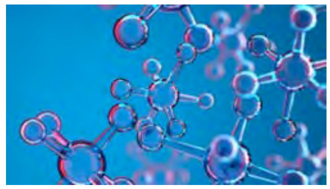
Thinking About PFAS-Related Corporate and Securities Litigation Risk

dandodiary.com/2025/05/articles/environmental-liability/thinking-about-pfas-related-corporate-and-securities-litigation-risk

Kevin LaCroix May 21, 2025



It has been my privilege over the years to participate in insurance industry conferences and events, including conferences and events concerned with topics far outside my usual management liability insurance turf. One of the recurring themes that comes up in these industry events is the wide-spread concern about potential liability exposures associated with PFAS – the large group of synthetic chemicals often referred to as “forever chemicals.” There is already extensive existing litigation relating to companies’ manufacture, use, and distribution of PFAS, much of it relating to environmental and consumer product safety concerns.

Among the PFAS-related litigation risks that many companies may face, in addition to the environmental and consumer product PFAS-related litigation concerns, is the risk of PFAS-related corporate and securities litigation. As discussed below, there have already been PFAS-related securities class action lawsuits, and the possibility of further litigation of this type may represent a significant litigation risk for many other companies.

Background

As well explained in a February 2025 memo from the Covington & Burling law firm (here), the label PFAS (per- and polyfluoroaklyl substances) describes a group of over 15,000 synthetic chemicals used since the 1950 in a wide range of industrial and consumer product, largely due to the chemicals ability to resist heat, water, and oil. For example, PFAS are commonly used in nonstick cookware, waterproof clothing, firefighting foams, cleaning agents and paints, cosmetics and personal care products, and food packaging. The chemicals are often referred to as “forever chemicals” because of their persistence in the environment and the human body. The chemicals do not break down naturally and can accumulate over time in soil, water, wildlife, and people.

For a particularly disturbing account of how the pervasive and enduring environmental spread of PFAS was uncovered (while at the same time the information allegedly was suppressed), please refer to the May 2024 article in *The New Yorker* published in the print edition under the title "You Make Me Sick," about one company's involvement with the chemical, here.

There are ongoing debates about whether and to what extent PFAS chemicals present human health risks. However, litigants and others assert that PFAS exposure has been linked to a wide range of serious health conditions, including cancers, metabolic disorders, hormonal disruption, fertility issues, developments effects in infants and children, and other concerns.

PFAS-Related Litigation

There has already been extensive PFAS-related environmental and consumer product safety litigation. Just to cite a few examples of this type of litigation: in June 2023, 3M announced that it had agreed to a settlement with a present value of $10.3 billion, payable over 13 years, to provide remediation of contamination of public water supplies; DuPont and several other companies agreed to pay $1.18 billion to settle similar water contamination claims; and thousands of lawsuits have been consolidated into a multidistrict litigation (known as the AFFF Firefighting Foam MDL) involving PFAS-related claims of firefighters, military personnel, and municipalities.

As summarized in a May 15, 2025 memo from the Thompson Coburn law firm (here), there has been extensive amounts of other PFAS-related litigation.

PFAS-Related Securities Litigation

In addition to this broad swath of environmental and consumer product safety litigation, there have also been PFAS-related corporate and securities lawsuits.

For example, as discussed here, in July 2019, a plaintiff shareholder filed a PFAS-related securities class action lawsuit in the District of New Jersey against 3M and certain of its executives. The gist of the complaint is the plaintiff's allegation that the defendants engaged in a scheme to defraud investors by issuing false and misleading statements "to conceal the truth about the Company's exposure to legal liability associated with its most lucrative product offerings: man-made chemicals known as per- and polyfluoroalkyl substances (PFAS)." In a September 30, 2021, order (here), the court granted the defendants' motion to dismiss. Among other things, the court concluded that the plaintiffs had failed to allege a material misrepresentation and had failed to sufficiently plead scienter. (As far as I can tell, no appeal was filed.)

Similarly, as discussed here, in October 2019, a plaintiff shareholder filed a PFAS-related securities class action lawsuit in the District of Delaware against The Chemours Company. Chemours had spun out of DuPont in 2015. Chemours itself filed a 2019 Chancery Court lawsuit against DuPont alleging that the environmental reserves that DuPont had established for Chemours were "spectacularly" deficient. Among other things, Chemours asserted that the reserves DuPont had established for Chemours PFAS-related litigation exposures were inadequate. The subsequently filed securities lawsuit largely tracked the allegation that Chemours had raised in the Chancery Court lawsuit. The court in the securities court lawsuit granted in part and denied in part the defendants' motion to dismiss. After the court's dismissal motion ruling, the parties submitted a stipulation of dismissal, asking the court to dismiss the remaining claims with prejudice; the court granted the motion.

Discussion

Though I have been able to cite above to the existence of prior PFAS-related securities litigation, readers undoubtedly noticed that neither of the two cases I cited survived in any meaningful way past the motion to dismiss stage. Certainly, neither case resulted in any recovery for the claimants.

However, the fact that these cases were unsuccessful from the plaintiffs' perspective by no means suggests that there could not be further PFAS-related litigation ahead. Indeed, from my perspective, the fact that these cases were previously filed suggests at least the possibility that there could be further PFAS related corporate or securities suits ahead, particularly given a number and seriousness of PFAS-related considerations.

As I see it, a number of considerations raise the possibility for further PFAS-related corporate and securities litigation: increasing global regulation, as well as at the state and federal level in the U.S., may require costly manufacturing and product formulations; companies continue to face to possibility for further lawsuits from consumers, municipalities, and other groups for alleged health and contamination effects; potential damage to brand and reputation as a result of association with PFAS; and the possibility for cleanup costs of contaminated sites and water supplies.

Given these various concerns, publicly traded companies may face significant challenges in their PFAS-related public disclosures. The nature and extent of these challenges is well-described in a May 8, 2025, *Law360* article entitled "Addressing PFAS Risks in Public Company Disclosures" (here), written by attorneys from the Venable law firm.

As the authors note, litigation and regulatory developments surrounding PFAS continue to evolve, as a result of which "an increasing number of industries face heightened exposure to compliance risks, enforcement actions and costly legal proceedings." Given these evolving risks, the authors note, "companies should regularly assess their potential impact on business operations and financial performance, and update their risk factors, MD&A disclosures and forward-looking statement safe harbor legends accordingly."

I want to stress here the importance of these disclosure-related considerations. The fact is that PFAS may be found, as the law firm memo's authors put it, "in an incredibly broad range of consumer and industrial products." Potential PFAS-related risks could affect a significant number of companies, putting significant disclosure pressure on potentially affected companies. The risk for these companies is that their disclosures, and perhaps more importantly, their omissions, potentially could be the subject of hindsight scrutiny from plaintiffs' lawyers in light of further developments in the evolving PFAS-related litigation and regulatory environment.

Bottom line for me is that, in addition to the other PFAS-related litigation and regulatory risks, companies potentially affected by PFAS exposure could also face the risk of potential PFAS-related corporate and securities litigation.

One final note. D&O insurance policies typically have environmental liability exclusions. However, if the policy provision is properly worded, the exclusion will have an express carve-out preserving coverage for shareholder claims or for claims alleging violations of the federal securities laws. The importance of this item in this context underscores the importance of a properly constructed D&O insurance policy, which in turn underscores the importance of companies have associating knowledgeable and experienced advisors in their D&O insurance placement process.

Securities Law News

BioAge Leaders Touted Obesity Drug Before Safety Woes, Suit Says

May 20, 2025, 2:09 PM PDT

- **COURT:** N.D. Cal.
- **TRACK DOCKET:** No. 3:25-cv-04271 **(Bloomberg Law subscription)**

BioAge Labs Inc. board members and top executives trumpeted an obesity drug candidate's development in the run-up to the company's IPO, only to halt its clinical trial on safety concerns, an investor alleges.

BioAge's leaders are responsible for a 77% stock drop, an ensuing class action, and other harm to the company, Wenshuang Luo says in a derivative suit. He filed the complaint Monday in the US District Court for the Northern District of California.

The initial public offering "represented to the public that there were no safety concerns and the Company expected top line results and to meet its primary endpoint goals" in the clinical trial for the drug candidate, azelaprag, Luo says. The members of leadership publicized the fact that Eli Lillly & Co. collaborated on the trial and looked ahead to a possible second clinical trial, Luo says.

The IPO was completed on Sept. 27, 2024. BioAge stopped the trial on liver toxicity concerns less than three months later, Luo says. Investors filed a proposed class action over the following business day's 77% stock drop, in which the security closed at $4.65 per share on Dec. 9. That suit, also pending in the Northern District of California, opens the company to massive classwide liability, Luo says.

Luo brings claims for breach of fiduciary duty, unjust enrichment, waste of corporate assets, and contribution. On behalf of the company, he seeks damages, an accounting and constructive trust, and punitive damages.

BioAge declined to comment on behalf of itself and the individual defendants.

Wolf Haldenstein Adler Freeman & Herz LLP, Rigrodsky Law PA, and the Grabar Law Office represent Luo.

The case is Luo v. Fortney , N.D. Cal., No. 3:25-cv-04271, complaint 5/19/25 .

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Litigation

Allied World Drops 'Bump Up' Case Against Berkley Insurance Unit

May 21, 2025, 7:50 AM PDT

A Fairfax Financial Holdings Ltd. insurance unit dropped its suit against a W. R. Berkley Corp. unit over coverage for a $9 million settlement of a shareholder class action related to IT firm Covisint's merger with OpenText Corp.

The US District Court for the Eastern District of Michigan dismissed Allied World National Assurance Co.'s suit with prejudice on Tuesday after the insurer filed a notice of voluntary dismissal.

- Allied World sued Berkley Insurance Co., which also covered Covisint, in April, arguing that a "bump-up exclusion" in its excess policy barred coverage for the settlement, which it said Berkley had agreed to fund.
- Berkley said Allied World should contribute its portion of the settlement within policy limits, according to the complaint.
- The "bump-up" exclusion is a widely used and contentious insurance provision that dictates who pays for settlements in post-acquisition shareholder litigation.

Dykema Gossett PLLC represents Allied World. No counsel entered an appearance for Berkley.

The case is Allied World Nat'l Assurance Co. v. Berkley Ins. Co. , E.D. Mich., No. 2:25-cv-10932, 5/20/25 .

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Litigation

Bankrupt Celsius' Spinoff Ionic Told to Reopen Board Nominations

May 21, 2025, 9:12 AM PDT

- **Ionic, formed from Celsius bankruptcy, has been struggling**
- **Judge orders annual meeting set, nomination window reopened**

A Delaware judge reached a split decision Wednesday in a dispute over the number of board seats up for election at bankrupt Celsius Network's offshoot Ionic Digital Inc.

Ionic's directors breached their fiduciary duties by cutting one board seat "not for a valid corporate purpose, but as an inequitable defensive measure," according to a 52-page Delaware Chancery Court opinion. But Ionic's board properly rejected shareholders' nominations of two director candidates under the Bitcoin mining firm's advance notice bylaw, Vice Chancellor Bonnie W. David said.

She ordered Ionic to reschedule its annual meeting and reopen the nomination window for 10 days to allow any shareholder to put forward candidates for two open director seats.

Ionic formed from the bankruptcy reorganization plan for the failed cryptocurrency platform as a way to compensate customers whose assets were locked into Celsius before it filed for Chapter 11 in 2022. But Ionic has struggled to complete plans to go public, and David's opinion noted the turmoil: in 17 months, it's had three CEOs, and five of its eight initial directors left the board. Since November, the board has comprised just four directors.

Figure Markets and GXD Labs, which aren't parties to the Chancery Court litigation, joined with some Ionic shareholders in proposing governance and operational changes at Ionic last year. Ionic's board scheduled its annual meeting and approved a resolution to eliminate one of two director seats that would be up for election after calls to use the meeting for a proxy contest to replace certain directors.

Because the decision to cut one seat from the board "was not adopted on a 'clear day,' but in the face of a mounting proxy contest, enhanced scrutiny applies," David said.

While even the shareholders agreed reducing one board seat might save costs and avoid deadlock, she said, the board "could have explored other solutions for saving costs that did *not* involve eliminating a director seat immediately prior to the stockholders' first opportunity ever to elect directors."

David sided with the Ionic board's rejection of the shareholders' nominations of two director candidates because they failed to disclose and provide copies of their agreements with Figure Markets and GXD. But there's "no real reason" why the same shareholders should be blocked from submitting a new notice during the reopened nomination window, she said.

David's opinion follows a two-day trial in early May that coincided with the sentencing of Celsius' founder, Alex Mashinsky, to 12 years in prison for defrauding hundreds of thousands of customers. The bankruptcy was part of the 2022 "crypto winter" that, amid the loss of billions of dollars in asset value, saw the Biden administration launch a series of prosecutions targeting crypto industry figures.

The shareholders are represented by Abrams & Bayliss LLP and Olshan Frome Wolosky LLP. Ionic's board is represented by Young Conaway Stargatt & Taylor LLP and Pachulski Stang Ziehl & Jones LLP.

The case is Vejseli v. Duffy , Del. Ch., No. 2025-0232, opinion 5/21/25 .

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Securities Law News

Checkpoint Therapeutics Beats Investor Suit Over FDA Assent (1)

May 20, 2025, 6:43 AM PDT; Updated: May 20, 2025, 9:07 AM PDT

- **Investors failed to allege misstatements on therapy approval**
- **Judge said manufacturer slip not properly tied to Checkpoint**

Checkpoint Therapeutics Inc. defeated investor claims it concealed the likelihood US regulators would deny its skin cancer treatment's application due to its manufacturer's compliance problems, a federal judge ruled.

Most of the purportedly misleading statements about the Food and Drug Administration's approval process for its therapy cosibelimab were unactionable puffery, opinion, or forward-looking projections, Judge Paul A. Engelmayer said as he tossed the investor's proposed class allegations with finality Monday. The US District Court for the Southern District of New York added that the investors failed to adequately allege the level of intent or reckless disregard to deceive by Checkpoint and its top executive to carry securities fraud claims.

On Dec. 18, 2023, Checkpoint said the FDA denied cosibelimab's biologics license application due to the regulator's inspection of the third-party manufacturer, Samsung Biologics, according to investors' most recent complaint. Checkpoint's share prices plummeted almost 45% to close at $1.83 that day—the stock's steepest one-day tumble since its 2016 market debut, according to data compiled by Bloomberg.

Investors claimed Checkpoint hid Samsung's quality issues and that the third-party had received repeated FDA notifications from 2016 to 2023 about potential problems. Samsung's issues risked FDA approval for cosibelimab, an antibody used to treat a form of skin cancer, the complaint said.

But the investors didn't plausibly allege that any of Samsung's prior notifications about observed issues were related to or conveyed to Checkpoint, Engelmayer said. They didn't they properly plead that the FDA observations targeted the same facility inspected while cosibelimab's 2023 approval was pending, he said.

When Samsung received such a notification while the FDA was reviewing cosibelimab's application in 2023, the inspection covered multiple products by various sponsors, so the investors didn't adequately allege that potential violations specifically impacted Checkpoint's products or that the manufacturer notified the defendants before some purported misstatements were made, he said.

These types of notifications were observational rather than the FDA's final word, so Samsung's receipt of these observations wasn't so significant to alert Checkpoint to risk, the judge said.

And allegations about its CEO's incentive-based compensation, stock sales, and transfer of stock to an irrevocable trust held for the benefit of his minor children, among other claims, didn't back up investors' theory about scienter, Engelmayer said.

The FDA approved cosibelimab's re-submitted application in 2024.

The proposed class would include those who got Checkpoint shares from March 10, 2021—the day after Checkpoint highlighted its agreements with Samsung Biologics in a press release—through Dec. 15, 2023.

Glancy Prongay & Murray LLP is lead counsel for lead plaintiff Hamilton Bailey and named plaintiff Reiko Juhst. Alston & Bird LLP represents Checkpoint, CEO James F. Oliviero, and CFO Garrett Gray. Neither of these law firms immediately responded to emails seeking comment. Checkpoint declined to comment in an email.

The case is In re Checkpoint Therapeutics Sec. Litig. , S.D.N.Y., No. 24 Civ. 2613, dismissed 5/19/25 .

(Updates with case context throughout.)

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Securities Law News

Spire Global Gets Dismissal of Investor Suit Over Accounting

May 20, 2025, 3:05 PM PDT

Spire Global Inc. investors can't proceed with their proposed class action alleging the satellite company engaged in improper accounting, a federal court said in closing the case Tuesday.

The investors failed to amend their complaint within 30 days after Judge Michael S. Nachmanoff threw out the most recent version in March, according to the order of the US District Court for the Eastern District of Virginia.

- The investors alleged Spire's stock fell 34% the day after the company announced on Aug. 14 that it was reviewing its accounting practices for contracts in its "Space as a Service" business
- Nachmanoff gave his reasons for dismissing the complaint verbally at the March 14 hearing, but didn't include them in his written order that day

Glancy Prongay & Murray LLP was lead counsel for the investors. Faegre Drinker Biddle & Reath LLP represented Spire.

The case is In re Spire Global, Inc. Sec. Litig. , E.D. Va., No. 1:24-cv-01458, 5/20/25 .

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Securities Law News

Nextdoor, Khosla Shed Investor's SPAC Merger Claims for Now (1)

May 20, 2025, 9:32 AM PDT; Updated: May 20, 2025, 1:18 PM PDT

- **Investor lacks standing to bring pre-merger claims, judge says**
- **Claim remaining statement was misleading insufficiently alleged**

Nextdoor Holdings Inc. and the company it merged with to go public in 2021 defeated investor claims that the two overhyped the number of active users of the neighborhood-based social media platform and average revenue generated from them, a federal judge ruled.

The investor lacks standing to sue for statements about Nextdoor before it went public, as he only bought shares of the special purpose acquisition company—Khosla Ventures Acquisition Co. II—three days before the merger, Judge Edward J. Davila of the US District Court for the Northern District of California said. The investor serving as lead plaintiff never owned Nextdoor securities as a private company, but rather that of the SPAC which acquired it to bring it public, Davila said as he tossed the proposed class action Monday.

Davila cited a Supreme Court "bright-line rule" that the US Court of Appeals for the Ninth Circuit recently applied in deciding against SPAC investors' standing in a similar circumstance.

Lead plaintiff Keith Hollingsworth stopped buying Nextdoor stock on May 11, 2022, so he lacks standing to sue over alleged misstatements after that, Davila said.

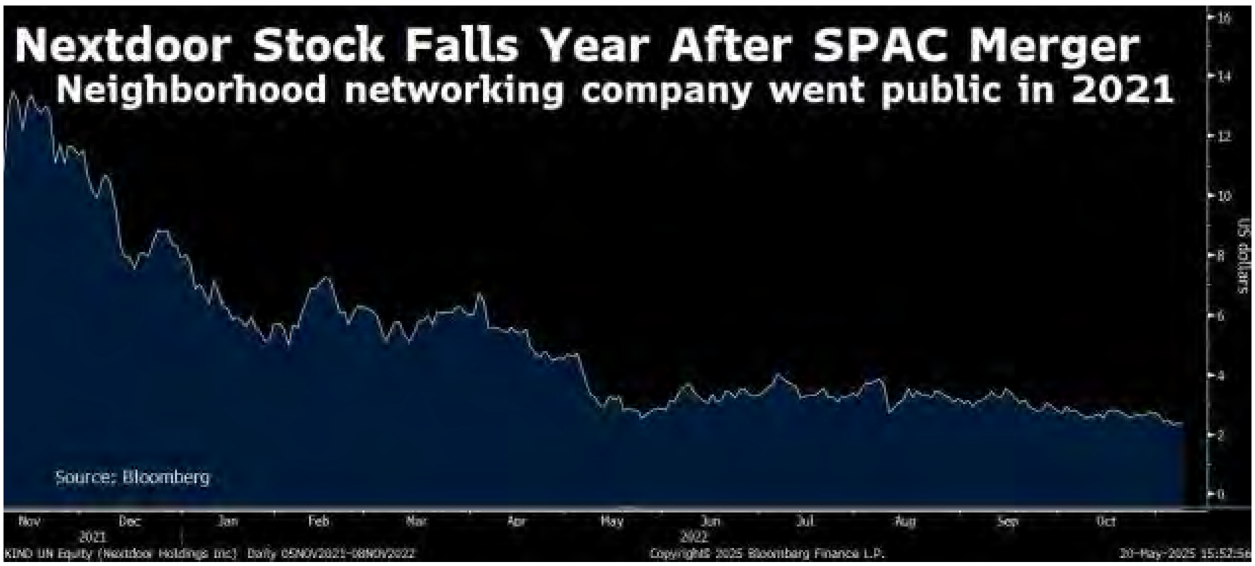
That left Hollingsworth with one alleged misstatement about Nextdoor's percentage of weekly active users. The investor had said it misleadingly didn't clarify those users included people who merely opened emails rather than who created advertising revenue by engaging with material on the website and app.

But Hollingsworth failed to plausibly plead it was a misstatement that would've mattered in context to investors because Nextdoor explicitly defined an "active user" as someone who opened the app, logged onto the site, or engaged with an email at least once during the set period, Davila said.

Davila's letting Hollingsworth file another complaint.

Nextdoor’s weekly active users and the average revenue per user boomed during pandemic social distancing protocols, Hollingsworth’s complaint said. The SPAC, going by Khosla Ventures Acquisition Co. II, brought public the social media company in November 2021, with Nextdoor emerging as the named entity, the complaint said.

Post-merger, Nextdoor’s revenues mainly derived from advertising, he said. But in 2022, Nextdoor revealed declining average revenue per user growth rates and declining weekly users. Nextdoor lost about 90% of its market value during the class period, he said.



Hollingsworth had also alleged in promoting the merger to investors, Nextdoor and Khosla leaders had portrayed the neighborhood networking company as a hot new startup like Twitter Inc. or Snap Inc. were.

Pomerantz LLP represents Hollingsworth, who sought to represent a class of investors who got what’s now Nextdoor stock from July 6, 2021, through Nov. 8, 2022.

Cooley LLP represents the Nextdoor and certain former executives. Latham & Watkins LLP represents certain SPAC sponsor defendants.

None of these law firms immediately responded to emails seeking comment.

The case is Hollingsworth v. Nextdoor Holdings, Inc. , N.D. Cal., No. 5:24-cv-01213, 5/19/25 .

(Updates to include case context throughout.)

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More Law Firms Join the Surge of Class Action Lawsuits Against Coinbase in Wake of Cyberattack

law.com/nationallawjournal/2025/05/20/more-law-firms-join-the-surge-of-class-action-lawsuits-against-coinbase-in-wake-of-cyberattack

Michael A. Mora May 20, 2025

After Coinbase disclosed that the cryptocurrency exchange received an email from an unknown threat actor claiming to have information about certain customer accounts, the publicly traded company forecast a hit of up to $400 million from the cyberattack.

Within hours, attorneys who represent Coinbase users sued the crypto exchange over its alleged failure to implement practices and systems to mitigate against the risks posed to ensure that the company safeguards personally identifiable information. These class action lawsuits were largely filed in the Southern District of New York and the Northern District of California.

“Any large-scale data breach case turns on two questions,” said Sean Burstyn of Burstyn Law in Miami, who serves in leadership positions for the Robinhood multidistrict litigation over its tampering of trading volume in meme stocks. First, Burstyn continued, did the data custodian do enough to protect customer information, and second, what did it do once it learned of the breach?

“The first question often gets hashed out by experts on industry standards; however, Coinbase's suggestion that it will strengthen its defenses makes one wonder why its existing defenses were not already strengthened,” Burstyn said in an email. “The second question can be thornier. A major concern for consumers will be delay.”

Burstyn advised immediate measures that consumers can take to protect themselves, such as locking down their Social Security numbers and changing passwords. But he added that “if the breached data custodian takes days or, in some cases, weeks to notify consumers, then the damage may be done before the consumer can do anything to protect themselves.”

In two of the class action complaints filed on Thursday, the plaintiffs and the proposed class pointed to Coinbase having discovered the breach as early as May 11 and to the fact that its users were “wholly unaware of the data breach until they learned of it in the media on May 15,” according to the complaint filed by Anderson Berry of the Arnold Law Firm.

On Monday, Law.com Radar recorded a litigation surge reflecting the 11 federal class action complaints, with the Radar managing editor suggesting that an MDL is possible. The same day, Paul Grewal, the chief legal officer of Coinbase, noted that the U.S. Department of Justice opened a probe into the breach upon the cryptocurrency exchange's request.

As of publication on Tuesday, there have been 12 filings penned by law firms such as Milberg Coleman Bryson Phillips Grossman, Ahdoot & Wolfson, Emery | Reddy, Almeida Law Group, and the Arnold Law Firm.

Burstyn noted that from a procedural standpoint, in the first innings of this kind of case, there will typically be arguments over arbitration, class action waivers and efforts to bring all of these cases to the Joint Panel on Multidistrict Litigation for consolidation into one master case.

“Behind the scenes, and mostly off of the public dockets,” Burstyn added, “there will be simultaneous jockeying by the plaintiffs' attorneys for court-appointed leadership roles in their combined efforts and likely one or more criminal investigations into the hackers.”

Justin Daniels, a faculty member at IANS Research, a cybersecurity research and advisory firm, and a partner at Baker, Donelson, Bearman, Caldwell & Berkowitz who is not involved in the case, observed a larger trend in which threat actors identify and target "weak link" employees, such as in the Coinbase breach and the $100 million MGM Casino and $1.5 billion Bybit hacks.

“Whether through impersonation, bribery or social engineering, the endgame is the same: gaining access to corporate IT systems or sensitive data,” Daniels said. “It’s a reminder that cybersecurity continues to be a people issue, highlighting the challenges of managing a global workforce and the critical importance of thorough vetting and hiring practices.”

These actions were 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.

Class Action

MedStar Retirement Plan Settlement Judge: Where's the Money?

May 21, 2025, 8:17AM PDT

Lawyers who negotiated an $11.8 million class settlement over MedStar Health Inc.'s retirement plan must address questions from a former hospital nurse who said she's seen no money or information about the finalized deal.

Judge James K. Bredar on Tuesday ordered attorneys for MedStar and the class of retirement plan participants to respond to a letter filed by a former MedStar nurse who said she kept her retirement savings with the hospital in anticipation of receiving a payout from the settlement, which received final approval in September 2024. The nurse said she's received "no communication" from MedStar about when she'll be paid, and that a law firm involved in the case "keeps telling me that the payment is coming soon."

- The class settlement covers more than 48,000 people and resolves allegations that MedStar chose overly expensive and risky target date funds as the default investment option in its retirement plan
- The parties first announced they'd struck a deal in January 2024, one month before the case was scheduled to go to trial in the US District Court for the District of Maryland

Skadden, Arps, Slate, Meagher & Flom LLP represents MedStar. The plan participants are represented by Miller Shah LLP, Capozzi Adler PC, and Joseph Greenwald & Laake PA.

The case is In re MedStar ERISA Litig. , D. Md., No. 1:20-cv-01984, 5/20/25 .

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Class Action

Column

Classes May Be the Surprise Answer to Universal Injunctions (1)

May 21, 2025, 1:30 AM PDT; Updated: May 21, 2025, 8:11 AM PDT

Columnist David Lat says class actions loomed unexpectedly large as an alternative to universal injunctions during Supreme Court oral arguments in the birthright citizenship case, but the biggest surprise came the next day.

The US Supreme Court heard oral arguments May 15 in cases challenging President Donald Trump's executive order restricting birthright citizenship. Lower courts have issued nationwide or universal injunctions preventing the order from taking effect, which the Trump administration argues these courts lack the power to do.

I expected the arguments to cover universal injunctions and birthright citizenship, and they did. I did not expect extensive discussion of class actions under Federal Rule of Civil Procedure 23—which wound up being, according to Adam Feldman of Legalytics, one of the top three topics raised at the arguments. Or as Stanford law professor Mila Sohoni put it, "The breakout star of the oral argument was the Rule 23(b)(2) injunctive class action."

I was not alone in being surprised by how prominently class actions figured in the arguments. Also caught off guard was Vanderbilt law professor Brian Fitzpatrick, a leading expert on class actions and author of the book "The Conservative Case for Class Actions," whom I interviewed earlier this week.

"I was surprised by how much class actions were mentioned," Fitzpatrick told me. "I realize they are a possible alternative to nationwide injunctions, but I didn't realize how strong the interest was in them. It seemed that the government had put all their eggs in that basket—or that the justices saw class actions as the only viable alternative."

Solicitor General D. John Sauer leaned hard on class actions in his argument. When Justice Elena Kagan asked what can be done about an illegal executive order, Sauer said that "Article III [of the Constitution] and the courts' traditional equitable practices provide a range of tools to address that, including a potentially nationwide class action"—but that "a universal injunction is not one of those tools."

Why might class actions be helpful to the Trump administration? Fitzpatrick explained that criticisms of nationwide injunctions fall into two buckets: formalist or technical concerns, and functional or practical ones. Class actions address both—at least in part.

On the formalist side, the government argues that it's unconstitutional to award relief like an injunction to an individual who's not a party to the case. Class actions address this problem by using the class certification process to make these individuals—i.e., individuals other than the named plaintiff in a class action—into formal or official parties.

On the functional side, there are a number of problems with universal injunctions. They encourage forum- and judge-shopping: Plaintiffs challenging a nationwide policy get to pick where they file their case. They prevent percolation of legal issues through the lower courts. Once a judge blocks some government action with a universal injunction, the action ceases, and other courts don't get to rule on it.

And they're unfair to the government: It can win the vast majority of lawsuits challenging a policy, but if one judge finds that policy unlawful, it gets frozen nationwide. As Sauer stated in the opening of his argument, universal injunctions "operate asymmetrically, forcing the government to win everywhere while the plaintiffs can win anywhere." If the government wins a challenge to a policy in one court, that ruling doesn't stop plaintiffs from filing lawsuits in other courts. But if the government loses and gets hit with a nationwide injunction, it can't implement that policy anywhere, full stop.

The class-action mechanism is less effective in addressing these practical problems, according to Fitzpatrick. Because class members are bound by an adverse ruling, the class action does fix the problem of unfairness to the government because of a lack of reciprocity. But it doesn't address the problem of forum- and judge-shopping, since lawyers challenging a national policy can pick where to file their class action, and it also doesn't allow for percolation, since granting relief to a nationwide class blocks that policy across the country.

In other words, put another way, there's not much of a practical difference between a nationwide class action, on the one hand, and a universal injunction, on the other. As an example, Fitzpatrick cited a class action challenging the Trump administration's policy allowing migrants to be deported to places other than their country of origin, so-called "third countries," without giving them a chance to object.

The lawsuit was brought by a coalition of immigrant-rights organizations, who shrewdly filed in the US District Court for the District of Massachusetts—where Democratic appointees outnumber Republicans by 11-2, among active judges. The case wound up before Judge Brian Murphy, a Biden appointee.

Five days after the complaint was filed, Murphy issued a temporary restraining order blocking the policy across the country. A few weeks later, and less than a month after the lawsuit was initiated, he certified a nationwide class and partially granted a preliminary injunction. (On May 20, Murphy ordered the administration to "maintain custody" of certain migrants who may have been deported to South Sudan—which is not their country of origin.)

One might argue that at least class actions require plaintiffs (and their lawyers) to satisfy Rule 23's requirements for certifying a class, including what Sauer referred to as "the rigors of the certification process." But an opinion the Supreme Court issued the day after the birthright-citizenship arguments calls even this argument into question.

In *A.A.R.P. v. Trump* , the justices extended their earlier order preventing the Trump administration from deporting alleged Venezuelan gang members under the Alien Enemies Act (AEA). The Supreme Court provided relief to a "putative" class, i.e., a class asserted to exist by the plaintiffs but not yet certified by the district court.

In fact, as Justice Samuel Alito complained in his dissent, "the Court issue[d] 'preliminary relief' to a putative class that the District Court has explicitly refused to certify," and "without providing any substantive analysis suggesting that the District Court's analysis of the class certification issue was incorrect." In Alito's view, even assuming a court can grant relief to a putative class, it "must at least consider whether class certification is likely" before doing so.

According to Georgetown law professor Steve Vladeck, "the majority's holding that plaintiff classes can be provisionally certified by district courts for purposes of providing temporary relief, even without resolving the likelihood of full class certification, is going to have an impact in lots of cases—well beyond the AEA." He characterized the court's conclusion as "the quiet bombshell in the ruling."

Or, as Fitzpatrick told me, if a court can provide class-wide, injunctive relief to a "putative" class, without certifying the class or even determining that class certification is likely, "that's giving away the whole ballgame—it's functionally equivalent to a universal injunction."

In Fitzpatrick's view, the better practice is for a court to reach at least a preliminary conclusion on the likelihood of class certification before issuing temporary relief to a putative class. But he said he understands the appeal of providing immediate relief to a putative class, given how swiftly the Trump administration moves.

In *A.A.R.P.*, for example, the plaintiffs alleged that the government planned to deport some migrants with only 24 hours' notice. And as the court pointedly noted—citing the case of Kilmar Armando Abrego Garcia, the Maryland man sent to an El Salvadoran prison—"the Government has represented elsewhere that it is unable to provide for the return of an individual deported in error to a prison in El Salvador."

So even if a court takes only a few days to make preliminary findings about the likelihood of class certification, it might be too late for the class members. As Fitzpatrick said, "Today we arguably have more need than ever to give relief to a putative class—because we have no assurance that the president isn't going to put all these people on a plane to El Salvador, making the entire litigation moot."

If we believe the court overreached in granting relief to a putative instead of certified class, we could be looking at a situation where "the Court has acted wrongly in enjoining action that is probably, or even certainly, illegal," lawyer and legal commentator Ed Whelan wrote. He added, "Another reason to condemn [the Trump administration's] unconstitutional actions is that they predictably generate bad law that expands judicial power."

In other words, Trump critics might argue—paraphrasing the old saying, "Hard cases make bad law"—that bad administrations make bad law.

Going back to the birthright-citizenship oral arguments, certain comments by the justices resonate differently in light of the *A.A.R.P.* ruling that came out the next day. Justices Neil Gorsuch and Brett Kavanaugh asked multiple questions about giving preliminary relief to putative classes—presumably because they knew the court was about to do just that in *A.A.R.P.*, even if the advocates in the birthright-citizenship cases did not.

Explaining the appeal of the class-action mechanism over the universal injunction, Kavanaugh said that at least the class action "complies with the rules." And while jumping through the hoops of Rule 23 class certification "may all be a technicality" to some, in the legal realm, as lawyers and judges, "we care about technicalities." Well said, Justice Kavanaugh.

The cases are Trump v. CASA, US, No. 24a884, *argued* 5/15/25; A.A.R.P. v. Trump, US, No. 24A1007, *order* 5/16/25.

David Lat , a lawyer turned writer, publishes Original Jurisdiction . He founded Above the Law and Underneath Their Robes, and is author of the novel "Supreme Ambitions."

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(Adds overnight developments in Murphy's court in paragraph 13. For clarity, removes parenthetical references to class member opt-outs in paragraphs seven and 10.)

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Critical Mass With Law.com's Amanda Bronstad: Bayer Takes Roundup Fight to State Legislatures, Clearview AI Class Action Settlement Creates Controversy

law.com/2025/05/21/critical-mass-with-lawcoms-amanda-bronstad-bayer-takes-roundup-fight-to-state-legislatures-clearview-ai-class-action-settlement-creates-controversy

Amanda Bronstad May 21, 2025

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

This week: **Bayer**, whose **Monsanto** subsidiary has a **Roundup** petition before the **U.S. Supreme Court**, is lobbying state legislatures to change their laws on pesticide labeling. **Public Citizen** plans to appeal a controversial **Clearview AI** privacy settlement that gives class members a 23% equity stake in the tech startup. Find out who stepped in for **Adobe Inc.** in a new slate of privacy suits.

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.

Majed Nachawati of Nachawati Law Group. Courtesy photo

Monsanto has petitioned the **U.S. Supreme Court,** but its parent, **Bayer**, also is turning its sights to state legislatures, where Georgia this month became the second state to pass a law shielding pesticide manufacturers from failure-to-warn claims.

Here's my colleague **Aleeza Furman**'s storyabout Bayer's legislative efforts, operating through a lobbying group called Modern Ag Alliance. So far, about a dozen states have introduced similar bills in the past year. On May 9, **Georgia Governor Brian Kemp** signed a bill into law, about two weeks after **North Dakota Governor Kelly Armstrong** signed similar legislation.

Could Monsanto file for bankruptcy? Monsanto still has thousands of Roundup cases pending. Another Roundup trial began Tuesday before S**t. Louis County Circuit Judge Brian May**, in St. Louis, Missouri -- Michelle Ramirez(**Sidley Austin**) gave Monsanto's opening statements. But a new report from **The Wall Street Journal**said Monsanto could file for Chapter 11 bankruptcy. A Bayer spokesman had no comment for **Law.com**. But Majed Nachawati (**Nachawati Law Group**), whose firm represents 5,000 Roundup plaintiffs, said:

"We've seen this story before and we know how it ends. We're not waiting, and we will keep filing lawsuits and keep pushing for an aggressive trial schedule so that all victims and their families have a chance for justice."

A businessman as bank and telephone bank protection has facial recognition, thanks to increased reality and futuristic technology. Concept of: cyber security, business, technology and future

Clearview Settlement: 'We Don't Know What It'll Be Worth'

A federal judge approved a controversial privacy settlement that gives class members a 23% equity stake in facial recognition software firm **Clearview AI Inc**.**U.S. District Judge Sharon Johnson Coleman** of the **Northern District of Illinois**, agreed with class counsel that the 23% stake was preferable to monetary relief that could put Clearview AI out of business. Class counsel estimated that the value of the equity stake could be about $51.75 million, 39.1% of which would pay for attorney fees.

Attorneys general from 22 states and Washington D.C., in an amicus brief, called the value of the equity stake unknown and speculative, and **Public Citizen**, an objector, plans to file its opening brief on June 16 before the **U.S. Court of Appeals for the Seventh Circuit** challenging both the compensation and the lack of injunctive relief in the deal.

Michael Kirkpatrick(**Public Citizen Litigation Group**) told me:

"On the one hand, the monetary relief is extremely speculative, so we don't know if it's a fair equity stake because we don't know what it'll be worth. But the flip side is we're allowing Clearview to essentially keep doing what they're doing. In fact if Clearview is successful, the equity stake will bring more money."

Jami Mills Vibbert, partner at Arnold & Porter Kaye Scholer.

Who Got the Work?

A team of lawyers from **Arnold & Porter** stepped in to represent **Adobe Inc.** in lawsuits alleging that its Adobe Experience Cloud Identity Service and related products use cookies to track and collect user data. At least three lawsuits have been filed against Adobe in **U.S. District Court** for the **Northern District of California**, according to **Law.com Radar**. Two were consolidated before **U.S. District Judge Noël Wise**, and plaintiffs' firms **Lowey Dannenberg**, **Milberg Coleman**, **Schubert Jonckheer & Kolbe** and **Cafferty Clobes** are vying with **DiCello Levitt** for lead counsel appointments. In the first case, Arnold & Porter partner Angel Nakamura, in Los Angeles,appeared last month on behalf of Adobe, followed by New York partners Jami Vibbertand David Schwartzthis month.
Here's what else is happening:

Uber's Up: **Uber** is preparing for its first bellwether trial on Dec. 8 among thousands of lawsuits alleging its drivers sexually assaulted passengers, most of them women.The **U.S. Court of Appeals for the Ninth Circuit** denied Uber's novel attempt to challenge the **U.S. Judicial Panel on Multidistrict Litigation**'s order coordinating the lawsuits before **U.S. District Judge Charles Breyer**, of the **Northern District of California**, who instructed both sides to each identify 10 bellwether cases. Uber moved to dismiss claims in the bellwether cases, such as fraud and misrepresentation, and product liability claims, which plaintiffs opposed this month.

Exxon Explanation: A judge upheld a $725.5 million benzene verdict against **ExxonMobil**, which has appealed the jury's award to the **Pennsylvania Superior Court**.In a May 8 opinion, **Philadelphia Court of Common Pleas Judge Carmella Jacquinto** said the jury had enough evidence to support its 2024 award, which ExxonMobil has insisted was excessive. She also rejected ExxonMobil's additional argument that online comments a juror made about the verdict showed bias against it. Jacquinto's opinion explains her Sept. 13 ruling denying ExxonMobil's post-trial motion.

Charges Dropped: A federal judge dismissed all criminal charges against **Tom Girardi**, who remains hospitalized in Los Angeles.Girardi, 85, was convicted by a federal jury in Los Angeles last year of four counts of wire fraud. Federal prosecutors in Los Angeles alleged he stole $15 million from four clients. In Chicago, federal prosecutors, who charged Girardi with stealing another $3 million from clients with **Boeing** settlements over the 2018 crash of Lion Air Flight 610 in Indonesia, filed a May 7 motion to drop those charges, citing his conviction in Los Angeles and his advanced age.

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

Judge delays Google's push to consolidate 2,296 privacy lawsuits

DJ **dailyjournal.com**/articles/385543-judge-delays-google-s-push-to-consolidate-2-296-privacy-lawsuits

May 20, 2025

Judge delays Google's petition to consolidate 2,296 privacy lawsuits alleging Incognito browser data collection, potentially creating California's largest privacy case, with 370,000 plaintiffs seeking damages for unauthorized tracking.

A judge deferred hearing a petition to consolidate cases against Google to create one of the largest privacy lawsuits in California history, over claims its Incognito browser secretly collected users' data.

Santa Clara County Superior Court Judge Charles F. Adams was appointed coordination motion judge in the Judicial Council Coordination Proceeding and must set a hearing on coordinating more than 370,000 plaintiffs in 2,296 lawsuits within 30 days after a hearing Monday.

Plaintiffs allege Google's Incognito browser collected users' data during private browsing sessions despite it being marketed as a safe, anonymous option. Google was contacted for comment but did not respond by press time. *Luna, et al. v. Google LLC*, 24CV434093 (St. Clara Cty. Super. Ct. filed Mar. 28, 2024).

Attorney for Google, Aarti Reddy of Cooley LLP, asked Adams at Monday's hearing to vacate the trial date set for June 18 so the petition could be heard. Reddy also informed the court that 5,000 new related complaints had been filed by Bellatrix Law PC and would require an add-on petition, which if granted could add another 30 days of trial delay.

Counsel for just under a third of all plaintiffs, Beko O. Reblitz-Richardson of Boies Schiller Flexner LLP, objected to the petition for consolidation and urged the court to keep the June trial date.

"Four individuals [plaintiffs] have health conditions that affect memory, eyesight and ability to travel," Reblitz-Richardson said. "We don't think it makes sense at this stage to take the train off the tracks."

Potter Handy LLP currently represents more than 250,000 plaintiffs in related cases.

Google pushed to centralize all proceedings -- including a rogue $200 million pro se case -- arguing that coordination will avoid inconsistent rulings and streamline litigation over identical claims.

The pro se plaintiff, Antonio Hood, whose case is being heard in Orange County, creates additional complexity for consolidation and confusion after attorneys from Boies Schiller Flexner and Morgan & Morgan PA confirmed he was part of their tranche of more than 96,000 plaintiffs.

Reddy wrote in a memo supporting Google's consolidation petition the plaintiffs' counsel "offered no further update and was unable to confirm they had spoken with Mr. Hood, continue to represent him... or that he was willing to withdraw or transfer the pro se action."

Hood did not appear at Monday's hearing and could not be reached for comment.

At Monday's hearing, Mark C. Mao, also of Boies Schiller, said, "I don't know if he [Hood] agrees it's the same kind of case [as other plaintiffs]. He opposes co-ordination of cases." No further clarification was made by counsel on Hood's status.

The lawsuit builds on findings from the Brown v. Google LLC federal class action (filed in 2020), which established that Incognito users' data was collected and awarded the certified class injunctive relief.

Anita Taff-Rice, founder of Walnut Creek based technology and communications law firm iCommLaw, said in an emailed comment on the cases Monday, "The Brown case offers a good preview of the likely strength of the plaintiffs' claims because that case was ready to go to trial before Google settled.

"The Brown court agreed that customers' browsing data was 'communications' for the purposes of the wiretap acts and that the way Google collected that private browsing data made it impossible for people to avoid Google's tracking and collection."

The plaintiffs in the newest case are pursuing monetary damages individually: $5,000 per alleged violation of the California Invasion of Privacy Act and punitive damages. They claim Google's actions constitute unauthorized wiretapping and eavesdropping, as well as tracking communications without consent.

Taff-Rice added, "The consolidation of the cases could magnify the effect if Google gets an unfavorable result, in part because there will be a single order at one time rather than a series of orders being issued over time."

On the impacts this case could have on the technology and information sector, Taff-Rice said, "A huge, high-profile case such as this will undoubtedly serve as a warning signal to other companies collecting customer data that they cannot escape liability simply because data is collected from an intermediate source."

#385543

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Judge rebukes attorney over request to seal class settlement

DJ dailyjournal.com/articles/385552-judge-rebukes-attorney-over-request-to-seal-class-settlement

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May 21, 2025

A San Francisco Superior Court judge sharply criticized a plaintiff's attorney for attempting to seal a class action settlement that included $390,000 in fees and minimal recovery for the named plaintiffs. The judge questioned whether the case was filed in state court simply to bypass stricter federal standards--and whether the public's right to transparency was being disregarded.

Superior Court Judge Ethan P. Schulman

A judge suggested a plaintiff's attorney had been "bought off" by defendants as he denied a motion to dismiss a putative class action that sought to redact a settlement payment and attorney's fees.

San Francisco Superior Court Judge Ethan P. Schulman slammed Seth A. Safier, partner at Gutride Safier LLP, at a hearing Tuesday for not acting in the public's interest or complying with Rule 3.770 of the California Rules of Court by requesting a class action dismissal request be filed under seal.

Schulman took issue with the proposed settlement amount for two plaintiffs of $5,000 each, while the attorney fee requested by Safir amounted to $390,000.

Safier also drew the judge's ire by seeking the state court's endorsement of a "virtually identical" case already pending in federal court, which was filed earlier.

"You think anytime a plaintiff comes in here and says we want the court to dismiss a putative class action without prejudice to class members... and gets bought off to put it gently, regardless of the merits and reasons, we ought to just take out the rubber stamp?" Schulman asked Safier at the hearing.

"The only prejudice being you wouldn't get this rich deal if the court didn't seal it," Schulman added.

Safier said at the hearing that the whole litigation had been pending for two and a half years and that the proposed settlement compensated the plaintiffs for their "time and effort" and "contribution to the class."

"You're not being asked to approve the settlement," Safier said to the judge. "You're being asked to approve dismissal of the class action.

Safier added, "We had to start somewhere, and federal court doesn't have the same requirement of Rule 3.770."

"Well, that's too bad," Schulman replied.

Safier was approached for further comment after the hearing but declined to provide one.

The plaintiffs brought a putative class action against defendant Rebbl Inc. over claims of unlawful practices in labeling and marketing its drinks in the amount of protein they contain. *Mehva Roffman v. REBBL, Inc.,* CGC-24-620772 (S.F. Super. Ct. filed Dec. 19, 2024).

Schulman questioned whether there was "any legitimate basis" for filing the case in state court when defendants changed their labels within months after the related federal litigation was filed in September 2022 - more than two years before plaintiff filed its complaint with the state court.

Safier said at the hearing that the label changes were made shortly after the federal case was filed but a contract had not been signed until March 2025.

"In federal court there is injunctive relief still available," Safier added.

"What you're saying is this should never have been brought in this court," said Schulman. "No one is benefitting from bringing this class action other than you."

Schulman ordered plaintiffs to "go back to federal court and ask them to dismiss."

"I have not granted and will not grant a Rule 3.770 settlement that is sealed," said Schulman. "We don't do things in secret in California."

At the hearing, defense attorney Matthew Orr of Amin Wasserman Gurnani said the case was filed in state court to "preserve a sliver" of what was dismissed in federal court. He declined further comment.

Schulman had previously denied the plaintiff's attempts to dismiss the case without attaching a settlement agreement in April. The plaintiff filed a renewed motion in May for dismissal with the settlement agreement attached that sought to be filed under seal, despite the court's previous ruling against sealing.

The renewed motion stated that "if this case is dismissed without prejudice, the parties will them [sic] seek to dismiss the federal court action."

In his latest tentative ruling denying the motion to dismiss, Schulman wrote that the only support the plaintiff offered to seal the settlement agreement was that one of the negotiated provisions stated the terms of the settlement would remain confidential.

"The settlement likely would not have been reached without this confidentiality provision," the plaintiffs said.

Schulman concluded in his tentative ruling that it was not a sufficient basis for sealing the motion and said, "The court will not approve dismissal of a proposed class action without a public record demonstrating full compliance with the rule."

#385552

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UnitedHealth falls after report it secretly paid nursing homes to reduce hospital transfers

reuters.com/business/healthcare-pharmaceuticals/unitedhealth-falls-after-report-it-secretly-paid-nursing-homes-reduce-hospital-2025-05-21

Sriparna Roy May 21, 2025

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

- US DoJ declined to pursue probe after factual inaccuracies in allegations, says company
- Shares down more than 39% this year

May 21 (Reuters) - UnitedHealth (UNH.N), opens new tab shares fell more than 6% on Wednesday after the UK's Guardian newspaper reported that the company made secret payments to nursing homes to reduce hospital transfers, adding to the woes of the healthcare conglomerate.
The alleged action, part of a series of cost-cutting tactics, has saved the company millions, but at times risked residents' health, the Guardian reported, citing an investigation.

The allegations add to the litany of negatives that have hurt UnitedHealth in the last several months, following a massive cyberattack at its Change Healthcare unit, reports of criminal and civil investigations into the company's practices, including one for Medicare fraud and the abrupt departure of CEO Andrew Witty last week.

Shares have stumbled all year, losing more than 39%, compared with a 0.6% decrease for the Dow.

UnitedHealth said in response that "the U.S. Department of Justice investigated these allegations, interviewed witnesses, and obtained thousands of documents that demonstrated the significant factual inaccuracies in the allegations."

The company also said in an emailed statement that the DoJ declined to pursue the matter after reviewing all the evidence during its multi-year investigation.

Reuters has not independently verified the article's allegations.

"The news is only seemingly getting worse for UnitedHealth," said Sahak Manuelian, managing director, global equity trading at Wedbush.

"This is kind of a tough situation for investors to come in and have any kind of confidence in putting money to work, so we'll have to kind of wait and see how this plays itself out, unfortunately," Manuelian said.

Separately, HSBC downgraded the stock to "reduce" from "hold," and cut the price target to a street-low of $270.

The brokerage said higher medical costs, pressure on drug pricing and its pharmacy benefit management unit, OptumRx, and a potential Medicaid funding cut can upset the company's recovery journey.

The company is now counting on the experience of Stephen Hemsley, who returned as CEO to steer it through the current crisis.

"We believe Hemsley has the experience and leadership attributes that the company needs to restore credibility and right the ship," said James Harlow, senior vice president at Novare Capital Management.

Reporting by Sriparna Roy in Bengaluru; Additional reporting by Twesha Dikshit in Bengaluru; Editing by Anil D'Silva

Sriparna reports on pharmaceutical companies and healthcare in the United States. She has a master's degree in English literature and post graduate diploma in broadcast journalism.

https://www.wsj.com/business/retail/kohls-walmart-michaels-ashley-buchanan-chandra-holt-0c2dc613

BUSINESS | RETAIL

How Two CEOs Mixed Romance and Business, Leading to Scandal

Kohl's CEO Ashley Buchanan and Chandra Holt lived together in Texas but kept their relationship quiet as their interests became intertwined at retail chains

ILLUSTRATION: ALEXANDRA CITRIN-SAFADI/WSJ; ISTOCK, AP

By Sarah Nassauer Follow *and Suzanne Kapner* Follow

May 20, 2025 9:00 pm ET

The Vaquero Club is tucked away behind stone walls in a wealthy suburb of Dallas. The gates protect a swanky neighborhood of Texas-size mansions, a pristine golf course and a lake stocked with bass.

Residents pay for seclusion and privacy, but it's one of those gated communities where secrets are hard to keep.

On a recent Friday evening, Ashley Buchanan and Chandra Holt headed to the Vaquero clubhouse for dinner, as they often do. Buchanan, 51, in a white polo shirt, and Holt, in a shaggy cream vest, sipped cocktails at the bar, according to a person who saw them. It was her 45th birthday. The pair showed no signs of having been engulfed in a corporate scandal that got Buchanan fired as CEO of Kohl's—which had become public just the day before.

Earlier that week, Kohl's KSS **-1.99%** chairman and an outside lawyer had confronted Buchanan, according to people familiar with the matter. The Kohl's board was investigating after an employee raised red flags. Buchanan had helped broker a deal for Kohl's to sell products from a coffee startup called Incredibrew. It was run by Holt, and the CEO hadn't disclosed their personal relationship, violating the retailer's ethics code.

Kohl's Chairman Michael Bender had known Buchanan and Holt for years. The three executives had worked together at Walmart a decade ago. But Bender, who led the board that had hired Buchanan a few months earlier, didn't know they were a couple.

The lawyer demanded to know: Was Buchanan dating Holt?

Yes, he replied.

It was an admission of a relationship that had been gossiped about for years among employees, but kept out of view of many corporate leaders and board members. First at Walmart, then crafts retailer Michaels and now Kohl's. But it wasn't really hidden. Both Buchanan and Holt had filed for divorce from their respective spouses in 2020. Court records showed an extramarital affair with Holt had a role in Buchanan's divorce. And the couple lived openly at Vaquero, where they play tennis together and share a $3 million stone house with a koi pond and private pool.

While a CEO doesn't have to share his or her love life outside of work with the board, most companies require executives to disclose relationships that could result in potential conflicts of interest. Both Buchanan and Holt had run major retail chains—she had been CEO of Bed Bath & Beyond and another retailer. They had worked together and hired staff from each other's companies. Holt had also started a coffee brand that was being marketed to both Kohl's and Michaels when Buchanan was running them.

Buchanan and Holt had largely kept quiet with co-workers and the companies that employed them about their romantic relationship, according to people who worked with them and court documents.

Michaels tried to recruit Holt for a senior role soon after Buchanan became CEO of the crafts retailer in 2020, and Buchanan didn't disclose that he had a personal relationship with her at that

Ashley Buchanan PHOTO: JONATHAN ZIZZO

time, according to one person familiar with the matter. Holt didn't end up taking the job.

Later on, Buchanan also didn't disclose his relationship with Holt to some merchants—the employees who choose which products to buy—when Michaels decided to sell Incredibrew at its stores.

After he was fired by Kohl's, Buchanan's defense was that he made introductions for merchants but didn't require them to buy particular products, according to one person who spoke with him.

On May 1, Kohl's said it fired Buchanan for cause after an investigation by outside lawyers found he had violated the company's ethics code, saying he had helped arrange a deal to sell Holt's coffee products. Buchanan had dictated the payment terms, and the order was for hundreds of Kohl's stores, according to a person familiar with the situation.

Kohl's said the terms were "unusual" and favorable to the vendor. The investigation also found that he caused Kohl's to enter into a multimillion-dollar consulting agreement at Boston Consulting Group, where Holt was an adviser at the time.

Chandra Holt founded Incredibrew, which sells coffee pods infused with supplements, in 2022. PHOTO: ALEXANDER COHN/WSJ

In an interview that day, Holt said she has known Buchanan for 10 years. She said they weren't romantically involved when Michaels was looking to hire her and that her Incredibrew business hadn't been compensated by Kohl's.

Boston Consulting Group said it was surprised to learn of Holt's relationship with Buchanan. "As a result of this non-disclosure, we have terminated Chandra Holt's contract," BCG said in a statement at the time. The firm said it had employed Holt on a part-time basis to provide advice on retail topics. BCG said she wasn't involved in structuring the Kohl's assignment or negotiating any contract terms. The work for Kohl's hadn't started by the time Holt's contract was terminated, according to people familiar with the situation.

Meeting at Walmart

Buchanan and Holt met a decade ago in Bentonville, Ark., when she took a job in 2015 as a vice president with Sam's Club, the warehouse chain owned by Walmart. Buchanan was running Walmart's dry grocery business at the time.

Holt, a Minnesota native, had started her career at Target, where she spent a decade, then worked a few years at Walgreens. After she joined Walmart, Holt and her then-husband and young daughter moved into a home in the Pinnacle Country Club, a gated golf community near Walmart's headquarters that is filled with its top executives.

Buchanan lived around the corner at Pinnacle with his then-wife and three daughters. The Texas native had worked at Walmart since 2007 and was a rising star within the executive team. He was known as a tough negotiator with Walmart's suppliers, and as a blunt leader who gave his direct reports autonomy.

At the start of 2017, Buchanan became Holt's boss after he was named chief merchant for Sam's Club. A few months later, Holt was promoted to lead the Sam's Club grocery business. The following year, she left his group when she was appointed chief operating officer of the chain's website.

Chandra Holt PHOTO: CONN'S HOMEPLUS

In Northwest Arkansas, a region where many inhabitants have ties to Walmart or its suppliers, chatter circulated about Buchanan's close relationship with Holt. That was in part because Buchanan, Holt and their children spent time together without their spouses, and in part because Buchanan discussed his troubled marriage with friends and co-workers, according to former and current Walmart executives.

His wife had a serious illness, so he went on many social outings without her. He worried about his wife and the toll her illness took on their children, some of those executives said.

Despite the troubles at home, Buchanan's career was advancing and he was viewed by some colleagues as a contender to take over as Sam's Club's next CEO. In November 2019, Sam's Club picked a new leader, but it wasn't Buchanan. He was named to another executive role at Walmart.

Around Christmas 2019, Buchanan told Walmart U.S. Chief Executive John Furner that he was leaving Walmart to become the CEO of Dallas-based Michaels, according to some of the executives.

Buchanan and his family made plans to move to Southlake, Texas, a western suburb of Dallas. On Jan. 3, 2020, soon after they arrived, Buchanan filed for divorce—setting off legal proceedings that would later reveal the affair with Holt.

Moving to Texas

Holt was exploring a new role in early 2020. She had been approached by Michaels to serve in a top merchandising position reporting to the CEO. But a nonpoach agreement with Walmart made the move difficult, and Holt stayed at Walmart, where she was promoted around that time.

Her marriage was also troubled. She separated from her husband in March 2020, then filed for divorce in October of that year. The couple would twice call off their divorce before making it official in 2024, according to filings.

In the summer of 2021, Holt left Walmart to become CEO of Conn's HomePlus, a regional homegoods retailer based near Houston.

As Buchanan and Holt moved their lives to Texas, they mostly kept their romantic relationship quiet. They recommended each other's companies to potential hires, in some cases, without disclosing their personal ties. For Conn's, Holt hired an executive that had worked at Michaels, where Buchanan was CEO.

Top executives at Michaels said they didn't know the pair had a romantic relationship until more Walmart employees later joined the company, passing along gossip from Arkansas and as Buchanan's divorce proceedings trickled into the open.

In early 2021, shortly before Buchanan's divorce was finalized, private-equity firm Apollo Global Management agreed to purchase Michaels and take it private in a $3.3 billion deal. Buchanan stood to receive $32 million from his stake in the deal, according to divorce filings submitted by his ex-wife's lawyer.

His ex-wife sued to set aside their October 2020 settlement plan and accused Buchanan of fraud for not disclosing the coming transaction. Buchanan disputed the claim in court. Terms of the pair's final settlement aren't known.

Introducing Incredibrew

Holt left Conn's in October 2022 and founded Incredibrew, a company that sells K-cup coffee pods infused with supplements such as collagen and melatonin. It was incorporated in July 2023 at her then home address near Houston, state records show.

In early 2024 she was hired as CEO of Bed Bath & Beyond after the homegoods chain had emerged from bankruptcy. By mid-June, she was out. The company said it was part of a leadership reorganization, and she didn't publicly comment at the time. She refocused on her coffee startup.

Meanwhile, Buchanan was in discussions to join Kohl's as its CEO. The chain was looking for a new leader after years of sales struggles, pressure from activist investors and strategy shifts. Days before Thanksgiving, Kohl's said Buchanan was taking over in January.

Incredibrew coffee near the checkout at a Michaels store. PHOTO: LAURA COOPER/WSJ

The Incredibrew capsules started being sold at Michaels, nestled in the candy area near the cash registers. They were also being sold online. Some former Michaels employees told The Wall Street Journal they wondered at the time why the chain was selling coffee since it doesn't have a grocery section.

In a series of LinkedIn posts this year, Holt started promoting Incredibrew. She said she had been working on it for the past two years and unveiled new products. In one video, she talked about the health benefits of the collagen infused coffee. "It's amazing for hair, skin and nails as well as bone and joint health," she said.

Buchanan reposted the video, which appeared to have been filmed in front of a gas fireplace in the home they share in the Vaquero Club community. Holt said the pods would be available online at Walmart and Amazon.

At Kohl's, Buchanan's brusque management style quickly ruffled feathers inside the Menomonee Falls, Wis., headquarters. Buchanan had a residence in Wisconsin but it isn't known how much time he spent there.

Within Buchanan's first months on the job, Kohl's was preparing to buy Incredibrew products. As part of the normal process of vetting a new vendor, a Kohl's employee raised concerns, according to people familiar with the probe. The board was notified and an outside law firm conducted an investigation.

On April 30, Bender, the Kohl's chairman, and a lawyer called Buchanan to share the findings of the investigation, including the Incredibrew order and the arrangement with BCG, surprising Buchanan. That's when they confronted the CEO about his relationship with Holt.

The following morning, Kohl's issued a statement that said Buchanan had been fired for cause. Bender stepped down as chairman to assume the role of interim CEO while the retailer looks for a permanent replacement.

Write to Sarah Nassauer at Sarah.Nassauer@wsj.com and Suzanne Kapner at suzanne.kapner@wsj.com

Ashley Buchanan reposted Chandra Holt's LinkedIn video promoting Incredibrew.

Tesla on track to launch robotaxi trial in Austin, Texas, by June end, Musk says

reuters.com/business/autos-transportation/musk-says-tesla-is-track-launch-robotaxi-trial-austin-texas-by-end-june-2025-05-20

Reuters May 20, 2025

A 3D-printed miniature model of Elon Musk and the Tesla logo are seen in this illustration taken January 23, 2025. REUTERS/Dado Ruvic/Illustration/File Photo Purchase Licensing Rights, opens new tab

- Tesla in talks to license FSD software to major automakers, Musk says
- Robotaxi deployment would scale up to about a thousand within a few months, Musk says
- xAI ramps up data center capacity with Nvidia chips in Memphis
- Tesla, xAI merger not out of question but would need shareholder ok, Musk says

(TSLA.O), opens new tab is set to begin a test of its long-promised robotaxi service on schedule in Austin, Texas, by the end of June, Chief Executive Elon Musk said on Tuesday, even as the company faces safety questions from a U.S. regulator.
The electric vehicle maker will roll out about 10 self-driving cars in some parts of the city, and scale up to about a thousand within a few months, Musk told CNBC in an interview.

"We are actually going to deploy not to the entire Austin region, but only the parts that are the safest."

Tesla sales have fallen worldwide with rising competition and as Musk faces a backlash for his right-wing political views and his work for U.S. President Donald Trump.

Musk has said he will reduce his work for Trump and focus on Tesla. "My rough plan on the White House is to be there for a couple days, every few weeks, and to be helpful where I can be helpful," he said.

A successful robotaxi trial is crucial for Tesla as Musk has shifted the company's focus away from building a new, cheaper EV platform to launching the robotaxi service and its Optimus humanoid robots. Much of Tesla's valuation hangs on that bet.

"The only things that matter in the long term are autonomy and Optimus," Musk told CNBC.

Autonomous vehicle technology has been hard to commercialize, with tight regulations and heavy investments forcing many companies to give up. Those still in the race, including Alphabet's Waymo, have faced increased scrutiny.

The National Highway Traffic Safety Administration has been investigating collisions involving Tesla's full self-driving (FSD) advanced driver assistance software in reduced roadway visibility conditions since October. The U.S. road safety regulator asked Tesla last week to answer questions on its paid robotaxi service launch to assess how the cars will perform in poor weather.

Tesla is in talks with major automakers to license the FSD software that is expected to underpin its robotaxis, Musk said.

To power his broader artificial intelligence vision, Musk's xAI startup has been ramping up its data center capacity to train more advanced models, and its supercomputer cluster in Memphis, Tennessee, called "Colossus," is touted as the world's largest.

xAI will deploy a million of Nvidia's (NVDA.O), opens new tab advanced Blackwell chips at a new facility near Memphis, Musk said. "So long as Nvidia is better than what we make, we'll keep buying from Nvidia," he said. xAI bought a 1-million-square-foot property in Southwest Memphis, Tennessee, the Greater Memphis Chamber said in March.
Musk, who merged xAI with his social media platform X in March, said a merger between Tesla and xAI was not being considered but was "not out of the question," though it would need shareholder approval.
Reporting by Akash Sriram in Bengaluru, Abhirup Roy in San Francisco and Juby Babu in Mexico City; editing by Peter Henderson, Deepa Babington and Richard Chang

Our Standards:

Podcast: Elon Musk Pushes Back in Tense Interview

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May 21, 2025, 5:45 AM PDT

Magnus Henriksson

Bloomberg Editorial

By Magnus Henriksson

(Bloomberg Businessweek) --

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Omny Studio: Elon on the Spot, Grok Has a Week - E...

Elon Musk was interviewed Tuesday by Bloomberg's Mishal Husain at the Qatar Economic Forum in Doha. The wide-ranging conversation spanned the multibillionaire's work on behalf of President Donald Trump and at his "Department of Government Efficiency," protests against Tesla and a careful assertion that he might wind down his political contributions. The chat turned tense at times, with Musk becoming visibly upset while discussing demonstrators who vandalized Tesla showrooms and how "DOGE" has vastly undershot its promised savings. In this week's *Elon, Inc.*, David Papadopoulos and Max Chafkin dissect some notable moments from the interview.

- After spending almost $300 million helping Trump win the 2024 election, some recent political setbacks may have given Musk pause about future outlays. “In terms of political spending, I’m gonna do a lot less in the future,” he told Husain. But maybe not, it turns out. Musk added that “if I see a reason to do political spending in the future, I will do it.” Chafkin has an explanation for Musk playing coy: leverage. “There’s lots of stuff that Elon Musk wants to happen that is at this point unrealized,” he explains. “It would not be to his advantage to say publicly ‘Yeah, I’m all in on Trump.’”
- Musk sought to brush off concerns about collapsing Tesla sales, pointing to a recent stock market rebound that’s pushed the embattled automaker above $1 trillion market capitalization. “We don’t anticipate any meaningful sales shortfall, and obviously the stock market recognizes that,” he said. The Tesla co-founder and CEO went on to threaten protestors who have targeted Tesla over his far-right politics and association with Trump, saying “we’re coming for you.”
- Musk also was asked about his promised $2 trillion worth of savings from “DOGE,” which has sought to fire tens of thousands of federal workers and shutter agencies—some, much or most of which may end up being blocked by the courts. The South Africa native asserted that $160 billion has been saved, but was careful to claim his role is only advisory. Chafkin once again sees strategy in the dance: “Anytime Elon Musk talks about the Trump administration, he wants to simultaneously give himself credit” but is mindful that “legally, politically, there are all sorts of reasons why that is not advantageous.”
- Also on the show, Chafkin goes through the wild week of xAI’s chatbot Grok. First off, the artificial companion spent an entire day talking about “White genocide” in clearly irrelevant responses to unrelated queries. The company then managed to strike a deal with prediction betting site Kalshi (announcements of which Kalshi later withdrew) and finally ended up in the cloud of arch-nemesis Microsoft. Chafkin has a lot of explaining to do.

About Elon, Inc.*: Each week, listen in as host David Papadopoulos (and sometimes Max Chafkin) convenes a panel of Bloomberg journalists tracking Elon Musk’s companies and the surprising ways they intersect, breaking down his latest moves and what they could mean for us all.*
(Corrects to note prediction betting site Kalshi withdrew announcements of a collaboration with xAI after publication of the podcast.)
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Elon Musk Says Control Over Tesla Matters More Than Compensation

bloomberg.com/features/2025-elon-musk-weekend-interview

Mishal Husain May 21, 2025

The Bloomberg Weekend Interview highlights influential voices in politics, business and culture from around the globe.

Elon Musk needs little introduction. His acumen has transformed the business of electric vehicles and getting to space, and he has more recently been at the right hand of US President Donald Trump. Whether at campaign rallies, on foreign trips, in the Oval Office or cutting federal government spending through his Department of Government Efficiency, Musk's influence is everywhere.

But the entrepreneur's iconoclasm has also made him a magnet for controversy. Tesla has experienced a pronounced backlash — you might have seen the stickers: "I bought this before we knew Elon was crazy" — and Bill Gates recently accused Musk of being responsible for killing children by pushing massive cuts to US foreign aid. To get Musk's reactions to as many of these points as possible, we sat down (virtually) at the Qatar Economic Forum on May 20. Here's our conversation, lightly edited for clarity.

Hello everyone and Elon Musk. Welcome to the Qatar Economic Forum. How are you?

Thank you for having me. I'm fine. How are you?

Very well, thank you, and very pleased to have you with us. You know, among those here in the audience in Doha are people who have backed you financially over the years since you last spoke here in 2022. A lot has changed in your life. You are not only running multiple companies — you were doing that then — but now you also

have a role in government ~~1~~. So first of all, I hope you won't mind if from time to time I have to move you from one topic to another because we have a lot to cover in the time we have.
Yeah, of course.

[1]Musk is a designated "special government employee" (SGE)–a label that allows him to work at a paid or unpaid government job for 130 days each year. His status as an SGE is expected to run out on May 31.

Well, let's start then with the fact that you now have this combination of being a CEO and having a role as a government advisor. Tell me about your week. How does it work? What's the split of your time?

Well, I travel a lot. So I was in Silicon Valley yesterday morning. I was in LA yesterday evening. I'm in Austin right now. I'll be in DC tomorrow. I'll be there after having dinner with the president tomorrow night, I believe. And then a whole bunch of cabinet secretary meetings and then back to Silicon Valley on Thursday night.

But I mean the balance of your time, is it—

It's a lot.

Well, clearly it's a lot, but is it still the case, as you said a while ago, that it's about one to two days a week on your government work ~~2~~?

Yeah, that's correct.

[2] During a Tesla earnings call in April, Musk said he would spend "a day or two a week on government matters" but would also continue working with the US government for "the remainder of the president's term, just to make sure that the waste and fraud that we stop does not come roaring back."

And what does that mean for your corporate life? Because if we start with Tesla, the company has suffered, in recent months, what you've called blowback. So what is your plan for turning around the declining sales picture and by what stage do you think you're going to be able to turn it around?

Oh, it's already turned around.

Give me some evidence for that. I've just been looking at the sales figures for Europe in April, which show very significant declines in the big markets ~~3~~.

[3] One example of this decline: Just 512 new Teslas were registered in the UK in April, down 62% from a year earlier. Denmark, the Netherlands and Sweden each had even larger year-over-year declines.

Europe is our weakest market. We're strong everywhere else. So now our sales are doing well at this point. We don't anticipate any meaningful sales shortfall and obviously the stock market recognizes that, since we're now back over a trillion dollars in market cap. So clearly the market is aware of the situation. So it's already turned around.

But sales are still down compared to this time last year.

In Europe.

In Europe, okay. And—

Yes, but that's true of all manufacturers. There's no exceptions [4].

[4] The picture is more complex than this. European car sales began to grow in March after a weak start to the year, with EV sales in the region surging 24%. But the growth in EV sales didn't extend to Tesla, which saw new registrations fall 28% in Europe in March. During an earnings call in May, Musk said first quarters are "usually the worst quarter of the year because people don't want to go buy a car in the middle of winter during a blizzard."

Does that mean that you are not going to be able—

The European market is quite weak

Okay, but you would acknowledge, wouldn't you, that what you are facing — let's just take it as Europe — what you are facing is a significant problem. Tesla was an incredibly aspirational brand, people identified with it, saw it as being at the forefront of the climate crisis. And now people are driving around with stickers in their cars saying, "I bought this before we knew Elon was crazy."

And that there are also people who are buying it *because* Elon's crazy or however they may view it. So yes, we've lost some sales paths on the left, but we've gained them on the right. The sales numbers at this point are strong and we see no problem with demand.

Members of the climate protest group Extinction Rebellion spray paint anti-DOGE messages on the outside of a Tesla showroom on April 22, 2025 in New York City. Photographer: Stephanie Keith/Getty Images

So what do you—

And I mean, you, can just look at the stock price. If you want the best inside information, the stock market analysts have that. And the stock wouldn't be trading near all-time highs if it was not, if things weren't in good shape. They're fine. Don't worry about it.

Okay, I was citing sales figures rather than share price. Well, tell me then, how committed you are to Tesla. Do you see yourself and are you committed to still being the chief executive of Tesla in five years' time?

Yes.

No doubt about that at all.

Well. No, I might die.

Okay. Short of that,

I can't be CEO if I'm dead. So there's a slight amount of—

Does that mean that the value of your pay doesn't have any bearing on your decision?

Well that's not really a subject for discussion in this forum. I think obviously there should be compensation for — if something incredible is done, that compensation should match that, something incredible was done. But I'm confident that whatever some activist posing as a judge in Delaware happens to do will not affect the future compensation [5].

[5] There's no shortage of reporting about Judge Kathleen McCormick's decision, for which she gave multiple reasons in a second ruling last December. Delaware is the most popular state for US corporations due to a well-developed set of corporate-governance laws and 125 years of case law, but after his legal setbacks there, Musk moved SpaceX's incorporation to Texas.

This is the judge who twice struck down the $56 billion pay package that was awarded to you?

Not a judge. Not a judge. The activist who is cosplaying a judge in a Halloween costume.

Okay, that's your characterization. On the current value of stock options, I think the value of that pay package stands at about $100 billion. Are you saying you are relaxed about the value of your future pay package? Your decision to be committed to Tesla for the next five years, as long as you are still with us on this planet, is completely independent of pay?

No.

It's not independent? So pay is a relevant factor then to your commitment to Tesla.

Sufficient voting control such that I cannot be ousted by activist investors is what matters to me. And I've said this publicly many times, but let's not have this whole thing be a discussion of my alleged pay. It's not a money thing. It's a reasonable-control thing over the future of the company, especially if we're building millions, potentially billions of humanoid robots [6].

[6] Musk often speaks of Tesla's Optimus robots, including in Saudi Arabia last week, where he said one had danced for President Trump and the Saudi Crown Prince. He has big plans for these, imagining them in roles from getting groceries and serving drinks to being a friend to their owners. It's a major ambition, but when the robots have been publicly displayed, there has sometimes been a level of human control that wasn't fully transparent at the time.

I can't be sitting there and wondering about getting tossed out for political reasons by activists. That would be unacceptable. That's all that matters.

Hmm.

Now let's move on.

Just one question—

—let's move on.

Tesla's humanoid robot Optimus Gen-2 on display in a Tesla store in Shanghai on May 15, 2025.
Photograph: CFOTO/Future Publishing/Getty Images

Well, one question before we move on to other companies, which is that I wonder if some of what has happened to Tesla in the last few months, did you take it personally?

Yes.

And did it make you regret any of it or think twice about your political endeavors?

I did what needed to be done. The violent antibody reaction — I'm not someone who's ever committed violence. And yet, massive violence was committed against my companies [7]. Massive violence was threatened against me. Who are these people? Why would they do that?

[7] This has included physical attacks on Tesla cars and dealerships; one incident in Oregon is alleged to have involved Molotov cocktails. On Truth Social, Trump called the vandals "sick terrorist thugs" and said he looked forward to them getting "20-year jail sentences," which he suggested they could serve "in the prisons of El Salvador."

How wrong can they be? They're on the wrong side of history, and that's an evil thing to do, to go and damage some poor, innocent person's car, to threaten to kill me. What's wrong with these people? I've not harmed anyone, so something needs to be done about them. And a number of them are going to prison and they deserve it. And more will.

You're referring to the attacks on Tesla showrooms, but I think—

Yes.

One thing—

Well, it's— [going] into showrooms and burning down cars is unacceptable.

Yes.

Those people will go to prison and the people that funded them and organized them will also go to prison. Don't worry.

But wouldn't you—

We're coming for you.

But wouldn't you acknowledge that some of the people who turned against Tesla in Europe were upset at your politics and very few of them would've been violent in any way; they just objected to what they saw you say or do politically.

It's certainly fine to object to political things, but it's not fine to resort to violence and hanging someone in effigy and death threats. That's obviously not okay. You know, that's absurd. That is in no way justifiable at all in any way, shape or form. And, some of the, legacy media nonetheless have sought to justify it, which is unconscionable. Shame on them.

Okay. Let's talk about your other companies in other business areas. SpaceX — I saw that you said in a speech at the West Point Military Academy recently that the future of warfare is AI and drones, and obviously defense is an increasingly booming sector with the state of the world at the moment. Do you see SpaceX moving into weaponized drones?

[Laughs] You certainly ask interesting questions that are impossible to answer. So no, SpaceX is, it's a space launch leader. So SpaceX doesn't do drones. SpaceX builds rockets, satellites and internet terminals. So SpaceX has a very dominant position in space launch. Of the mass launches to orbit this year, SpaceX will probably do 90%.

China will do half of the remaining amount — so 5% — and the rest of the world, including the rest of the US, will do about 5%. So SpaceX will do about 10 times as much as the rest of the world combined, or 20 times as much as China… and China is doing actually a very impressive job.

The reason for this is that we're putting into orbit the largest satellite constellation the world has ever seen [8] by far. So I think at this point maybe approaching 80% of all active satellites in orbit are SpaceX. And they're providing high-bandwidth global connectivity throughout the world. In fact, this connection is on a SpaceX connection. So I think this is a very good thing, because it means that we can provide low-cost, high-bandwidth internet to parts of the world that don't have it, or [where] it's very expensive. And I think the single biggest thing you can do to lift people out of poverty and help them is giving them an internet connection.

[8] This world of satellite constellations is immense, and growing — Starlink alone accounts for more than 6,000 of them. It's worth taking in its scale. Have a look at this explanation and the chart showing the big players in this new frontier.

Because once you have the internet connection, you can learn anything for free on the internet and you can also sell your goods and services to the global market. And once you have knowledge of the internet and the ability to engage in commerce, this is going to greatly improve quality of life for people throughout the world, and it has.

And I'd just like to thank anyone in the audience who may have been helpful with Starlink and getting it approved in their country. I think it's doing a lot of good in the countries that have approved it, which is, I think at this point, 130 countries are very happy with it.

I don't currently anticipate SpaceX getting into the weapons business. That's certainly not an aspiration. We're frequently asked to do weapons programs, but we have thus far declined.

Do you envisage SpaceX or indeed Starlink as a separate entity publicly listing in the near future or at all?

It's possible that Starlink may go public at some point in the future [9].

[9] SpaceX executives have hinted over the years at the possibility of a Starlink IPO. Gwynne Shotwell, the company's chief operating officer, first floated the idea of a spinoff for Starlink in 2020. But Musk has said in the past that it doesn't make sense to take the initiative public until its revenue flow is more predictable.

What would be the timeframe?

I'm in no rush to go public. Going public is I guess a way to, you know, potentially make more money, but at the expense of a lot of public-company overhead and inevitably a whole bunch of lawsuits, which are very annoying.

So really something needs to be done about the shareholder derivative lawsuits in the US, because it allows plaintiffs' law firms who don't represent the shareholders to pretend that they represent the shareholders by getting a puppet plaintiff with a few shares to initiate a massive lawsuit against the company.

And the irony being — the extreme irony — that even if the class they purport to represent were to vote that they don't want the lawsuit, the lawsuit will still continue. So how can it be a class action representing a class if the class were against it? And that's the bizarre situation we've got in the US. It's in dire need of reform. And as anyone who's run a public company has experienced this, it's an absurd situation that needs to change.

Well, do you think Donald Trump might change it? You've certainly got his ear, I imagine that you've put this to him. Is this something you're trying to change before any Starlink IPO?

Well, it would need a law to be passed. But the trouble being that you need 60 Senate votes and the Democrats will vote against it. The plaintiffs' bar is, I believe, the second-largest contributor to the Democratic party. That's the issue.

At the state level this can be solved. And I should say, Texas recently passed a law which, at least on the state level, made it much more reasonable because you have to get at least one in 33 shareholders to agree that they are part of a class of shareholders. Three percent, okay. This will really help with frivolous lawsuits.

Okay. Let's talk about AI, which is in so many of your businesses and in all our worlds in different ways. It's one of the big changes, the development of generative AI, since you last spoke to this forum three years ago. You're in this space, of course, with Grok, which almost everyone will know.

You co-founded Open AI and then left, and you obviously got into a legal battle with OpenAI and Sam Altman. I wonder if you could say something about the status of that, because you were together in Saudi Arabia with the president last week, with Sam Altman—

We weren't together—

In the same place at the same time—

I was with the president, Sam was in the neighborhood.

Okay. So does that mean you are pushing ahead with the lawsuit against OpenAI ~~10~~?

[10] There's a long history to this! Elon Musk was a co-founder of OpenAI and is among those objecting to it changing into a for-profit business. Open AI has partly gone back on those plans, but it's also countersuing. And we now know there was no rapprochement behind the scenes in Saudi Arabia.

Yes but — so look, I came up with the name OpenAI as open source, and as a nonprofit. And I funded OpenAI for the first roughly $50 million. And it was intended to be a nonprofit open-source company. And now they're trying to change that for their own financial benefit into a for-profit company that is closed-source. So this would be like, let's say you funded a nonprofit to help preserve the Amazon rainforest, but instead of doing that, they became a lumber company, chopped down the forest and sold the wood. You'd be like, 'Wait a second. That's not what I funded.' That's OpenAI.

They've made some changes to their corporate structure though, haven't they? Since then, in recognition of what you've said.

No, that's just what they told the media.

Okay.

[Musk laughs]

They have partly walked back their plan to restructure the business. I guess that's made no difference to how you feel about it. So you're determined to see them in court?

Of course.

Okay, well that's certainly going be one to watch. I also wanted to ask you about AI and regulation, because when you were here last talking to John Micklethwait, you had some pretty strong words about the risk that AI poses, and you said that you really felt what the US was missing was a federal AI regulator, something along the lines of the Food and Drug Administration or the Federal Aviation Administration. Now you are clearly in a zone where you are more on the cutting-regulation side than wanting new regulators. So has your view changed on the need for an AI regulator?

Well, it's not that I don't think there should be regulators [11]. You can think of regulators like referees on the field in sports. There should be some number of referees, but you shouldn't have so many referees that you can't kick the ball without hitting one. So in most fields in the US, the regulatory burden has grown over time to the point where it's like having more referees than players on the field.

[11] So the background. Musk's words at the Qatar Economic Forum in 2022 were, "I think there ought to be an AI regulatory agency that oversees artificial intelligence for the public good. And I think that for anything where there is a risk to the public, whether that's, say, the Food and Drug Administration or Federal Aviation Administration or the [Federal] Communications Commission, whether it's a public risk or a public good at stake, it's good to have a sort of government referee and a regulatory body. And I think we should have that for AI, and we don't currently." Hence my question.

This is a natural consequence of an extended period of prosperity. It's very important to appreciate this. This has happened throughout history. When you have an extended period of prosperity with no existential war, there's no cleansing function for unnecessary laws and regulations ~~12~~. So what happens is that every year, more laws and more regulations are passed because, you know, legislators are going to legislate, regulators are going to regulate, and you'll get this steady pile of more and more laws and regulations over time until everything is illegal.

[12] Musk is not the first to claim that regulations build up in the absence of war. In his 1982 book *The Rise and Decline of Nations*, political economist Mancur Olson made a similar case, arguing that Japan and Germany were growing faster than the US and the UK because World War II had the side effect of sweeping away interest groups that lobbied for carve-outs and favorable regulations.

Let me give you an example of a truly absurd situation: Under the Biden administration, SpaceX was sued for not hiring asylum seekers in the US. Now the problem is it's actually illegal for SpaceX under ITAR — International Traffic and Arms Regulations — to hire anyone who is not a permanent resident of the United States, the premise being that they'll take advanced rocket technology and return to their home country if they're not a permanent resident.

So we're simultaneously in a situation where it's illegal [not] to hire asylum seekers and it is also illegal to hire asylum seekers. And Biden's Department of Justice chose to prosecute us despite both paths being illegal. Damned if you do, damned if you don't.

But my question was specifically about a regulator for AI, which you said three years ago was needed, and you said, we need to be proactive on the regulation of AI rather than reactive. Have you changed your mind on that?

What? No, of course not. What I'm saying is that there should be some referees on the field, a few referees, but you shouldn't have a field jam-packed with referees, such that you could not kick a ball in any direction without hitting one.

So the fields that have been around for a long time, such as automotive, aerospace, you know, the sort of food and drug industries, are overregulated. But the new fields, like artificial intelligence, are under-regulated. In fact, there is no regulator at all.

So there should be? Do you still think that?

Yes. I'm simply saying, which I think is just basic common sense, that you want to have at least a few referees in the field. You don't want to have an army of referees. But you want to have a few referees on any given field, in any given sport, or even any given arena or industrial arena to ensure that public safety is taken care of. So there's a proper number of referees. Like I said, it's actually very easy to visualize this when compared to sports. If the whole field is packed with referees, that would look absurd. But if there were no referees at all, your game's not going to be as good.

Okay, so let's then talk about your new world, your role advising the government. You are in this unique and unprecedented position of having billions of dollars' worth of contracts with the federal government yourself, mostly through SpaceX, and also now an insider's knowledge of it because of DOGE. Can you see that there is a conflict of interest or a potential conflict of interest in broad terms, just through that very fact ~~13~~?

[13] It's worth reading this January piece from Bloomberg on the subject, which includes the view from Kathleen Clark, a law professor at Washington University of St. Louis who studies government ethics. She thinks this is akin to Musk having the "keys to the candy store" because of access to government data that could include trade secrets and enforcement actions against his own companies and competitors: "If I were a competitor to Musk in any industry, I'd be really worried about him having this kind of head start," Clark says. But Musk is emphasizing transparency and the lack of accusations of conflict thus far.

I don't think so, actually. There have been many advisors throughout history in the US government and others who have had economic interests. I'm simply an advisor, I don't have a formal power. And that's it. A president can choose to accept my advice or not. And that's how it goes. If there's a single contract that any of my companies have received that people think was somehow not awarded improperly, it would immediately be front-page news, to say the least. And if I didn't mention it, certainly my competitors would. So if you're not seeing that, then clearly there's not a conflict of interest.

There's another way, though, to look at it: that, for example, you have many competitors, whether it's companies like Boeing or companies who would like to do more of the kind of work you do for NASA — Blue Origin, Rocket Lab. And because

DOGE is in every federal government department, you or people who work for DOGE — and you are the driving force behind it — have an insight into those companies' affairs and those companies' relationships with the federal government.
No. All we do is we review the organization to see if the organization has departments that are no longer relevant. And then, are the contracts that are being awarded good value for money? In fact, frankly, the bar is not particularly high. Is there *any* value for money in a contract? And if there isn't, then we make recommendations to the secretary.

The secretary can then choose to take those actions or not take those actions. And that's it. And then any action that is a function of DOGE is posted to the DOGE website, doge.gov or at the DOGE handle on the X platform. So it's complete transparency. And I've not seen any case where, to the best of my knowledge, there's even been an accusation of conflict. Because it is completely and utterly transparent.

Yes, okay.

That's it.

Trump and Musk during a rally in Washington DC on Jan. 19, 2025. Photographer: Al Drago/Bloomberg

And what about the international dimension? Now let's think about Starlink. Starlink is obviously a very, very good internet service. It's sought after all over the world. It's critical to the frontline in Ukraine. It has also had more contracts coming its way, and there is some evidence that [countries] are allowing access to it because they want to be close to the Trump administration and send the right signal. So Bloomberg broke news today that the South African government is working around the rules on Black ownership in order to allow Starlink in, and that is being done on the eve of the visit that President Ramaphosa is going to make to the White House.

Do you recognize that as a conflict of interest?

No, of course not. First of all, you should be questioning, why are there racist laws in South Africa? That's the first problem. That's what you should be attacking. It's improper for there be racist laws in South Africa. The whole idea with what Nelson Mandela – who was a great man – proposed was that all races should be on an equal footing in South Africa [14].

[14] The Bloomberg story from South Africa that I mentioned in the question provides background context on the country's Black economic empowerment laws. It also includes recent official statistics showing that today, White South Africans earn on average five times what Black citizens do.

That's the right thing to do, not to replace one set of racist laws with another set of racist laws, which is utterly wrong and improper. So that's the deal, that all races should be treated equally. And there should be no preference given to one or the other. Whereas there are now 140 laws in South Africa that basically give strong preference to if you're a Black South African and not otherwise. And so now I'm in this absurd situation where I was born in South Africa but cannot get a license to operate in Starlink because I'm not Black.

Well, it looks like that—

Does that seem right to you?

It looks like that's about to change.

I just asked you a question. Please answer. Does that seem right to you?

Well, those rules were designed to—

Does that seem right to you, yes or no?

Those rules were designed to bring about an era of more economic equality in South Africa, and it looks like the government has found a way around those rules for you.

I asked you a question.

This is your interview. Everyone wants to hear from you.

I asked you a question, yes or no?

It's not for me—

Racist laws, yes or no?

[It's] not for me to answer. I have got a question for you about your government work though, in the amount of savings.

Why do you like racist laws?

This is not for me to answer. Come on. Now, you wouldn't be trying to dodge a question?

No, you have to answer the question. You answer mine.

I'm sure you can have that conversation directly with the South African government, if you want to. I want to ask you about the total—

I can't believe it. That's not good.

I want to ask you about the total amount—

Why do you like racist laws?

I want to ask you about the total amount that you're planning to save through DOGE's work. Before the election, you said it was going to be at least $2 trillion. The number currently on doge.gov is $170 billion. That's a big change. What happened to the $2 trillion?

Do you expect it to happen immediately?

Well, is it going to happen? Because DOGE is supposed to run until July 2026.

I mean, your question is absurd in its fundamental premise. Are you assuming that in one day, you know, within a few months, an instant $2 trillion is saved?

No, I'm not at all. I'm just asking, is that still your aim then? Is it still your aim to get to $2 trillion?

Have we not made good progress given the amount of time?

That's exactly what I'm asking. So is it still your aim to go from $170 billion to $2 trillion?

The ability of DOGE to operate is a function of whether the government, and this includes Congress, is willing to take our advice. We're not the dictators of the government, we are the advisors. And so we can advise. And the progress we've made thus far, I think is incredible. The DOGE team has done incredible work. But the magnitude of the savings is proportionate to the support we get from Congress, and from the executive branch of the government in general.

So we're not the dictators, we are the advisors. But thus far for advisors, we've – the DOGE team, to their credit, has made incredible progress.

You've talked about $4 billion a day being saved, but that—

That's right.

And I think everyone can agree that combating waste and inefficiency in government is a very good thing. But if you add that up, it's not going to get to $2 trillion over the lifetime of DOGE.

I'm sorry?

The $4 billion a day, if DOGE is going to run till next July, is not going to get you to $2 trillion. But you still say it's your aim, so we'll take that as read.

I mean, I feel you're somewhat trapped in the NPC dialogue tree [15] of a traditional journalist. So it is difficult when I'm conversing with someone who's trapped in the NPC tree of a conventional journalist because it's like talking to a computer.

[15] This is a first for me in a conversation of this kind! The term NPC stands for "non-player character" and means those in a video game who are not controlled by the players and therefore engage in repetitive behavior rather than original thought. In journalism however, we tend to ask the same question or a version of the same question again when there's no answer the first time.

So DOGE is an advisory group. We are doing the best we can, as an advisory group. The progress made thus far as an advisory group is excellent. I don't think any advisory group has done better in the history of advisory groups of the government. Now, we do not make the laws nor do we control the judiciary, nor do we control the executive branch. We are simply advisors. In that context, we're doing very well. We cannot take action beyond that because we're not some sort of imperial dictator of the government. There are three branches of the government that are to some degree opposed to that level of cost savings.

But nonetheless, let's not criticize whether there's $2 trillion and instead look at the fact that $160 billion has been saved and more will be saved too.

And as I said, I think everyone can agree that cutting waste and indeed fraud in any government and being responsible with taxpayers' money is a very good thing.

Yes.

I can see that you are proud of that work.

I do want to ask you about USAID and the comments that Bill Gates made the other day, which, and I know that you called him—

Yeah. He's a good liar.

I know you've said that already.

I'm sorry, who does Bill Gates think he is to make comments about the welfare of children, given that he frequented Jeffrey Epstein?

Okay, well he said he regrets those and he's spent—

Exactly. I wouldn't trust that guy with my kids—

He's spent a lot of his own money on philanthropy around the world over the years. My question to you is, have you looked at the data to check if he might be right, that the cuts to USAID might cost millions of lives?

Yes. I'd like him to show us any evidence whatsoever that that is true. It's false. What we found with USAID cuts, and by the way, they haven't all been cut. The parts of USAID that we found to be even slightly useful were transferred to the State Department. They've not been deleted. They've simply been transferred to the State Department.

But many, many times over with USAID and other organizations, when they said, "Oh, well this is going to help children" or it's going to help some disease eradication or something like that, and then we ask for any evidence whatsoever, I say, "Well, please connect us with this group of children so we can talk to them and understand more about their issue," we get nothing. They don't even try to come up with a show orphan. It's sort of like, well, can we at least see a few kids? Like where are they? If they're in trouble, we'd like to talk to them and talk to their caregivers. And let me put this as a response because what we find is an enormous amount of fraud and graft.

Okay. Let me, let me put this example to you—

Very little of it actually gets to the kids, if anything at all ~~16~~.

[16] This is a common misconception. While a January report from USAID noted that 12.1% of its money went directly to local organizations in foreign countries last year, most of the remaining money is distributed through organizations and companies that operate internationally. In March, USAID itself catalogued the effect of the recent cuts in a memo. And a top development think tank estimated lives saved from all US international aid — not just USAID — to be in the millions.

Okay. Let me put this example to you because you grew up in South Africa so you'll know the impact of HIV/AIDS. And this is why I asked about the data. The US led on international efforts to combat HIV/AIDS treatment and prevention, and there's an initiative called PEPFAR, which is credited with saving 26 million lives in the last 20 years. It was part of the foreign aid freeze. Then there was a limited waiver. Its services are disrupted and UNAIDS says, if permanently discontinued, there will be another 4 million AIDS-related deaths by 2029. So if you look at that example, which is backed up by data — in 2023, 630,000 people died of AIDS-related illnesses — then perhaps Bill Gates's figures are not wrong. Millions of lives could be lost ~~17~~.

[17] This was my longest question, but there's a reason for it: accuracy and attribution. You can see my source here. UNAIDS — a key delivery partner for the US in its HIV-response work — makes clear that only some of the work of PEPFAR is covered by the Emergency Humanitarian Waiver issued at the end of January.

First of all, the program, the AIDS medication program, is continuing. So your fundamental premise is wrong. It is continuing. Now, do you have another example?

Elon, not in its entirety—

That is false—

Not in its entirety—

It's false—

There's a limited waiver and UNAIDS have said that not all of the services that were previously funded by USAID are continuing. So that's why I put that example to you.

Okay, well, which ones aren't being funded? I'll fix it right now.

Okay, well actually they're all on the UNAIDS website, so you'll be able to see them. But mostly they are to do with prevention and for example, the rollout of a drug called Lenacapavir [18], which was hailed as one of the biggest breakthroughs against AIDS for many years, which came out last year. So I'm sure UNAIDS would be delighted if you're able to look at that again.

[18] This piece, which Bloomberg published in April, shows how much uncertainty there is about services that were covered by PEPFAR, and about the future rollout of this drug. Lenacapavir comes from a California-based pharmaceutical company, and could therefore also bring revenues back to the US.

Yes, but well, if in fact this is true, which I doubt it is, then we'll fix it.

Okay, fine.

So finally, your political influence. I wondered whether you have decided yet how much you are going to spend on the upcoming midterms? You spent a lot more money on the last US election than you envisaged when you were speaking here three years ago [19]. Are you going to continue to spend at that kind of level on future elections?

[19] At QEF in 2022, Musk said he had not decided on an exact amount, but estimated it would be "$20 million to $25 million." He ultimately donated about a quarter of a billion dollars to various political groups in the 2024 cycle, mostly supporting Donald Trump.

I think in terms of political spending I'm going to do a lot less in the future.

And why is that?

I think I've done enough.

Is it because of blowback?

Well, if I see a reason to do political spending in the future, I'll do it. I don't currently see a reason.

Okay. And what about political influence beyond the US? How often do you speak to President Putin?

I don't speak to President Putin.

You've never spoken to President Putin?

I was on a video call with him once about five years ago.

Okay. That's the only—

Why do you think I speak to President Putin? Oh, you must, oh, I get it. You believe the legacy media.

Because I've heard you speak, actually. I've heard you speak about it, for example, in your West Point speech. You said, 'Oh, I challenged President Putin' to, was it an arm wrestle? And I know *The Wall Street Journal* reported conversations.

Oh yeah *The Wall Street Journal* is—

If you are saying they haven't happened other than once, I'll take that as read.

Is there a worse publication on the face of the earth than *The Wall Street Journal*? I wouldn't use that to line my cage for parrot droppings. That newspaper is the worst newspaper in the world. If there's one newspaper that should be pro-capitalist, it's the one with Wall Street in the name. But it isn't. So I have the very lowest opinion of *The Wall Street Journal*, absolute nonsense. And you clearly believe the tripe that you've read in those papers

I read very widely, and I'm putting these questions to you so that you have an opportunity to respond to them, which you are, and, and for which we're all grateful.

Yes.

Okay. We are out of time.

You mentioned me challenging [Putin]. I did so on the X platform. I challenged Vladimir Putin —

Understood.

To single combat.

Okay.

But I didn’t talk to him. That was a post on the X platform.

Great. That’s why I asked you, and you’ve clarified and explained. Thank you. That’s why I was asking whether you have had reported conversations and, and you’ve said —

Yeah.

—you haven’t, other than a video call.

Typical legacy media lies.

I actually thought I might give Grok the last word, because when I asked Grok what your hardest challenge is, it said “the strain of managing multiple high-stake ventures amid financial, regulatory, and public relations crises.” And I wondered whether you recognize that characterization and whether you do think that this is a pivotal year in your life?

Well, every year has been somewhat pivotal, and this one’s no different. So I mean, in terms of interesting things that probably are accomplished this year: getting Starship to be fully reusable so that we catch both the booster and the ship, which would be the first fully reusable orbital rocket ever in history, which would be a profound breakthrough, the essential breakthrough necessary to make life multiplanetary — and ultimately it’ll become a space-faring civilization.

We’ve got Neuralink, which has now helped five patients restore capability using the telepathy implant, where they’re able to control a computer simply by thinking. We’ll be doing our first patient to restore sight with a Blindsight implant, which is the end of this year, early next. In fact, that first patient might be in the UAE since we have a relationship with the UAE and the Cleveland Clinic there.

I think what’s running on the AI front, we are close to what you might call AGI, or digital superintelligence. I think we are seeing an explosion in digital superintelligence here. And then we’ve got Tesla. We’ll be launching unsupervised autonomy, basically self-driving cars with no one in them, in Austin next month.

So it’s a big year for sure. Many other things in the works too. I’m a technologist first and foremost.

Elon Musk, thank you very much for joining us here at Qatar Economic Forum.

Thank you.

Mishal Husain is Editor at Large for Bloomberg Weekend. She joined Bloomberg from the BBC, where she presented its leading news program Today on BBC Radio 4 for over a decade.

(Corrects name in headline.)

FT Alphaville Bloomberg LP

Bloomberg Terminal outage support thread

How then shall we live?

“Would you say it’s time for our viewers to crack each other’s heads open… and feast on the goo inside?”

Louis Ashworth

Published 8 HOURS AGO | Updated 05:15

Borg’s down.

IB’s still working, and they still have a TV channel. But try to load some data on a Bloomberg Terminal, and you won’t see much.

In fact, even the screenshot function is currently dead, forcing us to recreate an image of the main view manually:

FT Alphaville would like to wish the best of luck to all the traders currently being forced to have conversations with their colleagues.

Update 10:15am ish: The UK's Debt Management Office has had to extend an auction window, the Top News page is loading but doesn't seem to have any new news, our mailbox is loading… really slowly. Of all the moments in history, this is one of them.

Update 10:31am ish: Pages are now somewhat reliably loading for us but s l o w l y.

Update 10:48am ish: POSH and RICH won't load for us. DINE, the restaurant guide function, will. Hannah Gobran, macro FX sales at JPMorgan and May's top reviewer, describes London's Bottarga as "Mediterranean at its finest". Bloomberg's Kevin Lam rates Crosstown Donuts a "maybe".

Update 10:58am ish: We're so back. In that everything is still laggy but we can load a price chart for LSEG, which is down about 0.3 per cent.

Update 11:14am ish: It appears the European Union also delayed an auction during the Borgpocalypse, big news if you're into that kind of thing.

Update 11:27am ish: It seems that þe werste is paste. We're still excited to see the Bloomberg News write-up of this if/when it lands, but until then we simply hope you all coped fine during these troubled times.

Update 12:24pm ish: A Bloomberg spokesperson has just got in touch to tell us:

> Our systems are returning to normal operations and Terminal functionality has been restored following a service disruption earlier today

Update 1:15pm ish: We've been asked to reflect that the Bloomberg statement above was sent to mainFT at about 11:35am ish, in case that's useful for all those tick-tocks and the inevitable movie adaptation (B-Day?).

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Elf Beauty Brass Face Investor Suit Over Declining Demand

By **Sydney Price**

Law360 (May 20, 2025, 7:28 PM EDT) -- Executives and directors of cosmetics company e.l.f. Beauty were hit with a shareholder derivative suit accusing them of concealing declining consumer demand, which led to a 55% decline in stock value as information regarding waning revenues and increasing inventory emerged.

Elf, which stands for "eyes, lips, face," primarily distributes its products through retail partners Target, Ulta Beauty and Walmart. These sales made up approximately 75% of the company's revenue throughout the relevant period, **according to the complaint** filed Monday by shareholder Mikhail Venikov in Delaware federal court.

The company distributes skincare and makeup products under multiple brands, including Elf Cosmetics, Elf Skin, Well People, Naturium and Keys Soulcare, the suit states.

Despite assurances to investors that Elf was "comfortable" with the amount of inventory it had on hand, the company began experiencing declining consumer demand for its products in mid-2023, which led to rising inventory levels in subsequent quarters.

"To hide this from investors, Elf attributed the sharp increase in inventory to accounting changes due to altered shipping logistics and to strategic efforts 'to meet the robust consumer demand we're experiencing,'" Venikov alleged.

In addition to nominal defendant Elf, several of the company's executives and directors, including its CEO Tarang P. Amin, are individual defendants in the suit.

The suit accuses the defendants of breaching their fiduciary duties and violating the Exchange Act. It also alleges that six of the individual defendants, including Amin, sold more than $132.2 million worth of stock at artificially inflated prices during the relevant period: from May 25, 2023, through the present day.

On May 25, 2023, Elf announced its financial results for the previous quarter. On an earnings call that day, Elf noted net sales had increased by 78% to $187.4 million, primarily driven by strength across retailer and e-commerce channels. It also said it would continue increasing distribution capacity to support strong demand, according to the suit.

Over the next several months, Venikov said, Elf continued touting strong demand and high sales. For example, on Feb. 6, 2024, Elf said it grew net sales by 85% in the previous quarter, marking its 20th consecutive quarter of growth. The company attributed the growth to "strong consumer demand," according to the suit.

The truth began to emerge last August, when Elf issued weaker-than-expected financial guidance for the previous fiscal quarter and "acknowledged downward pressure" on guidance for its adjusted earnings before interest, taxes, depreciation and amortization, the shareholder alleged.

On this news, Elf's stock price fell by $27.12, or about 14%, to close at $160.83 on Aug. 9, 2024, according to the complaint.

Then, on Nov. 20, 2024, investment company Muddy Waters Research published a report accusing Elf of revenue fraud and inventory mismanagement. The report claimed Elf overstated its revenue by $135 million to $190 million during the relevant period.

"The report further accused Elf of concealing declining customer demand from investors by falsely attributing the rising value of its inventory to a supposed change in its practice of taking ownership of inventory upon arrival at distribution centers in the United States instead of in China when the products ship," Venikov alleged.

On this news, Elf's stock price fell by $2.71, or about 2%, to close at $119 on Nov. 20, 2024, according to the complaint.

The shareholder said the full extent of Elf's deceit was revealed on Feb. 6, 2025, when Elf lowered its fiscal year outlook for the first time since the COVID-19 pandemic. Elf also revised its adjusted EBITDA guidance downward to $289 million to $293 million, from $304 to $308 million, Venikov said.

"Management explained that this downward revision in guidance reflected lower demand trends, challenging category conditions, and slower-than-expected new product performance," Venikov said.

Elf's shares fell again, by $17.36, or about 20%, to close at $71.13 on Feb. 7, 2025, according to the complaint.

Venikov noted Elf is facing at least two **securities class actions** over its alleged misconduct during the relevant period.

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

Venikov is represented by Blake A. Bennett of Cooch & Taylor PA, and Gregory M. Nespole, Daniel Tepper and Correy A. Suk of Levi & Korsinsky LLP.

Counsel information for Elf and the individual defendants was not available on Tuesday.

The case is Venikov v. Amin et al., case number 1:25-cv-00623, in the U.S. District Court for the District of Delaware.

--Editing by Lakshna Mehta.

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Tech Co. AppLovin's Brass Face 'Shadow Downloads' Claims

By **Emilie Ruscoe**

Law360 (May 20, 2025, 8:55 PM EDT) -- Executives and directors of technology company AppLovin face a shareholder derivative suit alleging they breached their fiduciary duties after the company allegedly inflated its download numbers, a key performance metric, by means of manipulative practices.

In complaint filed on Monday in California federal court, AppLovin investor Nathan Smith took aim at AppLovin's CEO Adam Foroughi, its Chief Financial Officer Matthew Stumpf and eight of its directors with claims that, among other things, the company under their direction had falsely attributed certain revenue growth to its "cutting-edge AI technologies."

In reality, its metrics reflected that it was using "manipulative practices such as ads clicking on themselves or using design gimmicks to trigger forced shadow downloads," the suit says.

The relevant conduct "involves a knowing or reckless violation of their obligations as directors and officers of AppLovin Corp., the absence of good faith on their part, and a reckless disregard for their duties to the company that [the defendants] were aware or should have been aware posed a risk of serious injury to the company," Smith claimed.

Smith's allegations echo those in a proposed investor class action filed in March, in which AppLovin investor Michael Quiero accused the Palo Alto-based company of misleading the markets by concealing that certain purportedly positive growth trends in its financial reporting actually resulted from "dishonest advertising practices."

As a result of the those practices, Quiero said, trading prices for AppLovin shares were artificially inflated between May 2023 — when the investor said the company shares "impressive financial results, outlooks, and guidance" with investors — and February 2025, when a pair of short-seller reports alleged the company was using manipulative practices to inflate its app installation metrics.

The investor posted to market records showing that trading prices for AppLovin shares fell by over $46 from about $377 to $331 following the short-seller reports in support of his claim the company harmed investors with the alleged misrepresentations.

In the Monday derivative suit, Smith invoked the shareholder class in asserting that the AppLovin brass had harmed the company with its conduct, contending that the harms include "the costs already incurred and to be incurred defending the company in the securities action, as well as costs to be incurred in remediating deficiencies in the company's internal controls."

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

Smith is represented by Shane T. Rowley and Danielle Rowland Lindahl of Rowley Law PLLC and Francis J. "Casey" Flynn, Jr., of the Law Office of Francis J. Flynn Jr.

Counsel information for the defendants was not immediately available on Tuesday.

The case is Smith v. Foroughi et al., case number 5:25-cv-04261, in the U.S. District Court for the Northern District of California.

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Investor Seeks Final OK For $41.5M Pilgrim's Pride Settlement

By **Ryan Harroff**

Law360 (May 20, 2025, 6:12 PM EDT) -- A proposed class of investors asked a Colorado federal judge for a final sign-off on a $41.5 million settlement with Pilgrim's Pride Corp. to resolve claims they artificially inflated stock prices with a price-fixing scheme targeted at the broiler chicken market, with $13.7 million of the deal going to attorney fees.

Lead plaintiff George Fuller told U.S. District Judge R. Brooke Jackson that the $41.5 million deal between his settlement class of investors, the food producer and former Pilgrim's Pride CEO William Lovette will provide investors with "valuable, immediate recovery" and spare the parties from prolonging an **already contentious bout** of litigation.

The deal was first **announced in January** with a joint stipulation from the parties. According to Fuller's approval bid, the settlement has not been contested by any member of his proposed investor class.

"As reflected in the stipulation, the parties, whose counsel have extensive experience litigating securities class actions and have thoroughly analyzed the facts and law relevant to this action, believe the settlement is in the best interests of the settlement class," Fuller said. "To date, the claims administrator has not received any requests for exclusion or any objections to the proposed settlement."

Fuller also filed an attorney fee bid Friday in which he asked that one third of the settlement fund go to class counsel at Kahn Swick & Foti LLC along with $425,000 in costs and a $40,000 service award to himself as lead plaintiff.

Pilgrim's Pride is represented by Aaron J. Curtis, Brian Kitchen, Caroline Zalka, Evert J. Christensen, Jonathan D. Polkes and Tania C. Matsuoka of Weil Gotshal & Manges LLP and Caitlin McHugh of Womble Bond Dickinson LLP.

Fuller is represented by Kim E. Miller, J. Ryan Lopatka, Lewis S. Kahn and Craig J. Geraci of Kahn Swick & Foti LLC.

The case is In Re Pilgrim's Pride Corp. Securities Litigation, case number 1:16-cv-02611, in the U.S. District Court for the District of Colorado.

--Additional reporting by Lauren Berg and Sydney Price. Editing by Alyssa Miller.

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Prudential Investors Seek OK Of $10M Derivative Settlement

By **Emilie Ruscoe**

Law360 (May 20, 2025, 10:18 PM EDT) -- Shareholders of Prudential Financial have asked for final approval for a $10 million deal ending derivative claims that the company concealed that it would need to revise its cost expectations for certain life insurance policies it had acquired.

In **Monday filings** in New Jersey federal court, counsel for Prudential investors Donel Davidson and Robert Lalor told U.S. District Judge Stanley R. Chesler that the settlement's $10 million cash payment to Prudential from the officers and directors named in the suit would cover nearly a third of the $35 million out-of-pocket settlement payment the company agreed to pay to end a separate proposed investor class action making claims over the same alleged conduct.

The investors told the court Monday that the $10 million deal "better serves the company's interests than continued litigation in pursuit of the speculative chance that a materially greater recovery might be secured at trial years from now, particularly when discounted by the substantial costs, delay, and distraction from current business such litigation would entail, and the significant risk that further litigation would yield no recovery at all."

For their work on the derivative matter, the investors' attorneys seek $2.5 million, or 25%, of the settlement sum, the filings state.

The derivative claims, which launched in 2020, describe Prudential's individual life insurance business segment as an "important part of the company's business."

The claims center on statements Prudential made in 2019 in the lead-up to a $208 million writedown — and, going forward, an earnings reduction of $25 million per quarter — for its individual life segment. The move was made following changes to the company's mortality assumptions for the segment.

Market records show that the announcement, which came alongside an earnings miss, precipitated a 12.5% decline in trading prices for Prudential shares, from over $101 to under $89.

Judge Chesler granted final approval to the $36 million securities class action settlement in June 2024 for the benefit of a class of investors who purchased Prudential stock between June 5, 2019, and Aug. 2, 2019. At the same time, the court granted a request for 25% of the settlement amount, or $8.75 million, from the investors' team of attorneys from Cohn Lifland Pearlman Herrmann & Knopf LLP and Seeger Weiss LLP.

On Monday, plaintiffs' counsel in the derivative matter said that the team's "conclusion that the settlement serves Prudential's best interests is fully informed and carefully considered."

Among other things, the plaintiffs' filing stated, they'd evaluated the "extensive" public record regarding Prudential's efforts to manage risks the company took on with its $615 million acquisition in 2013 of the Hartford Financial Services Group Inc.'s life insurance business, and they'd also assessed confidential records of an investigation undertaken by a special committee of Prudential's board in connection with the litigation.

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

The investors in the derivative matter are represented by Craig W. Smith, Brian J. Robbins and Shane P. Sanders of Robbins LLP, Lawrence P. Eagel of Bragar Eagel & Squire PC, Serina M. Vash of Herman Jones LLP and Justin Kuehn Moore Kuehn PLLC.

Prudential and its brass are represented by Maeve L. O'Connor and Susan R. Gittes of Debevoise & Plimpton LLP and Tricia B. O'Reilly and David D. Cramer of Walsh Pizzi O'reilly Falanga LLP.

The case is In Re Prudential Financial Inc Derivative Litigation, case number 2:20-cv-12772, in the U.S. District Court for the District of New Jersey.

—Additional reporting by Jessica Corso. Editing by Michael Watanabe.

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Barclays Officials Beat Shareholder's Suit At NY High Court

By **Sarah Jarvis**

Law360 (May 20, 2025, 10:15 PM EDT) -- New York's highest court on Tuesday rejected arguments that current and former officials of London-based Barclays PLC can be sued under New York law over a series of scandals that have rocked the bank, a decision that sparked rebuke from the court's chief judge.

Judge Anthony Cannataro, writing the 6-1 **opinion** for the Court of Appeals, affirmed the state Appellate Division's dismissal of a test case against dozens of current and former Barclays directors and officers and the bank's New York-based affiliate, Barclays Capital Inc.

The plaintiff — New York corporation Ezrasons Inc., which is a beneficial owner of Barclays shares — contended that shareholders can file derivative suits in New York court against foreign-headquartered companies under New York law. But the court's majority disagreed.

"It took more than half a century for a New York court to first express an interpretation similar to plaintiff's, in a decision that has not been followed and was firmly disavowed by the Appellate Division in this case," Judge Cannataro wrote.

"If plaintiff were correct that the provisions' 'meaning is unmistakable,' such a widespread and extended misconception of the law would be odd, to say the least," the judge continued, citing language from the court's 1910 decision in Seligman v. Friedlander .

Ezrasons had sued over what it said is a series of "unending scandals" that have led to $18 billion in regulatory fines against the bank in 10 years. That includes **$2.4 billion** that the bank agreed to pay in 2015 to end investigations into the rigging of the foreign exchange markets.

New York's Supreme Court, where the case was filed, granted the Barclays officers' motion to dismiss the complaint. The court found that foreign law governs the question of whether a plaintiff has the right to sue corporate management on behalf of a foreign corporation, under a principle known as the internal affairs doctrine.

The trial court also rejected the shareholder's argument that the New York legislature intended to override that "choice-of-law rule" by enacting sections of New York's Business Corporation Law in 1961 that case law says provide jurisdiction for such cases to New York courts but don't require the application of New York law in those cases.

The Appellate Division then unanimously affirmed, agreeing that Ezrasons lacked standing.

The case drew the attention of leading business groups, including the U.S. Chamber of Commerce and the Securities Industry and Financial Markets Association, both of which backed Barclays with **amicus briefs** at the Court of Appeals in October.

On Tuesday, the court majority said that if the legislature had intended for the 1961 provisions of the Business Corporation Law to override the internal affairs doctrine when applied to shareholder derivative standing, it could have said so. And in the 64 years since then, the "vast majority of New York courts and practitioners" have not treated those provisions as displacing the internal affairs doctrine, the majority said.

In dissent, Chief Judge Rowan D. Wilson said the majority "transports the modern-day iteration of the internal affairs doctrine into our pre-1961 caselaw."

Judge Wilson said the majority was skirting the question before the court by simply finding that the internal affairs doctrine is important and should not be disturbed.

"We are asked to interpret what our legislature did when it enacted Business Corporation Law §§ 626 and 1319, against the backdrop of a long period when New York's financial dominance was unparalleled," Judge Wilson said. The 1961 laws were clearly "intended to function as choice of law provisions, subjecting foreign corporations to the same standards as domestic ones," he said.

Referencing the film "Back to the Future," Judge Wilson wrote that "Doc Brown and Marty McFly would be impressed with the majority's ability to transport the present into the past to arrive at today's holding."

"Through the jurisprudential time machine it has concocted, transporting today's doctrine back to the first half of the last century, the majority's decision forces the legislature to anticipate the evolution of the common law and preemptively disavow it," Judge Wilson said. "That is an impossible task; even we do not know what future decisions may hold."

Judge Wilson said he would "respect the balance the legislature struck" by recognizing that the 1961 laws allow shareholders of foreign companies to bring derivative actions even if the laws of the company's home jurisdiction would not.

The majority addressed Judge Wilson's dissent in its opinion, saying he "spills a prodigious amount of ink rewriting case law because he can cite to no decision or scholarly authority agreeing with his view that the internal affairs doctrine was not understood of as a choice-of-law rule until the 1960s or later — a position not advanced by any party or amicus here."

"This court will not overrule a painstakingly developed body of law and decades worth of settled expectations based on one vague statutory sentence and equivocal legislative history," the opinion said.

Judge Michael J. Garcia took no part in the opinion.

Counsel for Barclays and the investors didn't immediately respond to requests for comment Tuesday.

Ezrasons is represented by Francis Bottini of Bottini & Bottini Inc.

Barclays is represented by Lara Flath, Boris Bershteyn, Scott Musoff and Michael Restey of Skadden Arps Slate Meagher & Flom LLP.

The case is Ezrasons Inc. v. Rudd et al., case number APL-2024-00016, in the Court of Appeals of the State of New York.

--Additional reporting by Jessica Corso. Editing by Brian Baresch.

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Nextdoor Beats Investor Suit Over Post-SPAC Profitability

By **Katryna Perera**

Law360 (May 20, 2025, 7:02 PM EDT) -- A California federal judge has tossed a shareholder class action that alleges hyperlocal social networking service Nextdoor Holdings Inc. misled investors about its projected profitability when combining with a special purpose acquisition company, saying the suit's plaintiff never owned or sold the company's securities before the merger, among other things.

U.S. District Judge Edward J. Davila issued an **order** Monday granting two dismissal motions: one filed by Nextdoor and its executives and the other by the "Khosla defendants," which include Khosla Ventures SPAC Sponsor II LLC, the blank check sponsor of Nextdoor, and the individuals that served as executives to "Nextdoor Private," the company that existed before the merger.

In their dismissal motions, the defendants first argued that plaintiff Keith Hollingsworth lacks standing to bring claims related to statements made about Nextdoor Private before the merger under the "puchaser-seller" rule.

According to the order, the purchaser-seller rule, outlined in the U.S. Supreme Court's 1975 ruling Blue Chip Stamps v. Manor Drug Stores, is a bright-line rule that limits standing to purchasers or sellers of the stock in question.

The defendants said that in the current action, Hollingsworth never owned Nextdoor Private securities, and he only purchased Khosla Ventures Acquisition Co. II securities three days before its merger with Nextdoor Private.

Therefore, he cannot bring claims arising from alleged statements and omissions made about Nextdoor Private before the merger, the defendants said. Judge Davila agreed on Monday.

The judge also found that Hollingsworth does not have standing to bring claims related to statements made after the merger, in August 2022, since he purchased his last Nextdoor securities on May 11, 2022.

The last remaining challenged statement in the suit, made on May 10, 2022, was about the supposed growth in Nextdoor's active users, according to the order. Hollingsworth claimed this statement was materially false and misleading because the "defendants failed to inform investors that half of the 'active users' were those who simply opened an email, not those who created advertising revenue by engaging with the website or app," the order states.

"Plaintiff presented a former employee who stated that 'this practice of counting as active users persons who merely open their email was highly unusual in the industry and so would not have been expected by investors,'" the order states.

But Judge Davila said Hollingsworth failed to plead facts showing that this statement was materially misleading.

"Though this practice of defining people who merely open their email as 'active users' may have been highly unusual in the industry, plaintiff has not alleged facts to support his allegation that it would have been unexpected by investors because Nextdoor explicitly defines an 'active user' as a person who 'opens our application, logs on to our website, or engages with an email with monetizable content at least once during a defined ... period,'" the order states.

"Regardless of what is typical in the industry, Nextdoor's explicit definition of 'active user' eliminates any reasonable expectation that the term could mean something else," the judge added.

Investors also alleged that in promoting the merger, the defendants portrayed Nextdoor as the "next big thing" and compared it to Twitter or Snap, "suggesting that there were similarly no structural barriers to its skyrocketing."

However, the plaintiff said these comparisons were misleading because Nextdoor could not "reasonably expect" to obtain "average revenue per user" comparable to Twitter or Snap's since the basis of Nextdoor is that it only attracts users for "one-off, discrete tasks, and half of Nextdoor's 'active users' merely open Nextdoor emails rather than engaging with Nextdoor's platform and making advertising impressions," the order states.

Nextdoor first launched in 2011 as a "neighborhood network" that operated a hyperlocal online social networking platform that "connected neighbors, public agencies, and businesses with features such as a news feed where neighbors engage with posts, discussions, and pictures," according to the order.

The suit alleged that Nextdoor lost 90% of its value during the proposed class period because the defendants misled investors about two aspects of the business: the company's definition of active users and its portrayal of Nextdoor as "the next big thing."

The suit said a series of disclosures revealed Nextdoor's declining average revenue per user growth rates and weekly active users, causing the company's value to plummet by the end of the proposed class period.

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

Hollingsworth is represented by Jeremy A. Lieberman, Austin P. Van and Jennifer Pafiti of Pomerantz LLP.

The Nextdoor defendants are represented by Patrick E. Gibbs, Shannon M. Eagan, Tijana M. Brien and Andrew C. Johnson of Cooley LLP.

The Khosla defendants are represented by Colleen Smith, Daniel Gherardi, Tina Jensen and Anastasia Pyrinis of Latham & Watkins LLP.

The case is Adamo v. Nextdoor Holdings Inc. et al, case number 5:24-cv-01213, in the U.S. District Court for the Northern District of California.

--Editing by Michael Watanabe.

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Cancer Drug Co. Beats Investor Suit Over FDA Rejection

By **Sydney Price**

Law360 (May 20, 2025, 9:25 PM EDT) -- Cancer drug company Checkpoint Therapeutics Inc. has permanently escaped a shareholder suit alleging it understated the likelihood the U.S. Food and Drug Administration would refuse approving Checkpoint's lead product candidate, with a New York federal judge ruling company statements were not shown to be false or made with scienter.

U.S. District Judge Paul A. Engelmayer said in an **opinion and order** on Monday that Checkpoint's statements regarding the FDA approval and timeline for commercial release of a skin cancer treatment called cosibelimab were not objective facts and that a reasonable investor would recognize the statements as opinion.

"Defendants consistently represented not that the FDA would necessarily approve the cosibelimab [biologics license application] but rather that they wished to put in their 'best shot at a first cycle approval' and they believed there to be a 'good probability' of 'success,'" Judge Engelmayer said.

Judge Engelmayer will not allow the shareholders to amend their claims, according to the order.

In the suit, which was most recently amended in August, the shareholders alleged Checkpoint was dependent on raising funds from investors in order to continue its operations since it had no FDA-approved products, "negligible" revenue and limited cash on hand. Because Checkpoint had limited resources, it outsourced manufacturing to Samsung Biologics, the suit states.

The investors claimed that despite the defendants' knowledge of Samsung Biologics' quality issues and interactions with the FDA, Checkpoint concealed distressing information about the violations.

In December 2023, shares of Checkpoint dipped nearly 45% after Checkpoint announced the FDA had denied the cosibelimab license. Checkpoint said at the time that the only deficiencies cited by the FDA "relate to the FDA's inspection of our third-party contract manufacturing organization [Samsung]," according to the complaint.

According to the order Monday, the FDA approved Checkpoint's resubmitted application for cosibelimab in December 2024.

Judge Engelmayer said courts have commonly found companies' statements saying it felt "good" or "confident" about the FDA approval process to be non-actionable opinion statements. Checkpoint "repeatedly warned" about the potential that a third-party manufacturer's failure to comply with FDA standards could prevent Checkpoint from selling cosibelimab, the judge noted.

The complaint also failed to allege that the defendants actually knew of the compliance deficiencies at the time of the alleged misstatements, Judge Engelmayer said.

Additionally, the judge said, the investors cannot infer scienter from Checkpoint CEO James F. Oliviero's stock transactions during the proposed class period.

Oliviero's Checkpoint stock holdings increased during the class period, which undermines the scienter theory, Judge Engelmayer said. Additionally, the value and volume of shares that Oliviero sold, relative to his total holdings, was "modest to de minimis," the judge determined.

"If Oliviero had aimed to enrich himself by selling Checkpoint's shares while temporarily fraudulently inflated, it would have made little economic sense for him to increase his holdings before the share price inevitably plummeted upon the FDA's denial (ostensibly anticipated by Oliviero) of the cosibelimab [application]," Judge Engelmayer said.

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

The investors are represented by Garth A. Spencer, Robert V. Prongay and Gregory B. Linkh of Glancy Prongay & Murray LLP.

Checkpoint and Oliviero are represented by Brett D. Jaffe and Timothy J. Fitzmaurice of Alston & Bird LLP.

The case is Moore v. Checkpoint Therapeutics Inc. et al., case number 1:24-cv-02613, in the U.S. District Court for the Southern District of New York.

--Editing by Lakshna Mehta.

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9th Circ. Ruling Clarifies Derivative Suit Representation Test

By **Stephen Blake, Craig Waldman and Jonathan Youngwood** (May 20, 2025, 6:09 PM EDT)

On March 28, in Bigfoot Ventures Ltd. v. Knighton, the U.S. Court of Appeals for the Ninth Circuit **affirmed** the U.S. District Court for the Central District of California's dismissal of a shareholder derivative action.

Stephen Blake

The action had been brought by Bigfoot Ventures, a venture capital firm, against NextEngine Inc., a technology company, and Mark Knighton, NextEngine's CEO and founder, on the ground that Bigfoot Ventures could not fairly or adequately represent the interest of NextEngine's stockholders.[1]

In its decision, the Ninth Circuit clarified the application of the eight-factor test established in Larson v. Dumke,[2] which is used to assess the adequacy of representation by a plaintiff in a shareholder derivative action.

Craig Waldman

The Ninth Circuit held that the district court did not err in considering the ongoing litigation between Bigfoot Ventures and NextEngine, pointing out that "[s]uch entanglements may make it likely that the interests of the other stockholders will be disregarded in the management of the suit."

Background and Procedural History

Between 2002 and 2005, Bigfoot Ventures made several loans to NextEngine through promissory notes, which were secured by NextEngine's patents. Subsequently, Bigfoot Ventures sued NextEngine in state court to collect on the notes, which had been restructured into one note.

Jonathan Youngwood

Following this, there were several lawsuits between Bigfoot Ventures and NextEngine and NextEngine's CEO concerning Bigfoot Ventures' investments in NextEngine and its patents.

In 2019, Bigfoot Ventures brought the instant shareholder derivative action in federal district court, alleging that an agreement transferring NextEngine's inventory and revenue to an LLC — which had been formed by NextEngine's CEO — was not intended to benefit NextEngine or its shareholders.

NextEngine moved to dismiss on the ground of plaintiff inadequacy under Rule 23.1 of the Federal Rules of Civil Procedure. Rule 23.1(a) states that a "derivative action may not be maintained if it appears that the plaintiff does not fairly and adequately represent the interests of shareholders or members who are similarly situated in enforcing the right of the corporation or association."

The district court ordered supplemental briefing on whether Bigfoot Ventures satisfied the test in Larson v. Dumke. In 2023, the district court dismissed, concluding that Bigfoot Ventures was inadequate to represent the manufacturer's shareholders.

Larson v. Dumke and the Criteria to Determine Plaintiff Adequacy

By way of background, in 1990, the Ninth Circuit explicitly took the opportunity to "establish criteria for determining adequacy of representation in subsequent cases" in Larson, although the Ninth Circuit had previously considered whether a derivative suit should be dismissed because the plaintiff is an inadequate representative in Hornreich v. Plant Industries Inc.[3]

In Larson, the Ninth Circuit first explained that "[a]n adequate representative must have the capacity to vigorously and conscientiously prosecute a derivative suit and be free from economic interests that are antagonistic to the interests of the class."

The court went on to explain:

> Other courts have stated certain factors to determine adequacy of representation: '(1) indications that the plaintiff is not the true party in interest; (2) the plaintiff's unfamiliarity with the litigation and unwillingness to learn about the suit; (3) the degree of control exercised by the attorneys over the litigation; (4) the degree of support received by the plaintiff from other shareholders; ... (5) the lack of any personal commitment to the action on the part of the representative plaintiff'; (6) the remedy sought by plaintiff in the derivative action; (7) the relative magnitude of plaintiff's personal interests as compared to his interest in the derivative action itself; and (8) plaintiff's vindictiveness toward the defendants.

In Larson, the Ninth Circuit reversed a trial court's dismissal of derivative claims due to the plaintiff's failure to qualify as an adequate representative, which the trial court had based on its finding that the plaintiff had sought to rescind an employee stock option plan, which meant that he would likely be "economically antagonistic" toward the corporation and other shareholders.

After a careful study of the trial court record, the Ninth Circuit concluded that recision of the employee stock option plan had not been formally requested, "and accordingly the major factual predicate of the trial court's decision finds no support in the record."

As to whether a lack of support for the derivative suit by nondefendant shareholders supported the district court's finding of inadequacy, the Ninth Circuit concluded that it was not sufficient to support the district court's exercise of discretion.

How the Ninth Circuit Expanded What a Court May Consider in Analyzing Plaintiff Adequacy

In Bigfoot Ventures, the Ninth Circuit has now provided useful guidance by clarifying how the Larson factor test should be applied, explaining that "it is not mandatory for a court to assess each and every one of the Larson factors" and that "[c]ourts may consider other factors like outside entanglements."

Notably, the Ninth Circuit stated that "[c]ourts can consider whatever other factors help them to assess" plaintiff adequacy "in addition to the Larson factors."

The Ninth Circuit held in this case that the derivative action could not be maintained because Bigfoot Ventures "does not fairly and adequately represent the interests of [the manufacturer's] shareholders." The Ninth Circuit further held that the district court did not err in considering the ongoing litigation between Bigfoot Ventures and NextEngine under "outside entanglements."

The Ninth Circuit noted that there have been frequently litigated disputes between Bigfoot Ventures and NextEngine concerning Bigfoot Ventures' investments in NextEngine and the ownership and use of the patents. The Ninth Circuit concluded that due to their "consistently contentious nature," the lawsuits "are significant outside entanglements, making it probable that the interests of NextEngine's stockholders will be disregarded in the management of this suit."

The Ninth Circuit noted that the district court's conclusion that the derivative action appears to be leverage in Bigfoot Ventures' other lawsuits "weighs heavily against plaintiff's adequacy."

As to the Larson factors themselves, the Ninth Circuit concluded that they "also support the district court's finding of plaintiff inadequacy" and that the district court correctly found four Larson factors weighed against plaintiff adequacy.

First, the Ninth Circuit stated that there were indications that Bigfoot Ventures was the true party in interest, but as a separate entity and not as NextEngine shareholder, because Bigfoot Ventures was seeking to use the derivative action to advance its own separate interests — namely, as another attempt to collect on a 2017 state court judgment awarding it $8 million and to take ownership of NextEngine's patents.

Second, the Ninth Circuit stated that Bigfoot Ventures' personal interest in gaining control of the patents was greater than its interest in asserting rights on behalf of NextEngine.

Third, the Ninth Circuit stated that nothing indicated that NextEngine's shareholders support this derivative action. The Ninth Circuit noted that "[t]o the contrary, three shareholders submitted declarations that formally and emphatically object to Bigfoot's derivative action."

Fourth, the Ninth Circuit stated that the lengthy history of litigation supported the district court's finding that Bigfoot Ventures was vindictive toward NextEngine and its CEO.

Key Takeaways

As the fact patterns involved in determining plaintiff adequacy can be complex, the Ninth Circuit's clarification of Larson will likely prove useful to litigants. While Larson sets a baseline of criteria to consider, Bigfoot Ventures emphasizes a court's discretion by specifically stating that the court need not assess each and every Larson factor.

After specifically noting that that courts may consider other factors, the Ninth Circuit notably goes so far as to state that courts can consider "whatever other factors" are helpful to assess plaintiff adequacy.

While some critics might point out that broadly expanding the considerations before a court may result in more drawn-out litigation, the Ninth Circuit's decision bodes well for ensuring that a court is able to fully examine all the relevant circumstances.

Stephen Blake is a partner at Simpson Thacher & Bartlett LLP.

Craig Waldman is a partner and head of the asset management litigation practice at the firm.

Jonathan Youngwood is a partner, global co-chair of the litigation department and the leader of the civil securities litigation practice at the firm.

The opinions expressed are those of the author(s) and do not necessarily reflect the views of their employer, its clients, or Portfolio Media Inc., or any of its or their respective affiliates. This article is for general information purposes and is not intended to be and should not be taken as legal advice.

[1] Bigfoot Ventures Ltd. v. Knighton , 2025 U.S. App. LEXIS 7218 (9th Cir. 2025).

[2] Larson v. Dumke , 900 F.2d 1363 (9th Cir. 1990).

[3] Hornreich v. Plant Industries Inc. , 535 F.2d 550 (9th Cir. 1976).

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5 Ohio Cities Say Hyundai, Kia Negligence Claims Still In Play

By **Linda Chiem**

Law360 (May 20, 2025, 9:22 PM EDT) -- Five Ohio cities have told a California federal judge that Hyundai and Kia cannot try to circumvent the Ninth Circuit and scuttle negligence claims in consolidated litigation alleging the automakers knowingly sold vehicles with design flaws that spawned a car-theft crime wave.

Cincinnati, Cleveland, Columbus, Lorain and Parma filed their **opposition** Monday to Hyundai Motor America Inc. and Kia America Inc.'s recent motion seeking to invoke the Ohio Product Liability Act, or OPLA, to wipe out the cities' common law negligence claims.

The claims are already being reviewed by the Ninth Circuit as part of the automakers' **interlocutory appeal** of U.S. District Judge James V. Selna's November 2023 decision declining to toss them. Judge Selna had **certified to the Ninth Circuit** the narrow question of whether a negligence duty of care could arise under the common law of New York, Ohio and Wisconsin, absent a special relationship. The Ninth Circuit heard oral arguments in April, during which Hyundai said the cities cannot seek to impose on manufacturers "a duty to the world."

"Beyond the moving target concern, there is a substantial risk of conflicting rulings," the Ohio cities said in their opposition brief. "By putting the question of OPLA abrogation at issue on appeal, and thereby inviting the Ninth Circuit to reach issues not included in the scope of this court's certified question, defendants have created a scenario where simultaneous rulings related to the abrogative effect of OPLA could issue from two different courts.

Hyundai and Kia filed a motion for judgment on the pleadings last month, saying the Ohio cities' negligence claims are barred following the Ohio Supreme Court's In re National Prescription Opiate Litigation decision, which dealt with public nuisance claims brought over the opioid crisis. Ohio's justices **ruled in December** that common law public nuisance claims for harm arising from the sale of a product are abrogated by OPLA.

The Ohio cities in this dispute dropped their public nuisance claims against the two carmakers in light of that ruling. But they say their negligence claims are still in play because they don't count as "product liability claims" under OPLA.

"Defendants seek to extend abrogation to encompass any common law causes of action factually related to the manufacture, design, or distribution of a product, however fashioned," they said. "Defendants' arguments in favor of this radical departure from Ohio law fly in the face of the Ohio State Supreme Court's recent ruling, which instructs courts to look to the plain text of the two statutory definitions of a 'product liability claim' to determine the abrogative effect of OPLA."

The Ohio cities say their claims fall squarely outside of those definitions. Under OPLA, a product liability claim can either be a common-law claim seeking non-economic "compensatory damages" from a manufacturer, or it can be a "public nuisance claim or cause of action at common law in which it is alleged that ... a product unreasonably interferes with a right common to the general public."

But Hyundai and Kia maintain that the Ohio cities no longer have viable claims given that "the close nexus between the Ohio ... plaintiffs' negligence claims and their abrogated common law public nuisance claims is no accident; under Ohio law, the Ohio ... plaintiffs were required to allege negligence in order to assert their qualified public nuisance claims."

The Ohio cities are among nearly 30 U.S. cities and municipalities — known as the **governmental entities plaintiffs** — that have sued Hyundai and Kia over car thefts spawned by a viral TikTok trend that popularized tips for breaking into their cars. They alleged that scarce resources have been siphoned from local law enforcement and first responders as a result of the car thefts.

The lawsuits from the governmental entities' plaintiffs are part of multidistrict litigation accusing Hyundai and Kia of pursuing profits over safety by failing to outfit millions of model year 2011–22 vehicles with industry-standard immobilizers to ensure the cars can't be started without their keys. The MDL centers on allegations that the thefts committed by "amateur thieves" and "teenagers" gained momentum after 2020 when users of TikTok and other social media platforms began sharing viral videos offering tips and techniques to easily break into Hyundai and Kia vehicles **using just a USB cable**.

The MDL included claims from consumers, but Hyundai and Kia reached a **$145 million settlement** that closed out the consumers' claims.

Still pending, however, are claims from **hundreds of insurers** that sued to recover at least some of the more than $1 billion they contend they paid in claims and adjustments in response to the unprecedented crime spree inspired by social media. The insurers' claims against Hyundai and Kia's U.S. units remain, but Judge Selna last year **dismissed** the automakers' South Korean parent companies from the dispute, saying the California federal court has no personal jurisdiction over the foreign entities. The insurers have appealed that finding to the Ninth Circuit.

Counsel or representatives for the parties could not be immediately reached for additional comment Tuesday.

The governmental entities are represented by Gretchen Freeman Cappio of Keller Rohrback LLP and Rick L. Ashton of Allen Stovall Neuman & Ashton LLP, among others.

The insurance companies are represented by Elliott R. Feldman, Nathan M. Dooley and Kevin P. Caraher of Cozen O' Connor, William Hoffmann, Adam Romney and Susan Benson of Grotefeld Hoffmann, Timothy E. Cary of Stutman Law and Craig S. Simon of Berger Kahn.

Hyundai and Kia are represented in the governmental entities' suits by Steven G. Madison and Justin Griffin of Quinn Emanuel Urquhart & Sullivan LLP and in the insurers' suits by Peter J. Brennan, Michael T. Brody, Kate T. Spelman, Madeline P. Skitzki and Jenna L. Conwisar of Jenner & Block LLP.

The MDL is In re: Kia Hyundai Vehicle Theft Litigation, case number 8:22-ml-03052, in the U.S. District Court for the Central District of California.

--Additional reporting by Bonnie Eslinger. Editing by Andrew Cohen.

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SEC Says Unicoin Made $100M Via 'Massive' Offering Fraud

By **Hailey Konnath**

Law360 (May 20, 2025, 11:38 PM EDT) -- The U.S. Securities and Exchange Commission on Tuesday accused Unicoin of promoting a "massive securities offering fraud" through which the cryptocurrency company raised more than $100 million from unknowing investors, according to a complaint filed in New York federal court.

In its **civil complaint**, the SEC said that New York-based Unicoin and four of its executives spent the last three years promoting the offering, making "false and misleading statements and material omissions" that convinced more than 5,000 investors around the world to purchase "Unicoin rights certificates" that they were told gave them rights to Unicoin tokens, the SEC alleged. However, Unicoin and its executives misled them about the "fundamental attributes" of the tokens, the commission said.

"Specifically, the promoting defendants falsely claimed in numerous public forums that the Unicoin tokens underlying the Unicoin rights certificates were asset-backed by billions of dollars in real estate and equity interests in promising pre-[initial public offering] companies," the SEC said in the complaint. "In reality, as the promoting defendants knew, the company's assets were never worth more than a small fraction of the values that the promoting defendants attributed to those assets and, in any event, the company did not intend to back the Unicoin tokens or Unicoin Rights Certificates with any such assets."

Unicoin and the executives also repeatedly stated that the tokens were "SEC-compliant" or "U.S.-registered," the commission said. In reality, neither the tokens nor the offer and sale of the certificates was registered with the SEC, it said.

On top of that, Unicoin told investors that the real estate that the company had acquired to back the tokens was worth billions of dollars, according to the suit. Specifically, Unicoin announced acquisitions of properties in Argentina, Thailand, Antigua and the Bahamas, saying they were worth more than $1.4 billion, the SEC said.

"In fact, not only did Unicoin never take title to most of the properties they claimed to have acquired, but the promoting defendants also vastly overstated the values of the properties," it said.

Unicoin also overstated the rights certificates sales and misrepresented the company's financial condition, the commission said.

CEO and Chairman Alex Konanykhin, former Chief Investment Officer Alex Dominguez and Silvina Moschini, former president, former board chairwoman and current board member were also listed as defendants in the suit. They're accused of violating the antifraud provisions of federal securities laws, as well as selling unregistered securities, according to a statement from the SEC.

Unicoin general counsel Richard Devlin is also listed as a defendant in the suit. The SEC said Devlin negligently made similar misstatements in private placement memoranda used to offer and sell rights certificates and Unicoin common stock.

However, unlike the other executives, Devlin has consented to a **final judgment** requiring him to pay a $37,500 civil penalty without admitting or denying the commission's allegations.

With the suit, the SEC is seeking disgorgement of ill-gotten gains, civil penalties and orders banning Konanykhin, Moschini and Dominguez from serving as officers or directors of companies in the future.

Mark Cave, associate director in the SEC's Division of Enforcement, said in Tuesday's statement that Unicoin and its executives "exploited thousands of investors with fictitious promises that its tokens, when issued, would be backed by real-world assets including an international portfolio of valuable real estate holdings."

"But as we allege, the real estate assets were worth a mere fraction of what the company claimed, and the majority of the company's sales of rights certificates were illusory," Cave said. "Unicoin's most senior executives are alleged to have perpetuated the fraud, and today's action seeks accountability for their conduct."

The suit comes as the SEC has **walked away from** a number of crypto enforcement matters under the Trump administration. In March, the commission dropped enforcement actions against Kraken, Consensys and Cumberland DRW. The SEC has also voluntarily dismissed cases against crypto exchange Coinbase and XRP issuer Ripple Labs and abandoned investigations into other crypto firms like OpenSea, Gemini and Robinhood's crypto arm.

Unicoin and counsel for Devlin didn't immediately respond to requests for comment, and the other executives couldn't be immediately reached for comment.

The SEC is represented by its own Adam B. Gottlieb, Russell J. Feldman, W. Bradley Ney, Jason D. Schall and Jocelyn Berteaud.

Devlin is represented by Aaron Katz.

Counsel information for Unicoin and the other defendants wasn't immediately available.

The case is Securities and Exchange Commission v. Unicoin Inc. et al., case number 1:25-cv-04245, in the U.S. District Court for the Southern District of New York.

–Additional reporting by Aislinn Keely. Editing by Michael Watanabe.

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SEC Chair Says Staff Exits Have Left Holes In Agency

By **Jessica Corso**

Law360 (May 20, 2025, 7:50 PM EDT) -- U.S. Securities and Exchange Commission Chair Paul Atkins told Congress Tuesday that the agency has lost hundreds of employees in recent months due to voluntary buyouts and early retirement incentives, and that some now-missing expertise will need to be replaced.

Paul Atkins, the chairman of the U.S. Securities Commission, spoke Tuesday before a House Appropriations subcommittee — his first hearing in front of Congress since he was sworn in 20 days ago. He spoke of staffing levels and the agency's approach to the cryptocurrency industry, among other topics. (Photo by Michael Brochstein/Sipa USA)(Sipa via AP Images)

Atkins told a House Appropriations subcommittee that about 600 employees, or 15% of the SEC's staff, have left the agency this fiscal year. He said many of those who left took voluntary early retirement or buyout offers that have been provided by the Trump administration to reduce headcounts at federal agencies.

But some of those vacancies will need to be filled, Atkins said.

He was asked by Democratic Rep. Steny Hoyer of Maryland "whether or not people were let go whose services you needed" and whether the agency would need "either to hire them back or to hire somebody to do those services?"

Atkins said that another option would be to promote someone within the agency to fill one of those necessary roles.

"Because there's a lot of good people at the SEC and for them to be promoted and to be recognized for their expertise, I think is great," he said. "It's a great way of rejuvenating an agency."

Rep. Chuck Edwards, D-N.C., asked if the commission's salary request will be lower next fiscal year given the staff reduction.

"The budget process is new to me," Atkins responded, adding that he wasn't yet sure what the fiscal year 2026 request would be but that he would work to "right-size what we need."

Tuesday's hearing was Atkins' first before Congress since he was sworn in 20 days ago. Other than staffing levels, he discussed the SEC's approach to the cryptocurrency industry since Republican leadership took over and tiptoed around questions about a possible probe into the Trump White House.

Atkins said he couldn't talk about investigations "current or potential or past" after Rep. Mark Pocan, D-Wis., pressed him on a Truth Social post from April 9. In that post, President Donald Trump said it was a "great time to buy!" just hours before informing the public that he was putting a 90-day pause on tariffs.

Some Democratic members of Congress have already questioned whether Trump's inner circle knew about the coming pause and profited off it, and Pocan asked Atkins if the social media posts amounted to market manipulation.

"Philosophically, is this market manipulation?" Pocan asked.

"Around that particular incident, I obviously can't speak to it," Atkins responded. "But, in general, the rules around trading and whatnot have to do with material nonpublic information and a duty. So all those elements need to be met."

"Do you think my example I just gave, would that be worthy of looking closer at?" Pocan asked, referring to the April 9 Truth Social posts.

"We have a lot of smart people and very ambitious people in our enforcement division who read the papers and look at things, and they are quick to go to plant their flag to launch investigations," Atkins said.

The White House didn't immediately respond to a request for comment Tuesday.

Atkins also declined to speak about the status of the SEC's fraud case against Tron crypto founder Justin Sun after the agency **voluntarily stayed** the lawsuit in February. The SEC chair said he didn't know anything about the case and so couldn't speak to it.

Sun has said he has invested tens of millions of dollars into Trump family-affiliated crypto tokens and into Trump-backed crypto platform World Liberty Financial. Sen. Elizabeth Warren, D-Mass., **has called** on the SEC's inspector general to investigate the president's relationship with Sun alongside other possible "undue influence" the Trump family has exerted over the agency's crypto program in recent months.

Atkins said that the agency was focused on establishing a "rational regulatory framework" for the crypto industry, **reiterating remarks** he made Monday about it being a "new day at the SEC."

"I think the problem is right now that there's a lot of uncertainty in the marketplace as to what's the security, what's not, and so that affects innovation," Atkins said when asked for his priorities in developing a regulatory framework.

"If lawyers cannot even write opinions for their clients as to what's a security and what's not, which is the situation right now, that just inhibits everything because capital doesn't flow where it might be needed," he later added.

--Editing by Emily Kokoll.