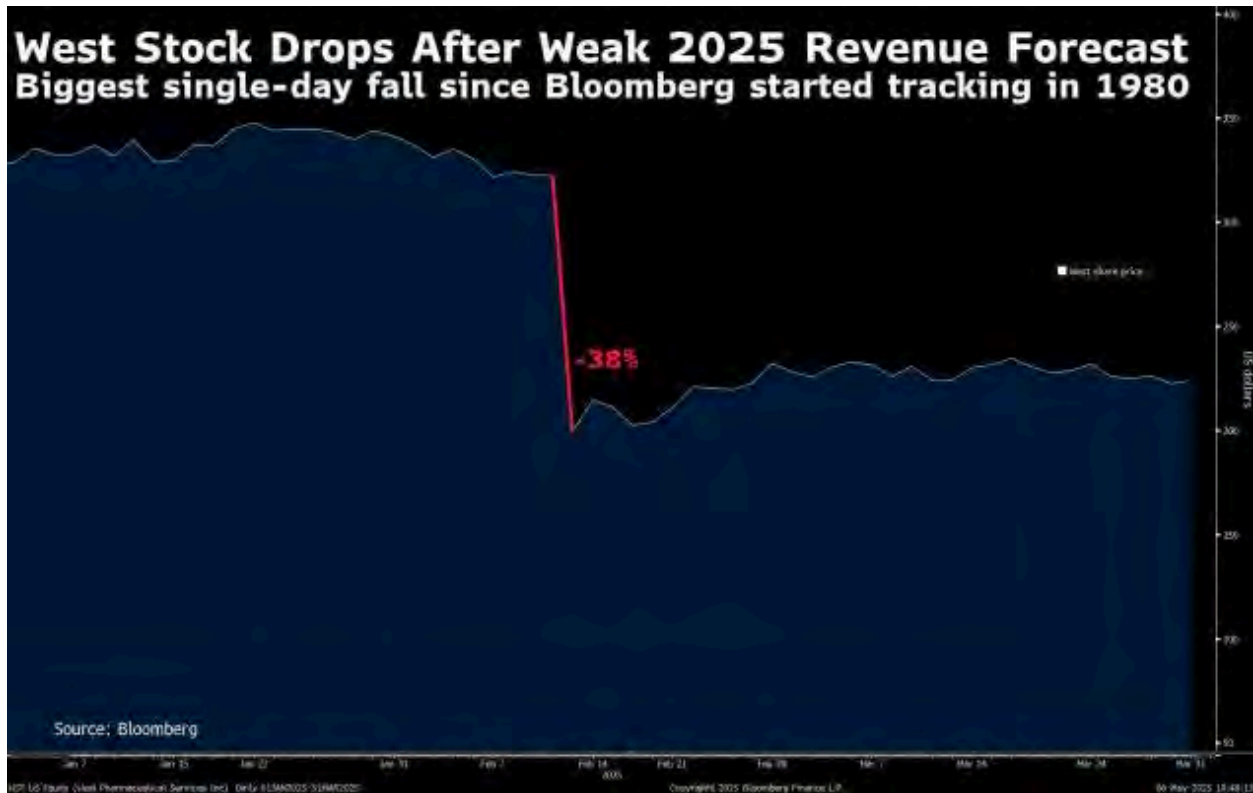
The company also announced on Feb. 13 that one of its high-value products, its wearable SmartDose injection device, would be dilutive to its profit margins in 2025 due to lower pricing, the New England Teamsters Pension Fund's complaint says.

West's proprietary division manufactures and sells its packaging and drug injectors—including its high-value products, which the company claims produces higher profit margins than its other offerings, the complaint filed Monday says. Its contract manufacturing division makes and sells products based on the clients' designs, the complaint says.

West's revenues and margins had been boosted by customers buying up components for Covid-19 vaccinations and stockpiling other products to skirt supply chain disruptions, the pension fund says. As the pandemic wound down in 2023 and 2024, demand waned while clients worked through excess inventory, the fund says.

The company and top brass downplayed destocking as a post-pandemic trend, assuring shareholders they had strong visibility into inventory and demand, the fund says. This allegedly misled investors into thinking financial impacts were temporary and industrywide.

But destocking was affecting its high-value products, the complaint says. West allegedly hid financial metrics created the risk of costly restructuring activities, including the decision not to participate in device development for those continuous glucose monitoring customers.



The proposed class would include those who got West shares from Feb. 16, 2023, when West touted its margins while delivering fourth-quarter and full-year 2022 financial results, through Feb. 12, 2025.

The pension fund seeks damages for alleged Securities Exchange Act of 1934 violations by the company, two current and one former executive.

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

Labaton Keller Sucharow LLP and Kessler Topaz Meltzer & Check LLP represent the pension fund.

The case is New England Teamsters Pension Fund v. West Pharm. Servs., Inc., E.D. Pa., No. 2:25-cv-02285, complaint filed 5/5/25.

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Charles River Labs Statements on Macaques Probed by Judges (1)

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 lead investor, a teachers' retirement fund, faulted six categories of statements by the company and its executives about its macaque supply chain and its legal compliance.

Charles River's stock fell 10% after it announced in 2023 that it had received a subpoena in connection with a US Department of Justice and US Fish and Wildlife Service investigation and that it would voluntarily suspend shipments of the animals from Cambodia, the fund said in its complaint.

Judge Denise Casper of the US District Court for the District of Massachusetts dismissed the case on the pleadings in July 2024.

The First Circuit should look at whether the statements were false or misleading to a reasonable investor, Matthew W.H. Wessler of Gupta Wessler LLP told the appellate panel Monday. After the indictment of a major smuggling ring, Charles River reassured investors that the indicted company was "not a supplier of ours" and that the sourcing issues wouldn't affect its business, Wessler said. But those statements weren't true, he said.

Judges Lara E. Montecalvo, Sandra L. Lynch, and William J. Kayatta Jr. asked questions to clarify the plaintiffs' position—for example, about the company's use of the term "non-preferred" vendors.

Lynch and Kayatta asked Wessler about the company's argument that it only disclaimed a connection with "direct" suppliers.

The CEO “complicated that story,” leaving analysts to conclude that Charles River was unaffected, Wessler said.

Charles Duggan of Davis Polk & Wardwell LLP, arguing for Charles River, said there were clear implications that the company expected some effect. “Nobody knew what was going on,” Duggan said about the macaque shipments. As soon as further developments occurred, the company made disclosures to investors, he said.

But Wessler, in rebuttal, said Charles River made its statements after the indictment to distinguish itself from its competitors. Analysts assumed Charles River could benefit after it claimed it was unaffected, he said. It was seen as being in “a positive position relative to its peers,” he said.

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 .

(Updates story with new reporting and context beginning in third paragraph.)

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Suits Allege GM Overstated Tech Prowess of Now-Shuttered Robotaxi Unit



law.com/corpcounsel/2025/05/05/suits-allege-gm-overstated-tech-prowess-of-now-shuttered-robotaxi-unit

Scott Ball

May 5, 2025

Reality didn't match the hype behind GM's robotaxi experiment, prompting the automaker to pull the plug on the business.

At least that's the take of securities fraud lawsuits that are starting to pile up against the Detroit-based automaker. Among the latest is a derivative complaint filed April 28 by shareholder Lee Namiotka in the Eastern District of Michigan.

"Defendants repeatedly touted the capabilities of Cruise's AV technology, assuring investors and the public that the technology was safe and the technology had reached driverless [Level 4] autonomy," according to the complaint, which was filed by Fink Bressack, Rigrodsky Law and Grabar Law Office.

GM did not respond to a request for comment.

GM had told investors that its Cruise autonomous vehicle fleet might generate \$50 billion in revenue annually by 2030. Its eight-year quest to take on Waymo and Tesla, which ended in December, cost GM \$11.5 billion.

Tech and IP attorney Joseph Falcon, a partner at Barley Snyder in Malvern, Pennsylvania, told Law.com the litigation against GM underscores the dangers of misrepresenting the potential of patent-protected technology.

"While patent law imposes no direct obligation to align public statements with those disclosures, securities law demands accuracy," Falcon said. "Misrepresentations can inflate stock prices, harm shareholders when the truth emerges and trigger securities fraud investigations by regulators like the SEC or private plaintiffs."

Namiotka's lawsuit accuses GM, its board members and former Cruise executives of breaching their fiduciary duty to shareholders and violating the Securities Exchange Act.

An earlier class action filed in the same district alleges the company made a range of misrepresentations, including saying the Cruise vehicles were "fully driverless" and could "operate without a human in the loop."

How We Got Here

Cruise's fortunes turned south in October 2023, when a Cruise AV hit a pedestrian in San Francisco then dragged her for 20 feet along the asphalt before coming to a stop. The woman suffered grave injuries that kept her in intensive care for months. (GM settled her injury suit months later.)

Regulators said Cruise made matters worse by not giving them video footage of the pedestrian being dragged, and initially claiming the robotaxi came to a complete stop after hitting her. California's Department of Motor Vehicles pulled Cruise's year-old permit and the National Highway Traffic Safety Administration issued a \$1.5 million fine for omission of crash details.

Cruise then recalled all its robotaxis, ostensibly to fix software and hard-braking problems, before finally throwing in the towel.

A third-party report on GM's Cruise conducted by Quinn Emanuel Urquhart & Sullivan cited poor leadership, inadequate processes and an "us versus them" mentality with regulators for the dragging incident response. Most of the remaining Cruise leadership was shown the door once GM released the Quinn report.

What's Next

Shareholder suits alleging misrepresentations are common. Last month, for instance, Law.com reported on litigation against Apple alleging it overstated the capabilities of its artificial intelligence.

Falcon said the Cruise suits might be a bigger threat to GM than the artificial intelligence suits are to Apple.

While the Apple cases involve vague, optimistic claims, "GM faces charges of misleading shareholders about its patented AV technology by claiming Level 4 autonomy, a precise SAE standard implying significant autonomy with minimal human intervention. The statements face heightened scrutiny and risk challenges to GM's patents' validity if they exceed U.S. Patent and Trademark Office disclosures."

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Investor Strikes Out With Suit Targeting B. Riley Role in Buyout

- Investor failed to allege stockholder controlled merger
- Allegations infer National's board acted independently

An investor was unable to convince a Delaware chancellor Monday that B. Riley Financial Inc. breached a fiduciary duty in its take-private acquisition of National Holdings Corp.

Richard Frank, an NHC stockholder, failed to allege BRF controlled National for the purposes of the merger in such a way that it owed any fiduciary duties to him or its other investors, Chancellor Morgan T. Zurn said in an opinion partly dismissing his proposed class action.

Zurn dismissed Frank's sole claim against BRF from the Delaware Court of Chancery, leaving a breach of fiduciary duties claim against National's former CEO Michael Mullen.

Frank alleges nothing showing BRF controlled or coerced the special committee required to approve the merger, Zurn said. The investor merely alleges that the committee deliberated its options independently while choosing to engage with BRF throughout the process.

Frank alleged BRF and Mullen forced through an underpriced transaction to sabotage a competing buyout proposal. Mullen was motivated by unfair perks and a hostile takeover threat, he also alleged in his complaint.

Mullen and BRF's leaders allegedly kept National's board in the dark while negotiating large equity and pay awards for senior management, Frank alleged. They then belatedly invited the board to get involved and retroactively tacked on meaningless protections for minority investors to make the process appear fair, his complaint said.

BRF owned 46.4% of National's stock and appointed one nonvoting observer to National's board at the time of the transaction. But pointing out this one appointment doesn't allege that BRF had any operational or managerial influence over National, Zurn wrote. And Delaware law only recognizes controller status when a stake is over 50%, the judge said.

“BRF’s stake shows only its “potential to control,” she said. “Plaintiff must still plead facts showing actual control.”

Aggregating Powers

Zurn also rejected Frank’s allegation that BRF combined forces with another stockholder or National’s management to wield a majority of voting power, saying the investor offered “no basis” for the argument, the opinion said.

Delaware law outlines that different stockholders can only aggregate their powers and thereby creating a fiduciary duty when they make an actual agreement, which Frank failed to allege.

He also failed to allege any inference that BRF actually controlled the merger process, the opinion said. Each step of the merger process in Frank’s complaint only shows an inference of independent decisionmaking, not through any stockholder control, Zurn wrote.

While Frank alleged BRF had conversations with Mullen amid a bidding war, this simply infers an “imperfect process,” the opinion said.

“Those talks may have strayed from the ideal,” Zurn said. “But they do not support an inference that BRF controlled National, or overrode the special committee.”

Cooch and Taylor PA, Kahn Swick & Foti LLC, and Monteverde & Associates PC represent Frank. Richards Layton and Finger PA and Sullivan & Cromwell LLP.

The case is Frank v. Mullen , Del. Ch., No. 2023-0381, 5/5/25 .

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Litigation

May 6, 2025, 9:54AM PDT

Credit Suisse Index Note Investors Rebuffed on Lawsuit Additions

- **Investors allegedly lost \$1.8 billion via volatility ETNs**
- **Adding allegations would be unfair to defendants, court says**

Credit Suisse Group AG has persuaded a federal court to stop investors from putting forth a new theory in their suit over the 2018 collapse of volatility-based notes.

The proposed additions to the complaint about the Credit Suisse “XIV Notes” product don’t merely add factual detail, Judge Analisa Torres said Monday for the US District Court for the Southern District of New York. Rather, “the allegations comprise a new theory of liability,” she said—shifting the focus from the bank’s own hedging to its activity lending notes to short-sellers.

The lead investors asked “to add a new theory of liability five years after this action was filed and more than a year after they began exploring the proposed lending allegations,” Torres said. Allowing the new allegations would unduly prejudice the three Credit Suisse entities and two executives named as defendants, she said.

The ruling approves a January 2024 order by Magistrate Judge Sarah Netburn.

The suit claimed investors lost \$1.8 billion in the Feb. 5, 2018, collapse of the market for VelocityShares Daily Inverse VIX Short Term Exchange Traded Notes, known as “XIV Notes,” a derivative investment that increased in value when the stock market was calm and decreased when it was volatile.

The investors obtained partial class certification in 2023 and class status for an additional group of investors in February.

In her opinion Monday, Torres also agreed with Netburn’s rejection of allegations intended to fix a deficiency in allegations about Credit Suisse’s role in calculating or monitoring the notes’ value.

Credit Suisse was acquired by UBS Group AG in 2023.

Counsel for the investors includes Cohen Milstein Sellers & Toll PLLC, Levi & Korsinsky LLP, and Slarskey LLC. Cahill Gordon & Reindel LLP represents Credit Suisse.

The case is Set Cap. LLC v. Credit Suisse Grp. AG , 2025 BL 152668, S.D.N.Y., No. 18 Civ. 2268, 5/5/25 .

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Treat Risk Disclosures as Opinions to Clean Up Fraud Challenges

Perspectives

Gibson Dunn's Michael Kahn argues risk factors should be analyzed as statements of opinion, offering a clearer legal standard and reducing uncertainty for both companies and courts.

The Bottom Line

- Dismissal of appeal in securities case leaves open questions about how to analyze securities fraud claims that challenge risk disclosures.
- Supreme Court has created framework through case precedent that could facilitate risk factor disclosure analysis.
- Treating risk factor disclosures as statements of opinion has sound basis in law and common sense and would help companies.

Risk factor disclosures fundamentally are an expression of a company's opinions and beliefs about what poses a risk to their business. Because a company's belief is a matter of opinion, risk factor disclosures should be analyzed as statements of opinion.

The US Supreme Court's decision to dismiss the appeal in *Facebook Inc. v. Amalgamated Bank* last year left unanswered how courts should analyze securities fraud claims challenging risk factor disclosures. Securities lawsuits increasingly claim that a company's risk factor disclosures—which typically warn that “if” an adverse event occurs, “then” the company could suffer harm—are misleading when they fail to disclose that the adverse event occurred in the past.

Courts are split on whether this is a viable theory and whether and when adverse past events should be disclosed with risk factors. This uncertainty presents challenges for companies drafting risk disclosures. It's unclear which adverse events must be disclosed, and it remains an open question how courts should make that determination.

However, the Supreme Court has already created a framework to analyze statements of opinion in *Omnicare Inc. v. Laborers District Council Construction Industry Pension Fund*. Risk factor disclosures should be analyzed under this framework.

This approach would reduce the current uncertainty in the law. Parties and courts are familiar with analyzing whether opinion statements are false (for example, if a company doesn't subjectively believe in the opinion being made).

And companies may consider expressly stating in their Securities and Exchange Commission filings that their risk factor disclosures are statements of opinion to underscore for investors and courts that risk factors are opinions about what may affect the company in the future, not representations about events that occurred in the past.

Uncertainty Surrounding Claims

Item 105 of Regulation S-K requires public companies to disclose in their SEC filings "under the caption 'Risk Factors' a discussion of the material factors that make an investment in the registrant or offering speculative or risky." For example, if a company's business is dependent on a complex supply chain, it may disclose as a risk that disruptions to the supply chain could harm its business.

Securities lawsuits increasingly include claims that such risk factor disclosures are misleading.

Take the hypothetical risk factor disclosure about supply chains. Assume that a year before that disclosure, the company experienced a disruption to its supply chain, this disruption wasn't disclosed by the company, and a few months after the disclosure, the company's stock price declined following a news article about the supply chain disruption.

In this scenario, a shareholder plaintiff filing a securities class action lawsuit might claim the risk factor disclosure was misleading because it framed the risk of a supply chain disruption as hypothetical when that risk had already materialized. The plaintiff in this hypothetical would claim that the past disruption should have been disclosed.

The plain terms of Item 105 don't require such a disclosure because it doesn't impose an obligation to disclose past events. Nonetheless, some courts have held that under certain circumstances, this can be a viable theory of securities fraud. These decisions typically find that risk factor disclosures contain an implied representation that the warned-of adverse event hasn't occurred, and that the failure to disclose the past event can render the risk factor misleading.

This presents a practical problem for companies. How does a company know which adverse events must be disclosed and which don't need to be?

To continue with the supply chain hypothetical, it isn't clear whether the company needs to disclose every time there was a supply chain disruption in the company's history. Disruptions could have happened a decade ago, or more recently. They also could have been immaterial, such as a single truck in the fleet going out of commission. There also isn't clarity about whether companies need to disclose a disruption that had already been reported.

Item 105 doesn't address these problems because again, it requires disclosure of risks, not past events. Some courts therefore have created their own rules for what past events must be disclosed, leading to uncertainty for companies as they craft their risk factor disclosures, and for parties and courts in disputes about these disclosures.

Statements of Opinion

Courts could resolve this uncertainty by holding that the framework the Supreme Court established for statements of opinion in *Omnicare* governs risk factor disclosures. There is a sound basis in law and common sense for this approach.

Under Item 105 of Regulation S-K, a company must disclose "material factors" that make an investment "risky." This is inherently a subjective analysis—a company must use its judgment to make that determination.

In other words, disclosures made pursuant to Item 105 necessarily reflect a company's belief about the factors that the company thinks make investing in the company risky. And as the Supreme Court recognized in *Omnicare*, statements of belief are statements of opinion.

Companies typically don't preface their risk factor disclosures by stating "we believe" that if an adverse event happens, then that could be bad for the business. But that doesn't matter because adding "we believe" to the beginning of the typical risk factor disclosure doesn't change its meaning.

Saying "if a disruption to our supply chain occurs, then our business may be negatively impacted" is no different than saying "we believe if a disruption to our supply chain occurs, then our business may be negatively impacted." Regardless of the phrasing, risk factor disclosures fundamentally are statements of opinion about the factors that make an investment in the company risky.

The framework by courts that has required the disclosure of past events in the context of risk factors is flawed. The analysis in all securities fraud cases requires "identifying affirmative assertions" made by companies and then "determining if other facts are needed to make those statements 'not misleading.'"

The only "affirmative assertion" made by disclosures under Item 105 is that the company believes the factors it discloses are the factors that pose a material risk to the company's business. Risk disclosures don't include an implied representation that the warned-of adverse event hasn't occurred in the past. Courts that have made this assumption miscomprehend the disclosure requirements of Item 105.

Again, the plain terms of Item 105 don't require disclosure of past events. This contrasts with other securities law provisions. For example, Item 106 requires certain disclosures about "previous cybersecurity incidents" and Item 303 requires disclosures of "known trends or uncertainties that have had or that are reasonably likely to have a material favorable or unfavorable impact" on the company.

Applying *Omnicare*

Properly understood as statements of opinion, risk factor disclosures should be analyzed under the *Omnicare* framework. Under *Omnicare*, there are three ways in which plaintiffs could establish the falsity of risk factor disclosures.

First, it is false if a speaker doesn't actually hold their stated belief. So, if a company doesn't believe the factors it discloses under Item 105 are the material factors that make an investment risky, then that could give rise to a claim.

Second, if opinion statements "contain embedded statements of fact," then plaintiffs can establish falsity by proving the embedded factual statement is false. This is a bread-and-butter securities claim—if a risk factor disclosure contains an assertion of fact, and that assertion is false or misleading, then the company could be subject to liability.

Finally, if the "facts about how the speaker has formed the opinion—or, otherwise put, about the speaker's basis for holding that view" are different than what a "reasonable investor" would expect, then a plaintiff could establish the falsity of that opinion.

For example, the Supreme Court explained if a company says it believes its conduct is lawful without consulting a lawyer, a plaintiff may be able to establish that this statement of opinion is misleading. This framework also could be applied to how companies form their views about which risk factors to disclose under Item 105.

To help bolster the conclusion that risk factor disclosures are statements of opinion, companies may consider expressly stating in their SEC filings that their risk factor disclosures reflect their opinions about the risks facing the company.

They may also consider expressly stating that their risk factor disclosures aren't purporting to make any factual representations about whether the warned-of risk has materialized in the past. This type of language could help courts confronting risk factor claims conclude—correctly—that these disclosures are statements of opinions.

The cases are *Facebook Inc. v Amalgamated Bank*, U.S., 23-980, decided 4/30/24 and *Omnicare Inc. v. Laborers District Council Construction Industry Pension Fund*, U.S., 13-435, decided 3/24/15.

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Acushnet Buyback Case Against Fila Targets Delaware Law Overhaul

- **COURT:** Del. Ch.
- **TRACK DOCKET:** [No. 2025-0466](#) (Bloomberg Law subscription)

Fila Holdings Corp. affiliates orchestrated a stock buyback scheme that let them maintain their control over golf equipment maker Acushnet Holdings Corp. while selling millions of shares, according to a lawsuit unsealed Monday.

A pension fund is suing the Korean sportswear conglomerate, now called Misto Holdings Corp., saying it's effectively using Acushnet's corporate coffers to preserve its majority stake while cashing out 7 million shares worth \$400 million. Acushnet's board "has worked hand-in-hand with Fila to carefully calibrate the repurchase program to ensure Fila's ownership always stays just above 50%," according to the court filing.

The investor suit is also the second to challenge a divisive overhaul of Delaware's best-in-class corporate laws designed to streamline insider dealmaking by reducing shareholder litigation. "Safe harbor" sections covering controlling stockholder conflicts of interest violate state constitutional provisions that restrict retroactive legislation and prescribe the jurisdiction of Delaware's Chancery Court, the legal complaint says.

The elite business court regularly hears disputes centering on the mechanics of corporate control. A wave of lawsuits have raised buyback gamesmanship allegations 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. A Grindr Inc. investor made similar claims about its largest stockholder a few days earlier.

Misto and Massachusetts-based Acushnet didn't immediately respond to requests for comment Monday. The suit also names Fila chairman Gene Yoon as a defendant, along with his son—its CEO—and two other executives.

According to the lawsuit, as the Fila has been dumping stock, \$750 million worth of share repurchases allowed it "to maintain mathematical control over Acushnet while liquidating hundreds of millions of dollars of its equity." Without the buybacks, Fila's sales would allegedly have reduced its stake to 41%.

Sections of the suit challenging the corporate law overhaul, called state Senate Bill 21, echo a case brought last month taking aim at Dropbox Inc.'s move from Delaware to Nevada. But even if the safe harbor provisions hold up to scrutiny, they still don't shield Fila's scheme, which got approval from neither minority investors nor an independent board committee, the court complaint says.

It was originally filed under seal April 29 by the Roofers Local 149 Pension Fund.

The fund is represented by Labaton Keller Sucharow LLP, Equity Litigation Group LLP, and AsherKelly.

The case is Roofers Local 149 Pension Fund v. Magnus Holdings Co. , Del. Ch., No. 2025-0466, complaint unsealed 5/5/25 .

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Federal Judge Tosses First Infant Formula Bellwether Trial

 [law.com/2025/05/05/federal-judge-tosses-first-infant-formula-bellwether-trial](https://www.law.com/2025/05/05/federal-judge-tosses-first-infant-formula-bellwether-trial)

Amanda Bronstad

May 6, 2025

What You Need to Know

- In a separate summary judgment ruling, the judge also refused to toss the two general causation experts for plaintiffs in the multidistrict litigation.
- The case was filed by Ericka Mar, whose daughter, RaiLee, died 15 days after being born 12 weeks premature on Jan. 1, 2014, at a hospital in West Virginia.
- Abbott has lost a \$495 million verdict, and Mead Johnson a \$60 million verdict, in state court trials, and their only defense win was tossed out.

An Illinois federal judge threw out the first federal bellwether trial over cow's milk-based infant formula but greenlighted the plaintiffs' general causation experts in hundreds of lawsuits.

In one summary judgment ruling entered on Friday, U.S. District Judge Rebecca Pallmeyer, of the Northern District of Illinois, who is overseeing more than 700 lawsuits tying cow's milk-based infant formula to a gastrointestinal illness called necrotizing enterocolitis, or NEC, tossed a bellwether case scheduled for a May 12 trial.

The first bellwether trial in the multidistrict litigation against Abbott Laboratories and Mead Johnson, one of four scheduled, was in a case filed by Ericka Mar, whose daughter, RaiLee, died 15 days after being born 12 weeks premature on Jan. 1, 2014, at a hospital in West Virginia.

"The loss of a child is heartbreaking, and for Ms. Mar and her family, RaiLee's death is a profound tragedy," Pallmeyer wrote. "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. Abbott cannot be liable for its failure to warn of a better but unavailable alternative."

But Pallmeyer, in a separate summary judgment ruling, also refused to toss the two general causation experts for plaintiffs in the multidistrict litigation, concluding that defendants had taken their deposition testimony "out of context." She also described some of the defense arguments as "groundless."

Abbott, the only defendant in the first trial, declined to comment. Mead Johnson, a subsidiary of Reckitt Benckiser Group, which joined Abbott in moving to toss the general causation experts, also declined to comment.

Jose Rojas, of Connecticut's Levin, Rojas, Camassar & Reck, said the ruling that tossed his client's case was "devastating."

"The Mar family was shattered by the death of their daughter," he said. "While we are disappointed the court granted summary judgment in baby RaiLee's case, we note that the order specifically said that it 'has limited direct application to the other claims in the MDL.' 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. Most immediately, we are reviewing the family's options going forward. We will continue to advocate for baby RaiLee and all other preterm infants affected by these products."

Diandra "Fu" Debrosse of DiCello
Levitt. Courtesy photo

Rojas joined other lead counsel in the multidistrict litigation—Diandra "Fu" Debrosse, of DiCello Levitt in Birmingham, Alabama; Timothy Becker of Johnson/Becker in St. Paul, Minnesota; Wendy Fleishman of Lieff, Cabraser, Heimann & Bernstein in New York; and Andy Childers, at Levin, Papantonio, Proctor, Buchanan, O'Brien, Barr, Mougey, in Pensacola, Florida—in stating that the expert ruling in their favor "confirms that the plaintiffs in this MDL will be able to pursue their claims against each defendant in federal court."

"Along with the plaintiffs in the ongoing state court litigation," they said, "we will continue to fight for the families whose children have been, and continue to be, harmed by Abbott's and Mead Johnson's cow's milk-based preterm products."

Next Bellwether Trial: Aug. 11

Attorneys have filed thousands of lawsuits over the formula, which is given to premature babies in the hospital by doctors and staff, and sold under the brands Enfamil and Similac. In the past year, juries in state courts in Illinois and Missouri have hit Mead Johnson with a \$60 million verdict and Abbott with a \$495 million award, as well as a defense verdict for both companies, although a Missouri judge who had sanctioned Abbott's lead counsel later granted a new trial in that case due to "widespread misconduct" on the part of the defendants.

Pallmeyer, in her federal district court ruling, found that the plaintiffs failed to allege that an alternative product was available to doctors, who were forced to use the formula after RaiLee's mother couldn't provide enough breast milk two weeks after her birth. She also found that a warning label would not have made a difference.

“There is simply no testimony or evidence on which a jury could find that a different warning would have resulted in different actions taken by plaintiff or the physicians,” she ruled.

A second bellwether trial is scheduled for Aug. 11.

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Law Firms Mentioned

Lieff Cabraser Heimann & Bernstein

Latest

Trending

Litigation Surge - Technology | Adobe

Adobe was hit with a cluster of federal lawsuits in April. At least three cases were filed against the software giant, including two digital privacy class actions centering on Adobe's software development kits or 'SDKs' and other tracking technologies embedded in third-party mobile apps. The suits accuse Adobe and app developers of using the SDKs and trackers to collect information about app usage and web activities, then using the data for identity resolution, real-time bidding and other services. Other companies have also been sued over SDKs in recent months including Allstate, Amazon and Meta Platforms. Who got the work? Adobe has tapped Arnold & Porter Kaye Scholer for defense.

[Read More](#)

Litigation Surge - Illinois | Trademark

Law.com Radar detected a flurry of trademark infringement lawsuits brought by major gaming companies in Illinois this past week. At least five cases were filed by entities on Radar's sector watchlist, all seeking to enjoin e-commerce operators from selling

Class Action

May 6, 2025, 8:24 AM PDT

Jani-King Hit With Five Class Actions Over 2024 Data Breach

- **COURT:** N.D. Texas
- **TRACK DOCKETS:** Nos. [3:25-cv-01040](#), [3:25-cv-01057](#), [3:25-cv-01062](#), [3:25-cv-01069](#), and [3:25-cv-01113](#) (Bloomberg Law subscription)

Commercial-cleaning franchise company Jani-King International Inc. is facing five proposed class actions alleging it negligently failed to protect the personal information of thousands of people in a 2024 data breach.

The plaintiffs alleged in separate lawsuits that Jani-King breached its duties under common law, contract law, industry standards, and the Federal Trade Commission Act to implement reasonable and adequate data-security measures, and to provide timely notice of the incident.

Information exposed in the breach includes names, addresses, and Social Security numbers, according to complaints filed between April 28 and May 5 in the US District Court for the Northern District of Texas.

Jani-King, which operates an international network of more than 6,600 franchises, didn't respond immediately to a request for comment.

The company waited nearly four months after discovering the breach to notify those affected, the complaints said.

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

Class Actions

Each plaintiff seeks to represent a nationwide class of people whose information was exposed in the breach.

The complaints bring a variety of claims, including negligence, negligence per se, breach of implied contract, unjust enrichment, invasion of privacy, and declaratory judgment.

The plaintiffs are variously seeking compensatory, statutory, exemplary, nominal, and punitive damages; restitution; credit-monitoring services for class members; injunctive and equitable relief; attorneys' fees and costs; and pre- and post-judgment interest.

Shamis & Gentile PA and KO Lawyers represent Edwin Delmacio. Federman & Sherwood represent John Cossette. Eggnatz Pascucci and Kantrowitz, Goldhamer & Graifman PC represent Sophia Ivy. EKSM LLP represents Francis Breedlove. Milberg Coleman Bryson Phillips Grossman PLLC represents Shelly Jacquez.

Kendall Law Group PLLC also represents Ivy and Jacquez.

The cases are Delmacio v. Jani-King Int'l Inc. , N.D. Tex., No. 3:25-cv-01040, complaint filed 4/28/25 , Cossette v. Jani-King Int'l Inc. , N.D. Tex., No. 3:25-cv-01057, complaint filed 4/29/25 , Ivy v. Jani-King Int'l Inc. , N.D. Tex., No. 3:25-cv-01062, complaint filed 4/30/25 , Breedlove v. Jani-King Int'l Inc. , N.D. Tex., No. 3:25-cv-01069, complaint filed 4/30/25 , and Jacquez v. Jani-King Int'l Inc. , N.D. Tex., No. 3:25-cv-01113, complaint filed 5/5/25 .

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Litigation

May 6, 2025, 9:51AM PDT

Californians Granted Class Certification in Auto Insurance Suit

- **Consumers alleged insurers failed to offer lowest policy rate**
- **Class approved as to plaintiffs' unfair competition claim**

California residents won class certification in their decade-long suit alleging several insurance companies failed to comply with a state requirement to offer good drivers the lowest available rate.

Subsidiaries of National General Holdings Corp. are "jointly responsible" for the alleged violations of California insurance law, and the plaintiffs satisfied all the requirements to certify a class of more than 900,000 consumers, Chief Magistrate Judge Donna M. Ryu wrote in a Monday order for the US District Court for the Northern District of California. But Ryu dismissed Personal Express Insurance Co. from the suit since the plaintiffs failed to present evidence linking their alleged injury to the company.

Ryu certified a class of consumers who purchased good-driver discounted auto policies since January 2011 from National General Insurance Co., Integon National Insurance Co., Integon Preferred Insurance Co., and MIC General Insurance Corp., but weren't offered the lowest available discounted rate within the group of insurers operating together.

Diedre and Edd King, the plaintiffs representing the class, alleged the companies overcharged them for insurance in violation of California law.

The statute requires companies to offer good drivers discounted rates of at least 20%. When several insurers operate under common management or control, California law requires those companies to offer a discount from the insurer within the group with the lowest rates for that coverage.

The companies, except for PEIC, were all subsidiaries of National General during the class period. PEIC was acquired by Integon National in April 2014 and was later granted a super group exemption in July 2014, which excludes an insurer within a control group from the lowest rates rule if it meets certain requirements.

PEIC's policy had the lowest good driver rate, and the plaintiffs presented evidence that sales agents for the National General subsidiaries "operated as one unit" and didn't present themselves as representatives for a "specific subsidiary," Ryu said. But the plaintiffs failed to trace their injury to PEIC since the company was part of the control group for a brief time period, and PEIC "maintained a completely separate sales team and training procedures from the other companies," the judge said.

The plaintiffs' renewed motion for class certification satisfied the commonality and numerosity requirements for certification because they demonstrated a common question among the class as to whether the companies acted in concert in their failure to offer the lowest rates within the group, subjecting the estimated 936,000 class members to the same unlawful practices under the California Unfair Competition Law, Ryu said.

The judge rejected the companies' arguments that individualized inquiries are necessary to determine if each proposed class member was eligible for the discount and said the plaintiffs satisfied the predominance requirement.

Ryu also found that the Kings satisfied the typicality requirement, rejecting the companies' argument that the couple allegedly misrepresented their marital status on their policy application.

The plaintiffs additionally satisfied the adequacy and superiority requirements, Ryu said.

But the judge denied class certification based on the plaintiffs' breach of implied covenant of good faith and fair dealing claim, since "individual issues predominate as to causation and damages" on that claim. The plaintiffs failed to adequately address the companies' arguments that some consumers might choose other insurance policies over the cheapest one, Ryu said.

Bashein & Bashein Co. LPA; Morgan & Morgan PA; Robins Kaplan LLP; Cannata O'Toole & Olson; and Cereghino Law Group represent the plaintiffs. Michelman and Robinson LLP represents the companies.

The case is King v. Nat'l Gen. Ins. Co. , N.D. Cal., No. 4:15-cv-00313, 5/5/25 .

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Eaton Fire plaintiffs, Edison clash over timing of damages discovery

DJ [dailyjournal.com/articles/385307-eaton-fire-plaintiffs-edison-clash-over-timing-of-damages-discovery](https://www.dailyjournal.com/articles/385307-eaton-fire-plaintiffs-edison-clash-over-timing-of-damages-discovery)

Judge Laura A. Seigle

Eaton Fire plaintiffs and defendant Southern California Edison disagree on the timing of individual plaintiffs' damages discovery and how to proceed should somebody personally known to the judge file an individual case.

Both parties staked their positions in a joint statement submitted on Friday for Tuesday's case management conference.

Plaintiffs' attorneys say that their clients should serve their individual damages questionnaire and document checklist no later than 90 days after their case is set for trial or by Dec. 1, 2026, whichever date is earlier. Southern California Edison's attorneys say that plaintiffs whose cases were related to the lead case should complete those documents by Nov. 28, 2025. Both parties cite previous wildfire cases to support their positions.

The plaintiffs' attorneys say that Southern California Edison is pushing for damages questionnaires and responsive documents to be completed and produced less than 11 months after the fire started and as their clients deal with matters including insurance claims, new living arrangements and loss assessments.

They say that those documents were due at least 13 months after smaller wildfires such as the McKinney and Zogg fires, and 17 months after the Thomas Fire, all of which were smaller.

"There are logistical limitations to working up damages for what counsel expects to be close to 10,000 households, with over half of those being total losses. It will take more than 120 days," states the case management statement. "Most lots have yet to be cleared by the Army Corps of Engineers. Debris removal will not be completed until late 2025," the statement continues.

It goes on to say that the subrogation plaintiffs have not started matching individual plaintiffs to insurance claim files, and will not begin producing closed insurance claim files until the fall of 2025 at the earliest.

Southern California Edison wants individual plaintiffs with cases related to the lead case to submit their individual damages questionnaires by Nov. 28, 2025 or within 90 days of the date that their action is related to the lead case in the Eaton Fire litigation, whichever is later.

"Defendants' proposal is comparable to other wildfire cases, which have generally required submission of damages questionnaires around one year after the fire ignited (e.g., 12 months for the Fairview Fire Litigation, 13 months for the Coastal Fire Litigation, and 11 months for the Woolsey Fire Litigation)," reads the joint statement.

"Defendants believe that this proposal is a reasonable compromise that addresses individual plaintiffs' request for additional time, and defendants' need for information regarding the scope of this case," it continues.

Judge Laura A. Seigle has told the parties that she wants to avoid conflict issues, so she is checking the names on each individual complaint stemming from the Eaton Fire that is assigned to her. The Eaton Fire burned over 14,000 acres, destroyed nearly 10,000 structures and killed 18 people.

The parties have agreed to waive any conflict should an individual plaintiff - who the judge knows - remain an absent class member. Should such a person file an individual complaint, plaintiffs' counsel suggest appointing a special master to handle those issues and assigning that case to another judge so that litigation of the related cases is not impacted and Seigle is not recused. Edison has not agreed to waive conflicts with respect to potential individual plaintiffs and would prefer to address those issues when they arise. Southern California Edison is represented by Hueston Hennigan LLP. *Gursey v. Southern California Edison*, 25STCV00731 (L.A. Super. Ct., filed Jan. 13, 2025).

#385307

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Billionaire Blasts Private Equity's Continued Grifting as Performance Falls Further

 [nakedcapitalism.com/2025/05/billionaire-blasts-private-equitys-continued-grifting-as-performance-falls-further.html](https://www.nakedcapitalism.com/2025/05/billionaire-blasts-private-equitys-continued-grifting-as-performance-falls-further.html)

May 6, 2025

We've written off and on over the years about the code of omerta surrounding private equity investing. The fund managers, aka "general partners" had managed to so cow the investors, aka "limited partners" as to how only the privileged were admitted to the special club of fund investors, that they bought into an inversion of the normal rules in money-land: that the party with the gold, here the limited partners, makes the rules (or at least has a lot of say). Not only did these investors accept non-negotiable agreements¹ with egregiously one-sided terms, but they also accepted not known how much in fees and expenses they were being charged and not having independent valuations (which is considered to be fundamental for every other type of investment made by fiduciaries). And they also agreed to treating the contracts as trade secrets, when there was nothing "trade secret" about them, and refrained from saying bad things about particular general partners or the industry generally, lest they no longer be afforded the opportunity to invest.

But the cognitive capture and the code of omerta are finally cracking. As the long-term slide in private equity returns has accelerated, and the industry has (not surprisingly) resorted to chicanery to try to keep milking investors, some big players are now willing to burn their bridges and call out industry misconduct in blunt terms. The example is a Financial Times front page story, Private equity's best days are over, says Egyptian billionaire Nassef Sawiris, where the headline is tame compared to Sawiris' criticisms.

But before turning to Sawiris' critique, some backstory as to why it matters.

The reason to care about private equity is its outsized power and the damage it has done and is set to continue to inflict, not just upon employees and customers of private-equity owned companies, but as we'll see, increasingly upon its investors. That includes public pension funds, who have accounted for an estimated 30% to 35% of total private equity commitments. Keep in mind that many of these public pension funds, such as CalPERS and the Kentucky Public Pensions Authority, have government guarantees of pension obligations, meaning taxpayers are on the hook if fund investment performance falls short.

As for their raw power, consider: private equity has for decades been the largest source of fees to Wall Street and top white shoe law firms. Contacts inform me that private equity has also provided more than half the professional fees to McKinsey, Bain and BCG since the early 2000s. In its pre-crisis IPO filing, KKR stated that was the fifth biggest employer in the US via the companies it owned.

The private equity fund managers are also unduly influential via succeeding in targeting niches (which may be geographic and thus don't show up in usual antitrust surveys) where they can achieve pricing power. One is hospital billing, where two private equity owned companies, TeamHealth (Blackstone) and Envision (KKR) are singularly responsible for the big uptick in "surprise billing" abuses.

One might wonder why it has taken investors so long to escape private equity cult programming. The industry, in its very early years as "leveraged buyouts" in the 1980s, earned spectacular returns. Finding overdiversified conglomerates and selling them for more than the value of their parts was easy; the hard part was winning the takeover fight, particularly since Wall Street was not keen about siding against big corporations, who were lucrative clients. A LBO debt crisis (masked by the much bigger S&L crisis) of the early 1990s led to a fundraising drought, which meant that those who were able to buy corporations had little competition and generally got very good bargains. So a glory period of vintage 1995 to 1999 deals ensued, and private equity biz has been running on brand fumes for quite a while since then.

It's not as if performance decayed quickly. But in the early 2000s, the money going into private equity rose markedly, the result of Greenspan in the dot-bomb era forcing negative real yields for an unheard of 9 quarters, which led investors into all sorts of reckless reaching for returns (like the subprime and asset-backed CDO bubbles). Historically, private equity was expected to deliver 300 basis points over stock indexes in returns to compensate for its higher risks (leverage and illiquidity). Mind you, no corrections were made for known problems, like private equity firms not reducing valuations sufficiently in bear equity markets (when by all logic, leveraged equity should be worth less than companies with lower borrowing levels) or adjusting for private equity reporting returns on average a quarter later than for listed stocks. The latter created an illusion of lower correlation with equities, which is valuable from a risk-reduction perspective. Recent papers that have corrected the timing of reporting have found, natch, a high level of correlation between public and private equity returns.

To shorten a very long story, Oxford Business School professor Ludovic Phalippou ascertained that private equity stopped outperforming public stocks in 2006. That means it should have been shunned as an investments, since it was no longer producing enough to compensate for its additional risks. To the extent private equity was delivering outsized total performance, the excess was being scraped off by the general partners in fees and expenses. Yet investors, particularly in the post-financial-crisis ZIRP era were desperate for additional returns, held fast to private equity hopium. They justified the flagging results with gimmicks like lowering the required risk premium from 300 basis points to 150, and switching the underlying equity benchmarks to be more flattering.

The chickens have come home to roost as private equity, as levered equity, has fared poorly in a higher (and not even all that high!) interest rate environment on top of its pushing-two-decades of widely unacknowledged underperformance. And unless Trump unexpectedly makes a big change in his economic course, private equity is set to suffer even more in a stagflationary environment (or worse, a flat out depression).

A collection of recent Financial Times headlines should give an idea of the sorry conditions in the industry:

Private equity's bind should prompt an investor rethink

3 days ago — Private equity's bind should prompt an investor rethink. Returns are likely to be lower in a world of weaker growth, higher interest rates ...

Private equity goes 'risk off' as it pauses dealmaking

Apr 15, 2025 — Donald Trump's tariffs are forcing private equity groups to pause their dealmaking and focus on managing their existing portfolio companies, ...

Big investors look to sell out of private equity after market rout

Apr 6, 2025 — The race to find liquidity signals that investors in private equity funds increasingly expect to receive few cash profits from their holdings ...

Hedge funds > private equity

4 days ago — After all, whenever private equity buys and sell companies, takes them public or issues bonds and loans to finance them it generates hefty fees ...

Private equity industry shrinks for the first time in decades

Mar 4, 2025 BE — Private equity fundraising dropped 23 per cent in 2024, with the industry drawing in \$401bn in new assets — the weakest tally since 2020.

Pensions dim on US private equity

Apr 14, 2025 — CPPIB's trepidation over investing in the US, in particular, is a huge blow to the private equity sector. The fund had close to \$50bn of ...

Can private equity meet public responsibilities? – FT Forums

To say that opinions on private equity's sustainability record are divided would be a wild understatement. When we polled FT Moral Money readers, respondents ...

And no, I did not omit any cheery search results.

A good one-stop shopping account of why once-loyal private equity investors are trapped in dud deals came in Big investors look to sell out of private equity after market rout. Keep in mind that CalPERS a few years ago acknowledged that private equity would go from being a cash flow positive investment strategy (CalPERS could expect to get more in redemptions

than it put in in a typical year) to cash flow negative. Why CalPERS insisted on increasing its private equity allocation in the face of that knowledge is beyond me. Pensions do not pay out beneficiaries based on paper returns. They pay them out of cash on hand.

The pink paper explained that the cash bind has only gotten worse:

Large institutional investors are studying options to shed stakes in illiquid private equity funds after the rout in global financial markets pummelled their portfolios, according to top private capital advisers.

The calls by pensions and endowments seeking ways to exit their investments, probably at discounts to their stated value, are a bad sign for the \$4tn buyout industry. Industry groups such as Blackstone, KKR and Carlyle all saw their stocks plunge between 15 per cent and more than 20 per cent on Thursday and Friday.

The race to find liquidity signals that investors in private equity funds increasingly expect to receive few cash profits from their holdings this year and may face liquidity pressures that cause them to further retrench from making new investments. Last year, the private equity industry's assets dropped for the first time in decades, according to Bain & Co, as fundraising plunged 23 per cent from 2023.

Executives had expected that a revival of dealmaking and initial public offerings under US President Donald Trump's administration would help firms return profits to their investors, bolstering a spurt of new investment activity. But the opposite has happened, leaving the private equity industry in one of its most vulnerable states ever....

"The amount of calls I've received from limited partners seeking liquidity in the past few days is the most since the first days of Covid," said Matthew Swain, head of Direct Placements and Secondaries at Houlihan Lokey. "People were banking on IPOs to meet their liquidity needs and now need to raise cash just to meet capital calls."

The "meeting capital calls" point is more pernicious than it seems. Those demands are coming from the very same private equity funds that are not selling investee companies on anything like the usual timetable. But most institutional investors have made commitments to current "flagship" (as in major) funds by big players. If those commitments have not been fully deployed, the general partner can make a capital call to make a new company buy and the fund investors have 5 to 10 days to get the money in. If they fail, their entire investment in that fund can be seized and allocated to the other investors in the fund.

Now finally, to the pointed takedown by billionaire Nassef Sawiris, as told to the Financial Times:

Sawiris, who has invested parts of his fortune in funds at multiple buyout firms, said he and others who back private equity funds were frustrated with the lack of distributions in recent years. Firms have struggled to exit investments amid a post-pandemic slowdown in dealmaking and initial public offerings....

“[Investors] are so frustrated. They are telling them [buyout firms]: ‘I haven’t seen any returns, you haven’t returned any cash to me in the last five, six years’.”

Sawiris took particular aim at the use of “continuation funds” to recycle capital — a tactic whereby private equity groups, instead of selling an asset to another owner or publicly listing it, move the asset into a new fund where they still maintain control.

“Continuation funds is the biggest scam ever because you say ‘I cannot sell the business, I’m going to lever it again’,” Sawiris said.

Continuation vehicles have grown increasingly popular in recent years, surging about 50 per cent to hit a record \$76bn last year, according to a report from investment bank Houlihan Lokey....

He also criticised private equity managers’ priorities, saying they were far more focused on raising capital for their investment vehicles than their portfolio companies’ operational performance.

“They’re spending 90 per cent of their time fundraising and 10 per cent managing the businesses,” he said. “They attend board meetings, have a board dinner and there’s a reason why they didn’t execute the plan.”

Tellingly, Sawiris was breaking up his Dutch-traded chemicals and fertiliser conglomerate OCI. He was lucky with many of his exits and returned a lot of cash to shareholders. He was considering using the remaining shell company with some cash retained to make new investments. He continued:

He said he was approached about buying dozens of companies...

Many of them were owned by private equity groups hoping for an exit, Sawiris said, adding that he did not find a single one of them to be an attractive target for a deal.

“A year ago we looked at 70 different companies that would have wanted to be merged with OCI because they were levered, and get a listing and all that . . . all private equity that can’t get an exit,” he said. “We said ‘like, why are we are there to solve somebody else’s problem?’”

So get this: not one had a company it could offer to a known-to-be sophisticated buyer on terms that made any sense. That suggests that any presentable and decently priced has long been sold, and what is left are dogs and zombies (companies that might be OK but are overburdened with debt, and the private equity manager won't adjust his asking price to reflect that).

That suggests there's no reason to expect the fundamentals to improve, even if Trump were to have a Damascene conversion tomorrow and drop his tariff demands. Yet wrong-way CalPERS decided in 2018 to increase its private equity allocation from 8% to 13% by 2021, and then in 2022 to boost the commitment from 13% to 17%. It has nearly met the 17% target. That "success" looks to be adding to private equity indigestion.

¹ Only a few terms at the margin are subject to ritualistic negotiation. Among other things, the limited partnership agreements contain astonishing indemnification language, including in the case of Bain deals, indemnifying the general partner for criminal conduct.

Boies: Trump's Law Firm Executive Orders Are 'More Primeval Scream' Than 'Real Threat'

 [law.com/litigationdaily/2025/05/06/boies-trumps-law-firm-executive-orders-are-more-primeval-scream-than-real-threat](https://www.law.com/litigationdaily/2025/05/06/boies-trumps-law-firm-executive-orders-are-more-primeval-scream-than-real-threat)

Ross Todd

May 6, 2025

David Boies, partner with Boies Schiller Flexner. Photo: Clark Hodgkin

Analysis

Boies Schiller Flexner chairman emeritus David Boies pointed out that executive orders targeting law firms explicitly said they'd be enforced "to the extent permitted by law." Said Boies: "The courts were open. And not only were the courts open, but the courts were very receptive to acting very fast."

Litigation

After I attended oral arguments last week in the AI copyright case involving Meta Platforms, I met up with the lawyer who argued on behalf of authors in the case—**David Boies of Boies Schiller Flexner**—for a wide-ranging discussion. The conversation touched on the wave of high-profile lawsuits involving Big Tech currently unfolding across the country, as well as Boies's concerns about artificial intelligence.

"The history of our planet is that whatever the dominant species is, the second species doesn't do well," he said at one point. "I think that 50 years from now, we will be a lot closer to chimpanzees in intellectual power than we will to computers."

As insightful as Boies was on the topic of tech, I'd like to focus this morning on what he said about the Trump administration's recent series of actions targeting Big Law firms.

"I think that weaponizing executive power to go after your opponents is very undesirable," Boies said. "I said that a year and a half [or] two years ago, when people were going after Trump, and I think that now."

Boies said it's clear that the president has the right to set policy, and that policy is often going to put people who have a point of view at a disadvantage. "But I draw a distinction between that and going after people in a punitive way," Boies said. Boies said he could wrap his head around the administration's focus on universities deemed as doing an inadequate job of policing antisemitism on campus. "That is not so different than going after universities in prior administrations for not having enough equal opportunity initiatives or not providing enough money to women's sports."

But he added: "I don't think it is desirable to go after institutions, whether it's a university or a law firm, because somebody at that institution ... is a political opponent."

What about Boies Schiller Flexner?

Boies himself has long been active in Democratic politics. The campaign donations of Boies Schiller lawyers and their families have skewed heavily blue. I asked Boies if he worried about ending up in the sights of the administration, as other large law firms have early in the second Trump presidency. He said he didn't.

"If we get targeted, one of two things is going to be true," he said. "Either we will have done something inappropriate, in which case we ought to be targeted because lawyers don't deserve any more immunity than anybody else. Or if we haven't been targeted unfairly, I've got confidence that the courts are going to adjudicate it."

Boies said he doesn't think he should be treated any differently just because he's a lawyer.

"People get subjected to enforcement actions all the time, in every walk of life," he said. "If that happens to lawyers, we are peculiarly well-suited to protect ourselves."

That said, Boies was surprised to see so many large law firms that did end up targeted by the administration decide to negotiate deals, especially since those who have decided to fight it out in court—**Perkins Coie**, **Jenner & Block**, **Wilmer Cutler Pickering Hale and Dorr** and **Susman Godfrey**—have so far been successful.

"Everybody who's fought has won. And I think everybody who was approached knew that," Boies said. "Is there a cost to fighting? Is it inconvenient? Yes, but we represent clients all the time who are standing up for rights that they believe in, even though it's expensive and inconvenient and time-consuming. It surprised me that more law firms didn't do it."

Boies added that he hasn't talked to any partners at the settling firms about why they did what they did, so he doesn't have any particular insight about those decisions. When asked if he had spoken with partners at firms that decided to go to court, Boies said, "That I can't talk about."

Boies Schiller, it should be noted, did not sign onto the brief that more than 500 law firms joined backing Perkins Coie in its case. I asked Boies about that decision. He said that Boies Schiller, as a general practice, does not sign onto amicus briefs. "Occasionally, we will do amicus briefs with respect to a public pro bono issue that we're involved in," he said. But he said signing onto the brief in the law firm case would have been a "political statement" by the firm. "If we were going to be making a political statement, I think we would be making a political statement about people who are being adversely impacted, who are a lot more vulnerable and less able to take care of themselves," he said.

"I'm less worried about the effects of these kinds of actions on people who can take care of themselves," Boies said.

Still, Boies said he was surprised by the decision some firms made to negotiate with the administration rather than fight. "The courts were there. The courts were open," he said. "And not only were the courts open, but the courts were very receptive to acting very fast."

Boies said, as he has before, that it's a threat to the rule of law to make it hard for people to get legal representation. But he said that in his view, the administration's executive orders didn't pose that sort of threat. Even though they purported to bar firms' lawyers from federal buildings and threaten to cut government contracts with firm clients, Boies pointed out that they said they would be enforced "to the extent permitted by law ... to the extent consistent with law."

"There's no doubt that those executive orders reflected unhappiness on the part of the administration with what the administration saw as the left-wing leanings of the law firms," Boies said. "But those executive orders were more primeval scream than they were a real threat."

Boies—like Berkeley Law Dean Erwin Chemerinsky—said he thinks if law firms had come together to fight, they would have won, and this issue would have disappeared quickly.

"If you lose five and nobody gives you anything, nobody likes to keep losing," he said. "What happened here was not because the power of the federal government squashed people. It's because people were not prepared to stand up and fight back in an environment in which they were going to win."

Would that fight have cost firms clients and profits? Maybe so, Boies said.

"Principles to which you only adhere when it is easy and costless aren't principles," he said.

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Law Firms Mentioned

Boies Schiller Flexner

Latest

Read the Complaint: Lawsuit Alleges Trump Unlawfully Revoked Security Clearances

 [law.com/nationallawjournal/2025/05/05/read-the-complaint-lawsuit-alleges-trump-unlawfully-revoked-security-clearances](https://www.law.com/nationallawjournal/2025/05/05/read-the-complaint-lawsuit-alleges-trump-unlawfully-revoked-security-clearances)

Sulaiman Abdur-Rahman

May 6, 2025

Counsel for a national security attorney filed a lawsuit Monday alleging President Donald Trump unlawfully revoked a security clearance in violation of the Administrative Procedure Act and First and Fifth Amendments to the U.S. Constitution.

“No American should lose their livelihood, or be blocked as a lawyer from representing clients, because a president carries a grudge toward them or who they represent,” plaintiff Mark S. Zaid said Monday in a statement announcing his lawsuit. “This isn’t just about me. It’s about using security clearances as political weapons.”

The complaint, filed Monday in the U.S. District Court in Washington, D.C., alleges Trump unlawfully rescinded Zaid’s security clearance with an unconstitutional memo that also targeted other individuals.

Trump’s March 22 memo is “unconstitutionally vague” and an unlawful act of retribution, co-counsel for Zaid allege in their complaint. “It provides no explanation for the revocation of security clearances, other than asserting the revocations would be in the ‘national interest.’ The variety of interpretations of what the Trump Administration deems to be in the ‘national interest’ is nothing short of limitless.”

Trump has revoked or suspended other attorneys’ security clearances since taking office for a second term. For example, he issued memos suspending the security clearance of Covington & Burling partner Peter Koski and revoking any security clearances held by Christopher Krebs.

Co-counsel for Zaid seek a court order declaring Trump’s March 22 memo “facially unconstitutional” and demand the reinstatement of Zaid’s security clearance. They also demand appropriate relief guaranteeing Zaid’s procedural and substantive due process rights.

Zaid is represented by Lowell & Associates; Koskoff, Koskoff & Bieder; Kevin T. Carroll; Kohn, Swift & Graf; Lankford & Reed; Feldesman Leifer; and Democracy Defenders Fund.

The U.S. Department of Justice did not immediately respond to a request for comment on this article.

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Litigation

May 6, 2025, 5:59 AM PDT; Updated: May 6, 2025, 7:41 AM PDT

Universities Sue US Science Agency Over Research Costs Cap (1)

- **COURT:** D. Mass.
- **DOCKET:** [No. 1:25-cv-11231](#) (Bloomberg Law Subscription)

The National Science Foundation unlawfully put a cap on indirect cost rates for government-funded research, according to a new lawsuit in federal district court from a group of universities.

The cap “violates the governing statutes in myriad respects” and regulations and doesn’t satisfy reasoned decision-making requirements under the Administrative Procedure Act, the Association of American Universities and other plaintiffs said in their complaint filed Monday in the US District Court for the District of Massachusetts.

The court should vacate the rate cap policy and permanently bar the government from implementing and maintaining it, the plaintiffs say.

In addition to the association, the plaintiffs in the suit include University of California, University of Chicago, Cornell, MIT, University of Michigan, University of Pennsylvania, and Princeton.

This challenged policy is “identical in key respects” to National Institutes of Health and Department of Energy policies that the district court enjoined last month, the complaint says.

The district court April 4 blocked the government from capping funds from the NIH that cover grant recipients’ research overhead costs, and April 16 enjoined DOE from capping overhead and administrative costs.

The National Science Foundation May 2 issued a “clearly unlawful” policy imposing a categorical 15% cap on all new grant and cooperative agreements to universities, the complaint says.

Congress authorized use of predetermined fixed-percentage rates for payment of reimbursable indirect costs attributable to research agreements with education institutions, at 41 U.S.C. § 4708, the complaint says.

“And with Congress having preserved a tailored approach to indirect cost rates since 1965, it beggars belief to suggest that Congress—without saying a word—impliedly authorized NSF to enact a sweeping, one-size-fits-all command that will upend research at America’s universities,” the plaintiffs say.

The rate cap also violates regulations that the Office of Management and Budget promulgated to ensure that funding recipients can recover the actual costs of conducting research the government selected them to undertake, the complaint says.

And the rate cap policy is arbitrary and capricious, among other reasons, because it doesn’t provide a rationale for subjecting different institutions to a single uniform rate, the plaintiffs say.

The US Department of Justice didn't immediately respond to a request for comment.

The case is assigned to Judge Indira Talwani.

Jenner & Block LLP and Clement & Murphy PLLC represent the plaintiffs.

The case is Ass'n of Am. Universities v. Nat'l Sci. Found. , D. Mass., No. 1:25-cv-11231, complaint filed 5/5/25 .

(Updated throughout with additional detail from the complaint)

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Larry Householder, Matt Borges corruption convictions upheld by federal appeals court

 [cleveland.com/news/2025/05/larry-householder-matt-borges-corruption-convictions-upheld-by-federal-appeals-court.html](https://www.cleveland.com/news/2025/05/larry-householder-matt-borges-corruption-convictions-upheld-by-federal-appeals-court.html)

<https://www.facebook.com/jeremypelzernews>

May 6, 2025



Former Ohio House Speaker Larry Householder, center, walks into Potter Stewart U.S. Courthouse with his attorneys, Mark Marein, left, and Steven Bradley, right, before jury selection in his federal trial, Friday, Jan. 20, 2023, in Cincinnati. (AP Photo/Joshua A. Bickel)AP

By

Jeremy Pelzer, [cleveland.com](https://www.cleveland.com)

COLUMBUS, Ohio—A federal appeals court has upheld the convictions of ex-Ohio House Speaker Larry Householder and former Ohio Republican Party Chair/lobbyist Matt Borges for their roles in the House Bill 6 bribery scandal.

In an unsigned ruling issued Tuesday, a three-judge panel of the U.S. Sixth Circuit Court of Appeals unanimously rejected a wide array of arguments made by Householder and Borges against their convictions.

Householder, a Perry County Republican, was sentenced in 2023 to 20 years in prison for overseeing the passage of HB6, a 2019 state energy law, with the help of \$60 million-plus in bribe money from Akron-based utility FirstEnergy, which stood to profit enormously from the law.

Borges, a lobbyist for a FirstEnergy subsidiary, was sentenced to 5 years behind bars for his part in the bribery scheme, which centered on scuttling opposition to HB6.

Householder appealed his conviction on several grounds, from claiming that the district court judge was biased to arguing the jury got faulty instructions. But the appeals court rejected each of his arguments.

“The evidence showed that Householder agreed to commit—and did commit—extortion and honest services fraud,” the appeals court decision stated. “That is, he solicited and received millions of dollars from FirstEnergy in exchange for passing the bailout legislation and saving that bailout from a voter referendum.”

Borges, meanwhile, claimed that, among other things, he wasn’t aware that the pro-HB6 organization was engaged in illegal activity. The appeals court panel didn’t agree.

“All told, Borges had a deep knowledge of (and involvement in) Householder’s bribery scheme,” the court held.

This story will be updated.

Jeremy Pelzer covers state politics and policy for Cleveland.com and The Plain Dealer.

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Around the Web

News from Bloomberg Terminal

May 6, 2025, 10:05 AM PDT

Ex-Ohio House Speaker's \$60 Million RICO Conviction Upheld (1)

- Ex-Ohio GOP chairman also had the same conviction upheld
- Sixth Circuit found no errors that warranted reversal

By Eric Heisig

(Bloomberg Law) --

Former Ohio House Speaker Larry Householder, who's serving 20 years for a racketeering conspiracy involving FirstEnergy Corp., won't get another shot to try to prove his innocence at trial, the Sixth Circuit ruled Tuesday.

The three-judge panel also upheld the same conviction against former Ohio Republican Party Chairman Matthew Borges, who's serving five years in federal prison after a jury found him guilty at the same trial as Householder.

The US Court of Appeals for the Sixth Circuit panel said in its unsigned opinion that that there were no errors at trial that warranted the reversal of either man's conviction.

"All told, none of Householder's arguments justifies overturning the jury's verdict," the panel, made up of Judges Amul R. Thapar, John B. Nalbandian, and Stephanie Dawkins Davis, said of the former GOP legislative leader.

Borges and Householder were convicted at a 2023 trial in Cincinnati in a case that involved \$60 million of FirstEnergy bribe money pumped into Householder-controlled nonprofits to get the speaker elected and to ram through a \$1.3 billion legislative package to bail out two nuclear power plants the Akron, Ohio-based utility owned at the time. As the opinion stated, "this case begins with two parties, each with a problem in need of a solution."

FirstEnergy

Borges was part of the conspiracy as a lobbyist for a FirstEnergy affiliate, working to kill a planned voter referendum to repeal major parts of the legislative package. This included funneling illicit money through bank accounts he controlled and bribing a political operative in exchange for information on the number of signatures collected on the referendum.

Both men challenged their convictions on multiple grounds. Householder claimed the instructions the jury received before deliberating were faulty, but the judges said they lined up with existing case law. He also said the evidence against him didn't support a conviction and that the district judge violated his right to counsel at two points during trial.

Borges focused most of his arguments on whether federal prosecutors showed he committed the underlying offenses necessary to support his racketeering conspiracy conviction. The appeals judges said that "all of Borges's arguments about the sufficiency of the evidence fail."

Thapar, an appointee of President Donald Trump, wrote in a concurrence that the US Supreme Court should revisit case law regarding how prosecutors must prove that a public official receives money in exchange for official actions. Under current interpretations, some routine political activity could be deemed illegal, he said, and should the justices revisit the issue, Householder's conviction may not stand.

The conviction against Borges—who argued that it's not right for a relatively minor player to face the same conspiracy charge as a key offender—could go with it, Thapar added.

Eight people have been charged because of the myriad investigations, which became public after the FBI arrested Householder, Borges, and others in 2020. In addition to the jury verdict against Householder and Borges, two others pleaded guilty while another two died by suicide.

FirstEnergy paid hundreds of millions of dollars in settlements with state and federal prosecutors and the US Securities and Exchange Commission.

Householder is represented by Marein & Bradley. Borges is represented by Dennis C. Belli of Columbus, Ohio. The government is represented by the US Attorney's Office for the Southern District of Ohio.

The cases are *United States v. Householder*, 6th Cir., No. 23-3565, 5/6/25 and *United States v. Borges*, 6th Cir., No. 23-3566, 5/6/25.

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(Updates throughout.)

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Matt Levine's Money Stuff: Warren Buffett Took the Long View

Warren Buffett

A pretty cool thing that Warren Buffett did is that he bought a few billion dollars' worth of Apple Inc. stock in 2016, when it was at around \$25 per share, and then, over the course of nine years, it went up to about \$200 per share. The Wall Street Journal this weekend had a recap of that trade, which has made a lot of money for shareholders of Berkshire Hathaway Inc., Buffett's company. Here is some of the analysis that Berkshire did:

Buffett wanted a company with a reasonably cheap price/earnings multiple of no more than 15, based on the next 12 months' projected earnings, The Wall Street Journal previously reported. Berkshire managers had to be at least 90% sure that the stock would generate higher earnings over the next five years. And he wanted Berkshire to be at least 50% confident that the company would grow a minimum of 7% annually for at least five years. ...

Buffett, a flip-phone user at the time, was hardly a techie. But he saw the hold the company had on its customers. Buffett's grandchildren were iPhone devotees, and Apple's customer retention rate was about 95%.

Buffett and his lieutenants did some research, saw that people liked the product, saw that the price/earnings multiple was reasonable, and concluded that the company's earnings would grow in the medium term. So he bought the stock, and it went up.

The Apple trade was in some ways singular — "I'm somewhat embarrassed to say Tim Cook has made Berkshire a lot more money than I've ever made," Buffett told Berkshire Hathaway's shareholders Saturday — but in other ways it fits the pattern of Buffett's greatest hits. He bought stock in the Coca-Cola Co. in 1988 and has owned it ever since. He bought a stake in American Express Co. in 1991 and has owned it ever since. In his 2023 letter to shareholders, he wrote:

During 2023, we did not buy or sell a share of either AMEX or Coke – extending our own Rip Van Winkle slumber that has now lasted well over two decades. Both companies again rewarded our inaction last year by increasing their earnings and dividends. Indeed, our share of AMEX earnings in 2023 considerably exceeded the \$1.3 billion cost of our long-ago purchase.

Both AMEX and Coke will almost certainly increase their dividends in 2024 – about 16% in the case of AMEX – and we will most certainly leave our holdings untouched throughout the year.

At Berkshire's shareholder meeting this weekend, Buffett announced that he will retire at the end of the year, when he will be 95 years old; his lieutenant Greg Abel will take over Berkshire Hathaway. Buffett is by consensus the best investor ever, but he is a particular kind of investor: the normal kind. He read a lot of companies' annual reports on Form 10-K, identified the companies that he thought were good and then bought their stocks. He made his money by being right a lot, by buying stocks that would go up and then holding them as they went up. You could do that. I mean, it would be weird if you could do it as well as Buffett — he's abnormally *good* at it, and he has had a lot of practice — but what's stopping you? You could read a lot of 10-Ks. He bought stocks like Apple and Coke. You probably like iPhones and Coke. This stuff is easy!

Obviously this is exaggerated, and Buffett's actual performance came from a range of things that ordinary investors couldn't actually do. Most of Berkshire Hathaway's investments are *whole companies*, where Berkshire controls the company and improves operations, rather than publicly traded stocks like Apple and Coke. Buffett gets cheap long-term leverage from insurance float, amplifying his returns with less risk than other sources of leverage. Because he is a famously good investor, his investment in a company can make the company more valuable, which increases his returns and also means that companies offer him attractive deals. And much of his success came from his network, not just reading 10-Ks.

But quite a lot of his legend, and much of the performance, really did come from doing fundamental analysis to buy public stocks that then went up. He was the very best player of a pretty accessible game. Anyone could do the thing that Buffett did, though not as well for as long.

Isn't that strange, though? At the Wall Street Journal, Jason Zweig has a good appreciation of Buffett titled "Why There Will Never Be Another Warren Buffett." Shouldn't people get better at things? Modern investors have far more access to data and cheaper trading costs and better computers. Why is a 94-year-old the best investor ever, with no obvious successor?

Surely the answer has a form like "yes, everyone is much better at investing now, which makes it more or less impossible to stand out by as much as Buffett did over the course of his career." Reading 10-Ks worked so well for Buffett that now everyone reads 10-Ks, so reading 10-Ks is no longer a big advantage.

And the thing that Buffett did — long-term buy-and-hold investments in public stocks based on fundamental analysis — is pretty out of vogue these days, at least for professional investment managers. If you launched a business today whose proposition was "I will buy a few dozen stocks of large public companies and hold them for decades, but the trick is that I will pick the *right* stocks," that would be a hard sell, as Bill Ackman found out recently. Modern academic theories, and institutional allocators, are suspicious of the idea that buying and holding big stocks can add much value. Modern finance views stocks mostly as a set of correlations to the market and other factors; if you just buy some big stocks, most of what you are getting is the market return, and anyone can get the market return cheaply by buying an index fund. It's not impressive to buy stocks that go up when the market goes up; what's impressive is to find sources of return that are independent of the market.

Similarly, modern theories are suspicious about distinguishing skill from luck, and one important way to do that is to increase the number of decisions. If you flip a coin 10 times in a row and it lands on heads 8 times, you might be good at flipping coins, or you might have had some good luck that will revert to the mean. If you flip a coin 10,000 times and it lands on heads 5,500 times, you're probably good at flipping coins. The more decisions an investment manager makes, the more confident you can be about evaluating her process. A manager who makes 100 trades a day and makes money on 55% of them is probably skilled. A manager who buys 10 stocks and holds them for 10 years, and makes money on 8 of them, could easily be lucky. The modern ideal — at quantitative hedge funds and proprietary trading firms and multistrategy funds — is making lots of independent investment decisions and being right 55% of the time. It's not buying Apple and being right for a decade.

If there is a successor to Buffett's title of greatest investor ever, it's arguably Jim Simons, who is not known for any particular stock pick but rather as a pioneer in quantitative investing who used algorithms to make lots of trades and win a bit more than he lost, with the results aggregating to a steady long-term winning record that stands comparison with Buffett's. Simons died last year, but he has more obvious successors than Buffett does: His firm runs great without him, and there are many other quantitative firms trying to do the same sort of thing.

When Buffett started out as a professional investor, he was in some ways working at the cutting edge of investment science: He was a disciple of Benjamin Graham, the "father of value investing," and used rigorous fundamental analysis to invest more rationally than his competitors and make money. The science has moved on. In public markets, sophisticated hedge funds look for uncorrelated alpha and rigorous skill, and the folksier "buy safe, quality stocks at reasonable prices" approach can be approximated cheaply with factor exchange-traded funds. If you want to do fundamental analysis and buy good businesses cheap, these days you get into private equity, where you can make long-term investments in businesses, though not in *Apple*.

Warren Buffett is a financial celebrity who buys stakes in large public companies that he thinks are good, and holds them as they go up. That is terrific work if you can get it, but I don't think anyone else can.

Armistice

Jason Zweig notes that one of Buffett's big advantages is that he runs permanent capital and so can invest countercyclically: "Cash can't come pouring in from new investors, or get yanked out by fleeing investors, at the worst possible times." Meanwhile if you run a hedge fund and *don't* have permanent capital, you know what to do, right? We have talked about it before, and at this point I assume it is taught on the first day of business school. It's:

1. You have a good run of returns.
- 2. You demand that investors lock up their money for a long time.
- 3. The investors think: "Yes, this fund is good, it keeps having good returns, and the manager wants a long lockup, so I guess we need to agree to a long lockup to continue to have access to the good returns."

- 4. They sign the lockup.
- 5. You have a bad run of returns.

Steps 2 through 4 are essential. Step 5 is *not* essential; if you can just have good returns forever that is cool too. Step 1 is probably pretty important, though there is perhaps a narrow path for omitting it entirely and just starting with a long lockup if you have a fancy pedigree and a good pitch. Replacing Step 1 with a run of *bad* returns probably doesn't work, though. If your model of a hedge fund manager is "sometimes you make money, and other times you lose money," it is very very very important to make money *first*. Make money, put up gates, lose money: That works great. Lose money, put up gates, make money: No, much harder.

The Wall Street Journal reports:

A highflying hedge fund blocked investors from leaving at the start of the year. It promptly went on a losing streak.

Armistice Capital, a stock-picking firm that began 2025 with about \$2 billion in assets under management, lost money in April for the third consecutive month, people familiar with the matter said. Investors unhappy with the performance can't leave anytime soon. Under new terms that went into effect Jan. 1, the firm locked up investors' money for all of 2025, The Wall Street Journal previously reported.

A 19% decline in March, Armistice's worst monthly performance since its founding in 2012, left it down 18% for the first quarter. Its April loss was much smaller at about 0.5%.

Yes the very most important element of hedge fund manager skill is having your worst monthly performance the quarter *after* you put up gates, not the quarter before.

Private credit

Elsewhere in sequencing, here's a Bloomberg News story from Friday:

"I'm going to focus today on one of ICI's strategic priorities: giving retail investors real access to private markets," said Eric Pan, the chief executive officer of the Investment Company Institute, which organized the three-day conference that ended Friday. "As we look to the future, we need to continue pushing the boundaries, and private markets may well be an important new opportunity for retail investors."

For an industry built on liquidity, transparency and public markets, the trend was clear: Private assets, once reserved for institutional investors and the ultra wealthy, are fast becoming mainstream.

And here's a different Bloomberg News story from Friday:

Private credit fund investors are offloading stakes at significant discounts ahead of more potential pain for the US economy, Oaktree Capital Management Co-Chief Executive Officer Robert O'Leary said.

Oaktree sees more chances to buy marked-down assets in continuation vehicles and in secondary markets, where private asset holders sell stakes in relatively illiquid funds to bring returns to their own investors. That activity has been building in private equity for some time, but credit investors are now putting up bigger trades, O'Leary said this week in a telephone interview.

Discounts are starting at about 90 cents on the dollar and going as low as the "50 cent range," he said Friday in a separate Bloomberg Television interview. Limited partners are taking matters into their own hands given a desire "to get out of this before a fall."

He said the current discounts don't include a lot of deterioration in credit quality, and as the economic outlook worsens, those discounts will get bigger.

I have generally explained the push to sell private assets to retail investors in simple, sort of cycle-neutral terms. There is a lot of retail money, and private credit and equity businesses have gotten so big that they need big new sources of incremental dollars. Meanwhile traditional retail asset managers are facing huge fee pressures, since these days retail investors can get low-cost index funds, commission-free trades and cheap robot advice; private market fees remain high. Finding new buyers for alternative asset managers' products, and finding new higher-margin products for traditional asset managers, are obvious imperatives.

But I suppose a more cynical market-timing-based explanation is also available, along the lines of "sophisticated institutions will pay 50 cents on the dollar for this stuff so let's sell it to retail at 100."

Trumpcoin treasury

Sure okay whatever:

A small logistics company's plan to hold President Donald Trump's memecoin as a treasury asset is fueling its blistering stock rally.

Freight Technologies Inc. said it will use proceeds from the sale of convertible notes to buy the Trump digital token. The company intends to start with a \$1 million offering, and may raise up to \$20 million. The penny stock more than doubled on Friday, giving it a \$4.71 million market value. The move followed a more than 20% swing up and then back down in the two trading sessions after Wednesday's morning announcement.

The Houston-based company said in a press release that it is one of the first public companies to make the Trump coin "a cornerstone of its digital asset strategy."

Why would a company make the Trump coin a cornerstone of its digital asset strategy? Well, I can think of two possible reasons. One is that the stock went up: We have talked a lot about the fact that the US stock market seems to put a premium on crypto asset holdings, so if a company buys \$1 of crypto its stock market value goes up by \$2. It is hard to really know what to make of this, but surely there is some sort of memetic first-mover advantage involved: *MicroStrategy* can get lots of investor attention and a big stock premium for buying a lot of Bitcoin, but perhaps the 100th company to do that can't. And so if you want to get into this game it helps to pick a new lane; the Trumpcoin lane has a lot of memetic value and seems to have been available.

The other reason is that the economic value proposition of Trumpcoin is pretty clear. The value of Trumpcoin is that it has a public immutable ledger that allows you to prove that you have handed a bag of cash to Donald Trump. (Not quite literally — purchases of Trumpcoin do not necessarily go to him directly — but pretty close.) Why would you want to prove that? Well, perhaps you want something from Donald Trump. Would publicly handing him a bag of cash help you get it? I don't know! I mean, we talked last month about how Trump is hosting a dinner for big holders of his memecoin. Seems like it could be helpful to go to that dinner?

Freight Technologies Inc. appears to work on freight technologies for trade between the US and Mexico, so you could see how it might be interested in influencing Donald Trump. And its press release specifically says that it is planning to buy Trump's memecoin to influence his policies:

Javier Selgas, Chief Executive Officer of Fr8Tech added, "At the heart of Fr8Tech's mission is the promotion of productive and active commerce between the United States and Mexico. Mexico is the United States' top goods trading partner, with Mexico being the leading destination for US exports and the top source for US imports. As US Treasury Secretary Scott Bessent recently stated, 'I wish to be clear: America First does not mean America alone. To the contrary, it is a call for deeper collaboration and mutual respect among trade partners.'" ...

"We believe that the addition of the Official Trump tokens are an excellent way to diversify our crypto treasury, and also an effective way to advocate for fair, balanced, and free trade between Mexico and the US."

Is buying the president's memecoin in fact an effective way to advocate for trade between Mexico and the US? I don't know! I guess they could advocate for it at the dinner.

Elsewhere here's a biopharmaceutical company that's pivoting to become a Dogecoin miner; why not.

Things happen

Taiwan's Markets Jolted as Currency Surges Most Since 1980s. Taiwan Regulator Summons Life Insurers as Soaring Currency Bites. Chinese exporters 'wash' products in third countries to avoid Donald Trump's tariffs. Citi Restarts Business of Lending to Buyout Funds After Pullback. Shell Is Studying Merits of BP Deal as Rival's Stock Slumps. Elon Musk Wins Vote to Establish His City in Starbase, Texas. European bank traders deliver best results in more than a decade. Maker of AI 'vibe coding' app Cursor hits \$9bn valuation. Trump Considers Executive Order on College Athlete Payments After Nick Saban Meeting. Stablecoin Coalition Cracks as Democrats Threaten to Filibuster. US lawmakers urge SEC to delist Alibaba and Chinese companies. Fired Kohl's CEO Said to Have Had History of Mixing Relationship With Work. Judge Rejects Lawsuit With Dragon Logo, Calling It 'Juvenile and Impertinent.' "It looks like they downloaded a bootlegged version of Times Roman without any kerning data embedded in the file, brought it into some ancient software, like Adobe Scribe 1517 A.D., and then let the software space the letters."

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- 1. It was actually around \$100 per share in 2016; there was a 4-for-1 stock split in 2020, and I've adjusted for that.
- 2. Actually he did a 1963 Amex trade but that's not quite the same thing.
- 3. Buffett noted in his 2024 shareholder letter that "the value of our non-quoted controlled equities increased somewhat and remains far greater than the value of the marketable portfolio."
- 4. Andrea Frazzini, David Kabiller and Lasse Heje Pedersen have a 2012 paper about "Buffett's Alpha," finding among other things that "decomposing Berkshire's portfolio into ownership in publicly traded stocks versus wholly-owned private companies, we find that the former performs the best, suggesting that Buffett's returns are more due to stock selection than to his effect on management."
- 5. Richard Grinold and Ronald Kahn write in "Active Portfolio Management" (2nd ed., p. 148): "All investors seek the strategies and managers with the highest information ratios. ... A simple and surprisingly general formula called the fundamental law of active management gives an approximation to the information ratio. ... The law is based on two attributes of a strategy, breadth and skill. The breadth of a strategy is the number of independent investment decisions that are made each year," and the information ratio (which managers are supposed to optimize) is proportional to the square root of breadth. Thus the more decisions you make, the better you are. They summarize (p. 162): "The message is clear: you must play often and play well to win at the investment management game." Or Joseph Peta, who works with hedge funds on identifying skill, has a fun book called "Moneyball for the Money Set," arguing (p. 53) that "daily excellence is a leading indicator of

future alpha production”: The core evidence of skill is having (somewhat) more winning than losing positions (properly defined), measured each day.

- 6. Byrne Hobart: “The set of companies with predictable, growing cash flows with relatively little capital intensity is the set of companies it’s incredibly tempting to lever up—one of the biggest puzzles in public and private markets is not why PE and VC funds own so many companies, but why public market investors ever get a chance to invest in them at all. Incidentally, one gradually-more-common explanation for public market investors getting access to some great company that could happily pass from PE firm to PE firm forever is that Berkshire Hathaway got to them first.”
- 7. Obviously the cycle can repeat. We talked last month about a hedge fund manager who “returned clients’ capital in 2022 following years of losses,” went back to investing his personal money, did *great*, and is now raising money again.

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Tesla's German car sales nearly halved in April

 [reuters.com/business/autos-transportation/teslas-german-car-sales-nearly-halved-april-2025-05-06](https://www.reuters.com/business/autos-transportation/teslas-german-car-sales-nearly-halved-april-2025-05-06)

Reuters

May 6, 2025

A Tesla electric vehicle is parked at a Tesla dealership, after Tesla, Inc. released its financial results for the first quarter of 2025, in Berlin, Germany April 23, 2025. REUTERS/Annegret Hilse/File photo Purchase Licensing Rights , opens new tab

(TSLA.O) , opens new tab sales volume in Germany nearly halved in April, German road traffic agency KBA said on Tuesday, even as sales of battery electric vehicles rose overall. KBA said Tesla sold 885 cars in Germany in April, down 45.9% from a year earlier. The number of Teslas sold between January and April 2025 dropped 60.4% to 5,820 units, compared with the same period last year.

By contrast, the total number of newly registered electric vehicles increased by 53.5% in April compared with last year, KBA added.

Data showed last week that the automaker's sales dropped for four straight months across much of Europe, as Europeans bought more Chinese EVs and some protest against CEO Elon Musk's political views.

The German agency said sales volume of Chinese electric vehicle manufacturer BYD (002594.SZ) , opens new tab jumped more than eightfold to 1,566 units in April and rose almost fivefold to 2,791 units in total since the beginning of the year.

Reporting by Amir Orusov Editing by Ludwig Burger

Tesla's UK, Germany new car sales at two-year low in April even as EV demand rises

 [reuters.com/business/autos-transportation/teslas-uk-sales-lowest-over-two-years-april-europe-snubs-musk-2025-05-06](https://www.reuters.com/business/autos-transportation/teslas-uk-sales-lowest-over-two-years-april-europe-snubs-musk-2025-05-06)

Alessandro Parodi

May 6, 2025

Sales of Elon Musk's EV cars also plunged to multi-year lows in some other key European markets last month.

Tesla's UK, Germany new car sales at two-year low in April

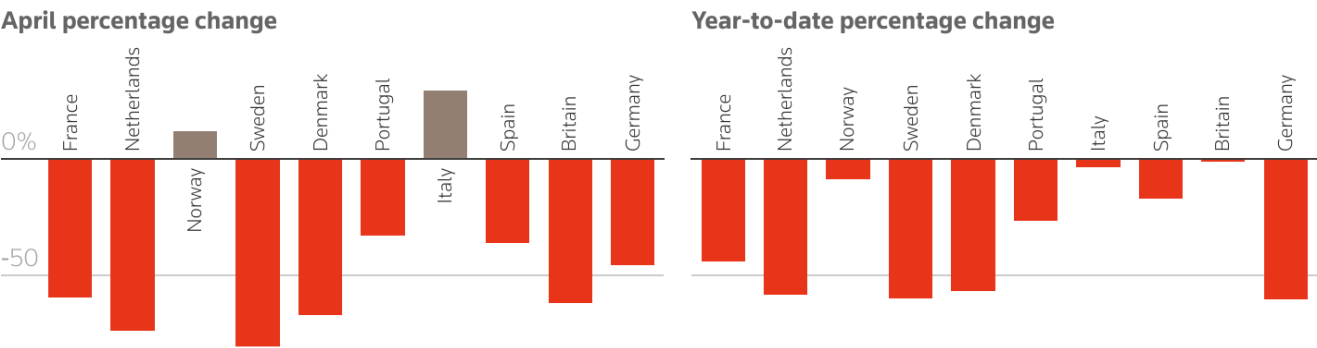
- Tesla's April car sales drop 62% in Britain, 46% in Germany
- EV market share for Tesla in Britain falls to 9.3%
- Revamped Model Y deliveries expected to start in June

May 6 (Reuters) - Tesla's (TSLA.O) , opens new tab new car sales in Britain and Germany plummeted to their lowest in over two years in April, falling 62% and 46% year-on-year respectively, even as demand for electric vehicles rose in both countries, national data showed on Tuesday.

Sales of billionaire Elon Musk's EV cars also plunged to multi-year lows in some other key European markets last month, national data showed last week, as Tesla prepares to counter competition from European and Chinese EV brands with the launch of a revamped Model Y. The brand's sales in Germany dropped to 885 cars in April, a fourth month of declines this year amounting to a cumulative year-to-date drop of over 60%, data from road traffic agency KBA showed.

Britain had bucked the gloomy European trend for Tesla so far this year, but last month, 512 new cars were sold, down from 1,352 in April 2024, according to the Society of Motor Manufacturers and Traders (SMMT).

Tesla's car sales falling in most European markets



By Alessandro Parodi • Source: Reuters calculations based on ACEA and national data. | May 6

The multiple bar charts show changes in Tesla's battery electric vehicle sales in some European markets in April and the first quarter.

This led to a year-to-date EV market share of 9.3% for Tesla in the UK, data from research group New AutoMotive showed. That's down from 12.5% a year ago, according to the research group's data.

Tesla's websites in Germany and Britain say that estimated deliveries of the revamped Model Y will start in June, but it will take a couple of months before sales data shows if the updated version has won back customers.

Advertisement · Scroll to continue



Item 1 of 3 A demonstrator protests against Tesla CEO Elon Musk outside the new Tesla dealership in London, Britain, April 5, 2025. REUTERS/Carlos Jasso

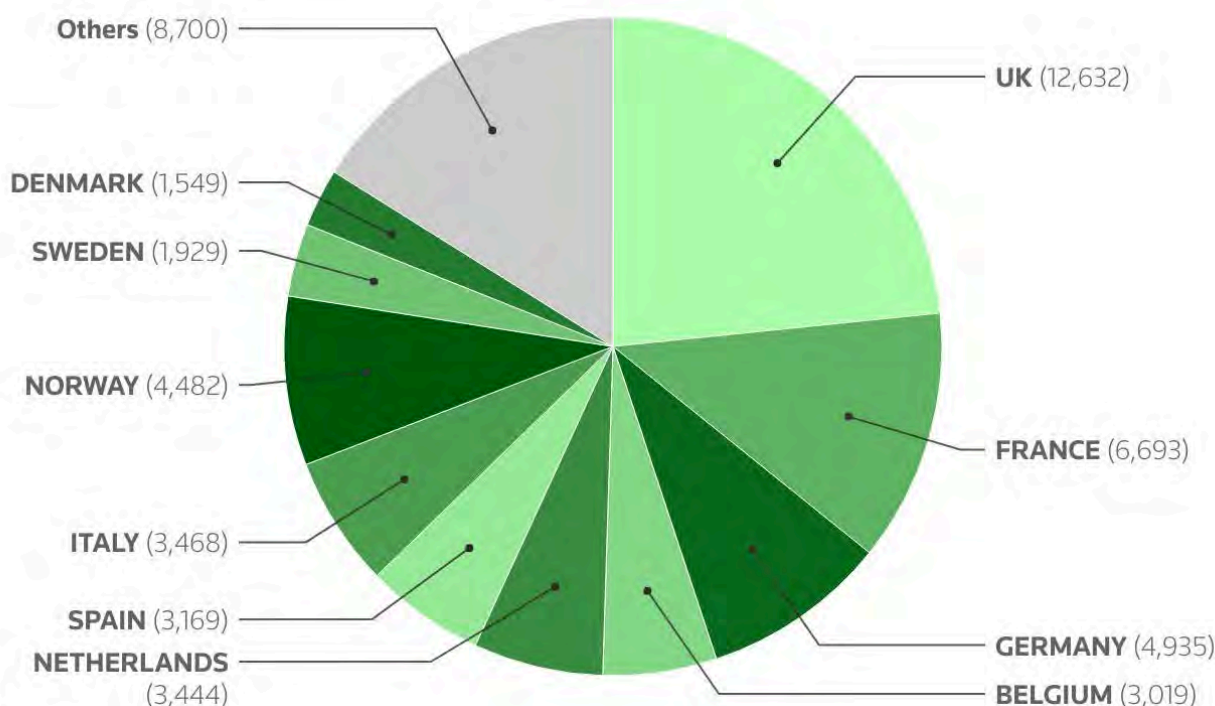
[1/3]A demonstrator protests against Tesla CEO Elon Musk outside the new Tesla dealership in London, Britain, April 5, 2025. REUTERS/Carlos Jasso [Purchase Licensing Rights](#) , opens new tab

Musk's closeness to U.S. President Donald Trump, his politics and efforts to eliminate waste at U.S. governmental agencies have spurred protests against him and the company, as well as vandalism at its showrooms and charging stations across the U.S. and Europe.

After the brand's first-quarter global sales and profit missed estimates, Musk said two weeks ago he would cut back on the time he devotes to the Trump administration and spend more time running the company.

What are Tesla's biggest markets in Europe?

The brand sold 54,020 cars in the EU, EFTA and UK region in the first three months of 2025.



Note: The European Free Trade Association (EFTA) includes the following countries: Iceland, Liechtenstein, Norway and Switzerland.

By Alessandro Parodi • Source: Reuters calculations based on ACEA and national data. | May 2

A pie chart showing Tesla sales in some of its biggest markets in Europe.

Overall car sales in Germany dropped by 0.2% in April, but those of electric vehicles grew by 53.5%, KBA said.

In Britain, battery-electric car registrations increased by 8.1% in the month, while total car sales were down 10.4%, the SMMT data showed.

EV sales in the UK slowed from the previous month due to broader economic conditions, New AutoMotive said.

However, Volkswagen's (VOWG.DE) [EV](#), opens new tab battery-electric sales in the country jumped 194% to 2,314 vehicles last month, while registrations of China's BYD (002594.SZ) [EV](#), opens new tab were up 311% to 1,419 cars, the research group said.

Reporting by Alessandro Parodi and Amir Orusov in Gdansk, Yamini Kalia and Yadarisa Shabong in Bengaluru; Editing by Mark Potter and Bernadette Baum

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

Alessandro is an Italian journalist based in Gdansk reporting on European markets, with focus on Italian companies. Previously, he worked as a multimedia freelancer in South Africa covering general news and cultures.

Auditors, Investors Debate Formalizing Company Earnings Metrics

- Project looks at corporate performance metrics like EBITDA
- Accountants, investors disagree on standard-setter's next step

Businesses including Bank of America Corp. and Big Four audit firms told the US accounting standards board to hold off on standardizing metrics like free cash flow and adjusted net income that are ubiquitous in corporate earnings reports.

The Financial Accounting Standards Board received mixed feedback on its preliminary inquiry into Wall Street data points that are derived from financial statements or underlying accounting records but don't fall under generally accepted accounting principles, or GAAP.

Standardized definitions would increase corporate reporting comparability, some groups representing investors and accountants argued in comment letters due last week. However, firms like PricewaterhouseCoopers LLP and Ernst & Young LLP pointed to the measures' varied use by industry and existing financial reporting guidance as potential sticking points.

"All of that makes it pretty challenging, candidly, for the FASB to sort of focus its efforts in this area," said Kimber Bascom, KPMG US deputy chief accountant and accounting standards leader.

FASB is looking at "financial key performance indicators," or financial KPIs. There's no standard method to calculate these metrics, which can make it difficult to compare across companies.

The board asked the public in November whether it should standardize financial KPIs and whether disclosure related to the metrics should be mandatory for companies, if FASB launches a formal project.

The proportion of S&P 500 companies reporting a financial KPI rose to 85% in 2022 from 65% in 2013, according to the invitation to comment. The metrics include measures such as earnings before interest, taxes, depreciation, and amortization, or EBITDA.

The Securities and Exchange Commission has scrutinized accounting adjustments that paint overly rosy pictures of corporate performance.

Tesla Inc.'s worst quarter in years was recently aided by the adjusted earnings it touted, which was more than double its official net income.

Cost-Benefit Analysis

Investment professionals pushed FASB to take on a project related to financial KPIs, citing concerns about a lack of comparability and opaque financial adjustments.

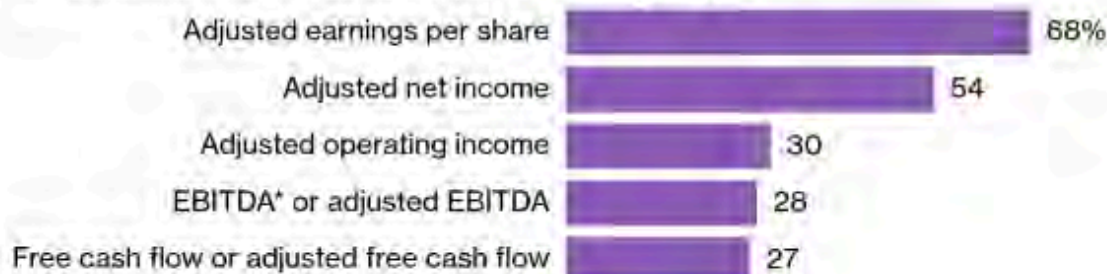
"Not only do these problems affect investment decision-making, but they also impact governance decisions because most public entities use non-GAAP financial measures in determining executive compensation," the CFA Institute said in its comment letter.

The group recommended FASB define and require disclosure of the most widely used metrics on an industry-specific basis. Like other groups, they pointed to free cash flow and EBITDA as commonly utilized measures.

Financial Key Performance Indicators

Large publicly traded companies showcase common non-GAAP metrics

■ Percentage of S&P 500 companies presenting the KPI



Source: FASB analysis of 2022 data from Calcbench

Note: *EBITDA is earnings before interest, taxes, depreciation, and amortization

Bloomberg Tax

Investment analysts also calculate financial KPIs to remove anomalies, such as one-off charges, from companies' portfolios.

Standardized definitions of common metrics would give them another "check" as they confirm the accuracy of their adjusted numbers, said Ron Graziano, director of accounting research at LSV Asset Management.

"The more inputs we have to test the validity of our numbers, the better," Graziano said.

An Institute of Management Accountants group broadly supported FASB prioritizing a financial KPIs project, saying it demonstrates the board's commitment to ensuring financial reporting remains relevant given the metrics' common use.

Still, others emphasized that there's already a sufficient reporting framework.

SEC regulations define which metrics are considered non-GAAP financial measures and the agency provides rules related to their disclosure outside of financial statements, EY said in its letter.

Companies must also reconcile their non-GAAP metrics to the most directly comparable GAAP measure, which "creates transparency without the need to standardize KPIs," according to an International Swaps and Derivatives Association group's letter.

Additionally, FASB may lack resources to "perform the ongoing surveillance necessary to continually monitor and maintain an up-to-date list of financial KPIs," the American Bankers Association wrote.

Businesses should be "individually responsible" for compiling and disclosing the metrics relevant to them, Bank of America said in its letter. If a standard set of metrics were required, this could lead company management to create "Financial KPIs to the Financial KPIs," the letter read.

Industry Variation

Developing uniform definitions for financial KPIs that are industry- or company-specific may be a "cumbersome task," a Texas Society of Certified Public Accountants group told FASB.

Financial statement users, such as investors, have indicated standardized metrics would need to be industry-specific to be "truly valuable," PwC's letter said. While annual recurring revenue is a key metric in the technology and software-as-a-service sectors, for example, the real estate industry prioritizes funds from operations, according to PwC.

The costs of defining certain metrics, therefore, may not justify the benefits, KPMG LLP said in its letter. Instead, the firm recommended the board consider defining GAAP elements that are commonly funneled into financial KPIs.

Disclosures

Some accountants questioned the usefulness and feasibility of instituting additional disclosures.

FASB floated requiring or permitting companies to disclose in financial statements certain newly defined metrics.

Creating prescriptive guidance on metrics and requiring details "would only unnecessarily add to the volume of disclosures," a Pennsylvania Institute of CPAs group said in its letter.

FASB also discussed the alternative possibility of allowing or requiring companies to disclose a financial KPI in their financial statements if they share that measure elsewhere.

It may be challenging for auditors to design procedures to assess whether a company's way of defining financial KPIs is appropriate and consistent without having a clear GAAP definition, Deloitte & Touche LLP wrote.

Some organizations, including the Institute of Management Accountants group, favored optional disclosure, as opposed to any requirements.

Wait-and-See

Ultimately, some suggested the standard-setter wait to pursue a project until it's clear how recent changes to the accounting rulebook are faring.

EY, Citigroup, and Deloitte pointed to FASB's projects requiring companies to provide more details on the amounts spent on expenses such as staff salaries, as well as expenses impacting performance on a business-line level.

Because investors haven't had the opportunity to evaluate the benefits of additional disaggregated expense information yet, "it could be premature to undertake a project on KPIs at this time," Deloitte said.

FASB declined to comment on the letters it received. The board will discuss the feedback at a future meeting.

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Litigation

May 6, 2025, 7:00 AM PDT

Moelis Arguments Threaten Founder Rights in Top Business Court

Argument Preview

- **Chancery Court decision prompted 2024 corporate law overhaul**
- **Amendments offer clarity, still need interpretation, attorneys say**

An appeals court is poised to resolve more than a year of debate over whether a judge went too far in invalidating a billionaire founder's veto rights over board decisions.

Corporate attorneys say they want to see how Delaware's courts will interpret a swiftly drafted law that effectively mooted a 2024 decision striking down most of the pact between Ken Moelis and his investment bank, Moelis & Co. While clients seeking stability found reassurance in the legislative moves to restore balance between controllers and minority shareholders, the Delaware Supreme Court's opinion on the Moelis decision could signal what the law known as S.B. 313 will look like in practice.

"It may be that this case fills some gap that somebody concludes wasn't properly filled in in the legislation itself," said Shireen Barday of Pallas Partners LLP.

The state's highest court hears oral argument Wednesday. Its analysis is what legislators and the Chancery Court's critics should've waited for in the first place, said Charles Elson, a retired University of Delaware law professor, who testified against the *Moelis*-prompted changes.

Will it "continue on its effective and intelligent mission of protecting all investors? Or will it bow to political pressure?" he said.

Moelis Debate

The *Moelis* ruling stoked arguments the Chancery Court had tilted the core management powers of high-profile founders and corporate leaders too far in favor of minority shareholders. Amendments that took effect in August allow companies to use private contracts to grant stockholders the types of control that previously required a charter provision or special class of stock.

Many companies had stockholder agreements that "didn't look all that different from the one in the *Moelis* case, so when that decision came down, there was a lot of uncertainty," said Samantha Hale Crispin of Baker Botts LLP.

It was "a relief" to see Delaware lawmakers quickly provide clarity around contract practices that were considered commonplace, she said.

Moelis and the bank said in a brief the Chancery Court's decision should be reversed because it disregarded "settled law and instead applied a new rule ungrounded in the relevant precedent" while also "relying on hypotheticals rather than evidence to conclude that the challenged provisions always operate unlawfully."

The pension fund that challenged the pact said it was "not typical of any market practice," according to a brief. The legislation that followed Vice Chancellor J. Travis Laster's ruling, moreover, was "not devised for the purpose of validating Moelis's own uniquely extreme agreement," it said.

Laster publicly criticized S.B. 313. He had hoped lawmakers would provide "a list of provisions that wouldn't be problematic," he said in a Fordham University School of Law forum on March 26. Instead, the law takes "a more anything-goes approach," he said.

The high court could limit its review to the case's specific facts, but *Moelis* "doesn't exist in a vacuum," Pallas's Barday said. When lower courts interpret the statutory changes rendered by S.B. 313, "it may be that they're interpreted against the backdrop of what happens in this case," she said.

Judicial Scrutiny

Delaware lawmakers over the last two years have responded properly to "interventionist judges supplanting their perspectives on independence and fairness for those that were adopted by a company's board and its stockholders," said Louis Lehot of Foley & Lardner LLP. It's "absolutely relevant and necessary" for the state supreme court to do the same, he said.

"There's a nagging doubt that the judges in the Delaware Chancery Court are going beyond the four corners of the law to impose their own concepts of fairness and justice that go beyond the statute," he said.

The high court's chief justice implored lawmakers earlier this year to respect judicial independence as they consider corporate law changes. The panel is known to be "unafraid" to deem a decision wrong even when it's "the product of a good judge's really hard work," said John Lawrence, also of Baker Botts.

What corporate clients want to know is what the practical implications of the court's decision will be, he said. Neither an affirmation nor a reversal of Laster's decision will affect how directors and executives consider whether to keep a company incorporated in Delaware, he said.

"A lot of the more soap opera aspects of Delaware law that are of interest right now aren't the things driving corporate decisions on these issues," he said.

— With assistance from Mike Leonard.

The case is *Moelis and Co. v. West Palm Beach Firefighters' Pension Fund*, Del., No. 340,2024, oral arguments 5/7/25.

To contact the reporter on this story: Jennifer Kay in Philadelphia at jkay@bloombergindustry.com

M&A deal signing hits 20 year-low after Trump's 'Liberation Day'

 [reuters.com/business/ma-deal-signing-hits-20-year-low-after-trumps-liberation-day-2025-05-06](https://www.reuters.com/business/ma-deal-signing-hits-20-year-low-after-trumps-liberation-day-2025-05-06)

Sabrina Valle

May 6, 2025

A double decker bus passes the skyline with its dominating banking district in Frankfurt, Germany, November 8, 2023. REUTERS/Kai Pfaffenbach/File Photo Purchase Licensing Rights , opens new tab

- M&A contracts inked fall to lowest level since 2005, Dealogic data shows
- Trump's tariffs cause market volatility, impacting M&A and IPO plans
- Tech deals remain strong amid tariff uncertainty, Citi banker notes

NEW YORK, May 6 (Reuters) - Bankers and CEOs hit the brakes on mergers and acquisitions after U.S. President Donald Trump launched a global trade war on April 2, with fewer deals getting signed than during the bleakest days of the COVID-19 pandemic and the 2008 global financial crisis.

The number of M&A contracts signed across the world - an indicator of global economic health - fell in April to the lowest level in 20 years - or since February 2005 - according to data compiled by Dealogic for Reuters.

In the U.S., the world's largest M&A market, just 555 deals were signed last month, the fewest for any month since May 2009.

Trump's self-styled "Liberation Day," when he announced tariffs against all countries, caused global markets to slide, CEOs from Chime to StubHub to yank planned IPOs and retaliatory measures from other nations.

The number of deals inked globally fell to their lowest in April since February 2005

Uncertainty has also prompted bankers, who earn fees and bonuses from facilitating deals, to tell clients to hold off on M&A and initial public offerings until there is more clarity and consistency on U.S. policy.

"I advise clients to wait," said Lorenzo Paoletti, a managing director of investment banking at Truist Securities. "CEOs and CFOs haven't fully understood how tariffs will hit them yet, so it's better to keep cash on hand" until more clarity emerges.

A few big deals in April, including Global Payments' \$24.25 billion acquisition of a card processing and account services firm, helped buoy an otherwise moribund start to the second quarter in what was expected to be a stellar year for M&A.

That was not enough, however, to keep the value of global M&A activity from slipping to \$243 billion - about 54% below March and 20% below the monthly average over the last 20 years, the Dealogic data shows.

"We are seeing a chain reaction in all of the diligence that we are doing," said Kristin Pothier, a global deal advisory and strategy leader at KPMG consultancy firm.

Global deals totaled \$243 billion in April, 20% below the 20-year average

The tit-for-tat trade war caused market volatility to spike to historic levels in April, "driven by on-again, off-again statements from the White House around tariff policy," said [Bloomberg](#), opens new tab Morgan Stanley analyst Lisa Shalett.

On April 2, Trump imposed and then paused for 90 days a minimum 10% tariff on all U.S. imports, and higher percentages to dozens of key partners from Europe to Japan, including levies on China that added up to 145%.

Trump's threats to fire U.S. Federal Reserve Chairman Jerome Powell, which called into question the Fed's political independence, further exacerbated stress in the markets, Shalett said.

There was one bright spot for M&A last month: tech deals in which value lies more in intellectual property like algorithms and software than in physical goods subject to tariffs, like autos.

The technology industry has been responsible for almost 40% of the nearly \$600 billion in deals signed this year in the U.S. The country accounts for almost half of global deal activity by value.

Uncertainty has been affecting industries differently.

Telecom, media, services, oil and gas and utilities are sectors less affected by the tariffs, while some areas of industrials, healthcare and technology are facing larger changes in their business model due to the tariff announcements, said Kevin Cox, global head of M&A at Citi.

"Anyone that is a manufacturer, either taking inputs from abroad or sending finished product abroad, is going to be affected," Cox said.

His team is telling clients to take their time to understand the additional risks of a target's business model and its expected returns.

The bank advised Boeing (BA.N) [Bloomberg](#), opens new tab on its April 22 sale of flight software subsidiary Jeppesen to Thoma Bravo for \$10.6 billion, in what was considered a tech deal. "Volatility impacts transactions," Cox said. "Buyers must price in this additional risk, or step back and wait for the situation to be known."

Trump's crypto ventures cause tensions to bubble over as Democratic lawmaker scuttles key hearing

 [reuters.com/sustainability/boards-policy-regulation/trumps-crypto-ventures-cause-tensions-bubble-over-democratic-lawmaker-scuttles-2025-05-06](https://www.reuters.com/sustainability/boards-policy-regulation/trumps-crypto-ventures-cause-tensions-bubble-over-democratic-lawmaker-scuttles-2025-05-06)

Hannah Lang

May 6, 2025



Republican presidential nominee and former U.S. President Donald Trump gestures at the Bitcoin 2024 event in Nashville, Tennessee, U.S., July 27, 2024. REUTERS/Kevin Wurm/File Photo Purchase Licensing Rights , opens new tab

Summary

- House panels were due to discuss crypto bill
- Representative Maxine Waters objected due to concerns about Trump ventures
- Trump has touted a meme coin, family crypto project
- Crypto industry has sought to portray digital asset regulation as a bipartisan issue

May 6 (Reuters) - Tensions on Capitol Hill over President Donald Trump's various cryptocurrency ventures escalated on Tuesday and threatened to derail the digital asset sector's hope of legislation by the end of this year as a top Democratic lawmaker stalled efforts to debate a bill.

Although Congress had appeared likely earlier this year to pass legislation governing digital assets for the first time, Democrats have grown increasingly frustrated as Republican Trump and his family members have promoted their personal crypto projects.

Representative Maxine Waters' objection to a joint hearing scheduled for Tuesday effectively cancelled proceedings between the House Financial Services Committee and the House Agriculture Committee, which were due to discuss creating a new legal regime for cryptocurrencies.

Trump's crypto ventures include a so-called meme coin called \$Trump, launched in January, and a business called World Liberty Financial, a crypto company owned partly by the president. Trump on social media has promoted a private dinner later this month for the top holders of his meme coin, along with a "special VIP tour" for a select few investors. The business endeavors have drawn criticism from government ethics experts and political opponents over potential conflicts of interest, especially because Trump courted cash from the crypto industry on the campaign trail and pledged to overhaul regulations for the sector. They have also put further legislation this year related to cryptocurrency in doubt as some lawmakers have expressed concern about self-dealing.

"I cannot in good faith agree to such a hearing to discuss crypto market structure while Republicans refuse to stop or even acknowledge Trump's abuse of power," Waters said in a statement ahead of the scheduled hearing.

Representative French Hill, the Republican chairman of the House Financial Services Committee, said that Waters objecting to Tuesday's hearing "has thrown partisanship into what has historically been a strong, good, working bipartisan relationship."

In a statement, Anna Kelly, the White House deputy press secretary, said there were no conflicts of interest and that Trump's assets are in a trust managed by his children.

"President Trump is dedicated to making America the crypto capital of the world and revolutionizing our digital financial technology," she said.

Still, Trump's crypto arrangements have threatened to derail legislation that was once considered near certain by analysts and lobbyists to pass this year. Congress is also debating a bill to create a regulatory framework for stablecoins, a type of cryptocurrency designed to maintain a constant value, usually a 1:1 dollar peg.

Senate Democrats have expressed concerns about the bill, especially after World Liberty Financial announced last week that its stablecoin would be used by an Abu Dhabi investment firm for its \$2 billion investment in crypto exchange Binance.

The White House wants that bill to pass the Senate by next week, according to a source familiar with the discussions. But some Democrats said on Saturday that Republicans had failed to negotiate on stronger provisions related to foreign stablecoin issues and anti-money-laundering protections, and that they would be unable to support the bill as it currently stands.

The stablecoin bill could still pass the Senate, in which Republicans hold the majority, but could pose a setback for the crypto industry which has tried to portray digital asset regulation as a bipartisan issue.

Reporting by Hannah Lang in New York; Editing by Pete Schroeder and Matthew Lewis

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

Hannah Lang covers financial technology and cryptocurrency, including the businesses that drive the industry and policy developments that govern the sector. Hannah previously worked at American Banker where she covered bank regulation and the Federal Reserve. She graduated from the University of Maryland, College Park and lives in Washington, DC.

Trump's Media Company Offering Movies About Wild Conspiracy Theories

 talkingpointsmemo.com/news/truth-plus-trump-conspiracy-theories



TPM Illustration/Getty Images/Truth+

By Hunter Walker

|

May 6, 2025 10:16 a.m.



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Less than two minutes into the movie, the narrator makes a shocking claim.

“The evidence we are about to present to you has the potential to rewrite thousands of years of human history. It will present evidence that suggests ancient serpent or lizard-like aliens came to earth thousands of years ago,” the narrator says. “We’ll also present evidence that these ancient aliens are still among us today.”

This bizarre narrative echoes a paranoia about shadowy reptilians that has persisted for decades on the absolute fringes of the conspiracy theory movement. However, in this case, the story of “serpent or lizard-like aliens” who are secretly wielding influence over the human race isn’t coming from some pamphlet or dark corner of the internet. It is among the most watched films available for streaming on a service run by a multibillion dollar media company that is owned by the President of the United States.

When they launched a streaming service last year, President Trump’s business partners at the Trump Media and Technology Group announced it would be focused on “news, Christian content, and family friendly programming that is uncancellable by Big Tech.” Yet this supposed haven for young viewers and wholesome Christian fare is also home to “Lizard People: Rulers of Time and Space,” a bizarre hour-long movie that presents claims that there is a race of “serpent-like aliens who created humans and the religious systems used to control them.” As of this writing, Trump’s company is marketing this to viewers as a “documentary” — and it’s not the only one on their platform filled with shocking statements linking Christianity and other faiths to shadowy, sinister alien conspiracies.

These ideas are easy to dismiss as utterly and obviously ridiculous. However, they have a history of attracting troubled believers on the furthest conspiracy fringe. And, while these movies are available on other streaming platforms, in this case the sitting president’s nascent media empire is playing a role in the promotion of this extreme content. Trump’s streaming service also seems to have helped it to find an audience. On Monday and through much of last week, “Lizard People” was listed among the top 10 “most watched” programs on the streaming service.

This service and some of its more unhinged offerings is effectively the underbelly of one of the more prominent features of the new Trump era — Truth Social.

Throughout his second re-election campaign and first hundred days back in office, President Trump has used the Truth Social platform to issue near constant updates including policy pronouncements, personnel announcements, attacks on his political enemies, and even musings on last month’s NFL Draft. The site serves a quasi-official role with Trump’s “truths” sometimes also being distributed by the official White House Office of Communications. Truth Social was launched in early 2022 after Trump was banned from multiple more mainstream sites following the Jan. 6, 2021 attack on the U.S. Capitol. The platform is the centerpiece of Trump Media & Technology Group, a company that is majority owned by the president and that has extensive ties to his current administration.

More recently, as Trump's media empire has made headlines for quickly losing and raising massive sums of cash, it has expanded beyond social networking into other forms of entertainment. Now, the company's ventures include Truth+, the streaming service with multiple films being marketed as documentaries that present wild conspiracy theories, including allegations alien beings are "manipulating world events and are using religion and other means to secretly control humanity."

TPM reached out to TMTG for comment on this surprising fare. Spokeswoman Shannon Devine responded on the company's behalf with a note that wove its own dramatic tale of nefarious plotting by shadowy forces.

"Having trafficked in absurd conspiracy theories for years, the partisan hacks at Talking Points Memo, at the behest of their leftwing puppet masters, turn around and demand we censor content on our free-speech platform," Devine said.

TMTG, which is also known as "Trump Media," has had what one analyst described to the UK's Telegraph newspaper as a "wild ride largely fueled by Donald Trump's political influence." TMTG was started in 2021 by Trump and two former contestants on his reality show, "The Apprentice." The relationship between Trump and the other founders eventually descended into lawsuits as the company underwent a merger and prepared to go public. TMTG, which trades under the symbol "DJT," had its IPO in March 2024 at an \$8 billion valuation. Since then, the stock has been on a rollercoaster ride, with prices climbing above \$60 after the initial offering before coming down to, as of last week, roughly \$25.

Having a publicly traded media company means Trump, who owns a majority of the DJT shares, is in a position to rake in sums from individual advertisers and investors at a level that is unprecedented for a sitting president. After winning the 2024 election, Trump placed his stake in the company into a revocable trust solely managed by his son, Donald Trump Jr., who is also on the company's board. The president isn't the only official who has been in a position to cash in on the company. Other members of the Trump administration have also held shares or served on TMTG's board. TMTG's CEO and chairman is Devin Nunes, who is a former Republican congressman and the current chair of the President's Intelligence Advisory board.



Trump Media & Technology Group stock market trading information is seen on a television at the Nasdaq Marketplace on March 26, 2024 in New York City. (Photo by Michael M. Santiago/Getty Images)

TMTG's high value has, thus far, been at odds with steep losses that have dwarfed the company's revenues and totaled over \$400 million last year. Stock sales have helped Trump Media offset that and close out 2024 with a \$777 million cash reserve. However, even with those assets, the company appears to be searching for ways to expand its business model. Truth+, which includes a streaming service, launched last August and has been framed by Nunes as central to those efforts.

In an April 29 letter to shareholders, Nunes described several potential revenue streams from Truth+, including a crypto token and "premium features" for subscribers like a verified "red check badge." Nunes reiterated the message that the streaming service would focus on the family and people of faith.

"We're assessing various means of monetizing the Truth+ platform, including through advertising and a subscription package with premium content," Nunes wrote. "Meanwhile, we are continuing our efforts to secure new programming encompassing family-friendly entertainment, documentaries, children's shows, Christian content, and unbiased news broadcasts."

The current slate of streamable video on Truth+ includes rebroadcasts of shows from the right-wing cable network “Real America’s Voice” and disgraced former Fox News host Bill O’Reilly. Along with partisan news, there are also documentaries, religious programming, and movies including some that are clearly labeled “sci fi,” “fantasy,” and “horror.” Among these offerings are multiple shows that veer towards the extreme and conspiratorial.

While other Truth+ programming is categorized with entertainment genres, as of this writing, the full description on the service identifies “Lizard People” simply as a “documentary” that poses a tantalizing, troubling question: “Did ancient serpent or Lizard-like aliens come to Earth thousands of years ago to play a role in creating humanity and are they still among us today?”

Viewers who are intrigued by this pitch and opt to watch are treated to a brief “WARNING” noting “some parts of this film may be objectionable or offensive and may contain triggers for post traumatic stress disorder, for some viewers.” The disclaimer also declares “the views and opinions expressed in this film are entirely those of its makers.” Other than that, the hour-long show contains no effort to question or downplay any of the shocking claims contained therein. Instead, the deep-voiced narrator repeatedly and authoritatively suggests the film’s claims all may be true.

“There is a great deal of evidence to suggest that alien, serpent-like creatures did come to Earth thousands of years ago and created religion, humanity, and continue to control us even now,” the narrator says at one point.

Along with the dramatic narration, “Lizard People” includes a compilation from various stock footage and image libraries along with computer animations. The “evidence” presented resists basic scrutiny, as it largely lacks citations and consists of sweeping statements about ancient art, culture, and more modern alien encounters. While the premise and bizarre presentation ensure that remotely discerning audiences would dismiss the film’s claims, they are continually presented as wholly factual research supported in part by the assertions of federal government agencies.

“With every passing day, NASA tells us that they have discovered yet another earth-like planet that could sustain life,” the “Lizard People” narrator states near the end of the show, adding, “They alter their equations on the existence of alien life on a weekly basis. Even they are growing more and more aware that soon they will discover something special. The question is, will we awaken the ancient invaders and will they return — if they’re not already here?”

Those comments directly give way to some of the more shocking imagery that appears in the climax of the hour-long film. As “Lizard People” enters its final minutes, footage plays across the screen showing grey alien figures standing over a nearly nude man splayed out on a

table surrounded by machinery and tubes prodding into his flesh.

Against this backdrop, the narrator declares: “The fact is, these serpent aliens may use more than space to appear on earth. They may also use time.” The footage gives way to images of human bodies suspended in pods and a suggestion that proof for all of this lies in tales of titans in “Greek mythology,” the story of the serpent and the Garden of Eden in the “Christian Bible,” and more modern disclosures about unexplained alien phenomena. This blend of strange imagery, ancient lore, and UFOlogy transitions to the movie’s final argument.

“In conclusion, there is a growing body of evidence to suggest that ancient serpent aliens still visit earth and also use time travel,” the narrator says as the screen goes dark.

Variations of the claim that reptilian extraterrestrials have played an influential and sometimes sinister role in world history have been promoted by conspiracy theorists for well over a hundred years. Researcher Logan Strain, who has written about conspiracy theories for the Washington Post and covers the topic in depth for the podcast “QAA,” which he co-hosts pseudonymously as “Travis View,” told TPM the phenomenon can be traced as far back as the 19th century occultist writer Helena Blavatsky.

“She wrote about ancient civilizations that influenced the modern day, and ancient lost races,” Strain explained. Blavatsky theorized an ancient race of dragon men. These claims, Strain said, “were later adopted by conspiracists.”

“But what really got it kicked off was a couple things,” he continued. “Robert E. Howard, who wrote the Conan the Barbarian series — he wrote some fiction about lizard people. This was picked up by a cult leader named Maurice Doreal.”

Doreal, Strain explained, wrote a pamphlet entitled *The Mysteries of Gobi* that described a civilization beneath the desert. “He claimed that there was an ancient race of lizard people,” Strain said. “So, this was like from the 1940s.”

Strain described reptilian theories, today, as “more fringe than QAnon.”

“There are more people who believe fringe conspiracy theories about the faked moon landing and stuff than lizard people,” Strain said. “It is a very fringe, minority conspiracist belief in a land where people feel free to believe lots of wild things.”

While the number of people convinced of a dark reptilian influence may be small, Strain pointed out belief in lizard people has been linked to multiple incidents of real world violence.

“This is such a wild, out-there belief, if someone espouses this belief and sincerely believes this, it signals, usually, some kind of an instability or mental illness,” said Strain. “There’ve been multiple examples of people who promote conspiracy belief, who’ve committed

violence or committed suicide in a spectacular way.”

The lizard people conspiracy is also, as Strain put it, “very heavily intertwined with anti-Semitic tropes” and the idea Jews are among the sinister, elite forces operating behind the scenes. Strain noted that the idea that reptilians are manipulating the world was “really popularized” more recently by the prominent British footballer-turned-conspiracy theorist David Icke. While Icke denies being an anti-Semite, his past statements — including blaming Jewish groups for COVID — have led him to be banned from multiple countries and internet platforms.

The film “Lizard People” does not include focused criticism of Jews. However, the movie and another on Trump’s Truth+ platform include bizarre and conspiratorial statements about multiple religions. In “Lizard People,” the narrator suggests the “very children of Israel” engaged in “intermarriage” with “serpent worshippers.”

“This is very revealing,” the narrator declares. “Intermarriage and worship of the serpent gods. Today, we can easily replace the word ‘gods’ with aliens.”

The movie also includes some inflammatory commentary about the Catholic Church.

“The Vatican comes from the words ‘vatis’ for prophet and ‘can’ for serpent, making the Vatican a place of serpent prophecy,” the narrator says. “The very book of Christians across the world, The Bible, is full of the serpent.”

Most etymologists explicitly do not agree with this interpretation of the term “Vatican.”

Another film on Truth+ delves more specifically into the idea that major religions are part of an extraterrestrial conspiracy. “Conspiracy Chronicles: Dark Underworld” has also been described on the service as a “documentary.”

“Explore the powerful, secret underworld of a shocking coalition of the human elite and advanced beings not of this world dating back hundreds of years,” the description says.

Like “Lizard People,” “Conspiracy Chronicles” is approximately one hour long and seemingly wholly made up of ominous narration set against stock footage and computer animation. It begins with a disclaimer that says “the views expressed in this film are not necessarily the views of ... any other person involved in the making and distribution of this film.” There is no other attempt to downplay the claims in the movie or indicate they have no basis in reality.

And “Conspiracy Chronicles” may be even weirder than the reptilian saga, as it includes a rapidfire smorgasbord of wild claims about everything from Freemasonry to the Jesuits to the Moon, which it contends is actually “hollowed out” and a “base for aliens.”

“Power cleverly shifts around, but always at the very top, the same families run the world,” the “Conspiracy Chronicles” narrator declares at one point, quickly adding, “The modern era of mind control began with the creation of the Illuminati.”

“Conspiracy Chronicles” also goes beyond the rhetoric of “Lizard People.” Rather than simply posing religion as a tool for nefarious forces to control the populace, it suggests the Judeochristian God and other religious leaders including the Hindu deity Krishna are actually extraterrestrials themselves.

“There are a few pieces of evidence that suggest that Jesus may have been an alien,” the narrator says before going deeper down the rabbit hole. “And what about other religious originators such as Buddha? ... He wasn’t human. He was an alien. So, the next time you see a statue of Buddha, remember that he was an alien.”

The array of theories in “Conspiracy Chronicles” also include some suggesting the U.S. government is part of a scheme to cover up both UFOs and “dark ops” experiments. According to the film, this secret laboratory work includes “deliberate production of utterly abominable results such as ape-human embryos and other ungodly biological combinations.” The movie outlines an especially disturbing scenario that it links to a military base in New Mexico.

“One of the most horrifying claims made for this installation was the presence of the so-called ‘blood lab’ where various kinds of blood, both natural and synthetic, was processed ostensibly for the consumption of the extraterrestrials who required it for their existence,” the narrator says.

Perhaps the most surprising aspect of these claims of government involvement in unnatural experiments and alien blood sacrifice is that they are being streamed on a service owned by the president of the United States. The White House did not respond to a request for comment asking if Trump thinks this content is in line with his company’s values. They also didn’t answer specific questions about whether Trump believes in “lizard-like” aliens or if the government is covering up UFOs or human-animal breeding experiments.

There is other conspiratorial content on Truth+ including a film on the “Illuminati” that was also, as of last week, among the services “most watched” videos. However, “Lizard People” and “Conspiracy Chronicles: Dark Underworld” stand out as truly bizarre in both their claims and presentation. Alchemy Werks LLC is identified as the production company behind both films on IMDB pages that are also linked on Truth+. “Lizard People” also cites Alchemy Werks in its credits. The company says on its website that it has produced dozens of movies about aliens that it bills as “reality films.” “Conspiracy Chronicles” additionally describes itself in its credits as a production of American River Media Group, a company that also advertises

THC “horse treats.” When TPM reached out to these businesses, we received a call back from a man who identified himself as Charles Thompson, who is credited as a producer on both “Lizard People” and “Conspiracy Chronicles: Dark Underworld.”



Devin Nunes and Donald Trump speak on the third day of the Republican National Convention at the Fiserv Forum on July 17, 2024 in Milwaukee, Wisconsin. (Photo by Leon Neal/Getty Images)

Thompson pointed to the disclaimers on both films, which state that the filmmakers do not vouch for the “accuracy” or “completeness” of the claims presented. The disclaimer on “Lizard People” also states that the filmmakers are “not responsible or liable for any action or inaction by a viewer of this video that is based on the content of this film.”

“I don’t know how you could take ‘Lizard People’ seriously, honestly,” Thompson said. He went on to compare the films to “Dungeons and Dragons” and other fantasy entertainment.

“We have nothing but support for President Trump,” he said. “They should be noted that the genres are sci-fi and there’s a big base that enjoys movies about aliens and lizard people and such. They’re insatiable about it.”

Thompson suggested he would talk with Truth+ about having his movies marked as “sci-fi/fantasy.”

“Unfortunately, they’re not being denoted as such on the Trump Media site and I’m going to have to look into that,” he said.

In the days since, the label on “Conspiracy Chronicles: Dark Underworld” has been switched from “documentary” to “sci-fi” on Truth+. As of this writing, “Lizard People: Rulers of Time and Space” is still identified as a “documentary.”

Conspiracy inflected plots are, of course, not uncommon in mainstream entertainment. Films, books and television including “The Da Vinci Code,” the “National Treasure” film series starring Nicolas Cage, and “The X Files” have long included clearly fictionalized storylines that delved into elements of popular conspiracy theories. While it is more rooted in conspiracy theories than any actual evidence, the idea that aliens played a role in early human history has also spawned relatively mainstream content that straddles the line between faux news and tongue-in-cheek entertainment. Specifically, the series “Ancient Aliens” has earned meme infamy while being broadcast on the “History Channel” and Netflix.

However, the conspiratorial “documentary” content that is popular on Truth+ is different, in part because it leans into the version of this mythos that frames the ancient extraterrestrials as “lizard-like” serpents. This reptilian take on the theme has historically been one of the most extreme versions of the belief that aliens played a pivotal role in human history. Strain, the conspiracy theory researcher, suggested it is particularly troubling to see lizard people conspiracy theories advanced on a platform owned by Trump because the presidential association could give these wild ideas momentum. He alluded to instances where Trump has engaged with followers of another popular conspiracy theory, QAnon, online and off.

“One of the reasons that QAnon spread so far and was so adopted is because Trump and some of his close associates were willing to sort of wink and nod at the QAnon community and make no effort to denounce them or denounce their beliefs,” Strain said. “That obviously fueled a lot of QAnon believers.”

Both “Lizard People” and “Conspiracy Chronicles” are also available on YouTube, Amazon Prime and other streaming services. However, at least on Amazon Prime, “Lizard People” is clearly identified as “science fiction.”

Other movies on Truth+ similarly come from companies that have dozens of little-known productions and that also make those films available on both free and paid streaming services. The fact these movies are simultaneously available from multiple different sources at widely varying price points brings up another question: How is it cost effective for producers to make dozens and dozens of movies? What exactly are they selling if these things are widely available and, in some cases, free?

TPM reached out to Richard Rushfield, a longtime chronicler of Hollywood and columnist at the entertainment industry site The Ankler, to try and understand this business model. There are various production companies who churn out work in bulk, at a low cost, and are then able to monetize even relatively small audiences via the internet or streaming, he said. He described it as a sub-Hollywood “weird internet” world and “very sort of bottom-feedery business.”

“It’s like the mud at the bottom of the floor,” he said. “It’s like living at that level.”

TPM asked Rushfield if it surprised him to see a company owned by the president engage with this type of content.

“Three months ago, it would have,” Rushfield said with a laugh. “I don’t know that I have the capacity for surprise any more.”



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Pharma Co. Escapes Investor Liver Drug Trial Suit, For Now

By **Katryna Perera**

Law360 (May 5, 2025, 7:23 PM EDT) -- Biopharmaceutical company Akero Therapeutics Inc. and its executives have escaped, for now, a proposed class action alleging they misled investors about the patient population in a clinical trial for Akero's liver disease treatment, with a California federal judge on Monday rejecting the suit's theory of motive for the defendants.

U.S. District Judge Yvonne Gonzalez Rogers **issued an order** tossing the suit without prejudice because the investors failed to adequately plead scienter for Akero's CEO Andrew Cheng, Chief Financial Officer William White and Chief Development Officer Catriona Yale.

According to the suit, which was **filed last year**, Akero has conducted trials to test the safety and efficacy of a protein and its lead product candidate, called EFX, to treat a liver disease known as nonalcoholic steatohepatitis, or NASH. Akero and its executives gave the impression that certain patients with risk factors that would hinder or confound the trial's results were excluded from the study. However, the executives knew all along that they were actually being incorporated into the trial, the suit says.

The investors' theory is that the executives' motive to hide the truth about the patient population "involved a gamble" — to raise money from investors — that the trial would still be successful even with the risk-factor patients, according to the order.

But the executives argued in their dismissal motion the theory is "illogical," the order noted.

"Defendants wonder why they would 'dedicate[] immeasurable time and resources to [the trial], knowing all along that the patient population supposedly signaled doom for the trial, and without any insider seeking to capitalize on this purported lie?'" the judge said.

Judge Rogers agreed with the defendants on Monday, saying there are "troubling gaps" in the investors' logic.

The judge noted Akero and its executives always knew they would ultimately have to report the trial's design — and the details of its patient population — and they did, about 36 weeks into the 96-week trial.

Not only does the investors' motive theory fail, Judge Rogers said, but they also failed to explain why the defendants "accurately and honestly" reported the inclusion of the risk factor patients at the 36-week mark instead of "keeping it a secret" throughout the trial.

According to the order, the court asked Akero's counsel during a recent hearing why the company decided to include the risk factor patients at all if their presence was not disclosed until the 36-week mark, when the interim results of the trial were announced.

The defendants responded there is often a level of detail with clinical trials seeking approval from the U.S. Food and Drug Administration that is not disclosed to the public, and in this case, there was a level of detail regarding the patient population that simply wasn't disclosed until the interim results were announced.

There were never any false statements made about the trial, the executives added, and they noted

the investors seemed to be debating the level of detail that should have been disclosed to the market.

Judge Rogers said Monday this explanation of the executives' behavior "leaves fewer questions than the alternative."

"Plaintiffs have not, in opposition or at argument, contested the general proposition that study readouts often contain more detailed explanations of a trial's design than comments made beforehand," the judge added.

She further stated the FDA's eventual approval of the trial indicates the defendants genuinely believed that the statements they made throughout the class period were objectively true.

Although Judge Rogers tossed the suit, with leave to amend, for failure to plead scienter, she did state the investors plausibly pled loss causation and the falsity of some statements.

In a statement to Law360 on Monday, Jamie Wine of Latham & Watkins LLP, counsel for the defendants, said, "We are pleased with the court's decision to dismiss plaintiffs' complaint in its entirety. Our client, Akero, is focused on continuing its efforts to develop an effective treatment for patients with liver disease caused by [metabolic dysfunction-associated steatohepatitis]."

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

The suit's class period begins Sept. 13, 2022, the day Akero announced the 24-week results of the trial in a filing with the U.S. Securities and Exchange Commission. Investors alleged that filing, and others throughout the class period, did not disclose that 20% of the patients in the trial should have been excluded to prevent potential adverse effects on its results.

On Oct. 10, 2023, the defendants held an investor call to discuss the trial's results, and the truth began to reveal itself, the plaintiff investors said. The company disclosed that the inclusion of certain patients was a confounding factor in the results and that the executives knew about the trial's design flaw throughout the class period, the investors said.

On the news, Akero's shares declined \$30.39, or about 63%, to close at \$18.15 per share, according to the suit.

The suit further claims that several analysts took issue with the previously undisclosed inclusion of certain patients in the trial, and they cut their price targets.

The investors are represented by Shawn A. Williams, Kenneth J. Black, Taeva C. Shefler and Hailey S. Zanutto of Robbins Geller Rudman & Dowd LLP, and Jack G. Fruchter and Michael J. Klein of Abraham Fruchter & Twersky LLP.

Akero and the executives are represented by Jamie L. Wine, Melanie M. Blunschi and Daniel R. Gherardi of Latham & Watkins LLP.

The case is Klobus v. Akero Therapeutics Inc. et al., case number 3:24-cv-02534, in the U.S. District Court for the Northern District of California.

--Additional reporting by Sydney Price. Editing by Lakshna Mehta.



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Umpqua Bank Class Seeks Approval Of \$55M Ponzi Suit Deal

By **Katryna Perera**

Law360 (May 5, 2025, 3:23 PM EDT) -- A class of Umpqua Bank investors has asked a California federal judge to give the initial OK to a \$55 million settlement to end a suit alleging the bank helped execute a \$300 million Ponzi scheme led by a since-deceased real estate investment manager.

The investors filed a **motion** for preliminary approval on Friday saying the court should approve the deal resolving the suit's aiding-and-abetting claims against the bank because, among other things, it represents 37% of the estimated recoverable damages, making it fair, reasonable and adequate.

Shela Camenisch and her co-plaintiffs alerted the court **in March** that they had resolved the entire action on a classwide basis with Umpqua and asked the court to vacate all pending hearing dates, including a retrial scheduled for April.

The settlement brings a five-year-old litigation closer to its end. The suit stemmed from an alleged Ponzi scheme run by real estate investment manager Kenneth J. Casey — who founded Professional Financial Investors, or PFI, in the San Francisco Bay Area and died in 2020 — and his alleged partner Lewis Wallach.

The case went to trial in February before U.S. District Judge P. Casey Pitts, with the plaintiffs pursuing a "fraudulent concealment" theory accusing Umpqua of aiding PFI's fraudulent concealment of using investor cash to enrich its executives, pay other investors and cover recurring shortages, regardless of PFI's ability to repay investors or of profitability.

A mistrial was declared on March 4 after the jury said it was deadlocked.

According to Friday's motion, the settlement was negotiated at arm's length and provides immediate relief for class members against the uncertainties and risks of continued litigation.

"That risk is not merely theoretical here. Plaintiffs presented extensive evidence of Umpqua's alleged knowledge to a jury over the course of four weeks and were unable to convince the entire jury of Umpqua's liability," the motion states. "The evidence was compelling enough that at least one juror believed Umpqua should be held secondarily liable for PFI's fraud. But at least one juror also believed that Plaintiffs' evidence was insufficient."

"There is no guarantee that a second trial would yield a better result," the motion further states. "And even if all jurors saw the evidence the same way and found Umpqua liable, there is a wide range of damages that the jury could ultimately award."

The motion states that class counsel will seek an award of attorney fees worth 25% of the settlement fund as well as \$5,000 service awards for the suit's four class representatives, "each of whom have devoted considerable time over the past several years to respond to written discovery, produce private communications with other investors, sit for lengthy depositions, and testify at trial."

Camenisch and her co-plaintiffs sued Umpqua Bank in 2020, alleging Casey operated his scheme through Umpqua's Novato, California, branch, which purportedly "agreed to look the other way" when other financial institutions rejected PFI as a banking customer due to Casey's history of financial crime.

In 1997, Casey admitted to 21 counts of bank fraud, five counts of tax evasion, five counts of filing a false income tax return and one count of conspiracy to defraud the U.S. According to the investors, Casey was sentenced to 18 months in prison and lost his public accounting license.

The U.S. Securities and Exchange Commission **sued Casey's estate in June 2021**, alleging he misappropriated more than \$10.3 million from clients before his death.

Casey was accused of being involved in a larger scheme in which hundreds of millions of dollars were bilked from 1,300 investors, the government had alleged. Many of the defrauded investors were retirees, or elderly, and depended on their investment income for day-to-day living expenses, according to the SEC.

Casey allegedly secured investments by making misleading statements to investors, such as saying their funds would primarily be used to invest in multi-unit residential and commercial real estate, according to the SEC. He also had PFI employees falsify financial records to make it appear as though their investments were safe and profitable, the agency alleged.

In reality, a significant cut of those funds was used to pay existing investors, the SEC's suit said. Casey also used the cash to renovate one of his homes and pay his personal federal and state taxes, the suit added.

In April 2023, Casey's estate **agreed to pay** the SEC \$11.9 million to end the case, without admitting or denying the allegations.

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

The investor class is represented by Amy M. Zeman, Linda P. Lam and E. Wynne Tidwell of Gibbs Mura LLP, Scott L. Silver, Ryan A. Schwamm and Peter M. Spett of Silver Law Group and Geoffrey A. Munroe of Law Office of Geoffrey A. Munroe.

Umpqua Bank is represented by Kasey J. Curtis, Charles P. Hyun, Kathryn M. Bayes and Katherine P. Goetz of Reed Smith LLP and Keith A. Ketterling, Lydia Anderson-Dana, Madeleine C. Holmes and Erin E. Roycroft of Stoll Berne.

The case is Shela Camenisch et al. v. Umpqua Bank, case number 5:20-cv-05905, in the U.S. District Court for the Northern District of California.

--Additional reporting by Gina Kim. Editing by Patrick Reagan.



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Apple Hit With Developer Suit After App Store Contempt Order

By **Lauren Berg**

Law360 (May 5, 2025, 11:51 PM EDT) -- Apple has been hit with a developer's proposed class action after a California federal judge last week agreed with Epic Games that the tech giant violated her order prohibiting App Store rules that prevent developers from steering users to alternative payment options.

U.S. District Judge Yvonne Gonzalez Rogers **on Wednesday slammed** Apple's efforts to "maintain its anticompetitive revenue stream" by intentionally thwarting a **2021 injunction** barring the company from standing in the way of app developers that want customers to have cheaper payment options for purchases on Apple devices than going through Apple's App Store.

The judge found Apple in civil contempt, barring it from collecting any fees on outside-app purchases, and referred the matter to federal prosecutors for possible criminal contempt proceedings.

On Friday, Pure Sweat Basketball **filed suit** in Oakland, California, federal court, alleging that Apple's defiance of the injunction has harmed app developers "who populate Apple's App Store with innovative apps that give Apple's devices ever-evolving functionality and utility."

Had Apple complied with the court order, developers would have saved potentially billions of dollars in in-app purchase commissions to the tech giant, the suit states.

"These are ill-gotten gains and Apple should not be permitted to retain them," the plaintiff said. "If it does, Apple will have profited handsomely for violating a court order and scheming to retain revenues to which it had no legal entitlement."

Pure Sweat, an Illinois-based developer offering basketball training apps, wants to represent a nationwide class of potentially 100,000 "developers of any iOS or iPadOS app that was (a) distributed through Apple's U.S. App Store and (b) offered in-app products (including subscriptions) for a non-zero price" from Jan. 17, 2024, when the injunction became effective, through "the date on which Apple fully complies with the injunction."

The suit includes claims of unjust enrichment and tortious interference with business expectancy. It seeks restitution, damages, disgorgement, litigation costs and attorney fees, among other relief.

"It appears as though Apple has been caught red-handed blatantly seeking to undercut the law," plaintiff's attorney Steve Berman of Hagens Berman Sobol Shapiro LLP said in a statement Monday.

"We believe app developers deserve a fair market to promote and sell their products, and the world's largest corporation doesn't get to bully them out of this billion-dollar revenue stream," he added.

A representative for Apple did not immediately respond to a request for comment Monday evening.

In her order last week, Judge Gonzalez Rogers said, "Apple willfully chose not to comply with this court's injunction. It did so with the express intent to create new anticompetitive barriers which would, by design and in effect, maintain a valued revenue stream; a revenue stream previously found to be anticompetitive."

"That it thought this court would tolerate such insubordination was a gross miscalculation," she

added.

Her order now permanently bars Apple from imposing any fee on purchases that consumers make outside an app and from restricting developers' placement of links for purchases outside an app.

It also bars the company from interfering with consumers' choice to proceed inside or outside an app, apart from displaying a neutral message that informs users they are going to a third-party site, according to the order.

Her original injunction was issued following a bench trial in Fortnite maker Epic Games' landmark antitrust fight challenging the Apple App Store's 30% commissions on in-app purchases, which Epic claimed has unfairly kept competing app stores off Apple devices.

Although Judge Gonzalez Rogers mostly rejected Epic's antitrust arguments — it won a **bigger victory** against Google — she found Apple's so-called anti-steering rules were anticompetitive and issued an injunction, which was later affirmed on appeal.

Wednesday's order comes after a year of proceedings related to **Epic's contention** that Apple launched a "deliberate campaign to avoid complying with the injunction."

On Monday, Apple filed a notice of appeal to the Ninth Circuit, court records show.

The plaintiff is represented by Ben M. Harrington, Steve W. Berman and Theodore Wojcik of Hagens Berman Sobol Shapiro LLP and Eamon P. Kelly, Joseph Vanek, Alberto Rodriguez and Phillip F. Cramer of Sperling Kenny Nachwalter.

Counsel information for Apple was not immediately available.

The suit is Pure Sweat Basketball Inc. v. Apple Inc., case number 4:25-cv-03858, in the U.S. District Court for the Northern District of California.

--Additional reporting by Bryan Koenig, Dorothy Atkins and Bonnie Eslinger. Editing by Jay Jackson Jr.



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Are Circuits Suddenly Split 11-1 Over Forum Selection Fights?

By **Jeff Overley**

Law360 (May 5, 2025, 10:45 PM EDT) -- Holy split! That exclamation would be a reasonable reaction to a new and lopsided divide described by industrial giant Honeywell, which contends that the Seventh Circuit abruptly and erroneously broke with all its sister circuits regarding enforcement of forum selection clauses.

In a petition late last month, North Carolina-based Honeywell International Inc. — a conglomerate specializing in aerospace, chemicals, software and more — directed grievances galore at the Seventh Circuit panel that **recently rejected** its change-of-venue efforts in a proposed class action involving employee benefits.

Forum Defection

The Seventh Circuit, in a recent decision involving forum selection, broke ranks with all its sister circuits, according to industrial corporation Honeywell, which cited the past decisions below.

1st Circ. (1969)

In re: GAF Corp. ●

2nd Circ. (1995)

In re: Warrick ●

3rd Circ. (2002)

In re: Federal-Mogul Global ●

4th Circ. (2020)

In re: Pukke ●

5th Circ. (2008)

In re: Volkswagen of America ●●

6th Circ. (1958)

Lemon v. Druffel ●●

8th Circ. (1965)

McGraw-Edison Co. v. Van Pelt ●●

9th Circ. (1992)

U.S. v. S.S. American Merchant ●●

10th Circ. (1965)

Cessna Aircraft Co. v. Brown ●●

11th Circ. (1989)

In re: Ricoh Corp. ●●

D.C. Circ. (1983)

In re: Scott ●●

Source: Court records; Law360 reporting

Those grievances are partly about the swift and succinct rejection of its efforts — the three-judge panel balked in a concise **order** only two weeks after Honeywell sought the circuit court's intervention, and the company has suggested it was given short shrift. In the first sentence of its **petition**, Honeywell faulted the panel for delivering a major decision in the form of "a two-page order without full briefing or oral argument," adding that the panel reached key conclusions "without explanation" and "without any detailed analysis."

But the main thrust of Honeywell's petition, which seeks rehearing by the panel or the full circuit, is that the panel's perfunctory holding "squarely clashes" with circuit precedent, "likewise conflicts" with U.S. Supreme Court precedent and "even conflicts with the decisions of all 11 courts of appeals that have considered the matter."

The matter in question is whether writs of mandamus — generally speaking, appellate orders compelling lower courts to do something — can be obtained in the context of lower court rulings on motions to transfer cases from one judicial district to another. Honeywell sought mandamus at the

Seventh Circuit after a lower court **blocked its bid** to move the proposed class action from the Northern District of Illinois to the Western District of North Carolina.

When the panel denied mandamus, it cited the Supreme Court's 1989 opinion in *Lauro Lines s.r.l. v. Chasser* . That opinion analyzed motions to dismiss based on forum selection clauses and held that district court denials of such motions aren't immediately appealable under the collateral order doctrine, which allows certain appeals before proceedings conclude in lower courts.

Honeywell "does not cite Chasser or explain why it suffices to change the label from appeal to mandamus," the panel wrote. The panel also acknowledged that circuits "occasionally say that the costs of litigation are irreparable harm that support mandamus," but it ultimately declined to reach that conclusion "in the teeth of precedents that Honeywell has not even acknowledged."

In its petition for rehearing, Honeywell held little back, pelting the two-page order with criticism spanning more than 20 pages. Much of that criticism centered on what Honeywell deemed a "conflation of the collateral-order doctrine and mandamus" that is "fundamentally flawed."

Courts have discretion with mandamus, but they can't simply spurn collateral appeals involving important rights; for rights that aren't important enough, mandamus serves as a "safety valve" to correct serious errors by lower courts, but the panel "effectively eviscerated" that mechanism, according to Honeywell.

Another misstep was the panel's reliance on perceived litigation costs when assessing irreparable harm, the company's petition said. The real harm, Honeywell asserted, is being forced to litigate in a less convenient forum that differs from the forum designated in employee benefit plans for related litigation.

"The panel's order creates a split with *all* of its sister circuits," Honeywell wrote, using italics to accentuate the Seventh Circuit's conflict with its peer courts. And the idea that litigating in a disfavored forum isn't irreparable harm warranting mandamus "would bar *every* mandamus petition challenging a transfer decision," the corporation wrote with additional italicized emphasis.

Plaintiffs' counsel didn't immediately respond Monday to requests for comment. They also haven't filed any responses to Honeywell's petitions for mandamus or rehearing. In a district court brief opposing transfer, they wrote that the company had "utterly failed to meet [its] burden to prove a contractually valid forum-selection clause applies" to the Employee Retirement Income Security Act lawsuit brought by Antoinette Nessi, who worked for a Honeywell predecessor.

Honeywell's lawyers also didn't respond to requests for comment Monday.

Despite the magnitude of the supposed split, it's far from certain that the panel or the full circuit will grant Honeywell's rehearing request. The Seventh Circuit's handbook, for example, notes that "en banc hearings or rehearings are infrequent," adding that "it is more likely to have a petition for writ of certiorari granted by the Supreme Court than to have a request for en banc consideration granted."

If the company does secure a second look, it might be because of second thoughts by U.S. Circuit Judge Frank H. Easterbrook, one of the nation's more prominent circuit judges and one of the three judges on the Seventh Circuit panel that torpedoed Honeywell's mandamus maneuver. In its petition for rehearing, Honeywell included several quotes from Judge Easterbrook's past opinions, including a 2003 opinion in *U.S. v. Howze* , in which the Seventh Circuit overruled precedent "in order to bring harmony both within and among the circuits."

Citing that opinion, Honeywell highlighted this quote: "A circuit that stands alone against the considered view of coordinate courts should be willing to rethink."

Honeywell is represented by Ashley E. Johnson, Karl G. Nelson, Brian Sanders and Savannah C. Silver of Gibson Dunn & Crutcher LLP.

Nessi is represented in district court by Susan Martin, Jennifer Kroll and Michael M. Licata of Martin & Bonnett PLLC and Caryn C. Lederer of Hughes Socol Piers Resnick & Dym Ltd.

The appeal is In re: Honeywell Retirement Earnings Plan et al., case number 25-1529, in the U.S. Court of Appeals for the Seventh Circuit.

The district court case is Nessi v. Honeywell Retirement Earnings Plan et al., case number 1:24-cv-06093, in the U.S. District Court for the Northern District of Illinois.

--Editing by Alanna Weissman and Emily Kokoll.

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Class Cert. Partially Granted In Auto Insurance Discount Case

By **Ganesh Setty**

Law360 (May 5, 2025, 10:39 PM EDT) -- A California federal court partially granted class certification Monday over policyholders' claims that a group of insurers violated the state's rule on good driver discounts.

U.S. Magistrate Judge Donna M. Ryu found that a claim under the state's unfair competition law can proceed, but a claim alleging breach of the implied covenant of good faith and fair dealing cannot. Issuing **a ruling** over Edd and Diedre King's January 2021 amended complaint against National General Insurance Co., Integon National Insurance Co., Integon Preferred Insurance Co., MIC General Insurance Corp. and Personal Express Insurance Co., or PEIC, Judge Ryu further dismissed PEIC from the dispute.

After she previously found in June 2021 that PEIC qualified for an exemption to the rule at issue, the "lower rates rule," for a period of time, Judge Ryu further found Monday that the plaintiffs "have not presented evidence that their injury can be traced to PEIC." They specifically purchased their policies from National General Insurance Co., or NGIC, she noted.

However, she said facts are "still relevant" as to the period of time when PEIC was in the same "control group" as the other defendant insurers, referred to as the NG defendants, and whether the NG defendants violated the lower rates rule by failing to "cross-offer" PEIC policies during the period.

According to court filings, the lower rates rule falls under California's law requiring auto insurers to offer a good driver discount, or GDD, where the premium for a GDD policy is at least 20% less than the rate a driver would've otherwise been charged. For separate insurers that share common ownership, the lower rates rule provides that an agent of that "control group" of insurers must offer the lowest GDD policy rate offered among the insurers comprising the control group. However, the law does provide for certain exemptions, as the court previously found with respect to PEIC.

Among the certified class are policyholders of the NG defendants who purchased GDD policies but were not offered the lowest possible rate within the control group during the class period, which spans from Jan. 22, 2011, to the present. The control group further includes PEIC for the period between April 19, 2023, and July 18, 2014.

The King plaintiffs and two other individuals first kicked off the litigation in January 2015, but only the King plaintiffs remained by the time the present motion for class certification was filed in December 2024, records show.

During that time, the court dismissed two other insurers from the dispute thereafter, one via jointly filed stipulation by the parties, and further held that only the implied covenant of good faith and fair dealing and unfair competition law, or UCL, claims could proceed.

The plaintiffs have specifically alleged the NG defendants, and PEIC for a period of time, were in a control group and that each had a duty under the lower rates rule to cross-offer the lowest rate GDD policy, but failed to do so.

After addressing various bids by the parties to exclude certain expert testimony, Judge Ryu on Monday tackled the plaintiffs' position that NG defendants and PEIC were jointly liable for violating the lower rates rule, thereby establishing standing to bring claims against them all.

The King plaintiffs provided evidence that PEIC did offer a lower GDD policy at the time the Kings renewed their NGIC policy in June 2013, Judge Ryu found. She added that other policies the King plaintiffs had pointed to from the NG defendants were either not available to them or charged fees that offset a lower premium.

"To demonstrate joint liability, plaintiffs must connect NGIC's failure to cross-offer a PEIC policy in June 2013 with the rest of the defendants," Judge Ryu continued. However, she said much of the plaintiffs' evidence "goes toward joint liability between the NG defendants, but not PEIC."

The plaintiffs' evidence "only shows that PEIC may have been in the same control group as the NG defendants for a short period of time, that defendants all used the same policy administration system during an irrelevant period of time, and that no cross-offers were made," Judge Ryu further held.

"This does not come close to demonstrating the requisite 'unity of interest,' she determined, citing the 2022 California federal case [Jeong v. Nexo Financial LLC](#) .

After further determining the plaintiffs further satisfied the numerosity, commonality, typicality and adequacy requirements for class certification under Rule 23(a), Judge Ryu then turned to Rule 23(b), which further requires that one of three other requirements be satisfied. The plaintiffs specifically sought certification under Rule 23(b)'s predominance requirement, where questions of law or fact common to class members predominate over questions affecting individual members.

The insurers in turn argued the predominance requirement was not met because they said there was no means of common proof to determine whether a class member would actually accept an offer to purchase a cheaper GDD policy.

"Defendants' position boils down to an argument about reliance: that to prove a class member's claims for violation of the UCL and breach of the implied covenant, the class member must demonstrate they would have actually relied on defendants' cross-offer and accepted the lower-rate policy," Judge Ryu noted.

But reliance is not an element of a claim under the UCL's "unlawful or unfair prongs," Judge Ryu said.

But the same can't be said for the breach of implied covenant of good faith and fair dealing claim, she also found Monday. The claim is contract-based, she highlighted, and an "essential requirement" of such claims under California law is that damages be proximately caused by a defendant's breach and be reasonably foreseeable.

"There is no indication of how many policyholders would turn down a lower-rate policy if offered, or even a single example of a policyholder who actually did so," Judge Ryu further noted.

The plaintiffs "repeatedly fall back on the conclusory and unproven assumption that any driver would naturally accept an offer of the same insurance coverage for a lower price," she added, while the defendant insurers countered that they offered differing scopes of coverage for different prices.

Individual issues therefore predominate with respect to the breach of the implied covenant of good faith and fair dealing claim, Monday's decision concluded.

Michael Ram and Craig Bashein, attorneys for the plaintiffs, told Law360 in a statement they are "pleased with the court's decision to certify this lawsuit as a class action."

"We look forward to being able to fight this case on its merits and get our clients the compensation that they're rightfully entitled to," they said. "We also believe this improper practice to be more widespread in the California auto industry and hope to pursue justice on behalf of all drivers who may have been affected."

Representatives of the defendants did not immediately respond to a request for comment.

The King plaintiffs and class are represented by Michael F. Ram and Marie N. Appel of Morgan & Morgan PA, by Jeffrey B. Cereghino of Cereghino Law Group LLP and by W. Craig Bashein and John P.

Hurst of Bashein & Bashein Co. LPA.

The NG defendants and PEIC are represented by Sanford L. Michelman, David F. Hauge, Mona Z. Hanna and Vincent S. Loh of Michelman & Robinson LLP.

The case is Edd King et al. v. National General Insurance Co. et al., case number 4:15-cv-00313, in the U.S. District Court for the Northern District of California.

--Editing by Nick Petruncio.

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Google Ads Advertisers Ask For Class Cert. In MDL

By **Sydney Price**

Law360 (May 5, 2025, 7:12 PM EDT) -- A group of advertisers in multidistrict litigation accusing Google of violating antitrust law through its control over key ad technology has asked a New York federal court to certify it as a class.

In a motion filed Friday, New York-based Hanson Law Firm PC and other entities claim to represent a class of harmed Google Ads users — a more narrow class than another proposed in the litigation, which would have included any advertiser that placed a display ad using any of Google's products.

"This difference poses no obstacle to certification given that '[a] court is not bound by the class definition proposed in the complaint and should not dismiss the action simply because the complaint seeks to define the class too broadly,'" the motion states.

The advertiser plaintiffs told the judge they meet all of the requirements for class certification, including numerosity and typicality.

"Plaintiff Hanson and each class member share the same overarching goal: to demonstrate the relevant markets, Google's monopoly power, and the anticompetitive conduct Google undertook to preserve and enhance that monopoly power," the motion states.

The advertisers said on Friday that they have focused their claims on two facets of Google's alleged anticompetitive conduct: its so-called Project Bernanke and Unified Pricing Rules programs.

According to the U.S. Department of Justice suit launched against Google in 2023, Google implemented Project Bernanke in 2013 as "a secret scheme to manipulate the bids" that Google Ads submitted into its ad exchange, AdX, "in order to win more competitive transactions and solidify AdX's dominance in the industry."

Then, in 2019, Google imposed Unified Pricing Rules, which restricted publishers' ability to control their pricing and potentially favored Google's AdX ad exchange, according to the advertisers' suit and the DOJ.

In the multidistrict litigation, Google faces numerous claims from advertisers, publishers, businesses and news outlets, among others, all of whom say Google's exponential growth over the past nearly two decades has made it a player at every level of the display advertising service industry. That positioning has allowed Google to exclude competition through anticompetitive policies and practices, the plaintiffs allege.

Last March, U.S. District Judge P. Kevin Castel dismissed all claims stemming from the terms of a 2018 network bidding agreement the company purportedly reached with Facebook. Advertisers claimed that the agreement restrained trade in the horizontal competition between ad-buying tools and competing advertiser intermediaries that also bid in in-app display auctions. Competitive benefits to Facebook under that deal thus came at the expense of rival bidders, they said.

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

The advertisers are represented by Dena C. Sharp, Scott Grzenczyk, Mikaela Bock and Isabel Velez of Girard Sharp LLP and Tina Wolfson, Theodore W. Maya and Bradley K. King of Ahdoot & Wolfson PC.

Google is represented by Justina K. Sessions, Eric Mahr, Robert J. McCallum and Jeanette Bayoumi of

Freshfields Bruckhaus Deringer US LLP and Daniel Bitton, Denise L. Plunkett, Craig M. Reiser, Eva H. Yung, Claire L. Haws, Bradley Justus and Caroline P. Boisvert of Axinn Veltrop & Harkrider LLP.

The case is In re: Google Digital Advertising Antitrust Litigation, case number 1:21-md-03010, in the U.S. District Court for the Southern District of New York.

--Editing by Emily Kokoll.

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Meta Users Refused 9th Circ. Appeal On Data Pay Cert Denial

By **Bryan Koenig**

Law360 (May 5, 2025, 7:15 PM EDT) -- A Ninth Circuit panel summarily refused to permit Meta Platforms Inc. users to immediately appeal a district court decision rejecting class certification for their antitrust case alleging the social media giant would have had to pay for their data if it didn't lie about privacy safeguards.

The two-judge panel's pair of two-page decisions Friday merely pointed to the circuit precedent outlining the factors for granting immediate appeal of nonfinal orders.

In rejecting the two appeals, the judges put the case now firmly back with the California federal judge who said the certification bid, covering every Facebook user from December 2016 to December 2020, was entirely dependent on the opinions of an economist who cannot get from general economics to market reality.

Meta had opposed the petition, filed under seal, by **arguing in February** that the lower court's rejection, centered on the exclusion of the plaintiffs' key economist Nicholas Economides' opinion, "implicates no unsettled or fundamental issue of law regarding Rule 23 and class certification."

The company welcomed the Ninth Circuit decision in a statement.

"It has been clear throughout this case that the plaintiffs cannot substantiate their baseless theories," a spokesperson said.

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

The Facebook users **denied class certification** in January are pressing a novel theory that in a "but-for" world where Meta didn't deceive users regarding how much of their data it was collecting and offering up to advertisers, other platforms would have eaten into Facebook's user base by presenting an alternative with better privacy protections. As a result, according to Economides, Facebook would have been forced to pay users a small monthly rate to keep them on the platform.

But U.S. District Judge James Donato wasn't convinced, ruling that the plaintiffs relied almost entirely on Economides' theory despite having little in the way of "validated economic literature to support" the conclusion or any real-world examples of a platform paying users. Judge Donato's ruling left in place for now a separate proposed class of **advertisers** accusing the company of monopolizing the social media advertising market.

Meta late last month **sought summary judgment** to nix the users' claims outright, arguing that without reliable expert data, the individual plaintiffs have no theories to stand on as they approach a trial currently **set for November**.

Meta is also in the midst of **a bench trial** in D.C. federal court, where the company is battling Federal Trade Commission accusations that it monopolized the social media market by purchasing WhatsApp and Instagram.

U.S. Circuit Judges A. Wallace Tashima and Roopali H. Desai sat on the panel.

The advertisers are represented by Scott + Scott Attorneys at Law LLP, Levin Sedran & Berman LLP,

Bathae Dunne LLP and Ahdoot & Wolfson PC.

The consumers are represented by Hagens Berman Sobol Shapiro LLP and Quinn Emanuel Urquhart & Sullivan LLP.

Meta Platforms Inc. is represented by Sonal N. Mehta, David Z. Gringer, Ross E. Firsenbaum, Ryan Chabot, Paul Vanderslice, Ari Holtzblatt, Molly M. Jennings and Michaela P. Sewall of WilmerHale.

The original case is Maximilian Klein et al. v. Meta Platforms Inc., case number 3:20-cv-08570, in the U.S. District Court for the Northern District of California. The appeals are Klein et al. v. Meta Platforms Inc., case numbers 25-983 and 25-853, in the U.S. Court of Appeals for the Ninth Circuit.

--Additional reporting by Craig Clough, Nadia Dreid and Jared Foretek. Editing by Jay Jackson Jr.

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