

Alta Mesa Investors Get Final Approval for \$126 Million Accord

- SPAC suit alleged inflated financial estimates before crash
- District court approves nearly \$42 million in attorneys' fees

A more than \$126 million class settlement between Alta Mesa Resources Inc. investors and four groups of defendants over the energy company's blank-check merger and demise warrants final approval, a federal court ruled.

Judge George C. Hanks Jr. on Tuesday also approved plaintiffs' attorneys' fees equal to 33% of the settlement amount, or nearly \$42 million, in the US District Court for the Southern District of Texas case.

Riverstone Holdings LLC, the private equity firm behind the special purpose acquisition company that brought Alta Mesa public through a merger, joined with Alta Mesa and numerous individual defendants to contribute \$115 million to the global settlement, according to documents filed in January asking for preliminary approval.

Other participants in the global settlement include investment firm HPS Investment Partners LLC, private equity firm Bayou City Energy Management LLC, and producer services company ARM Energy Holdings LLC. These companies had ownership interests in one or both of Alta Mesa's predecessors and became minority shareholders in the merged company, according to an August 2024 court opinion. HPS agreed to pay \$6.3 million, Bayou City \$2 million, and ARM \$3 million, according to the preliminary approval request.

The class action stems from the \$3.8 billion oil and gas company's financial collapse. The investors allege Alta Mesa secretly used unconventional drilling methods to inflate financial estimates before and after its merger with the SPAC, according to a court opinion in the case.

Alta Mesa wrote down \$3.1 billion in response to an audit that showed accounting weaknesses, according to the investors. Its stock eventually crashed from \$8.38 a share to \$0.34, and its assets sold during bankruptcy for \$320 million, the investors said.

The suit is among many faced by companies formed through de-SPAC, or blank-check, mergers. Numerous companies that went public through that method have faltered following the deals' peak in 2020 and 2021, sending investors to the courts.

Two sets of investment funds suing over the SPAC deal opted out of the class settlement and have reached separate settlements with HPS. Two individuals also opted out, Hanks said.

Entwistle & Cappucci LLP and Robbins Geller Rudman & Dowd LLP are class counsel. Firms representing the defendants include Eversheds Sutherland (US) LLP, Latham & Watkins LLP, and Kirkland & Ellis LLP.

The case is In re Alta Mesa Res., Inc. Sec. Litig. , S.D. Tex., No. 4:19-cv-00957, 5/6/25 .

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Class Action

May 8, 2025, 9:47AM PDT

Cargill, Andersons Face Investor Class in Wheat Futures Lawsuit

- Investors claim antitrust, market manipulation violations
- Court rejects one proposed class representative, allows two

Two investors suing Cargill Inc. and The Andersons Inc. claiming manipulation of the wheat futures and options market can proceed on behalf of a class, a federal court ruled.

"The existence and impact of the alleged manipulative scheme is central to every class member's claims," Judge Robert W. Gettleman said Wednesday for the US District Court for the Northern District of Illinois.

Gettleman rejected one of the three proposed class representatives, Michael Glass, over credibility issues tied to derivative exchange operator CME Group's allegations that he violated its rules. One of the instances involved "the contracts that are the subject of this suit," the judge said.

The investors allege that Andersons and Cargill, purported rivals that each have grain storage facilities in Ohio, schemed to suppress demand for soft red winter wheat futures and options contracts. The companies allegedly committed antitrust violations under the Sherman Act and market manipulation violations under the Commodities Exchange Act.

Some of the companies' arguments against class certification focused on the presence of "net gainers" in the proposed class, according to the opinion. About 34% of the proposed class members benefited from the alleged manipulation more than they were harmed by it, the defendants argued.

"But the reason that the net-gainers suffered no *net* harm is not because they were not harmed at all, but rather because also they received a windfall," Gettleman said. Thus, the class isn't overbroad, and individualized injury issues won't swamp common ones, he said.

Gettleman appointed Lowey Dannenberg PC and Kirby McInerney LLP as class counsel. Foley & Lardner LLP, Tomlinson & Shapiro PC, and Neal Gerber & Eisenberg LLP represent Andersons. Morgan Lewis & Bockius LLP represents Cargill.

The case is *Dennis v. Andersons, Inc.*, 2025 BL 156959, N.D. Ill., No. 20-cv-4090, 5/7/25.

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Litigation

May 8, 2025, 8:51AM PDT

Venture Global Investor Sues Management After IPO, Contract Loss

- **COURT:** E.D. Va.
- **TRACK DOCKET:** No. [1:25-cv-00792](#) (Bloomberg Law subscription)

Management overhyped Venture Global Inc. in initial public offering documents, only to have its stock price fall after a major contract rejection and disappointing financial results amid legal challenges from large clients, a shareholder lawsuit said.

The exporter in IPO documents misrepresented its customer backing and approach as a scalable and repeatable way to bring liquefied natural gas to the international market quickly and cheaply, a stockholder told the US District Court for the Eastern District of Virginia. The paperwork excluded fourth fiscal quarter of 2024 results, which the complaint filed Wednesday said would've revealed its performance was worse than the market expected before the January IPO.

And Venture Global's warnings about the volatility of proceeds generated weren't sufficient since its fourth quarter finished almost a month prior to the IPO, according to the complaint. The fact that the warnings in IPO paperwork discussed perils hypothetically when some had already happened was misleading in a way that would've mattered to investors, said the shareholder derivative complaint, a lawsuit filed on behalf of a company against its corporate overseers.

Nine Venture Global executives and board members and its three primary IPO underwriters harmed the company by negligently preparing the paperwork and letting it release misleading statements, said plaintiff Paul White's complaint. They hurt Venture Global's reputation and wallet, exposing it to potentially costly litigation, he said. White seeks damages and corporate governance reform for Venture Global, among other relief.

IPO filings discussed the development of five LNG projects around Louisiana, the complaint said. But they didn't detail declining commissioning volumes and production issues and delays at its inaugural LNG export facility, Calcasieu Pass, that damaged customer relationships, White said.

TotalEnergies SE's CEO Patrick Pouyanné on Feb. 5 said that he turned down a long-term supply contract for Calcasieu Pass, citing a lack of trust in Venture Global and its disputes with clients Shell Plc. and BP Plc. over delays, White's complaint noted. The stock slid over 11% the next day, according to data compiled by Bloomberg.

Venture Global said last month it was starting commercial operations at Calcasieu Pass.

Venture Global released fourth quarter and full-year 2024 financial results on March 6 that missed analysts' estimates, with the company sharing a sales stumble and higher cost estimates for its Plaquemines project, White said. Share prices plummeted roughly 36% that day, according to Bloomberg data.



Venture Global priced its Jan. 24 market debut of 70 million shares at \$25 after slashing its target. Share prices closed at about \$9 Wednesday, according to Bloomberg data.

A proposed class action alleging similar issues against the same leaders and underwriters plus the company is pending in the same court.

Gainey McKenna & Egleston and Williams & Skilling PC represent White. He alleged breach of fiduciary duties, gross mismanagement, waste of corporate assets, and unjust enrichment against the Venture Global leaders, and aiding and abetting by the underwriters.

Venture Global didn't immediately respond to an email seeking comment. Neither did its counsel in the proposed class action, Latham & Watkins LLP. Nor did the underwriters' counsel from the proposed class action, Gibson, Dunn & Crutcher LLP.

The case is White v. Sabel, E.D. Va., No. 1:25-cv-00792, complaint filed 5/7/25.

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UnitedHealth Sued by Investor Over Strategy After CEO Murder (2)

- Insurance giant sued after lowering 2025 earnings outlook
- Investor said revision suggested softened corporate strategy

UnitedHealth Group Inc. misled investors about its corporate strategy as the company faced significant public scrutiny following the December killing of CEO Brian Thompson on a Manhattan street, a proposed class action filed Wednesday said.

Share prices plummeted more than 22% April 17 after the insurer lowered its full-year 2025 net earnings outlook, with the company indicating “heightened care activity” for beneficiaries of Medicare Advantage, investor Roberto Faller told the US District Court for the Southern District of New York. It was the stock’s steepest one-day fall since 1998, according to data compiled by Bloomberg.

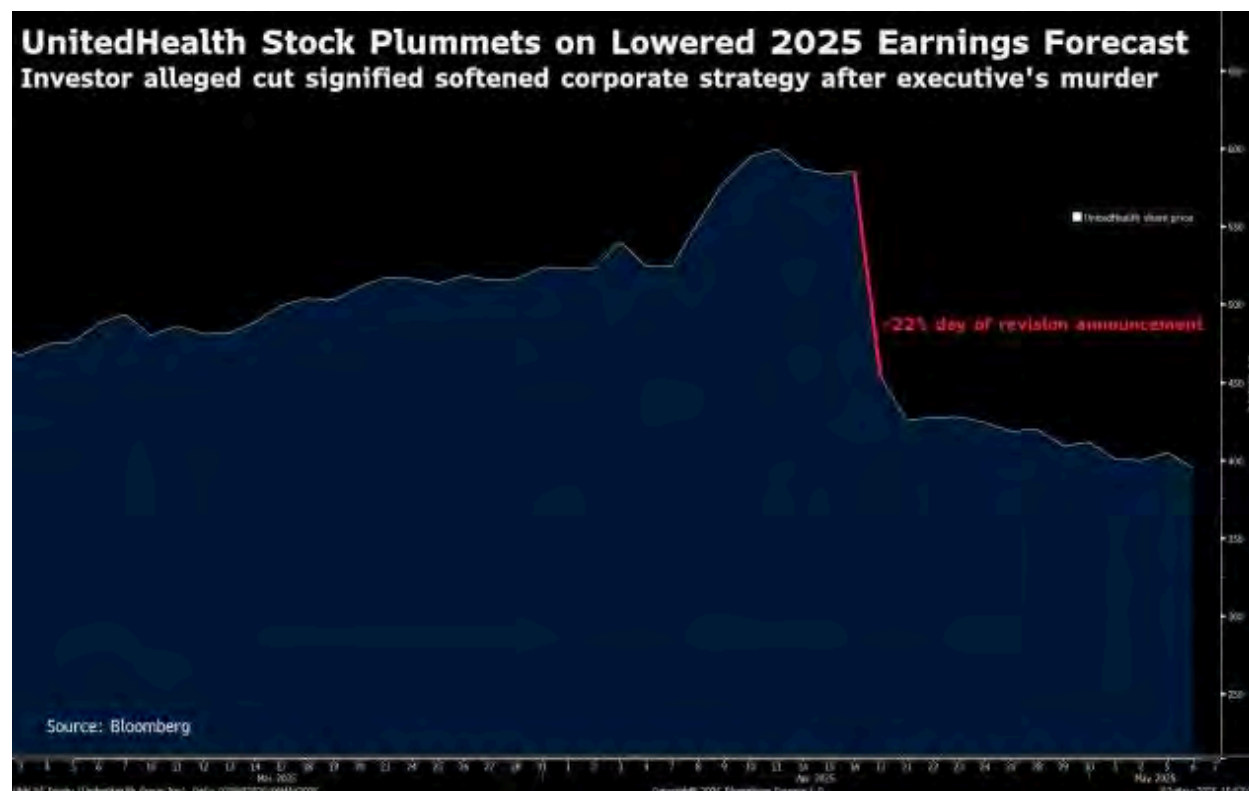
This lowered 2025 outlook signaled there had been a softening in corporate strategy unbeknownst to investors as individuals and policymakers questioned UnitedHealthcare’s denials of coverage, Faller said.

Thompson, who led UnitedHealth’s insurance business UnitedHealthcare, was shot from behind at the New York Hilton Midtown while en route to an investor conference Dec. 4. “It is commonly believed that the accused killer’s motivation to attack Mr. Thompson was due to anger regarding UnitedHealthcare’s policies” under his tenure, Faller said in his complaint. Profits increased with Thompson’s leadership, Faller said, but the company “became increasingly controversial due to denials of coverage.”

Prior to Thompson’s killing, a US Senate subcommittee reported that prior authorization requests for post-acute care for Medicare Advantage enrollees were denied by UnitedHealthcare and other insurers at higher rates than for other forms of care, Faller said. News outlets before and after Thompson’s murder reported on UnitedHealthcare’s curbing of coverage, the complaint said. After, media highlighted how patients, doctors, and lawmakers reactions’ to his death signaled ire toward the overall insurance industry.

UnitedHealth said it was sticking to its 2025 outlook on Jan. 16, the complaint said. This was misleading, Faller said, as it didn't disclose the company was "no longer willing" to "use the aggressive, anti-consumer tactics" it needed to achieve its prior forecast as it was embroiled in heightened public hostility. On April 17, UnitedHealth said its 2025 net earning outlook would be lowered to \$24.65 to \$25.15 per share, previously estimated at \$28.15 to \$28.65, and its adjusted earnings dropped to \$26 to \$26.50 per share, previously being \$29.50 to \$30.00, according to the complaint.

"The magnitude of the April 17, 2025 drop was such that it caused the Dow Jones Industrial Average to fall by 1.3%," Faller said.



Luigi Mangione has been charged in both federal and state court with killing Thompson. He has pleaded not guilty in both cases. US Attorney General Pam Bondi has said Justice Department lawyers prosecuting him should seek the death penalty.

Mangione saw an outpouring of support since being accused of the killing; his legal defense fund surpassed \$1 million in donations this week.

UnitedHealth and UnitedHealthcare didn't immediately respond to emails seeking comment.

The Rosen Law Firm PA represents Faller, who seeks to represent a class of investors from Dec. 3, 2024—when it issued its fiscal guidance—through April 16, 2025. The investor is suing the group, CEO Andrew Witty, and CFO John Rex for alleged Securities Exchange Act of 1934 violations. Faller seeks damages, among other relief.

The case is Faller v. UnitedHealth Grp. Inc. , S.D.N.Y., No. 1:25-cv-03799, complaint filed 5/7/25 .

(Updated with additional reporting throughout.)

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UnitedHealth sued by shareholders over its reaction to backlash from executive's killing

 [reuters.com/sustainability/boards-policy-regulation/unitedhealth-sued-by-shareholders-over-its-reaction-backlash-executives-killing-2025-05-07](https://www.reuters.com/sustainability/boards-policy-regulation/unitedhealth-sued-by-shareholders-over-its-reaction-backlash-executives-killing-2025-05-07)

Jonathan Stempel

May 7, 2025

The corporate logo of the UnitedHealth Group appears on the side of one of their office buildings in Santa Ana, California, U.S., April 13, 2020. REUTERS/Mike Blake/File Photo Purchase Licensing Rights , opens new tab

- Shares sank 22.4% after UnitedHealth cut profit forecast
- Insurer said to conceal changes after Brian Thompson death
- Luigi Mangione pleaded not guilty to murdering Thompson

NEW YORK, May 7 (Reuters) - UnitedHealth Group (UNH.N) , opens new tab was sued on Wednesday for allegedly concealing how backlash from the killing of a top executive was damaging its business, causing its stock to nosedive after the insurer lowered its 2025 outlook.

In a proposed class action filed in Manhattan federal court, shareholders said the insurer defrauded them after the December 4 shooting of UnitedHealthcare Chief Executive Brian Thompson by shifting away from strategies that led to higher-than-average claims denials, without revealing the impact on profitability.

UnitedHealth shares fell 22.4% on April 17, wiping out about \$119 billion of market value, after the insurer cut its 2025 forecast for adjusted profit per share to between \$26 and \$26.50 from between \$29.50 and \$30.

The insurer cited higher costs in its Medicare business. It had issued the old forecast one day before Thompson's death.

Shareholders said UnitedHealth had previously inflated its stock price by recklessly sticking with its old forecast, even as mounting public anger and an October 17 U.S. Senate report , opens new tab on claims denials caused it to become more patient-friendly.

UnitedHealth had no immediate comment. The insurer has offices in Eden Prairie, Minnesota and Washington, D.C.

Wednesday's lawsuit seeks unspecified damages for UnitedHealth shareholders from between December 3, 2024 and April 16, 2025. Chief Executive Andrew Witty and Chief Financial Officer John Rex are also defendants.

Luigi Mangione has pleaded not guilty to murdering Thompson in midtown Manhattan, and could face the death penalty.

Mangione has become a hero to some Americans who are unhappy with for-profit health insurers that deny coverage for treatments.

The case is Faller v UnitedHealth Group Inc et al, U.S. District Court, Southern District of New York, No. 25-03799.

Reporting by Jonathan Stempel in New York; Editing by Chizu Nomiya

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

Event-Driven Litigation, Sure, But Even Where the Event is the CEO's Murder?

K [dandodiary.com/2025/05/articles/securities-litigation/event-driven-litigation-sure-but-even-where-the-event-is-the-ceos-murder](https://www.dandodiary.com/2025/05/articles/securities-litigation/event-driven-litigation-sure-but-even-where-the-event-is-the-ceos-murder)

Kevin LaCroix

May 8, 2025



As part of our beat here at *The D&O Diary*, we read all of the new securities class action lawsuit complaints as they come in. As a result, we have become quite accustomed to the reality that, as *Bloomberg* columnist Matt Levine famously put it, “everything, everywhere is securities fraud.” But our experience did not quite prepare us for the new complaint filed earlier this week against UnitedHealth Group that works the CEO’s murder into the complaint’s allegations. A copy of the May 7, 2025, complaint filed against UnitedHealth can be found [here](#).

Background

Brian Thompson, United Health’s CEO, was shot and killed in New York City on December 4, 2024. Several days later, Luigi Mangione was arrested in Pennsylvania and charged with the killing, as well as several other federal crimes. Mangione has pled not guilty.

The new securities class action complaint against UnitedHealth Group opens its factual allegations with an express reference to Thompson’s murder, following which the complaint alleges that “it is commonly believed that the accused killer’s motivation to attack Mr. Thomson was due to anger regarding UnitedHealth’s policies under Thompson’s leadership, including denial of coverage.”

The complaint then goes on to allege that with Thompson as UnitedHealth’s CEO, the company’s profits increased “but the company became increasingly controversial due to its denials of coverage.” The complaint refers to a U.S. Senate report that was published just weeks before Thompson’s death citing the company’s high rate of denial for prior authorization requests for post-acute care for Medicare Advantage enrollees. The complaint also cites press reports weeks before Thompson’s murder reporting that UnitedHealth was limiting mental health care coverage for its insureds. The media reports claim that the company used algorithms that identified providers that were providing “too much therapy.”

The complaint notes that in the wake of Thompson's murder, "the reaction was not uniformly sympathetic to Thompson" and that instead Thompson and the company "became the target of harsh criticisms from politicians, medical professionals, and consumers." The article cites a BBC article entitled "Killing of insurance CEO reveals simmering anger at US health system."

The complaint alleges that even after Thompson's murder and the negative press coverage, the company on January 16, 2025, announced that it was, according to the complaint, "sticking with its previously issued guidance." The complaint alleges that these statements were "false and misleading" because they "omitted that the Company was no longer willing (as a result of heightened scrutiny against the Company, as well as open hostility against the company from large swaths of the general public) to use the aggressive, anti-consumer tactics" it would need to use to achieve its per share earnings and adjusted net earnings targets.

Then, in an April 17, 2025, press release, the company revised its guidance for the year, lowering its net earnings per share outlook and its adjusted earnings target. The complaint alleges that the press release indicated that the company is "allowing increased coverage and care for beneficiaries of Medicare Advantage." According to the complaint, the company's share price declined over 22% on the lowered guidance news and fell an additional 6.3% the next day.

The Lawsuit

On May 7, 2025, a plaintiff shareholder filed a securities class action lawsuit in the Southern District of New York against United Health and certain of its current executives. The complaint purports to be filed on behalf of UnitedHealth investors between December 3, 2024 (that is, the day before Brian Thompson was murdered) and April 16, 2025 (the day the company announced it was lowering its guidance).

The complaint alleges that during the class period, the defendants made false and/or misleading statements and/or failed to disclose that:

(1) UnitedHealth had, for years, engaged in a corporate strategy of denying health care coverage in order to boost its profits, and ultimately, its share price; (2) this anti-consumer (and at times unlawful) strategy resulted in regulatory scrutiny (as well as public angst) against United Health, which ultimately resulted in the murder of Brian Thompson; (3) animus towards UnitedHealth was such that, subsequent to the murder of Mr. Thompson, may Americans openly celebrated his demise, expressed admiration for the accused killer and/or otherwise demanded that UnitedHealth change its strategy even if they condemned Mr. Thompson's killing; (4) the foregoing regulatory and public outrage caused UnitedHealth to

change its corporate practices; (5) notwithstanding the foregoing, UnitedHealth recklessly stuck with the guidance it issued the day before Thompson's murder; and (6) as a result, Defendants' public statements were materially false and/or misleading at all relevant times.

The complaint alleges that the defendants violated Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 and Rule 10b-5 thereunder. The complaint seeks to recover damages on behalf of the plaintiff class.

Discussion

I fully recognize that there was a lot of ugliness that came out after Thompson's murder. I saw the messages on the Internet and in my social media feeds portraying Mangione as some kind of folk hero and even suggesting that Thompson had it coming. However, the fact that these kinds of messages were circulating on the internet does not validate them. Even though these kinds of communications took place, it is still a long stretch from that to presenting an allegation in a securities class action complaint, as this one does, that the company's supposed "anti-consumer strategy ... resulted in the murder of Brian Thompson."

The company had one strategy, and then as a result of unfavorable media coverage, the company changed its strategy. O.K, that sounds like a more conventional securities lawsuit complaint (although not necessarily a meritorious one).

But adding allegations that the original strategy was supposedly so heinous that the company's CEO got murdered; and that that's why the company had to change its strategy; and then trying to make all of that add up to securities fraud, is taking securities fraud allegations to a far different, and far darker place. The murder is effectively the centerpiece of the complaint; indeed, the complaint's factual allegations *lead* with the assertion that anger at the company's practices led to Thompson's murder.

I have written before on this blog about the phenomenon of event-driven litigation. It would be hard to think of an event in a company's life more dramatic than the cold-blooded murder of the company's CEO. Even though I am well-accustomed to the reality in this country that securities fraud litigation has come to reflect company setbacks more so than accounting fraud or financial misrepresentations, it still comes as, well, a surprise to me to see an event-driven securities suit where the event at issue is the CEO's murder.

The complaint has only just been filed and it remains to be seen how it will fare. I will say that, regardless of the outcome, the new lawsuit is in some ways the ultimate expression of the reality that these days everything really is securities fraud.

UnitedHealth sued over plummeting share price in the wake of CEO's murder

 [courthousenews.com/unitedhealth-sued-over-plummeting-share-price-in-the-wake-of-ceos-murder](https://www.courthousenews.com/unitedhealth-sued-over-plummeting-share-price-in-the-wake-of-ceos-murder)



Over a hundred supporters of Luigi Mangione convened at the Manhattan criminal courthouse on Feb. 21, 2025 for his first New York City court appearance since his December 2024 arraignment on state murder charges. (Josh Russell/Courthouse News)

MANHATTAN (CN) — Shareholders sued health insurance giant UnitedHealth Wednesday, claiming the company misled them by not adjusting financial projections to account for change to its corporate practices following the high profile killing of top executive Brian Thompson last December.

The changes came in response to regulatory scrutiny and public outrage over high rates of claim denials after Thompson, chief executive officer of UnitedHealthcare, was fatally gunned down on a Midtown Manhattan sidewalk outside of the hotel where the company was holding its annual investor conference.

In a proposed class action filed Wednesday in the Southern District of New York federal court, investors claim UnitedHealth defrauded them after Thompson's murder by pivoting away from profit-boosting strategies that led to higher-than-average claims denials, without disclosing the impact on profitability to shareholders.

“Specifically, defendants made false and/or misleading statements and/or failed to disclose that: UnitedHealth had, for years, engaged in a corporate strategy of denying health coverage in order to boost its profits, and ultimately, its share price; this anti-consumer (and at times unlawful) strategy resulted in regulatory scrutiny (as well as public angst) against UnitedHealth, which ultimately resulted in the murder of Brian Thompson,” the shareholders write in the complaint.

Represented by global investor rights law firm Rosen Law, the investors also name Chief Executive Andrew Witty and Chief Financial Officer John Rex as co-defendants in the complaint.

The investors seek unspecified damages for UnitedHealth shareholders from between December 3, 2024 and April 16, 2025, one day before UnitedHealth shares fell 22.4% to close at \$454.11 per share on April 17, 2025., wiping out about \$119 billion of market value.

Citing higher costs in its Medicare business, UnitedHealth cut its 2025 forecast for adjusted profit per share to between \$26 and \$26.50 from between \$29.50 and \$30.

"Had plaintiff and the other members of the class been aware that the market price of UnitedHealth's securities had been artificially and falsely inflated by defendants' misleading statements and by the material adverse information which defendants did not disclose, they would not have purchased UnitedHealth's securities at the artificially inflated prices that they did, or at all," the investors write.

The shareholders also note the U.S. Senate highlighted denials of coverage by UnitedHealth in the weeks prior to Thompson's death. On October 17, 2024, the Senate Permanent Subcommittee on Investigations published a report entitled "Refusal of Recovery: How Medicare Advantage Insurers Have Denied Patients Access to Post-Acute Care."

Representatives for UnitedHealthcare did not immediately respond to requests for comment on Wednesday afternoon.

A 27-year-old Maryland man, Luigi Mangione, has been charged in both New York state and federal courts in connection to Thompson's murder.

Mangione has pleaded not guilty in both cases.

The death penalty is illegal in New York State, meaning that Mangione is up for a maximum of life in prison in that state case, while he faces a death penalty-eligible count in the federal case.

Some corners of the internet have hailed Mangione as a folk hero for his apparent motivations behind the killing. Mangione's online footprint showed disdain for the for-profit health care industry.

Police also discovered the words "deny," "defend" and "depose" printed on shell casings near the site of the shooting, seemingly a reference to a rallying cry for detractors of the industry — "delay, deny, defend" — which refers to insurers delaying payment on claims, denying claims and then defending their actions in court.

A trial date has not yet been set in either case.

Quantum Computing Executives Sued After Short Seller Claims (1)

- **COURT:** D.N.J.
- **TRACK DOCKET:** No. [2:25-cv-03900](#) (Bloomberg Law subscription)

Quantum Computing Inc.'s top brass misled investors about its chip factory, its National Aeronautics and Space Administration relationship, and early business deals to inflate its stock price, a shareholder lawsuit said.

The alleged fabrications came to light when a short seller accused QCI of overhyping its technology and progress on its Arizona quantum computing device foundry, a stockholder told the US District Court for the District of New Jersey. The short seller's Jan. 16 report said that QCI's claims of a "longstanding relationship" with NASA involving multiple contracts weren't true, per the complaint filed Tuesday. Rather, government personnel and records showed a "single \$26,000 'computer programming' contract," said the short seller, Capybara Research.

And the short-seller claimed that QCI signed "fake deals with undisclosed related parties" early on "to deceive investors through promotional press releases containing outright lies."

Share prices slid almost 15% across two trading days, from a closing price of \$11.55 on Jan. 15 to closing at \$9.83 on Jan. 17, said the shareholder derivative action, a lawsuit filed on a company's behalf against its overseers.

Current and former executives and board members harmed QCI's reputation and wallet by causing it to issue misleading statements, exposing it to potentially costly litigation, said plaintiff Michael T. Haley. He seeks damages for QCI and corporate governance reform.

Capybara also accused QCI executives of undisclosed—and uncompleted—related party transactions with Quad M Solutions Inc. and millionways Inc., which Haley said hurt QCI. The company's former CEO Robert Liscouski was reportedly serving as a director at Quad M, which the short seller alleged was "an OTC listed company with ties to multiple stock frauds," when the QCI announced an agreement with it in 2022, per the complaint.

QCi had also announced a letter of intent to acquire millionways, a purported artificial intelligence company, that the short seller claimed a QCi founder was involved with, Haley said.

Facility Size Questioned

Capybara's accusations came after Iceberg Research published a pair of reports in November and December asserting QCI's Arizona property purported to house its foundry was smaller than claimed and appeared incapable of manufacturing its chips, Haley said. Share prices fell 5.8% on Dec. 9, 2024, the day one of those reports published, he said.



QCi announced another NASA contract in a December press release, which Haley also said misrepresented its capabilities and relationship with the federal entity.

The lawsuit comes after another similar shareholder derivative and a proposed class action—against the company and four current and former executives—are pending in the same court.

Gainey McKenna & Egleston represents Haley, who alleged breach of fiduciary, gross mismanagement, waste of corporate assets, unjust enrichment, and aiding and abetting. He also claimed directors violated Section 14(a) of the 1934 Securities Exchange Act, which govern disclosures in proxy statements sent to shareholders.

QCi didn't immediately respond to an email seeking comment. Paul Hastings LLP, the law firm representing it in the previously filed actions, declined to comment in an email.

The case is *Haley v. McGann*, D.N.J., No. 2:25-cv-03900, complaint filed 5/6/25 .

(Updates to include that a law firm declined to comment in the 11th paragraph, a chart of QCI's share prices from Nov. 2024 through Jan. 2025, and other details.)

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Class Action

May 8, 2025, 6:49 AM PDT

Citigroup Faces Revived Investor Suit Alleging Fraud in Mexico

- Investors say they lost more than \$1 billion in scheme
- Citigroup shuttered Mexican subsidiary where fraud occurred

Citigroup Inc. will have to face a lawsuit from investors who claim they lost more than \$1 billion in a fraud involving a Mexican oil services company after a federal appeals court revived the case Thursday.

The US Court of Appeals for the Eleventh Circuit overturned a lower court ruling that said investors failed to establish that Citigroup employees in New York and Miami conspired with bankers at the company's now-defunct Mexican subsidiary to fraudulently advance funds to the failing oil services company.

"The plaintiffs allege that Citigroup conspired and participated in a vast fraudulent scheme," Judge Britt C. Grant's opinion said. "Citigroup contests those allegations. There are quarrels over which employee worked for which company, what Citigroup's then-CEO really admitted to, and whether Citigroup knew about the fraud at all.

"But those factual disputes are best left for another day," Grant added. "At this stage, the plaintiffs have met their burden."

The decision is the second time the Eleventh Circuit has ruled in the case.

The appellate panel in July 2020 overturned a January 2018 lower court ruling dismissing the case, finding that the claims against Citigroup belonged in a US court despite the investments—including through scandal-plagued former Citigroup unit Banamex—occurring in Mexico.

Citigroup processed transactions through its New York and Miami offices, making the US an appropriate venue, the appeals court said in its previous ruling.

Judge Darrin P. Gayles in the US District Court for the Southern District of Florida dismissed the case against Citigroup again in August 2023, determining the investors failed to prove Citigroup conspired with Mexican oil services provider Oceanografia SA to commit fraud.

Investors in their suit claimed Citigroup employees improperly advanced funds to the now-defunct Mexican oil services provider in an attempt to make it look financially healthier than the company actually was.

Citigroup settled claims related to the conduct with the Justice Department in 2017 and with the SEC in 2018 and fired around a dozen employees over the scandal. The bank also wound down Banamex and replaced it with a new Mexican subsidiary.

Judges Jill A. Pryor and Elizabeth L. Branch joined the opinion. The court heard oral argument in September 2024.

Quinn Emanuel Urquhart & Sullivan LLP and Homer Bonner Jacobs Ortiz represent the appellants. A&O Shearman and Day Pitney LLP represent Citigroup.

The case Otto Candies LLC v. Citigroup Inc. , 11th Cir., No. 23-13152, Opinion 5/8/25 .

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FTX lawsuit against Tom Brady, Stephen Curry, Shohei Ohtani, others is narrowed

 [reuters.com/legal/ftx-lawsuit-against-tom-brady-stephen-curry-shohei-ohtani-others-is-narrowed-2025-05-08](https://www.reuters.com/legal/ftx-lawsuit-against-tom-brady-stephen-curry-shohei-ohtani-others-is-narrowed-2025-05-08)

Jonathan Stempel

May 8, 2025

Sep 8, 2024; Cleveland, Ohio, USA; Fox Sports broadcaster Tom Brady talks on the field before the game between the Cleveland Browns and the Dallas Cowboys at Huntington Bank Field. Ken Blaze-Imagn Images/ File Photo Purchase Licensing Rights , opens new tab

May 8 (Reuters) - A federal judge narrowed but stopped short of dismissing a lawsuit by investors seeking to hold celebrities like sports stars Tom Brady, Stephen Curry and Shohei Ohtani liable for promoting the collapsed cryptocurrency exchange FTX.

The investors said the defendants ignored "red flags" and hid millions of dollars of payments to promote FTX as "brand ambassadors," as part of a civil conspiracy with Sam Bankman-Fried's exchange to defraud them into becoming customers.

In a 49-page decision on Wednesday, U.S. District Judge K. Michael Moore in Miami dismissed 12 of the 14 claims, saying the investors did not prove the celebrities knew FTX was a fraud, and merely receiving payments did not establish a conspiracy.

He said the investors could try to prove the defendants violated Florida law by helping FTX sell unregistered securities, finding it plausible that FTX "needed influencers" to sell its products. A claim under Oklahoma law also survived.

Other defendants include sports stars David Ortiz and Naomi Osaka, supermodel Gisele Bundchen, comedian Larry David, businessman and TV personality Kevin O'Leary, and the Golden State Warriors basketball team.

Lawyers for the defendants did not immediately respond to requests for comment on Thursday.

Adam Moskowitz, a lawyer for the investors, called the decision a victory because Florida law allows strict liability, meaning the defendants did not have to know FTX was a fraud.

He said he plans to file an amended complaint with additional defendants, including Major League Baseball and Formula 1 Racing. The sports stars Shaquille O'Neal and Trevor Lawrence previously settled.

FTX filed for bankruptcy protection in November 2022. Bankman-Fried is appealing his fraud conviction and 25-year prison sentence.

Last October, FTX won court approval for its bankruptcy plan, which would allow it to fully repay customers.

The case is In re FTX Cryptocurrency Exchange Collapse Litigation, U.S. District Court, Southern District of Florida, No. 23-md-03076.

Reporting by Jonathan Stempel in New York; Editing by Chizu Nomiyama

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- Suggested Topics:
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Judge Allows Weakened FTX Investor Lawsuit to Proceed Against Celebrities, YouTube Promoters



law.com/2025/05/07/judge-allows-ftx-investor-lawsuit-to-proceed-against-celebrities-youtube-promoters

Michael A. Mora

May 8, 2025

Kevin Michael Moore, chief judge of the U.S. District Court for the Southern District of Florida. Photo: Daniel Portnoy Photography

News

“When Defendants urged people to invest in FTX, they solicited the purchases that followed,” U.S. District Judge K. Michael Moore ruled Wednesday in a 49-page order.

May 07, 2025 at 07:14 PM

Cryptocurrency

U.S. District Judge K. Michael Moore ruled Wednesday that a multidistrict litigation case in the Southern District of Florida, which accuses big-name celebrities and YouTube stars of helping to sell unregistered securities tied to the now-defunct FTX cryptocurrency exchange, can move forward—at least in part.

Adam M. Moskowitz, managing partner at the Moskowitz Law Firm, is lead class counsel in the MDL with David Boies, founding partner at Boies Schiller Flexner, for the 16 plaintiffs, three of whom are from Florida, while the rest reside in Oklahoma, California, Illinois, Connecticut, Arizona, New Jersey, Virginia, the United Kingdom, Canada, Germany, Brazil and Australia. Members of the class purchased or held legal title to cryptocurrency deposited on the FTX platform.

“There is a reason the MDL panel selects judges such as Judge Moore; his order is extremely well-reasoned and balanced,” Moskowitz said in a statement. “All FTX victims continue to be grateful to John Ray and his team, who are helping us formulate the full damages to the class, which will be many multiples of the \$4 billion lost as of only the date of the bankruptcy.”

These plaintiffs sued celebrity defendants, including NFL legend Tom Brady, supermodel Gisele Bündchen, NBA champ Stephen Curry, baseball star Shohei Ohtani and comedian Larry David, plus online influencers such as YouTuber Jaspreet Singh. The plaintiffs claimed these stars lured ordinary folks into investing in FTX’s unregistered securities in exchange for multimillion-dollar paydays and equity stakes before the collapse of FTX in November 2022.

Defendants had argued that their endorsements amounted to non-actionable puffery or standard advertising, and that they were unaware of any fraud within FTX, according to the order. But Moore found that plaintiffs plausibly alleged a campaign of influence that materially aided in FTX's scheme, even if defendants themselves were not insiders.

The defendants declined to comment.

In the 49-page order, Moore found that for purposes of the motion to dismiss, the plaintiffs had plausibly alleged that certain FTX products, including yield-bearing accounts and the exchange's proprietary crypto token, were unregistered securities under state laws and that the celebrity and YouTuber defendants materially aided in their sale.

"When Defendants urged people to invest in FTX, they solicited the purchases that followed," Moore wrote. "The substantial financial compensation packages offered to Defendants, including large direct payments and equity in FTX, demonstrate Defendants' motivations to serve their own financial interests."

Specifically, Moore found that the promotion of the FTX platform was inseparable from the promotion of the underlying securities and allowed the Florida securities law claims to survive the motion to dismiss. A similar Oklahoma securities law claim survived as well. However, Moore dismissed the California securities claim, ruling that plaintiffs failed to sufficiently plead that defendants had "intent to deceive or defraud," a requirement under California law.

Among the other claims that Moore dismissed were allegations of aiding and abetting FTX's fraud under California, Florida and Oklahoma state law, and aiding and abetting FTX's conversion of its funds under California and Florida law.

Moore dismissed consumer protection claims brought under the California Unfair Competition law, Florida's Deceptive and Unfair Trade Practices Act, and the Oklahoma Consumer Protection Act. Moore ruled that the investors failed to meet the heightened pleading requirements for claims sounding in fraud.

In sum, only two of the 14 claims survived.

However, Moore declined to dismiss the case based on personal jurisdiction arguments, improper service or claims that the complaint constituted an impermissible "shotgun pleading," according to the order. Moore ruled that the complaint was organized and specific enough to put defendants on notice of the claims against them.

Still, there are six more litigation tracks besides the celebrity promoters, including banks, lawyers, accountants and domestic and international funds. Moore indicated at a status conference hearing that he will soon determine the best plan moving forward.

But the Wednesday ruling allowing discovery to proceed, pending expiration of the period within which the plaintiffs can amend the complaint and the six tracks, opens the door to further scrutiny of endorsement contracts, internal communications and the financial arrangements underpinning FTX's massive marketing push before the collapse of the \$32 billion exchange.

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Law Firms Mentioned

Boies Schiller Flexner

Latest

Trending

Who Got The Work

Attorneys from Davis Polk & Wardwell have entered appearances for Perion Network, a provider of online advertising services, and its top officers in a pending shareholder derivative lawsuit. The complaint, filed Feb. 13 in New York Southern District Court by Gaiety McKenna & Egleston, arises from the company's search advertising segment and a contract to distribute Microsoft's Bing search engine to clients. The court action accuses certain officers and directors of failing to disclose to Microsoft and investors that a significant amount of Perion's business was derived from low-quality publishers dealing with 'worthless' online traffic such as fake users and 'clickbait.' The suit also contends that the defendants concealed that Perion lacked sophisticated technological capabilities. The case, assigned to U.S. District Judge Valerie E. Caproni, is 1:25-cv-01326, Carr v. Jacobson.

[Read More](#)

New Jersey Appeals Court Expands Securities Violation Penalties

- Cash back to victims and profits are both on the table
- Court must make specific findings to ensure no double-dip

The New Jersey Attorney General's Office can seek both restitution for victims and disgorgement of illegal profits under state securities law, a state appeals court ruled Wednesday.

Trial courts can grant both of these types of remedies in the same case under an expanded view blessed by a unanimous New Jersey Superior Court Appellate Division.

"There is overlap between the remedies of restitution and disgorgement, but the concepts are distinct," Judge Morris G. Smith wrote in his opinion. And while "double payment" penalties aren't allowed, "the trial court must make findings to ensure that there is no double recovery."

The case stemmed from an investigation into unregistered investments through businessman Owusu Kizito and two companies that he owned. The state alleged he took at least \$16 million in improper investments and illegally diverted \$1.5 million for improper purposes, but even with a default judgment the trial court wouldn't grant both restitution for the amounts the victims gave Kizito and disgorgement of his profits.

The appeals court's reversal aligns New Jersey with the US Court of Appeals for the District of Columbia and the Oklahoma Supreme Court. Both courts concluded that long as courts guard against unlawful stacked penalties for the same cash, then securities regulators can penalize violators for both revenue and the resulting profits, the opinion says.

Judges Mark K. Chase and Christine M. Vanek also heard the case.

The New Jersey Attorney General's Office represented the state. Kizito wasn't represented by counsel.

The case is *Platkin v. Kizito*, N.J. Super. Ct. App. Div., No. A-0739-22, 5/7/25.

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Moelis Pact Challenge's Timing Probed by Delaware High Court (1)

- Chancery Court's decision prompted corporate law overhaul
- Bank reached challenged agreement with its founder in 2014

The Delaware Supreme Court on Wednesday questioned why it took a decade for investors to challenge a pact between Moelis & Co. and the investment bank's founder that gave him extensive veto rights.

Some of the panel's five justices also appeared to struggle with how to view the case in light of corporate law amendments passed in response to a February 2024 ruling from the state's elite business court invalidating much of Ken Moelis's 2014 stockholder's agreement with the bank. The bank is appealing the Delaware Chancery Court ruling, as well as \$6 million in legal fees awarded to the attorneys representing the pension fund that challenged the pact.

"If this was such a striking agreement, why wasn't it challenged seven, eight years ago?" Justice Gary F. Traynor asked during oral arguments.

With no government enforcement agency overseeing these kinds of governance provisions, average investors generally defer to what's been approved "by elite law firms," said Thomas Curry of Saxena White PA, representing the pension fund that challenged Moelis's pact with the bank.

The Chancery Court rightly viewed the provision as void to start with, Curry said, adding that "it just can't be right" to expect investors to wait until there's "some catastrophe" to bring a lawsuit. The pension fund sought a forward-looking judgment saying "this cannot continue to bind the board of directors" and they "don't have to check with the founder before they do anything," he said.

The pension fund hasn't shown that it's learned anything since 2014 that would ripen its claims and "does not contest it slept on its rights for a decade," said William Savitt of Wachtell Lipton Rosen & Katz, representing Moelis.

He criticized the Chancery Court ruling as "an absolutely exorbitant rule of law in which a claim can be facially valid forever, for generations."

Legislative Changes

The statutory changes stipulated that as of Aug. 1, 2024, companies could use private contracts to grant stockholders the types of control that previously required a charter provision or a special class of stock. The law “applies retrospectively and prospectively,” excluding claims such as the Moelis case that were pending before that date, said Justice Karen L. Valihura. “We’re in this odd window of having to decide a case based on a legislatively overwritten statute,” she said.

The amendments “essentially say agreements like this are appropriate where appropriate under the law of this state,” Savitt said. Lawmakers rejected the Chancery Court’s ruling and enacted its opposite as Delaware public policy, he said.

Curry acknowledged it wasn’t “an ideal state of affairs,” but, he said, legislators chose to allow pending cases to proceed, and the current law still imposes some limits on these kinds of provisions. “There is an open question as to what extent board-centric governance is still part of the public policy of Delaware,” he said.

Vice Chancellor J. Travis Laster, who wrote the first-of-its-kind decision against Moelis, and the Chancery Court’s chief judge had objected publicly to the legislative changes. In response, former Chancery Court Chief Judge William Chandler, now a partner at Wilson Sonsini Goodrich & Rosati, said in testimony before the legislature that “judges need to stay in their own lane” and “don’t need to intrude upon the process of making law.”

Moelis & Co. is also represented by Morris Nichols Arsht & Tunnell LLP. The challenge was brought by the West Palm Beach Firefighters’ Pension Fund.

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

(Updates throughout with comments from attorneys during the hearing.)

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Litigation

May 8, 2025, 9:28 AM PDT

Texas Reacts to Delaware Musk Beef, Delays Business Court Growth

- **House and Senate aligned on delaying rural court expansion**
- **Musk's Delaware departure prompted Texas shareholder bill**

Texas lawmakers gave mixed signals in their bid to become the country's king for corporate governance, proceeding with a proposal to prevent the kind of shareholder challenge that caused Elon Musk and Tesla to flee Delaware, but backing off a plan to expand the state's fledgling business court system.

The shareholder bill is off to Gov. Greg Abbott's (R) desk after the Texas Senate gave it final approval Wednesday.

The bill, known as SB 29, "will establish Texas as a meaningful alternative to legal incorporation in Delaware, whose law has ceased to be predictable and clear in light of growing activism by the Delaware courts and legal community," read a statement from three groups pushing the legislation, Texans for Lawsuit Reform, Texas Stock Exchange, and Alliance for Corporate Excellence.

Notably, the bill would amend state law to prohibit a shareholder from bringing suit unless they own more than 3% of a corporation's shares.

Musk moved some of his companies to Texas in 2024 after a Delaware Chancery Court blew up his record \$56 billion Tesla pay package opposed by an investor who held nine Tesla shares when he sued in 2018. He encouraged others to leave as well, prompting Delaware lawmakers to scramble to remain competitive by strengthening the presumption that directors are independent of management and controlling stockholders. Gov. Matt Meyer (D) signed the law in March.

While Texas' S.B. 29 seeks to capitalize on Delaware's vulnerabilities, the state's business courts system needs more seasoning to wage a rivalry against Delaware's prestigious Chancery Court. Lawmakers in the House and Senate agreed to abandon a House proposal to expand the system to rural areas during this legislative session, Sen. Bryan Hughes (R) told Bloomberg Law.

Now, the earliest an expansion could happen is 2028.

"We believe the business court divisions already functioning in the state will prove the value of the court, and the success of the court will result in the rural divisions being funded and activated," in the future, said Lee Parsley, president of Texans for Lawsuit Reform.

Houston and Dallas, the busiest divisions in the system's first eight months, would each get a third judge under the nearly identical proposals. The Senate and House are also aligned in lowering the minimum amount-in-controversy threshold in a qualified transaction from \$10 million to \$5 million.

Hughes presented his proposal, SB 2883, to a Senate committee Wednesday. The House plan, HB 40, passed out of committee on April 15 but hasn't been scheduled for a floor vote.

The session ends June 2. Abbott has until June 22 to sign or veto bills.

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J&J Renews Bid to Remove Beasley Allen From Talc Leadership

 [law.com/njlawjournal/2025/05/07/jj-renews-bid-to-remove-beasley-allen-from-talc-leadership](https://www.law.com/njlawjournal/2025/05/07/jj-renews-bid-to-remove-beasley-allen-from-talc-leadership)

Amanda Bronstad

May 7, 2025

What You Need to Know

- Johnson & Johnson failed in its previous attempt to disqualify Andy Birchfield and his firm, Beasley Allen, from the talc litigation.
- The new motion cites an April 10 letter to Johnson & Johnson Chief Legal Officer Liz Forminard and Erik Haas, vice president of worldwide litigation, in which Birchfield offered to set up a meeting to restart settlement negotiations.
- On Tuesday, Birchfield and Beasley Allen called the new motion a ‘calculated attempt to eliminate a firm that has repeatedly worked to block its bad-faith bankruptcy schemes.’

Johnson & Johnson has filed a new motion to remove Beasley Allen from leadership of the talcum powder litigation, citing “serious ethical lapses.”

Johnson & Johnson failed in a previous attempt to disqualify Birchfield and his Montgomery, Alabama-based firm on the grounds of a partnership he struck with one of its former lawyers to resolve the talc litigation. Judge John Porto, in New Jersey’s Atlantic County Superior Court, denied Johnson & Johnson’s motion last year.

Now, in an April 16 motion, Johnson & Johnson wants to remove Beasley Allen from the plaintiffs’ steering committee in the talc multidistrict litigation, citing an April 10 letter to Chief Legal Officer Liz Forminard and Erik Haas, vice president of worldwide litigation, in which Birchfield offered to set up a meeting to restart settlement negotiations. In a letter the next day, Forminard called Birchfield’s communication with her “inappropriate and unethical” and accused him of “ethical breaches.”

“It is unfathomable that you would expect us to disregard such dishonest behavior and engage with you in any negotiation, having acted in such an ethically vacuous manner,” she wrote in an April 11 letter to Birchfield. “In the event we were to engage in settlement negotiations with counsel on behalf of the talc claimants writ large, we would certainly not do so with you or your firm, but rather with one of the other counsel and firms that have not evidenced such lack of credibility, integrity and ethics.”

Johnson & Johnson's new motion also cited Birchfield's testimony during a key hearing earlier this year that focused on confirmation of its subsidiary Red River Talc's \$10 billion bankruptcy plan to resolve the talc litigation. Birchfield, who represented 11,000 talc clients, falsely testified that he had the consent of his clients when voting "no" on their behalf, according to Johnson & Johnson's motion.

Steve Brody, with O'Melveny & Myers.
October 2021. Photo: Andrew Zinn

"There is simply no way that a firm that has engaged in such conduct can sit in a leadership position in this litigation," Johnson & Johnson's lawyers, O'Melveny & Myers partner Steve Brody, in Washington, D.C., and Jessica Brennan, of Barnes & Thornburg in Morristown, New Jersey, wrote. "Beasley Allen has demonstrated itself unfit to represent its own clients' interests, let alone the interests of clients represented by other firms. Its continued presence on the PSC would be an intractable impediment to the fair progression of this litigation."

Johnson & Johnson has insisted that more than 75% of talc claimants voted in support of its bankruptcy plan. In a statement, Haas reiterated that Beasley Allen could not represent talc clients, or their own lawyers, "whose interests, loyalty, trust and confidence he has utterly and irretrievably betrayed."

Birchfield and Beasley Allen, in a Tuesday response, denied the allegations.

"J&J's effort to remove Beasley Allen from leadership is nothing more than a calculated attempt to eliminate a firm that has repeatedly worked to block its bad-faith bankruptcy schemes," wrote their lawyer, Jeffrey Pollock, of Pollock Law in Trenton, New Jersey.

He wrote that Birchfield had informed his clients about the bankruptcy plan and that he would vote "no" if he didn't hear from them. He also noted that U.S. Bankruptcy Judge Christopher Lopez, of the Southern District of Texas, in his March 31 order dismissing the talc bankruptcy due to "significant voting and solicitation irregularities," concluded that Birchfield did not act in bad faith. As to the letter to Forminard, Pollock said Birchfield never discussed the merits of the litigation.

"In-house counsel are not shrinking violets, they are sophisticated lawyers," Pollock wrote. "They are not going to wilt because an outside counsel or party reaches out to them. Rather, in-house counsel are the front line of the corporation."

He added that Leigh O'Dell, the Beasley Allen principal who is co-lead plaintiffs' counsel in the talc multidistrict litigation, had "served with distinction."

The motion is set for June 17, when other matters halted by the 2024 filing of the talc bankruptcy are set to restart in the talc multidistrict litigation, which is overseen by U.S. District Judge Michael Shipp, in the District of New Jersey.

Separately, Johnson & Johnson also has moved to set aside judgment in a lawsuit against leading plaintiffs' expert Dr. Jacqueline Moline, whose 2020 report tied cosmetic talcum powder to mesothelioma. U.S. District Judge Georgette Castner, of the District of New Jersey, dismissed its 2023 lawsuit against Moline last year.

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Valisure-driven class action could get lawyers \$1.2 million



legalnewsline.com/stories/671202883-valisure-driven-class-action-could-get-lawyers-1-2-million

John O'Brien

May 8, 2025

Federal Court

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HARTFORD, Conn. (Legal Newsline) - Lawyers who ran with a study produced by a controversial laboratory are asking for \$1.2 million from a settlement that gives buyers of a dry shampoo some money back.

The firms Silver Golub & Teitell, Sauder Schelkopf and Squitieri & Fearon on May 5 filed their proposed settlement of a class action lawsuit against Unilever. Like other firms in cases over other products, they cited the findings of the lab Valisure in their 2022 complaint. Steven Bloch of the Silver firm signed the document.

Valisure tested dry shampoo products under the brand names like Dove, Suave and TRESemme and claimed to find elevated trace levels of benzene. The attorneys fees request mirrors what Unilever would have paid had it taken Valisure up on an earlier offer.

In court records, Unilever cited a September 2022 letter from Valisure's lawyer, Marty Sipple, offering to test aerosol products for benzene for an up-front payment of \$1.25 million and \$250,000 a month, promising to keep results confidential.

In that court filing, Unilever suggested Valisure might have been offering to keep test results for its products out of a petition it later filed with the FDA, which has rejected Valisure's findings in two other petitions.

"(N)otwithstanding the substantial risks and uncertainty present in this case, the settlement provides settlement class members as good a result on an individual basis as they could have achieved at trial," the motion for approval of the settlement says.

The case does not allege any physical harm from use of the products, only that Unilever should have disclosed the benzene risks. Had it done so, consumers would have paid less for them than they did, or not bought them at all, the suit claims.

Lawyers say about 10 million units were possibly subject to benzene contamination. The entire settlement is worth \$3,625,000. Using a method to determine damages that includes a "price point" at which consumers would have preferred the products be sold, the lawyers

said the settlement represents a 24% recovery compared to the best outcome possible at trial.

Those with proofs of purchase can get a full refund. Those without can get \$3 per product, with a cap at \$12 per household.

Valisure's citizen petitions with the FDA bring lawsuits. The same day it announced a petition claiming acne medications contain benzene, Bloomberg and CNN ran stories about the "cancer-causing chemical" in benzoyl peroxide-containing acne medicine.

A couple of days later, law firms – some of them with a history of working closely with Valisure – began filing class action lawsuits against acne medicine manufacturers as well as retailers including Walmart and Target.

Based on past history, the law firms suing over Valisure's claims can expect to make lots of money in fees. Milberg Cohen and Bursor & Fisher shared \$833,000 in fees on a \$3.1 million settlement of Valisure-fueled claims over dry shampoo and \$1 million in fees from a \$3 million settlement with Walmart over hand sanitizer that Valisure said contained benzene.

Companies usually settle these cases despite Valisure's checkered history, including the fact founder David Light served time in prison for possessing a cache of illegal weapons while he was still an undergraduate at Yale.

Around 30 lawsuits followed Valisure's testing on acne medication. But they are in jeopardy now, after the FDA tested 95 acne drugs and found only six lots with with small problems, all nearing their expiration dates.

"Even with daily use of these products for decades, the risk of a person developing cancer because of exposure to benzene found in these products is very low," the FDA wrote.

The FDA went on to warn labs like Valisure to use validated testing methods, saying Valisure's processes may result in much higher reported levels of contaminants like benzene.

"FDA has continued to raise concern that use of unvalidated testing methods by third-party laboratories can produce inaccurate results leading to consumer confusion," the FDA said.

Valisure heated acne medicines to 170 degrees Fahrenheit and found "concerningly high levels of benzene in only 18 days." Valisure said the temperature was a reasonable estimation of what might occur in a shipping container or a hot car.

It was a similar process that produced NDMA in the heartburn medicine Zantac. Valisure created an artificial stomach, heated it to 266 degrees and exposed it to a level of salt that would kill a human.

And though the FDA similarly rejected those findings, lawsuits pressed on. A federal judge in Florida dismissed about 50,000 lawsuits after finding Valisure's methods didn't fit expert witness standards, but judges in Delaware and California reached the opposite conclusion and allowed lawsuits there to proceed.

That green light caused a massive spike in advertising for lawyers trying to find Zantac clients. The research firm X Ante found trial lawyers went from \$3,000 on Zantac ads in May, then after the Delaware ruling that figure went up to \$1.8 million in June and July.

In Philadelphia, plaintiffs asked a judge with a reputation for keeping "junk science" out of his courtroom to recuse himself from handling pretrial matters for more than 400 cases, but he refused, leading to an appeal.

Valisure's big payday is coming from a lawsuit in which it purported to represent the interests of the federal government over payments for Zantac. It will get a significant chunk of a \$67.5 million settlement with GlaxoSmithKline.

The lab put Zantac in an artificial stomach and heated it to a level about 70 degrees lower than the average temperature of the planet Mercury, then introduced an amount of salt that would kill a human being. The result was Zantac producing a known carcinogen called NDMA.

ORGANIZATIONS IN THIS STORY

U.S. District Court for the District of Connecticut

US Navy liable for fuel leak that sickened military families in Hawaii

 [courthousenews.com/u-s-navy-labile-for-fuel-leak-that-sickened-military-families-in-hawaii](https://www.courthousenews.com/u-s-navy-labile-for-fuel-leak-that-sickened-military-families-in-hawaii)



Members of the Oahu Water Protectors, outside a federal courthouse in Honolulu, display a banner supporting families suing the U.S. Navy over water contamination. (Keya Rivera/Courthouse News)

HONOLULU (CN) — A federal judge Wednesday said the U.S. is liable for a 2021 fuel leak at the Red Hill Bulk Fuel Storage Facility in Honolulu, which contaminated the drinking water of thousands of military families on the Hawaiian island of Oahu.

In the long-awaited preliminary decision, U.S. District Judge Leslie Kobayashi awarded 17 plaintiffs damages for pain and suffering ranging from \$3,000 to \$75,000, depending on the severity of their injuries. Four plaintiffs will also receive additional compensation for future medical expenses, totaling around \$48,000.

"It is clear to the court that many of the plaintiffs have suffered greatly and have a myriad of health issues," Kobayashi said in the 162-page preliminary findings order.

Economic losses, however, were minimal in the court's assessment, with only one plaintiff receiving \$2,144 for such a loss. Each plaintiff was also granted \$1,000 for loss of enjoyment of life.

Despite finding the government liable, the court rejected many of the plaintiffs' claims for damages. The court largely denied requests for ongoing medical treatment costs due to insufficient evidence, and dismissed claims for tutoring costs for affected children.

"The court is sympathetic to plaintiffs and their families but is nevertheless bound to hold plaintiffs to their legal obligation to provide evidence proving by a preponderance that the Fuel Release is a legal cause of each injury," Kobayashi said.

On Nov. 21, 2021, more than 10,000 people were forced to relocate after fuel reached residential areas. The Red Hill Shaft was shut down on Nov. 28, but by then, significant damage had occurred.

The judge found the government negligent in operating the facility where a ruptured fire suppression line led to jet fuel entering the water supply serving Joint Base Pearl Harbor-Hickam.

The government argued for offsets to damages based on benefits already provided to plaintiffs, including temporary lodging allowance payments and potential future coverage through TRICARE, the military's health care program. Kobayashi rejected these arguments.

"It is too speculative for this Court to apply TRICARE offsets when the benefit has not vested," she said.

Many families described the upheaval as traumatic, moving between hotels, boiling water for basic needs, and some even eventually leaving the island.

"(The government) has made my family sick, destroyed our lives, and turned its back on us," Plaintiff Nastasia Freeman testified.

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The California Bar Was So Bad That The Exam Vendor Is Getting Sued Over It

A [abovethelaw.com/2025/05/the-california-bar-was-so-bad-that-the-exam-vendor-is-getting-sued-over-it](https://www.abovethelaw.com/2025/05/the-california-bar-was-so-bad-that-the-exam-vendor-is-getting-sued-over-it)

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

May 7, 2025

(Image via Getty)

In the spirit of bar prep, let's IRAC this. The California Bar had an issue: they looked at their budget and realized that they'd go bankrupt if they continued administering the bar as usual. Rules are rules, though; you've gotta have some way of determining minimum competency. To conclude, they had to hastily come up with a new, experimental, partially crafted by AI test to administer. You may have noticed that the Application part of IRAC was glossed over. That's what the State Bar of California's most recent lawsuit against Meazure Learning is about. Reuters has coverage:

The state bar, represented by partners from Hueston Hennigan, said it is seeking an unspecified amount of damages from Meazure. The state bar signed a \$4.1 million contract with the company in September 2024 to administer the exam.

...

Some test takers were unable to log into the bar exam at all, while many experienced delays, lax exam security, distracting proctors, and a copy-and-paste function that didn't work. The state bar alleged that Meazure disabled its own spell-check feature because it froze the platform.

As if the faulty spell-check feature wasn't enough, some test takers allege that they couldn't even type out words without dealing with lagging letters. Few things in life inspire irrationally non-reciprocal anger quite like non-responsive keyboards. The California Bar has since tried to save face by issuing refunds and free chances to retake the horrid exam, but a fig leaf and good PR will only go so far in fixing California's now established bad bar reputation. They ultimately decided to crawl back to the NCBE for their testing needs. While that should be a breath of relief for anyone taking the July test, suing Meazure over the February fiasco could be a great way for the Bar to get some of the heat off of their name. The payoff probably won't be that grand, but we all know that they are willing to try *anything* at this point.

California Bar Sues Vendor Over Exam Meltdown [Reuters]

Earlier: The California Bar Is Flat Broke And Its Plan To Fix This Involves Throwing Out The Existing Bar Exam

California Bar Exam Disaster Reaches Its 'Offer Everyone A Refund' Stage

Buy One Get One Free Cal Bar Exams!

California Bar Reveals It Used AI For Exam Questions, Because Of Course It Did



Chris Williams became a social media manager and assistant editor for **Above the Law** in June 2021. Prior to joining the staff, he moonlighted as a minor Memelord™ in the Facebook group Law School Memes for Edgy T14s. He endured Missouri long enough to graduate from Washington University in St. Louis School of Law. He is a former boatbuilder who is learning to swim, is interested in critical race theory, philosophy, and humor, and has a love for cycling that occasionally annoys his peers. You can reach him by email at cwilliams@abovethelaw.com and by tweet at [@WritesForRent](https://twitter.com/WritesForRent).

Trump order against law firm Susman Godfrey faces court test

 [reuters.com/world/us/trump-order-against-law-firm-susman-godfrey-faces-court-test-2025-05-08](https://www.reuters.com/world/us/trump-order-against-law-firm-susman-godfrey-faces-court-test-2025-05-08)

Mike Scarcella

May 8, 2025

U.S. President Donald Trump looks on as he signs executive orders and proclamations in the Oval Office at the White House, in Washington, D.C., U.S., May 5, 2025.

REUTERS/Leah Millis/File Photo Purchase Licensing Rights , opens new tab

May 8 (Reuters) - U.S. law firm Susman Godfrey will ask a judge in Washington on Thursday to permanently bar President Donald Trump's executive order against it, calling the measure an act of retaliation that trampled its rights under the U.S. Constitution.

The hearing before U.S. District Judge Loren AliKhan will be the latest in a series of high-profile court clashes over the Republican president's orders targeting major law firms for their connections to his political adversaries or stances they have taken.

Trump has been losing the legal battle so far, after judges put his orders against four firms on hold and struck down one of them entirely on May 2.

AliKhan is set to hear arguments in Susman Godfrey's case at 2 p.m. Eastern Time. The Houston-based firm sued the administration last month, asserting Trump's executive order violated constitutional protections for free speech and due process.

Trump issued orders against Susman and three other firms — Perkins Coie, Jenner & Block and WilmerHale — that suspended their lawyers' security clearances, restricted their access to government officials and sought to cancel federal contracts held by their client.

Susman Godfrey in its lawsuit said Trump's order was retaliation for its defending the integrity of the 2020 presidential election that Trump lost to Democrat Joe Biden.

The firm represents election technology supplier Dominion Voting Systems in cases that challenged false claims the election was stolen from Trump through widespread voting fraud.

The U.S. Justice Department has defended Trump's orders as lawful exercises of presidential authority and urged judges to uphold them.

Nine prominent law firms, including Paul Weiss, Skadden Arps, Latham & Watkins and Kirkland & Ellis, have settled with the White House to avoid similar actions against them by the administration.

Those firms cumulatively pledged nearly \$1 billion in free legal services and made other concessions in their deals with Trump. They have defended agreements as being aligned

with their principles.

At an earlier hearing in the Susman Godfrey case, AliKhan lamented the settling firms were "capitulating" to the Trump White House.

Reporting by Mike Scarcella; Editing by David Bario and Chris Reese

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- Suggested Topics:
- United States

Litigation

May 8, 2025, 6:33 AM PDT

Abbott Labs Secures Dismissal of Diabetes Supply Fraud Claims

- Whistleblower's claims barred by FCA's first-to-file rule
- Res judicata also requires dismissing claims with prejudice

Two claims in a whistleblower suit alleging that Abbott Laboratories Inc. and others improperly billed the government for diabetic supplies are dismissed, a Florida federal district court said.

Claims in Troy Olhausen's 2021 suit triggered the False Claims Act's first-to-file bar because his 2019 suit raising related claims was pending when he filed the complaint, Judge Robert N. Scola Jr., of the US District Court for the Southern District of Florida said in an opinion posted to the docket Wednesday. The first-to-file bar precludes a second-filed suit when a first-filed suit is pending.

Olhausen's claims are also dismissed under the doctrine of res judicata because the US Court of Appeals for the Eleventh Circuit affirmed dismissal of the same misconduct he alleges here, Scola said. This doctrine bars re-litigating claims raised and resolved in prior cases.

Scola said a suit is normally dismissed without prejudice when dismissed under the first-to-file bar, but application of res judicata requires dismissing the claims with prejudice.

Scola also said that the parties must provide briefing as to whether a third count should continue, despite appearing "to be the same claim" as one pending in the 2019 suit.

Olhausen sued Abbott in 2019, as well as Ariva Medical LLC and Alere Inc., alleging that the companies defrauded Medicare by sending supplies to patients whose prescriptions on file were invalid, sending supplies without collecting signed patient forms, and shipping supplies without ensuring they were medically necessary.

The district court dismissed the suit in 2020, and the Eleventh Circuit affirmed in 2022. The US Supreme Court reopened the suit in 2023, which has returned to the district court.

Olhausen filed the 2021 suit while the Eleventh Circuit appeal was pending alleging the same conduct, Scola said.

Olhausen argued that the first-to-file bar didn't preclude the 2021 suit because the district court's dismissal of the 2019 suit meant it was no longer pending. Scola disagreed, stating that the 2019 remained undecided when it was on appeal at the Eleventh Circuit.

Allowing "a second related action to be filed while a second related action to be filed while the first is pending on appeal could eventually 'result in two pending suits on the same subject matter—the scenario that the FCA seeks to avoid,'" the court said.

Scola also said res judicata applies to the two claims, stating that when the Eleventh Circuit affirmed the decision to dismiss, that constituted an adjudication on the merits.

Podhurst Orseck PA represents the whistleblower. Homer Bonner Jacobs Ortiz and Kirkland & Ellis LLP represent the defendants.

The case is United States ex rel. Olhausen , S.D. Fla., No. 1:21-cv-23916, 5/7/25 .

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<https://www.wsj.com/finance/regulation/credit-suisse-whistleblowers-settlement-ae45bfca>

MARKETS & FINANCE | REGULATION

Whistleblowers Who Defied Credit Suisse Are About to Share Up to \$150 Million

Former employees set to strike it rich for telling U.S. authorities Credit Suisse wasn't living up to its promise to block tax evasion

By *Aruna Viswanatha*and *Margot Patrick**May 7, 2025 11:00 pm ET*

A Credit Suisse unit agreed this week to pay \$511 million for not meeting the terms of a 2014 settlement with U.S. authorities. PHOTO: FABRICE COFFRINI/AGENCE FRANCE-PRESSE/GETTY IMAGES

A decade ago, Credit Suisse pleaded guilty to helping Americans evade taxes by stashing cash and assets overseas and pledged to stop doing so.

Now former bank employees collectively stand to make up to \$150 million for quietly telling U.S. authorities that Credit Suisse wasn't living up to its promise.

A Credit Suisse unit this week pleaded guilty again to helping Americans hide their assets to evade taxes and [agreed to pay \\$511 million](#) for not meeting the terms of a [2014 settlement with U.S. authorities](#). Credit Suisse is now owned by [UBS](#) UBS **1.00%** ▲ after an [emergency 2023 rescue](#).

Credit Suisse admitted that it opened more than two dozen potentially tax-dodging U.S. accounts after the 2014 deal, hung on to other big accounts that it was supposed to have reported and closed or helped wealthy clients move their assets without telling the Internal Revenue Service, the plea agreement said.

In all, there were at least 475 accounts that Credit Suisse should have known were tied to Americans as of around 2018, holding \$4 billion, the filing said.

UBS said it was pleased to have resolved another of Credit Suisse's legacy issues.

Two bankers have so far emerged as whistleblowers in the case, though it is possible that more might do so. They could collect between 15% and 30% from the Justice Department settlement, which could be one of the largest tax whistleblower awards in IRS history. A [former UBS banker](#) who helped the U.S. first lift the veil of Swiss bank secrecy received \$104 million in 2012. Other government whistleblower programs have paid larger sums, including a \$279 million Securities and Exchange Commission award to a tipster in a foreign bribery case in 2023.



UBS, which took over Credit Suisse in a 2023 rescue, expressed relief at this week's resolution of the case. PHOTO: PASCAL MORA/BLOOMBERG NEWS

The Credit Suisse pair haven't identified themselves publicly for fear of prosecution under Swiss bank-secrecy laws, which bar bankers from discussing clients with anyone outside of their institutions—including foreign tax authorities.

“They feel vindicated—for telling the truth, for risking everything, and for standing up to one of the world’s most powerful financial institutions,” said Jeffrey Neiman, a lawyer for the whistleblowers.

The case is the latest in a near two-decade effort by U.S. prosecutors to punish Swiss banks for helping Americans hide accounts, and shows how deep rooted the practice was.

The whistleblowers’ interest in the case began in 2014 when then-Credit Suisse Chief Executive Brady Dougan told a U.S. Senate committee that the misconduct was all historic behavior of around a dozen people who had all been fired.

“These people went to great lengths to disguise their bad conduct from the bank,” Dougan testified along with other Credit Suisse executives. Dougan, who left the bank in 2015, didn’t respond to a request for comment.

One of the whistleblowers, a former South America desk banker, recalled in an interview watching the testimony at Al Leone, a popular cafe for bankers in Zurich. He said he shouted at the television: “They are lying!”

He knew the practice was endemic. Bank executives, he said, tried to get a \$100 million account in South America moved to other banks without disclosing the client’s American passport. The Justice Department highlighted the poor handling of the account, for a Colombian-American woman and her family, in court filings Monday.

After Credit Suisse’s 2014 guilty plea, the bank was supposed to give the Justice Department the names of American customers leaving for other banks. Instead, some bankers referred customers to other banks with their foreign passports, omitting to say they also were American, the former banker said.

Other customers sought to hide behind parents or siblings who weren’t Americans, sometimes with Credit Suisse bankers falsifying records to help, prosecutors said.

Credit Suisse executives testified in 2014 before a Senate committee investigating offshore tax evasion. PHOTO: WIN MCNAMEE/GETTY IMAGES

In another situation, prosecutors said, Credit Suisse bankers appeared to turn a blind eye to the status of a scion of a wealthy European family who had more than \$1 billion in his accounts and was resident in the U.S. Credit Suisse assisted in payments for the billionaire's U.S. taxes in 2014 but didn't probe further.

The Justice Department said a cursory review of public information showed that the scion was regularly identified in news articles as living in a mansion in the U.S.

The bank's executives were so brazen that they assigned one dual national's \$200 million account on the bank's Israeli desk to a junior banker, with a plan to blame the trainee if things went south, the second whistleblower said in an interview.

Within months after Credit Suisse pleaded guilty in 2014, this whistleblower approached U.S. authorities. The owner of the Israeli account, an American professor named Dan Horsky [paid a \\$100 million penalty](#) to the U.S. government in 2016 and pleaded guilty to conspiracy to defraud the government.

In Monday's statement of facts, prosecutors said that Credit Suisse knew the Horsky account should have been declared before the 2014 settlement and that a Credit Suisse executive went to Tel Aviv in January 2016 to strategize with Horsky on ways to conceal his control of the account.

The filing said that bankers helped other customers carry out fictitious donations to sidestep owning an account in bank records, and that in 2022 a single Swiss lawyer was found by compliance staff to be handling 104 accounts for 13 American clients who had been able to avoid detection for U.S. tax.

UBS [came close to settling](#) over the Credit Suisse accounts earlier this year, The Wall Street Journal reported in January, and might have avoided another Credit Suisse guilty plea had it done so. That deal fell through in the final days of the Biden-era Justice Department. Monday's agreement puts Credit Suisse on three-years probation.

The penalty had hung over Credit Suisse in its final years and was in [UBS's calculations](#) for potential legal costs before the 2023 takeover.

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Appeared in the May 8, 2025, print edition as 'Bankers To Get Big Reward for Exposing Tax Dodge'.

Videos

"Legalized Bribery:" Judge in Householder case sparks fears of corruption going mainstream

 [cleveland.com/news/2025/05/legalized-bribery-judge-in-householder-case-sparks-fears-of-corruption-going-mainstream.html](https://www.cleveland.com/news/2025/05/legalized-bribery-judge-in-householder-case-sparks-fears-of-corruption-going-mainstream.html)

Today in Ohio

May 7, 2025



Although an appellate court upheld the conviction of Larry Householder as the most corrupt official in Ohio history, one judge said he thinks the kind of bribery that Householder engaged in should be legal, a claim criticized by the Today in Ohio podcast.(Butler County Sheriff's Office via AP)AP

Former Ohio House Speaker Larry Householder will remain behind bars after the 6th Circuit Court of Appeals unanimously upheld his corruption conviction in what's been called Ohio's largest-ever political bribery scandal.

But a concurring opinion criticized Wednesday on the suggests such corruption might actually be protected speech under a different interpretation of the law, bringing condemnation.

"One of the judges states in a concurring opinion that really, under the law, as it stands, this conviction holds. But he doesn't think the law is right. He thinks the U.S. supreme Court should revisit this," explained Laura, noting the potential loophole for future corruption cases.

The conviction stems from a \$60 million bribery scheme in which FirstEnergy funneled money to Householder in exchange for his support of a \$1.3 billion bailout of the company's nuclear power plants. While the three-judge panel (consisting of one Democrat and two Republicans) unanimously upheld the conviction, the concurring opinion from a Trump-appointed judge raised alarms about the future of anti-corruption prosecutions.

"Yeah, it's amazing to me that a judge would say such a thing," Chris Quinn said. "Under this judge's claim, it's okay for Larry Householder to say, 'give me \$60 million and I'll give you a billion dollar plus bailout.' That's what this judge is saying here."

The judge's opinion relies heavily on the landmark Citizens United decision, which equated political spending with protected free speech. The controversial Supreme Court ruling has already transformed campaign finance regulations and, according to the podcast hosts, opened the floodgates to "dark money" in politics.

Johnston explained the judge's concerning perspective: "This is a Trump appointee, and he's saying this is a criminalization of, quote, routine political activity, which is the argument we've seen from Householder, the argument we saw from Jimmy Dimora, that this is just the way things work."

The podcast discussion highlighted how Citizens United has already dramatically changed political financing, with Quinn noting: "In the old days of politics, politicians were bought and paid for, but Americans demanded reform. You had campaign finance reporting, you had all sorts of rules about how things could go. Citizens United changed it."

The hosts expressed alarm that instead of recognizing the need for greater transparency and reform, this federal judge appears to favor further deregulation that would essentially legalize political bribery.

The conversation underscored how money from special interests already dominates Ohio politics: "Every time we talk about something in the State House, whether it's fracking or private school vouchers, we ask who's giving the money? And we can't give everyone the answer, because dark money is just that. It's dark."

The Householder case represents a critical juncture in American political ethics – whether to strengthen guardrails against corruption or normalize pay-to-play politics as constitutionally protected activity.

"We basically have said it is okay to secretly bribe these politicians with millions and millions of dollars," Quinn lamented, highlighting the stakes of this ongoing debate.

For the full discussion, listen here.

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

- "Could We Be The Convener?" A vision for civic problem solving after town hall success
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- "Federal government blackmail:" An impossible choice between principles and cash for Ohio schools

where Chris Quinn hosts our daily half-hour news podcast, with Editorial Board member Lisa Garvin, Impact Editor Leila Atassi and Content Director Laura Johnston.

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News from Bloomberg Terminal

May 8, 2025, 11:14AM PDT

Meta Will Make Friends

By Matt Levine

(Bloomberg Opinion) --

Meta

I think a lot about the time that Mark Zuckerberg was hauled before Congress to answer questions about whether Facebook (now Meta Platforms Inc.) is a monopoly. He said:

We face a lot of competitors in every part of what we do, from connecting with friends privately to connecting with people in communities to connecting with all your friends at once to connecting with all kinds of user-generated content. ... Congressman, the space of people connecting with other people is a very large space.

"See," I wrote, "Facebook also has a tiny market share, if you define its market as ... human interaction? Human behavior? 'Only like 5% of human life consists of Facebook, how could we possibly be a monopoly?'"

Of course, when a chief executive officer is testifying in a congressional antitrust hearing, he will want to downplay the possibility that his company is a monopoly. When he leaves the hearing and goes back to his office, the incentives will reverse, and he will work to seize the biggest possible share of his market. If his market is all human interaction, there's a lot of work to do. I went on:

When Facebook says "we're not a monopoly, there's lots of competition in the connecting-with-people space, some of our most fearsome competitors include Having Dinner With Friends and Reading Stories to Your Children," you could interpret that as a threat. Facebook is good at disposing of competitors! Maybe it will copy enough features from Reading Stories to Your Children so that people will abandon it for a Facebook product, Instagram Reads Stories to Your Children or whatever. Maybe it will acquire Having Dinner With Friends so it can merge it into the Facebook experience. These companies are where they are because they dominate their markets; if they define their markets as *the world*, then the world had better watch out.

That was five years ago. The Wall Street Journal reports:

Mark Zuckerberg wants you to have AI friends, an AI therapist and AI business agents.

In Zuckerberg's vision for a new digital future, artificial-intelligence friends outnumber human companions and chatbot experiences supplant therapists, ad agencies and coders. AI will play a central role in the human experience, the Facebook co-founder and CEO of Meta Platforms has said in a series of recent podcasts, interviews and public appearances.

"I think people are going to want a system that knows them well and that kind of understands them in the way that their feed algorithms do," Zuckerberg said Tuesday during an onstage interview with Stripe co-founder and president John Collison at Stripe's annual conference.

Zuckerberg said on a podcast last week that he thinks the average person wants to have more friends and connections with other people than they currently do—and that AI friends are a solution. ...

"The average American I think has, it's fewer than three friends, three people they'd consider friends, and the average person has demand for meaningfully more, I think it's like 15 friends," he said in the interview with podcaster Dwarkesh Patel.

The total addressable market for friends is 15 per person, and right now humans are only providing about three friends per person, which leaves an opening for Meta to capture as much as 80% of human (well, human-ish) interaction.¹ That would be pretty good.

LMEs

The basic trick in distressed debt is this:

1. A company borrows \$100 from a bunch of different lenders.
2. Time passes, and eventually the company, for reasons, would prefer not to pay back the \$100.
3. It goes to a group of lenders holding 51% of the debt (\$51) and offers them a deal: The company will pay them back 110 cents on the dollar (\$56.10), if it can pay back the *other* lenders (who hold 49%) zero dollars.
4. The majority lenders say "sure, \$56.10 is better than \$51."
5. The company puts the matter to a vote of its creditors, and 51% of them vote in favor of the deal, so it passes.
6. The majority lenders get their \$56.10; the minority lenders get \$0.
7. The company has saved \$43.90; the majority lenders have made a \$5.10 bonus; the minority lenders have lost \$49.
8. Everyone is mad for a little while.
9. Eventually they forget and you do it again.

This is called a “liability management exercise,” or LME, and we have been talking about the basic idea for years. My schematic outline above is too cute; you can’t *exactly* do that. The actual trick is in figuring out what you *can* do. Most credit agreements and bonds will allow the company to do some stuff with the approval of a majority of the lenders, and other stuff only with the approval of *every* lender. *Cancelling* the debt is in the latter category: A company can’t literally zero 49% of the debt with the approval of the other 51%. Changing the maturity or interest rate is usually also off limits.

But it can make the debt pretty unpleasant for the minority holders. Often, for instance, the credit agreement will say “the company can’t issue any debt that is senior to this debt,” but *that* can be amended by a majority vote. So you get 51% of the creditors to agree to allow new more senior debt, and then you give them the senior debt: They vote to allow new debt that is senior to the old one, and they exchange their \$51 of old debt into \$51 of new senior debt. The remaining \$49 of old debt is now worth less, since it is behind the new \$51 senior debt in line for repayment. Perhaps the majority creditors give the minority an extra kick on their way out the door, stripping out covenants from the old debt so the minority creditors have fewer legal rights. Depending on how troubled the company is, that \$49 of old debt might trade down to pennies on the dollar. (And then, if the company is feeling really feisty, it can buy it back cheap.²) The company can’t really zero the minority debt, but it can shift a lot of value from the minority to the majority, and the majority creditors might be willing to pay the company for that value. Generally they pay in the form of new financing: The company can borrow more money and keep itself going for a while longer, because the majority lenders will kick in more money in exchange for seniority on their old money.

If you are a private equity firm, you are in the business of buying lots of companies with lots of debt, and eventually some of them are going to run into trouble. One thing that you could do in that situation is say “ah well, we gave it our best shot,” file for bankruptcy and hand the company over to its creditors. But probably you should get good at optimizing this situation: It will come up a lot, and there are trades to be made. Some of your companies will run into trouble and be unable to pay back 100% of their debt. If you go to all of the lenders and say “we’ll give you 80% if you let us keep the company,” they might say yes. But if you go to 51% of the lenders and say “we’ll give you 110% if you agree to stiff the other guys and let us keep the company,” they’ll probably say yes, and you can keep more of the company for yourself.

And so these LMEs are stereotypically associated with private equity ownership, and private equity sponsors – who are repeat players with smart employees and good lawyers – tend to be good at them. In theory, you do not want to be *too* good at them, as a private equity sponsor: If you are too good at extracting value from your lenders, people will stop lending to you, and you will be unable to do any more leveraged buyouts. In practice memories are short and this theoretical limit has probably never been reached, but you never know.

Bloomberg’s Reshmi Basu has a story today about the state of LMEs:

Tropicana Brands Group is among a stampede of recent cases that reveals a class system is taking root after lots of these refinancing deals, cementing in place an approach that tends to favor bigger lenders and penalize the rest. The orange-juice giant and its owner PAI Partners discussed plans with a select band of creditors – including heavyweights such as Carlyle Group and CVC Credit Partners – to divvy up its loans into three tiers, people with knowledge of the talks say. Each rank will be worth less than the one above. Much less.

The inside group is in line to swap most of its existing debt for so-called first-out and second-out loans, putting them at the front of the repayment queue, and they're being priced respectively at 95-97 cents on the dollar and 61-63 cents. Other lenders are braced for a hefty portion of third-out debt valued at just 28.5-31.5 cents. Owning supposedly safe first-lien loans won't save them.

Similar cases abound. Newfold Digital, a web company owned by Clearlake Capital and Siris Capital, is in talks to possibly split its loans into four tiers, according to people familiar. Marquee names Pimco and Blackstone Inc. are part of the creditor in-crowd, and likely in the box seat for the skinniest losses.

A couple of points here. First of all, conceptually, the basic trick that I described above *shouldn't work*. As a US appeals court said about Serta Simmons Bedding LLC's 2020 liability management exercise:

Ratable treatment is an important background norm of corporate finance. Pursuant to this norm, a borrower must treat all of its similarly situated lenders, well, similarly. ... Ratable treatment is such an important norm that it is often described as a lender's "sacred right" under syndicated loan agreements.

This norm is, I think, much stronger in equity than in debt, but it really is an important background norm. And then the point of many LMEs is to find loopholes in the loan documents that let you violate this norm and treat some of your lenders better than others. In Serta Simmons, the trick was that the company was allowed to do "open market purchases" of its debt without offering the same deal to everyone: If it bought one lender's loans back in the open market, that didn't require it to buy back everyone's loans. The company argued that this allowed it to do a non-pro rata negotiated exchange, and a bankruptcy court agreed, but ultimately the appeals court reversed that and eliminated the "open market" loophole.

So the market quickly moved on to find other loopholes. Basu:

On New Year's Eve, the Fifth Circuit Appeals Court in the US offered a glimmer of hope to downtrodden lenders when it ruled that Serta Simmons Bedding's so-called "open market purchase" of discounted debt to complete a 2020 restructuring – a famous test case in the world of distressed borrowing – wasn't allowed under the terms of its pre-existing loans.

The wish was this might finally curb a standard *modus operandi* in LMEs, where some lenders hand fresh cash to a company and then get the chance to swap their old loans for new debt that gets priority over other creditors.

Any celebrations by the left-behind have been short lived. Better Health Group and Oregon Tool Inc., a chainsaw maker, have already found workarounds in ongoing restructuring deals, according to lawyers.

The workaround seems to be what is called “extend and exchange,” and it is a neat little trick. Loan documents often require the company to treat everyone in a class of loans similarly, but they allow the company to treat different classes of loans differently. For instance, if you have 2-year loans and 3-year loans, you can offer the 2-year lenders something different from what you offer the 3-year lenders. And the agreement might allow individual lenders to *extend* their loans – to go from 2 to 3 years, for instance – without offering that opportunity to everyone. But of course if you extend your loan, you are in a separate class from the un-extended loans.

That’s all you really need. You go to 51% of your lenders, you ask them to extend their loans by a month, now they are a separate class, and now you can give them a better deal than the other 49%.³ This approach seems to have been deployed within weeks after the Serta Simmons decision, which suggests that private equity firms and their lawyers already had it ready. The market for this sort of thing is very efficient: Finding ways to shift value from one set of creditors to another is very valuable to private equity firms, and their demand creates supply.

Second, you could imagine lenders fighting back. Ex ante, this sort of thing probably does take value from lenders and distributes it to private equity sponsors and their lawyers. Basu:

Moody’s Ratings reckons only half of distressed exchanges help businesses avoid defaulting again. These swaps handed creditors average losses of 7% to 21% last year, Fitch Ratings estimates, worse still when it was an LME. That’s better than the 60% hit on bankruptcies, but lasting recoveries are rare. ...

While participation rates in restructuring deals are soaring as the tiered model emerges as the go-to strategy, that’s largely because the alternative for those down the pecking order might be getting nothing at all. A key problem for lenders trying to navigate the new landscape is the tangled math needed to price their first-lien debt when it may end up sliced, diced and devalued. ...

Legal and other fees increase the company’s burden. Buyout firm Platinum Equity is a regular LME protagonist, and early term sheets for its refinancing of digital PR group Cision Ltd. called for \$30 million of professional fees to be funded from a new loan, according to people with knowledge of the situation.

And there is some pushback; some loan agreements now have “Serta blockers” that require the consent of all creditors (not just a majority) to subordinate the existing debt to new debt, which prevents a lot of this sort of up-tiering. Or creditors could just refuse to participate in these sorts of LMEs, but they mostly don’t:

More of a threat comes from early signs that creditors en masse have grown sick of the LME merry-go-round and are becoming more willing to stare down private equity sponsors. In talks around ailing software group RSA, several lenders refused to accept Clearlake’s proposal of a double-digit haircut, and its reluctance to put in more cash. They say they’d rather wait it out and own the company if it eventually runs out of road.

The sheer amount of money sloshing around the private markets makes this a brave gambit. Clearlake, for instance, has built strong relations with many direct-lending funds – a ready alternative to traditional syndicated loans.

For private equity sponsors, the attraction of private credit is that (1) private credit funds are desperate to make loans, so they value good relationships with sponsors who will bring them deals and (2) private credit funds value long-term relationships and will be nice to companies that run into trouble. If you are a public lender, you have to compete with that.

Third, I said above that, in theory, if you are a private equity sponsor, you don't want to get too good at extracting value from your lenders, because then they might stop lending to you. Sometimes you might have to walk it back. Basu reports:

Clearlake, criticized by some lenders for its chunky management fees and dogged defense of its own equity's value, has been involved in multiple grueling LMEs. It has spent time this year in one-to-one creditor meetings to offer a mea culpa of sorts, according to people familiar with the matter, acknowledging gripes while stressing its need to protect its interests. The firm wants to improve lender communication, a person with direct knowledge says. ...

Private-markets titan Apollo Global Management Inc. started a similar PR tour in 2015 after skirmishes with creditors, according to people familiar.

Good for Clearlake. We talked about the Apollo apology tour a while back, and I wrote ⁴:

If you build a reputation for extracting a lot of battle by being cleverer, harder-working and more ruthless than everyone else, well, in large swathes of finance that's just *good*. Investors will want to give you money, because you are clever and ruthless. People will want to work for you, because they fancy themselves clever and ruthless, and because you pay well. Creditors will fear you, which is not all good (you have to pay them more to finance your deals), but which is maybe helpful if you actually *do* end up fighting with them.

If you develop a reputation for being ruthless in LMEs, that will probably make your LMEs easier: Your lenders will want to be in the group that cooperates with you, because they know that being in the other group will be bad. In theory this will make it harder for you to borrow money in the first place, but in practice there's a lot of private credit money out there.

Crypto converts

MicroStrategy Inc.'s core discovery is that the US stock market will pay \$2 for \$1 worth of Bitcoin. MicroStrategy (now called Strategy) is essentially a pot of Bitcoins, and its stock trades at roughly twice the value of its Bitcoins. So it issues more stock and buys more Bitcoins and goes up in a bizarre perpetual motion machine that I write about a lot but cannot explain. Many people have noticed, though, and we talk a lot about companies that copy MicroStrategy's approach – being a "Bitcoin treasury company" – with various minor twists (being a Japanese company, doing Solana or Trumpcoin instead of Bitcoin, etc.). I am not sure that this always works, but it does seem to work more than I would have expected. The stock market pretty consistently pays \$2 for \$1 worth of crypto.

MicroStrategy's *other* good discovery is that *convertible bond* investors will pay a lot for Bitcoin treasury company convertible bonds. Why? I think there are two conceptually related but very different-sounding answers:

1. If you like Bitcoin but worry about its volatility, a Bitcoin convertible is a good story: You can buy the convertible for \$1,000; if Bitcoin (and MicroStrategy stock) goes up, you will get (some of) the upside; if Bitcoin (and MicroStrategy) crashes, you will get your \$1,000 back.⁵
2. If you don't care about Bitcoin but are a convertible arbitrageur, you make money on volatility: You buy convertible bonds, sell some of the underlying stock short to hedge your stock-price risk, and adjust the hedge over time as the stock moves. The more the stock moves, the more money you make adjusting your hedge. (We discussed this in more detail last year.) Bitcoin is stereotypically volatile, so intuitively you would expect a Bitcoin treasury company's stock to be pretty volatile.

You might think that crypto treasury companies would also have an easy time copying *this*. Actually, though, Bloomberg's Yiqin Shen reports:

The success of Michael Saylor's fundraising playbook for Strategy is causing trouble for its imitators, as the market for the convertible bonds they are using to fund Bitcoin buys is getting tighter – and a rival with heavyweight backers is about to start pumping out its own paper. ...

"There's a bit of exhaustion in the new deal space. I don't think convertible bond investors necessarily want new names since they have quite a bit to play with", said Bank of America Corp. Head of Global Convertibles and Preferred Strategy Michael Youngworth.

The big new Bitcoin treasury convertible issuer is Twenty One, the pot for Tether's and SoftBank's Bitcoins, which is going public in the US by merging with a special purpose acquisition company and which plans to issue convertibles. (We talked about Twenty One last month.) But while "MicroStrategy owns Bitcoin, Bitcoin is volatile, convertible investors like volatility, I can own Bitcoin, so convertible investors will like me" seems like a plausible reasoning, it isn't quite right, for two reasons.

First: MicroStrategy is not volatile just because it owns Bitcoin. MicroStrategy is much more volatile than Bitcoin, and the reason for that seems to be partly that it is a meme-ish stock but mostly that there are big popular double levered exchange-traded funds that own a lot of its stock. These ETFs rebalance every day, which means that, whenever MicroStrategy's stock goes up, they have to buy more stock; whenever it goes down, they have to sell. This amplifies MicroStrategy's volatility. Convertible investors do the opposite trade – they buy back some of their hedge shares when the stock goes down, and sell more when it goes up – which means that they profit from volatility but also dampen it. Having a big supply of ETF volatility makes MicroStrategy's volatility very attractive to convertible investors. But not every crypto company can replicate that.

Second: To profit from volatility, convertible arbitrageurs need to sell the underlying stock short, which means that they need to borrow it. If they can't borrow the stock, there's no trade. Shen:

The trade depends on the hedge funds' ability to borrow a target company's shares at a reasonable cost.

While that's not a problem for Strategy, small issuers with few shares available for shorting are less likely to draw the interest of the hedge fund crowd.

"If short borrow does not exist, the arbitrageurs can't get involved," Bank of America's Youngworth said.

MicroStrategy really is a finely tuned machine for extracting value from Bitcoins in the public markets, but it's not *that* easy to copy it. Honestly it's still pretty easy though.

Everything is seating charts

My impression is that most senior executives at big banks think that working from home is bad and that everyone should be in the office every day. For a while after the pandemic, that was a hard sell to employees, but norms have shifted and now it is easier to tell employees to return to the office. The prior regime had one big advantage for executives, though, which is that they could save money on office space. The problem is that office space is not instantaneously flexible, so if you made office-space decisions in the old regime, in the new regime you are haranguing your employees to come back to desks that don't exist:

As HSBC Holdings Plc prepares to move into a new London headquarters as early as next year, executives are grappling with how to handle a more severe desk shortage than they previously anticipated in the new, smaller building.

Senior managers have informed executives that under one relocation scenario being explored, the new Square Mile headquarters building would face a shortfall of 7,700 desks for staffers, according to people familiar with the matter. That's an even more acute shortage than earlier in-house projections of less than 5,000, the people said, asking not to be identified discussing internal deliberations.

A combination of the firm's return-to-office mandates and a larger-than-expected London-based workforce led to the revised estimates, the people said. ...

Estimates made at a time when most staff were spending a significant portion of time working from home have been upended both by the gradual return-to-office-based working and a trend for more amenities that have increased the overall amount of space needed.

Oops! It will be strange if the medium-term effect of the pandemic is that offices get *more crowded*.

Things happen

Banker Bonuses Set to Drop as Tariffs Cause Economic Uncertainty. Citi's Banamex Focused on IPO as CEO Rules Out Direct Sale of Bank. BlackRock orders managing directors back to office five days a week. Coinbase Buys Derivatives Venue Deribit for \$2.9 Billion. France Blasts EU Plan for Retail Investor Protection as Costly. Bill Gates accuses Elon Musk of 'killing' children with USAID cuts. Disney Plans New Theme Park in Abu Dhabi. Algatha Christie. Florida Judge In Ethics Case Defends Remarks As 'Dad Jokes.' Habemus papam. "When I was watching [*American Psycho*], I was like, *Damn, I wish I had his skin-care routine, his morning routine.* The only part that isn't perfect is his psychopathic tendencies."

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1. Also I must say, there is nothing that I want less in life than a friend who “understands [me] in the way that [my] feed algorithms do,” both in the sense that my feed algorithms do not understand me particularly well and in the sense that they understand me **too** well.
2. Bloomberg’s Reshmi Basu writes: “[Private equity] owners like third and fourth tiers because they open the door to buying back dirt-cheap debt, another restructuring veteran says.”
3. From 9fin in January: “In Serta’s credit agreement, in the ‘Extensions of Loans and Additional Revolving Commitments’ section, it specifies that, ‘... the Borrowers are hereby permitted to consummate a transaction with any individual Lender who accepts the terms contained in the relevant Extension Offer to extend the Maturity Date of all or a portion of such Lender’s Loans and/or Commitments of such Class ...,’ which is followed by the detail, ‘... it being understood that any Extended Term Loans shall constitute a separate Class of Loans from the Class of Loans.’ ... Ok, so let’s extend the participating lenders’ maturities by like one day. There, they’re a different class. Then looking at the pro rata sharing provision in section 2.18 which stated: ‘[E]ach Borrowing, each payment or prepayment of principal of any Borrowing, each payment of interest in respect of the Loans of a given Class and each conversion of any Borrowing ... shall be allocated pro rata among the Lenders in accordance with their respective Applicable Percentages of the applicable Class.’ ... Ah, ok, so now, they’re in a different class they can do what they want, and now they just exchange into a priority facility.”
4. This was in the context of Apollo building out its investment-grade private credit business, and I went on: “But if you are an investment-grade provider of private credit, that reputation is mostly unhelpful. If you go to an investment-grade company and say ‘hey we would love to provide you with some investment-grade private credit’ and their first reaction is ‘okay but you plan to kill us right,’ you will not get a lot of deals done. Lots of companies raise money from people who obviously plan to kill them, but that’s distressed credit and they have no choices; if you want to deploy lots of capital doing investment-grade deals it is helpful to have a reputation for being easy to deal with, not terrifying. If you’re an Apollo credit person, you probably do have to start every meeting by saying ‘no, I’m not like our private-equity guys, I’m nice, we sit on different floors, I’m scared of them too.’”
5. I mean? Will you? Why? I once wrote: “My gut sense is that the one-sentence intuitive credit analysis of MicroStrategy – ‘it has a huge pot of Bitcoins, has borrowed significantly less than the market value of that pot in the convertible market, and has like a \$90 billion equity cushion’ – is just fine for convertible investors in a way that it might not be for, like, ratings agencies or traditional credit investors.”

Matt Levine's Money Stuff: Medicaid Taxes Pay for Themselves (Correct)

Opinion

Medicaid

A classic conflict of interest occurs when the buyer of something gets reimbursed for part of the cost by someone else. Schematically:

1. Alice is a repeat consumer of a thing, and Bob is a producer of that thing.
- 2. Carol is someone — Alice's employer, her insurer, a government agency, etc. — who has an obligation to reimburse Alice, say, 60% of what she pays for the thing. (Or to pay 60% of the cost directly to Bob.)
- 3. The thing costs \$100.
- 4. Alice pays Bob \$100 and gets the thing.
- 5. Carol pays Alice back \$60.
- 6. Net, Alice pays \$40 and Carol pays \$60; Bob gets \$100.
- 7. Alice and Bob do this every week, and they get to chatting.
- 8. Bob asks: "If I raised the price to \$200, would Carol pay you \$120?" "Yup," says Alice. "And she wouldn't push back on the price?" "Nope, she just pays 60% of whatever price I pay; I'm the one who negotiates the price."
- 9. "Why don't I just raise the price to \$200 then," says Bob. "Well, because I'd be out of pocket \$80, and I can't afford that, so I'd stop buying from you," says Alice.
- 10. "Hmm," says Bob. "What about this. What if I raise the price to \$200, you give me \$200, Carol reimburses you \$120, and then when her check clears I give you a \$70 refund? That way I get \$130 instead of \$100, and you pay \$10 instead of \$40. We are both \$30 better off. And Carol is \$60 worse off but, and this is really the critical point, she isn't here."
- 11. "Yes this is good," says Alice. "The only problem is that if you give me a \$70 refund, Carol might notice that the net price is only \$130. Can we *call* it something other than a refund? Like if I pay you \$200 for the thing, and Carol reimburses me \$120, and then you write me a \$70 check as a Christmas present, Carol won't have anything to complain about."
- 12. "Sure," says Bob, and they do that. The new price of the thing is \$200; Alice pays \$200; Carol reimburses \$120; Bob gives Alice a \$70 Christmas present. Net, Bob gets \$130 (\$200 minus \$70), Alice pays

\$10 (\$200 minus \$120 minus \$70), and Carol pays \$120.

- 13. "Hey I've been thinking," Bob says after a while. "What about \$300? Carol would reimburse \$180, I could give you a \$150 Christmas present, I'd be better off than I am now, and you'd actually make money each time you buy the thing."
- 14. "What about \$500," says Alice.

There are all sorts of versions of this, many of them in the US healthcare space, where (1) no one has any intuitions about the correct price of the thing and (2) most consumers are getting reimbursement from someone. Alice is a patient, Bob is a drug company, Carol is Alice's insurer, Carol pays 80% of the cost of Alice's drugs (that is, Alice has a 20% copay), and instead of a "refund" or "Christmas present" Bob gives Alice a "charitable copay assistance program." Bob can charge \$10,000 for the drug instead of \$100, and Alice is indifferent, since Bob — or Bob's affiliated charity — pays her copay. Bob is not indifferent, since he gets \$8,000 (from Carol) instead of \$100.

In the health insurance space, this stuff is pretty well known, but that doesn't mean it is *prohibited*, exactly. It is *regulated*. There is some social value in Alice getting cheap access to expensive medicines; drug companies *can* help with copay assistance programs as long as they don't do it in ways that are too nakedly aimed at boosting the prices they charge insurers. Sometimes they get in trouble for going too far.

Or there is the Medicaid provider tax, in which Alice (the buyer) is a US state government, Bob (the seller) is a hospital or other medical provider, Carol (the reimbursor) is the US federal government, and instead of a "refund" or "Christmas present" the hospital pays the state an extra tax. The New York Times explains the trade:

In its simplest form, the tax maneuver works like this: When a Medicaid patient goes to the hospital, the federal government and state usually share the costs. The ratio varies from one state to another, depending on how poor the state is, but the federal government often pays around 60 percent of the bill.

States that use provider taxes to get more money usually start by paying the hospitals more. If the federal government is paying 60 percent and the state 40 percent, when a state bumps a payment to \$1,030 from \$1,000, the federal government chips in \$618 instead of \$600.

And then the state imposes, say, a \$25 tax on the hospital. Net, the state pays \$387 (the \$1,030 payment minus \$618 of federal reimbursement and \$25 of tax) instead of \$400, and the hospital gets \$1,005 instead of \$1,000. The federal government has chipped in an extra \$18, and the state and the hospital have divided it up between them.

You can view this narrowly, as a trade between the state and the hospital. From that viewpoint it's a great trade, an arbitrage, maybe a scam: Both sides get free money by putting one over on the federal government. "For years," notes the Times, "the use of provider taxes in New Hampshire was openly described as 'Mediscam' by state officials."

Or you can view it a bit more broadly. The federal government, after all, is *aware* of this. Forty-nine states use some version of it. There are extensive federal rules about how reimbursements work, rules that specify what sorts of taxes do and do not meet the requirements. (Literal refunds of state payments don't work, but broad taxes on medical providers do.) The broader view is something like "the federal government wants Medicaid recipients to get treatment, and is willing to pay a bit more than the published reimbursement rates to make sure that happens; for boring institutional reasons the federal government will only reimburse states for 60% of the stated cost of Medicaid services, but it's fine to inflate that stated cost a bit so that the federal government reimburses, say, 65% of the *actual* cost."

Obviously on the second view, the much more efficient approach would be to outlaw the shenanigans and have the federal government reimburse states for more of the cost of Medicaid. In the limit, if the federal government is going to pay most of the cost of Medicaid, it might be more efficient for the federal government to pay 100% of the cost directly to hospitals, rather than putting states in the middle and creating incentives to game the costs. But, you know, those boring institutional reasons are real, and it's possible that allowing states and hospitals to team up to gently scam the federal government really is the most practical way to get the government to pay its socially optimal share of the cost of medical care.

Or not. The Times also reports:

Long after these taxes have become entrenched, congressional Republicans are now considering curtailing or ending them as one way to achieve the steep federal spending reductions proposed in the House budget. If they did, it would save the federal government about \$600 billion over the next decade, a large chunk of the \$880 billion in cuts that the House committee that oversees Medicaid has been charged with finding. ...

The proposals circulating on Capitol Hill to ban the taxes do not include provisions to replace any lost dollars with new funding sources, which would leave some states with big holes in their Medicaid budgets. In some places, more than a third of federal Medicaid spending would vanish. ...

"If you take away this money, that's a policy decision," said Robin Rudowitz, director of the Medicaid program at KFF, a health research group. "It's not an issue of cracking down on fraud." ...

A 2020 report from the Government Accountability Office estimated that states, on average, were using the taxes to get the federal government to pay an extra 5 percent of their Medicaid bills.

That is: The current deal is that the federal government pays 65% of states' Medicaid costs (on average, with wide variation), but for boring institutional reasons that deal is expressed as "the federal government pays 60% of the cost but you can cheat a bit on the costs to get to 65%." A revenue-neutral way to reform that might be to say "the federal government pays 65%, but no more cheating." Or you could leave it at 60% and ban the cheating, but at this point, after the cheating has been accepted for decades, that is also a policy decision to cut Medicaid.

Tariff now pay later

I used to be a corporate derivatives structurer at an investment bank, which means that I learned a little bit about options math and dynamic hedging and accounting, and a lot about storytelling. The business of derivatives sales, like any sales business, is about telling an emotionally resonant story showing how your product solves the customer's problems. If you know her fondest hope, you try to sell her a product that (seems like it) can make it come true. If you know her deepest fear, you try to give her a product that (seems like it) can guard against it. If your products are, you know, stock options, they are not necessarily a natural fit for anyone's fondest hopes or deepest fears, but you're paid for creativity. You think of some exciting stories about stock prices and sell the customer upside; you think of some scary stories about stock prices and sell the customer downside protection. The products don't change much — you can tinker with the parameters, but basically they're stock options — but the story you tell about them does.

Similarly, if you are in the business of financing trade, President Donald Trump's tariffs have some obvious downsides for you. If there are big tariffs on all goods coming into the US, trade will probably go down, and you will finance less of it. On the other hand, the tariffs are new, so there are new stories for you to tell. "We finance trade, we could finance the tariffs, that's something," is probably the thought process that a lot of trade financing bankers are having. Like this one:

HSBC Holdings Plc is offering a new loan product to US companies struggling to cover the cost of President Donald Trump's tariffs that have roiled international supply chains.

The London-headquartered bank said on Wednesday its TradePay platform was being extended to directly cover the cost of tariff payments, allowing importers to effectively borrow to meet the increased expenses involved in shipping products into the US.

"By settling import duties directly and frictionlessly through HSBC TradePay, our US clients have more visibility and control over their working capital," said Vivek Ramachandran, head of global trade solutions at HSBC.

Under the new loans, customers' import payments will be automatically paid through pre-agreed credit with brokers or a direct deduction using automated clearing house credits, meaning companies will be better able to manage their cash flow and settle duties more efficiently.

HSBC is the world's largest trade bank and the biggest international bank in China, giving it a crucial role in oiling the wheels of international trade, particularly between the two biggest economies. The US has imposed tariffs as high as 145% on Chinese goods, while China has hit back with retaliatory rates of 125%. Talks aimed at de-escalating the situation are due to take place this week.

Yes, right, "we lend you money to finance your imports, and the cost of your imports is going up so we will lend you more money" is not *exactly* a new loan product, but it is certainly a timely and topical re-description of an old product. And "the cost of your products has doubled, but at least you can borrow money to pay the extra cost" is not an appealing story *per se*, but the bankers work with what they've got.

OpenAI revenue sharing

I wrote yesterday about OpenAI's corporate structure. Basically OpenAI is a company that

is controlled by a nonprofit organization, and

- has raised money from investors (and incentivized employees) by giving them complicated stakes in the economics of its business, stakes with forms like "X% of our profits up to \$M, and then Y% of profits up to \$N, and then Z% of profits up to \$P, but nothing above that."

And now OpenAI is planning to convert to a more normal structure, in which

all those weird economic stakes will be converted into normal stock, so instead of a complicated profit waterfall each investor just gets some percentage ownership of the company "in an amount supported by independent financial advisors," and

- the nonprofit organization gets the rest of the shares — if all those profit waterfalls work out to the investors getting 71% of the company, the nonprofit gets the other 29% — but its shares are super-voting, so the nonprofit keeps control of the company.

This is an approximate description and abstracts away from some of the mechanics. Those mechanics are particularly complicated with Microsoft Corp. Microsoft is a big investor in OpenAI, and has some complicated series of profit interests that will convert into stock. But it didn't just hand OpenAI a bunch of cash for those interests. For one thing, it seems to have paid mostly in the form of computing power, not cash. And it has a commercial relationship with OpenAI, with exclusive deals to use OpenAI's models in its products and cloud services.

And so when OpenAI goes through its process of slimming down and simplifying its capital structure, converting weird profit-sharing deals into shares of stock, I suppose the question might come up: What counts as capital structure? What bits of Microsoft's relationship with OpenAI consists of economic quasi-ownership that should get converted into stock, and what bits consist of commercial deals that should just continue? Is "20% of revenue, plus 75% of the first \$17 billion of profits, plus 49% of the next \$83 billion of profits" convertible into "___% of stock," or into "well you keep getting the 20% of revenue and you also get ___% of stock," or something else?

The Information reports:

As OpenAI moves ahead with a corporate restructuring to appease its investors as well as regulators, it needs to get clearance from Microsoft, its biggest outside shareholder and business partner.

One part of OpenAI's plan involves reducing the percentage of revenue it shares with Microsoft. In financial projections OpenAI shared with investors, that percentage would drop by at least half by the end of this decade. Microsoft, whose servers power OpenAI products, still hasn't signed off on OpenAI's desired changes, according to a person who spoke with a senior Microsoft executive involved in the negotiations.

In an existing deal, OpenAI agreed to share 20% of its revenue with Microsoft through 2030—a year in which OpenAI has projected it would generate \$174 billion in revenue. In recent weeks, though, OpenAI told some potential and current investors that by 2030, it would only share 10% of revenues with commercial partners including Microsoft, according to private documents. ...

OpenAI and Microsoft have been wrangling for months over amendments to their existing agreement, including changing the 20% revenue-share figure and how long Microsoft will retain the right to use OpenAI's intellectual property. ...

[OpenAI's restructuring] would also give investors including Microsoft traditional stock instead of shares that entitle them to potential future profits. That seemed good enough for some investors including SoftBank, which reaffirmed its commitment to invest \$30 billion in OpenAI despite the nonprofit retaining control over the company, CEO Sam Altman told reporters on Monday.

OpenAI would like to simplify its financial and commercial arrangements, but there's only so far it can go.

People are worried about stock buybacks

My crude model of President Donald Trump's tariffs is that the Trump team thinks that too much US economic activity is in finance, and not enough is in manufacturing. After Trump's "Liberation Day" tariff announcement last month, I wrote that "a world in which the US gives people finance and gets back inexpensive goods strikes me as good for the US. We give them entries in computer databases, they give us back food and clothing: That is a magical deal for us!" But the Trump economic team appears to disagree. They have argued that the US dollar's status as the world's reserve currency is bad for us: Foreigners are too happy to buy US financial assets, which drives up the value of the dollar, makes our exports less competitive, and causes a US capital-account surplus that leads to a current-account deficit. Foreigners trade their manufactured goods for our financial assets, and Trump wants them to trade their manufactured goods for our manufactured goods. Presumably, in the desired end state, US factory employment would go up and financial-industry employment would go down.

Now I should say that this is only one possible model of what Trump's advisers are up to, and they do tend to say lots of contradictory things, so many other models are roughly equally plausible. (My model is perhaps best supported by the statements of Stephen Miran, the chair of Trump's Council of Economic Advisers, but even he explained his own view of Trump's economic policy by saying that "I expect policy to be dollar-positive before it becomes dollar negative," so you could take that however you want.)

But it has been striking to me that the execution of Trump's tariff policy seems to be broadly a lot of fun for the financial sector and less good for manufacturing. If tariff policy is coy and uncertain and changes every day, that creates enormous volatility. A lot of financial firms make their money, more or less, on volatility: The more asset prices bounce around, the more trading activity there is, and the more money you can make (or lose) by providing liquidity. Manufacturers looking to build factories, though, do not make their money on volatility. They want predictability. If you are going to spend a billion dollars building a factory in the US to take advantage of high tariffs on the rest of the world, you need to have some sense of what those tariffs will be when you open the factory. You have no idea.

So it's hard to invest in a factory. You know what you can do with your money, while you wait for certainty? You can optimize your capital structure. The Financial Times reports:

US companies are planning to buy back a record \$500bn of their own shares, as they seek to deploy their huge cash piles at a time when President Donald Trump's policies are adding to uncertainty over making capital investments. ...

Trump's unconventional trade manoeuvrings have in a number of cases made planning for the future more difficult, forcing groups such as Colgate, General Motors and Delta Air Lines to cut sections of their earnings guidance.

Rising buybacks are "a reflection of the fact that global tariff uncertainty is getting in the way of planning for operational investment", said a former co-head of equity capital markets at a large US investment bank.

My naive view of the Trump industrial policy is that the administration would prefer for companies to spend more money on operational investment and less on stock buybacks, but the effect might be the opposite.

Things happen

Lawyers Are Quoting \$1 Million in Fees to Get Pardons to Trump. Top Trump Crypto Buyers Vying for Dinner Seats Are Likely Foreign, Data Shows. How dealmaking fever hit Italy's banking sector. Disgraced Ex-Goldman Partner Sought by Malaysia for Extradition in 1MDB Scandal. Milken Private-Credit Crowd Spots 'Golden' Moment Amid Chaos. SMBC Teams With Private Lenders to Offer \$1.7 Billion of Credit. The High-School Juniors With \$70,000-a-Year Job Offers. Geely Plans Bid to Take Zeekr Private at Value of \$6.4 Billion.

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(Corrects amount Carol pays in Step 12 of first item.)

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- 1. Have you ever gotten airline miles or credit card points from a work trip?
- 2. Like, this trade is harder to do if Alice is buying pencils, or for that matter stocks, from Bob: If she submits a receipt for a \$200 pencil, or a \$500 share of Tesla Inc. stock, Carol will know something is amiss. You need something where the prices are squishier.
- 3. Here's a 2024 Fiscal Policy Institute note about a proposed New York "Managed Care Organization (MCO) provider tax that would be cost-neutral for the State, but would generate \$4 billion in increased Federal Medicaid revenue," describing the multi-decade history of regulation of this loophole.
- 4. The Times notes: "The federal government allows states to have provider taxes as long as they don't go above a certain percentage, meant to be applied across all providers in a category — not just as a windfall to a hospital that treats a high number of Medicaid patients. With the government's blessing, there are now 19 different types of health care providers that can be taxed, not just hospitals but also dentists and even chiropractors, and numerous approved ways to pay them back." And here's a 2023 Center for Medicare & Medicaid Services letter approving "a waiver of the broad-based and uniformity requirements related to the state of California's managed care organization (MCO) tax" and walking through CMS's reasoning about what sorts of taxes are allowed under the rules.
- 5. Paul Krugman wrote about Miran's vision: "Part 3 makes the case for tariffs by arguing that they won't be inflationary because they'll lead to a stronger dollar, reducing import prices. Part 4 then calls for an all-out effort to weaken the dollar, using emergency powers if necessary."

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Trump Cuts Thousands of Wall Street Cops While Markets Swing (1)

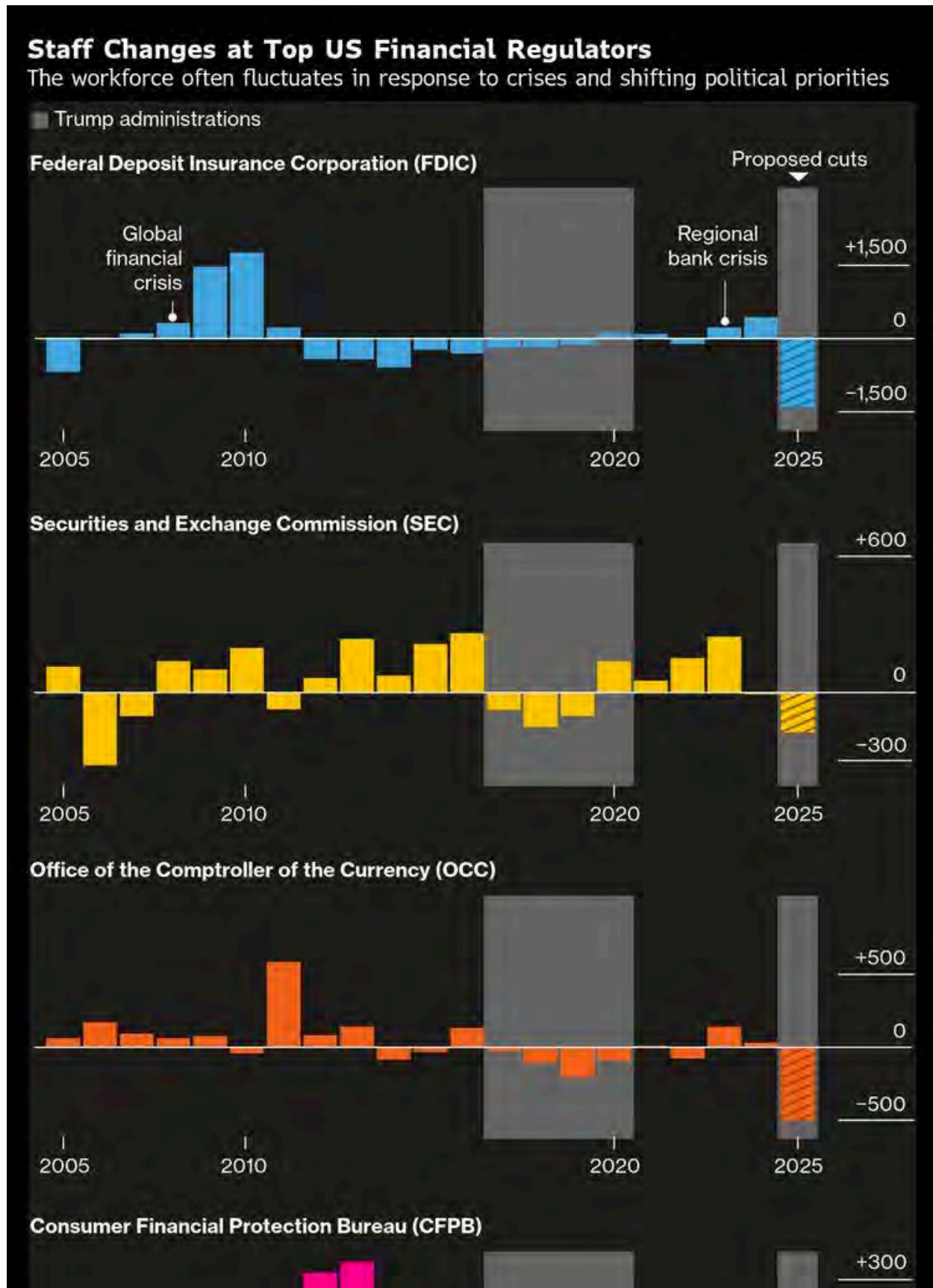
Donald Trump's administration is set to shrink the ranks at the top US financial regulators by more than 2,300 workers, a group that includes bank examiners, criminal investigators and economists.

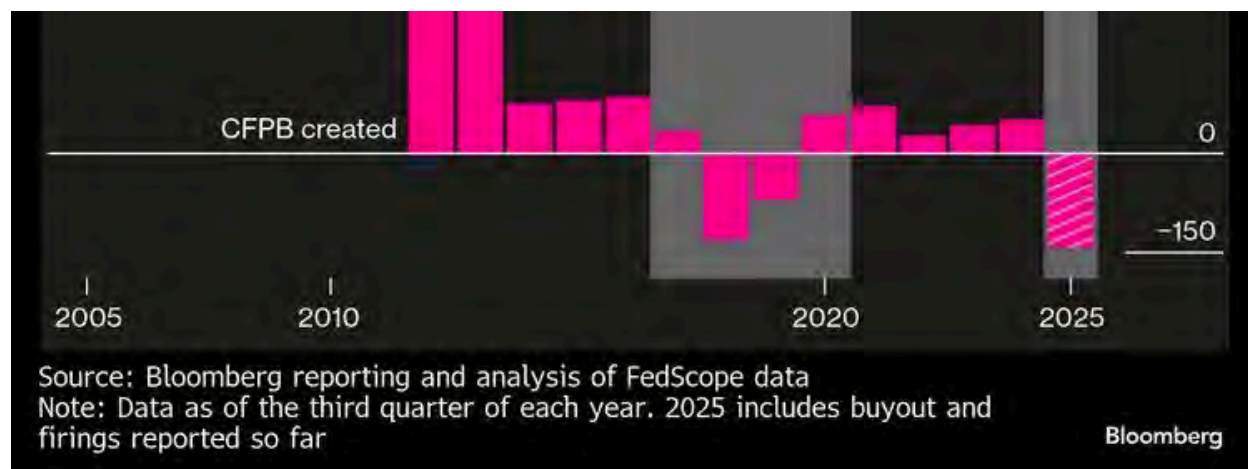
The cuts are the steepest in decades for the Federal Deposit Insurance Corp., the Office of the Comptroller of the Currency and the Securities and Exchange Commission, the primary agencies responsible for oversight of banks, trading houses and the public markets.

At the same time, the agencies are rapidly juggling their remaining staff and adjusting policies. The OCC has said it will combine supervision teams that were previously tailored to banks by size, and the SEC has reorganized its regional offices. The FDIC has yet to announce significant changes, but officials are rethinking its approach to bank supervision, according to people familiar with internal discussions.

Defenders of the downsizing, which includes buyouts, layoffs, early retirements and hiring freezes, see it as part of the administration's stated goal of rolling back rules to boost growth and unleash lending. The agencies shrunk during Trump's first term, too, by about 1,000 employees from 2016 to 2020 — half the level of reductions proposed since his second inauguration.

But to critics, fewer examiners and investigators are a harbinger of weaker oversight and an invitation to excessive risk-taking, particularly as Trump's trade policies have caused extreme market swings, and calls of an impending recession have some banks bracing for higher credit losses.





Even in the best of times, “overburdened and under-experienced staff could be unable to recognize brewing risks to the financial system,” said Michele Alt, a former official at the Office of the Comptroller of the Currency and now a partner at the financial-services advisory firm Klaros Group.

The current administration instituted the government-wide job cuts as part of a broader campaign to save \$1 trillion in federal spending. That rationale confounds critics, who note that the top banking and markets watchdogs don’t receive taxpayer funding: They pay for themselves — and sometimes turn a profit — through fees, licensing revenue and fines to firms they oversee.

Since 2015, the FDIC collected \$74 billion more than it spent, most of which accrues to the agency’s bedrock insurance fund that protects depositors during bank failures. The OCC has run a \$107 million surplus during the same period.

On the other hand, failures of oversight can be very expensive, said **Jeremy Kress**, a former Fed bank-policy attorney who now teaches business law at the University of Michigan.

“While reducing staff might yield short-term cost savings, any near-term benefits are likely to be dwarfed by the long-term costs of weaker financial oversight, more reckless risk-taking, and more frequent bank failures,” he said.

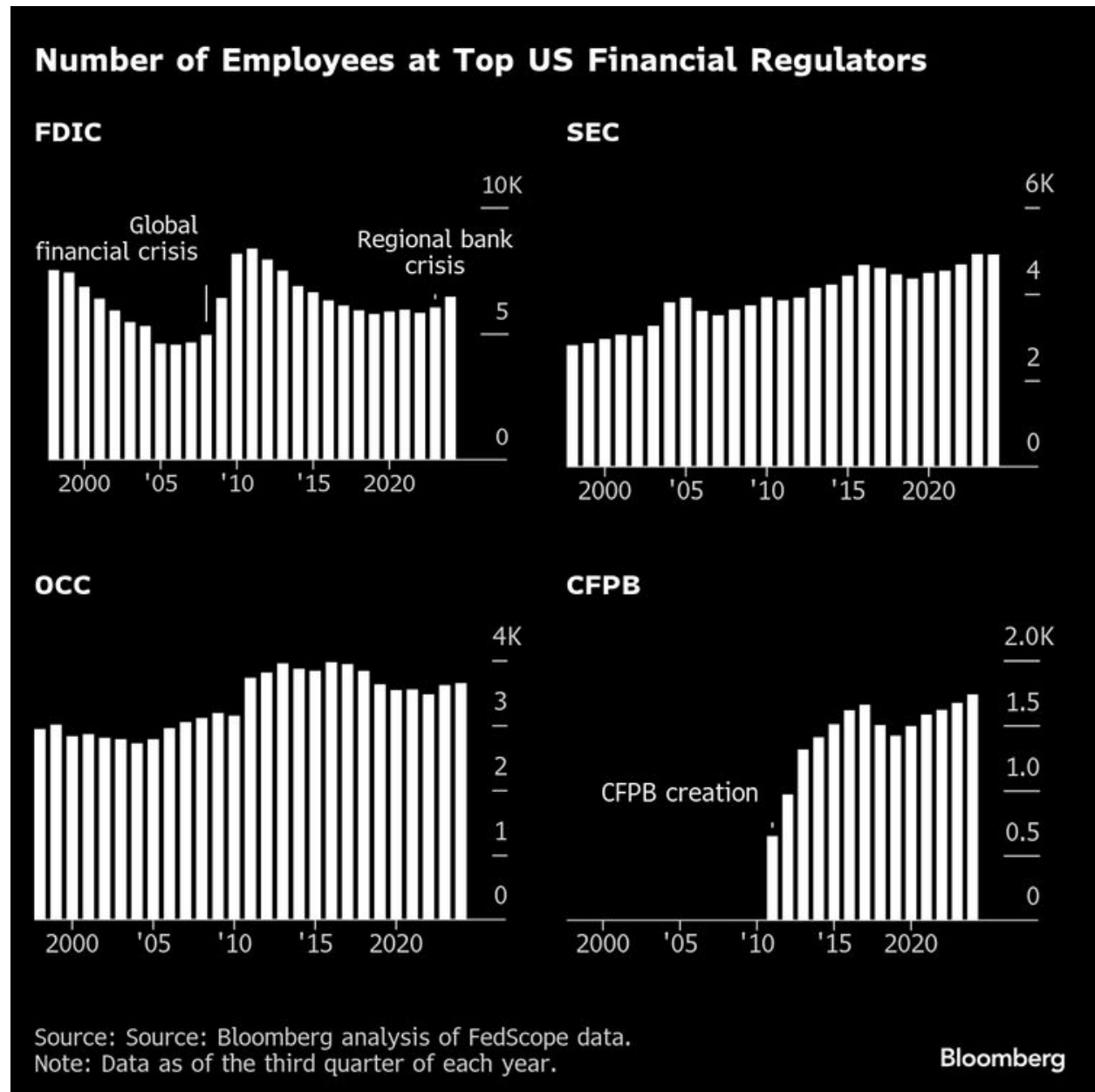
Representatives from the FDIC, SEC and the OCC declined to comment.

Historically, agency headcount has fluctuated not only with political priorities but in response to the demands of firms and the markets. The FDIC in particular has seen spikes after periods of bank failures, then shrunk when the crises abate. That left the agency short of bank examiners following collapses of Silicon Valley Bank, Signature Bank, and First Republic Bank, according to a 2023 staff report.

A different report by the agency’s inspector general the same year pointed out that nearly 40% of the FDIC’s employees would be eligible for retirement by 2027.

Read More: Bank Examiner Exits Risk Undermining Regulators’ Post-SVB Fixes

If retirements continue apace, long-tenured workers take the buyout and probationary employees are dismissed, mid-career staff are left to manage both the tasks for which they lack important institutional memory and the lower-level tasks from which they'd previously graduated, Alt said.



Some banks say they're already noticing changes, including a shift to younger, less-familiar faces among their usual regulators. Privately, that has spurred worry among some executives, who say they rely on consistent relationships with staff who can engage or answer questions before problems arise.

Even those who have been pushing for deregulation for a long time say the current job cuts and reorganizations miss the point. Undoing rules, withdrawing proposals and rewriting guidance requires smart, skilled staff, analysts and attorneys say, not a hobbling of agencies.

"The problem with bank supervision is not lack of personnel, but rather where they are deployed, how they are supervised by senior officials, and the extent to which the agencies demand rapid action on problem institutions," said **Karen Shaw Petrou**, the managing partner at Federal Financial Analytics, a Washington-based consulting firm.

CFPB

The Trump administration has also attempted to terminate thousands of staff at a fourth regulator, the Consumer Financial Protection Bureau. The government has declared its intention to shutter the agency, which was created by Congress in the wake of the 2008 financial crisis to oversee consumer products like credit cards and student loans.

Unlike the more longstanding regulators, the CFPB has been a political lightning rod since its creation. Democrats have continued to tout the agency as a necessary check on corporate power and a guardian of wealth for ordinary Americans, against the attacks of Republicans and business groups who claim it lacks accountability.

After several failed efforts by the finance industry to defund the consumer watchdog through the court system, it became an immediate target for Trump in the early days of his second term.

Read More: [Elon Musk Wants to Shut the CFPB. What's at Stake: QuickTake](#)

An initial attempt to cut most of the CFPB's 1,700 employees was temporarily halted by a federal judge. So far, some 200 people have been laid off or fired, while lawyers argue the future of the rest of the staff in court.

The CFPB didn't respond to a request for comment.

The consumer watchdog has said it would shift its enforcement focus back to banks under Trump after broadening its supervision of non-bank firms and stepping up oversight of tech platforms offering payment services, during the Biden administration, but emphasized that it would cut "supervision events" in half.

(Updates to include FDIC response in eleventh paragraph.)

--With assistance from Paige Smith, **Yizhu Wang**, **Emily Mason** and **Dave Merrill**.

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Janet Paskin, Katanga Johnson

Trump Memecoin Uproar Complicates Crypto-Backed Stablecoin Deal

- Democrats rip Trump memecoin, stablecoin deals ahead of vote
- Bipartisan coalition has fractured, threatening Trump priority

The controversy over President Donald Trump's crypto profits is threatening to derail a quick deal on bipartisan stablecoin legislation backed by both the crypto industry and the White House.

Elizabeth Warren, the top Democrat on the Senate Banking Committee, is leading the effort to use the stablecoin bill to bar a sitting US president from profiting off crypto ventures, which have already earned Trump and his family millions.



President Donald Trump

Photographer: Samuel Corum/Sipa/Bloomberg

Democrats in talks with Republicans have pushed to include legislation barring the president from profiting off of his memecoin and other cryptocurrencies, said a Senate Democratic aide familiar with the discussions.

Progress has been made in the talks but policy discussions are still ongoing, the aide added.

Democratic leadership, meanwhile, also wants changes to language dealing with Tether, the leading stablecoin, as well as language addressing Trump, said another person familiar with the discussions.

Minority Leader Chuck Schumer has signed on to separate legislation to ban Trump from profiting from his crypto projects.

But Warren's push to include it on the stablecoin bill puts Schumer in a familiar bind of deciding between a legislative priority with support from both parties and pressure from his left to resist Trump.

"We all know the level of corruption in the Trump administration is higher than any administration probably in American history," Schumer told reporters this week. "But on stablecoins, Democrats and Republicans are talking to each other."



Senator Elizabeth Warren

Photographer: Kent Nishimura/Bloomberg

Republicans need at least seven Democrats to back the stablecoin legislation, so Schumer has some leverage to force at least a floor vote on include the Trump-related language in the larger bill.

“Greenlighting Donald Trump’s corrupt stablecoin deals is wrong,” Warren said. Without a provision stopping the president’s digital token ventures, she added, the legislation “will simply facilitate Trump’s crypto corruption.”

It’s the latest hurdle for the legislation and risks undoing the fragile bipartisan coalition still negotiating the bill.

The creators of Trump’s memecoin launched a contest that offered its top holders the opportunity to win a private dinner with the president and a possible VIP tour. The move, which initially boosted sales of the token, provoked sharp condemnation from Democrats.

More than half of the top holders of memecoin appear to be foreign nationals or people who are based outside the US, based on the exchanges they used to purchase the memecoin.

Read more: [Crypto Buyers Vying for Trump Dinner Seats Are Likely Foreign](#)

White House Deputy Press Secretary Anna Kelly said in a statement stablecoin legislation should pass on a bipartisan basis.

“President Trump is dedicated to making America the crypto capital of the world and revolutionizing our digital financial technology,” she said. “His assets are in a trust managed by his children, and there are no conflicts of interest.”

Senator Kevin Cramer of North Dakota, a Republican member of the Banking Committee, said Trump’s crypto projects have complicated the issue politically for Democrats but defended the president’s ventures with digital tokens.

“It shouldn’t be disqualifying that you’re actually in the business world and in charge of the federal regulatory regime,” he said.



Senator Ruben Gallego

Photographer: Al Drago/Bloomberg

A group of crypto-friendly Democrats led by Ruben Gallego of Arizona threatened in a statement Saturday to use procedural maneuvers to block the legislation over “numerous” issues, including anti-money-laundering provisions. But that pivotal group of Democrats continues to be engaged in the talks, Republican senators said.

Republicans said they remain hopeful that they can pick off at least seven Democrats needed to overcome a filibuster against the bill.

“We have been negotiating in good faith for months,” said bill sponsor Bill Hagerty of Tennessee. “We’re ready to move.”

The stablecoin legislation is a top priority for the burgeoning cryptocurrency industry and would provide a friendly regulatory regime for the digital asset. Stablecoins, which are crypto tokens typically designed to be pegged to the value of the US dollar or another traditional currency, are a lucrative business because issuers are able to invest reserves backing stablecoins in short-term US Treasuries or similar products and keep the yields.

Read more: [Crypto’s \\$205 Billion Stablecoin Market Set to Go Mainstream](#)

In addition to the memecoin, the Trump family's World Liberty Financial project has issued its own stablecoin, USD1, which has a \$2.1 billion market value, according to CoinGecko.

The Senate's stablecoin bill includes a provision restating laws and ethics guidance applying to members of Congress and senior government officials, but those do not apply to the president or the vice president or their families, a Democratic aide said.

Republican Senator Cynthia Lummis of Wyoming, a sponsor of the stablecoin legislation, said senators are seeking to find language that both Democrats and Trump will accept.

Negotiators are working "to make sure that the language that we choose satisfies both Democrats and Republicans that are concerned about elected officials' participation as issuers, but that can still be signed by the president," she said.

World Liberty Financial announced last week the Trump-tied stablecoin was used in a \$2 billion investment from Abu Dhabi's MGX into Binance Holdings Ltd.

The transaction linked a company controlled by Trump's family with a cryptocurrency exchange that pleaded guilty to violating anti-money laundering laws and US sanctions and an investment fund overseen by Sheikh Tahnoon bin Zayed Al Nahyan, the brother of the president of the United Arab Emirates.

--With assistance from **stacy-marie ishmael**.

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Cryptocurrencies

Traders made \$100mn from buying Melania Trump memecoin before launch

Small group of digital wallets bought up coins in the minutes before it was announced, FT analysis shows

Eade Hemingway, Oliver Hawkins, Chris Cook and Paul Caruana Galizia

Published MAY 5 2025



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A small group of traders earned a \$99.6mn windfall by buying Melania Trump's cryptocurrency token in the minutes before it was made public, an analysis by the Financial Times has found.

[Melania Trump](#) unveiled the \$MELANIA coin in a social media post late on January 19, just hours before her husband was inaugurated as the US president.

In the two and a half minutes before her post went live on Truth Social, two dozen digital wallets bought \$2.6mn of the tokens from the [crypto](#) marketplace where they had been deposited.

The traders profited when Melania Trump's post sent the price of the tokens soaring. The wallets offloaded most of their coins rapidly, with 81 per cent of their sales taking place within 12 hours.

Crypto transactions can be tracked on digital ledgers known as "blockchains", but the entities or individuals who control the wallets that hold and trade coins generally remain anonymous.

The \$MELANIA memecoin, a type of crypto token with no functions beyond being a vehicle for speculation, was launched about two days after Donald Trump had [launched his own \\$TRUMP token](#).

The launch of the two coins comes as the Trump family and its business associates have backed a wide array of crypto ventures. Donald Trump's administration has been more accommodative in its regulation of crypto than Joe Biden's government.

The launch process for memecoins enables the price of the tokens to rise sharply from near-zero prices if interest surges, giving earlier buyers the chance to make outsized profits. Crypto enthusiasts refer to accounts that buy big and early to exploit this feature as “snipers”.

Memecoins are [not treated as securities](#) under US financial regulations, meaning scheme promoters are not bound by federal disclosure and insider dealing rules designed to protect retail investors.

One wallet that bought prior to launch spent \$681,000 on the memecoin in a single transaction 64 seconds before the existence of the project was made public. Within 24 hours, this account had made \$39mn from selling most of its holdings. It made a further \$4.4mn from selling the rest over the following three days.

In total, the 24 accounts bought up 16.7mn of the 200mn total \$MELANIA tokens scheduled for sale during the launch period.

The price of \$MELANIA peaked within 10 hours and then fell

Price of \$MELANIA in the main liquidity pool (\$)



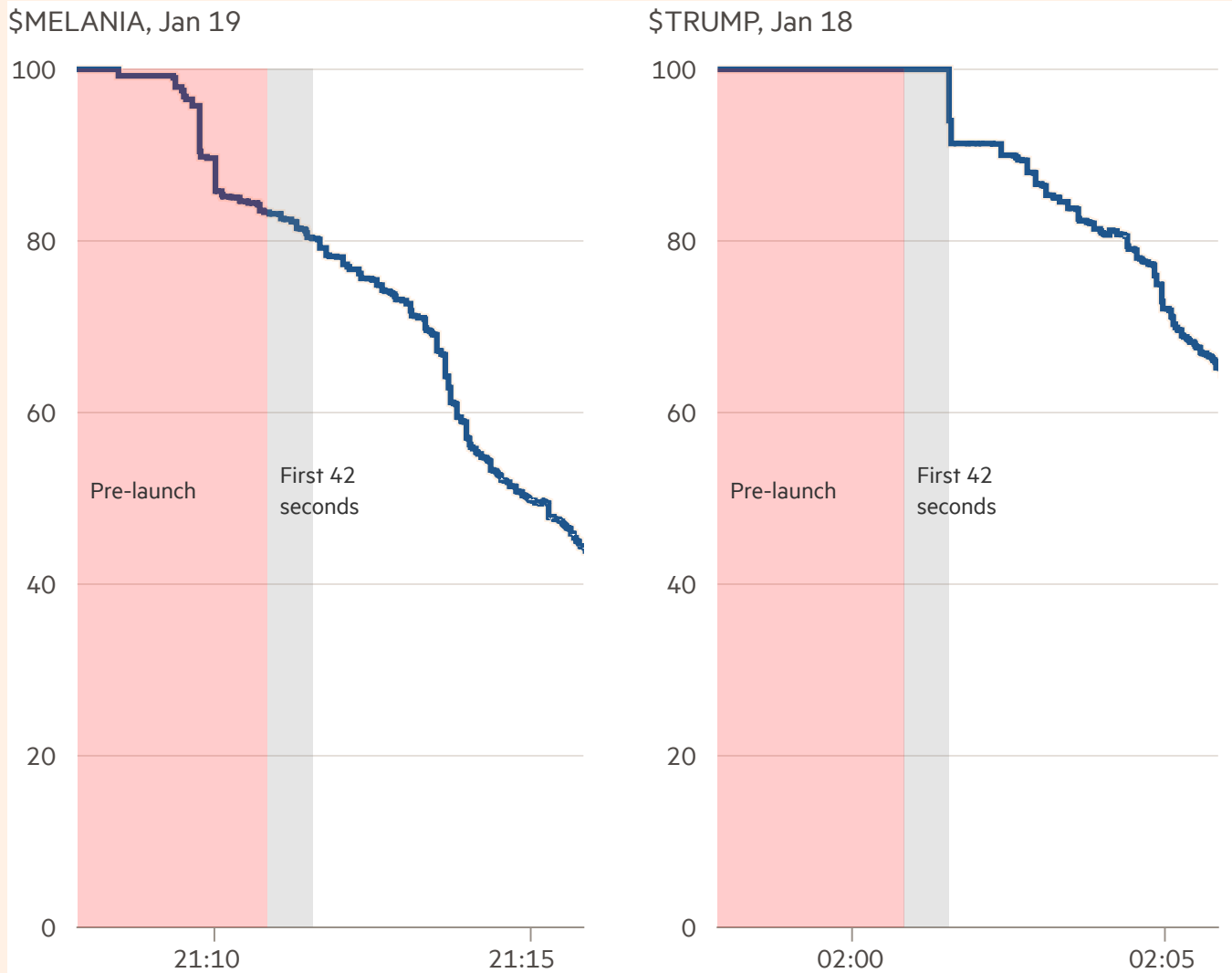
Source: FT analysis of Solana data • Greenwich Mean Time (GMT)

When \$TRUMP was launched, there were no pre-announcement purchases, with the first sale going through 42 seconds after the publication of the Truth Social post announcing it.

With \$MELANIA, the run of sales that started pre-launch continued. About \$900,000 worth of tokens were bought by an additional 22 accounts in the 42 seconds after the launch.

Unlike the \$TRUMP coin, the \$MELANIA coin saw a wave of pre-announcement sales

Number of memecoins in the main liquidity pool (mn)



Source: FT analysis of Solana data • Greenwich Mean Time (GMT)

The FT has previously tracked transactions involving \$TRUMP, revealing that entities behind the launch earned at least \$350mn — both from sales of the tokens and market-making fees.

\$MELANIA was organised by a wholly different group of companies and individuals using different processes. FT analysis suggests that the entities that launched the coin — which are separate from the wallets that traded in it prior to the official announcement — have so far withdrawn profits of \$64.7mn from fees and primary sales.

Last month, the price of \$TRUMP coin [soared](#) when it was announced that large holders would be eligible to join a dinner with Donald Trump, meaning that the stock of 800mn \$TRUMP coins still held by the scheme organisers would notionally be worth \$9.0bn.

The \$MELANIA coin currently trades at 33 cents. At these prices, the retained stock of 800mn \$MELANIA coins, which were not originally listed for public sale, would be worth \$265.9mn.

According to its official website, the \$MELANIA coin is marketed by MKT World LLC — a [Delaware-registered firm](#) the first lady has used for various ventures since 2021. The project's official terms do not clarify whether MKT World is the coin's issuer, nor how profits will be split with other entities involved. Melania Trump has not responded to requests for comment.

Hayden Davis, a 28-year-old crypto entrepreneur from Texas, has said he was involved in the launch of \$MELANIA. Davis, who was listed as chief executive of Kelsier, a crypto business, was also involved in the launch of the \$LIBRA memecoin. This token, which was briefly endorsed in February by Javier Milei, the president of Argentina, turned into a political scandal after a price surge and crash.

The first account to buy coins in the run-up to launch bought \$40,000 of \$MELANIA 141 seconds prior to launch. The account went on to sell 86 per cent of its holding within two hours, making \$2.5mn.

The FT has confirmed findings by Bubblemaps, a crypto analytics platform, that this wallet was funded via an account which has previously been used in ventures involving Davis.

In an interview with Stephen Findeisen, an independent crypto journalist known [as Coffeezilla](#), Davis said: "There was no money made from the Melania team. We didn't take any liquidity out. Zero."

The FT has sought comment from Davis, whose company websites have been taken down and who has stopped issuing public statements in the wake of the \$LIBRA scandal.

How the FT chronicled trading in \$MELANIA coin

The FT's estimates describe the profit made by the wallets by tracking their subsequent token sales. In some cases, the tokens were moved to other wallets before being sold.

Of the \$99.6mn made by the 24 accounts, \$88.7mn of the purchases were made in exchange for USDC — a stablecoin whose price is intended to be fixed to the dollar.

The remaining amount, however, was denominated in SOL, which is a volatile cryptocurrency. The FT has estimated prices based on a rate of \$144.68 per Solana token, which was the price at the time of calculation.

This is a lower-bound estimate: in some cases, wallets made trades both *before* and *after* the announcement of the memecoin, which requires the FT to estimate how much was made from pre-announcement purchases.

In these cases, the FT has used the most conservative possible arithmetic to estimate the amount made from pre-launch sales.

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May 7, 2025, 7:42 AM PDT

A group of anonymous traders scored a \$100 million payday by buying Melania Trump's memecoin just before it launched publicly

A group of anonymous traders scored a \$100 million payday by buying Melania Trump's memecoin just before it launched publicly

By Marco Quiroz-Gutierrez

(FORTUNE)

A group of traders bought millions of dollars worth of First Lady Melania Trump's memecoin before it was publicly announced, netting a \$99.6 million pay day by selling as the coin hit its peak price. Most of the \$MELANIA coins were exchanged for a stablecoin, USDC, whose price is tied to the U.S. dollar.

A handful of traders bought First Lady Melania Trump's memecoin before it went public, and in the process, secured a \$99.6 million windfall.

By studying the blockchain, which publicly displays wallets and transactions but not identities, the *Financial Times* found that 24 separate wallets bought \$2.6 million worth of \$MELANIA two-and-a-half minutes before it was publicly announced by the First Lady in a Jan. 19 Truth Social post.

A majority of the \$99.6 million cashed out by the wallets was exchanged for USDC, a so-called stablecoin tied to the price of the U.S. dollar, the *FT* reported. It's unclear how many people were behind the two dozen wallets.

The White House did not immediately respond to *Fortune's* request for comment.

Memecoins, like \$MELANIA and President Donald Trump's \$TRUMP coin, are vehicles for speculation that are not backed by another asset. This type of cryptocurrency is not classified as a security under U.S. financial regulations. The Trump administration has adopted a lighter touch on regulation of the crypto industry compared to the Biden administration, and many of the biggest U.S. crypto firms donated to President Trump's inaugural committee.

Once Melania Trump announced her own coin, hours before President Trump was inaugurated, the wallets sprung into action, taking advantage of a price spike to offload their holdings. In all, the wallets sold 81% of their coins in the first 12 hours of the public sale.

During the first two days of the sale, the price of the coin surged, reaching a high of \$13.73 on Jan. 20, the day following its public announcement. The coin was trading Wednesday morning at around 32 cents, down 98% from its peak, according to CoinMarketCap.

One wallet, which alone bought \$681,000 worth of \$MELANIA precisely 64 seconds before the coin was made public, took advantage of the early euphoria and sold much of its holdings in 24 hours, netting a \$39 million payday. It made another \$4 million in the next three days offloading the rest.

Another account made \$2.5 million by selling most of the \$40,000 worth of coins it bought 141 seconds before launch.

About 40% of Trump's net worth, or about \$2.9 billion, is made up of crypto according to the nonprofit State Democracy Defenders Action. The issuers of the \$Trump stablecoin have also reportedly profited \$320 million from trading fees associated with the coin, according to a study by blockchain analysis firm Chainalysis.

Democrats have condemned the use of cryptocurrency by Trump and his family since he retook office in January. Sen. Chris Murphy (D-Conn.) introduced a bill called the MEME Act earlier this week to try to prevent a U.S. president or member of Congress from issuing a memecoin. Murphy argued in a video posted on X, the social-media platform, that elected officials can use memecoins to receive backdoor money in exchange for favors.

"Trump's memecoin is the most unethical, the most corrupt thing a president of the United States has ever done," Murphy said.

This story was originally featured on Fortune.com

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Investigation reveals a group of traders made nearly \$100 million buying MELANIA minutes before the launch

 crypto.news/traders-made-100m-buying-melania-before-the-launch

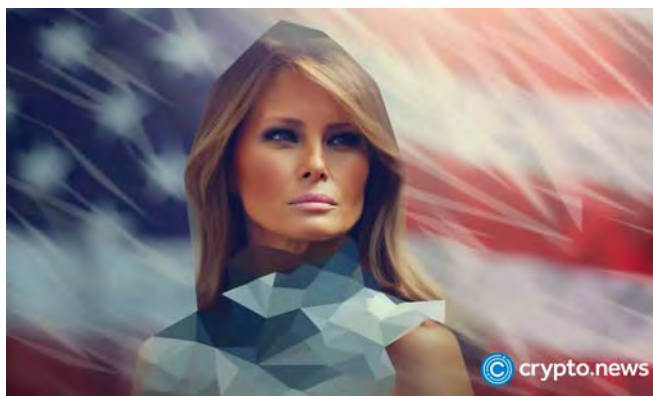
May 8, 2025



By Alexey Borovets



Edited by Anna Akopian
Feature



The Financial Times analyst noticed that millions of dollars' worth of MELANIA memetoken were bought minutes before the launch. Investigation reveals the details of the purchases and estimates combined profits at \$99.6 million.

The MELANIA token was launched on Jan. 19, 2025, two days after the launch of the Official Trump token and only one day before Donald Trump's inauguration. Lack of transparency, conflict of interests, and emphasis on the gambling aspect of cryptocurrencies are only a few reasons why the Trump pair's tokens launch caused displeasure in the crypto community. Both \$TRUMP and \$MELANIA are Solana-based memecoins with little to no use case.

What is known about pre-launch sales?

The token launch was announced by Melania Trump on Truth Social on Jan. 19. Digesting the blockchain data, an FT analyst noticed that two and a half minutes before the post went live, 24 wallets received \$2.6 million worth of \$MELANIA. They bought 16,700,000 out of 200,000,000 \$MELANIA, or 33.4% of the total supply. The holders of these wallets remain unknown.

As the token launch announcement was published, the \$MELANIA price skyrocketed. Within the following 12 hours, investors who bought the token cheap before the launch sold 81% of their holdings.

One specific account invested \$681,000 in \$MELANIA in a single transaction just a minute before the first announcement of the memecoin launch. Selling most of the \$MELANIA tokens the same day, the investor enjoyed \$39 million in profits. Within the following three days, they gained \$4.4 million more.

According to FT, the wallets participating in pre-launch purchases don't belong to the MELANIA team, which allegedly fixed profits at \$64,700,000.

Although this purchase can't be called 100% fair, it doesn't break the law protecting the securities investors as memecoins do not qualify as securities in the U.S. Clarifying the legal status of memecoins which saw a boom at the end of 2024 and beginning of 2025, the SEC's guidance issued in February 2025 noted that these tokens are "more akin to collectibles" and the laws regulating securities do not apply to them.

Read more: SEC's Division of Corporation Finance says memecoins are not securities

The team behind \$MELANIA

Officially, the First Lady's memecoin is managed by her Florida-registered company, MKT World LLC. Melania Trump has used this firm since 2021 for various enterprises. The exact role of MKT World in MELANIA memecoin is not clear, though. According to the Melania Meme website, the team owns 30% of the supply, while 30% is held in the treasury, 20% is intended for the community, and the remaining 20% is available for public use.

The team behind the MELANIA memecoin was suspected of sniping various memecoins after capitalizing on the MELANIA token. Sniping refers to using automated tools to make instant purchases of fresh memecoins before their prices go up. According to the report released in February, the MELANIA team made \$2.4 million through sniping the First Lady-themed memecoin.

According to Bubblemaps analysts, the address used for it is allegedly associated with other successful sniping operations. The 0xcEaE address was used to withdraw \$2.4 million after MELANIA sniping and distribute it between the Avalanche and Arbitrum addresses. The same address is associated with \$LIBRA token sniping. On top of that, Bubblemaps analysts associate involved addresses with multiple pump-and-dump operations.

\$MELANIA vs \$TRUMP

The FT report emphasizes that the story of the MELANIA token is different from the story of Official Trump. The latter token was launched by a different team and grossed \$350 million through fees and token sales.

The latest data from Chainalysis indicates that after the launch of the Official Trump memecoin, 58 wallets gained \$10 million in \$TRUMP each. The total profit amounted to \$1.1 billion. The same report reveals that around 764,000 wallets, holding mostly small amounts of \$TRUMP, lost money as a result of investment. The total number of wallets involved in the \$TRUMP investment is estimated at two million. Reportedly, 80% of the token's supply is controlled by the team behind the token.

Different price trajectories of these tokens differently affected the holdings belonging to the teams—holdings of the \$TRUMP team get bigger as the price enjoys occasional spikes. In contrast, the \$MELANIA price has been pretty low all the time since it dropped shortly after the launch. As of press time, \$MELANIA is traded at around 32 cents, 97% below its ATH, which was \$13.73 on the very first day on the market.

Conclusion

Solana tokens, launched by the Trumps not long before the inauguration, leave a bitter taste. Some see these memecoins as a convenient way to bribe top officials by foreign entities, while others believe these tokens were made for insider trading.

It's going to take years for the next administration to unravel all the laws this administration broke...This will be a bigger investigation than 1/6!

— Impeach Trump a 3rd Time! (@Christo12919382) May 7, 2025

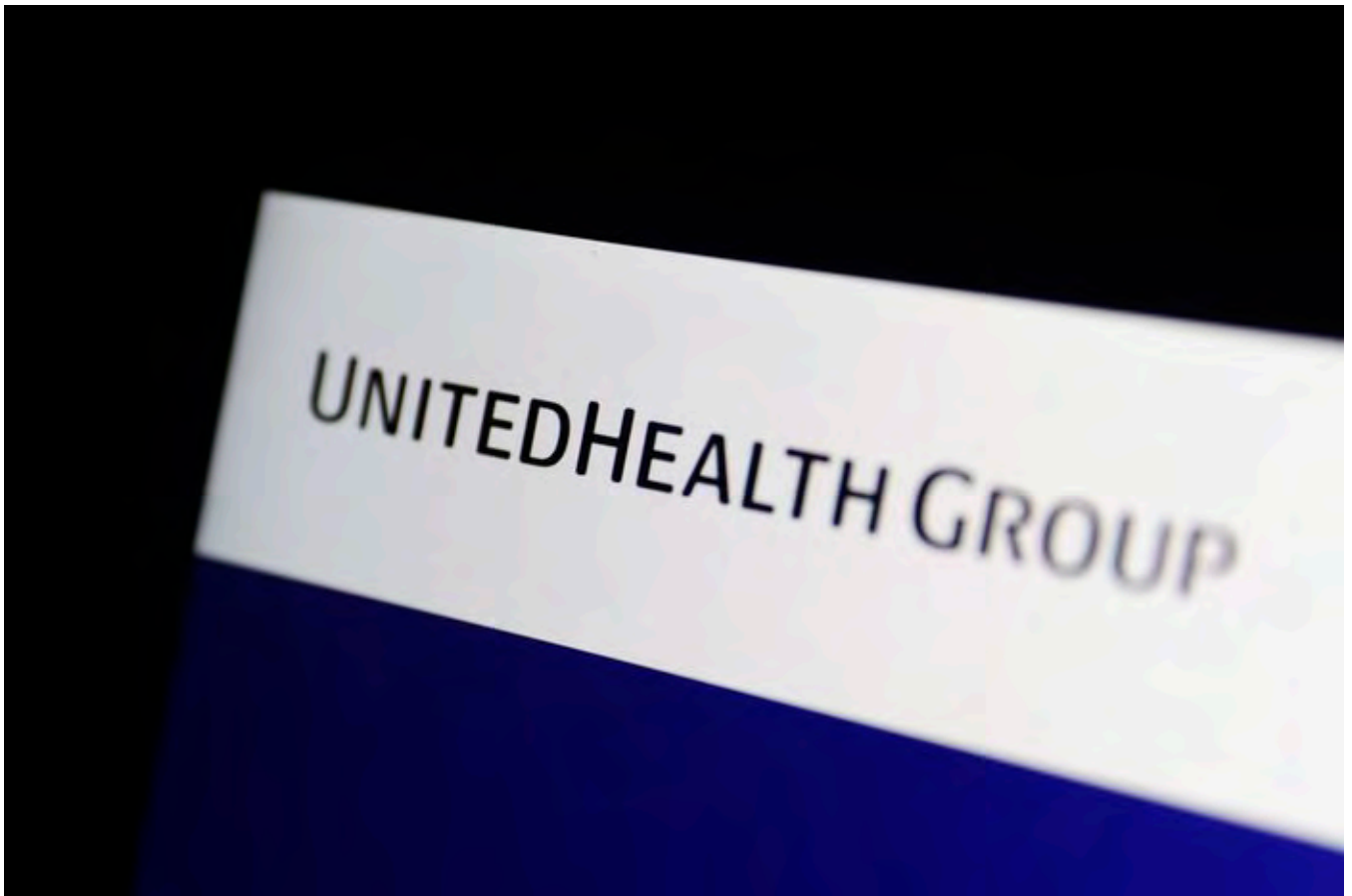
Both projects lack transparency, but it's clear that the identification of holders of these 24 wallets may be lucrative for Donald Trump's political enemies.

You might also like: Melania meme coin team dumps 9.99m tokens in 8 days, nets 170k SOL so far

UnitedHealth Hid Biz Impact Of CEO's Killing, Investor Says

By **Lauren Berg**

Law360 (May 7, 2025, 11:48 PM EDT) -- UnitedHealth Group concealed how public scrutiny of its coverage policies and backlash from the killing of its CEO was harming its business, leading to plummeting stock prices when the insurer lowered its 2025 earnings outlook, according to a proposed investor class action filed Wednesday in New York federal court.



UnitedHealth Group's April 17 revised earning outlook prompted the company's stock to fall \$130.93 per share, or about 22.4%, to close at \$454.11 per share, according to an investor's proposed class action. (Photo by Jakub Porzycki/NurPhoto via AP)

After UnitedHealth CEO Brian Thompson was shot on a New York City sidewalk in December, politicians, news outlets and the public increasingly criticized the insurer for its above-average denial of claims, but UnitedHealth omitted from its outlook guidance that it would need to adjust its business strategy, according to the **complaint** filed by investor Roberto Faller.

One day before Thompson was killed, UnitedHealth released guidance that included revenues of \$450 billion to \$455 billion, net earnings of \$28.15 to \$28.65 per share and adjusted net earnings of \$29.50 to \$30 per share. The company in January announced that it would stick with the previously issued outlook, the suit states.

That statement "was materially false and misleading at the time it was made because it omitted that the

company was no longer willing (as a result of heightened scrutiny against the company, as well as open hostility against the company from large swaths of the general public) to use the aggressive, anti-consumer tactics that it would need to achieve" those earnings, Faller said.

"As such, the company was deliberately reckless in doubling down on its previously issued guidance," he said.

Then on April 17, UnitedHealth "shocked the market" with revised guidance, stating that its net earning outlook would now be \$24.65 to \$25.15 per share and adjusted earnings of \$26 to \$26.50 per share, according to the complaint. Faller said the financial community took the guidance cut to mean there was a change in corporate strategy.

On the news, UnitedHealth's stock price fell \$130.93 per share, or about 22.4%, to close at \$454.11 per share on April 17, the suit states. The price then fell a further \$28.78 per share, or 6.3%, to close at \$425.33 per share on April 18, according to the suit.

"The magnitude of the April 17, 2025, drop was such that it caused the Dow Jones Industrial Average to fall by 1.3%," Faller said. "As a result of defendants' wrongful acts and omissions, and the precipitous decline in the market value of the company's securities, plaintiff and other class members have suffered significant losses and damages."

Faller wants to represent a nationwide class of potentially thousands of people who "purchased publicly traded UnitedHealth securities" between Dec. 3, 2024, and April 16, 2025.

The suit claims violations of the Securities Exchange Act and seeks damages, litigation costs and attorney fees.

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

Luigi Mangione, the 27-year-old accused of killing Thompson, was arrested five days after the shooting.

New York state prosecutors say Mangione shot Thompson in a targeted attack outside his midtown Manhattan hotel on Dec. 4, charging him in an 11-count indictment with murder and terrorism.

He also faces weapons charges in Pennsylvania based on what was found on him when he was arrested at a local McDonald's.

Mangione has pled not guilty.

Karen Friedman Agnifilo, a former veteran prosecutor in the Manhattan district attorney's office, has been **retained to represent** Mangione. In February, she argued that his constitutional rights are being violated in the state case as federal prosecutors are "hanging the death penalty over" his head on related charges.

Agnifilo **told the court** her client was being treated differently than other defendants, in part because he was being charged for "one event" in three jurisdictions — New York state court, Pennsylvania state court and the federal Southern District of New York.

She also highlighted that New York City Mayor Eric Adams and the chief of detectives had already sat down for interviews with HBO to discuss the arrest and their theories of the case, potentially tainting the jury pool.

Faller is represented by Phillip Kim and Laurence M. Rosen of The Rosen Law Firm PA.

Counsel information for UnitedHealth was not immediately available.

The case is Roberto Faller v. UnitedHealth Group Inc. et al., case number 1:25-cv-03799, in the U.S. District Court for the Southern District of New York.

--Additional reporting by Frank G. Runyeon. Editing by Michael Watanabe.



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Celebs And YouTubers Nix Most FTX Investor Claims, For Now

By **Rae Ann Varona**

Law360 (May 8, 2025, 12:07 AM EDT) -- A Florida federal judge Wednesday freed several high-profile celebrities and YouTubers from a majority of claims FTX investors lodged in a sprawling multidistrict litigation over the cryptocurrency exchange's collapse, slashing all but two of the investors' claims, including aiding and abetting.

U.S. District Judge K. Michael Moore dismissed a dozen of 14 claims filed against YouTubers and celebrities like NFL quarterback Tom Brady, Golden State Warriors point guard Stephen Curry, Dodgers hitter Shohei Ohtani and "Shark Tank" star Kevin O'Leary, who FTX investors alleged "vociferously" promoted the company.

Among the claims Judge Moore tossed include those alleging aiding and abetting FTX's fraud under Florida, California and Oklahoma state law, and aiding and abetting FTX's conversion of its funds under Florida and California law.

Judge Moore tossed the 12 claims without prejudice, leaving only separate claims under Florida and Oklahoma state law prohibiting the selling of unregistered securities for the time being.

The investors' latest complaint alleged that the celebrities and YouTube stars "should have known" of potential concerns regarding FTX selling unregistered crypto securities given their "substantial investment experience," "vast resources to obtain outside advisors" or "experience with sponsorship deals."

The complaint also cited an interview that O'Leary did with CNBC, in which he said that "we all look like idiots."

But "red flags" don't create actual knowledge, Judge Moore wrote in his Wednesday dismissal order.

He said that the red flags and access to financial advisers and resources may show that the personalities were on "notice" that some misconduct was taking place.

"However, allegations of negligence, recklessness, or even that defendants 'look like idiots,' are insufficient to establish that defendants had actual knowledge of FTX's fraud and conversion," Judge Moore wrote.

The sprawling multidistrict litigation stems from a **putative class action** filed in November 2022 that accuses FTX Trading Ltd. founder Sam Bankman-Fried and a slew of celebrity "brand ambassadors" of scheming to take advantage of unsophisticated investors across the United States who used mobile apps to make investments.

A most recent complaint filed in August 2023 asserted that some of the "biggest names in sports and entertainment" had either invested in FTX or been brand ambassadors for the company.

Those names also include Brady's ex-wife and top model Gisele Bündchen; Japanese professional tennis player Naomi Osaka; comedian, writer and "Seinfeld" co-creator Larry David; and NBA legend Shaquille O'Neal. O'Neal **settled** out of the suit in April.

"A number of them hyped FTX to their social media fans, driving retail consumer adoption of the FTX

platform," the suit alleged.

Bankman-Fried was sentenced to **25 years** in prison in March 2024 after being **convicted** in 2023 of fleecing \$11 billion from FTX customers, investors and lenders. His **appeal** of his conviction is currently **underway** in the Second Circuit.

The **celebrities** and YouTubers filed motions to dismiss in September 2023, asserting failure to state a claim.

Several of the celebrities subsequently filed supplements to their motion.

On Wednesday, Judge Moore also tossed consumer protection claims brought under Florida's Deceptive and Unfair Trade Practices Act, the California Unfair Competition law and the Oklahoma Consumer Protection Act.

The investors failed to meet the heightened pleading requirements for claims sounded in fraud, he said.

Judge Moore said that the investors had given several examples of promotions, advertisement and statements by and from the personalities as to FTX's safety, trustworthiness and compliance with regulations.

"However, in the extensive list of promotions, advertisements, and statements, plaintiffs have not provided any details related to defendants' alleged scheme to engage in knowingly false or deceptive practices, other than that defendants promoted the FTX products in exchange for a substantial compensation package," Judge Moore wrote.

He said that the investors provided "ample examples of the substance of the fraudulent statements, without any details as to the time, place and substance of defendants acts, 'when they occurred, and who engaged in them.'"

Judge Moore also tossed civil conspiracy claims that accuse the personalities of conspiring with FTX to induce investors into purchasing interests in the exchange, yield-bearing accounts or FTX tokens called FTT.

"Defendants cannot be found liable for civil conspiracy for merely receiving payments and other monetary benefits in exchange for their promotional content," Judge Moore wrote.

Adam M. Moskowitz of the Moskowitz Law Firm PLLC, an attorney for the investors, told Law360 on Wednesday that they are "all extremely appreciative to Judge Moore for his very well reasoned order and look forward to advancing this important litigation."

Counsel for the celebrities and YouTubers did not immediately respond to requests for comment on Wednesday evening.

The investors are represented by Adam M. Moskowitz and Joseph M. Kaye of the Moskowitz Law Firm PLLC and David Boies, Alex Boies and Brooke Alexander of Boies Schiller Flexner LLP.

The YouTubers are represented by Josef M. Mysorewala of Law Office Of Josef M. Mysorewala PLLC, Kimberly P. Stein of Flangas Law Group, Jose G. Sepulveda of Stearns Weaver Miller PA, Derek Adams of Potomac Law Group PLLC and Michael O. Cummings of Cummings McClorey Davis & Acho PC.

The celebrities are represented by Roberto Martínez, Stephanie A. Casey and Zachary Lipshultz of Colson Hicks Eidson PA, Andrew B. Clubok, Susan E. Engel, Brittany M.J. Record, Marvin S. Putnam, Jessica Stebbins Bina, Elizabeth A. Greenman and Michele D. Johnson of Latham & Watkins LLP, Matthew S. Kahn, Michael J. Kahn, Michael Dore and Jamila MacEbong of Gibson Dunn & Crutcher LLP, Edward Soto of Weil Gotshal & Manges LLP, Nathan Bull, Jason D. Strabo and Sarah P. Hogarth of McDermott Will & Emery LLP, Christopher S. Carver, Jason S. Oletsky and Katherine A. Johnson of Akerman LLP, Jeffrey Neiman, Jeffrey Marcus, Michael Pineiro and Brandon Floch of Marcus Neiman Rashbaum & Pineiro LLP and Andrew B. Brettler of Berk Brettler LLP.

The case is In Re: FTX Cryptocurrency Exchange Collapse Litigation, case number 1:23-md-03076, in the U.S. District Court for the Southern District of Florida.

--Additional reporting by Carolina Bolado, Pete Brush, Elliot Weld and Katryna Perera. Editing by Jay Jackson Jr.

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Walgreens Wants 'Far-Fetched' Shareholder Suit Tossed

By Celeste Bott

Law360 (May 7, 2025, 7:24 PM EDT) -- Walgreens contends that a proposed class action alleging it inflated share prices by concealing the lack of viability of its pharmacy division and primary clinic investment must be dismissed because it lacks factual allegations to back its claim that Walgreens made any misstatements to shareholders about its financial outlook, let alone with fraudulent intent.

Investor Rizwan Bhaila **filed a derivative suit** in July claiming Walgreens and its executives presented falsely optimistic projections of the pharmacy division's growth potential and cost execution before revealing in an earnings call that the segment was not truly equipped to handle the ongoing challenges in its industry.

Responding Monday to the shareholders' brief of opposition to its bid to dismiss the case, Walgreens said the complaint falls "well short" of the heightened standard for pleading securities fraud and accused the plaintiff of speaking "in sweeping generalities and assumptions rather than particularized facts."

The drugstore giant suggested the plaintiffs, rather than having viable fraud claims, merely disagree with its business strategy to expand into healthcare through its VillageMD investment. Walgreens Boots Alliance paid \$5.2 billion to **acquire a majority stake** in Chicago-based primary care provider VillageMD in 2021, with the goal of opening at least 1,000 primary care practices branded as Village Medical at Walgreens in more than 30 states by 2027.

"Plaintiffs press a far-fetched theory of fraud: that Walgreens knew VillageMD — which experienced quarter-over-quarter growth and reached over \$1.6 billion in sales — was a failure from the start of the investment, but nonetheless continued investing billions of dollars into the company and lied to investors about VillageMD's progress and performance," Walgreens said.

The suit's proposed class period begins Oct. 12, 2023, the day Walgreens issued an outlook for fiscal year 2024 expecting adjusted earnings per share of \$3.20 to \$3.50. The company told investors that it was adopting a "prudent approach" and executing actions to lower its cost base. The effects will "start to ramp up in the second quarter" of 2024, the defendants told investors, according to the suit.

Over the next several months, the defendants continued to tout Walgreens' "strong execution" of its pharmacy services, led by its vaccine portfolio, the complaint claims.

The truth began to emerge, the suit alleges, on June 27 when Walgreens announced lower-than-expected financial results for the third quarter. The defendants told investors that the current pharmacy model is "not sustainable" due to the continuation of worse-than-expected pharmacy margin headwinds from the impact of fluctuations in drug acquisition costs, inflation and lower overall market growth, among other things, according to the suit.

Walgreens lowered its 2024 adjusted earnings per share guidance to \$2.80 to \$2.95, the complaint said. The news resulted in Walgreens' stock price declining \$3.47, or about 22%, to close at \$12.19 per share on June 27, according to the complaint.

Walgreens argued Monday that many of the statements challenged by the investors are forward-looking statements, statements of opinion, or puffery, for which they aren't liable under federal securities laws.

"Plaintiffs claim defendants' cautionary language is inadequate because the warnings omitted that 'clinics were unopened, woefully understaffed, bereft of patients, and severely underperforming.' This argument mischaracterizes defendants' cautionary language and misstates the law," Walgreens said.

Walgreens added: "The challenged forward-looking statements were accompanied by cautionary language that warned investors about risks that could affect Walgreens' projections, including VillageMD."

The company also took issue with shareholders' allegations that it made misstatements about clinic openings when it decided in June 2022 to abandon the rollout of VillageMD clinics. The complaint fails to adequately allege that this decision ever occurred — much less that any defendant knew it had occurred, Walgreens said.

Actual data in Walgreens' SEC filings shows that Walgreens opened nearly a hundred new clinics after it supposedly "abandoned" the rollout, the company argued, but it also warned about risks related to VillageMD as early as August 2021.

As for the plaintiffs' arguments that statements touting VillageMD's growth potential and high growth trajectory were misleading because the clinics were actually underperforming, they can't dispute VillageMD consistently grew sales for seven consecutive quarters, Walgreens said.

Statements about the number and pace of clinic openings are not actionable, it added, because they said nothing about the progress of the healthcare strategy or clinic performance and stated only the number of clinics opened, which the investors concede was correct, the company said.

"Walgreens said nothing about the performance of any clinic, so it had no duty to disclose alleged performance problems," it argued.

And the shareholders don't meaningfully dispute that vague and optimistic statements about the company's performance, including that Walgreens' business strategy "is working" and that VillageMD's delivery model is "highly scalable" are inactionable puffery, according to Walgreens.

In addition to Walgreens, the suit's individual defendants include CEO Timothy C. Wentworth, Chief Financial Officer Manmohan Mahajan and Chief Pharmacy Officer Rick Gates.

Bhaila claims Walgreens and the individual defendants acted with scienter, or actual knowledge of wrongdoing or reckless disregard, and violated the Exchange Act. He claims the defendants' statements aren't covered by the safe harbor provisions of securities laws and seeks damages on behalf of the proposed class.

Counsel for Bhaila and a representative of Walgreens did not immediately respond to requests for comment Wednesday.

Bhaila is represented by Peter S. Lubin and Patrick D. Austermuehle of Lubin Austermuehle PC, Terrence Buehler of the Law Office of Terrence Buehler and Adam M. Apton, Gregory Potrepka and Shannon Hopkins of Levi & Korsinsky LLP.

Walgreens is represented by Brian M. Lutz, Colin B. Davis and Jessica Valenzuela of Gibson Dunn & Crutcher LLP and Molly K. McGinley and Paula Enid Litt of Honigman LLP.

The case is Bhaila v. Walgreens Boots Alliance Inc. et al., case number 1:24-cv-05907, in the U.S. District Court Northern District of Illinois, Eastern Division.

--Additional reporting by Sydney Price and Benjamin Horney. Editing by Amy French.



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Investors Fight J&J, Kenvue Bid To Nix IPO Fraud Suit

By **Emilie Ruscoe**

Law360 (May 7, 2025, 11:08 PM EDT) -- A New Jersey federal judge shouldn't reconsider his decision to sustain IPO fraud claims against pharmaceutical giant Johnson & Johnson and a former subsidiary, investors suing the companies said Wednesday by arguing that the judge was right to find that the companies should have disclosed a "serious challenge" to the effectiveness of a common medication ingredient in public filings.

In a **Wednesday opposition brief**, investors Joseph Ditta and David Gruthoff urged U.S. District Judge Zahid N. Quraishi to tell Johnson & Johnson, consumer health products business Kenvue Inc. and certain underwriter defendants that he won't rethink his decision to deny their bid to dismiss the consolidated proposed class action.

In the reconsideration bid, the defendants "do not identify any controlling decision or relevant fact that the Court overlooked in denying defendants' motion to dismiss," the investors told Judge Quraishi on Wednesday.

The latest version of the suit accuses the defendants of failing to disclose to prospective investors that Kenvue was facing a U.S. Food and Drug Administration regulatory proceeding through a meeting scheduled before the Nonprescription Drug Advisory Committee, or NDAC, that would be held just months after Kenvue raised \$4.2 billion by going public in an initial public offering in 2023.

The meeting led to an FDA vote that determined that the medication component phenylephrine, which can be found in many Kenvue products, is not an effective nasal decongestant when taken orally — a conclusion that stood in contrast to numerous previous representations about phenylephrine, including some purportedly made by the defendants.

In his March order denying the dismissal bid, Judge Quraishi said that the investors had plausibly alleged that as Kenvue prepared to go public in 2023, during which time J&J was a majority shareholder in the company, some statements Kenvue made could be misleading because they'd failed to disclose there was, in the words of the investors, a "serious challenge to phenylephrine's effectiveness."

Certain relevant "studies on [phenylephrine] were not just 'some fact[s] cutting the other way,' as defendants argue," Judge Quraishi said in March. "The court therefore finds that the amended complaint plausibly alleges that such omitted information would have been important to an investor's decision to purchase Kenvue stock especially because [phenylephrine] was a significant source of revenue for Kenvue."

In the April reconsideration bid, the defendants argued that Judge Quraishi should take the "exceptional" measure of reconsidering his dismissal denial — or alternatively, certify the order for an interlocutory appeal.

For one thing, the defendants cited a Third Circuit decision that they claimed supported a finding that the allegedly omitted information about phenylephrine was published by the FDA and was therefore available to reasonable investors.

The company defendants also argued that in related multidistrict litigation regarding phenylephrine, the court had found that it was not misleading under the Federal Food, Drug, and Cosmetics Act and FDA regulations to state that phenylephrine is "effective" as a "nasal decongestant."

The investors pushed back against those contentions Wednesday, describing the defendants' cited Third Circuit ruling as an unpublished decision that explicitly stated that it "does not constitute binding precedent."

It also cast skepticism on the defendants' claims about the MDL findings, contending that "the labeling requirements under the FDCA [cited in the MDL] are not identical with a company's disclosure obligations under the securities laws."

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

The investors are represented by Robert Prongay and Leanne Solish of Glancy Prongay & Murray LLP and James Cecchi, Donald Ecklund and Kevin Cooper of Carella Byrne Cecchi Brody & Agnello PC.

Kenvue and J&J are represented by Kristen Seeger, John Skakun, Christopher Lee and Takayuki Ono of Sidley Austin LLP and David Kott and Joseph Braunreuther of McCarter & English LLP.

The underwriters are represented by Isaac Ashkenazi, Barry Sher, Jennifer Conn and Zachary Zwillinger of Paul Hastings LLP.

The case is In Re Kenvue Inc. Securities Litigation, case number 3:23-cv-20998, in the U.S. District Court for the District of New Jersey.

--Editing by Michael Watanabe.

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Judge Certifies Class In Wheat Futures Manipulation Case

By **Katryna Perera**

Law360 (May 7, 2025, 10:34 PM EDT) -- An Illinois federal judge Wednesday certified a class of traders who held positions in certain wheat futures contracts in a class action accusing agribusiness The Andersons Inc. of manipulating its wheat futures and options price, saying, "most importantly, the efficiencies of adjudicating this matter as a class action are overwhelming."

U.S. District Judge Robert W. Gettleman issued an **order** appointing Lowey Dannenberg PC and Kirby McInerney LLP as co-class counsel and certifying a class that includes all individuals and entities who purchased a long position in Chicago Board of Trade soft red winter wheat December 2017 or March 2018 futures contracts.

The certified class also includes those who purchased long positions in CBOT call options on CBOT SRW wheat March 2018 futures contracts, or a short position in CBOT put options on CBOT SRW winter wheat March 2018 futures contracts, and subsequently liquidated the position through an offsetting market transaction at any point between Nov. 30 and Dec. 14, 2017.

In certifying the class, the judge found that it satisfied all the requirements, including numerosity, commonality and predominance, among the other factors.

According to the order, the court was presented with three proposed class representatives — Port 22, Michael Glass and Richard Dennis. Judge Gettleman appointed Port 22 and Dennis as class representatives but declined to appoint Glass, agreeing with the defendants that he presented "serious credibility problems."

The defendants argued that Glass could not serve as a class representative because CME Group Inc. fined him for spoof trading the March 2018 SRW wheat contract, according to the order.

The plaintiffs responded saying that although Glass reached a settlement with CME in 2019 over the alleged spoof trading, he still denies the claims, and they argued that credibility issues "do not bear on a named representative's ability to represent the class absent some indication that the named representative has an antagonistic interest to the class or does not have sufficient interest in the outcome of the case."

However, Judge Gettleman noted Wednesday that while Glass entered into the settlement without admitting or denying any of the claims, he also agreed to a statement that the Chicago Board of Trade Business Conduct Panel found that he violated CME rules.

"The court finds that the evidence here is indeed so severely undermining of Glass's credibility that a fact finder might reasonably focus on the spoof-trading allegations to the detriment of absent class members' claims," the order stated. "It is especially concerning that Glass's credibility is questionable 'on an issue that relates directly to a central part of the litigation.'"

The judge added that it is likely that some class members in the current action were harmed or injured by Glass' alleged conduct and while it is a separate issue from the injury at issue in the current case, Judge Gettleman found that the alleged conduct would create an antagonistic relationship between Glass and unnamed class members.

The suit, filed in 2020, accuses The Andersons and Cargill Inc., supposed competitors, of operating

multiple grain storage warehouses in Ohio and collaborating to manipulate prices of SRW wheat futures and options contracts on the Chicago Board of Trade.

According to the suit, the scheme began with the sale of large quantities of SRW wheat to major purchasers in October and November 2017 to suppress demand for physical SRW wheat.

Then, in late November 2017, the plaintiffs claim The Andersons registered for the delivery of two thousand certificates of CBOT December 2017 SRW wheat.

"This registration (falsely and intentionally, plaintiffs allege) signaled that The Andersons, Inc. would sell ten million bushels of physical SRW wheat to parties holding long positions in December 2017 SRW wheat futures," the order stated. "Consequently, December 2017 SRW wheat futures prices decreased and the spread between the December 2017 and March 2018 SRW wheat futures contracts widened."

The defendants then profited from the widening spread due to the positions they held and later collectively repurchased some of the earlier registered shipping certificates at decreased prices, according to the suit.

The plaintiffs said they transacted in December 2017 and March 2018 SRW wheat futures and lost money because of the decreased prices and widened spread caused by the scheme.

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

The class is represented by Vincent Briganti, Raymond P. Girnys, Noelle Forde and Charles Kopel of Lowey Dannenberg PC, and Anthony F. Fata, David E. Kovel, Karen M. Lerner and James A. Isacks of Kirby McInerney LLP.

The Andersons is represented by Ellen M. Wheeler, Thomas P. Hansfield, Kate E. Gehl and Craig Florence of Foley & Lardner LLP.

Cargill is represented by Kenneth M. Kliebard, Michael M. Philipp and Zachary M. Johns of Morgan Lewis & Bockius LLP.

The case is Dennis v. The Andersons Inc. et al., case number 1:20-cv-04090, in the U.S. District Court for the Northern District of Illinois.

--Editing by Kristen Becker.



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McMahon's Misconduct Docs Sought In WWE Merger Suit

By **Katryna Perera**

Law360 (May 7, 2025, 6:12 PM EDT) -- Shareholders seeking damages from World Wrestling Entertainment Inc.'s disputed \$21.4 billion merger with Ultimate Fighting Championship have urged a Delaware vice chancellor to force WWE's former CEO, Vince McMahon, to hand over documents regarding his alleged sexual misconduct and hush money payments, arguing they are central to the suit.

The shareholders filed a **motion** that was made public on Tuesday, saying McMahon has refused to produce any discovery materials related to the suit's sexual misconduct topics unless the discovery materials also expressly discuss the merger or "reflect discussions with 'decision-makers.'"

The shareholders argue McMahon's refusal efforts are improper because the sexual misconduct discovery requests are relevant to the suit since they will shed light on McMahon's motivations for pushing through the merger and allegedly steering the process to favor UFC's parent company, Endeavor Group, despite other bidders expressing interest with higher bids.

The suit claims McMahon was "highly motivated" to sell WWE to Endeavor, which is owned and controlled by his longtime friend, Ari Emanuel.

The complaint alleges McMahon believed Emanuel would be an ally and allow McMahon "to extract lucrative personal financial benefits, and ensure his continued employment at the post-merger company — all which would have been impossible to secure from any other transaction counterparty as a result of the sexual misconduct allegations, investigations, and hush money payments."

Therefore, discovery related to the alleged sexual misconduct is relevant because it will show McMahon's "state of mind" before the merger, including whether he viewed the fallout from the sexual misconduct allegations and ensuing investigation as "realistic threats to his employment at and control over WWE," the motion states.

"Because McMahon had been stripped of his Chairman and CEO positions when the first sexual misconduct allegations reached the board, plaintiffs are entitled to investigate whether 'past actions' of the WWE board made McMahon sufficiently 'concerned about loss of control' to force WWE into a tainted sale process that prioritized his interests," the motion states.

The shareholders add that they are not seeking to relitigate the sexual misconduct allegations or "assess the rigor of any investigation," but only obtain discovery that is tailored narrowly to the needs of the current action.

The motion also argues that by only providing sexual misconduct documents that also expressly relate to the merger, McMahon "ignores that the temporal relationship between the investigations and his initiation of the sale process renders documents related to his misconduct relevant, no matter what might also be referenced."

"For example, if a document shows that McMahon learned that information about his misconduct might make it to the board or public, and shortly thereafter he contacted Emanuel, the document is extremely significant even if it does not expressly reference any strategic transaction or review," the motion states.

"McMahon's proposed approach of deciding on a document-by-document basis whether any discovery material relates to his narrowed responsiveness definition is also impractical because it would result in a lack of uniformity, introduce unnecessary opportunity for gamesmanship, and likely exclude relevant information," the motion further states.

The deal at the heart of the suit was first announced in April 2023 and closed the following September. Under the agreement, existing WWE shareholders rolled all existing equity into TKO Group Holdings, which formed when the WWE merged with Endeavor.

Endeavor then stated it would own 51% of the combined entity, while WWE stockholders would own 49%. The deal combined two of the world's largest professional fighting sports and entertainment organizations.

McMahon is facing **another suit** in Connecticut federal court from a former WWE staffer who is accusing him of sex trafficking, assault and harassment.

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

The shareholders are represented by Kimberly A. Evans, Lindsay K. Faccenda, Irene R. Lax, Robert Erikson, Jason M. Leviton and Nathan Abelman of Block & Leviton LLP, Benjamin M. Potts, Jeroen van Kwawegen, Edward G. Timlin, James Janison and Rebecca Temkin of Bernstein Litowitz Berger & Grossmann LLP, Brian J. Robbins, Stephen J. Oddo and Richard N. Lozano of Robbins LLP and Richard A. Maniskas of RM Law PC.

McMahon is represented by Michael A. Pittenger, T. Brad Davey, Nicholas D. Mozal and Eric J. Nascone of Potter Anderson & Corroon LLP, and Sandra C. Goldstein, Stefan Atkinson and Haley S. Stern of Kirkland & Ellis LLP.

The case is *In re World Wrestling Entertainment Inc. Merger Litigation*, case number 2023-1166, in the Court of Chancery of the State of Delaware.

--Editing by Drashti Mehta.



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Del. Justices Deny Bid To Revive Carvana Insider Trading Suit

By **Bonnie Eslinger**

Law360 (May 7, 2025, 7:45 PM EDT) -- Delaware's Supreme Court rejected a bid by Carvana stockholders to revive insider trading claims against the father of the company's CEO, alleging the senior businessman controlled the online car retailer and used inside information when selling \$3.7 billion in shares.

In a one-sentence order, Delaware Supreme Court Justice Karen L. Valihura said the court considered the written brief and oral arguments from the parties and concluded that the lower court got it right, saying, "the same should be affirmed on the basis of and for the reasons assigned by the Court of Chancery" in its September 2024 ruling **tossing the case**.

Originally covering a dozen directors and officers and Ernest Garcia, II, the father of Carvana founder Ernest Garcia, III, the derivative action asserted claims for alleged insider trading and legal compliance monitoring failures, a case that defense attorneys had branded "repackaged" from past or pending federal securities actions.

The suit, led by stockholder Rhonda Schertz, accused the Arizona-headquartered Carvana of operating with such an "insatiable hunger for growth" that it bought questionable used cars without assuring they had necessary paperwork, then sold the vehicles to customers without properly transferring the titles, making them illegal to drive.

As Carvana's sales grew and its stock price climbed, insiders with knowledge of the growing title and registration problems dumped billions worth of shares before state agencies started cracking down, triggering Carvana's stock to plummet from a high of \$376 to just \$15 per share as of June 6, 2023, the complaint said.

Last month, counsel for the plaintiffs urged the state's justices on Wednesday to **revive the claims** against Garcia Sr. for insider trading.

In their written brief to the state's high court, the lawyer for the shareholders said Garcia Senior was familiar with the used-car sales business.

"He has over three decades of experience in the business; co-founded Carvana; installed a Board that is beholden to him; installed his son as the Company's President and CEO; controls 84% of Carvana's stock voting power; and received over \$1.5 billion from related party transactions with Carvana," the opening brief states.

During oral arguments on April 16, Schertz's lawyer, Daniel Tepper of Levi & Korsinsky LLP, said the lower court judge incorrectly found that claims against Garcia Sr. lacked the "particularity" required to survive dismissal arguments.

Tepper said the suit and allegation rested on a "fair notice" standard for complaints, requiring only limited information regarding the claims to the person named to avoid dismissal, rather than the kind of detail that might be needed for a derivative action. Derivative suits require a party filing suit to show that it would have been futile to first make a direct demand on a board to pursue claims.

Justice Valihura queried Tepper on the appropriate standard for insider trading, asking, "In other words, is it enough to require the inference that Mr. Garcia must have known about these events,

given the position that you allege in your complaint?"

Tepper said that under the claim made in the suit, "we are not required to plead that Mr. Garcia must have known. We need to plead that information was knowable and Mr. Garcia was in a position to know it."

Justice Abigail M. LeGrow asked Tepper if it was enough that Garcia Sr., whose son, Ernest Garcia Jr., is president and CEO, has a relationship with someone who might have knowledge of the alleged breaches.

Tepper said Garcia Sr. holds the bulk of Carvana's voting stock and runs it for the family's benefit, with hundreds of millions in related party transactions occurring each year. Garcia Sr., however, is banned for life from serving as a director, officer or employee of any New York Stock Exchange company after pleading guilty to fraud in 1992 in connection with the savings and loan crisis, the lawyer underscored.

Andrew Clubok of Latham & Watkins LLP, counsel to Garcia Sr. and Carvana, told the justices that even under "plaintiff-friendly standards," an insider trading claim has to include "sufficient facts that a fiduciary possessed and traded on material, nonpublic information. In this case, there are "no nonconclusory allegations" that Garcia Sr. did so, Clubok said.

"Before he made the four trading decisions he allegedly made, there was no allegation at all that he received anything about titling or registrations, let alone that it was material, nonpublic information," Clubok told the justices.

Justice N. Christopher Griffiths asked Tepper what material, nonpublic information Garcia Sr. traded on, and what else the stockholders point to in support of "scienter," or awareness of wrongdoing, beyond the size of Garcia Sr.'s trades.

Tepper said a professor who had studied the issue "concluded it's unprecedented, unheard of, for a plan this size to be amended so frequently in so short a period of time." He also noted Garcia Sr.'s purchase of more than 500,000 shares of Carvana at a secondary offering "at below-market prices, below everyone else, and then sold at record prices."

Garcia Sr. sold more than \$1.28 billion worth of Carvana stock after amending his 10b5-1 trading plan — an agreement that allows corporate insiders to sell company stock at set prices over particular periods, Tepper said. The plan was changed twice in six months to increase Garcia Sr.'s daily sales limit, with an additional \$478 million worth of Carvana stock sold outside his plan, the plaintiff's lawyer said.

Clubok, one of Garcia Sr. and Carvana's attorneys, said, "Today's decision by the Delaware Supreme Court affirms the well-reasoned Court of Chancery decision that found no 'reasonably conceivable' basis for the groundless claims that our clients have been forced to defend."

Counsel for Schertz declined to comment on the Delaware Supreme Court's decision.

Rhonda Schertz and the proposed class are represented by Stephen E. Jenkins and F. Troupe Mickler IV of Ashby & Geddes PA, Daniel Tepper and Gregory M. Nespole of Levi & Korsinsky LLP, and Brian J. Robbins and Kevin A. Seeley of Robbins LLP.

Carvana's officers and directors and the company are represented by David Ross, R. Garrett Rice and Benjamin M. Whitney of Ross Aronstam & Moritz LLP and Andrew Clubok, Susan E. Engel, Matthew J. Peters, Blake E. Stafford, Stephen T. Nasko and Jeff G. Hammel of Latham & Watkins LLP.

The case is Rhonda Schertz v. Ernest Garcia II et al., case number 446,2024, in the Supreme Court of the State of Delaware. The case under appeal, with the same caption, is 2023-0600, in the Court of Chancery of the State of Delaware.

--Additional reporting by Jeff Montgomery. Editing by Vaqas Asghar.



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Moelis Atty Says Chancery Ruling 'Handcuffed' Co.

By **Jeff Montgomery**

Law360 (May 7, 2025, 8:16 PM EDT) -- A Delaware Court of Chancery ruling that last year invalidated a decade-old stockholder agreement granting broad corporate powers to investment bank Moelis & Co.'s founder "handcuffed for no reason" directors of state-chartered corporations, an attorney for the company told Delaware's Supreme Court on Wednesday.

William Savitt of Wachtell Lipton Rosen & Katz made the remark during arguments for reversal of a decision already overturned by Delaware lawmakers in June 2024 with the passage of state corporation law amendments that eased restrictions on some previously conflicted corporate acts and limited some stockholder document inspection rights.

Legislators overwhelmingly approved the board- and management-friendly overhaul while an appeal was still pending on the Chancery Court's Moelis & Co. decision, however, leaving the state's high court in a rare position, with friend-of-the-court briefs filed on both sides.

"We're in the odd window of having to decide a case, or a handful of cases, based on a legislatively overridden statute," Justice Karen L. Valihura told Thomas Curry of Saxena White LLP, counsel to Moelis stockholders who challenged Moelis' bylaws that gave founder Ken Moelis broad deference.

In a 133-page decision in February 2024, Vice Chancellor J. Travis Laster granted summary judgment in favor of motions to strike down rules obliging the company to obtain Moelis' prior written consent before taking 18 different categories of action. The court later also approved a \$6 million fee for attorneys who represented stockholders in the Moelis case, led by West Palm Beach Firefighters Pension Fund — an amount that attorneys for Moelis branded as unjustified.

Spurred by Moelis, state lawmakers approved a bill in June 2024 allowing boards to cede some governance rights to chosen stockholders. Nine months later, they approved even broader rights for boards easing restrictions on some conflicted corporate acts.

"The original version of that legislation had no limits. As a compromise, during the legislative process, what they did was put in language that essentially does not allow for constraints that would be contrary to public policy," Curry told the justices, leaving "significant" open questions that might warrant additional briefing before a ruling on Wednesday's arguments.

Savitt argued in part that Moelis' stockholder agreement went unchallenged far beyond the ordinary three-year window for challenges, with the appeal time-barred as a result. The company also argued that a \$6 million fee awarded to attorneys for the stockholders was unwarranted.

"Ten years went by. No objection from anyone having anything to do with this agreement," Savitt said, observing that the complaint "does not even identify, does not even claim any harm" to a stockholder, but instead argued that the law is "facially invalid" because it conflicts with the Delaware General Corporation Law.

Measures invalidated by the Moelis decision included Kenneth Moelis' right to designate a majority of the board's seats and to maintain the board at a static 11 members, as well as a right to replace a Moelis-chosen director with another Moelis director.

At issue in part, Savitt said, is a distinction between indefensibly "void" corporate actions always subject to challenge and "voidable" acts, within a company's authority but subject to challenge only if brought within a three-year "laches" deadlines.

"It is really our view that this is a case that needn't have been decided, that oughtn't have been decided," Savitt said, arguing that the stockholders sought to "overthrow a piece of the governance table 10 years afterward, when no one has complained. "There may be a day when this agreement is alleged to have interfered with a right," but "this lawsuit didn't need to come up at this time."

Justice Gary F. Traynor pressed Curry on "why, if this was such a striking agreement" between Moelis and the company's board, "wasn't this challenged seven or eight years ago."

Curry pointed to Delaware corporate law tradition of private enforcement within the DGCL's framework.

"There's not a government enforcement agency that looks at any of these things," Curry said. "What you have is a relatively small, private stockholder bar, and that's really what investors depend upon."

For average and even sophisticated investors, "I think the general assumption is: 'I guess they can do this,'" Curry said, making challenges less likely.

Fourteen law professors joined in a friend-of-the-court brief supporting the stockholder challenge, arguing in part that an amicus brief for the company sought an "advisory opinion that would radically redefine Delaware's ripeness doctrine and largely foreclose the Court of Chancery from playing its historical role in interpreting and enforcing Delaware law."

The brief said the amicus brief filed for the Moelis side, "would have Delaware shut down meritorious stockholder lawsuits, insulating companies and their advisors from judicial scrutiny, even when they get Delaware law wrong. This is bad law and worse policy."

Four law professors on the company's side argued that the case never should have gone forward, saying, "The stockholder agreement was not alleged to have ever blocked board-desired action or have caused the stockholders any harm. There was no justiciable case for the trial court to decide."

In their amicus brief, the company-side professors also argued that given the state legislature's recent DGCL amendments, the best path would be to reverse the Chancery Court's decision based on a finding that the dispute was not yet ripe for consideration.

The justices said they would take the arguments under advisement.

Moelis & Co. is represented by John P. DiTomo and Miranda Gilbert of Morris Nichols Arsht & Tunnell LLP and William Savitt, Anitha Reddy, Won S. Shin and Daniel B. Listwa of Wachtell Lipton Rosen & Katz.

West Palm Beach Firefighters Pension Fund and the class are represented by Thomas Curry, David L. Wales, Joshua Nelson and Adam D. Warden of Saxena White PA.

Legal academics who submitted a brief on behalf of stockholder West Palm Beach Firefighters Pension Fund are represented by Ned Weinberger and Mark D. Richardson of Labaton Keller Sucharow LLP, Lori Marks-Esterman and Jacqueline Y. Ma of Olshan Frome & Wolosky LLP and Joel Fleming and Amanda Crawford of Equity Litigation Group LLP.

Legal academics who submitted a brief on behalf of Moelis & Co. are represented by Raymond J. DiCamillo and Robert B. Greco of Richards Layton & Finger PA.

The Delaware Supreme Court case is Moelis & Company v. West Palm Beach Firefighters Pension Fund, case number 340,2024.

The Court of Chancery case under appeal is case number 2023-0309 in the Court of Chancery of the State of Delaware.

--Editing by Kelly Duncan.



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AWOL Plaintiff Dropped From Apple, Amazon Antitrust Case

By **Rachel Riley**

Law360 (May 7, 2025, 4:54 PM EDT) -- A Washington federal judge has ousted the lead plaintiff in a proposed antitrust class action against Apple and Amazon, after deciding last month to sanction the firm bringing the case for failing to tell the court the client had abandoned the case.

U.S. District Judge Kymberly K. Evanson permanently dismissed Steven Floyd from the putative class action in a Tuesday order, leaving the case in the hands of other named consumers and proposed class counsel Hagens Berman Sobol Shapiro LLP. The judge noted that Floyd never responded to a previous order imposing a May 2 deadline for him to tell the court why his claims should not be thrown out with prejudice.

Judge Evanson **sanctioned** the firm last month for misrepresenting to the court that Floyd wished to continue with the case, even though he had been clear with his attorneys about wanting to leave the suit. In her April 10 order, the judge cleared the way for Apple and Amazon to seek legal fees in connection with the underlying discovery and sanctions motions.

In a motion filed Monday, Apple and Amazon requested more than \$200,000 in legal fees for the time spent resolving "issues caused by the plaintiffs' counsel's conduct in connection with the withdrawal of plaintiff Steven Floyd as class representative."

Floyd was the sole plaintiff when the putative class action was **first filed** in 2022, accusing the companies of illegally restricting competition by forging a pact that eliminated third-party Apple resellers on Amazon's platforms. The case challenges a 2018 deal under which Amazon allows only Apple-approved third-party vendors to sell iPhones and iPads on its online marketplace. The companies **have argued** their "Global Tenets Agreement" is meant to protect consumers from falling prey to counterfeit electronics sellers and not stifle competition.

But Floyd's involvement in the case has been in question for more than a year, since he first ghosted his attorneys in early 2024. Judge Evanson **agreed last May** to let Hagens Berman file an amended complaint naming new consumer plaintiffs Jolene Furdek and Jonathan Ryan, while signaling she would consider dismissing Floyd's claims after reviewing his communications with the firm.

Hagens Berman has maintained that it was transparent with the court about Floyd's unresponsiveness, while still wanting to provide him with a chance to rejoin the litigation in the future if he wished. The firm formally requested to withdraw as Floyd's counsel in the case in an Oct. 4 motion.

Apple and Amazon, meanwhile, have countered that Floyd was not an appropriate plaintiff for the case in the first place and was used as a "placeholder" to prolong the case. The companies cite evidence that Floyd purchased iPhones from multiple cellular carriers, even after his suit was filed, undermining his core allegations that Apple and Amazon's pact illegally monopolizes smartphone and tablet sales.

After reviewing emails and other communications between Hagens Berman and Floyd, Judge Evanson concluded in her April 10 order that the plaintiffs' counsel "failed to candidly and/or accurately describe their client's intentions to defendants or the court," prolonging the dispute and wasting the court's time.

While Floyd had briefly reengaged with his attorneys after initially disappearing in January 2024, he had been forthright with his counsel about wanting to exit the suit to avoid discovery obligations, the judge noted.

The parties did not immediately respond to requests for comment on Wednesday.

The customers are represented by Steve W. Berman, Theodore Wojcik, Meredith Simons, Ben Harrington and Benjamin J. Siegel of Hagens Berman Sobol Shapiro LLP.

Amazon is represented by John Goldmark and MaryAnn Almeida of Davis Wright Tremaine LLP, Jonathan E. Nuechterlein and Benjamin M. Mundel of Sidley Austin LLP, and Jon Dugan of Redgrave LLP.

Apple is represented by Mark S. Parris of Orrick Herrington & Sutcliffe LLP, Mark A. Perry, Brian G. Liegel and Morgan MacBride of Weil Gotshal & Manges LLP, and Anna T. Pletcher, Benjamin Bradshaw and Sergei Zaslavsky of O'Melveny & Myers LLP.

The case is Floyd et al. v. Amazon.com Inc. et al., case number 2:22-cv-01599, in the U.S. District Court for the Western District of Washington.

--Additional reporting by Ryan Boysen. Editing by Robert Rudinger.

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Fla. City Residents' Suit Over Corroded Water Pipes Revived

By **David Minsky**

Law360 (May 7, 2025, 11:48 PM EDT) -- A Florida state appellate court on Wednesday reinstated a proposed class action alleging negligence against the city of Miramar and a consultant over improperly treated tap water that led to damaged pipes in homes, saying the complaint sufficiently claimed the city assumed a duty to make sure water wasn't corrosive.

A three-judge Fourth District Court of Appeal panel issued a **per curiam opinion**, reversing dismissal of residents' claims alleging negligence against Miramar and consultant Kimley-Horn & Associates Inc. and remanding the case to the Seventeenth Judicial Circuit.

Additionally, the panel reversed the dismissal of a professional malpractice claim against Kimley-Horn, but it affirmed the dismissal of a negligent misrepresentation claim against the consultant, saying the residents "insufficiently alleged justifiable reliance on material misrepresentations." The panel also affirmed the dismissal of breach of implied warranty and strict liability claims against Miramar.

"We do not express any opinion on whether plaintiffs are likely to prevail at further stages of this litigation," the panel said. "Accordingly, we affirm in part and reverse in part the trial court's orders dismissing plaintiffs' complaint with prejudice and remand for further proceedings."

In 2023, a proposed class of more than 1,000 residents of Miramar sued the city and the consultant in Broward County, Florida, state court. The residents claimed that from 2016 to 2022, the city failed to add sufficient minerals back to the water after those minerals are removed through reverse osmosis and nanofiltration at the West Water Treatment Plant. The minerals, most notably calcium, are necessary for creating a coating inside copper pipes to prevent corrosion, the residents said.

The lack of minerals and corrosion inhibitor removed the coating inside the pipes and ultimately leading to pin-sized holes that caused leaks in the residents' homes in the area serviced by the water plant, according to the suit.

Additionally, in 2016, residents alleged the city had the water tested by Kimley-Horn, which recommended the corrosion inhibitor but didn't recommend the addition of calcium.

"The corrosive mechanism caused by the water from the WWTP is autocatalytic (continuously self-perpetuating) in nature and will penetrate at an accelerated rate once established," the residents said in their **amended complaint**. "Thus, even if the corrosion protection mechanisms (water chemistry) are improved, and passive layers are re-established, the pits will continue progressing, and leaks will form. There is no option, therefore, but to replace the entire copper piping system in the plaintiffs' homes and the class members' properties within the class area."

The lower court cited several reasons for dismissing the plaintiffs' lawsuit, including that they "failed to plead ultimate facts demonstrating that consultant intended to supply information to them for their benefit and guidance, or knew that the city intended to do so, or that they detrimentally relied upon consultant's advice," the panel noted Wednesday.

Citing the "undertaker's doctrine," the panel said Miramar could be held liable if the plaintiffs' are able to prove the city "negligently maintained, controlled, or operated the water treatment system."

According to the opinion, the undertaker's doctrine was spelled out in the Florida Supreme Court's 2003 ruling in [Clay Electric Cooperative Inc. v. Johnson](#) , which held that "whenever one undertakes to provide a service to others, whether one does so gratuitously or by contract, the individual who undertakes to provide the service — i.e., the 'undertaker' — thereby assumes a duty to act carefully and to not put others at an undue risk of harm."

The panel also said the plaintiffs sufficiently alleged a professional malpractice claim against Kimley-Horn, ruling the consultant "provided 'professional planning and design engineering consulting services'" and that the consultant's alleged breach of duty "proximately caused their damages because the corrosive water, for which consultant should have adequately advised the city to remediate, damaged plaintiffs' water pipes."

Leslie Kroeger of Cohen Milstein Sellers & Toll PLLC, representing the residents, said in a prepared statement emailed to Law360 on Wednesday that the panel's ruling "represents significant progress for Miramar residents who have suffered substantial plumbing and property damage."

"Many homeowners faced expenses in the tens of thousands of dollars, with some forced to completely re-pipe their homes," Kroeger said. "They shouldn't bear the financial burden of the city's failure to properly treat their water supply."

Reached by email on Wednesday, Kroeger told Law360 she expects the case to be re-assigned to another judge in the lower court's complex division and proceed to a status conference to determine a case schedule and possible trial date.

Michael Hanzman of Bilzin Sumberg Baena Price & Axelrod LLP, representing the consultant, told Law360 in an emailed statement on Wednesday that the panel "departed from well settled and uniform precedent" holding that professionals don't owe a duty of care to nonclients absent certain circumstances, such as "when the professional knows and intends that its work product will be relied upon by the nonclient, and the nonclient in fact relies upon it."

The precedent includes professionals such as engineers, attorneys and accountants, according to Hanzman.

"None of those circumstance were, or could have been, pled here, as the trial court properly found," Hanzman said. "We feel strongly that Kimley-Horn owed a duty of care only to its client, the city of Miramar, and we intend to seek rehearing and/or rehearing en banc, as this decision, if permitted to stand, will dramatically expand the scope of professional liability by exposing professionals to claims by nonclients who they never dealt with or assumed any obligation toward."

Representatives for Miramar did not immediately respond to emailed requests for comment on Wednesday.

Judges Mark W. Klingensmith, Martha C. Warner and Alan O. Forst sat on the panel for the Fourth District Court of Appeal.

The residents are represented by Jeffrey V. Mansell and Bard D. Rockenbach of Burlington & Rockenbach PA, Leslie M. Kroeger and Diana L. Martin of Cohen Milstein Sellers & Toll PLLC, and J. Eric Romano of Romano Law Group.

Miramar is represented by Norman C. Powell and Jordan Gary of Austin Pamies Norris Weeks Powell PLLC.

Kimley-Horn & Associates Inc. is represented by Michael A. Hanzman, Mitchell E. Widom and Kayla M. Hernandez of Bilzin Sumberg Baena Price & Axelrod LLP.

The case is Enrique R. Antezana et al. v. Kimley-Horn & Associates Inc. and City of Miramar, case number 2024-0486, in the Fourth District Court of Appeal of the State of Florida.

The lower court case is Enrique R. Antezana et al. v. Kimley-Horn & Associates Inc. and City of Miramar, case number CACE23012261, in the Seventeenth Judicial Circuit Court of the State of Florida.



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Upstart Says SEC Has Ended Probe Into AI, Loan Disclosures

By **Aislinn Keely**

Law360 (May 7, 2025, 8:36 PM EDT) -- The U.S. Securities and Exchange Commission has closed an investigation into online lender Upstart's disclosures around the use of artificial intelligence for underwriting and loans, according to the firm's latest agency filing.

Upstart Holdings Inc. said in a Tuesday 10-Q that the SEC notified the firm on March 10 that it was closing its investigation without any enforcement action. The inquiry dates back to a November 2023 SEC subpoena for documents "regarding our disclosures, including the use of our AI models and loans, among other things," the filing said.

"We cooperated with the SEC in its investigation and, on March 10, 2025, the SEC notified the Company that it was closing the investigation and would not pursue an enforcement action against the Company," said the filing.

Upstart and the SEC did not immediately respond to a request for comment Wednesday.

Upstart is a consumer lending platform that uses AI to underwrite personal loans, which the firm claims in its 10-Q widens access to "affordable and frictionless credit." According to public statements from the firm, more than 90% of loans on its platform are fully automated with no human intervention by Upstart.

The firm's claims around its use of AI has drawn consumer suits, including a consolidated **derivative shareholder suit** that alleged the company made false statements about the capabilities of its artificial intelligence underwriting model. That case continues to play out in Ohio federal court, most recently with an April 2024 amended complaint.

Similar derivative shareholder suits have been filed in other jurisdictions, three of which have also been consolidated and stayed for the time being. The 10-Q noted that the derivative suits remain at a preliminary stage.

The SEC under previous chair Gary Gensler **warned** companies it would scrutinize so-called AI washing, or instances where companies may exaggerate their use of or the capabilities of their AI models. Over the course of 2024, the SEC **announced** multiple settlements and suits over firms' statements around their use of AI.

--Additional reporting by Katryna Perera. Editing by Michael Watanabe.

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