Class Action

May 9, 2025, 9:26 AM PDT

Compass Sued Over 62% Stock Plunge After Lugano Accounting News

Compass Diversified Holdings overstated its financials before revealing it needed to restate 2024 results while it probes its luxury jewelry subsidiary's accounting, said an investor's proposed class action filed Friday.

Share prices slid 8% after hours May 7 and continued to plunge in early trading hours Thursday, the day after the holding company said subsidiary Lugano Holdings Inc.'s CEO resigned, per the complaint filed in the US District Court for the Central District of California.

Share prices had dropped 62% by Thursday—the stock's steepest single day slide on record, according to Bloomberg data.

The case is Matthews v. Compass Grp. Diversified Holdings, LLC. , C.D. Cal., No. 8:25-cv-00981, complaint filed 5/9/25 .

To contact the reporter on this story: Gillian R. Brassil in Washington at gbrassil@bloombergindustry.com

To contact the editor responsible for this story: Carmen Castro-Pagán at ccastro-pagan@bloomberglaw.com

Class Action

May 9, 2025, 8:18 AM PDT

Digimarc Investor Sues After 2024 Revenue Dip, Record Stock Drop

- **COURT**: D. Or.
- **TRACK DOCKET**: No. 3:25-cv-00779 (Bloomberg Law subscription)

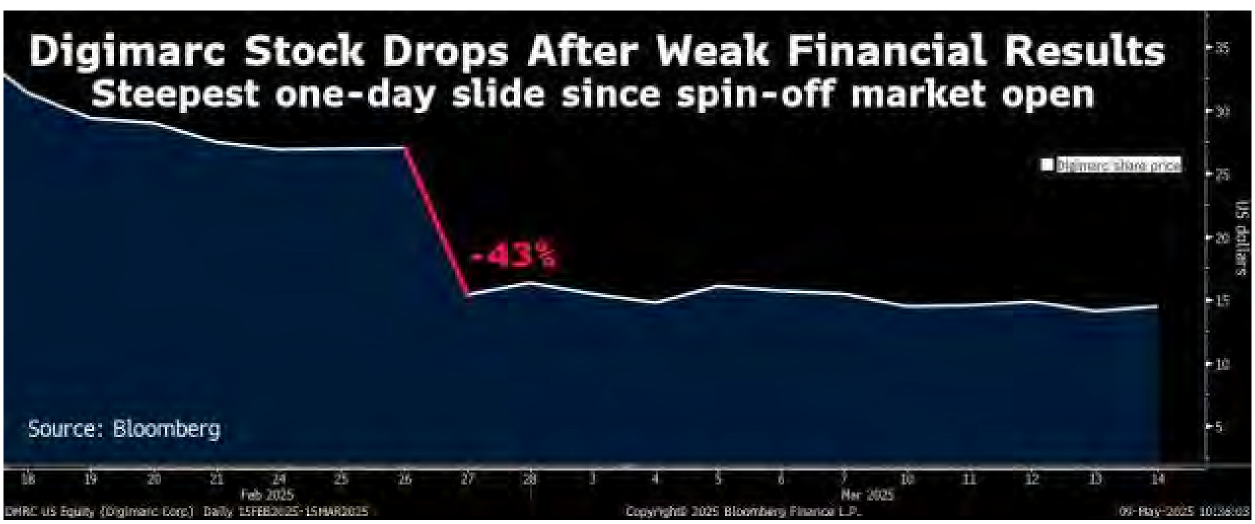
Digimarc Corp. hid from investors it lost a major contract in 2024 that dinged its financial results before a record stock drop, a proposed class action said.

Share prices plummeted more than 43% Feb. 27, the day after the digital watermarking company said annual recurring revenue fell to $20 million in 2024 compared to $22.3 million the year prior, an investor told the US District Court for the District of Oregon Thursday.

It was the stock's steepest single-day fall since it started trading as a spin-off from a predecessor Digimarc company in October 2008, according to data compiled by Bloomberg.

Digimarc's press release also said subscription revenue for the fourth fiscal quarter of 2024 fell to $5.0 million compared to $5.6 million in the fourth quarter of 2023. These decreases came from a commercial contract expiring in June, Digimarc said.

But in fiscal statements issued before then in 2024, Digimarc said revenue was offset by the "delayed timing in the anticipated renewal of a commercial contract," according to investor Frederick Ullom's complaint. Digimarc misled investors by not disclosing the contract, and related revenue, was at risk, Ullom said.



The proposed class would include those who got Digimarc stock from May 3, 2024—when the company shared 2024 first quarter results—through Feb. 26, 2025.

The Schall Law Firm and Stoll Stoll Berne Lokting & Shlachter PC represent Ullom. He seeks damages, among other relief, for alleged Securities Exchange Act of 1934 violations by the company, CEO Riley McCormack, and CFO Charles Beck.

Digimarc didn’t immediately respond to an email seeking comment.

The case is Ullom v. Digimarc Corp. , D. Or., No. 3:25-cv-00779, complaint filed 5/8/25 .

To contact the reporter on this story: Gillian R. Brassil in Washington at gbrassil@bloombergindustry.com

To contact the editor responsible for this story: Carmen Castro-Pagán at ccastro-pagan@bloomberglaw.com

Securities Law News

May 8, 2025, 12:20 PM PDT

AMC's APE Stock Conversion Upheld Once More by Delaware Court

- **AMC's meme stock base opposed the 2023 APE stock conversion**
- **Preferred shareholder said anti-dilution provisions were violated**

The settlement that enabled AMC Entertainment Holdings Inc. to proceed with its 2023 APE stock conversion has withstood another challenge, this one from aggrieved preferred shareholder.

The Delaware Supreme Court on Thursday rejected the shareholder's arguments that the movie theater chain violated anti-dilution provisions with a distribution exclusively to common shareholders.

The high court didn't elaborate on its decision to uphold an Oct. 2 ruling from the Delaware Chancery Court. Justice N. Christopher Griffiths signed the order.

The high court last year affirmed a settlement allowing AMC to proceed with the August 2023 stock conversion. That dispute stemmed from AMC Preferred Equity units, or APEs, which AMC created in 2022 to get around a share limit it couldn't raise without approval from its retail investor base.

The preferred shareholder, Michael Simons, filed his lawsuit just after the settlement's approval in Chancery Court, seeking to declare the deal invalid. He focused his appeal on the wording of the anti-dilution provisions and the date of the conversion. The reverse stock split and conversion took place Aug. 25, 2023, with the settlement paid out three days later in the form of common stock.

AMC argued that reversing the Chancery Court's rejection of Simons' challenge to the settlement would result in diluting the common stock distributed. The APE-holders "got exactly what they were entitled to" in the conversion, according to a bench ruling from Vice Chancellor Morgan T. Zurn.

The Supreme Court panel who heard Simons' arguments on April 30 included Chief Justice Collins J. Seitz Jr. and Justices Gary F. Traynor, along with Griffiths. A panel of three justices typically hears appeals, except in death penalty appeals or other cases where it determines en banc consideration is warranted.

AMC is represented by Weil Gotshal & Manges LLP and Richards Layton & Finger PA. The investor is represented by Berger Montague PC.

The case is Simons v. AMC Ent. Holdings Inc. , Del., No. 457,2024, order 5/8/25 .

Litigation

May 9, 2025, 10:38 AM PDT

Insurer Appeals AMC Investor Deal Ruling to Delaware High Court

Midvale Indemnity Co. is seeking to appeal a Delaware court's ruling opening the door to insurance coverage for AMC Entertainment Holdings Inc.'s settlement with investors.

The insurer filed its notice of appeal Thursday in the Delaware Supreme Court.

- The Delaware Superior Court's February ruling found that the AMC-issued shares paid out in the settlement constituted potentially covered losses under the insurance policy.
- Midvale is also appealing a final judgment against it for $5 million, which was agreed to by the parties to enable the appeal.
- AMC first sued its insurers in May 2023, seeking coverage for defense and settlement costs from the underlying investor suit over its plan to convert "APE" units to common stock. The entertainment giant dismissed claims against all other insurer defendants in the case in 2023 and 2024, including units of American International Group Inc., W. R. Berkley Corp., and AXA SA.

Phillips, McLaughlin & Hall PA and Wiley Rein LLP represent Midvale. Berger McDermott LLP and Cohen Ziffer Frenchman & McKenna LLP represent AMC.

The case is Midvale Indemnity Co. v. AMC Entertainment Holdings Inc. , Del., No. 206,2025, notice of appeal 5/8/25 .

To contact the reporter on this story: Olivia Alafriz in Washington at oalafriz@bloombergindustry.com

To contact the editor responsible for this story: Michael Smallberg at msmallberg@bloombergindustry.com

Securities Law News

May 8, 2025, 6:49 AM PDT; Updated: May 8, 2025, 2:14 PM PDT

Citigroup Faces Revived Investor Suit Over Fraud in Mexico (2)

- **Investors say they lost more than $1 billion in scheme**
- **Eleventh Circuit rules against bank, reverses lower court**

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 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."

Citigroup declined to comment.

"After nine long years, we're just tremendously gratified that we're going to be able to litigate the case on the merits," said Juan Morillo, a Quinn Emanuel Urquhart & Sullivan LLP partner representing the investors.

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 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.

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

The appellants are also represented by Homer Bonner Jacobs Ortiz. 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 .

(Updates with comment from investors' counsel in sixth paragraph. Previous version was corrected to remove references throughout to separate Citigroup subsidiary that was wound down.)

To contact the reporter on this story: Evan Weinberger in New York at eweinberger@bloombergindustry.com

To contact the editors responsible for this story: Michael Smallberg at msmallberg@bloombergindustry.com; Rob Tricchinelli at rtricchinelli@bloombergindustry.com

Securities Law News

May 8, 2025, 10:24 AM PDT; Updated: May 8, 2025, 12:46 PM PDT

FTX-Linked Celebrities, Influencers Sidestep Most Claims (1)

- **Crypto investors will have chance to re-plead intent**
- **Some defendants have already settled promotion claims**

Allegations against celebrities and YouTube influencers for promoting FTX before the exchange's collapse mostly fell short, a federal court ruled.

Tom Brady and other sports and entertainment figures and entities partly succeeded on their request for dismissal, but the investors suing them will be able to re-plead their claims. And the investors can proceed with securities claims under Florida and Oklahoma law, Judge K. Michael Moore said Wednesday for the US District Court for the Southern District of Florida.

The claims against the celebrities and influencers largely foundered on the requirement to show fraudulent intent or actual knowledge under securities and consumer protection laws, according to the opinion.

Moore said the defendants didn't fully address whether securities laws apply to the FTX exchange, FTX accounts, and the company's FTT token. He therefore declined to dismiss the Florida and Oklahoma securities claims on that basis.

NBA star-turned businessman Shaquille O'Neal has agreed to settle his claims, though the dollar amount isn't public yet and the court hasn't approved the deal, and football player William Trevor Lawrence announced a settlement in March 2024. They aren't among those addressed by the ruling, Moore said. Similarly, eight "Youtubers" were named in the complaint, but five have settled the claims against them, he said.

Investors who bought crypto assets through FTX also sued insiders at the now-bankrupt exchange, third-party advisers, and others in the proposed class actions now consolidated in multidistrict litigation before Moore. They're seeking damages of about $21 billion beyond the estimated $9.2 billion available in bankruptcy court, according to documents filed when the parties sought to streamline competing claims in the two courts.

Moore's opinion also addressed consumer protection claims against the celebrities and influencers. California, Florida, and Oklahoma consumer protection laws don't apply to securities—but since the defendants may raise the securities issue again in the future, it's premature to dismiss the claims for that reason, Moore said. Nevertheless, the plaintiffs' failure to show knowledge of fraudulent or deceptive practices bars the claims for now, he said.

The Moskowitz Law Firm and Boies Schiller Flexner LLP are lead counsel for the proposed class. Counsel for the defendants includes Latham & Watkins LLP, McDermott Will & Emery LLP, and Colson Hicks Eidson.

The case is In re FTX Cryptocurrency Exchange Collapse Litig. , S.D. Fla., No. 1:23-md-03076, 5/7/25 .

(Updated with additional context and material from opinion beginning in third paragraph.)

To contact the reporter on this story: Martina Barash in Washington at mbarash@bloomberglaw.com

To contact the editors responsible for this story: Drew Singer at dsinger@bloombergindustry.com; Naomi Jagoda at njagoda@bloombergindustry.com

Bloomberg Law

Request a Demo Login

Securities Law News
May 8, 2025, 2:48 PM PDT

InnovAge Investors Reach Settlement in Suit Over Elder Care IPO

InnovAge Holding Corp. investors have reached a settlement in their IPO-related lawsuit against the geriatric health care company, its underwriters, a private equity firm, and InnovAge board members, including former Florida Gov. Jeb Bush (R), according to a federal court filing.

The terms of the accord are still being finalized, the parties said in a notice Wednesday to the US District Court for the District of Colorado. The suit alleges false statements in registration documents for the health service company's initial public offering.

- A formal request for preliminary court approval, which would typically contain details about the dollar amount and other terms, is expected to be filed by June 2, according to the parties
- J.P. Morgan Securities LLC, Barclays Capital Inc., Goldman Sachs & Co. LLC, and Citigroup Global Markets Inc. are among the underwriters that are stuck in the suit after failing in a dismissal bid in January 2024
- The settlement announcement follows a recent ruling by Judge William J. Martinez keeping entities associated with private equity firm Welsh, Carson, Anderson & Stowe in the case on allegations that they can potentially be held liable for controlling the actions of InnovAge

Cohen Milstein Sellers & Toll PLLC is lead counsel for the investors. Sullivan & Cromwell LLP represents the WCAS entities, InnovAge, and other defendants. Additionally, Wilmer Cutler Pickering Hale and Dorr LLP represents InnovAge. Freshfields US LLP represents the underwriters.

The case is El Paso Firemen & Policemen's Pension Fund v. InnovAge Holding Corp. , D. Colo., No. 21-cv-2770, notice 5/7/25 .

To contact the reporter on this story: Martina Barash in Washington at mbarash@bloomberglaw.com

To contact the editor responsible for this story: Andrew Harris at aharris@bloomberglaw.com

Securities Law News

May 8, 2025, 5:52 AM PDT

Iron Mountain Workers in Forfeiture Suit Decry 401(k) Settlement

- **Proposed settlement would resolve suit over 401(k) plan fees**
- **Workers in separate suit seek carve-out for forfeiture claims**

A proposed $850,000 class settlement over Iron Mountain Inc.'s retirement plan fees is under fire from a group of workers who say the deal's broad release agreement improperly blocks their separate lawsuit over 401(k) forfeitures.

A group of Iron Mountain 401(k) plan participants led by Arnulfo Melendez on Wednesday filed an objection to aspects of the settlement, saying its release agreement would extinguish their claims accusing the company of wrongly using forfeited 401(k) money for its own benefit. This claim was never raised or litigated in the case led by Rodney Barnett, and it shouldn't be released in the *Barnett* case's settlement, Melendez said.

"The overbroad release language exposes the Proposed Settlement as unfair, unreasonable, and inadequate," Melendez said in an objection filed in the US District Court for the District of Massachusetts. He urged Judge George A. O'Toole Jr. to "carve out" his case's challenge to plan forfeitures from the proposed deal, which he called a "blatant attempt at an end-run around the well-pled and separate claims in the *Melendez* Action."

Barnett's year-old lawsuit accuses Iron Mountain of paying 401(k) recordkeeping fees well above what similar retirement plans paid. The parties announced an $850,000 class settlement in December 2024, and O'Toole agreed to preliminarily approve it.

Two months before the Barnett settlement was announced, Melendez filed a separate lawsuit challenging the 401(k) plan's fees and its use of forfeitures, which are the nonvested amounts workers give up when they leave the company after a short period. Instead of using this money to reduce the administrative expenses borne by workers, the company put more than $1.6 million of it toward the employer contributions it would otherwise be required to make to the plan, according to Melendez's complaint.

Retirement plan forfeitures have driven dozens of new lawsuits over the past two years, with mixed early results in court.

Seyfarth Shaw LLP represents Iron Mountain. Schneider Wallace Cottrell Konecky LLP, Walcheske & Luzi LLC, and Jonathan Feigenbaum of Boston represent the *Barnett* plaintiffs. Capozzi Adler PC and Jeffrey Hellman of New Haven, Conn., represent the *Melendez* plaintiffs.

The case is Barnett v. Iron Mountain Inc. , D. Mass., No. 1:24-cv-11239, objection 5/7/25 .

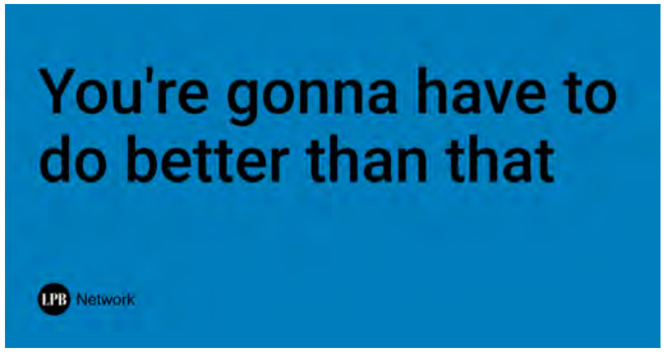
To contact the reporter on this story: Jacklyn Wille in Washington at jwille@bloombergindustry.com

To contact the editor responsible for this story: Drew Singer at dsinger@bloombergindustry.com

You’re gonna have to do better than that

businesslawprofessors.com/2025/05/youre-gonna-have-to-do-better-than-that

Ann Lipton May 9, 2025



Texas, Nevada, and Delaware have been competing to relieve corporate managers of liability for breach of fiduciary duty (the interesting question is not the race so much as why none feels sufficiently emboldened to say what they mean – shareholders can’t sue – they all feel it necessary to dress up their legislation in a lot of conditions so as to obscure the practical effect), but what if they could compete to eliminate other shareholder rights?

That’s the innovation currently being advanced by the Texas Legislature, with HB 4115 – just passed the House.

The legislation tackles the scourge of nonbinding shareholder proposals. Corporations that meet certain criteria can amend their governing documents – and I can’t tell whether that means bylaws, the certificate, or either, though I suspect the latter – to block shareholder proposals unless the shareholder holds the lesser of $1 million worth of securities or 3% of the securities entitled to vote, and solicits at least 67% of the corporation’s voting power (again, not sure if that means sending proxy materials or if 14a-8 inclusion in the corporation’s proxy materials is sufficient).

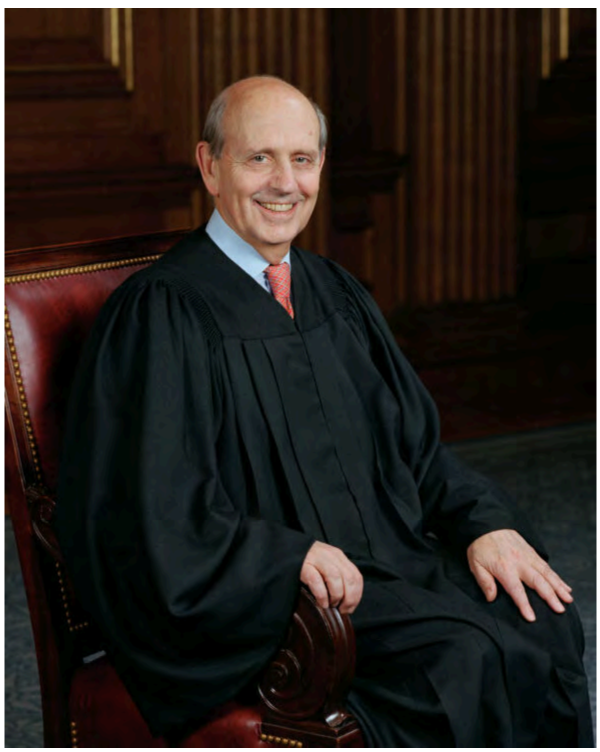
The conditions to take advantage of this provision are that the corporation must: (1) be listed on a national exchange *and* either (1) have its principal office in Texas *or* (2) be listed on an exchange that, as far as I can tell, meets criteria that likely only the Texas Stock Exchange can currently meet.

So the first thing to note is that, as far as I can tell, the current version of the bill – there were earlier ones – does not require the company to be *organized in Texas*. That sets up a delightful fight about the internal affairs doctrine and federal preemption. Federal Rule 14a-8 – which governs shareholder proposals for public companies – largely attempts to use proxy rules to replicate the rights that shareholders have *under state law*, meaning, under the law of the organizing state. Texas's bill would purport to limit shareholder rights *regardless* of the organizing state, so I'd assume Delaware would, you know, have something to say about that.

That said, the bill appears to encourage either Texas headquarters or Texas exchange listing. But if that's the goal, joke's on them because, as Mohsen Manesh convincingly argues, even a Delaware corporation can amend its charter – and possibly even its bylaws – to prohibit shareholder proposals on any terms it likes. Which means, if Professor Manesh is right, all of this is theater.

And another thing. On this week's *Shareholder Primacy* podcast, Mike Levin and I use Tesla's wildly … umm, optimistic … projections as a jumping off point to talk about the legal and practical implications of corporate predictions. Here at Apple, here at Spotify, and here at YouTube.

And finally … RIP Justice Souter. You were a wonderful person and an excellent jurist.



he'd laugh

In Delaware Chancery Court, Tucker the goldendoodle has his day

reuters.com/legal/government/column-delaware-chancery-court-tucker-goldendoodle-has-his-day-2025-05-08

Jenna Greene May 8, 2025

The seal of the Court of Chancery for the State of Delaware is seen on a wall in the Sussex County Court of Chancery in Georgetown, Delaware, U.S., June 9, 2021. REUTERS/Andrew Kelly Purchase Licensing Rights, opens new tab

May 8 (Reuters) - A Delaware Chancery Court judge is indeed a rarified jurist, ruling on the intricacies of billion-dollar deals and high-stakes shareholder challenges.

Also, a goldendoodle named Tucker.

The post-breakup fight over custody of the Very Good Boy by his two co-owners seems as bitterly intractable as, say, litigation over Elon Musk's $56 billion pay package or the failed merger of grocery chains Albertsons and Kroger – albeit on a much smaller, furrier scale. It also underscores what strikes me as a basic disconnect in the law, which views dogs as personal property, akin to a table or a lamp, even if many of us consider them beloved family members.

The case has landed in the lap of the court's newest judge, Vice Chancellor Bonnie David, after originating in Delaware's Justice of the Peace Court, progressing to the Court of Common Pleas, then to the Superior Court and now the Court of Chancery. (Should we expect a U.S. Supreme Court cert petition next?)

On Wednesday, David ruled, opens new tab that Tucker was subject to partition as jointly owned property of his dueling co-parents, Karen Callahan and Joseph Nelson – but no, not in a Gordian Knot way.

"Concerned readers may rest assured that Tucker will not be partitioned in kind (i.e., physically divided)," she wrote.

Whew.

Instead, David ruled that one pooch parent will be Tucker's sole owner and the other will receive a monetary payment but declined to specify who gets what. She urged the parties to "see if they can reach agreement on a proposed process."

The vice-chancellor suggested they employ a corporate law tool– a blind bidding auction, where the highest bidder buys out the lower bidder's interest. A public auction wouldn't make sense, she added, given "the parties here attach far more value to Tucker than would any member of the public."

“Or the parties could propose a better alternative,” she said.

Callahan’s lawyer, Bill Larson, a partner at MG+M The Law Firm in Wilmington, said via email that his client “remains hopeful and optimistic about finding an equitable remedy that will allow her to bring Tucker back home to her.”

Nelson’s counsel, Josiah Wolcott of Connolly Gallagher, also in Wilmington, declined comment on the litigation but said his client “absolutely believes that this case highlights the issue with how the law treats animals as mere personal property.”

According to court papers, opens new tab, Callahan and Nelson were neighbors as children. They reunited and began dating in late 2018, and Callahan moved into Nelson’s house in Bear, Delaware, in early 2019.
In April 2020, they adopted Tucker, who came to them via Nelson’s daughter, a veterinarian, after the poodle/golden retriever mix was surrendered by his previous owners at the facility where she worked.

In photos submitted as part of a lower court filing, Tucker appears as an amber-colored fluff ball, so adorable that he could pass for a stuffed animal.

Nelson’s daughter testified at trial in 2023 that she’d intended Tucker as a gift for her father, whose prior dog Biscuit had died. But Callahan was the one who picked Tucker up from the facility, paying $644 to cover his veterinary bills. She also registered him in her name through PetHub.

Callahan and Nelson then shared in the costs and efforts to maintain the dog until they broke up in 2022.

They’ve been fighting over Tucker, who has remained in Nelson’s possession, ever since.

If the couple had been married, David noted, Tucker's fate might have been a question for the Family Court to resolve, pointing to state legislation enacted in 2023. The law directs the Family Court to “take into consideration the well-being” of a companion animal when awarding ownership in a divorce proceeding.

But because Callahan and Nelson never wed, “partition provides the mechanism for these co-owners to sever their property interests,” David wrote. Without such a remedy, she added, the two “might remain trapped in joint ownership of their pet indefinitely, notwithstanding what I assume is a mutual desire to go separate ways.”

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

- Suggested Topics:
- Government

Battle erupts over Adobe privacy lawsuit leadership

DJ **dailyjournal.com**/articles/385375-battle-erupts-over-adobe-privacy-lawsuit-leadership

Data Privacy

May 9, 2025

DiCello Levitt LLP seeks co-lead counsel role in Adobe privacy lawsuits, citing unique evidence of widespread internet user tracking. Federal court battle looms as firms vie for leadership.

Photo: JHVEPhoto/Shutterstock

A battle over class counsel leadership positions in a consolidated, putative privacy action against Adobe Inc. is underway after attorneys from DiCello Levitt LLP argued their firm should be appointed as co-lead counsel because the firm found "unique" evidence that Adobe is tracking "nearly all users of the internet."

The motion to intervene, filed Wednesday in federal court in San Jose, seeks to halt the imminent the appointment of co-lead counsel a pair of lawsuits against Adobe that were consolidated last month.

The motion to appoint class counsel is set to be heard by U.S. District Judge Noel Wise on Sept. 3.

DiCello Levitt's client, who filed his complaint on Monday, wants his attorneys appointed as co-lead counsel on the grounds that his interests are not adequately represented by the other two cases because his firm uncovered new evidence regarding the extent to which Adobe was tracking internet users.

Counsel for the proposed class from Lowey Dannenberg PC declined to comment Thursday. The other firm representing the plaintiffs of the proposed consolidated class, Schubert Jonckheer & Kolbe LLP and Milberg Coleman Bryson Phillips Grossman PLLC, could not be reached for comment. Rapak v. Adobe, Inc., 5:25-cv-03032 (N.D. Cal. filed April 2, 2025).

The first case, referred to as Rapak, was filed on April 2 and a related case, referred to as Johnston, was consolidated with the lead action on April 17. Both cases, and the complaint filed by DiCello Levitt's client, center on Adobe's Experience Platform Identify Service. A motion to relate the most recent lawsuit was filed by the attorneys for the Rapak plaintiff on Wednesday.

The plaintiffs in all three cases claim the service orchestrates "wide-spread surveillance" of users' browsing habits with "unique, persistent identifier" cookies. They claim this creates a "workaround" to privacy protections, allowing Adobe to compose comprehensive data profiles of internet users without their consent.

The firms argued that they are best suited to represent the interests of all potential internet users tracked by Adobe, in an April 23 motion to appoint lead counsel. Adobe has not answered any of the lawsuits. The company's media relations office, and its legal team from Arnold & Porter Kaye Scholer LLP could not be reached for comment Thursday.

Brian O'Mara, managing partner for Dicello Levitt LLP in San Diego and one of the proposed intervenor's lead attorneys, said his firm should be co-lead counsel because it uncovered four categories of evidence that were not mentioned in the other two complaints: web crawler data, cookie placement, cookie synching, and cookie disguising.

O'Mara filed a response letter to the Rapak plaintiffs' motion to appoint lead class counsel Wednesday. *Chwe v. Adobe Inc.*, 5:25-cv-03911 (N.D. Cal. filed May 5, 2025).

"... Through DiCello Levitt's investigation, the class should be able to show that all or nearly all users of the internet are being tracked by Adobe due to the ubiquity of Adobe's tracking technology across thousands of heavily-tracked websites," he wrote.

In an April 23 motion to appoint Lowey Dannenberg and Millber Coleman Bryson Phillips Grossman as the co-lead class counsel and Schubert Jonckheer & Kolbe as liaison counsel, the plaintiffs' attorneys argued that this leadership structure would best serve all interests of the plaintiffs.

"Proposed interim co-lead counsel are comprised of attorneys at firms that, together, can and will commit sufficient resources to adequately represent Plaintiffs and the putative class, as they have done in prior cases in which they have achieved exceptional results," their motion stated.

On its web page, Adobe states, "Experience Cloud Identity Service Identity Service uses your organization ID, the Experience Cloud AMCV cookie, and a demdex cookie to create and store unique, persistent identifiers for your site visitors. These cookies let Identity Service track visitors across your different domains and enable data sharing among different Experience Cloud solutions."

Adobe, however, claims its tracking tools are not "not dangerous, malicious, or different from other first- or third-party cookies stored by a website or service in a browser, following the same rules that govern other first- and third-party cookies."

O'Mara's colleagues from Dicello Levitt represent the proposed intervenor: Daniel R. Schwartz, Rebecca Trickey of Chicago and David A. Straite of New York City.

The following attorneys represent the Rapak plaintiffs: Robert C. Schubert, Willem F. Jonckheer, Amber L. Schubert of Schubert Jonckheer & Kolbe LLP in San Francisco; Christian Levis, Amanda Fiorilla, Rachel Kesten, and Yuanchen Lu of Lowey Dannenberg P.C. in White Plains, New York. The Johnson plaintiffs are represented by: John J. Nelson of Milberg Coleman Bryson Phillips Grossman PLLC in San Diego

The following attorneys from Arnold & Porter Kaye Scholer represent Adobe: Angel T. Nakamura, Kristina Iliopoulos of Los Angeles; Estayvaine Bragg of San Francisco; Jami M. Vibbert, David B. Schwartz, Sasha Zheng of New York City, and Daniel E. Raymond of Chicago.

#385375

Wisdom Howell

Daily Journal Staff Writer
wisdom_howell@dailyjournal.com

Amazon, Apple seek legal fees as sanction in US consumer lawsuit

reuters.com/legal/legalindustry/amazon-apple-seek-legal-fees-sanction-us-consumer-lawsuit-2025-05-08

David Thomas, Mike Scarcella May 8, 2025

The Apple Inc. logo is seen in the lobby of New York City's flagship Apple store January 18, 2011. REUTERS/Mike Segar Purchase Licensing Rights, opens new tab

May 8 (Reuters) - (Billable Hours is Reuters' weekly report on lawyers and money. Please send tips or suggestions to D.Thomas@thomsonreuters.com, opens new tab)
Apple and Amazon have asked for a combined $223,000 in sanctions against a prominent class action law firm, accusing it of dragging out litigation over the price of iPhones and iPads after the initial plaintiff in the case sought to drop out.

U.S. District Judge Kymberly Evanson in Seattle last month said, opens new tab the companies could ask to recover legal fees from Hagens Berman Sobol Shapiro for failing to immediately disclose that its client wanted out of the case.
Hagens Berman "needlessly prolonged this litigation and required considerable judicial resources," Evanson said.

The companies said in their fee request on Friday, opens new tab that their legal teams worked more than 350 hours on motions relating to seeking information about the plaintiff. Spokespeople for Hagens Berman, Apple and Amazon did not immediately respond to requests for comment. The lawsuit, which accuses the companies of conspiring to artificially inflate the price of iPhones and iPads sold on Amazon's platform, is continuing after other plaintiffs were added to the case.

Apple and Amazon have denied the antitrust claims.

Apple is represented by attorneys from Weil, Gotshal & Manges and Orrick, Herrington & Sutcliffe, while Amazon has a team from Sidley Austin, Redgrave and Davis Wright Tremaine.

The tech companies said they would limit their fee request to match hourly rates typically charged in the Western District of Washington. Weil partner Mark Perry, a Washington, D.C., lawyer who co-leads the firm's appellate and strategic counseling practice, said, opens new tab his rate for the purpose of the fee request was $900 an hour. Perry and other defense lawyers in the case did not immediately respond to requests for comment.
Hagens Berman client Steven Floyd told his lawyers in January 2024 that he wanted out of the litigation because he did not want to participate in the discovery process, Evanson said last month.

But the firm did not immediately disclose this to the court, the judge said, and instead created the impression that Floyd "had suddenly fallen out of contact in January 2024, for reasons his counsel did not know and possibly unrelated to the litigation."

Hagens Berman's "characterizations of Floyd's situation over the past fourteen months have not reflected his reality," Evanson said.

The judge on Tuesday formally dismissed Floyd's claims from the lawsuit.

-- William Burck and Alex Spiro aren't the only partners at Quinn Emanuel Urquhart & Sullivan who are charging $3,000 an hour.
Court filings in a $34 million fee fight between Quinn Emanuel and former client Desktop Metal showed that Michael Carlinsky, co-managing partner of the firm, is also charging the $3,000 hourly rate, opens new tab.
Carlinsky said in an email he is "honored to be in the same club, so to speak, as Spiro and Burck. Two fine lawyers."

Reuters first reported Burck and Spiro's sky-high billing rates in February. Susman Godfrey also has a pair of veteran litigators — Neal Manne and Bill Carmody — who are charging that much.
-- Williams & Connolly is charging a Minnesota school district a flat rate of $300,000 to defend it in a student disability case at the U.S. Supreme Court, according to information provided by the district that also showed the firm's star appellate partner Lisa Blatt normally charges $2,400 an hour.

The firm initially charged $45,000 for a brief urging the justices not to take up the case, which tests the scope of the law concerning students with disabilities. Firms commonly bill a flat amount for litigation at the high court.

The court heard arguments, opens new tab last week from Blatt, representing the school district, and Latham's Roman Martinez, who argued for the parents of the student who filed the petition at the high court.
Blatt did not immediately respond to a request for comment.

A spokesperson for the school district said it is "committed to the principles and ideals expressed by the Individuals with Disabilities Education Act."

Read more:

Epic Games' Cravath team wins fees in Apple contempt ruling
US lobbying firms see early revenue boost in Trump's second term
Bitcoin miner accuses K&L Gates of botching bankruptcy claim, overbilling
Reporting by Mike Scarcella

Class Action
May 9, 2025, 1:30 AM PDT

California Firms Can’t Use Blinders on Real-Time Bidding Suits

Womble Bond Dickinson’s Matthew Pearson says recent class actions may affect how companies use digital advertising, and that businesses should watch out for more litigation in this arena.

Companies spend billions of dollars every year to ensure their advertisements are shown to the right types of users at the right time. With that amount of investment, it was only a matter of time before the consumer class actions were filed.

At least eight class actions have been filed against several well-known companies in the last couple of months, including Trade Desk Inc. and Experian Data Corp. The suits each claim that the companies’ participation in real-time bidding violates California and federal wiretapping statutes, invades users’ privacy, and unjustly enriches the defendants.

These class actions could have a significant effect on how companies engage in digital advertising in the future, and being willfully blind to their progress only exposes companies to increased litigation exposure.

RTB Process

RTB is the process by which website operators decide which ads to show their users. When a user visits a website with available ad space, the website operator (publisher) auctions off that ad space to interested companies (advertisers). Because this auction occurs in near real time, the user is usually unaware that it has occurred.

Nevertheless, the auction involves several key players, including the publishers and advertisers; the supply-side platforms, or SSPs, that work directly with the publishers to sell their available ad space; the demand-side platforms, or DSPs, that work directly with the advertisers to bid on the available ad space; and the ad exchanges that host the auction.

Advertisers rely on “bidstream data” to determine which users to bid on and how much to bid. Bidstream data includes information on the ad space being sold, user device information (such as screen size and resolution), and the user’s public IP address. It may even contain some user some browsing history. The success of a specific advertisement often depends on the ability to extrapolate from the available data the user’s interests and align those interests with the advertised product.

Plaintiffs’ New Theory

In the past, plaintiffs’ lawsuits have focused almost exclusively on the collection of bidstream or other similar data by publishers. Large media companies found themselves the defendants in putative class actions alleging that they had engaged in unlawful wiretapping—or in installing and/or using a pen register or trap-and-trace device—under California’s Invasion of Privacy Act.

Plaintiffs have now shifted focus, filing suit against SSPs and DSPs instead of publishers. While this change in defendants does affect the types of claims asserted (as discussed below), the real impact is in the scope of the claims asserted. Because SSPs offer for-sale ad space across multiple web properties and because DSPs bid on ad space across multiple web properties, these platforms obtain more bidstream data than could otherwise be obtained by a single publisher or advertiser.

In fact, the plaintiff in one RTB class action claims that this sharing of information happens "178 trillion times annually across the U.S. and Europe."

Claims Broken Down

The claims asserted in these new RTB class actions can be divided into one of two groups: online tracking claims or RTB-specific claims.

The online tracking claims differ very little from the claims plaintiffs have historically asserted against publishers. Whereas in the past, the plaintiffs sued publishers for assisting the wiretapping of their communications, they now are suing the RTB defendants for engaging in the wiretapping itself.

Similarly, the plaintiffs used to sue publishers for installing pen registers; now they are suing the RTB defendants for using them. In other words, the online tracking claims are just a different side of the same coin.

The RTB-specific claims—invasion of privacy and unjust enrichment—center on what the RTB companies do with the bidstream data after they have collected it. Essentially, the plaintiffs claim that the RTB defendants leverage the RTB process to accumulate "vast amounts of personal information for as many people as possible" and then, with that information, create "identity graphs," which can be used to better predict a user's interests in the future.

The better advertisers are at predicting a specific user's interests, the more likely their ads are to be successful, the more money they are willing to pay to place them, and the more money the RTB defendants stand to gain. The plaintiffs claim that the RTB defendants are monetizing the plaintiffs' data to unjustly enrich themselves.

Whether those claims have merit is still to be determined.

The Takeaways

Companies may brush these lawsuits aside because they aren't SSPs or DSPs themselves. But doing so would be a mistake. As noted above, companies generally aren't sued for wiretapping their own communications; they're sued for assisting a third party to do so. And companies generally aren't sued for using a pen register/trap-and-trace device; they're sued for installing one.

That means if the plaintiffs prevail in one of these RTB class actions, companies may be stuck with the outcome. The fight may shift from whether a wiretap occurred to simply whether the company assisted that wiretap—just as the fight may shift from whether a tracker is a pen register to whether the company installed it.

While the sale of ad space can be lucrative, it isn't without risk. Companies should ensure that they know exactly what is happening on their sites and that the disclosures they are making are clear and conspicuous. The last thing any company wants is to be dragged into litigation over something it didn't even know it was doing in the first place.

This article does not necessarily reflect the opinion of Bloomberg Industry Group, Inc., the publisher of Bloomberg Law and Bloomberg Tax, or its owners.

Author Information

Matthew Pearson is a partner at Womble Bond Dickinson, where he litigates class actions across the country.

Write for Us: Author Guidelines

To contact the editors responsible for this story: Melanie Cohen at mcohen@bloombergindustry.com; Daniel Xu at dxu@bloombergindustry.com

Class Action

May 9, 2025, 8:47 AM PDT

Ford Accused of Selling Defective 'Adventure-Ready' Vehicles

- **COURT:** D. Del.
- **TRACK DOCKET:** No. 1:25-cv-00569 (Bloomberg Law subscription)

Ford Motor Co. was hit with a proposed class action alleging that its 2023 and 2024 Ford Transit Trail vehicles are defective and unsuitable for their advertised off-road capabilities.

The complaint, filed Thursday in the US District Court for the District of Delaware, alleges that the vehicles suffer from a defect that causes the tires needed for off-roading to rub against the wheel arch liners, potentially damaging the wheel well and leading to tire blowouts, tread separation, and loss of vehicle control.

The noise of the tires striking the wheel wells also can startle the driver, leading to a loss of concentration or overcorrection, it said.

Ford allegedly knowingly sold the vehicles with this defect and failed to disclose it to consumers, despite marketing the Transit Trail as "adventure-ready" and designed for off-road use, lead plaintiffs Michele Provo and Susan Cherwa said in their complaint.

The lawsuit asserts violations of Minnesota and Missouri consumer protection laws, breach of implied warranty of merchantability, unjust enrichment, and fraud by omission or fraudulent concealment.

The plaintiffs seek certification of a nationwide class as well as Minnesota and Missouri subclasses. They are requesting an injunction requiring Ford to provide a complete and effective recall or replacement program that directly notifies class members based on information obtained from states' departments of motor vehicles. They additionally seek equitable relief including restitution and disgorgement, costs, damages and punitive damages, and attorneys' fees.

A representative for Ford didn't immediately respond to a request for comment.

Berger Montague PC and Capstone Law APC represent the plaintiffs.

The case is Provo v. Ford Motor Co. , D. Del., No. 1:25-cv-00569, complaint filed 5/8/25 .

This story was produced by Bloomberg Law Automation.

To contact Bloomberg Law Automation: automation@bloombergindustry.com

To contact the editor responsible for this story: Laura D. Francis at lfrancis@bloombergindustry.com

Edison accused of lead, asbestos contamination from Eaton Fire

DJ **dailyjournal.com**/articles/385374-edison-accused-of-lead-asbestos-contamination-from-eaton-fire

Kiley L. Grombacher of Bradley Grombacher LLP.

A putative class action accusing Southern California Edison of widespread lead and asbestos contamination from the Eaton Fire was just filed this week in Los Angeles County Superior Court.

The complaint was filed by attorney Kiley L. Grombacher on behalf of a South Pasadena resident and guardian of a minor child.

It claims roughly the same causes of action as the scores of individual Eaton Fire lawsuits pending before Judge Laura A. Seigle. It accuses Southern California Edison of negligence in its maintenance and management of its grid. It too says the Eaton Fire was caused by sparks emanating from Edison's power lines, towers and poles.

But it goes further. It says that the fire, which burned more than 14,000 acres and destroyed thousands of structures, blanketed the area with lead, asbestos and other contaminants.

"The full extent of the damage of the Eaton Fire is only beginning to emerge," Grombacher wrote in the complaint.

"Thousands of houses, cars, tires, buildings containing lead paint and asbestos, and appliances have burned, all contributing to the toxic smoke that has settled on the community in the form of ash and debris. Structures that at first glance appear to have been spared from the flames are in fact unfit for human habitation," she continued. Grombacher is a co-founding partner of Bradley Grombacher LLP. The firm partnered with Aylstock Witkin Kreis & Overholtz PLLC in the California Fire Victims Law Center.

The complaint cites environmental tests performed separately by Caltech geochemistry professor Francois Tissot and the non-profit advocacy group Eaton Fire Residents United. It says virtually all the homes they tested had lead contamination, with a significant portion in excess of EPA limits.

Childhood lead exposure is known to cause developmental damage and long-term health problems.

"What's truly alarming is that scientific testing shows entire neighborhoods, even miles from the epicenter of Eaton Fire, are contaminated at levels far exceeding federal safety thresholds. This public health crisis could have been prevented had Southern California

Edison fulfilled basic safety obligations to properly maintain its electrical infrastructure," Grombacher said in a prepared statement.

Grombacher said she and her colleagues are investigating a similar claim over the Palisades Fire. The Los Angeles Department of Water and Power provides electrical service to most of the Palisades area, while Edison has some customers there also.

The 2nd District Court of Appeal in February ruled that homeowners were not entitled to property damage losses from their insurance company because they failed to show that smoke, soot and ash from the 2019 Saddle Ridge fire altered their property in a lasting manner. *Hovik Gharibian, et al. v. Wawanesa General Insurance Company*, B325859 (2nd Cal. App, filed Feb. 7, 2025).

Some litigators have said that the decision sets a dangerous precedent for wildfire insurance claims. Grombacher said it was "factually distinguishable" from her case. *Amber Diaz, et al. v. Southern California Edison*, 25STCV13469 (L.A. Super. Ct., filed May 7, 2025)

#385374

Antoine Abou-Diwan

Daily Journal Staff Writer
antoine_abou-diwan@dailyjournal.com

US ordered to pay $600K to families sickened in Pearl Harbor fuel spill

reuters.com/legal/government/us-ordered-pay-600k-families-sickened-pearl-harbor-fuel-spill-2025-05-08

Diana Jones May 8, 2025

USS Arizona memorial can be seen after ceremonies commemorating the 74th anniversary of the attack on Pearl Harbor at Kilo Pier on Joint Base Pearl Harbor - Hickam in Honolulu, Hawaii, December 7, 2015. REUTERS/Hugh Gentry Purchase Licensing Rights , opens new tab

May 8 (Reuters) - A federal judge in Hawaii ordered the U.S. government on Wednesday to pay about $600,000 to six families impacted by a 2021 fuel spill that tainted drinking water at the Joint Base Pearl Harbor-Hickam near Honolulu after finding that the tainted water was the cause of their health problems.

U.S. District Judge Leslie Kobayashi’s order came after she heard evidence during a 10-day bench trial that began in April 2024 over the families’ claims they suffered from nausea, rashes, emotional trauma and in some cases seizures and tremors after they showered in and drank the tainted water.

The trial, which involved claims of 17 people from six different families, was the first trial in the Red Hill litigation. The government and attorneys for the victims have agreed to use the judge’s order to help determine the future of the more than 7,000 remaining claims.

Attorneys for the six families had sought a little more than $6.5 million in damages in total for their pain and suffering, mental anguish and other harms, according to court records.

Thousands of people, including active duty members of the military, their families and their civilian neighbors, have brought claims against the U.S. government under the Federal Tort Claims Act over the November 2021 spill, which released 19,000 gallons of jet fuel from Pearl Harbor’s Red Hill Bulk Fuel Storage Facility into a water system serving both the base and neighboring homes. Those claims total about $156 billion, according to a Navy spokesperson.
Kobayashi said the plaintiffs' experts had proved that the chemicals in the water after the spill had the capacity to cause the families' injuries. She also found that the chemicals had reached all parts of the Navy's water system.

Kristina Baehr, an attorney for the plaintiffs, said the case "sets the precedent that there's no institution that is immune from accountability for poisoning people."

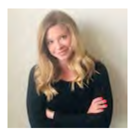
Baehr said she did not know of any other successful environmental contamination cases brought under the Federal Tort Claims Act, which governs lawsuits against the government over injuries caused by negligent or wrongful actions of federal employees.

Representatives for the U.S. Navy directed a request for comment to the U.S. Department of Justice, which did not immediately respond.

Before the trial, the government acknowledged that the incident at Red Hill, which has been in the process of shutting down, occurred when thousands of gallons of jet fuel were incorrectly shunted to a pipe and then released after a vehicle hit the pipe in November 2021.

Although the government admitted that the fuel had reached parts of the water system, it disputed that the entire water system was affected or that the injuries the plaintiffs claimed were caused by the water.

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



Diana Novak Jones
Thomson Reuters

Co-author of the Daily Docket, Reuters' daily legal industry newsletter. Diana reports on litigation, mass torts and the plaintiffs' bar. She previously worked at Law360 and the Chicago Sun-Times.

Securities Law News

May 8, 2025, 12:56 PM PDT

Judge Questions Basis for Trump Order Targeting Susman Godfrey

- **Susman Godfrey seeks to strike down Trump order**
- **Firm argues directive is vindictive and retaliatory**

A DC federal judge on Thursday questioned the rationale for President Donald Trump's executive order targeting law firm Susman Godfrey.

The April 9 order states the law firm "engages in unlawful discrimination" yet points to no examples that show such behavior, Judge Loren AliKhan of the US District Court for the District of Columbia said. "I just don't see any evidence of that."

AliKhan also questioned whether Trump was using his discretionary power to deny contracts to Susman clients, or if he was engaging in viewpoint discrimination because he doesn't like positions the firm has taken. "I'm just trying to figure out where the lines are," she said.

The hearing on whether AliKhan should strike down Trump's order as unconstitutional followed the pattern of those in other courtrooms, with judges sounding skeptical of Trump's authority to target law firms with the executive actions. US District Court Judge Beryl Howell on May 2 permanently blocked the order against Perkins Coie.

Susman sued the Trump administration last month, arguing that the order against the firm is vindictive, retaliatory, and violates the constitution. Similar to the directives against Perkins Coie, WilmerHale and Jenner & Block, the Susman order instructed agency heads to strip lawyers' security clearances, restrict personnel from accessing federal buildings, and slash federal contracts held by the firm's clients.

Houston-founded Susman is asking AliKhan to grant summary judgment to strike down the order without proceeding to a full trial.

The purpose of Trump's orders is "to intimidate law firms into abandoning advocacy on behalf of their clients," said Donald Verrilli, a Munger Tolles & Olsen lawyer representing Susman at Thursday's hearing. "That is unconstitutional full stop, no matter what the motivation is."

Richard Lawson, a deputy associate attorney general, told AliKhan that determinations such as who can be a contractor or who has access to government buildings are completely within the authority of the president.

“This is executive discretion,” Lawson said. “There is no inherent right of access.”

Nine top law firms, including Paul Weiss, Kirkland & Ellis, Willkie Farr, and Latham & Watkins, reached agreements to collectively provide $940 million in free legal services for President Donald Trump to avoid executive orders. Some of the firms also resolved Equal Employment Opportunity Commission inquiries into their diversity programs.

The case is Susman Godfrey v. Executive Office of the President, D.D.C., 1:25-cv-01107, 5/8/2025.

To contact the reporter on this story: Tatyana Monnay at tmonnay@bloombergindustry.com

To contact the editors responsible for this story: Chris Opfer at copfer@bloombergindustry.com; John Hughes at jhughes@bloombergindustry.com; Alessandra Rafferty at arafferty@bloombergindustry.com

Judge Presses Government on Reasoning Behind Susman Godfrey Executive Order

law.com/nationallawjournal/2025/05/08/judge-presses-government-on-reasoning-behind-susman-godfrey-executive-order

Abigail Adcox and Amanda O'Brien May 8, 2025

During a nearly two-hour hearing, U.S. District Judge Loren AliKhan on Thursday repeatedly questioned the evidence behind the government's claims that Susman Godfrey engages in "unlawful discrimination," which the president claimed in his executive order against the firm.

The judge, hearing Susman Godfrey's motion for summary judgment and the government's dismissal motion, ultimately reserved judgment.

AliKhan pressed deputy associate attorney general Richard Lawson on the government's arguments that Susman Godfrey's statements on its website amounted to discrimination, as President Donald Trump's executive order alleged. "Yes or no?" she asked the government's lawyer about whether a firm prize for diversity was unlawful discrimination. "I would like an answer before you leave."

Lawson said the government's view is that the executive order falls under "executive discretion" in the interests of national security and under the executive branch's procurement power.

Representing Susman, Donald Verrilli at Munger, Tolles & Olson argued the executive order was issued in retaliation, including because of Susman's advocacy for Dominion Voting and for giving a charitable contribution to an organization, GLAD, that advocates for equal treatment of LGBTQ people, which he says were alluded to in section one of the executive order titled "background."

Lawson argued that section one was just "commentary" and doesn't call for any action to be taken. He echoed similar arguments the government has made in other law firm executive order litigation, which is that the executive order should not be ruled on in its entirety but looked at on a section-by-section basis.

Verrilli, a former solicitor general of the United States, said the whole point of the Susman Godfrey executive order "is to intimidate law firms into abandoning advocacy on behalf of clients." While Susman Godfrey is fighting that intimidation, "other firms are already acquiescing to that intimidation."

He said the executive order threat against certain firms is one against the whole bar, with the "goal to prevent courts from hearing the best arguments."

‘Under-Represented’ Groups

The judge continued to press Lawson on what proof the government was using to justify its conclusion that Susman Godfrey had engaged specifically in race-based discrimination. “It doesn’t seem like anything you have alleged” points to racial discrimination, the judge said as she questioned Lawson.

Lawson pointed to the firm's website usage of the word “under-represented,” noting the concern with that approach is that it is presuming there is an adequate representation based on race, ethnicity and gender, which he said runs counter to the U.S. Supreme Court’s *Students for Fair Admissions* ruling.

The government’s brief cited some additional statements from Susman Godfrey’s website, including those on the firm valuing gender equality. “They’re saying [this language] goes beyond what was at issue in *SFFA*,” Verrilli said, about the Supreme Court decision that ruled race-based affirmative action in college admissions to be unlawful. “They don’t remotely approach those at issue at SFFA.”

Another issue the judge probed was section four of the executive order against Susman Godfrey, which, while not directly commanding the EEOC to investigate the discrimination allegations against Susman Godfrey, indicated that nothing in the Trump executive action would prevent or limit the EEOC’s power to investigate firms under discrimination claims.

“I confess I have concerns about section four,” the judge said to Verrilli. “Is section four actually doing something affirmative as opposed to limiting what could be construed as undermining an earlier order?”

In response, Verrilli acknowledged that Susman had not received an inquiry from the EEOC, but expressed concern that the firm would face an investigation from the agency and asked the judge to enter language prohibiting the EEOC from acting under the language and claims of discrimination mentioned under section one of the executive order.

Verrilli added that the firm’s reputation and its “ability to attract and retain clients has been seriously damaged by what we believe to be baseless findings” from the executive order.

Security Clearance Review

Speaking about section two of the executive order pertaining to security clearance review, Verrilli said he wasn’t aware of any Susman employees who had their security clearance revoked, but he pointed to several problems with the security clearance suspensions as a result of the executive order.

“If the president were to issue an executive order that no woman could receive security clearance or no Republican,” there is not a chance it would be found justifiable, he said. “This executive order is a version of the same thing.”

He also noted that the “exact same suspension” of security clearances was found in the executive order against Paul, Weiss, Rifkind, Wharton & Garrison. Then it was rescinded within a week with “no change in circumstances to the trustworthiness of the lawyers” at Paul Weiss, Verrilli said.

Verrilli cited U.S. District Court Judge Beryl Howell’s opinion in Perkins Coie’s case against the government several times during his arguments, noting at one point that they “endorse” Howell’s reasoning on a matter.

While AliKhan reserved judgment on Thursday on a ruling, she indicated that she will “get something out in due course.”

In attendance at Thursday’s hearing was Susman Godfrey managing partners Kalpana Srinivasan and Vineet Bhatia, among other attorneys from the firm.

Susman’s hearing is the latest development in law firm litigation against the Trump administration and comes days after Perkins Coie obtained summary judgment in its own case against the administration challenging an executive order. Howell’s 102-page opinion called the administration’s efforts against Perkins Coie “an unprecedented attack” on the principles of the U.S. judicial system.

Besides Susman Godfrey, two other law firms, Jenner & Block and Wilmer Cutler Pickering Hale and Dorr are seeking to permanently block executive orders targeting their firms. All three have already obtained temporary restraining orders against the administration over the executive orders. The judges in Jenner and Wilmer’s cases have yet to issue an opinion on their motions for a permanent injunction.

Law Firms Mentioned

Susman Godfrey

Silicon Valley investor with ties to Elon Musk accuses Brookfield of fraud, retaliation

courthousenews.com/silicon-valley-investor-with-ties-to-elon-musk-accuses-brookfield-of-fraud-retaliation

San Mateo County's Hall of Justice in Redwood City, Calif. (Natalie Hanson / Courthouse News)

SAN MATEO, Calif. (CN) — A Silicon Valley investor with ties to Elon Musk is suing Brookfield Asset Management, accusing the $1 trillion firm of fraud, mismanagement and attempted bribery.

In a 100-page lawsuit filed Thursday in San Mateo County Superior Court, Josh Raffaelli — a former managing partner at Brookfield until his firing in December — claims the firm misled investors and retaliated against him after he blew the whistle to regulators.

Raffaelli claims Brookfield improperly diverted capital away from the funds he managed to offset losses in its struggling commercial real estate arm. The complaint also accuses Brookfield of limiting access to high-profile private investments, including Musk's artificial intelligence company, xAI, to the detriment of clients.

A Brookfield spokesperson did not immediately respond to requests for comment about the lawsuit.

Raffaelli built his career in venture capital with early exposure to Musk's companies, including SpaceX and Tesla. In 2017, he joined Brookfield to lead tech investments and eventually oversaw funds totaling $1.75 billion from pension funds, institutional clients and Brookfield itself.

Raffaelli says in his complaint that Brookfield reneged on funding commitments in 2024 and blocked a $100 million investment from a foreign conglomerate, forcing Raffaelli to scale back stakes in Musk ventures like xAI. One fund's planned $25 million investment in xAI was slashed to $5 million — a move that Raffaelli says was "indefensible" and was akin to "walking away from the chance to buy Facebook or Apple stock."

"The markets expected this investment to go nowhere but up, and that is exactly what has happened," Raffaelli says in the complaint.

Brookfield later proposed folding Raffaelli's funds — known in the complaint as Fund 2 and Fund 3 — into Pinegrove Capital Partners, an internal firm Raffaelli claims had inflated its financial strength by over $100 million. Raffaelli says he reported these concerns anonymously through Brookfield's internal whistleblower channel and later to the Securities and Exchange Commission in late 2024.

Raffaelli says hundreds of institutions, including nonprofit organizations and pension funds for police officers and firefighters, had been duped under false pretenses to entrust their money to Pinegrove.

Investors in Raffaelli's funds needed to approve any merger with Pinegrove, and Raffaelli says Brookfield pushed him to pitch his investors to approve the idea because they trusted him.

"At this point, it became clear to Raffaelli that the Brookfield defendants intended to proceed with their lunatic plan to aggravate the existing securities fraud issues — and now ensnare Fund 2 and Fund 3 investors into the web of fraud victims by merging Funds 2 and 3 into Pinegrove — so he had no choice but to act," Raffaelli says.

After raising objections to the Pinegrove deal and turning down what he viewed as a $46 million bribe to support it, Raffaelli was fired over email nine days after sharing his SEC complaint with Brookfield's legal department, he says.

"As uncomfortable as this is for me, I wanted to share with you that I felt I had an obligation to blow the whistle on certain illegal conduct," he wrote to Brookfield's general counsel, he says in the lawsuit.

Raffaelli added, "The termination email stated that Raffaelli was terminated because of his 'connection with the Pinegrove transaction,' which he believes refers to his complaints about illegal activity relating to and arising from the proposed merger of Funds 2 and 3 with Pinegrove."

Brookfield's former chairman, Mark Carney, stepped down in January to become Canada's new prime minister.

Categories / Business, Securities

News from Bloomberg Terminal
May 9, 2025, 10:51 AM PDT

Kohl's Says Director Departed Board Because of Disagreements

By Lily Meier

(Bloomberg) --

Kohl's Corp. said on Friday the recent departure of a board director was related to a disagreement with the company — an abrupt change in stance from a day earlier and the latest sign of turmoil at the beleaguered retailer.

In a filing Friday, Kohl's said the resignation of Christine Day, a former chief executive officer for Lululemon Athletica Inc., from its board was due to disagreements over how the company responded to recommendations from a shareholder advisory firm on executive pay and board procedures. A day earlier, Kohl's had said that Day's departure wasn't due to any disagreements related to company operations, policies or practices.

According to emails included with the filing, Day took issue with the earlier characterization of her departure. "There is simply no way the board could have interpreted my resignation as having no conflict issues. This was a deliberately selective edit," Day said in an email.

Kohl's said it "strongly disagrees with the assertions in Ms. Day's emails."

The acrimony adds more pressure to a retailer that's struggling to turn its sales around following years of intense competition and changing consumer behavior. On May 1, the Kohl's board fired its CEO, Ashley Buchanan, only months after he was hired after determining he had directed millions of dollars of business to someone he has had a personal relationship with, without disclosing the relationship.

Related: Kohl's Forms Committee to Find New Head After CEO's Ouster

To contact the reporter on this story:
Lily Meier in New York at lmeier12@bloomberg.net

To contact the editors responsible for this story:
Emily Cohn at ecohn24@bloomberg.net
Jonathan Roeder

Bloomberg Law

Request a Demo Login

Securities Law News
May 8, 2025, 12:45 PM PDT

Crypto-Backed Stablecoin Bill Blocked Amid Trump Furor (1)

Senate Democrats blocked stablecoin legislation backed by the digital assets industry amid a furor over President Donald Trump's extensive and growing portfolio of crypto ventures.

Backers of the bill failed to muster enough support to bring it up for consideration with only 48 senators voting in favor Thursday, short of the 60 votes needed.

President Donald Trump in the Oval Office Thursday
Photographer: Bonnie Cash/UPI/Bloomberg

Many Democrats, including Democratic Leader Chuck Schumer, Brian Schatz and Chris Coons, said the bill was not ready, with no finalized legislative text reflecting a compromise.

Republicans rebuffed Democrats' demands to include a provision barring Trump and other senior officials from profiting off of crypto ventures while in office.

Read More: Top Trump Crypto Buyers Vying for Dinner Seats Are Likely Foreign

It's possible the two sides could still reach a deal in the coming weeks, with many Democrats calling stablecoin regulation essential to protect consumers and provide rules of the road for a burgeoning industry.

Senator Mark Warner, a Virginia Democrat who voted against moving forward despite earlier saying significant progress had been made in talks, said he hopes the issue can be revived.

If a deal can be worked out, the legislation could be an inflection point for the digital asset industry, which has vocally advocated for its passage.

Treasury Secretary Scott Bessent said in a social media post after the vote that the measure "represents a once-in-a-generation opportunity to expand dollar dominance and U.S. influence in financial innovation."

Senate Banking Chair Tim Scott of South Carolina denounced Democrats' opposition as driven by "Trump derangement syndrome."

Trump has promoted a memecoin bearing his name on his social media platforms, and stands to profit from its success. A Trump family venture has also launched its own stablecoin.

Sales of the memecoin jumped after organizers launched a contest that would give its largest holders the chance to join a private dinner with the president. Democrats including Senator Elizabeth Warren of Massachusetts called such an incentive blatantly corrupt.

The outcome is a victory for Warren, who had urged Democrats to filibuster the bill unless the ban was added.

Read more: Trump Memecoin Uproar Complicates Crypto-Backed Stablecoin Deal

Two Republicans joined Democrats in opposing advancing the bill: Rand Paul of Kentucky and Josh Hawley of Missouri. Hawley is seeking a provision barring tech companies like Amazon.com Inc. and Facebook parent Meta Platforms Inc. from issuing their own stablecoins. Hawley warned the tech firms would gain too much power if they are able to issue the digital tokens.

Circle Internet Group Inc., one of the largest stablecoin issuers, urged senators to continue to work toward a deal.

"The stakes for America's consumers, national security, and international competitiveness are too great for further delays or inaction," said **Dante Disparte**, Circle's chief strategy officer and head of global policy.

Securities Law
May 9, 2025, 8:02 AM PDT
US Probes Role of CrowdStrike Bosses in Carahsoft Deal (2)

- **Cybersecurity firm said it stands by accounting of transaction**
- **Prosecutors also said to be examining other CrowdStrike deals**

US prosecutors and regulators investigating a $32 million deal between CrowdStrike Holdings Inc. and a technology distributor are probing what senior company executives may have known about it and are examining other transactions made by the cybersecurity firm, according to two people familiar with the matter.

In recent months, investigators with the Justice Department and the Securities and Exchange Commission have been probing the transaction between CrowdStrike and the distributor, Carahsoft Technology Corp. , to supply cybersecurity software to the Internal Revenue Service . CrowdStrike has previously said that Carahsoft made on time payments for the order. However, the IRS never purchased or received the products. It remains unclear why the companies struck the deal without an IRS purchase, but Carahsoft previously said it stands by the transaction.

Investigators have questioned former employees about how the deal was struck, what awareness CrowdStrike's leaders had of it and whether staff raised concerns about other transactions, the people said. Investigators have also obtained internal CrowdStrike records, said the people, who asked not to be named because they aren't authorized to discuss the matter.

The investigators' questions suggest the parallel SEC and DOJ probes into CrowdStrike are broader than previously known.

Shares of CrowdStrike fell as much as 5.6% on Friday following Bloomberg's report on the scope of the federal investigations. The company earlier this week announced it was cutting about 500 jobs as it seeks to boost revenue.

CrowdStrike Holdings Inc. signage on the floor of the New York Stock Exchange.

Photographer: Michael Nagle/Bloomberg

CrowdStrike spokesperson Brian Merrill said in an email, "As we have stated previously, we stand by the accounting of the transaction." Carahsoft representatives didn't respond to calls and emails seeking comment; a lawyer for the company had previously declined to comment on the federal investigations.

Prosecutors from the US Attorney's Office for the Southern District of New York have taken the lead in questioning several witnesses, the people said. A spokesperson for the Manhattan federal prosecutor's office, Nicholas Biase, declined to comment, as did SEC spokesperson Cory Jarvis.

Around the time CrowdStrike closed the deal for the IRS, on the last day of a fiscal quarter in 2023, some staff at the Austin, Texas-based company raised concerns that it was "pre-booking" the transaction, Bloomberg previously reported. The employees viewed the deal as incomplete because it was unclear whether the tax agency would ultimately make the purchase.

Read More: CrowdStrike, Carahsoft Made Deal for Software IRS Didn't Buy

US regulators have in some cases sued and fined companies over alleged pre-booking, also known as channel stuffing, claiming they misled investors by improperly recognizing revenue to inflate their financial figures.

In interviews starting last fall, prosecutors and regulators have asked whether CrowdStrike employees believed other deals were handled in similar ways, the people said. The investigators have specifically asked about another 2023 transaction involving the IRS that was worth more than $1 million, they said.

According to one of the people, investigators also inquired about multi-million dollar deals for the Department of Health and Human Services and the Department of Energy.

A CrowdStrike spokesperson, Jeremy Fielding, told Bloomberg in October that a deal for the Department of Energy's National Nuclear Security Administration was among transactions put through a "second, independent and thorough review" in response to employee concerns. He said the $32 million deal also got "a separate and extensive review," that each transaction had "non-cancellable order" and that "it is demonstrably false that there was any 'pre-booking.'"

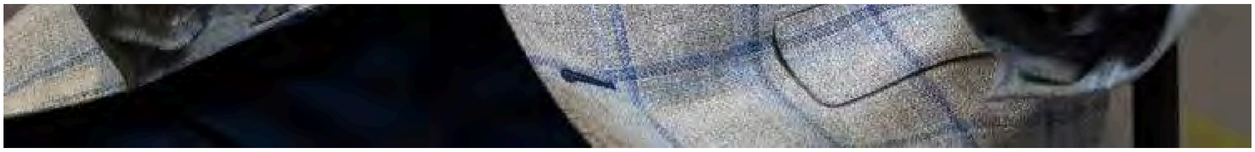
Read More: CrowdStrike-Carahsoft Deal Probed by US Prosecutors, SEC

Among the internal CrowdStrike records that investigators have obtained are employee responses to questionnaires meant to ensure transactions comply with the Sarbanes-Oxley Act, the people said. The law, passed after several accounting scandals in the early 2000s, was intended to reduce corporate fraud by improving financial auditing and public disclosure requirements.

One of these records showed an employee formally expressed concerns that the company handled the $32 million deal inappropriately, one person said. Investigators have also sought detailed information about CrowdStrike's process for closing the transaction and asked about who in the company's sales and corporate leadership may have been involved in different aspects of it, the people said.

The transaction was big enough that it could have made the difference between CrowdStrike beating or missing Wall Street projections on two key financial metrics for the quarter in which it closed in 2023. The company has declined to detail to Bloomberg how it accounted for the deal.

Chief Executive Officer **George Kurtz** highlighted it in an earnings call after markets closed on Nov. 28, 2023, saying, "identity threat protection wins in the quarter included an eight-figure total deal value win in the federal government." The day after CrowdStrike reported results for the record quarter, its shares rose 10%.



George Kurtz, co-founder and chief executive officer of Crowdstrike Holdings Inc., during a Bloomberg Television interview in 2023.
Photographer: Lauren Justice/Bloomberg

Carahsoft paid CrowdStrike on time for the deal, the cybersecurity firm told Bloomberg last fall.

Both companies said then that they had a “non-cancellable order” between them, but declined to say why they struck the deal without a purchase from the IRS. A purchase order seen by Bloomberg split the purchase into four $8 million payments, with the final payment due at the end of last October.

Last November, CrowdStrike excluded roughly $26 million from the annual recurring revenue in its quarterly earnings report. Chief Financial Officer **Burt Podbere** said the company determined a transaction wouldn’t be repeated “after a distributor in the federal space provided notice of its intention to exercise transferability rights with respect to a transaction.” CrowdStrike representatives have declined to elaborate.

(Updates with share move in the fifth paragraph.)

To contact the reporter on this story:
Jake Bleiberg in New York at jbleiberg2@bloomberg.net

To contact the editors responsible for this story:
Andrew Martin at amartin146@bloomberg.net

Lynn Doan

Wolfspeed shares sink on going-concern fears, slowing EV sales hit annual revenue forecast

reuters.com/world/china/wolfspeed-shares-sink-going-concern-fears-slowing-ev-sales-hit-annual-revenue-2025-05-09

Reuters May 9, 2025

View of a Wolfspeed's Silicon Carbide (SiC) Wafer during an event on the future of the decommissioned coal-fired power plant in the Western German Saarland region in Ensdorf, Germany, February 1, 2023. REUTERS/Thilo Schmuelgen/File Photo Purchase Licensing Rights, opens new tab

(WOLF.N), opens new tab shares fell 23% on Friday after it raised going-concern doubts and forecast weaker-than-expected annual revenue as it grapples with slowing electric-vehicle demand amid economic uncertainty.
The company is squeezed between sluggish demand in the industrial and automotive markets, while rival Chinese manufacturers such as Sicc Co (688234.SS), opens new tab and EpiWorld International are gaining ground with inexpensive wafers, which are thin slices of semiconductor material used to make chips.
Wolfspeed's customers are also grappling with tariff-induced uncertainty, with General Motors (GM.N), opens new tab trimming its 2025 profit forecast, while Mercedes-Benz (MBGn.DE), opens new tab had pulled its earnings outlook for 2025.
Its departing CFO Neill Reynolds said in a post-earnings call that the company may need to pursue in-court options to renegotiate its debt and that "going concern" language could be added to the quarterly filing.

Wolfspeed included the risk of "substantial doubt about the company's ability to continue as a going concern" in another regulatory filing on Thursday.

The company will cut its senior leadership team by 30%, its executive chairman Thomas Werner said. It forecast 2026 revenue below market estimates.
Wolfspeed's shares have fallen about 33% so far this year, after losing about 85% of their value in 2024.

"Difficulties refinancing the debt, continued cash burn and slowing demand in materials increased the specter of bankruptcy and will depress the stock for the foreseeable future," Charter Equity Research said.

Wolfspeed was set to lose more than $150 million from its market value of $689.2 million, if losses hold.

It said it expects to receive $600 million of cash tax refunds during fiscal 2026 under the Chips and Science Act.

But the future of the Biden-era legislation that promised subsidies for domestic chip manufacturing remains uncertain after U.S. President Donald Trump's administration called on lawmakers to repeal the federal funding.
Reporting by Jaspreet Singh in Bengaluru; Editing by Pooja Desai

Our Standards:

- Suggested Topics:
- China

LAW360

Portfolio Media. Inc. | 230 Park Avenue, 7th Floor | New York, NY 10169 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Albertsons Says Counties Have 'Paradoxical Status' In MDL

By **Catherine Marfin**

Law360 (May 8, 2025, 7:43 PM EDT) -- A group of pharmacies led by Albertsons Cos. Inc. have told the Texas Supreme Court that two counties can't assert claims against them in the state's opioid multidistrict litigation while simultaneously denying they qualify as claimants.

In a joint **brief** on the merits requested by the high court, Albertsons wrote Wednesday that the Fourteenth Court of Appeals got it wrong when it held that Dallas and Bexar counties are **not considered "persons"** under the state's common law and therefore are not subject to the Texas Medical Liability Act's requirement that they submit expert reports to pharmacy defendants in the MDL.

"If a party asserts a health care liability claim and seek damages in the same manner as a person, that party is a claimant under the [Texas Medical Liability Act]," the pharmacy wrote. "The inquiry need not go further because, if the counties bring health care liability claims, then they should be subject to the law intended by the Texas Legislature to govern all such claims — the TMLA."

To rule otherwise, the pharmacy wrote, would give the counties a "paradoxical status."

Albertsons and Shavano Oaks respectively appealed the Fourteenth Court's March 2024 decision in July and August 2024. The Texas Supreme Court requested a consolidated briefing on the merits in March.

The pharmacies were included in the state's opioid MDL based on claims that they failed to follow dispensing standards when prescribing opioid medications.

The pharmacies moved to dismiss the counties' claims in February 2023 on the basis that they **failed to serve a preliminary expert report**. The district court denied the motions, and the pharmacies' appeals were consolidated in the Fourteenth Court.

Albertsons wrote Wednesday that instead of engaging in a two-step analysis that first seeks to determine whether a claimant is a "person" and then whether their claim meets the definition of a healthcare liability claim, the high court should only focus on the latter inquiry.

"If the claims qualify as [health care liability claims], then the entity asserting them is a 'claimant,' and the analysis need not go further," the pharmacy wrote. "This streamlined approach aligns with the legislature's focus on the nature of the claim and avoids unnecessary disputes over the identity of the plaintiff."

The pharmacies said the Texas Legislature's intent can be determined from amendments from 2003 to the Texas Medical Liability Act, which changed the term "patient" to "claimant" and in turn defined "claimant" as a "person."

A "person" under Texas law includes both people and legal entities, they wrote.

"Nothing in the text suggests that courts should ignore that choice for the purpose of the TMLA's expert-report rules," the brief reads. "The legislature deliberately chose the word 'person' to broaden, not narrow, the scope of the TMLA."

The word choice also "shifted the focus of the TMLA from the identity of the plaintiff to the nature of the claim being asserted," the pharmacies argued.

They added that the fact that the counties seek monetary damages under the statute "further confirms their status as claimants."

When asked for comment Thursday, Dallas County counsel Mark Lanier of the Lanier Law Firm said his client is "confident the judge got it right."

Counsel for Shavano Oaks did not immediately return a request for comment Thursday. Counsel for Bexar County and for Albertsons declined to comment.

Albertsons is represented by Justin Bernstein, Peter S. Wahby and Gregory Franklin of Greenberg Traurig LLP.

Shavano Oaks is represented by David Luningham, James H. Fendley and Laura E. Cook of Watson Caraway Luningham Bradley & Trammell LLP.

Dallas County is represented by W. Mark Lanier, Dara G. Hegar and Rebecca L. Phillips of the Lanier Law Firm, and Jeffrey B. Simon and Shreedhar R. Patel of Simon Greenstone Panatier PC.

Bexar County is represented by Mikal C. Watts of Watts Law Firm LLP, and Michael T. Gallagher and Pamela McLemore of the Gallagher Law Firm.

The cases are Albertson Cos. Inc. et al. v. County of Dallas, case number 24-0541, and SPCSA PLLC v. County of Bexar, case number 24-0619, in the Texas Supreme Court.

--Editing by Adam LoBelia.

LAW360

Portfolio Media. Inc. | 230 Park Avenue, 7th Floor | New York, NY 10169 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Musk Objects To New Job For SEC's Former Litigation Chief

By **Jessica Corso**

Law360 (May 8, 2025, 6:29 PM EDT) -- Elon Musk is opposing a move by plaintiff-side firm Bernstein Litowitz Berger & Grossmann LLP to hire the U.S. Securities and Exchange Commission's former chief litigation counsel**,** arguing in a court filing that the lawyer "played a personal and substantial role" in suing Musk while at the SEC.

Musk said in a **court filing** Tuesday he objects to the conflict screening procedures that Bernstein Litowitz plans to put in place to keep Jorge Tenreiro away from a securities fraud suit filed by the firm over Musk's purchase of Twitter, now known as X. Tenreiro also once led the SEC's cryptocurrency enforcement unit.

Bernstein Litowitz **revealed last month** it plans to hire Tenreiro, requesting that the judge overseeing the shareholder case approve its conflict screening procedures.

But Musk argued Tuesday that Tenreiro "played a personal and substantial role in recommending and advancing an enforcement action against Elon Musk based on the very same conduct alleged in this litigation."

Former Twitter shareholders sued Musk in 2022, **accusing him** of failing to immediately report he had amassed a significant stake in the social media platform in order to keep stock prices low and save himself $143 million. Musk eventually purchased the platform and took it private, renaming it X.

The SEC **also sued Musk** in the waning days of the Biden administration, also accusing him of failing to timely file a required beneficial ownership report in 2022 after surpassing a 5% ownership stake in Twitter.

At the time, the SEC's Twitter lawsuit was filed, Tenreiro was working as the agency's chief litigation counsel, having been promoted from his former position as head of the crypto assets and cyber unit.

Musk claimed in the private litigation on Tuesday that, as chief litigator, Tenreiro had discussions concerning the investigation into Musk and that Tenreiro reviewed a memorandum submitted to the commission that recommended the enforcement action be filed.

Bernstein Litowitz has said Tenreiro's involvement in the SEC's Musk investigation was "minimal" and that he would not be involved in the law firm's litigation against Musk.

But Musk said Bernstein Litowitz's "tightknit securities fraud practice and its relatively small New York office will make effective screening impossible."

The billionaire also complained about Tenreiro publicly "liking" a number of social media posts critical of Musk.

"Mr. Tenreiro seeks to move from a position at the SEC where he had unique information, access, and involvement in one of SEC's latest witch hunts against Mr. Musk into private practice, where he will capitalize on that unique knowledge to promote [Bernstein Litowitz's] equally baseless fraud litigation," Musk said Tuesday.

Neither Tenreiro nor Bernstein Litowitz immediately responded to a request for comment Thursday.

Tenreiro revealed in a court declaration last month that he reached out to Bernstein Litowitz about possible employment after being shifted to the SEC's information technology department in February.

He said he took a buyout offer and left the agency on April 4.

Bernstein Litowitz told the court in April that Tenreiro "has no recollection of any confidential government information underlying the substantive allegations in the SEC action and, to the best of his knowledge, does not possess any other nonpublic information that could be used to the material disadvantage of any defendant in this action."

Bernstein Litowitz also said defendants in other suits involving matters that Tenreiro may have worked on at the SEC have approved the conflict screening procedures.

The firm has asked the judge in the Musk case to approve the procedures as well so it can move forward with the hiring process.

The lead plaintiff, Oklahoma Firefighters Pension and Retirement System, is represented by Salvatore J. Graziano, Katherine M. Sinderson, Jeremy P. Robinson, Jonathan G. D'Errico and Emily A. Tu of Bernstein Litowitz Berger & Grossmann LLP.

Musk is represented by Alex Spiro, Jesse Bernstein, Jacob J. Waldman, Nathan Goralnik and Rachel Frank of Quinn Emanuel Urquhart & Sullivan LLP.

The case is Marc B. Rasella v. Elon Musk, case number 1:22-cv-03026, in the U.S. District Court for the Southern District of New York.

--Editing by Lakshna Mehta.

LAW360

Portfolio Media. Inc. | 230 Park Avenue, 7th Floor | New York, NY 10169 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Del. Justices Uphold Chancery Toss Of AMC Meme Stock Suit

By **Jeff Montgomery**

Law360 (May 8, 2025, 10:27 PM EDT) -- A long-running meme stock saga that saw common and preferred stockholders battle AMC Entertainment in Delaware's Court of Chancery over a preferred equity conversion plan ended quietly Thursday with a state Supreme Court refusal to disturb a vice chancellor's dismissal of a final settlement dispute.

Closed down with the decision — issued without elaboration on the basis of the Oct. 2 Chancery ruling — was a multiyear court fight focused in part on an AMC settlement with common stockholders of a suit alleging that a preferred stockholder had violated stock certificate designations.

Vice Chancellor Morgan T. Zurn on Oct. 2 rejected arguments from attorneys for former AMC preferred equity holder Michael Simons that the entertainment company should have issued additional anti-dilution share rights to the holders of its preferred equity units before their holdings converted to common stock on Aug. 25, 2023.

AMC issued the preferred units when the company became a COVID-19 pandemic-era darling of public investors, driving its stock upward. When AMC hit its authorized common share limit, it issued the preferred equity units and kept raising money until conditions changed and it attempted to convert the units' preferred equity status to common.

Part of the debate turned on differing interpretations of timing involving a phrase "deemed to be issued." The outcome had consequences for preferred stockholder eligibility for shares that the vice chancellor said were intended to "give equity to the common but not the preferred" as compensation for common stock dilution by the preferred equity shares.

Under the preferred equity plan, the common stockholders were to be paid a special distribution of one new share for every 7.5 Class A shares before a 1-for-10 reverse stock split. Holders of preferred shares, however, did not see their shares converted to common under the reverse split until after the 1-per-7.5 distribution had been completed, although they benefited from the conversion, since common shares were trading at a much higher price than preferred.

Simons sued after the conversion for breach of contract and breach of the implied covenant of good faith and fair dealing, alleging that the common-share-only distribution diluted the preferred.

In rejecting Simons' claim, the vice chancellor noted that his position had to "circumvent the repeated and metaphysically necessary requirement that the issuance" of the special shares "predate the conversion in order for the conversion rate to be adjusted" to benefit common stockholders damaged by the original preferred share issue.

"The AMC distribution occurred after conversion. The preferred are not entitled to a dividend or distribution" under the proposal, and the date the distribution was recorded is "irrelevant to when the distribution was issued," the vice chancellor said in her October from-the-bench ruling.

Upholding the decision on Thursday were Chief Justice Collins J. Seitz, Justice Gary F. Traynor and Justice N. Christopher Griffiths.

Simons is represented by Michael Dell'Angelo, Joseph E. Samuel Jr. and F. Paul Bland of Berger Montague PC, and Russell D. Paul.

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

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

The case under appeal is case number 2023-0835, in the Court of Chancery of the State of Delaware.

--Editing by Melissa Treolo.

LAW360

Portfolio Media. Inc. | 230 Park Avenue, 7th Floor | New York, NY 10169 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Honest Co. IPO Investors Get Initial OK For $27.5M Settlement

By **Emilie Ruscoe**

Law360 (May 8, 2025, 7:06 PM EDT) -- Investors in actress Jessica Alba's "clean lifestyle" brand The Honest Co. Inc. have gotten an initial nod for their $27.5 million deal to end claims the company failed to disclose negative trends ahead of its 2021 initial public offering.

U.S. District Judge Mark C. Scarsi granted initial approval to the proposed settlement deal in a Tuesday order, finding after a review of the deal that it appeared the court "will likely be able to approve the proposed settlement as fair, reasonable, and adequate" subject to further consideration at a settlement hearing.

If granted final approval, the deal would end claims the company hurt investors by concealing that it was experiencing "decelerating demand" for diapers and wellness products at the time of its IPO.

The proposed settlement would see The Honest Co. defendants and the underwriters of the IPO pay $20 million and for company shareholder Catterton Management Co. to pay $7.5 million, all funded by insurance.

The settlement agreement comes after lengthy mediation, lead plaintiff Kathie Ng said in her March bid for preliminary approval of the "excellent" deal, estimating at the time that the $27.5 million settlement fund represents 13% of the defendants' maximum potential exposure in the matter and 76% of its minimum potential exposure.

The settlement came after the investors considered, among other things, the "potential risks with respect to enforcing a litigated judgment against Honest, given its ongoing financial vulnerabilities," Ng said in March. On Thursday, the company's stock closed out the day trading at about $4.40, down nearly 73% from its $16 per share IPO price.

Ng and the class are represented by Jonathan Gardner, Alfred L. Fatale III, Joseph Cotilletta and Beth C. Khinchuk of Labaton Keller Sucharow LLP, and Brian Schall and Rina Restaino of The Schall Law Firm.

The Honest Co. and other named defendants are represented by Koji F. Fukumura of Cooley LLP.

The underwriter defendants are represented by Daniel C. Lewis of Allen Overy Shearman Sterling.

The Catterton defendants are represented by Daniel J. Tyukody of Greenberg Traurig LLP.

The case is In Re: The Honest Co. Inc. Securities Litigation, case number 2:21-cv-07405, in the U.S. District Court for the Central District of California.

--Additional reporting by Lauren Berg, Hailey Konnath, Katryna Perera and Craig Clough. Editing by Kristen Becker.

LAW360

Portfolio Media. Inc. | 230 Park Avenue, 7th Floor | New York, NY 10169 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Addressing PFAS Risks In Public Company Disclosures

By **Kirill Nikonov, Xochitl Strohbehn and Adrienne Dawn Gurley** (May 8, 2025, 5:59 PM EDT)

Kirill Nikonov

Xochitl Strohbehn

Adrienne Dawn Gurley

By now, the majority of public companies whose fiscal year ends on Dec. 31 have filed their annual reports on Forms 10-K and 20-F, making it an ideal time to review disclosures in comparison with industry peers, evaluate their adequacy and gather insights from competitors to enhance future quarterly reports, if applicable, or registration statement disclosures.

Material risks that could potentially affect registrants' business and results of operations are a key area requiring constant updates. Depending on the nature of material risks and their impacts, a registrant may need to update risk factors, forward-looking statement safe harbor legends, and management discussion and analysis, or MD&A, disclosures.

One of the recently emerged risks involves per- and polyfluoroalkyl substances, or PFAS. Publicly traded companies should take proactive steps now to consider and address the potential risks associated with PFAS-related litigation or regulatory action.

The Growing Litigation and Regulatory Risks of PFAS

PFAS — often referred to as forever chemicals — represent an emerging risk from both a regulatory and a litigation perspective, affecting a wide array of industries and companies.[1]

Individual lawsuits and class actions spanning multiple sectors and products are increasing, with major brands such as **Samsung Electronics Co. Ltd.**,[2] **Target Corp.**,[3] and **Costco Wholesale Corp.**[4] recently named as defendants in consumer product class action litigation involving PFAS.

In these lawsuits, plaintiffs allege that exposure to certain PFAS may have harmful health effects on humans. The scientific research surrounding the potential health effects of PFAS exposure is still evolving and not yet conclusive. Moreover, not all PFAS behave in the same manner or present the same potential health or environmental risks.

Nevertheless, the scope of potential PFAS-related liability is far-reaching and, at this juncture, may be difficult — if not impossible — to quantify, even for companies that recognize the significance of their potential risks associated with PFAS.

While previous mass litigation involving asbestos or tobacco revolved around more clearly defined uses and exposures, PFAS may be found in an incredibly broad range of consumer and industrial products, as well as in drinking water and environmental media. As a result, PFAS-related lawsuits are currently expected to multiply and expand in scope, with class actions gaining momentum and drawing in an increasing number of previously unaffected industries.

PFAS-related risks are further heightened by rapidly evolving and often unclear regulatory initiatives on both the federal and state levels. The federal government and several states have enacted regulations prohibiting or restricting PFAS in specific products, setting water quality standards, and establishing other environmental standards and requirements for PFAS.

While the long-term trajectory of the federal PFAS initiatives is currently unclear, Lee Zeldin, the newly appointed administrator of the U.S. Environmental Protection Agency, supported stringent PFAS legislation during his tenure in the U.S. House of Representatives and has highlighted his work on PFAS in his official biographical information.[5] This suggests that expectations of a complete rollback of federal PFAS regulations may be, at best, premature.

To the extent that federal regulations are not rolled back, the risks of federal regulatory action remain. Differing state regulations expose industries and companies to varying standards that often create obstacles to compliance and raise the risk of enforcement actions.

Furthermore, there is no consensus on the definition of "PFAS," with some regulators defining it more broadly than others, which creates additional challenges for companies that want to understand their compliance obligations and extrapolate risks accordingly.

Incorporating PFAS-Related Risks and Known Trends Into Disclosures

To the extent a public company has a reasonable expectation that it will face PFAS-related legal exposure — whether due to regulatory developments, litigation risks or even potential reputational harm — it should ensure that its periodic filings and offering documents adequately reflect those risks.

If material, PFAS-related risks should be incorporated into risk factors and forward-looking statement safe harbors. Additionally, when these risks materialize into known trends or uncertainties, they may require disclosure in MD&As, potentially including quantified impacts on financial conditions and results of operations.[6]

Fortunately, there are already examples of PFAS-related risk factors and MD&A disclosures on the U.S. Securities and Exchange Commission's Electronic Data Gathering, Analysis and Retrieval, or EDGAR, system, providing companies with a foundation for tailoring disclosures to their specific circumstances.

Risk Factor Disclosures and Corollary Safe Harbor Updates

The Regulation S-K disclosure framework requires registrants to identify material risks that make an investment in their securities speculative or risky.[7] Well-drafted risk factors are not only critical for balancing a company's communications with the market, but also for defending against allegations that statements in periodic filings or offering documents are false or misleading, and, thus, reducing the overall risk of securities-related regulatory actions and litigation.

For these same reasons, companies should evaluate these factors when drafting or updating their forward-looking statement safe harbor legends.[8]

Thus far, we have observed various approaches to incorporating PFAS-related risks into risk factor disclosures in public filings.

Many registrants address PFAS risks within broader environmental risk categories. For example, some companies categorize PFAS risks under regulatory compliance (Hamilton Beach Brands Holding Co.[9] and Rogers Corp.[10]); environmental regulations (Intel Corp.,[11] United Airlines Holdings Inc.[12] and Steel Dynamics Inc.[13]); or risks related to public perception of substances in products and packaging (The Coca-Cola Co.[14]).

PFAS-related risks are also aligned with food safety regulations risks (Yum! Brands Inc.[15]); supply chain constraints (Boston Scientific Corp.[16]); or water regulations (California Water Service Group,[17] Essential Utilities Inc.[18] and American Water Works Company Inc.[19]).

Alternatively, some companies choose to craft stand-alone risk factors addressing PFAS-related risks more directly.

For example, Enpro Inc.'s Form 10-K includes a risk factor discussing how evolving PFAS regulations could affect its business, focusing on specific regions (the EU) and compounds (PTFE resins);[20] Solventum Corp.'s Form 10-K highlights potential PFAS-related liabilities tied to a specific product line;[21] and Casella Waste Systems Inc.'s Form 10-K discusses increased regulatory scrutiny on specific PFAS and related contaminants — perfluorooctanoic acid and perfluorooctanesulfonic acid, and their salts and structural isomers.[22]

We have also observed comprehensive risk factors in connection with ongoing litigation and liabilities related to specific PFAS.

Ultimately, there is no one-size-fits-all approach to PFAS risk disclosures. Each company should assess its material exposure and tailor its risk factor disclosures accordingly. In certain instances, companies may not have yet assessed the full impact of PFAS risks on their business or have difficulties with such assessment. Companies should evaluate when their obligation to disclose attaches and bear in mind that generic disclosures should generally be avoided in favor of more specific disclosures.[23]

If a company has not fully assessed its PFAS-related risks, incorporating them into broader regulatory compliance risk factors may be appropriate. The closer a PFAS risk moves toward a known trend or uncertainty, the stronger the case for a stand-alone PFAS risk factor.

Companies should exercise caution when describing risks that have already materialized — hypothetical statements about materialized risks may be deemed misleading by both the SEC and the plaintiffs bar. For instance, if a company is already facing PFAS-related lawsuits, it should disclose that such legal proceedings are ongoing rather than stating that the company may be subject to litigation.

MD&A Disclosures

One of the objectives of MD&A disclosures is to illustrate events, trends and uncertainties that could cause previously reported financial results not to be indicative of the company's future performance, whether in a favorable or unfavorable way. Unlike risk factors, MD&A disclosures should be more specific to a company's business, and explain how PFAS risks affect revenue, expenses and key financial metrics.

Preferably, the described impact should be quantified. For example, if a company must replace PFAS-containing materials because of regulatory changes, it may need to quantify the increased material costs and the impact on profit margins.

Based on our observations,[24] the quantity of PFAS-related disclosures and PFAS references in Item 7 of Forms 10-K among large accelerated filers increased by more than 50% in the period from Jan. 1 to March 15, compared with the same period in 2024.

Water utilities, such as Middlesex Water Co.,[25] Essential Utilities Inc. and the American Water Works Co., have disclosed the financial impact of EPA drinking water regulations finalized in April 2024, sometimes quantifying necessary compliance costs.

While reviewing peer disclosures can be helpful, companies should avoid copying competitors' approaches without fully assessing their own PFAS risks.

A common disclosure pitfall in connection with known trends and uncertainties pertains to the standard of disclosure imposed by the SEC.

No disclosure is required only if management determines that the risk is not reasonably likely to materialize. In the instance management cannot make such determination, the issuer "must evaluate objectively the consequences of the known trend, demand, commitment, event or uncertainty, on the assumption that it will come to fruition," according to a 1989 SEC rule.[26]

For example, there is a new PFAS regulation that could materially affect an issuer's business and is currently being challenged in court. The issuer's management cannot extrapolate the likelihood of the court ruling in favor of or against the regulation and assumes a 50-50 outcome. In such a situation, the issuer must evaluate the potential financial implications if the regulation remains in effect.

Conclusion

A well-structured disclosure process is important to ensuring the accuracy and completeness of PFAS-related disclosures. As litigation and regulatory developments surrounding PFAS continue to evolve, an increasing number of industries face heightened exposure to compliance risks, enforcement actions and costly legal proceedings.

Given the evolving nature of these risks, companies should regularly assess their potential impact on business operations and financial performance, and update their risk factors, MD&A disclosures and forward-looking statement safe harbor legends accordingly.

As with all risk factors, PFAS-related disclosures should be tailored to the company's specific circumstances, avoiding unnecessary disclosures as well as overly generic statements or hypothetical language that could either mislead investors or weaken the effectiveness of safe harbor protections. When PFAS risks transition into known trends or uncertainties, companies must ensure their MD&A adequately reflects these developments, including any material financial impact.

Finally, disclosure is not a one-time exercise — companies should proactively reassess their PFAS-related risks on an ongoing basis, adjusting assumptions and disclosures as new regulatory actions, litigation trends, and scientific findings emerge and companies' risks adjust.

Kirill Y. Nikonov is counsel, and Xochitl S. Strohbehn and Adrienne Dawn Gurley are partners, at Venable LLP.

Venable partners Joo Cha Webb and James D. Barnette contributed to this article.

[1] General information on PFAS provided by the U.S. Environmental Protection Agency is available here.

[2] See Gonzalez v. Samsung Electronics Am., Inc., C.D. Cal., No. 2:24-cv-1123; complaint filed on December 31, 2024.

[3] See Gudgel v. Target Corp., M.D. Fla., No. 6:24-cv-00870, complaint filed on May 8, 2024.

[4] See Bullard v. Costco Wholesale Corp., N.D. Cal., No. 3:24-cv-03714; complaint filed on June 20, 2024.

[5] Mr. Zeldin's official biography is available here.

[6] See Item 303 of Regulation S-K, available here.

[7] For general requirements to provide a description of the risk factors, see Item 105 of Regulation S-K, available here.

[8] For a general approach to drafting forward-looking statements' safe harbors, refer to the Venable forward-looking statements guide, available here.

[9] Hamilton Beach Brands Holding Company's Form 10-K filed with the SEC on February 26, 2025 is available here.

[10] Rogers Corporation's Form 10-K filed with the SEC on February 26, 2025 is available here.

[11] Intel Corporation's Form 10-K filed with the SEC on January 31, 2025 is available here.

[12] United Airlines Holdings, Inc.'s Form 10-K filed with the SEC on February 27, 2025 is available here.

[13] Steel Dynamics, Inc.'s Form 10-K filed with the SEC on February 28, 2025 is available here.

[14] The Coca-Cola Company's Form 10-K filed with the SEC on February 28, 2025 is available here.

[15] Yum! Brands, Inc.'s Form 10-K filed with the SEC on February 19, 2025 is available here.

[16] Boston Scientific Corporation's Form 10-K filed with the SEC on February 18, 2025 is available here.

[17] California Water Service Group's Form 10-K filed with the SEC on February 27, 2025 is available here.

[18] Essential Utilities, Inc.'s Form 10-K filed with the SEC on March 3, 2025 is available here.

[19] American Water Works Company, Inc.'s Form 10-K filed with the SEC on February 19, 2025 is available here.

[20] Enpro Inc.'s Form 10-K filed with the SEC on February 21, 2025 is available here.

[21] Solventum Corporation's Form 10-K filed with the SEC on February 28, 2025 is available here.

[22] Casella Waste Systems, Inc.'s Form 10-K filed with the SEC on February 18, 2025 is available here.

[23] Item 105(a) of Regulation S-K is available here.

[24] Calculations were made using Intelligize benchmarking tools.

[25] Middlesex Water Company's 10-K filed with the SEC on February 28, 2025 is available here.

[26] SEC Release Nos. 33-6835; 34-26831; IC-16961; FR-36 (May 18, 1989) are available here.

LAW360

Portfolio Media. Inc. | 230 Park Avenue, 7th Floor | New York, NY 10169 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Class Attys Awarded $15M In $50M GM Faulty Fuel Pump Deal

By **Danielle Ferguson**

Law360 (May 8, 2025, 10:11 PM EDT) -- A Michigan federal judge has given the final stamp of approval to a $50 million settlement resolving a class action that accused General Motors of selling diesel-powered trucks with defective fuel pumps, and awarded the consumers' lawyers $15 million in fees.

U.S. District Judge Terrence G. Berg said the deal is fair and represents the best interest of the settlement class.

"The settlement was a result of arm's-length negotiation by experienced counsel with an understanding of the strengths and weaknesses of their respective cases," Judge Berg concluded in an **order** Tuesday.

He also **granted** the plaintiffs' request for attorney fees of $15 million.

The 11 class representatives were each awarded a $5,000 service award.

The judge **gave preliminary approval** to the settlement in July.

The court previously certified seven state classes, including California, Florida, Illinois, Iowa, New York, Pennsylvania and Texas. Those classes cover individuals who have purchased a class vehicle between March 2010 and the date of the settlement notice.

GM had **appealed the certification** of the seven state subclasses, but it later **agreed to drop** the appellate bid as part of the settlement.

The deal covers customers who purchased 2011 through 2016 GMC and Chevrolet diesel trucks equipped with 6.6L V8 Duramax LML engines that contain a CP4 fuel injection pump from GM-authorized dealerships in the seven states. According to a motion for settlement approval, notices were sent to about 390,000 class members.

Under the agreement, GM would pay $50 million to compensate truck owners who paid out of pocket for engine repairs that were needed because of defect the drivers described, as well as former owners who alleged they overpaid for their vehicles. Consumers who had to pay for repairs may see between $6,300 and $12,700, depending on the number of claimants, court filings showed.

Class members who sold their trucks are also entitled to about $400 to $800 for their overpayment, according to a motion for settlement approval.

Class members who still own their trucks will also receive future warranty coverage for repairs on the fuel pump and related components done at GM dealerships. Those who submit timely claims — within 12 months of the final settlement approval or 200,000 miles from the original sale, whichever is first — will receive a 50% reimbursement.

Representatives of GM did not immediately respond to a request for comment Thursday.

Steve Berman of Hagens Berman Sobol Shapiro LLP, an attorney representing class, said in a statement to Law360 Thursday, "We are pleased that we can now start paying consumers who went out of pocket big time to fix their cars. And we thank GM for agreeing to help out its consumers here."

Bob Hilliard of Hilliard Law, another lawyer for the class, noted the settlement honors the memory of their very first plaintiff.

"This settlement honors the memory of Kevin Berry, who initially discovered this defect, became our very first plaintiff, but unfortunately passed away before he could see this result," Hilliard said.

The class is represented by Hagens Berman Sobol Shapiro LLP, Hilliard Law and The Miller Law Firm.

GM is represented by April N. Ross and Rachel P. Raphael of Morgan Lewis & Bockius LLP and Jeffrey K. Lamb of Honigman LLP.

The case is Chapman et al. v. General Motors LLC, case number 2:19-cv-12333, in the U.S. District Court for the Eastern District of Michigan.

--Editing by Covey Son.

LAW360

Portfolio Media. Inc. | 230 Park Avenue, 7th Floor | New York, NY 10169 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Judge Says No French Connection In L'Oreal Hair Relaxer MDL

By **Mike Curley**

Law360 (May 8, 2025, 7:49 PM EDT) -- An Illinois federal judge has dismissed L'Oréal USA Inc.'s French parent company from multidistrict litigation alleging it and other companies' hair relaxer products can cause health problems, finding the company doesn't have sufficient connections to the U.S. for the court to have jurisdiction.

In an **order** filed Wednesday, U.S. District Judge Mary M. Rowland granted L'Oréal SA's bid to dismiss the master long-form complaint against it, as well as plaintiff Lillian Clemons's short-form complaint naming the company, rejecting the plaintiffs' arguments that L'Oréal SA either sells its products in the U.S. or controls the U.S. subsidiary.

While Clemons argued the court has jurisdiction on the theory that L'Oréal SA put its products into the stream of commerce with the knowledge it would be sold in Illinois or Texas, where Clemons's short-form complaint was initially filed, Judge Rowland said the notion that L'Oréal SA itself sold the products in question is unsupported.

According to the order, L'Oréal SA submitted a declaration that it has never manufactured hair relaxer products or its ingredients in the U.S., or otherwise participated in sales, manufacturing or distributing in the U.S.

The judge further found Clemons's argument that L'Oréal SA controls its U.S. counterpart to be unavailing, as they overstate the scope of an annual report from the L'Oréal Groupe, comprised of the L'Oréal companies.

The statements in the report do not say that L'Oréal SA itself, as opposed to its subsidiaries, engaged in conduct in the U.S., or that the products it discusses include the hair relaxer products at issue in the MDL, according to the order.

The lawsuits, consolidated in Illinois in **February 2023**, generally accuse L'Oréal and other companies of selling hair relaxation, or lanthionization, products that caused or increased the risk of women developing uterine, ovarian or breast cancer, endometriosis, uterine fibroids or other injuries to the reproductive system.

The hair relaxer products at issue can be applied by cosmetologists or at home to temporarily straighten and smooth hair in a process that can cause burns and lesions on the scalp and allow hair relaxer chemicals to enter the body, according to the plaintiffs.

In **November 2023**, Judge Rowland largely denied bids to dismiss the master complaint by L'Oréal, Revlon and others, keeping alive negligence, strict liability for design defect and failure to warn, breach of warranty, unjust enrichment and wrongful death claims.

While L'Oréal SA was not named in the initial master long-form complaint, Clemons brought the company into the MDL with her short-form complaint, according to Wednesday's order.

The judge said L'Oréal SA holding the patents for the products does not confer jurisdiction, nor does the licensor-licensee relationship, as the evidence shows that L'Oréal SA does not exercise sales over the U.S. subsidiary's sales or other operations.

Furthermore, L'Oréal SA's sharing of financial information and tracking the U.S. arm's business also does not give the court jurisdiction, the judge wrote, as they do not establish the kind of control necessary for that finding.

And while L'Oréal SA has participated in the litigation by supplying historical documents in discovery, the judge wrote the threshold for finding that L'Oréal USA and SA have a sufficient corporate relationship for discovery purposes is lower than the threshold for finding jurisdiction over L'Oréal SA.

Finally, the judge rejected Clemons's bid for jurisdictional discovery, saying that would only be necessary if the question of jurisdiction was ambiguous, while here it is clear that the court does not have jurisdiction.

Representatives for the parties could not immediately be reached for comment Thursday.

L'Oréal SA is represented by Theodore E. Tsekerides, Aaron J. Curtis and Elaina K. Aquila of Weil Gotshal & Manges LLP.

L'Oréal USA Inc., L'Oréal USA Products Inc. and SoftSheenCarson LLC are represented by Dennis S. Ellis, Katherine F. Murray, Noah S. Helpern and Serli Polatoglu of Ellis George LLP and Jonathan Blakley and Peter Siachos of Gordon Rees Scully Mansukhani LLP.

Revlon is represented by Robert A. Atkins, Daniel H. Levi, David E. Cole, Randall S. Luskey and Daniel H. Levi of Paul Weiss Rifkind Wharton & Garrison LLP and Edward P. Abbot and Erich J. Gleber of Hawkins Parnell & Young LLP.

The plaintiffs are represented by Diandra "Fu" Debrosse Zimmermann of DiCello Levitt LLP, Benjamin L. Crump of Ben Crump Law, Fidelma L. Fitzpatrick of Motley Rice LLC, Michael A. London of Douglas & London PC and Edward A. Wallace of Wallace Miller, among others.

The case is In re: Hair Relaxer Marketing Sales Practices and Products Liability Litigation, case number 1:23-cv-00818, in the U.S. District Court for the Northern District of Illinois.

--Additional reporting by Lauren Berg, Dorothy Atkins and Emily Field. Editing by Drashti Mehta.

LAW360

Portfolio Media. Inc. | 230 Park Avenue, 7th Floor | New York, NY 10169 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Ex-Brookfield Leader Says He Was Fired For Whistleblowing

By **Hailey Konnath**

Law360 (May 9, 2025, 12:22 AM EDT) -- A former managing partner at Brookfield Asset Management lobbed wrongful termination and defamation claims at his former employer Thursday, claiming that he was fired for refusing to accept a bribe and for filing a whistleblower complaint with the U.S. Securities and Exchange Commission.

In his suit, Josh Raffaelli said he was retaliated against after he disclosed to the SEC that an investment fund affiliated with Brookfield was misleading investors. Among other issues, Raffaelli said Brookfield "deliberately inflated the amount of capital in its venture capital fund" to trick potential investors that included pension funds, universities and nonprofits, according to the 100-page complaint filed in California state court.

Raffaelli described himself as a seasoned professional with decades of experience managing venture capital. He said he was the architect of Brookfield's venture capital strategy and the "driving force" behind "hugely successful early investments" in Elon Musk-led companies SpaceX, Tesla and X Corp., formerly known as Twitter, among other "fast-growing companies."

Still, Raffaelli was terminated after he refused to go along with a plan to "make self-serving decisions to benefit [Brookfield's] bottom line at the expense of their investors," he alleged.

"He also refused to accept a bribe offered by the Brookfield defendants in exchange for him lying to investors about the supposed advantages of merging their venture capital funds into one that had such an opposite trading strategy that it was sure to kill their investments," Raffaelli said.

According to the complaint, Raffaelli started working for Brookfield in 2017. In his managing partner role, Raffaelli started and oversaw several venture capital funds. And his employment agreement rewarded his success, he said. If the funds did well, then he could earn tens of millions of dollars, Raffaelli said. If they did "very well," he could earn even more, he said.

"During the course of more than six years with the Brookfield defendants, the BAM VC funds performed very well," the complaint states. "Had he not been wrongfully terminated, Raffaelli stood to be paid a minimum of at least $46 million, with significant payouts due by mid-2025."

However, the trouble began in 2020, when commercial real estate took a "nosedive" during the COVID-19 pandemic, according to Raffaelli. Brookfield was heavily invested in the commercial real estate space, he said. When that happened, Brookfield had "neither the available cash nor the inclination" to honor commitments to invest $400 million in venture capital funds or $6.5 billion in its latest private equity funds, nor did it want to spend "billions of dollars more across its adjacent private equity strategies," per the complaint.

One executive admitted this to Raffaelli in a phone call, revealing "the true reason Brookfield's private equity division had passed on more than $27 billion of equity commitments between September 2022 and June 2024 was balance sheet constraints at Brookfield," he said.

"Investors had committed their capital to Brookfield only to have Brookfield sit on these assets (while charging management fees) and while trying to repair a broken balance sheet," he said.

A way out of this predicament would be for Brookfield to use its role as general partner to artificially limit the size, investments and profitability of the venture capital funds, Raffaelli said. Brookfield figured if it would do that, then Canada-based Brookfield Corp. could use its role as a limited partner to avoid investing further cash and reduce the management fees it had to pay, he said.

"Raffaelli came to learn that the Brookfield defendants began a campaign in late 2023 and throughout 2024 to artificially manipulate the BAM VC funds to accomplish their goals, which occurred in various ways," the suit says.

Specifically, he said he was instructed not to accept offered investments from third parties, to shut down new investments for the venture capital funds and to stop marketing for further investments.

"Any VC fund trying to thrive and yield maximum returns would regard this strategy as lunacy because a larger fund, with more deployable capital, always benefits its investors since it can pounce on good opportunities when they come along while being better diversified to protect against a serious downside if an investment is in trouble," Raffaelli said.

He said he was told to make decisions that were "terrible for Brookfield's venture capital fund investors," but that helped Brookfield by limiting the amount of cash it had to invest in the funds.

At the same time, Raffaelli said he learned about another issue. Brookfield had acquired a majority interest in the failed Silicon Valley Bank's venture capital and credit funds. And that collection of funds, named Pinegrove, was "committing securities violations by misrepresenting the amount of capital it had raised and the sources of that capital," he said.

"Unable to countenance the deceptions about Pinegrove affecting its [limited partners] and investors, Raffaelli did the right thing and anonymously reported his findings internally to the Brookfield defendants," according to the complaint. "Only after realizing that his reporting had not triggered any investigation by the Brookfield defendants did Raffaelli take the next step and report Pinegrove's misrepresentations to the SEC by filing a whistleblower complaint."

Ultimately, Raffaelli said he was told to lie to other limited partners — in part because those investors trusted Raffaelli — and get them to move their investments over to Pinegrove. "If he would agree to lie, the Brookfield defendants told Raffaelli that they would make a 'trade' with him by paying him huge compensation from the BAM VC funds," the suit states.

"To say that Raffaelli was gobsmacked by his employer's blatant bribe offer would be an understatement," he said.

Raffaelli said he finally told his employer that he'd filed an SEC whistleblower complaint in November.

"Within a few days, his career with Brookfield was over," per the suit.

Raffaelli is alleging wrongful termination, defamation, unfair business practices, breach of contract and unjust enrichment, among other claims. He's seeking unspecified damages for lost wages, plus pain and suffering and punitive damages.

Mark Mermelstein, one of Raffaelli's lawyers, told Law360 on Thursday, "Brookfield repeatedly betrayed the trust and best interests of its investors, and then fired the employee who challenged its behavior."

"This is classic David versus Goliath: an individual standing up to one of [the] world's largest asset managers to demand that it uphold fundamental ethical and fiduciary responsibilities," Mermelstein said.

Brookfield didn't immediately respond to a request for comment late Thursday.

Raffaelli is represented by Mark Mermelstein and Joel Athey of Holmes Athey Cowan & Mermelstein LLP.

Counsel information for Brookfield wasn't immediately available Thursday.

The case is Josh Raffaelli v. Brookfield Asset Management LLC et al., case number unknown, in the Superior Court of the State of California for San Mateo County.

--Editing by Jay Jackson Jr.

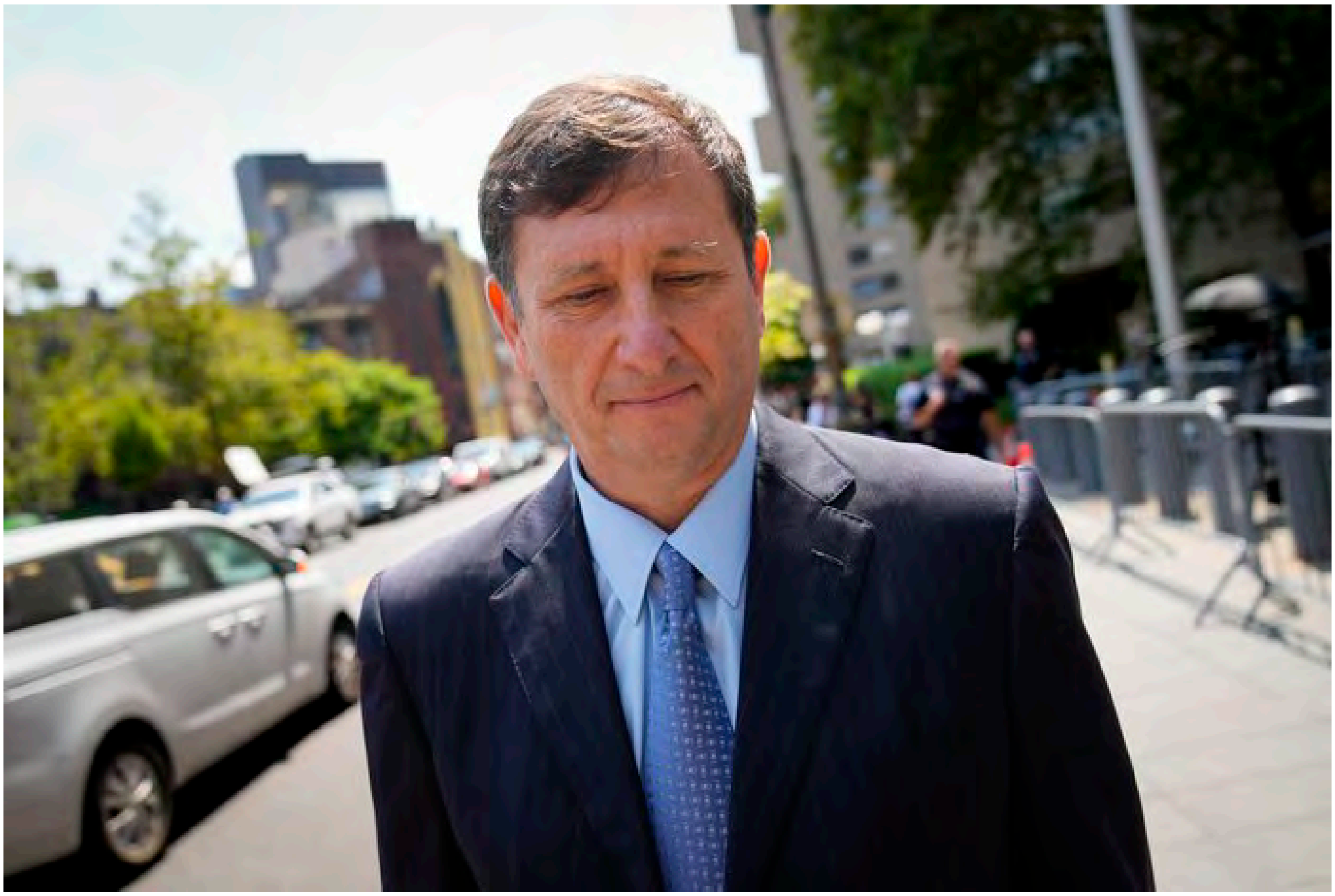
LAW360

Portfolio Media. Inc. | 230 Park Avenue, 7th Floor | New York, NY 10169 | www.law360.com
Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

Celsius Founder Gets 12 Years For Massive Crypto Fraud

By **Stewart Bishop**

Law360, New York (May 8, 2025, 11:17 PM EDT) -- The founder and former CEO of defunct Celsius Network on Thursday was sentenced to 12 years in prison for deceiving customers about the crypto lender's profitability and business practices, and falsely inflating the price of the platform's native token, CEL.



"I wanted to be of service to people, I wanted to help people and I destroyed that," Alexander Mashinsky, pictured in 2023, told a New York federal judge on Thursday. (AP Photo/John Minchillo)

U.S. District Judge John Koeltl handed down the prison term to Alexander Mashinsky during an hourslong sentencing hearing in Manhattan. Mashinsky was also ordered to forfeit over $48 million and pay a $50,000 fine. The matter of restitution will be decided at a later date.

While customers, or retail investors, were able to recover a portion of their funds as part of Celsius' **bankruptcy proceedings**, and some also received equity in a crypto mining venture, Judge Koeltl said that can't make up for the full range of harm suffered by the victims.

"The letters from the victims in this case were extraordinarily moving," Judge Koeltl said, in reference to over 200 victim letters received by the court. "They show that victims lost their life savings or a portion of them, and many victims suffered psychological [harm]."

Once valued at over $3 billion with $25 billion in assets under management and one million registered customers, Celsius billed itself as a crypto bank, where customers could deposit digital assets and earn interest or "rewards," from Celsius' investment of those assets — which involved lending, exchange trading and other profit-seeking strategies. Customers could also obtain loans from Celsius, using their crypto as collateral.

Prosecutors say Celsius was actually a house of cards, and Mashinsky lied about how Celsius used funds from unwitting customers to make risky investments and extend uncollateralized loans. According to the indictment, Mashinsky and others also had Celsius buy hundreds of millions of dollars of CEL to keep the price artificially high and hid the extent of the company's CEL trading.

Celsius filed for Chapter 11 protection in July 2022 with a shortfall of nearly $1.2 billion amid the cryptocurrency market downturn, shortly after halting all customer withdrawals. Customers lost over $590 million, Judge Koeltl said Thursday.

Mashinsky, a Ukraine-born naturalized U.S. citizen, in December **pled guilty** to securities fraud and commodities fraud.

However, Judge Koeltl on Thursday took issue with what he said were efforts by Machinsky to seemingly limit the extent of his misconduct to two particular false statements.

In his guilty plea, Mashinsky specifically admitted that he misled customers by falsely suggesting in a 2021 interview that Celsius had received approval from regulators when it hadn't, and that he lied that he was not selling his CEL token holdings in September 2019, which prosecutors say netted him over $48 million when he unloaded the crypto at overly inflated prices.

"[He] makes no reference to the millions of dollars of losses from his fraud," the judge said.

Mashinsky's sentencing comes nearly two years after prosecutors unveiled a seven-count indictment in July 2023 charging him and former Celsius chief revenue officer Roni Cohen-Pavon — an Israeli attorney who had worked at the law firm Herzog Fox & Neeman before joining Celsius around 2020 — with fraud and conspiracy.

Celsius entered into a nonprosecution agreement and agreed to cooperate with the government.

In September, Cohen-Pavon pled guilty under an agreement to cooperate with the government, and he was expected to testify against Mashinsky during Mashinsky's jury trial, which was scheduled to begin in January, until Mashinsky pled out.

In a statement to the court on Thursday, Mashinsky, tearful at times, told Judge Koeltl that he's truly remorseful for his actions.

"I wanted to be of service to people, I wanted to help people and I destroyed that," Mashinsky said. "And I'm sorry."

Prosecutors didn't buy it. Assistant U.S. Attorney Allison Nichols told Judge Koeltl that Mashinsky is a predator, who took advantage of his customers by selling them false hope.

"It was his lies that induced these customers to turn over their savings to the platform," Nichols said.

According to the government, Mashinsky has tried to walk back his guilty plea by disclaiming the extent of his wrongdoing and engaging in "elaborate linguistic acrobatics" to avoid taking responsibility.

Prosecutors asked the judge to impose a 20-year prison term for Mashinsky, who in turn asked for an incarceratory sentence of no more than a year and a day. For its part, the U.S. Probation Department in the Southern District of New York said a 15-year stretch would suffice.

Three different Mukasey Young LLP attorneys spoke on Mashinsky's behalf.

One of them, Michael Westfal, took issue with the government's characterization of his client, saying Mashinsky would never maliciously harm anyone.

"The portrayal of Alex as some sort of financial serial killer out to harm someone is a hoax," Westfal told Judge Koeltl.

The defense bristled at other cases described by the government as being analogous to Mashinsky's misconduct, including FTX founder Sam Bankman-Fried, who was **sentenced to 25 years** in prison for stealing more than $11 billion from customers, investors and lenders of his now-collapsed cryptocurrency empire.

Westfal noted that Mashinsky's $48 million forfeiture stemmed from the sale of his own stake in CEL, which was not the case in other Southern District prosecutions like that of Bankman-Fried or the defendants **charged over OneCoin** — a $4 billion cryptocurrency scheme masterminded by "CryptoQueen" and fugitive Ruja Ignatova that defrauded millions of investors around the world.

"He didn't touch Celsius or Celsius customer funds," Westfal said.

In a statement, the new U.S. attorney for the Southern District of New York, Jay Clayton, said Mashinsky used customer funds to make "tens of millions of dollars while his customers lost billions."

"America's investors deserve better," Clayton said. "The case for tokenization and the use of digital assets is strong, but it is not a license to deceive."

Mashinsky attorney Marc Mukasey told Law360 that they're "happy the court rejected the government's heavy-handed sentencing request."

"But even one day in prison is too much," Mukasey said.

Mashinsky is due to report to prison on Sept. 12.

The company and Mashinsky have also been sued by regulators including the U.S. Securities and Exchange Commission, the Federal Trade Comission and the Commodity Futures Trading Commission.

Mashinsky is represented by Torrey Young, Marc Mukasey and Michael Westfal of Mukasey Young LLP.

The government is represented by Allison Nichols, Adam Hobson and Peter Davis of the U.S. Attorney's Office for the Southern District of New York.

The case is U.S. v. Mashinsky et al., case number 1:23-cr-00347, in the U.S. District Court for the Southern District of New York.

--Additional reporting by Elliot Weld and Dorothy Atkins. Editing by Bruce Goldman.