Securities Law News

May 13, 2025, 11:54 AM PDT

# ModivCare Shareholder Sues Brass Over Contract Cash Flow Fall

- **COURT**: D. Colo.
- **TRACK DOCKET:** No. 1:25-cv-01483 **(Bloomberg Law subscription)**

ModivCare Inc. management hid deteriorating free cash flows by touting certain contracts in its non-emergency medical transportation business as mitigating risks, a shareholder lawsuit said.

Share prices plummeted more than 59% on Sept. 12, the day the health care company said in a Securities and Exchange Commission filing that it was taking steps to improve its liquidity partly due to outstanding contract receivables, said the complaint filed Monday in the US District Court for the District of Colorado.

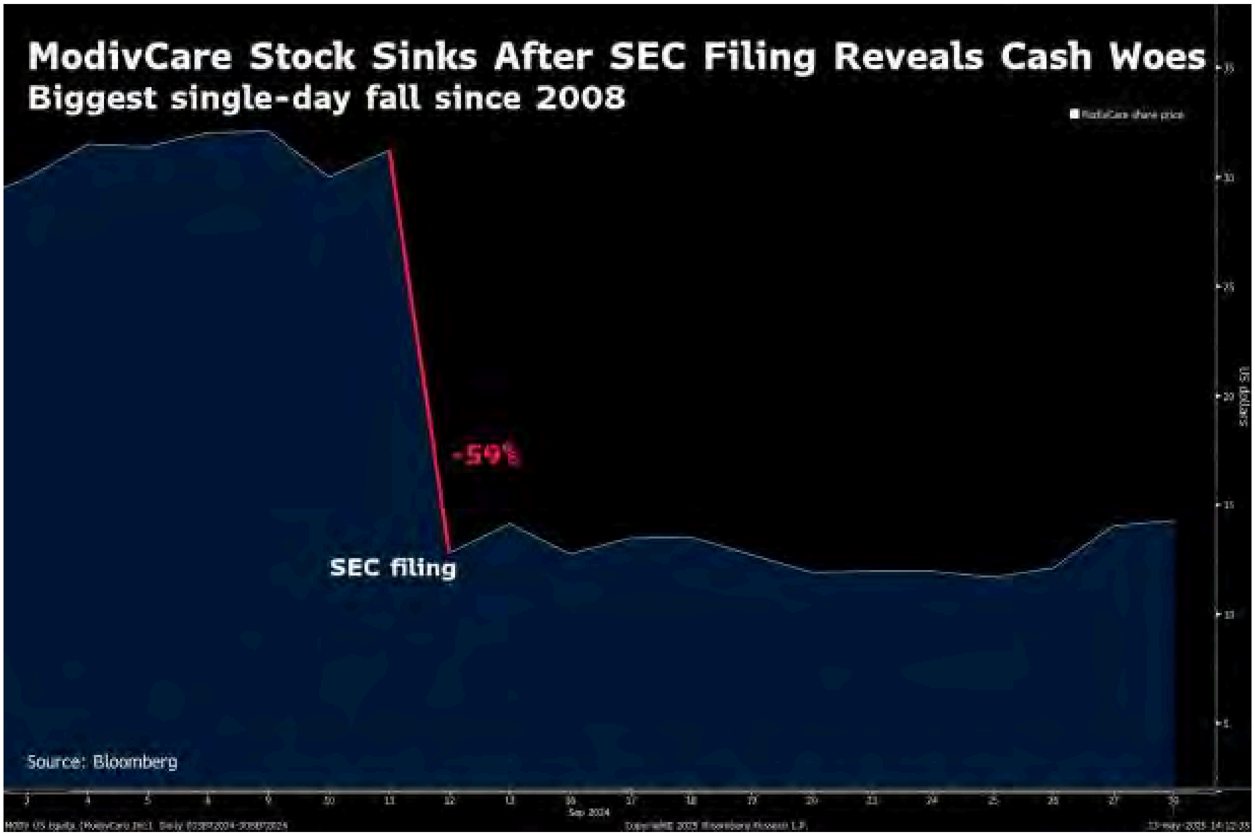
It was the stock's biggest one-day drop since October 2008, according to data compiled by Bloomberg.

Top corporate brass concealed that certain contracts in the transport segment were causing ModivCare's free cash flow to degrade and that related renegotiations and pricing accommodations were hurting its financial results, said the shareholder derivative action—a lawsuit filed on behalf of a company against its leadership. Free cash flow measures how much money is available after a business covers its operations and makes any capital expenditures.

Current and former board members and executives harmed ModivCare's reputation and wallet by having it issue misleading statements and not maintaining adequate internal controls, plaintiff Zane Whitfield said in his complaint. Those overseers forced ModivCare to buy back more than 10,500 of its own allegedly inflated shares for almost $968,000 and exposed it to potentially costly litigation, he said.

Whitfield alleged corporate wrongdoing from at least Nov. 3, 2022, through Sept. 15, 2024—the day before ModivCare said it lowered a key 2024 financial metric's outlook, mostly because of pricing accommodations in the transport segment to grow client relationships. Share prices slid almost 10% on Sept. 16.

Whitfield's lawsuit comes a week after the company announced chief financial officer Barbara Gutierrez and chief information officer Jessica Kral would depart and not have their positions filled as part of ModivCare's modernization and cost reduction strategy. A few days later, ModivCare shared an adjusted earnings loss that was steeper than consensus estimates for the first fiscal quarter of 2025.




The stock price dropped more than 16% on May 4, 2023, after an executive said ModivCare saw reduced cash flow from operations in the first quarter of 2023, Whitfield said. And share prices fell more than 39% on Feb. 24, 2024, after CEO L. Heath Sampson revealed negative cash flow in the fourth quarter of 2023 and predicted the trend to continue into 2024, Whitfield said.

A proposed class action alleging similar issues against ModivCare and three executives is pending in the same court.

Rigrodsky Law PA and Grabar Law Office represent Whitfield, who seeks damages for ModivCare, among other relief. Whitfield alleged securities law violations, breach of fiduciary duties, aiding and abetting of the breaches, unjust enrichment, and waste of corporate assets by ModivCare's current and former corporate leaders.

ModivCare didn't immediately respond to an email seeking comment. Nor did the law firm representing it in the related proposed class action, Gibson, Dunn & Crutcher LLP.

The case is Whitfield v. Sampson , D. Colo., No. 1:25-cv-01483, complaint filed 5/12/25 .

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

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

Securities Law News

May 13, 2025, 10:40 AM PDT

# Intel Hit With $1 Billion Lawsuit for Dodging Mobileye Losses

- **COURT:** Del. Ch.
- **TRACK DOCKET:** No. 2025-0500

Intel Corp. exploited its majority Mobileye Global Inc. stake to dodge nearly $1 billion in losses through opportunistic stock sales based on inside information about inventory problems, according to an unsealed lawsuit.

Mobileye investors are suing Intel—its controlling stockholder—along with current and former board members including ex-Sen. Claire McCaskill (D-Mo.) and GOP diplomat Jon Huntsman Jr., who previously served as governor of Utah. Not named as a defendant is two-time Republican cabinet secretary Elaine Chao, a Mobileye director married to Sen. Mitch McConnell (R-Ky.), the former longtime majority leader.

Intel and Mobileye didn't immediately respond to requests for comment Tuesday.

The Silicon Valley giant took the Jerusalem-based auto tech company private for more than $15 billion in 2017, allegedly keeping a dominant controlling position when it spun Mobileye back out at a $17 billion valuation in 2022. Mobileye itself isn't named as a defendant.

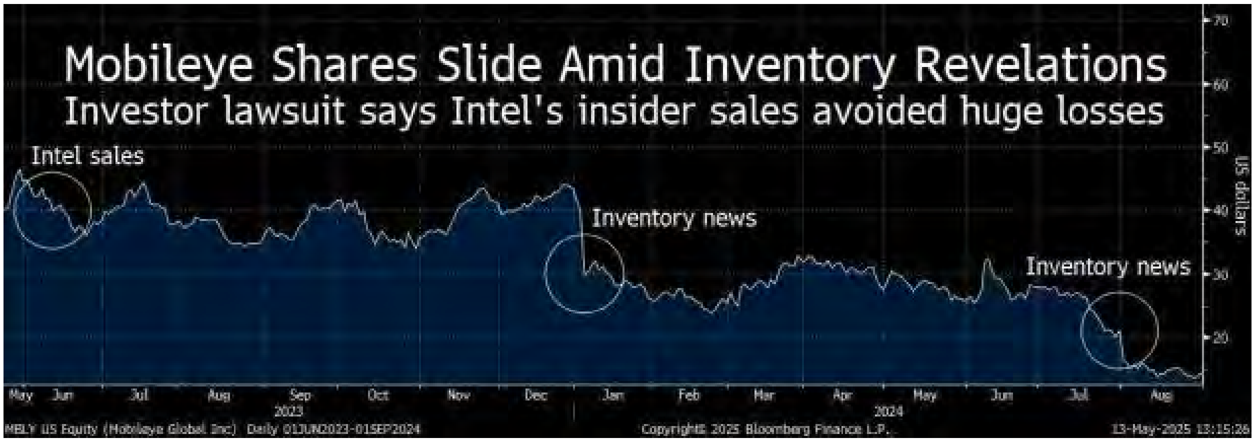
Abuses of corporate control comprise a recurring theme in Delaware's Chancery Court, the leading US business tribunal, which sees a steady stream of litigation targeting alleged looting of public companies by founders, majority shareholders, and other influential insiders.

A series of court decisions cracking down on controlling stockholder conflicts—including a landmark $56 billion ruling against Elon Musk—recently sparked a major legislative overhaul aimed at reversing a perceived legal swing toward minority investors.

**Channel Stuffing**

The shareholder suit, made public Monday, says Intel knew Mobileye was inflating its market value through "channel stuffing" when the chipmaker sold shares worth $1.6 billion in June 2023, about six months before news of the revenue scheme began trickling out. Channel stuffing involves locking customers into excessive inventory orders to boost short-term sales at the expense of future profits.

If Intel had waited until after the revelations drove Mobileye’s shares from nearly $40 to around $16 between January and August 2024, its sales would have been worth only a little more than $600 million, according to the court complaint. Mobileye’s stock, now trading for less than $16, has stayed consistently below the $42-per-share price of the secondary public offering Intel orchestrated, the lawsuit says.




The suit involves shareholder derivative claims, which are technically filed on a corporation’s behalf against its senior leaders or controlling stockholders. Damages in derivative cases are typically paid into a company’s coffers by its officers, directors, financial backers, or insurers.

The allegations partly echo a proposed securities fraud class action thrown out by a federal judge last month. The parallel securities suit, led by two pension funds, targeted Mobileye and several corporate executives without naming Intel as a defendant.

The Delaware court complaint was originally filed under seal May 6.

The investors leading the case, Evan Levitan and Barbara Wolfson, are represented by Cooch & Taylor PA, Robbins LLP, and Weiss Law LLP. Intel and the Mobileye board members haven’t yet made court appearances.

The case is Levitan v. Shashua , Del. Ch., No. 2025-0500, complaint unsealed 5/12/25 .

To contact the reporter on this story: Mike Leonard in Washington at mleonard@bloomberglaw.com

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

# SoundHound AI faces merged stockholder lawsuits over goodwill claim

DJ dailyjournal.com/articles/385425-soundhound-ai-faces-merged-stockholder-lawsuits-over-goodwill-claim

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**May 14, 2025**

SoundHound AI faces investor lawsuits alleging misleading financial reports and inflated goodwill from an $80 million acquisition, causing a stock price drop after a delayed SEC filing.

U.S. District Judge Rita F. Lin

Stockholder litigation against SoundHound AI, an artificial intelligence company specializing in voice recognition, is heating up after a federal judge in San Francisco consolidated two investor lawsuits on Tuesday.

The investors accused the company of failing to maintain financial reporting controls and misleading the public about the benefit of an $80 million acquisition of a subsidiary, Amelia, last year.

U.S. District Judge Rita F. Lin's consolidated two suits claiming SoundHound failed to timely file an SEC report by March 4. The complaints claim this failure caused the stock price to drop and revealed the company misled investors about its internal controls.

The plaintiffs in the Bishop case, filed on April 8, and the Roy case, filed on April 15, allege that the filing delay and overestimation of goodwill caused SoundHound's stock price to drop 5.86% in a single day on March 3.

The company filed its annual report to shareholders on March 11. The plaintiffs claim the company revealed that it inflated by $9.3 million the goodwill of its August 2024 acquisition of Amelia, a conversational AI company that is developing an AI assistant for businesses.

In an April 28 SEC filing, SoundHound warned consumers that the acquisition of Amelia could hurt the business and SoundHound admitted to the over estimation of goodwill in the Amelia asset.

SoundHound is valued at $4.18 billion. Goodwill is an intangible asset that arises when a company is purchased for more than the fair value of its net identifiable assets. *Bishop v. SoundHound AI, Inc.*, 3:25-cv-03172 (N.D. Cal. filed April 8, 2025); *Roy v. Mohajer*, 3:25-cv-03363 (N.D. Cal. filed April 15, 2025).

SoundHound's media relations office could not be reached for comment on Tuesday.

Jon A. Tostrud, founder of Tostrud Law Group PC in Los Angeles, argued in the Bishop complaint that the six company executives listed as individual defendants in the case worked together to orchestrate a conspiracy to mislead the public about the company's internal controls. Tostrud could not be reached for comment Tuesday.

Tostrud's clients claim that the defendants were unjustly enriched by the inflation of the company's stock price prior to the March SEC filings. The complaint alleges that the individual defendants own approximately $77.5 million in total SoundHound stock with CEO and co-founder Keyvan Mohajer allegedly owning $60.2 million.

In the April 28 SEC report to investors, SoundHound admitted to failing to implement internal financial reporting controls but claimed it was not discovered until Dec. 31.

"The Company has identified material weaknesses in its internal control over financial reporting and may identify additional material weaknesses in the future, which may result in material misstatements of the Company's consolidated financial statements or cause the Company to fail to meet its periodic reporting obligations and the trading price of our stock could be negatively affected," the filing stated. "The Company did not design and maintain effective controls related to the identification of and accounting for certain non-routine, unusual or complex transactions, including the accounting for complex financing transactions and acquisitions."

The attorneys representing the plaintiffs in the Roy case are: Tostrud; Timothy J. MacFall, Samir Aougab of Rigrodsky Law PA in Garden City, New York; and Joshua H. Grabar of Grabar Law Offices in Philadelphia.

The attorneys representing the plaintiffs in the Bishop case are: Robert C. Moest, of counsel, and Timothy Brown, managing partner, for The Brown Law Firm PC in Santa Monica.

#385425

Daily Journal Staff Writer
wisdom_howell@dailyjournal.com

Securities Law News
May 13, 2025, 1:23 PM PDT; Updated: May 13, 2025, 3:49 PM PDT

# Cabot Oil Board Bests Shareholder Pollution Claims on Appeal (2)

- **Shareholders didn't establish board demand futility, court said**
- **Shareholders didn't sufficiently allege directors acted in bad faith**

Cabot Oil & Gas Corp.'s board overcame allegations that they failed to properly oversee gas well fixes and forced the company to mislead investors about complying with environmental laws, a federal appeals court ruled Tuesday.

The US Circuit Court of Appeals for the Fifth Circuit affirmed a district court ruling to toss the shareholder derivative lawsuit, agreeing with the lower court that the plaintiffs didn't sufficiently establish that demanding changes from the board before suing would've been in vain, which is required under Delaware law where Cabot is incorporated. Circuit Judge James E. Graves Jr. wrote for the panel that shareholders didn't adequately allege current and former directors acted in bad faith, as documents showed Cabot "had both successes and failures in its remediation of the gas migration and water contamination."

Shareholders had sued the board in 2020 seeking relief for Cabot—which became Coterra Energy Inc. through a 2021 merger—after the company revealed receiving notices about flouting agreements to fix issues with its gas wells and the Pennsylvania Office of the Attorney General charged the company with 15 criminal counts for violating environmental law. Coterra pleaded no contest to charges in 2022, agreeing to pay almost $16.3 million for the construction of a new public water supply in Susquehanna County, the according to the office.

Cabot's fracking there had caused the explosion of an residential water well in 2009, prompting a state investigation that the company had been leaking methane gas into residential water supplies, Graves said. The company entered a series of agreements to remediate these issues and allegedly assured investors that they had been fixing faulty wells, but Cabot still polluted water supplies through stray gas migration and was receiving notices of new violations from Pennsylvania regulators, per district court filings.

US District Court for the Southern District of Texas Judge Lee H. Rosenthal correctly dismissed the suit because the shareholders didn't make a pre-suit demand or sufficiently claim how such an ask would've been futile—which is needed for shareholder derivative actions, a lawsuit that's brought against its corporate leaders seeking relief for a company, Graves said.

Shareholders had told the court that directors couldn't be impartial about litigation since they would be implicated for violating their duty to properly oversee Cabot's operations, half of them had issued misleading statements, and one engaged in insider trading, the opinion said.

The appellate panel disagreed. Cabot's board "neither failed to implement a compliance system nor failed to monitor it" regarding fixing wells, Graves said. Shareholders failed to plead with enough particularity that directors knowingly causing Cabot to issue misleading statements, Graves said. And they waived their insider trading claim by merely mentioning it in a footnote on appeal; it wouldn't have sufficed anyway, Graves wrote, considering shareholders needed to demonstrate demand futility by at least half of the 10 then-directors.

The Southern District of Texas approved a $40 million class action settlement for investors in a related suit against the company last fall.

Glancy Prongay & Murray LLP and Robbins LLP are co-lead counsel for the plaintiffs-appellants, according to the notice of appeal. Norton Rose Fulbright US LLP represents the defendants-appellants, per the docket. None of these firms immediately responded to emails seeking comment.

The case is Ezell v. Dinges , 5th Cir., No. 24-20050, dismissal affirmed 5/13/25 .

(Updated with case context throughout.)

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

To contact the editors responsible for this story: Kiera Geraghty at kgeraghty@bloombergindustry.com; Naomi Jagoda at njagoda@bloombergindustry.com

# Judge declines to OK settlement in challenge of hedge funds' handling of KY pension money

**kentuckylantern.com**/2025/05/12/judge-declines-to-ok-settlement-in-challenge-of-hedge-funds-handling-of-ky-pension-money

Tom Loftus May 12, 2025

Franklin Circuit Judge Thomas Wingate has issued a ruling that appears to be a win for four state employees who are suing hedge funds over controversial investments made on behalf of state public pension funds. (Kentucky Lantern photo by McKenna Horsley)

FRANKFORT — Franklin Circuit Judge Thomas Wingate has declined to approve a final settlement in the longrunning lawsuit against big hedge funds over their role in controversial investments by the Kentucky Retirement Systems more than 13 years ago.

The settlement was announced Jan. 8 by Kentucky Attorney General Russell Coleman, who said the hedge funds had agreed to pay $227.5 million to Kentucky's pension programs for public employees.

Franklin Circuit Judge Thomas Wingate

But in a four-page order, Wingate said, "The Court is left without a sufficient reason as to why the Court's approval is necessary for this settlement or why this Court is being asked to make findings that the Court is without sufficient knowledge to make."

Wingate wrote that he "welcomes the parties to settle the matter as they best see fit, however, the Court declines to bless an agreement and enter an order that asks the Court to make findings that the Court believes to be outside of its role."

While the order leaves open the door to further settlement talks, it is a setback for Coleman, the hedge funds and the other parties who had presented a proposed final settlement order to Wingate for his approval.

Kevin Grout, a spokesman for Coleman's office, said late Monday, "We're reviewing the court's order and discussing with the Kentucky pension board leaders."

The order appears to be a big win for four Kentucky public employees who filed a separate case against the same hedge funds. That's because a key part of the proposed settlement order would have required that their case, as well as other related cases, be dismissed.

The employees in that separate case are represented by attorney Michelle Ciccarelli Lerach. A spokesman for Lerach said Lerach is reviewing Wingate's order and will release a statement later this week.

Wingate's Friday order also included a directive that will slash the potential amount that could be paid in fees to attorneys who represent Coleman's office in the case.

The contract between Coleman and those private attorneys led by Ann Oldfather, of Louisville, calls for the fees to be 20% of the first 20% of gross recovery in the case.

The proposed settlement called for hedge funds to turn over $227.5 million, but that total had two parts — $82.5 million in new money plus $145 million held in reserve by Prisma, one of the hedge fund companies that are defendants in the case.

Wingate's order said the $145 million has belonged to Kentucky's pension funds all along and is "not to be considered 'recovered funds' and/or a portion of the 'settlement recovery' for the purpose of determining attorneys' fees."

Don Kelly, the attorney representing Blackstone, one of the defendants in the case, emphasized in a statement Monday that Wingate's order leaves the door open for the parties to settle the case. "The settlement is clearly in the best interests of the Commonwealth and its pensioners and will result in significant assets being paid to the pension plans," Kelly said. "As stated by the Attorney General and the KPPA (Kentucky Public Pension Authority), who are best positioned to make decisions in the public interest, now is the time to put an end to this long running expensive and distracting litigation."

From the case's outset the hedge funds have denied allegations that the investments resulted in high fees, low transparency and massive losses for Kentucky public pension plans. Kelly said in his statement Monday that Blackstone Alternative Asset Management had "delivered a net return of 30 percent on investment."

Litigation
May 13, 2025, 3:13 PM PDT

# Musk Must Produce Experts From Delaware Twitter Purchase Case

X Corp. owner Elon Musk was order by a San Francisco federal judge to produce three expert reports that were prepared in Twitter Inc.'s 2022 Delaware lawsuit over Musk's attempt to back out of purchasing the social media platform.

Magistrate Judge Donna M. Ryu of the US District Court for the Northern District of California on Tuesday said a discovery agreement between Musk and a group of investors suing him over his attempt to lower Twitter's stock price indicated that he must produce the reports from the Delaware case.

The reports by Harvard Law Professor John Coates and investment banker James Boland concerned merger and acquisition transactions, while Columbia Law Professor Justin McCrary's report was on the sampling methods employed by Twitter to analyze fake accounts. Musk had argued that the investors aren't entitled to the reports and are attempting to use the opinions while avoiding compensating the experts.

The investors' lawsuit was certified as a class action last year and avoided dismissal of claims that they lost investments after Musk sought to lower Twitter's stock price to reduce the purchase price of the company.

Cotchett Pitre & McCarthy LLP and Bottini & Bottini Inc. represent the class. Quinn Emanuel Urquhart & Sullivan LLP represents Musk.

The case is Pampena v. Musk , N.D. Cal., No. 3:22-cv-05937, 5/13/25 .

To contact the reporter on this story: Isaiah Poritz in San Francisco at iporitz@bloombergindustry.com

To contact the editor responsible for this story: Stephanie Gleason at sgleason@bloombergindustry.com

# In Tesla’s wake, more big companies propose voting “Dexit" to depart Delaware

**reuters.com**/business/autos-transportation/teslas-wake-more-big-companies-propose-voting-dexit-to-depart-delaware-2025-05-14

Tom Hals May 14, 2025

A drone view shows Tesla electric vehicles waiting for shipment outside the Tesla gigafactory in Austin, Texas, U.S., May 2, 2025. REUTERS/Eli Hartman/File Photo Purchase Licensing Rights, opens new tab

- Musk urged against incorporating in Delaware after his Tesla pay was struck down
- Five large public companies have left and nine more may follow
- Companies said Delaware's courts are becoming unpredictable

WILMINGTON, DEL., May 14 (Reuters) - In the coming weeks, investors in nine public companies worth at least $1 billion each will vote on proposals to ditch Delaware as their place of incorporation, potentially denting the state's longtime reputation as Corporate America's capital, Reuters has found.

Five companies with a stock market value of at least $1 billion have moved their legal home out of Delaware since last year, in what some have nicknamed "Dexit." Tesla (TSLA.O), opens new tab made a high-profile move to Texas last year and in April, President Donald Trump’s social media company Trump Media & Technology (DJT.O), opens new tab, which owns the Truth Social platform, decamped to Florida.
Most of the companies are dominated by a significant shareholder or founder. Delaware judges have expanded the court's most stringent legal standard to a growing range of situations involving controllers, increasing the risk of shareholder lawsuits. The decisions culminated with the blockbuster ruling last year that rescinded Musk’s $56 billion pay package from Tesla (TSLA.O), opens new tab.
Less than an hour after the ruling, Musk said on X: “Never incorporate your company in the state of Delaware.”

Musk’s SpaceX and Tesla soon reincorporated in Texas. Musk did not respond to a request for comment.

Trump Media, which is controlled by a trust that owns shares on behalf of President Trump and is overseen by his oldest son, said in its March proxy statement that Delaware's "increasingly litigious environment facing corporations with controlling stockholders has created unpredictability in decision-making.”

The company cited the Musk pay ruling as an example. It is now incorporated in Florida. Dropbox (DBX.O), opens new tab and The Trade Desk (TTD.O), opens new tab, which each

has a large shareholder, and Cannae Holdings (CNNE.N), opens new tab have moved their charter to Nevada from Delaware. They did not respond to a request for comment.
Among the companies set to vote on proposals to leave are Simon Property Group (SPG.N), opens new tab, which is seeking shareholder approval on Wednesday to reincorporate in Indiana, and gaming platform Roblox (RBLX.N), opens new tab, which wants to move to Nevada.
Unlike many of the other companies that have proposed a "Dexit," Simon does not have a controlling shareholder. It declined to comment on its reasons for proposing a move, referring to its latest proxy statement. Roblox said that Nevada law provides greater predictability.

To be sure, the share of Delaware-based companies in the Russell 3000 index, which covers nearly all public companies, continues to grow, rising to 62% last year from 56% in 2020, according to ISS-Corporate. However, 2024 was the first year that more companies in the Russell Index left Delaware than moved their incorporation to the state.

“On the Richter scale, it’s not that high,” said Benjamin Edwards, a professor at the UNLV School of Law, of the changes. “But it’s still shaking the ground.”

FEARING AN EXODUS

Delaware, which has no sales tax, gets around a third of its general budget revenue from fees and taxes related to chartering businesses. Fearing an exodus of companies leaving after the judicial rulings, the state enacted legislation in March that limits the role of the state’s judges in reviewing certain corporate deals.

It also limited the scope of so-called "books and records" requests, a legal tool often used by shareholder attorneys to try to obtain directors' emails and texts.

Despite the recent changes, corporate law in Delaware remains relatively strict when it comes to insiders making deals that would likely benefit them directly, such as a deal to buy assets from a controlling shareholder or Musk and his Tesla pay arrangement, legal experts said.

"That's one area where Delaware has consistently said, 'Look, we're going to kick the tires of those decisions with a little bit extra force'," said Eric Talley, a professor at Columbia Law School.

Delaware law typically requires a company that strikes a deal with a controlling shareholder to prove the arrangement met a strict standard showing the price and process were fair, unless it was negotiated by independent directors or approved by shareholders.

In Nevada, the same controlling shareholder deal would likely be protected by a legal standard known as the business judgment rule, which shields against lawsuits, regardless of how it was negotiated and approved, legal experts said.

Talley said Nevada directors are protected unless they engage in fraud. "It's actually okay to engage in self-dealing, as long as you don't lie about it," he said.

A state's corporate law governs a company's relationship with shareholders and typically does not affect legal rights of employees or consumers.

In Texas, where Tesla and SpaceX are now incorporated, lawmakers last week approved amendments to its corporate law that are aimed at reducing the threat of shareholder litigation, in part by allowing companies to set stock ownership thresholds for lawsuits. The plaintiff in the Musk pay case owned just nine shares when he filed suit in 2018.

Governor Greg Abbott has not signed the bill and his office did not respond to a request for comment.

Eric Lentell, the general counsel at Delaware-chartered Archer Aviation (ACHR.N), opens new tab, said the aircraft developer is considering reincorporating in Texas and believes directors of other public companies should reconsider Delaware.
After a Delaware judge refused last year to recognize a vote by Tesla investors to reinstate Musk's pay, Lentell said it signaled that Delaware judges "have become kind of activist in nature" by appearing to rewrite settled law.
"I think that's where people get nervous," he said.

Reporting by Tom Hals in Wilmington, Delaware; editing by Amy Stevens, Noeleen Walder and Anna Driver

Class Action

May 14, 2025, 7:18 AM PDT

# Kellogg, FedEx Pension Appeals Spur Historical Inquiry by Court

- **Separate cases argued before Sixth Circuit panel last week**
- **Judges express interest in original meaning of ERISA statute**

A pair of lawsuits challenging how Kellogg Co. and FedEx Corp. calculate retiree pensions may turn on how certain terms in the federal employee benefits statute were understood 50 years ago, the Sixth Circuit signaled.

The appeals court instructed the parties in both cases to file briefs on what the statutory term "actuarial equivalent" meant when the Employee Retirement Income Security Act was enacted in 1974. The parties should address "whether the term was understood as a term of art in the field of actuarial science and, if so, what the meaning of that term was in 1974," the US Court of Appeals for the Sixth Circuit said in a pair of substantially identical orders issued Tuesday in both cases.

The separate cases accuse FedEx and Kellogg successors Kellanova and WK Kellogg Co. of shortchanging the retirement benefits of workers who choose pensions that make post-death payments to their surviving spouses. The proposed class actions say both companies calculated these benefits using outdated formulas and life expectancy data, causing these pensions to be worth less than a traditional, single-life pension in violation of ERISA.

Both cases were dismissed in 2024 by federal judges who declined to read ERISA as including a requirement that these pension calculations rest on actuarial assumptions that are "reasonable." The retirees appealed, and a Sixth Circuit panel including Judges Jane Branstetter Stranch, John K. Bush, and John B. Nalbandian heard arguments in both cases on May 8.

Dozens of large employers have been sued in recent years over the actuarial and interest rate assumptions used by their pension plans, causing district courts to weigh whether these assumptions are legally required to be reasonable. Cases have advanced against Citgo Petroleum Corp., Pinnacle West Capital Corp., and Huntington Ingalls Industries Inc., while lawsuits involving Kellanova, FedEx, Southern Company Services Inc., and Partners Healthcare were dismissed.

Stris & Maher LLP and Siri & Glimstad LLP represent the Kellogg plan participants. Motley Rice LLC, Siri & Glimstad LLP, and Izard, Kindall & Raabe LLP represent the FedEx plan participants.

Jenner & Block LLP represents the Kellogg defendants. FedEx represents itself, along with Morgan, Lewis & Bockius LLP.

The cases are Reichert v. Kellogg Co. , 6th Cir., No. 24-1442, 5/13/25 ; Watt v. FedEx Corp. , 6th Cir., No. 24-5945, 5/13/25 .

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

Class Action
May 14, 2025, 2:10 AM PDT
# Swapping Arbitrators Midstream Risks Moving Claims Back to Court
Deep Dive

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- **Mass-arbitration campaigns spawn disputes over arbitral forum**
- **Courts likely to view abrupt change in provider with skepticism**

Corporate defendants attempting to save money and tilt mass arbitration proceedings in their favor by switching service providers late in the game potentially undermine the validity of the alternative dispute resolution contract, possibly—and ironically—reopening the door to the courthouse.

Claimants in at least three recent video-privacy cases, two involving ESPN Enterprises Inc. and the third against WarnerMedia Direct LLC, have objected to updated agreements purporting to change providers after the defendants faced mass-arbitration campaigns.

But the companies' freedom of action is limited.

"What we're seeing in the cases is that it's going to be problematic to try to change your provider when you're already in the middle of a mass arbitration or have a motion to compel arbitration pending" in court, said Elizabeth Shaffer, a partner with Dinsmore & Shohl LLP who has defended companies in mass arbitrations.

Trying to change your arbitrator can render your agreement unenforceable, and if it does, "you could expose yourself to a class action," she said.

Still, the defendant traditionally is on the hook for costs to initiate arbitration, which can run to $3,500 per claimant. So finding the most efficient and least costly forum for resolving arbitration campaigns involving thousands of claims is to be expected, Shaffer said.

**Tit-for-Tat**

The shift to mass arbitration is part of a tit-for-tat battle with corporate defendants over the handling of large numbers of low-dollar claims, Shaffer said.

Companies struck first by including mandatory arbitration provisions in their consumer and employment agreements, which they paired with waivers prohibiting consumer class actions, she said. The agreements typically required businesses to pick up the tab for most of the filing fees as a way to reassure the courts that arbitration was a consumer-friendly way to resolve disputes, she said.

But the strategy exposed them to potentially enormous fees arising from the simultaneous filing of thousands of similar claims. The up-front costs of a large mass-arbitration campaign easily could run into the tens of millions of dollars.

Plaintiffs' firms within the past decade have mounted a mass-arbitration counterattack, filing campaigns based on wage-and-hour, antitrust, privacy, and data-sharing claims, and a wide range of others, said Maria Glover, a professor at Georgetown Law, one of the first legal scholars to examine mass arbitration.

An American Arbitration Association spokesperson said there appears to be an increase in privacy-related claims in recent years, although a precise breakdown isn't available.

Prominent companies facing mass arbitration privacy claims include Google LLC, Samsung Electronic Co., GoodRx Holdings Inc., L'Occitane Inc., Plex Inc., Tubi Inc., and Starz Entertainment LLC.

Arbitration is a "creature of contract," and defense attorneys say courts typically allow contract changes—including to the arbitration provider—where it can be shown that both sides agreed to the modification. They also say new procedures make sense considering the challenges of attempting to handle thousands of claims at a time.

"There's a natural process going on here, as businesses confront mass arbitrations, of trying to identify forums that have better, more efficient procedures for the types of mass arbitrations they're facing," said David Horniak, a partner with DLA Piper who has defended and written on mass arbitration.

**Revised Procedures**

In response, arbitration providers like AAA and JAMS have introduced new procedures and fee schedules to boost efficiency and lower costs. And startup providers such as New Era ADR emerged to compete for a place in the mass-arbitration landscape.

The difficulty arises when companies already facing litigation try to pick and choose among them.

For example, consumer plaintiffs represented by Labaton Keller Sucharow LLP seized the opportunity to file a proposed class action in federal district court against WarnerMedia's HBO Max after the company attempted to switch arbitration providers in the midst of a mass-arbitration campaign over alleged Video Privacy Protection Act violations.

Warner refused to participate in proceedings before AAA, breaching the arbitration agreement and class-action waiver to which it was linked, the plaintiffs said.

Other claimants appear content to proceed with mass arbitration while fighting the abrupt forum switch.

In *Antoine v. ESPN Enterprises Inc.* , the sports network evaded a VPPA class action by successfully moving in court to compel arbitration before JAMS.

But after the plaintiffs' attorneys launched a mass-arbitration campaign, ESPN issued a new user agreement selecting ADR Services as the arbitrator instead.

The plaintiffs moved to compel arbitration before the JAMS, and the court agreed, in part because it already did so under the prior agreement.

**‘Oppression and Surprise’**

In an antitrust case against Live Nation Entertainment Inc. the US Court of Appeals for the Ninth Circuit ruled that the ticket seller’s new agreement switching arbitration providers from JAMS to New Era ADR without notice wasn’t enforceable because the company engaged in “oppression and surprise.”

The court also held that the procedures themselves were unfairly tilted against claimants.

“Courts are right to view post-dispute amendments to the arbitration provision with concern,” especially where there may be collaboration between the arbitrator and the respondent company, said Ben Whiting, a partner with Keller Postman LLC, a pioneering mass-arbitration firm.

New Era—a newer provider that at the time handled mass arbitration campaigns by “batching” claims —"appears to have been assisted” in developing its rules by Live Nation, he said.

New Era has since changed its arbitration procedures, said Rich Lee, its co-founder and CEO.

Shaffer said she expects courts will allow companies to change the arbitration forum if no litigation is underway.

But doing so after arbitration cases have been filed under a prior agreement “would be harder,” she said.

To contact the reporter on this story: Christopher Brown in St. Louis at ChrisBrown@bloombergindustry.com

To contact the editors responsible for this story: Nicholas Datlowe at ndatlowe@bloombergindustry.com; Laura D. Francis at lfrancis@bloombergindustry.com

# Critical Mass With Law.com's Amanda Bronstad: Why Aren't There Any Cases for the MDL Panel to Hear This Month? Johnson & Johnson Renews Its Bid to Boot Beasley Allen

**law.com**/2025/05/14/critical-mass-with-lawcoms-amanda-bronstad-why-arent-there-any-cases-for-the-mdl-panel-to-hear-this-month-johnson--johnson-renews-its-bid-to-boot-beasley-allen

Amanda Bronstad May 14, 2025

Welcome to **Law.com Class Actions: Critical Mass**, a weekly briefing for class action and mass tort attorneys.

**This week**: In a rare event, the **U.S. Judicial Panel on Multidistrict Litigation** has no cases scheduled for oral argument at its May 29 hearing. **Johnson & Johnson**, fresh off its bankruptcy dismissal, wants **Beasley Allen** removed from leadership of the talc cases—again. Find out who was appointed special master to allocate common benefit fees in the **proton-pump inhibitor** settlements.

I'm . Feel free to reach out to me with your input. My email is abronstad@alm.com. Follow me on LinkedIn or X: @abronstadlaw.

At its May 29 hearing in Washington D.C., the **U.S. Judicial Panel on Multidistrict Litigation** has no cases scheduled for oral arguments.

That's highly unusual. Lawyers told me they weren't sure what the statistic meant. Many agreed that plaintiffs' attorneys were increasingly coordinating cases on their own because the panel, in multiple orders throughout the years, encouraged them to do so. The panel also has denied more requests for multidistrict litigation.

Others, however, noted that more mass torts were being filed in state courts, which aren't part of multidistrict litigation. Some cited a noticeable lull in product liability cases.

Few, however, pointed to the first multidistrict litigation rule, which is set to become effective on Dec. 1.

**One thing is clear**: The number of motions has dropped dramatically. In 2025, there were six motions filed as of May 1, down from 46 last year and far below the 29 in 2023, the lowest number in the past decade.

On May 5 and May 6, however, two competing motions were filed to coordinate multidistrict litigation of 10 antitrust class actions alleging a price-fixing conspiracy among the nation's largest construction equipment rental companies. Here's my storyon those cases, which are likely to be heard at the panel's next hearing on July 31 in Boise, Idaho.

## J&J: Bankruptcy Testimony Bolsters Brawl With Beasley Allen

With its third talc bankruptcy now dismissed, **Johnson & Johnson** has renewed an attempt to remove **Beasley Allen** from leadership of the litigation, citing "serious ethical lapses." Here's my report on the court filings, which focus on letters last month between Andy Birchfield (**Beasley Allen**), Johnson & Johnson **Chief Legal Officer Liz Forminard** and **Vice President of Worldwide Litigation Erik Haas** regarding the possibility of reviving settlement negotiations. Johnson & Johnson's new motion also references Birchfield's testimony during a key bankruptcy hearing, in which he falsely testified that he had his clients' consent when voting "no" on their behalf to Johnson & Johnson's $10 billion confirmation plan. Beasley Allen's response noted that **U.S. Bankruptcy Judge Christopher Lopez**, in his March 31 dismissal order, concluded that Birchfield had not acted in bad faith.

**Update**: On Monday, Johnson & Johnson filed a motion to pursue discovery into litigation financing of Beasley Allen's talc cases, citing "new developments" on the facts. Last year, a special master in the talc multidistrict litigation had refused Johnson & Johnson's request to issue subpoenasrelating to litigation financing, but testimony during the bankruptcy hearing justified a new look, the motion says. That's because **The Smith Law Firm**, which shared thousands of Beasley Allen's talc clients under a joint venture, admitted to receiving litigation financing. Kristen Fournier(**King & Spalding**) and Jessica Brennan(**Barnes & Thornburg**) wrote:

*"With the violation of the rule, obfuscation of the truth, false certifications, and conflicts, defendants ought to be able to get to the bottom of what is really occurring with respect to litigation financing and its effect on settlement decisions."*

## Who Got the Work?

Retired U.S. District Judge Dennis Cavanaugh(**McElroy Deutsch**), of the **District of New Jersey**, was appointed special master to allocate common benefit fees in the multidistrict litigation over proton-pump inhibitors such as **Nexium** and **Prilosec**. **U.S. District Judge Claire Cecchi,** of the District of New Jersey, appointed him last month. In 2023, **AstraZeneca** reached a $425 million settlement of 11,000 lawsuits, which alleged the medications caused kidney injuries. **GlaxoSmithKline**, **Procter & Gamble** and **Pfizer** reached prior settlements totaling $108.5 million.
Here's what else is happening:

**Girardi Hospitalized**: Convicted plaintiffs' attorney **Tom Girardi** was hospitalized a day before a key hearing in Los Angeles.Girardi, 85, who has dementia, was set to appear at a May 8 hearing to determine whether he should serve his sentence at a medical facility or behind bars but, the day before, he was hospitalized for "liver dysfunction," according to court papers. **U.S. District Judge Josephine Staton** rescheduled the hearing for June 2 and the sentencing for June 3, Girardi's 86th birthday.

**Monsanto Loss**: A **Pennsylvania Superior Court** upheld a $177.3 million verdict in the first **Roundup** trial against **Monsanto** in the **Philadelphia Court of Common Pleas**.The appeals panel on May 8 rejected Monsanto's challenges to the 2023 verdict, including federal preemption, the primary argument in its petition last month to the **U.S. Supreme Court** in a Roundup case that ended in a $1.25 million verdict in Missouri's **22nd Judicial Circuit Court** in St. Louis. On May 9, numerous agricultural groups filed an amicus brief supporting the Supreme Court petition, raising alarm about the "devastating risk to America's food supply" that removing Roundup ingredient glyphosate would have.

**Scout Appeal:** The **U.S. Court of Appeals for the Third Circuit** upheld the Chapter 11 bankruptcy plan with the **Boy Scouts of America** but remanded on the issue of insurer rights. Tuesday's ruling means the overall settlement fund for sexual abuse victims is $2.4 billion. Four groups had appealed the plan's confirmation, two of which were insurers that claimed the order failed to protect their rights to collect on defense costs and excess liability claims outside of bankruptcy. The insurers also had cited the U.S. Supreme Court's 2024 decision in *Harrington v. Purdue Pharma*.

*Thanks for reading Critical Mass! I'll be back next week.*

# 'Devastating Risk to America's Food Supply' Agricultural Amici Fear Roundup's Demise

**law.com**/therecorder/2025/05/12/devastating-risk-to-americas-food-supply-agricultural-amici-fear-roundups-demise

Amanda Bronstad May 13, 2025

## What You Need to Know

- Unlike Monsanto's previous Supreme Court petition, about half the 18 amici groups are agricultural organizations concerned about removing Roundup ingredient glyphosate.
- The amicus brief comes after Bill Anderson, the CEO of Bayer, which owns Monsanto, told shareholders last month that the company might be forced to pull Roundup from the U.S. market due to the lawsuits.
- Monsanto asked the Supreme Court to resolve a circuit split over whether federal law preempts state law-based claims that it failed to warn about Roundup's health risks.

Farmers growing corn, soybeans, blueberries and cherries were among the 18 groups that filed amicus briefs before the U.S. Supreme Court supporting Monsanto's petition to review the pesticide Roundup.

The amicus groups, most of which filed their briefs on Friday, are double the number that supported Monsanto in its prior Roundup petition that the Supreme Court denied in 2022. Many are the same legal and business organizations, such as the Washington Legal Foundation and the U.S. Chamber of Commerce, but more than a dozen groups representing America's agricultural community raised concerns that Monsanto could remove glyphosate, Roundup's key ingredient, should the Supreme Court not rule in its favor.

"To remove glyphosate from the market would pose an immediate, devastating risk to America's food supply," wrote Scott Burnett Smith, of Bradley Arant Boult Cummings in Huntsville, Alabama. He represents the American Farm Bureau Federation, the American Soybean Association, the American Sugarbeet Growers Association, the Cherry Marketing Institute, the Florida Fruit and Vegetable Association, the International Fresh Produce Association, the National Association of Wheat Growers, the National Corn Growers Association, the National Cotton Council of America, the National Sorghum Producers, the North American Blueberry Council and Western Growers.

"If farmers cannot use glyphosate, food yields in the next growing season will drop precipitously," he wrote. "The question presented is critically important for the American agricultural industry."

The amicus brief comes after Bill Anderson, the CEO of Bayer, which owns Monsanto, told shareholders last month that the company might be forced to pull Roundup from the U.S. market due to the lawsuits.

## 'All Corners of America's Agricultural Industry'

Monsanto's attorney, former U.S. Solicitor General Paul Clement, of Washington, D.C.'s Clement & Murphy, filed a petition for writ of certiorarito the Supreme Court to resolve a circuit split over whether the Federal Insecticide, Fungicide, and Rodenticide Act preempts state law-based claims that it failed to warn about Roundup's health risks. More than 100,000 lawsuits have been filed alleging Roundup caused non-Hodgkin lymphoma, leaving Monsanto to pay $10 billion in settlements. Thousands more Roundup cases are pending, and juries have come out with verdicts for and against Monsanto, including a $2 billion award last month in the first trial in Georgia.

Paul Clement, partner with Kirkland & Ellis, speaking at a panel discussion during the "Law Symposium: Justice Thomas's Thirty-Year Legacy on the Court," Co-hosted by The C. Boyden Gray Center for the Study of the Administrative State and The Heritage Foundation, in Washington, D.C., on Thursday, October 21, 2021. Photo: Diego M. Radzinschi/ALM

The case before the Supreme Court was the first plaintiff's win following a string of defense verdicts for Monsanto in Roundup trials that followed the COVID-19 pandemic's courthouse shutdowns. A jury in the 22nd Judicial Circuit Court in St. Louis awarded $1.35 million to plaintiff John Durnell, diagnosed with non-Hodgkin lymphoma. Following that jury award, other trials have been in Arkansas, California, Delaware, Illinois, Missouri and Philadelphia, ending in a mix of plaintiff and defense verdicts, as well as mistrials.

On Feb. 11, the Missouri Court of Appeals upheld the *Durnell* verdict, prompting Monsanto's petition before the Supreme Court. Monsanto also has filed two related "hold" petitions before the Supreme Court in Roundup cases in Oregon and Florida.

Amicus briefs filed by the Atlantic Legal Foundation, CropLife America and a combined filing from the U.S. Chamber of Commerce, the American Tort Reform Association, the Product Liability Advisory Council and the Washington Legal Foundation, focused on the circuit split over federal preemption: The U.S. Court of Appeals of the Third Circuit found last year that preemption barred the claims, while the Eleventh and Ninth Circuits have allowed them to go forward.

The amicus brief filed by the agricultural groups focused on the practical impacts of removing glyphosate, which the U.S. Environmental Protection Agency, and numerous scientific studies, have deemed safe, despite lawsuits, citing the International Agency for Research on Cancer’s 2015 classification of Roundup's ingredient as a carcinogen.

“All corners of America’s agricultural industry rely on, and benefit from, glyphosate,” Smith wrote. “Without access to glyphosate, crop losses will inevitably occur, leading to further supply chain disruptions, food shortages, and higher consumer prices.”

So far, the U.S. Justice Department under the Trump Administration hasn’t weighed in. Both the Biden Administration and the prior Trump administration filed opposing amicus briefs in prior Roundup appeals, including one before the Supreme Court.



## Law Firms Mentioned

Bradley Arant Boult Cummings

Latest

Trending

**New Suit - Trademark**

BluJay Studios, which manufactures CatFace merchandise, filed a trademark infringement lawsuit on May 13 in Illinois Northern District Court against multiple online retailers over the sale of allegedly unauthorized Aphmau/MeeMeow-branded plush kittens. The lawsuit, filed by Keith Vogt, alleges the defendants are part of an organized counterfeiting network operating deceptive online storefronts. The complaint, which involves nine registered trademarks, claims the defendants use multiple fictitious identities and offshore accounts to evade detection while shipping counterfeit goods from China. The case is 1:25-cv-05284, Blujay Studios, Inc. v. The Partnerships and Unincorporated Associations Identified on Schedule A .

# New Antitrust Suits Allege Price-Fixing of Construction Equipment Rentals

**law.com**/2025/05/13/new-antitrust-suits-allege-price-fixing-of-construction-equipment-rentals

Amanda Bronstad May 14, 2025

- The suits are the latest antitrust actions to target companies over algorithmic pricing.
- Dual motions have been filed before the U.S. Judicial Panel on Multidistrict Litigation to coordinate the cases in Illinois or California.
- Vinson & Elkins, Sullivan & Cromwell and Kirkland & Ellis are among the defense firms that have stepped up to represent the companies.

A new spate of antitrust lawsuits accuse the nation’s largest renters of construction equipment, such as forklifts, excavators and bulldozers, of a price-fixing scheme.

At least 10 class actions have been filed by individuals and businesses in the past month targeting Rouse Services and its parent company, RB Global, which provide benchmark pricing to the rental companies. The lawsuits allege Rouse and the rental companies have conspired to create an unlawful cartel to boost the price of construction equipment rentals in violation of Section 1 of the Sherman Act.

The suits are the latest antitrust actions to target companies over algorithmic pricing.

“I've been waving the red flag on algorithmic price-fixing across industries for some time now, and our firm is actively investigating—and litigating—a number of these actions,” said Natasha Fernández-Silber, whose firm, Edelson, filed the first case on April 1. “What we allege here is that the rental company defendants conspired through Rouse to illegally fix rental prices for construction equipment. We allege Rouse markets software that allows it to set rates collectively for most of the industry using rental companies’ non-public pricing information.”

Many of the suits were flagged by Law.com Radar and cited in dual motions before the U.S. Judicial Panel on Multidistrict Litigation this month. One motion, filed on May 5 by Michael Flannery of Cuneo Gilbert & LaDuca in Washington, D.C., seeks to coordinate the cases in the U.S. District Court for the Central District of California, where three cases are located and where Rouse Services is based in Beverly Hills. Another motion, filed on May 6 by Edelson, Berger Montague and Hausfeld, asks to transfer the cases to the Northern District of Illinois, where RB Global is based in Westchester, Illinois. Six cases are pending in that district, as is a motion to consolidate.

“We do think the cases should go to the Northern District of Illinois for the reasons we put in our JPML motion: It’s a convenient and accessible forum, where a majority of the pending actions have been filed, and with a track record of efficiently handling complex antitrust MDLs,” Fernández-Silber said.

Another case was filed in the U.S. District Court for the Southern District of Iowa.

A representative of RB Global, which is represented by Dylan Ballard of Vinson & Elkins in San Francisco, said the claims were “meritless and mischaracterize Rouse Rental Insights’ business practices and the highly competitive nature of the construction equipment rental industry.”

“Rouse Rental Insights is purposefully configured to comply with all regulations, including competition and antitrust laws,” the representative said.

“By design, Rouse Rental Insights does not provide pricing recommendations or real-time pricing data of any kind. Rather, it assists customers—who unilaterally and independently set and manage their own rental rate pricing and fleet decisions outside of the Rouse Rental Insights product—in understanding industry trends through benchmarks based on anonymized participant data that are aggregated, weight-adjusted and time-lagged. We intend to vigorously defend the company.”

Construction equipment rental companies named in the lawsuits did not respond to Law.com. They are: United Rentals Inc., H&E Equipment Services Inc., Sunstate Equipment Co., Sunbelt Rentals Inc., HERC Rentals Inc., The Home Depot and EquipmentShare.com Inc.

Dylan Ballard, partner, Vinson & Elkins,
San Francisco. Courtesy photo

In the first suit, defense lawyers have filed appearances. In addition to Ballard, Vinson & Elkins partners Michael Scarborough in San Francisco, Nicole Castle in New York and Stephen Medlock in Washington, D.C., represent RB Global.

Steven Holley, the co-head of Sullivan & Cromwell’s antitrust group in New York, represents United Rentals, as do special counsel Bradley Smith, also in New York, and partner Adam Paris in Los Angeles.

Milbank partner James Weingarten and special counsel Anastasia Pastan, both in Washington, D.C., represent H&E Equipment Services; Kirkland & Ellis partners Devora Allon and Gilad Bendheim in New York are counsel for Sunstate; Paul Hastings partners Ryan Phair and Michael Murray, both in Washington, D.C., represent Sunbelt Rentals; and Sidley Austin partner Corey Roush in D.C. has appeared for HERC Rentals Inc.

Representatives of Home Depot and EquipmentShare.com, both named in some of the suits as additional defendants, did not respond.

The suits allege that prices in the construction equipment rental business were competitive until 2011, when United, HERC and H&E got together with Rouse Services to share their nonpublic pricing information. Now, hundreds of companies participate in the alleged cartel.

Some of the suits note that the U.S. Department of Justice, which has sued real estate software provider RealPage, filed statements of interest in other antitrust cases involving algorithmic pricing. The DOJ's position remains the same under the Trump administration, they say, citing statements by Ryan Tansey, the chief of the DOJ antitrust division's Washington Criminal Section, at a March conference that "characterizing conduct as an information exchange shouldn't be thought of as a way to insulate businesses from criminal antitrust scrutiny."

"Considering DOJ's position that information exchanges can be anticompetitive regardless of their exact form, defendants' information exchange violates Section 1 of the Sherman Act," wrote Adam Levitt of Chicago's DiCello Levitt in an April 16 complaint.

*This action was surfaced by Law.com Radar, which delivers real-time alerting on new litigation across more than 2,600 state and federal courts. Click here to get started and be first to act on opportunities in your region, practice area or client sector.*

Litigation

May 14, 2025, 8:20 AM PDT

# Wells Fargo Signs $19.5 Million California Privacy Class Deal

- **Wells Fargo agents recorded cold calls for card-pay business**
- **It's the second largest CIPA settlement, class counsel says**

Wells Fargo Bank agreed to contribute to a $19.5 million to settle allegations that it listened in on customer calls in violation of the California Invasion of Privacy Act, according to a court filing.

It's the second largest CIPA settlement ever, the motion for final approval said, and if approved nearly 19,000 claimants will get an average of $680.49 from the deal. In addition to Wells Fargo, the settlement covers telemarketing firm Credit Wholesale Co. and a payment processing company Priority Commerce.

The deal would also prevent Credit Wholesale from recording appointment-setting calls to phone numbers with California area codes without sufficient disclosure, according to filings in the US District Court for the Northern District of California.

Wells Fargo sought to boost its business processing credit and debit card transactions, so it worked with Credit Wholesale and Priority Commerce to cold call merchants. The appointment-setting cold calls were recorded without warning, leading to the suit.

"This is a substantial payment for an intrusion of privacy that, on average, lasted 45 seconds and often less than 15 seconds," the motion said. It compared the result favorably to some CIPA settlements that provided class members less than a dollar.

The motion said that had Wells Fargo succeeded in convincing a federal court that there was no principal-agent relationship with Credit Wholesale, it was unlikely the small telemarketing firm could fund the current settlement amount.

Two companies would get an additional $7,500 in incentive awards as lead plaintiffs, and class counsel would receive $6.5 million in attorneys' fees, according to court documents.

Myron M. Cherry & Associates, which represented the class, said that it also successfully negotiated a $78 million settlement in what the firm called the largest CIPA class action deal ever. That case involved Wells Fargo and Fifth Third Bank.

Andrus Anderson LLP also represented plaintiffs.

Delahunty & Nash LLP represented Credit Wholesale. Polsinelli PC represented Wells Fargo. King and Spalding LLP represented Priority Commerce.

The case is Aguilar Auto Repair Inc. v. Wells Fargo Bank , N.D. Cal., No. 3:23-cv-06265, motion for final approval 5/13/25 .

# Third Circuit Affirms Bulk of Boy Scout Bankruptcy Plan, But Sides With Insurers on Partial Remand

**law.com**/nationallawjournal/2025/05/13/third-circuit-affirms-bulk-of-boy-scout-bankruptcy-plan-but-sides-with-insurers-on-partial-remand

Ellen Bardash May 13, 2025

The U.S. Court of Appeals for the Third Circuit partially remanded the Boy Scouts' bankruptcy plan Tuesday, determining recent Supreme Court precedent required a more explicit protection of insurers' rights.

The opinion, written by Judge Cheryl Ann Krause, resolves an appeal a three-judge panel heard argument on in November and allows the majority of the scouting organization's Chapter 11 plan, which includes the second-largest sexual abuse settlement in U.S. history, to move forward.

"By dismissing these appeals, the court has assured survivors that the settlement trust established under BSA's plan can continue its essential work of providing financial compensation to survivors," Scouting America wrote in a statement shortly after the opinion was released. "The overall settlement fund for abuse claims is valued at $2.4 billion with the opportunity for additional contributions by numerous other parties, including the BSA's insurers that have not yet settled. Since it was established in April 2023, the trust has distributed more than $138 million to approximately 20,000 survivors. Today's decision ensures that the trust's work can continue without interruption."

Circuit Judge Cheryl Ann Krause of the U.S. Court of Appeals for the Third Circuit. Courtesy photo

Ken Rothweiler of Eisenberg, Rothweiler, Winkler, Eisenberg & Jeck, which represents a larger percentage of the roughly 82,000 sexual abuse claimants whose claims the settlement aims to compensate, said the Third Circuit's decision allows the trustee administering that trust to begin awarding compensation in larger amounts.

"We are very pleased that the Third Circuit has, in principal part, affirmed the bankruptcy court's approval of this historic, $2.4 billion compensation fund," said Adam Slater of Slater Slater Schulman LLP, who co-founded the Coalition of Abused Scouts for Justice. "Our goal is to ensure the trust is fully funded and to deliver meaningful compensation and long-overdue justice to all survivors, many of whom have been waiting for decades."

The plan has been effective since 2023, when a District of Delaware judge affirmed the bankruptcy court's confirmation order.

The decision addresses appeals from four groups. The court determined the bankruptcy code barred it from reaching the merits of the appeals from two of those groups, which in total represent about 140 abuse claimants.

The two groups whose appeals were not dismissed are both made up of insurers, and both appealed the district court's decision upholding the bankruptcy plan because, they claimed, the plan and confirmation order failed to properly protect the rights they would have had to collect on defense costs and excess liability claims outside of the bankruptcy context.

The Third Circuit affirmed the district court's decision in the appeal of the group that's been referred to throughout the appellate process as the "certain insurers," but reversed the decision as it related to challenges from the "Allianz insurers."

"(We) conclude the certain insurers’ arguments fail because the plan and confirmation order already preserve all of the rights and defenses required," Krause wrote. "But the confirmation order’s judgment reduction clause impermissibly releases contribution and indemnification claims the Allianz insurers otherwise would be able to assert, and we will reverse with respect to those claims."

The opinion said granting the plan amendments requested by the certain insurers would only "fasten suspenders to this already well-secured belt."

The Allianz insurers had argued that the Supreme Court's June 2024 decision in *Harrington v. Purdue Pharma* blocks language in the plan and the bankruptcy court's confirmation order that keeps them from pursuing claims against insurers who have entered into settlements with the Boy Scouts.

The Third Circuit agreed, instructing the bankruptcy court on remand to add a backstop to the relevant clause in the plan.

"Without factual findings about the extent of the Allianz insurers’ excess claim liability—including, given the various layers of contingency, whether it is real versus speculative—the record does not support the conclusion that the judgment reduction clause is an adequate alternative to the Allianz insurers retaining the right to full recovery on their excess claims," the opinion stated.

Judge Marjorie O. Rendell wrote a concurring opinion stating while she agreed that the claims brought by the two sets of appealing abuse claimants should have been dismissed, it should have been because they were determined to be equitably moot.

"Equitable mootness is firmly rooted in our precedent, and, as counsel for BSA urged at oral argument, if ever there were a case crying out for application of the doctrine, this is it," she wrote.

The Boy Scouts first filed for Chapter 11 in February 2020 with the goal of reaching a global settlement of claims from those who allege they survived sexual abuse while involved in scouting. The majority of those claims are linked to experiences that date back decades.

"It really is a travesty, because of how old these clients have been—most of this abuse happened when they were 13, 14 years old, and most of these guys are between 65 and 70 years old now—we've had hundreds of clients that have actually died during this process because it's taken so long," Rothweiler said. "So it's a shame that those folks will not get compensated. Hopefully their family members will be compensated to some extent, but it's really been a very hard thing to go through for them."

# Law firms sanctioned for using AI to cite fake cases in federal lawsuit

DJ **dailyjournal.com**/articles/385428-law-firms-sanctioned-for-using-ai-to-cite-fake-cases-in-federal-lawsuit

**May 14, 2025**

While the attorneys involved were not sanctioned individually, their firms were ordered to pay over $31,000 in legal costs to the defense, and their briefs were struck from the record.

A special master in a federal lawsuit in Los Angeles has sanctioned two prominent law firms, K&L Gates LLP and Ellis George LLP, because attorneys used generative AI in an outline that included case citations with false quotes and, in at least one case, didn't exist at all.

Former U.S. Magistrate Judge Michael R. Wilner declined to impose sanctions on any of the individual attorneys involved because they apologized and took responsibility for the mistakes.

But he ordered the firms to pay $31,100 to the defense for their costs, shifting fees that were initially to be paid by State Farm General Insurance Co., and struck the plaintiff's briefs submitted by the two firms seeking discovery relief.

"If the undisclosed use of AI and the submission of fake law causes a client to lose a motion or case, lawyers will undoubtedly be deterred from going down that pointless route," Wilner wrote in a May 6 order.

"I didn't discover that Plaintiff's lawyers used AI - and re-submitted the brief with considerably more made-up citations and quotations beyond the two initial errors - until I issued a later [Order to Show Cause] soliciting a more detailed explanation," the special master continued.

But Wilner gave the lawyers - Ellis George partner Trent B. Copeland, K&L Gates LLP partner Ryan Q. Keech, and associate Keian Vahedy - credit for owning up to their mistakes.

"The lawyers' sworn statements and subsequent submission of the actual AI-generated 'outline' made clear the series of events that led to the false filings," he wrote. "The declarations also included profuse apologies and honest admissions of fault."

Copeland, Keech and Vahedy could not be reached for comment Tuesday.

In a May 6 declaration, Copeland took the blame.

"This problem began with me -- full stop - in my failure to advise my colleagues that a preliminary outline I forwarded to them had relied, in part, on the use of generative AI capabilities found in CoCounsel and Westlaw Precision and Google Gemini," he wrote.

"To the extent my colleagues were tasked with the primary responsibility for research and drafting of the memorandum, they did so in reliance -- at least initially -- on my preliminary outline and notes I had provided several days earlier," Copeland added. "I am both deeply apologetic and embarrassed by this error."

The underlying case is a lawsuit for breach of contract and breach of the implied covenant of good faith and fair dealing filed by former Los Angeles District Attorney Jacquelyn "Jackie" Lacey against State Farm accusing the insurer of providing her husband, who died in 2022, with an inadequate defense after a lawsuit by Black Lives Protesters he greeted with a gun outside their front door in 2020. That lawsuit settled.

Lacey's lawsuit against State Farm, which was originally filed in Los Angeles County Superior Court before the insurer removed it to federal court, is pending. *Lacey v. State Farm General Insurance Co. et al.*, 24-cv-05205 (C.D. Cal., filed June 20, 2024).

Wilner wrote that what he described as the "AI debacle" unsettled him.

"Directly put, Plaintiff's use of AI affirmatively misled me," he wrote. "I read their brief, was persuaded (or at least intrigued) by the authorities that they cited, and looked up the decisions to learn more about them - only to find that they didn't exist."

"That's scary," Wilner added. "It almost led to the scarier outcome (from my perspective) of including those bogus materials in a judicial order. Strong deterrence is needed to make sure that attorneys don't succumb to this easy shortcut."

Wilner noted that bad use of artificial intelligence in legal briefs is being reviewed, citing several recent examples.

"With greater frequency, courts are now regularly evaluating the conduct of lawyers and pro se litigants who improperly use AI in submissions to judges," he wrote. "Whether that conduct supports the imposition of various types of sanctions requires a fact- and circumstance-specific analysis."

Jennifer M. Hoffman, a partner with Sheppard, Mullin, Richter & Hampton LLP who represents State Farm, could not be reached Tuesday.

Litigation
May 14, 2025, 6:49 AM PDT

# Publix Gets Dismissal of Whistleblower's Opioid Fraud Lawsuit

- **Whistleblower didn't show Publix made specific representation**
- **Complaint didn't connect obligations to misrepresentations**

A False Claims Act whistleblower's suit against Publix Super Markets Inc. alleging opioid prescription fraud is dismissed because the complaint is a "shotgun pleading," a Florida federal district court said.

Whistleblower Publix Litigation Partnership LLP's complaint failed to adequately state an FCA claim because it is "filled with background information and legal conclusions that have very little to do" with specific claims for relief, Judge Tom Barber of the US District Court for the Middle District of Florida said in a Tuesday order to dismiss without prejudice. The whistleblower has until May 27 to file an amended complaint, Barber said.

The whistleblower, made up of two Publix pharmacists, alleged in 2022 that Publix dispensed opioids, and submitted reimbursement requests to federal health-care programs, despite knowing that the prescriptions were improper. Publix allegedly ignored "red flags" before dispensing prescriptions, and sought payments without knowing if prescriptions were invalid, the whistleblower contends.

The suit is dismissed because the whistleblower didn't sufficiently allege facts to show Publix made a specific representation to the government about the goods and services it provided, the court said.

The whistleblower failed to provide representative examples of actual claims Publix submitted to the government that the company based on invalid prescriptions, the court said.

Barber also said the whistleblower failed to satisfy the FCA's materiality standard in *Universal Health Services Inc. v. United States ex rel. Escobar* . The whistleblower alleged that Publix failed to disclose to the government that it violated a regulation requiring pharmacies to dispense only valid prescriptions, and that the government wouldn't have paid Publix if it knew of the violation.

But FCA liability arises from the submission of a fraudulent claim to the government, not the disregard of regulations or failure to maintain internal policies, the court said.

The whistleblower should identify specific obligations, the source of the obligations, and how those obligations tie into specific misrepresentations, if it tries to satisfy the materiality standard in an amended complaint, the court said.

**Constitutionality Question**

Barber also rejected Publix's argument that the suit must be dismissed because the FCA's whistleblower provisions are unconstitutional.

Publix cited a 2024 decision by another judge in the Middle District of Florida, *United States ex rel. Zafirov v. Florida Medical Assocs. LLC* , which said FCA whistleblowers violate the appointments clause in Article II. An appeal of that decision is pending at the US Court of Appeals for the Eleventh Circuit.

"While this court may be inclined to agree with certain aspects of the *Zafirov* decision, the overwhelming weight of the law is to the contrary at this time," Barber said.

Baron & Budd PC; Lauro & Singer; and Trombley & Hanes PA represent the whistleblower. Morgan, Lewis & Bockius LLP represents Publix.

The case is United States ex rel. Publix Litig. P'ship LLP v. Publix Super Markets Inc. , M.D. Fla., No. 8:22-cv-02361, 5/13/25 .

To contact the reporter on this story: Daniel Seiden in Washington at dseiden@bloombergindustry.com

To contact the editor responsible for this story: Martina Stewart at mstewart@bloombergindustry.com

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Securities Law News
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# Financial Reporting by Business Line Attracts SEC Staff Scrutiny

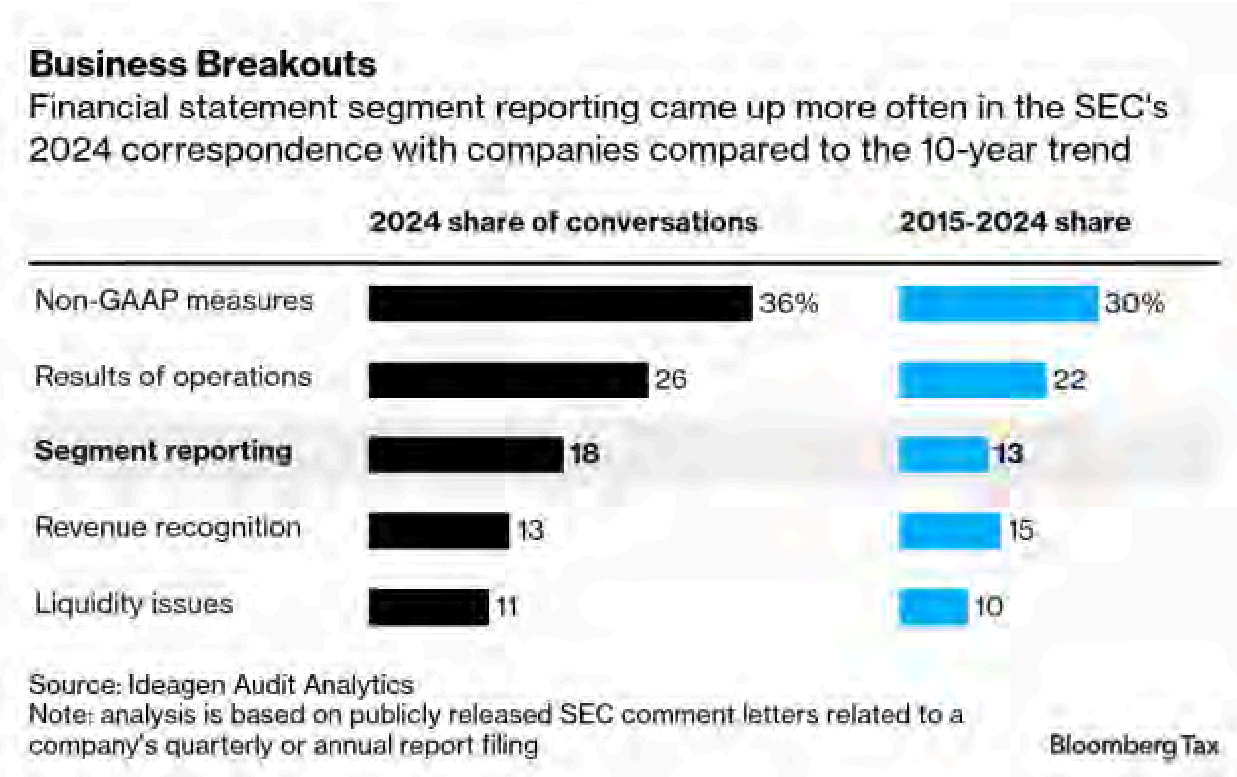
- **Segment reporting, unofficial metrics were key issues in 2024**
- **Report focuses on correspondence between SEC, companies**

Financial reporting of large segment-level expenses was a prominent topic in conversations between Wall Street's regulator and firms last year, according to an Ideagen Audit Analytics report.

Segment reporting accounted for 18% of US Securities and Exchange Commission comment letter conversations related to financial filings in 2024, the white paper published Tuesday said. That puts segments among the top three issues discussed last year, a higher rank than the topic's overall trend over the past decade.

The paper focuses on conversations that include multiple comment letters between the SEC and a company related to a review of quarterly or annual filings.

SEC staff can ask companies in comment letters to provide further details to better understand disclosures as they assess compliance with generally accepted accounting principles, or GAAP. In some cases, they may even ask the company to revise the disclosure in a document filed to the regulator.




Accounting guidelines define operating segments as units within a company that earn money and incur expenses and whose results are regularly reviewed by a "chief operating decision maker," usually the CEO or another executive.

Questions about reporting segment-level expenses have likely increased in recent years due to the Financial Accounting Standards Board's 2023 update to accounting guidelines, the report said.

The standard-setter's plan requires disclosure of significant segment expense categories that are reported to businesses' chief operating decision makers, according to the report. FASB has said the information should help investors better understand companies' overall performance.

SEC officials have warned companies to proceed with caution in following the rules. The regulator doesn't want companies using the standard to convey an overly rosy outlook.

The segment reporting-related comment letter conversations that the paper analyzed from 2015 to 2024 refer to issues like changes in the measurement of segment amounts from period to period, as well as reconciliations of total segment revenues.

### Unofficial Metrics

Non-GAAP measures were once again the most commonly raised accounting issue, referenced in more than 300 comment letter conversations in 2024, the report said.

The SEC provides rules related to the disclosure of these performance measures, which encompass a wide array of metrics including free cash flow and adjusted net income.

The metrics made up 36% of total conversations started between the regulator and companies during 2024, according to the report. The technology, manufacturing, and real estate and construction industries were among those where non-GAAP measures were a common conversation topic.

A documented increase in SEC-registered companies presenting non-GAAP metrics to their investors led staff in the agency's division of corporation finance to issue new compliance and disclosure interpretations in 2016 relating to elements of the measures and disclosures, the report said.

There's no standard method of calculating these measures. FASB's preliminary inquiry into whether it should pursue formalizing any financial performance indicators was met with mixed feedback as auditors and investors debated next steps.

To contact the reporter on this story: Jorja Siemons in Washington at jsiemons@bloombergindustry.com

To contact the editors responsible for this story: Andrea Vittorio at avittorio@bloombergindustry.com; Amelia Gruber Cohn at agrubercohn@bloombergindustry.com

Securities Law News
May 13, 2025, 11:29 AM PDT

# Matt Levine's Money Stuff: Mortgage Your 401(k)

**Levered 401(k)**

What percentage of her net worth should a 30-year-old professional have in the stock market? I am not going to give you investment advice, and there is a wide range of plausible answers. "Zero, put it all in Bitcoin" is I guess on the list. A popular rule of thumb would say 70% in stocks, with the other 30% in bonds and cash. There is, however, a good theoretical case that the right answer is really 200%, or 500%: Most of a young professional's economic wealth is the present value of her future employment income, and borrowing money to buy more stocks is a good way to diversify away from that one risky asset. Also many 30-year-old professionals buy *houses* for considerably more than 200% of their net worth, and putting 200% of their net worth into the stock market could again be useful diversification.

But it is not easy to put 200% of your net worth into the stock market, because where will you get the money? A mortgage on a house is a pretty standard product in the US, but a mortgage on a retirement account is not. Bloomberg's Suzanne Woolley reports on someone trying to change that:

Basic Capital's basic pitch: Its 401(k) and IRA platform offers savers $4 in leverage for every $1 saved. At current interest rates, the cost of that extra money, which sits in a limited liability company created for each account, would be about 6.25%.

Here's its website, saying that "Basic Capital closes the ownership gap by enabling Americans to finance investments."

A few points. First: This is cool. There are already various ways to get leverage in your stock portfolio (options, futures, margin loans), but they tend to be focused on the short term and prone to blowing up. This is not that: This is "an [individual retirement account] paired with a fixed term, self-amortizing loan," something much closer to a mortgage. Basic explains that "your IRA buys sole interest of an LLC that we set up and manage on your behalf," and the limited liability company "secures financing for 4 x your … contribution." The financing appears to have a five-year renewable term, and:

There are no margin calls or mark-to-market triggers. If the market falls below a certain level, you aren't forced to liquidate. The financing is structured more like a mortgage: It's a loan to a separate entity (an LLC) that holds the assets. There's no personal recourse beyond your initial contributions; you cannot owe more than you put in, even if the market crashes.

But there is one important compromise here. A problem with the idea of a levered retirement portfolio is the interest bill. Basic's loans charge the secured overnight financing rate, SOFR, plus 2%, so currently the rate is about 6.3%. (Basic charges various separate fees of its own.) If you put in $20,000, they will lend you $80,000, for a $100,000 portfolio, but you'll have to pay about $5,000 a year in interest to keep the portfolio. If you put $20,000 into your retirement account, it's quite possible that you can't afford to put in another $5,000 every year, and even if you can, it is psychologically a bit depressing to have most of your retirement contributions go to interest rather than new investments.

That is, the problem with borrowing a lot of money to buy stocks for retirement is that it has negative *carry*: It requires you to pay cash every month, rather than bringing in cash. You are buying stocks for capital appreciation, not steady income, and you have to make years of interest payments to get the payout at the end.

There is another related problem: Who would lend you the money? I mean, who would lend you money to buy stocks with (1) a five-year term, (2) no margin calls, (3) no recourse to you, (4) a fairly low interest rate of SOFR plus 2% and (5) an 80% loan-to-value ratio? The annual volatility of the S&P 500 is about 20%: A 20% drop in market values is not all that unlikely, and if the market drops more than 20% the lender will lose money.

Basic Capital is well aware of these problems, and it has a solution: Instead of buying stocks in your levered retirement account, you mostly buy *bonds.* The bonds will give you steady cash flow to cover the interest payments, so you don't need to pay out of pocket. Basic's FAQ explains:

Currently, funds are allocated 85% in a diversified bond ETF and 15% in SPY (the S&P 500 Index ETF). The 85% allocation to bonds is intended to generate yields that exceed the cost of borrowing, creating positive carry. The 15% in SPY provides equity upside.

And Woolley reports:

But, the thinking goes, the startup can find private credit investments from the major players in the industry that yield more like 9%, meaning they will throw off enough cash to cover the borrowing costs and then some. Mix in some traditional stock-market exposure, and — assuming those private credit yields persist and that equities gain in line with historical averages — the startup said savers can expect low double-digit returns.

Ah. On the one hand: Yes. This solves the problems: The bonds (or private credit) pay your interest bill, so the portfolio has positive carry, and the bonds (or private credit) are much less volatile than stocks, so lenders are much less likely to lose money and will be happier to make 80% loan-to-value loans. And levering up to buy bonds, or private credit for that matter, might be a good trade for an individual with a long time horizon. The long-term return to bonds is usually higher than the long-term return to cash, and you get the equity upside for free, as it were. And maybe private credit will do great over the long term!

On the other hand: What percentage of her net worth should a 30-year-old professional have in the stock market? This product is a pretty complicated way to put 75% of your net worth (that is, 15% of your assets, which are 500% of your net worth ) into the stock market. (And then put 425% of your net worth into, like, credit spreads. ) The smooth intuitive thing that one wants here is a way to put 500% of your net worth into the stock market, but this isn't that, because that doesn't carry.

Of course this *could* be a way for retail savers to put 425% of their net worth into private credit funds, which, heh. We talk a lot about private credit around here, and three points that I sometimes make are:

1. Private asset managers *looooooooooooooooove* to find retail investors to sell to. Finding retail products to put private assets in is the absolute number one pastime of the financial industry right now, so I bet these guys are getting a lot of meetings.

- 2. There is a lot to be said for putting private assets in retirement funds, since your 401(k) has a long time horizon and no need for cash in the short term, so it can take some risk and illiquidity to maximize expected returns. (And there is a lot to be said against it, mostly "fees," though also "risk" and "opacity.")
- 3. Private credit is *in theory*

systemically safer than banking, because private credit loans are funded by long-term locked-up equity investors rather than by short-term flighty deposits. And retirement funds, with their long time horizons, should be good sources of capital for long-term lending. But of course as private credit gets bigger it gets increasingly levered, which increases run risks and its interconnections with the financial system. One form of this is that a private credit fund will raise $100 from long-term locked-up equity investors, and then also go borrow $100 from a bank to make $200 of loans, but there are other forms. There are lots of places to put leverage. If you have a $100,000 *stake* in a private credit fund, you can (apparently) borrow $80,000 against it, in your 401(k).

I don't know who is making these non-recourse SOFR + 2% loans to limited liability companies in individuals' retirement accounts, but it would be funny if it was private credit funds.

**Bitcoin treasury meta-company**

The basic situation is that the stock market will pay $2 for $1 worth of Bitcoin. This fact was more or less discovered by MicroStrategy Inc. (now Strategy), which exploits it in enormous size: It runs a huge pot of Bitcoin, trades on the stock exchange for about twice the value of the pot, and sells more stock to buy more Bitcoin in what I have called a "perpetual motion machine." When you discover a financial perpetual motion machine, though, people tend to notice, and you probably can't patent it. (Nor does MicroStrategy want to: It proselytizes for this approach, which is called being a "Bitcoin treasury company.") And so companies keep copying the idea: They pivot from being software or biotech companies or whatever to (1) accumulating pots of Bitcoin and (2) selling stock, at a premium to the value of the pot, to buy more Bitcoin.

My intuition is that you can't get the same results as MicroStrategy purely by copying what it does. My intuition is that MicroStrategy has some sort of first-mover, publicity, memetic advantage: When people think "I'd like to buy some Bitcoins on the stock exchange," they think of MicroStrategy first, so it commands a bigger premium than some random Bitcoin-treasury-company-come-lately would. But I am not sure that's right. You could make a sort of arbitrage argument: If MicroStrategy is selling $1 worth of Bitcoin for $2, and I start Matt's Pot of Bitcoins Inc. and sell my pot of Bitcoins at 180 cents on the dollar, arbitrageurs should buy my pot at $1.80 because it's cheaper than MicroStrategy's $2, until the prices converge. I leave it to the reader to find the holes in this argument; I sure can't.

Still, many crypto treasury companies do seem to think that it's hard to compete directly with MicroStrategy, so they either (1) come in with big scale and name recognition ( Twenty One, a huge Tether-affiliated pot of bitcoins) or (2) pick a different lane. Be an Ethereum or Solana or Trumpcoin treasury company, rather than a Bitcoin one. Or: Presumably MicroStrategy's value proposition is that it is a non-financial US public company, so regular US retail stock investors *and possibly index funds* can buy its stock, even if they couldn't buy Bitcoin directly. Presumably regular stock investors in many *other* countries would do the same thing, if you built a Bitcoin treasury company for them, so people do. We talked once about Metaplanet, which is roughly the MicroStrategy of Japan.

The last few days have seen several Bitcoin-treasury announcements, which these days often take the form of *mergers* rather than *pivots.* Instead of some random healthcare company announcing "we're gonna start selling stock to buy Bitcoin," some random healthcare company will announce "we've merged with a pot of Bitcoin run by a crypto team, and *now* we're gonna start selling stock to buy more Bitcoin." Starting with some Bitcoin establishes credibility, and having a team of crypto people lets you argue that you won't just *buy* Bitcoin, but also proselytize for it, which seems important in this line of business.

For example, Bloomberg News reported yesterday:

KindlyMD shares gained as much as 706%, the most on record, after the health care services company agreed to merge with Bitcoin holding company Nakamoto Holdings Inc. to start a Bitcoin treasury strategy. Many companies have shifted into buying and holding Bitcoin on their balance sheet, which was popularized by Michael Saylor's Strategy.

Sure, the usual; Kindly seems to be trading at about 10 times its net asset value, so selling $1 worth of Bitcoin for $10 is nice work. But what is their lane? Here's what they say, per Bloomberg:

"There are many different major capital markets that do not have a Bitcoin treasury company, and so part of what we're trying to do is we're trying to use Nakamoto as a beachhead for bringing Bitcoin to the capital markets," Nakamoto Founder and CEO David Bailey said in an interview.

"Every single country will have a Bitcoin treasury company and we're in the very early stages of that process," Bailey said. "Not only are we raising a Bitcoin treasury at Nakamoto, but we're actually gonna use that Bitcoin to acquire public companies around the world and convert them into Bitcoin treasury companies"

Here's the investor presentation, which runs through countries that do have Bitcoin treasury companies (the US, Japan, Hong Kong, a few others) and countries where Nakamoto is working on something (Abu Dhabi, Brazil, India, South Korea and "ultimately every capital market a target"). The point, I think, is that Nakamoto is not just going to be a pot of Bitcoins listed on the US stock exchange: Its goal is to go out and get pots of Bitcoins listed on *other* stock exchanges, so it can sell its Bitcoins at, you know, 200 or 300 or 1,000 cents on the dollar in lots of places where they've never even *heard* of MicroStrategy.

What would Satoshi Nakamoto think? What a strange vision of crypto this is. In the future, in every country, you will be able to go to your locally regulated stockbroker and pay a premium of 100% or more to buy shares of stock of a trusted local company, denominated in the local currency, that will hold Bitcoin for you. If you want to transfer your Bitcoin across national borders you can … I don't know, sell the stock on the exchange through your broker, do a foreign exchange transaction to convert rupees into dirham, find a stockbroker in the target country, open an account, pass know-your-customer checks, fund the account with local currency and then buy stock in *that* country's local Bitcoin company (at a 100% or more premium). Seems like it might be easier to buy Bitcoin? But what do I know.

**Carbon credits**

The way many sorts of carbon credit work is that various natural things — trees, grass, soil — store carbon, and if you leave them alone they will keep storing carbon, and if you don't they will release carbon into the atmosphere. If your baseline assumption is "these trees will get chopped down," then *not* chopping down the trees *reduces* carbon emissions, relative to the baseline of chopping them down. Big companies want to buy carbon credits to offset their own carbon emissions, and not chopping down trees reduces carbon emissions relevant to some baseline, so you can package not-chopping-down-trees into a financial product and sell it for a lot of money to big companies. This is all pretty well known by now, but it is a piece of financial engineering that still leaves me in awe every time I think about it.

There are various problems of measurement here — what is the correct baseline? — but there are also problems of *ownership* . I can easily promise not to chop down any trees in Alaska, because I do not live anywhere near Alaska and am not handy with an axe. Should you pay me for carbon credits because I refrain from chopping down those trees? Probably not.

Similarly, if I were to say to you "if you give me millions of dollars, Maasai herders in Kenya will rotate their animals' grazing of a huge tract of grassland so that the grass will lock more carbon in the soil," you might have any number of questions, at least one of which would be "why am I giving *you* the money for something that the *Maasai* are doing," or I guess something that they're not doing, or I guess something that their animals are not doing (eating the grass).

I would have an answer for you! The answer would be, like, "I am organizing a conservation group that will inform the Maasai about the benefits of changing their grazing patterns, and the group will get the money and use a lot of it to build hospitals and other public services in Kenya, and the Maasai and other herders will participate in the governance of the group and share in the benefits, so in an important sense really you *are* giving the money to the Maasai." But. You know. Why am I pitching you this opportunity? Why are you handing me the check? The Wall Street Journal reports:

The Northern Kenya Rangelands Carbon Project is the world's largest soil-carbon plan, its boosters say. Launched in 2012, it was designed to preserve some 4.7 million acres of grasslands to lock in carbon on land communally owned by the Maasai, Borana and other pastoralist groups, which is part of a network of protected areas hosting threatened species such as cheetahs, black rhinos and Rothschild's giraffes. ...

The carbon project, designed by the American soil scientist Mark Ritchie and run by the Northern Rangelands Trust, a Kenyan nonprofit, requires herders to rotate livestock grazing so grasses can recover and lock more carbon into the soil. …

While some herding communities back the project, there has been fierce backlash from others.

Rights organizations such as London-based Survival International say project backers didn't properly obtain local consent for the project. The critics argue the project disrupted migration patterns based for centuries on the seasonal availability of pasture and rainfall.

The Northern Rangelands Trust and project developers say enforcement of grazing plans is managed by community leaders, and that participation is voluntary.

The dispute reached a flashpoint in 2021, when 165 pastoralists from two conservation areas sued the Northern Rangelands Trust in Kenyan court for allegedly using their land without consent. The plaintiffs accused the trust of creating the conservancies—which acted as the herders' representatives in the carbon deal—through pressure and intimidation rather than informed consent. The court ruled in their favor.

"The trust has sold over six million carbon credits, worth between \$42 million and \$90 million depending on market prices, to buyers including Netflix and Facebook parent Meta," but now Verra, the nonprofit that certifies carbon credits, has put the project's credits under review. You could imagine reviewing the credits at two levels. There is the level of philosophical legitimacy, where the question is like "is this project that is supposed to be done for the benefit and with the consultation of the local pastoralists actually what they want," and if the answer is no then you have in a sense bought the carbon credits from people who had no right to sell them.

And then there is the level of physical reality, where the questions are like "where are they grazing, how's the grass doing, and how much carbon is being released," and if the answer is "everybody's grazing where they want and the grass is all dead," then you have bought carbon credits that don't actually reduce atmospheric carbon.

**Student finance clubs**

I feel like the two classic ways to get a good job in finance are:

1. Organize your whole life, starting in high school if not earlier, around finance. Read Money Stuff and trade stocks in high school; read *Margin of Safety* and trade convertible bonds from your college dorm; get a summer investment banking internship in college that turns into a full-time offer after graduation that turns into a private equity offer before you even leave campus.
- 2. Do not know that finance exists, care deeply about astrophysics, get your PhD, become disillusioned with the astrophysics job market, meet a friendly stranger who takes you out to lunch and bonds with you about your shared love of logic puzzles and at the end of the lunch hands you a bag of cash and says "have you ever heard of Jane Street?" For "astrophysics" you could substitute "pure math" or "computational linguistics" or "tennis" or "chess" or occasionally "lounging at your family's enormous estate."

I majored in Greek and Latin in college, eventually stumbled into investment banking, and would then sometimes go back to my college and do recruiting, where I was very excited to interview the people who majored in weird stuff and had weird interests. There were, like, two of them. Everyone else was an applied math and economics double major and the president of the private equity club.

On the one hand, that was sort of sad. Within living memory, there was a sense that investment banking and consulting were the generic elite finishing schools. You left college with a bunch of fond memories but no useful job skills, so you became an investment banker, where you learned widely useful job skills (Excel modeling, attention to detail, work ethic, firm handshakes, office politics, etc.), and then after two years you went out into the world to do whatever you wanted to do. Having the investment bank on your resume enhanced your prestige and opened doors. But the investment banks also enhanced their own prestige by recruiting a broad cross-section of fancy college graduates, some of whom loved finance and went on to be senior partners at banks or private equity firms, and some of whom were indifferent to finance but went on to become politicians or tech founders or filmmakers or writers of newsletters.

On the other hand, obviously the president of the private equity club could build a pretty sick leveraged buyout model on her first day of work, which is not so true of the Greek poetry majors. If investment banking is primarily a job where you do specialized stuff, hiring people who can do the stuff — and who *want* to do the stuff for 100 hours a week — seems sensible. Those people are just easy; they know what to do; they show up and can be put to work immediately.

Weirdly that path keeps getting more competitive; here's a grim Business Insider article about how brutal university finance clubs are:

What distinguishes them is that they tend to offer their members VIP access to campus recruiters, specialized training sessions, and other tools to help students snag the all-important investment banking internship, which is the best path to a full-time job after graduation.

The catch? Their perks have created a race for membership, and the admissions process to join a club can be as cutthroat as the industry itself. ...

While it's unclear exactly when these clubs became must-haves for a Wall Street job, the people who spoke with BI tended to agree that the situation reflected a race among employers to recruit talent earlier and earlier.

A Wharton sophomore said he knew of high school students who'd started preparing to get into clubs as soon as they were accepted to college — before they'd even arrived on campus.

"I remember my senior year, after I got into college, I was just messing around. I was just having fun," but that's not the case anymore, he said, adding: "You've gotten into these places and it's like, all right, now work on building a DCF" — a valuation method. "It's outrageous."

And:

Club leaders from three schools told BI that their organizations accepted less than 10% of their freshman applicants, who numbered 150 to 300 in recent years. …

"I have so many opportunities to network internally and have specific résumé drop links that these recruiters give to the club specifically, that are only open to members," [one leader] told BI about his campus club experience. "You want to be part of the résumé book."

One funny thing about investment banking in particular is how very finely graded its junior hierarchy is. The first-year associates haze and mentor the second-year analysts, who haze and mentor the first-year analysts, who haze and mentor the summer interns. Who can the summer interns haze and mentor? Well, they can go back to college for their senior year and haze the juniors in their finance club, who can haze the sophomores, who can haze the freshmen, who can go back to their high school and pester the kids there. "Hey kid, before you get to college you'd better build some DCF models" might not be great advice — maybe keep plugging away at the astrophysics — but the point is that everyone in the banking pipeline gets to be a big shot to someone else.

**Things happen**

UnitedHealth Replaces CEO After Its Medicare Strategy Sputters. Softer-Than-Expected Inflation Points to Muted Tariff Fallout. Can Europe finally fix its capital markets? AI Startup Perplexity's Valuation Surges to $14 Billion in New Funding Round. Elliott Wins Backing From Proxy Advisers in Phillips 66 Boardroom Battle. Microsoft Is Cutting Thousands of Employees Across the Company. Apple Wants People to Control Devices With Their Thoughts. Working from Yacht. Elizabeth Holmes's Partner Has a New Blood-Testing Start-Up.

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To contact the author of this story:
Matt Levine at mlevine51@bloomberg.net

To contact the editor responsible for this story:
Michael Newman at mnewman43@bloomberg.net

- 1. Warren Buffett to some college students: "Practically anybody in this room is probably more likely to be a net buyer of stocks over the next ten years than they are a net seller, so every one of you should prefer lower prices." That implies that young savers are structurally *short* the stock market, and would de-risk that position by buying more stocks. And Byrne Hobart: "One way to look at this is that a young saver without dependents is probably underlevered financially, because their big asset is the future income they'll receive from working."
- 2. There are also 401(k) loans, but those tend to be pitched and structured as "if you're desperate for cash you can borrow against your retirement fund," not "you should borrow against your retirement fund as soon as you open it, to optimize your personal capital structure."
- 3. Plus fees and amortization.
- 4. The 260-day realized volatility of the iShares Core U.S. Aggregate Bond ETF (AGG) is about 5.5%; for SPY it's about 20%. So a 20% drawdown on the stock market, which would wipe out the equity and leave the lender at risk, is a pretty normal occurrence; for the bond ETF it's much rarer. (Though to be fair AGG did have about a 23% drawdown between July 2020 and October 2023.)
- 5. I'm simplifying by assuming that your net worth is equal to the equity in your retirement account. If you've also got a house, this is less than 75% of your net worth, but I think the rules of thumb around this stuff are not so much based on percentage of net worth but on percentage of net financial assets.
- 6. Sort of. Assume 15% of the portfolio is stocks and 85% is bonds and/or private credit. If it's bonds, you are taking duration risk, a little bit like Silicon Valley Bank: You're buying a diversified portfolio of bonds and borrowing at SOFR plus 2%, so if interest rates go up your cost of funds will go up and the value of your assets will go down. If it's private credit, you probably *aren't* taking much duration risk, as a lot of private credit tends to be floating-rate: Schematically, you're borrowing at SOFR 2% to lend at SOFR 6%, so you're earning some carry no matter what happens to rates. But you probably have more credit risk, though even that isn't guaranteed; there are various investment-grade flavors of private credit these days.
- 7. To be clear, that's from Woolley's reporting; their FAQ still mentions bond funds.
- 8. I think there's a good case that it was really discovered by the Grayscale Bitcoin Trust, but that's a somewhat different structure and arguably was never in the business of selling $1 worth of Bitcoin for $2, at least not directly. (And now it's an exchange-traded fund that sells $1 worth of Bitcoin for around $1.)
- 9. I mean. Shouldn't the arbitrageurs buy *actual Bitcoins* for $1 instead of mine for $1.80 or MicroStrategy's for $2? But my main point here is that I have never understood why the stock market will pay a premium for Bitcoins so I am completely in the dark about all of this.
- 10. That is, the main asset of the combined company seems to be a new $510 million equity investment at $1.12 per share, which will be used "to purchase Bitcoin and for working capital and general corporate purposes"; there's also a new $200 million convertible note with a strike price of $2.80 per share. So figure the

company is getting $710 million of Bitcoin for stock at an average price of $1.35 per share. The stock closed at $13.69 yesterday, so about a 900% premium to the actual value of the pot.

Securities Law News

May 13, 2025, 2:40 PM PDT

# B. Riley Overshoots Another Deadline for Filing Results With SEC

B. Riley Financial Inc. added to its tally of overdue regulatory filings, this time missing the deadline for quarterly results as soured investments mounted.

The report is delayed because B. Riley is still working on finishing its delinquent full-year report for 2024, the Los Angeles-based financial services firm told the US Securities and Exchange Commission on Tuesday.

While the formal numbers are still pending, B. Riley estimated it swung to a quarterly profit of $1 million to $6 million, or 3 cents to 18 cents a share, from a $51 million loss, or $1.71 per share, a year earlier. The results reflect a series of one-time items. Cash and equivalents fell by $114 million to about $143 million, mainly due to retiring debt, which stood at $1.58 billion. Assets were about $1.5 billion.

B. Riley has struggled to meet SEC deadlines as its holdings, earnings and stock price deteriorated. The firm had vowed to resume reporting on time in 2025 after failing to produce timely quarterly reports in 2024, and the annual report is late for a third year.

The task has been complicated by regulatory probes of the company and writedowns on several investments, most notably its key holding in Franchise Group Inc. The retailer of furniture, vitamins and pet supplies collapsed into bankruptcy last year. B. Riley's stock, which briefly topped $40 last year, now trades for less than $3.50.

**Gains, Losses**

The firm previously told shareholders to expect a 2024 full-year loss of more than $700 million, equal to at least $23.25 a share. More recently, B. Riley said its stake in e-commerce technology firm Nogin Commerce was impaired.

B. Riley netted $26 million from selling a portion of its wealth management unit to Stifel Financial Corp., albeit $1 million less than its lowest estimate, and a stake held in Babcock & Wilcox Enterprises Inc. came under a cloud after that firm, which provides power generation equipment, warned there's substantial doubt about its survival.

B. Riley has been cutting leverage by selling assets and conducting debt swaps that helped push back maturity dates. Gains for the first quarter were expected to include about $30 million from the sale of Atlantic Coast Recycling, and Oaktree Capital Management LP, the investment firm led by Howard Marks, stepped in to replace B. Riley's syndicated bank loan.

Read More: B. Riley Carves Out Investment Bank, Will Retain 89% Stake

Chairman **Bryant Riley** has vowed the company he co-founded will return to growth. Any plan will have to be crafted without revenue from some of B. Riley's crown jewels that have been sold to raise cash, the departures by some of its most productive brokers, and defections from investment banking, capital markets and equities trading and research to rival firms.

Last year's delays spurred a threat from Nasdaq to delist B. Riley's shares, which was headed off when the firm caught up on its third-quarter filing. Nasdaq sent a new delinquency notice in April when the company failed to file its annual report and fourth-quarter figures. B. Riley said at the time it expects to produce that document in time to avert action by Nasdaq.

Previous filings have included disclosure of material weaknesses in B. Riley's reporting, and a US inquiry into B. Riley's relations with Brian Kahn, the former head of Franchise Group and an ex-business partner of **Bryant Riley**. Each has said there's been no wrongdoing, and no charges have been filed.

Read More: B. Riley Discloses Finra Exam of Wealth Management Business

To contact Bloomberg News staff for this story:
**Yizhu Wang** in New York at ywang3309@bloomberg.net

To contact the editors responsible for this story:
**Sally Bakewell** at sbakewell1@bloomberg.net

Rick Green

Tesla Inc

# Tesla board explores new pay deal for Elon Musk

Billionaire's record 2018 package stuck in seven-year legal battle


Model Y Teslas: Elon Musk has said he wants more control of the company © Patrick Pleul/Reuters

**Stephen Morris** and **Tabby Kinder** in San Francisco

Published YESTERDAY

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Tesla's board has formed a special committee to explore Elon Musk's pay which could lead to the electric-vehicle maker's chief being offered a fresh package of stock options as it seeks to resolve uncertainty over his future.

The committee comprises just the chair Robyn Denholm and Kathleen Wilson-Thompson, according to several people familiar with the matter. As well as Musk's pay package it will also explore alternative ways to compensate him for past work should Tesla fail to reinstate his record 2018 pay deal via an appeal at the Delaware Supreme Court this year.

After the existence of the special committee was disclosed with a single sentence in a filing last month, major investors have reached out to the board and have been sounded out about their views on Musk's pay and his continued leadership of the company, the people added.

Tesla and Musk have been embroiled in a legal battle in Delaware for seven years over the largest pay award in US history. It was struck down by Chancellor Kathaleen McCormick, a Delaware judge, in January 2024. She ruled that the amount was excessive and board members had acted in thrall to Musk. They were behaving, she concluded, "like supine servants of an overweening master".

Musk, already the world's richest man, has threatened to leave the electric-car maker he co-founded unless he is awarded greater control over the company.

The Texas-based automaker also said in another filing that its proxy statement would be submitted late, indicating that its annual meeting could be delayed. This would allow the committee time to formulate new pay proposals on which shareholders could vote, the people added. Tesla usually holds the event in May or June.

The committee is still in the early stages of deliberation and neither a new package nor any decision on how Musk's new pay would be structured is guaranteed, the people said. Any stock options would be contingent on Tesla hitting financial, operational and share price targets.

Tesla did not respond to a request for comment.

Musk's 2018 package included 304mn stock options, worth a potential $56bn at the time of the initial 2024 ruling, $146bn at their peak in December, and $98bn at the current share price. He gained the right to exercise all the options in 2023 after hitting ambitious valuation and financial targets.

Wilson-Thompson, a former head of HR at pharmacy group Walgreens Boots Alliance, was the sole member of a prior special committee that reviewed the 2018 package after it was voided. She concluded that the size and criteria had been appropriate. However, McCormick rejected an attempt to reinstate Musk's pay in December even after Tesla had won a shareholder vote reapproving the award at its last annual meeting in June.

If reinstated on appeal by Delaware's Supreme Court, the package would increase Musk's ownership of Tesla from just under 13 per cent to more than 20 per cent.

In early 2024, Musk said he would leave the carmaker unless his control was increased, arguing that, without a quarter of the shares, he could not fend off activists or ensure that Tesla deployed artificial intelligence responsibly.

Musk had already founded a separate AI start-up called xAI in 2023 and merged it with X, formerly Twitter, earlier this year.

The billionaire's alliance with President Donald Trump and actions as head of the so-called Department of Government Efficiency have become a liability for Tesla. EV sales have plunged in the US and Europe, and slowed in China amid fierce domestic competition and Trump's trade war.

To pacify restless investors after a stock market slide since mid-December, last month he pledged to devote "far more of my time to Tesla". He has since been seen more often at Tesla's HQ in Austin, Texas, according to people familiar with the matter. The company denied a report earlier this month that it was seeking to replace him as chief executive.

Tesla shares have rallied since, but are still down 32 per cent from their December peak.

Any new package for Musk would be subject to Texas rules because Tesla moved its incorporation last year in protest at Delaware's decision. The special committee has hired a new law firm that specialises in Texan law, McDermott Will & Emery, the people said. It previously used Sidley Austin in Delaware.

Tesla's board faces a dilemma over how to deliver more shares to its CEO if his 2018 package is not restored on appeal, the Financial Times has previously reported.

Reissuing the options would trigger a $50bn-plus accounting charge for Tesla and a punitive 57 per cent tax rate for Musk, since the options would be awarded "in the money", with the financial targets already exceeded.

The board itself has also attracted controversy over the amount its members have earned and their close ties to CEO Musk. In January, several directors agreed to return more than $900mn in cash and stock to settle a lawsuit that had argued their pay was excessive.

Denholm has sold $538mn in Tesla stock since she joined the board in 2014, including $198mn in the past six months, according to data provider Insider Score.

Wilson-Thompson was the sole member of the previous pay committee because all the other directors had either formulated the original package, or had to recuse themselves for being too personally close to Tesla's CEO.



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Tesla Inc

# Exclusive: Tesla to resume shipping Chinese parts for Cybercab, Semi production in the US, source says

**reuters.com**/business/autos-transportation/tesla-resume-shipping-chinese-parts-cybercab-semi-production-us-source-says-2025-05-14

Reuters May 14, 2025

Tesla to resume shipping Chinese parts for Cybercab, source says

- Move comes after US-China trade war deescalation
- Situation could still change due to US unpredictability - source
- Tesla aims to start trial production of the two models in Oct

SHANGHAI, May 14 (Reuters) - Tesla plans to start shipping components from China to the U.S. for the production of Cybercab and Semi trucks from the end of this month, after the U.S. and China reached a truce over tariffs, said a person with direct knowledge.

The move, being reported by Reuters for the first time, illustrates how the de-escalation of the trade war between the world's two largest economies, following talks in Geneva over the weekend, is having an immediate impact on business activity.

suspended plans to ship the components after U.S. President Donald Trump raised tariffs on Chinese goods to 145%, potentially disrupting Tesla's plan to start mass production of the much-anticipated models.
The truce announced on Monday saw the U.S. and China agree to roll back the bulk of tariffs and other countermeasures.
The source, however, added that the situation could still change, citing the Trump administration's unpredictability. They declined to be named as the matter was confidential.

Tesla didn't immediately respond to a request for comment.

Item 1 of 2 A Tesla Cybercab is displayed at the Los Angeles Auto Show, in Los Angeles, California, U.S., November 21, 2024. REUTERS/Daniel Cole/File Photo

**[1/2]**A Tesla Cybercab is displayed at the Los Angeles Auto Show, in Los Angeles, California, U.S., November 21, 2024. REUTERS/Daniel Cole/File Photo Purchase Licensing Rights, opens new tab
Tesla aims to start trial production of the two models in October and mass production in 2026, with the Cybercab to be produced in Texas and Semi in Nevada, Reuters previously reported.

Tesla has been seeking approvals from state governments for a robotaxi service using a fleet of Cybercabs with no steering wheel or control pedals. It unveiled the concept in October and promised to start building the vehicle by 2026 at a price of less than $30,000.

Tesla also plans to ramp up production of its Semi trucks in 2026 and accelerate deliveries of long-overdue orders to customers including PepsiCo (PEP.O), opens new tab.
Trump's tariffs, which were meant to boost U.S. manufacturing, hurt his political ally, Tesla CEO Elon Musk, who has repeatedly voiced his support for free trade and objections to tariffs.

Last month, Musk told analysts on a first-quarter earnings call that he pushed for lower tariffs to Trump but that the decision was ultimately up to the U.S. President.

Vaibhav Taneja, Tesla chief financial officer, told the same call that tariffs were also hurting capital investments as Tesla had to bring equipment from outside the U.S., particularly from China, to expand domestic production lines.

Reporting by Shanghai Newsroom; Editing by Kate Mayberry

Our Standards:

Batteries

# Tesla supplier Panasonic pressed to step up deliveries of US-made batteries

Chinese alternatives have become less competitive due to domestic subsidy rules and higher tariffs

Panasonic showed off its role in electric vehicles in the US at the CES consumer electronics show in Las Vegas last year © Getty Images

**Harry Dempsey** in Tokyo

Published 8 HOURS AGO

Tesla battery supplier Panasonic is being pushed to accelerate supplies of its American-made products, according to the Japanese company's chief executive, in a sign that US protectionist measures have made batteries manufactured by its Chinese rivals less competitive.

Yuki Kusumi said in an interview in Tokyo with foreign media that its main customer — widely understood to be Tesla — was encouraging a quicker start to production at its new Kansas plant, most likely because Chinese batteries were less profitable to bring into the US due to a combination of subsidies and tariffs.

"As we've been told by our customer to get Kansas moving quickly, we're hurrying to do so," Kusumi said. He conjectured that the customer was thinking that replacing Chinese batteries with US-made Panasonic ones would help its electric vehicles sold in the US qualify for significant consumer tax credits.

Under construction since 2022 and close to first production, Panasonic's plant in De Soto, Kansas, will be its second battery site in the US and will lift its production capacity 60 per cent when it reaches mass production by March 2027.

Kusumi did not mention Tesla by name. However, Tesla has long been Panasonic's largest customer, jointly setting up the Nevada gigafactory that helped Elon Musk's car group become a global EV leader.

The rush to bring Kansas online runs counter to delays and cancellations across the auto sector for battery and EV plants in the face of slower sales growth for electric cars.

Honda on Tuesday announced a delay of at least two years to an $11bn battery investment in Canada, following a similar move by Toyota this year, while Nissan has abandoned plans for a battery plant in Japan.

Tesla previously sold a low-cost version of its Model 3 in the US that used a battery sourced from China, but discontinued it last year. The vehicle would not qualify for subsidies under the Inflation Reduction Act, the US clean energy industrial subsidy package.

The Texas-based automaker has tried to rely mainly on US-made batteries for models sold in the US but it does not fully disclose the origin of batteries for each model variant.

Kusumi highlighted potential risks to demand for EVs sold by its major customer in North America, citing that vehicles of a certain automaker had been set on fire.

Tesla vehicles have been vandalised in the US in protest against Elon Musk's controversial leadership of the Department of Government Efficiency in the Trump administration. The consumer backlash led the US carmaker to its worst quarter since 2022 in the first three months of this year.

"There are risks, but we are planning on robust demand for batteries from our main customer as of now," Kusumi added.

Panasonic has fallen behind Chinese and Korean competitors after betting heavily on Tesla during a nascent stage of electric vehicle adoption. It has dropped from the world's leading EV battery producer in 2016 to number four.

The group's standing could be strengthened by the opening of a Japanese battery plant in Wakayama in September last year and the new Kansas factory, which it has previously said would open in the spring of this year.

Kusumi declined to provide an exact timeline for the start of production, although he said the company had an internal target in mind.

Last week, Panasonic said it would cut 10,000 jobs, equivalent to 4.3 per cent of its workforce, as part of a long-awaited restructuring plan to focus on more profitable businesses and consider withdrawing from less profitable ones, including the TV unit that turned it into a household name.



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https://www.wsj.com/finance/currencies/small-china-linked-firm-plans-to-snap-up-trumps-crypto-token-f213d2b5

MARKETS & FINANCE | CURRENCIES

# Small China-Linked Firm Plans to Snap Up Trump's Crypto Token

GD Culture Group plans MicroStrategy-like crypto asset treasury strategy, including by buying the $TRUMP meme coin

By *Patricia Kowsmann* Follow and *Angus Berwick* Follow

*May 14, 2025 10:23 am ET*

$TRUMP is one of a string of crypto ventures launched by President Trump that are blurring the lines between his political and business interests. PHOTO: MEHMET ESER/ZUMA PRESS

GD Culture Group GDC **6.50%** ▲ , a small technology company with operations in China, said it struck a $300 million funding deal to help it amass a stockpile of cryptocurrencies, including President Trump's meme coin.

## What is GD Culture Group?

Nasdaq-listed GDC has a market value of about $26 million. It says it uses artificial-intelligence algorithms and software to generate "digital human models." It uses these avatars to sell products on TikTok, including Asian snacks, small home appliances and gardening tools.

The lossmaking company is based in New York and has a majority-owned subsidiary in China. It is led by Chairman and Chief Executive Officer Xiaojian Wang.

**GD Culture Group's stock price, past five days**


Source: FactSet

## What are its crypto plans?

GDC says it will raise up to $300 million through stock sales to support its "crypto asset treasury strategy," including purchases of both bitcoin and $TRUMP, the president's digital token. It would join numerous other companies, most prominently MicroStrategy, that have pivoted to focusing on their so-called treasury holdings of cryptocurrencies.

The stock price of GDC jumped early Monday after it announced the deal, but has since fallen back.

## What is $TRUMP?

$TRUMP is one of a string of crypto ventures launched by the president and his family that are blurring the lines between his political and business interests.

Critics say the ventures open the door for foreign governments and businesses to influence Washington, by creating ample opportunities for quid pro quos and favor-seeking. Another Trump crypto business, World Liberty Financial, has joined with a United Arab Emirates state-backed investor and crypto exchange Binance, whose convicted founder Changpeng Zhao has been pushing for a presidential pardon.

The meme coin rallied in late April on news that the top 220 holders would be invited to a May 22 gala dinner with the president. $TRUMP has a market value of almost $3 billion.

## How does GDC intend to buy $TRUMP?

The company says it has secured a funding commitment from an investor based in the British Virgin Islands, which it didn't name. The deal appears to be structured as a so-called equity line of credit. That means the investor will buy up to $300 million of stock over time, at a discount to recent traded prices, and then resell it in the open market.

Write to Patricia Kowsmann at patricia.kowsmann@wsj.com and Angus Berwick at angus.berwick@wsj.com

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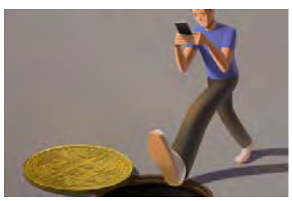

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# Health Co. Elevance Faces Suit Over Post-COVID Costs Claims

By **Emilie Ruscoe**

Law360 (May 13, 2025, 9:48 PM EDT) -- Health insurance provider Elevance Health Inc. and some of its executives face a proposed investor class action alleging the company hurt shareholders by mismanaging expectations about its Medicaid business's costs amid the post-pandemic eligibility redetermination process in certain markets it served.

In a **Monday complaint** in Indianapolis federal court, investor Eric Miller cited market records showing trading prices for Elevance shares fell 10.6% in October, when the company announced a quarterly earnings miss and lowered its full-year earnings per share guidance in connection with what it termed "elevated medical costs in [its] Medicaid business."

Miller claimed the announcement surprised investors, who'd known the company was seeing shifting cost trends for its Medicaid business but had previously been reassured by the company that those shifts were "nothing outside of the bounds of what we've expected and guided for."

In reality, the investor claimed, in 2024 the company was seeing Medicaid utilization levels and patients' required levels of care "rise significantly" as pandemic conditions lessened and states resumed their regular process of reviewing eligibility of Medicaid beneficiaries to redetermine whether existing beneficiaries still qualified for coverage.

Following the 2023 lifting of a moratorium on Medicaid eligibility redetermination processes during the height of the pandemic, Miller claimed, most states anticipated finishing their initial redetermination processes by mid-2024.

During that process, the investor alleged, Elevance told its investors it was closely tracking relevant cost trends so it could negotiate sufficient premium rates for the risks and costs associated with patients who would stay enrolled in Medicaid programs.

"While defendants acknowledged that Medicaid expenses were rising, they repeatedly assured investors that this was adequately reflected in the company's guidance for the year," Miller claimed, citing the company's claim, from the April 2024 beginning of his proposed class period, that it had "visibility into 75% of our Medicaid rates and premiums for 2024" and was accounting properly for changes.

Miller asserted that the company's representations to investors failed to disclose that in 2024, "the members being removed from Medicaid programs were, on average, healthier than those who remained eligible for the programs," and the trend was "occurring to a degree that was not reflected in Elevance's rate negotiations with the states or in its financial guidance for 2024."

According to Miller, investors first saw trading prices for Elevance shares fall on the heels of related statements in July 2024, following the disclosure that the company was "seeing signs of increased utilization across the broader Medicaid population, including in outpatient home health, radiology, durable medical equipment, as well as some elective procedures." Following that announcement, Miller said, trading prices for Elevance shares fell 5.8%, or over $32, from about $553 to under $521.

In October, when the company lowered its 2024 earnings guidance, trading prices fell from nearly $497 to about $444, a decline of 10.6%, or nearly $53.

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

Miller is represented by Jeroen van Kwawegen, Avi Josefson and Scott R. Foglietta of Bernstein Litowitz Berger & Grossmann LLP, Richard A. Maniskas of RM Law PC and Joseph N. Williams of Williams Law Group LLC.

Counsel information for the defendants wasn't immediately available Tuesday.

The case is Miller v. Elevance Health Inc et al., case number 1:25-cv-00923, in the U.S. District Court for the Southern District of Indiana.

--Editing by Michael Watanabe.

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# Intel Schemed To Duck $1B In Mobileye Losses, Investors Say

By **Hailey Konnath**

Law360 (May 13, 2025, 9:46 PM EDT) -- Intel Corp. used its position as Mobileye Global's controlling shareholder and fiduciary to strategically offload $1.6 billion in stock ahead of an announcement that tanked stock prices, according to a shareholder derivative suit filed Monday in Delaware Chancery Court.

Mobileye investors Evan Levitan and Barbara Wolfson claim Intel, which controls the principal employment of four of the eight members of Mobileye's board of directors, knew Mobileye had a buildup of excess inventory. In June 2023, Intel sold 38.5 million Mobileye shares at $42 per share, coming away with $1.6 billion, the complaint says.

In January 2024, Mobileye announced the inventory buildup, saying "lower-than-expected volumes" in one area of its business would temporarily affect profitability, the investors say. Mobileye's stock price fell after this revelation, they say.

In August 2024, Mobileye "shockingly reduced its 2024 revenue guidance even lower," yet again citing the inventory issue, the investors say. Mobileye's stock price fell again, closing at $16.28 per share, according to the suit. Mobileye's stock is now trading under $16 per share, the investors say.

"Had Intel sold its stock on August 1, 2024, the 38,500,000 shares that it sold in the [secondary public offering] would have been worth $626,780,000 rather than $1.6 billion," the suit says. "Thus, Intel used its position as the company's controlling stockholder and fiduciary opportunistically to avoid almost $1 billion in losses."

According to the complaint, Mobileye develops advanced driver assistance systems and autonomous driving technologies. The majority of its revenue comes from selling so-called EyeQ System-on-Chips to automotive suppliers who then sell the products to equipment manufacturers, they said.

Intel acquired Mobileye for $15.3 billion in 2017. However, after a reorganization, Mobileye went public again in 2022, according to the investors.

"Intel, however, remains in control of Mobileye," the suit says. The investors added that Mobileye "is a 'controlled company' with Intel controlling all matters submitted to the company's stockholders for approval, including the election of directors and the approval of significant corporate transactions."

Specifically, Intel owns roughly 750 million shares of Class B common stock in Mobileye, with 10 votes per share, meaning it holds about 98% of the total stockholder voting power in the company and 87.7% of the company's outstanding common stock, the investors say.

From 2021 through 2023, Mobileye's automotive suppliers purchased excess inventory of EyeQ systems, which brought with it "significant risk" that the suppliers would buy less product in the future, according to the complaint. Soon after that, Intel began planning its secondary public offering, with the help of Mobileye's board of directors, the investors said.

Mobileye's founder Amnon Shashua, chairman of the board Saf Yeboah-Amankwah and past and present directors Claire C. McCaskill, Eyal Desheh, Frank D. Yeary, Patrick P. Gelsinger, Christine Pambianchi and Jon M. Huntsman Jr. are also named defendants in the suit.

The investors allege breach of fiduciary duty and unjust enrichment. They also seek unspecified damages and an order forcing Intel to "return to the company the ill-gotten gains it realized as a result of its improper trading."

Intel, Mobileye and counsel for the investors didn't immediately respond to requests for comment.

The investors are represented by Blake A. Bennett of Cooch & Taylor PA and Brian J. Robbins, George C. Aguilar and Michael J. Nicoud of Robbins LLP.

Counsel information for the defendants wasn't immediately available Tuesday.

The case is Evan Levitan et al. v. Amon Shashua et al., case number 2025-0500-MTZ, in the Court of the Chancery of the State of Delaware.

--Editing by Drashti Mehta.

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# Fox Nabs Smartmatic Bribery Probe Docs In Defamation Case

By **Elliot Weld**

Law360 (May 13, 2025, 7:13 PM EDT) -- A New York state appeals court on Tuesday ordered Smartmatic to give Fox News documents related to a federal investigation into allegations that executives of the election systems company bribed officials in the Philippines, ruling the materials are "plainly relevant" to the network's defense against defamation claims.

A five-judge panel of the First Judicial Department reversed a lower court's order blocking Fox from obtaining documents about the effects of the U.S. Department of Justice's investigation on Smartmatic's business, as well as internal communications about the investigation and comments from customers about it.

The financially embattled Smartmatic has claimed that Fox reported baseless statements that the company was involved in a scheme to rig the 2020 presidential election for former President Joe Biden, and that the reports caused a significant hit to its business.

The panel said an "integral part" of Fox's defense is that Smartmatic's money problems stemmed from other sources, including **accusations** that three company executives bribed a Philippines election official to secure contracts for that country's 2016 election cycle. Those charges are pending in Florida federal court.

"The documents and communications sought by defendants on this appeal, which reflect the potential impact of these criminal charges on Smartmatic's business prospects, are plainly relevant to its current and future lost profits," the panel said.

In blocking Fox from obtaining the documents, the lower court relied on a series of cases that dealt with the admissibility of evidence at trial, but discovery uses a much more liberal standard, the Tuesday order reads.

Fox is not seeking to hold a "trial within a trial" and prove that Smartmatic's executives committed bribery, the panel said, only to show the likelihood that the allegations had an impact on the company's business prospects and will continue to do so.

In arguing against turning over the documents, Smartmatic said the lower court had rightly rejected Fox's "fishing expedition" since the criminal investigation of its executives was too far removed from the defamation suit to be relevant.

Both sides **asked** a New York judge to grant them summary judgment last month in the $2.7 billion defamation case. Fox argued that Smartmatic had failed to tie its business losses to Fox's reporting, and also asked the court to grant it a win on its anti-SLAPP counterclaims.

Meanwhile, Smartmatic argued that Fox Corp. owners Rupert and Lachlan Murdoch were well aware that President Donald Trump had lost the 2020 election, yet allowed the network to air false claims of election fraud in order to receive a ratings boost.

"We are pleased with the court's ruling that materials about Smartmatic executives' indictments are 'plainly relevant' to its lack of damages," a Fox News spokesperson said in a statement Tuesday. "The factual evidence shows that Smartmatic's business and reputation were badly suffering long before any claims by President Trump's lawyers on Fox News and that Smartmatic grossly inflated its damage claims to generate headlines and chill free speech."

A lawyer for Smartmatic, Erik Connolly, said in a statement that discovery already produced in the case shows Fox's alleged defamation "was the number one cause of Smartmatic's injuries."

"Fox trying to blame anyone other than itself for Smartmatic's injuries is just more lies from Fox," Connolly said. "The writing is on the wall. Lies have consequences."

Justices Peter H. Moulton, Barbara R. Kapnick, Saliann Scarpulla, Julio Rodriguez III and John R. Higgitt sat on the panel for the First Judicial Department.

Smartmatic is represented by J. Erik Connolly, Nicole E. Wrigley, Lee B. Muench and Edward C. Wipper of Benesch Friedlander Coplan & Aronoff LLP.

Fox News, hosts Maria Bartiromo and Jeanine Pirro, and former host Lou Dobbs are represented by Kirkland & Ellis LLP, Steven G. Mintz and Scott Klein of Mintz & Gold LLP, and Paul D. Clement and Erin E. Murphy of Clement & Murphy PLLC.

The case is Smartmatic USA Corp. et al. v. Fox Corporation et al., case number 2024-07725, in the Supreme Court of the State of New York, Appellate Division, First Judicial Department.

--Additional reporting by Frank G. Runyeon. Editing by Melissa Treolo.

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# Nike Seeks Dismissal Of Investors' Sales Strategy Fraud Suit

By **Katryna Perera**

Law360 (May 13, 2025, 10:15 PM EDT) -- Sportswear company Nike and several of its top executives have urged an Oregon federal judge to toss a proposed class action alleging the company's stock value declined as it continued to mislead investors on the success of a change in sales strategy, saying the suit improperly uses hindsight to claim fraud.

Nike and the suit's individual defendants, which include its President and CEO John J. Donahoe II and Chief Financial Officer Matthew Friend, filed a dismissal **motion** Monday saying the suit, brought by the City Pension Fund for Firefighters and Police Officers in the City of Pembroke Pines, Florida, is a "textbook example of the very fraud-by-hindsight Congress sought to eliminate."

The suit, **filed last year**, accuses the defendants of artificially inflating the company's stock price based on the deception that it was successful with its direct-to-consumer sales strategy, known as the "consumer direct acceleration."

However, on Monday, Nike argued that the plaintiffs ignored the fact that the strategy worked for years, drove direct and digital revenues to record highs and consistently beat out Nike's own aggressive targets.

"When consumer shopping patterns changed as the pandemic waned, direct and digital sales plateaued and Nike's senior management adapted by rebalancing the company's strategy to focus more on wholesale and retail," the motion states. "Changing a successful strategy when it no longer delivers the value it once did is the right thing to do, not evidence of securities fraud."

Nike argues that the plaintiffs try to "manufacture" a fraud claim by challenging "every conceivable public statement made about [consumer direct acceleration] during the class period," but that there are no specific facts demonstrating that any of the challenged statements were actually false or misleading.

"Nike never promised, as plaintiffs imply, flawless execution and zero obstacles to the ambitious CDA strategy," the motion states. "To the contrary, Nike repeatedly disclosed the risks and uncertainties in the strategy, that CDA was a work in progress, and that Nike was continuing to invest in supply chain, technology, and innovation as part of the strategy."

The suit's scienter claims "are even more deficient," the motion states, since they rely on the accounts of 19 confidential witnesses, most of whom had no direct contact with any of the individual defendants, according to Nike.

Additionally, the confidential witnesses only offer "vague references to 'problems' and 'issues' supposedly discussed in unspecified meetings or documents," the motion states.

The plaintiffs' financial motive theory, supported by the defendants' alleged suspicious stock sales, is "equally nonsensical," Nike argues, since its former CEO did not sell any stock and the stock sales by the other two defendants were routine.

"Every major business strategy encounters challenges, and nothing in the federal securities laws requires flawless execution. That Nike faced execution challenges regarding CDA and did not perfectly predict how consumers would choose to shop coming out of the global pandemic shows that Nike exists in the real world — not that it committed fraud," the motion states.

In 2017, Nike implemented its "consumer direct offense" strategy, which focused on selling products directly to consumers and "emphasized Nike's digital presence as a means of directly connecting" with customers, according to the suit. The plaintiffs allege that to focus on the new strategy, Nike dropped one-third of its sales partners by late 2020, significantly reducing sales from retail partners such as Macy's, Foot Locker and DSW.

Part of the strategy included the company forming Nike Direct, which combined financial metrics from Nike Digital and retail stores as one segment, the suit says, adding that this was intended to be the "centerpiece of Nike's long-term financial plans" and was touted by Donahoe as Nike's "fourth emergency competitive advantage."

The plaintiffs claim that despite a decline in revenues following the company's fourth quarter results in June 2022, Donahoe asserted that Nike's strategy was "working as we create value though our relentless drive to serve the future of sport." Following the investor earnings call later that month, Nike Class B common stock declined nearly $8 per share, according to the suit.

The pension fund contends that more materially false statements were made during a June 2023 conference call when Nike reported its full fiscal year results, with Friend announcing revenue growth due to "clear advantages, strong consumer momentum, a robust product innovation pipeline, healthy inventory and a normalized flow of supply."

The truth was revealed in December 2023, the pension fund says, when Friend revealed that Nike's total retail sales "across the marketplace fell short of our expectations" and the company was "identifying opportunities across the company to deliver up to $2 billion in cumulative cost savings over the next 3 years," among other statements. Nike's stock declined more than $14 per share based on this news, according to the suit.

Then in March 2024, following another reported decline in revenue, the pension fund says Donahoe admitted that "Nike is not performing in our potential," in addition to an announcement by Friend that the company was "prudently planning for revenue in the first half of the fiscal year [2025] to be down low single digits."

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

The proposed class is represented by Carol C. Villegas, Irina Vasilchenko, Matthew J. Grier, Connor C. Boehme, Gloria J. Medina and Mark Willis of Labaton Keller Sucharow LLP, Jonathan Cohen of DRRT, Steven J. Toll, Molly J. Bowen and Margaret (Emmy) Wydman of Cohen Milstein Sellers & Toll PLLC and Timothy S. DeJong, Keith A. Ketterling and Cody Berne of Stoll Berne.

Nike and the individual defendants are represented by B. John Casey and Alex Van Rysselberghe of Stoel Rives LLP and Brian M. Lutz, Jessica Valenzuela and Jeff Lombard of Gibson Dunn & Crutcher LLP.

The case is In re: Nike Inc. Securities Litigation, case number 3:24-cv-00974, in the U.S. District Court for the District of Oregon.

--Additional reporting by David Minsky. Editing by Jay Jackson Jr.

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Phone: +1 646 783 7100 | Fax: +1 646 783 7161 | customerservice@law360.com

# Wells Fargo Asks 9th Circ. To Undo 'Sham' Hiring Class Cert.

By **Katryna Perera**

Law360 (May 13, 2025, 10:58 PM EDT) -- Wells Fargo has asked the Ninth Circuit to intervene and undo the class certification granted to investors who have claimed that the bank's alleged practice of conducting "sham" interviews to meet diversity quotas harmed the bank's stock price when the truth came to light.

Wells Fargo on Friday filed a **petition for permission to appeal**, pushing back against the investors' proposed methodology for determining the class's damages. When the class was **certified last month**, U.S. District Judge Trina L. Thompson held that the proposed "out-of-pocket methodology that employs an event study" is adequate.

However, Wells Fargo argued on Friday the methodology does not meet the standard laid out in the U.S. Supreme Court's 2013 ruling in Comcast Corp. v. Behrend. According to the petition, the high court held that a plaintiff seeking class certification must submit "evidentiary proof" that its "'damages are capable of measurement on a classwide basis' in a manner 'consistent with its liability case.'"

Wells Fargo further noted the Ninth Circuit has held that, consistent with Comcast, it is not enough for an expert for the plaintiffs to "merely assert that he would be able to develop a [damages] model at some point in the future."

But that is exactly what the plaintiffs' expert, Dr. Joseph Mason, did in the current action, Wells Fargo added.

The bank said Mason only offered "'vague references' to an unspecified 'approach based on "out-of-pocket" losses' that 'may' incorporate other unspecified 'standard financial analysis and valuation tools.'"

"Dr. Mason added that, if 'called upon to evaluate damages,' he would 'consider the facts and circumstances of the case, including documents produced and testimony elicited during the discovery phase of this litigation as appropriate, in order to measure the extent to which, if at all, Wells Fargo's common stock price was inflated throughout the class period,'" the bank said.

However, Mason's deposition made it clear the plaintiff's expert had not yet done any of this work, nor did he have an "opinion specifically about what the case is about," Wells Fargo noted.

The bank said that alone should have been "fatal" to class certification, but Judge Thompson ruled it was enough that Mason had "mentioned the concept of an 'out-of-pocket methodology' and the possibility of an unidentified 'event study,' even though he had offered no detail whatsoever about any such 'methodology' or 'study.'"

According to Wells Fargo, the district court judge had acknowledged that granting class certification equated to a finding that Comcast does not pose any barriers to class certification in securities cases.

"The court nevertheless certified a class, holding that 'Comcast does not require plaintiffs to produce an out-of-pocket damages method that applies specifically to this case,'" the bank said. "To support its (non-)application of Comcast, the district court stated that securities defendants are already 'shielded' by the Private Securities Litigation Reform Act at the pleading stage of the case, but did not explain why that is relevant or improper. ... It is neither."

Wells Fargo argued that now the Ninth Circuit faces a question the court has not yet addressed: "What do plaintiffs in securities litigation have to show regarding their damages methodology post-Comcast in order to certify a class?"

Wells Fargo said the answer from the plaintiffs and the expert is "nothing," but the district court's decision to accept that answer is "manifestly erroneous" and warrants appellate review.

The certified class includes all individuals and entities who acquired Wells Fargo stock between Feb. 24, 2021, and June 9, 2022. SEB Investment Management AB and West Palm Beach Firefighters' Pension Fund were appointed class representatives, and Kessler Topaz Meltzer & Check LLP as class counsel.

The investors claimed Wells Fargo **conducted faux job interviews** for positions that didn't exist or had already been filled so the bank could meet its goals for diversifying its pool of job applicants. After The New York Times published an article about the hiring practices, Wells Fargo lost $17 billion in market capitalization — a 10% downturn in its stock price — over two days, the investors alleged.

Judge Thompson refused to throw out the suit last year, finding the investors had sufficiently alleged Wells Fargo made material misrepresentations about its diverse search requirement.

The investors asked the judge to certify their class earlier this year, alleging that throughout the class period, Wells Fargo "repeatedly lauded the diverse search requirement to investors and stressed that it was a centerpiece of the company's efforts to improve diversity and inclusion."

Meanwhile, Wells Fargo **has argued** the investors haven't shown that the downturn in its stock price was caused by the alleged job interviews rather than by rising interest rates.

Judge Thompson scheduled a case management conference for July. The parties are also **set for mediation** in late May, according to the case docket.

Wells Fargo declined to comment on Tuesday, and counsel for the investors did not immediately respond to requests for comment.

The investors are represented by Jennifer L. Joost, Stacey M. Kaplan and Sharan Nirmul of Kessler Topaz Meltzer & Check LLP, and David R. Kaplan of Saxena White PA.

Wells Fargo is represented by Brendan P. Cullen, Christopher M. Viapiano and Leonid Traps of Sullivan & Cromwell LLP.

The case is SEB Investment Management AB et al. v. Wells Fargo & Company et al., case number 25-3021, in the U.S. Court of Appeals for the Ninth Circuit.

--Additional reporting by Hailey Konnath. Editing by Lakshna Mehta.

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# Magistrate Judge Cuts Defendants In J&J Talc Unit Fraud Suit

By **Emlyn Cameron**

Law360 (May 13, 2025, 9:38 PM EDT) -- A New Jersey magistrate judge on Tuesday dropped a collection of defendants from a class action brought by cancer patients alleging that Johnson & Johnson's maneuvers to settle thousands of tort claims through Chapter 11 involved fraud.

Taking up an order stipulated to by both sides in the case, U.S. Magistrate Judge Rukhsanah L. Singh **dismissed** defendants including Johnson & Johnson's chief financial officer and the company's chief executive officer without prejudice. Judge Singh also replaced LTL Management LLC — the first entity Johnson & Johnson used to attempt its bankruptcy court resolution to tort claims — with Red River Talc LLC, a unit that the pharmaceutical company more recently tried to place in Chapter 11, as the first-named defendant in the case, per the order.

The same day the parties submitted the **stipulation and proposed order** that Judge Singh signed, the plaintiffs also submitted **an amended complaint** in the case. The new complaint updates the suit's allegations that Johnson & Johnson was using fraudulent asset transfers and bankruptcy filings to evade paying tort claimants.

"For years, defendants engaged in a complex web of corporate transmogrification — and concomitant shifting of assets and liabilities — that J&J knew from the outset" would reduce or delay its payouts to claimants, the plaintiffs said in their revised complaint. "J&J has compounded its tort malfeasance by embarking on successive fraudulent transfers — and serial related invocations of bankruptcy proceedings despite its lack of financial distress — to hinder, delay, and/or defraud these victims and prevent them from ever having their day in court before a jury of their peers, much less recovering from J&J."

Johnson & Johnson **has failed** three times to use bankruptcy to settle claims that its products contained cancer-causing asbestos. LTL first filed for Chapter 11 protection in North Carolina in 2021 to deal with tens of thousands of claims arising from exposure to J&J's cosmetic talc products. The case was moved to New Jersey and thrown out in January 2023 after the Third Circuit found that LTL was not in financial distress and lacked the required good faith to commence its bankruptcy.

Less than three hours after an order dismissing the case was signed in April 2023, LTL filed a second bankruptcy in the same court. That case was tossed months later.

In May 2024, the class action plaintiffs **brought the** fraudulent transfer case, which asked the court to undo three corporate transfers beginning with the company's 2021 "Texas two-step" maneuver to form LTL Management. The plaintiffs sought a declaratory judgment finding that the 2021 maneuver — along with the 2022 transfer of corporate assets from an existing consumer health division into a new entity known as Kenvue and the 2023 replacement of a $61.5 billion funding agreement provided to LTL with a $29.9 billion funding agreement — were fraudulent.

They asked that those transfers be voided and for a finding that J&J was liable for the full $61.5 billion provided in the original funding agreement to LTL. They argued that those actions allowed the company to use the bankruptcy courts to limit its liability for talc claims and delay trials and other forms of resolution for the proposed class for years.

Then, Johnson & Johnson created Red River last year through another divisional merger that saddled it with liabilities and claims tied to the talc litigation facing J&J. It filed for bankruptcy in Texas with a prepackaged Chapter 11 plan apparently supported by 83% of talc plaintiffs in September.

But that case was thrown out like the two previous efforts. U.S. Bankruptcy Judge Christopher M. Lopez said in a written decision that voting irregularities before Red River's bankruptcy filing and third-party releases supported dismissing the case and throwing out a roughly $9 billion bankruptcy deal.

His ruling followed a two-week trial in the unit's Chapter 11 case that pitted it against parties that argued the Texas two-step bankruptcy was filed in bad faith.

On Monday, the plaintiffs filed their revised complaint, which added the creation of Red River to the actions alleged to be part of the pharmaceutical company's efforts to evade paying up. The same day they asked, with buy-in from the defendants, to replace LTL with Red River as the main defendant and cut other defendants including Jonhson & Johnson CFO Joseph J. Wolk and CEO Joaquin Duato, according to the stipulation.

"The change in parties on the revised complaint was occasioned by the creation of Red River LLC," plaintiffs' counsel Brian Glasser of Bailey & Glasser LLP told Law360. "The order was giving effect to a party stipulation."

Judge Singh obliged, filing a signed version of the proposed order changing the defense roster on Tuesday.

Johnson & Johnson, Kenvue and counsel for Red River and its co-defendants did not reply to requests for comment.

The plaintiffs are represented by Richard M. Golomb and Kevin W. Fay of Golomb Legal PC and Brian A. Glasser, David L. Selby II, Thomas B. Bennett, D. Todd Mathews and Michael L. Shenkman of Bailey & Glasser LLP.

Red River Talc and its co-defendants are represented by Jessica Leigh Brennan of Barnes & Thornburg LLP.

The case is Love et al. v. Red River Talc LLC et al., case number 3:24-cv-06320, in the U.S. District Court for the District of New Jersey.

--Additional reporting by Mike Curley, George Woolston, Alex Wittenberg, Clara Geoghegan, Carolina Bolado and Rick Archer. Editing by Linda Voorhis.

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