

Securities Law News

Advance Auto Parts Investor Pushes Executive Intent on Appeal

May 23, 2025, 12:56 PM PDT

Former Advance Auto Parts Inc. executives manipulated accounting to hide from investors the company's inability to achieve a key performance metric, a public pension fund said in asking an appellate court to revive its proposed class action.

The district court didn't holistically assess the alleged level of intent or recklessness when dismissing the securities fraud claims like it should've, said the City of Southfield General Employees' Retirement System's opening brief filed in the US Court of Appeals for the Fourth Circuit Thursday. Judge James C. Dever III tossed the lawsuit without prejudice in the US District Court for the Eastern District of North Carolina in January, saying company leaders issuing corrections more plausibly indicated that executives found and fixed accounting errors than acted with scienter.

- Advance in May 2023 revealed a \$17 million out-of-period charge and lowered its 2023 guidance, the fund had said. Share prices plummeted over 35% that day, then the stock's biggest one-day drop since its 2001 market debut, according to data compiled by Bloomberg
- The fund told the appellate court restatement, lack of accounting controls, leadership departures, compensation plans, and more supported an inference of scienter by two executives

Robbins Geller Rudman & Dowd LLP, Deutsch Hunt PLLC, and Higgins Benjamin PLLC were on the brief for the fund. Hogan Lovells US LLP and Smith, Anderson, Blount, Dorsett, Mitchell & Jernigan LLP represent Advance and three executives. None of these law firms immediately responded to emails seeking comment.

The case is City of Southfield Gen. Emps. Ret. v. Advance Auto Parts, Inc. , 4th Cir., No. 25-01188, opening brief filed 5/22/25 .

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

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

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Securities Law News

Slack Supreme Court Ruling Spurs Divergent Paths on Standing

May 27, 2025, 1:30 AM PDT

Fried Frank's Samuel Groner and Katherine St. Romain explain why conflicting decisions are complicating claims against companies accused of producing misleading direct listing registration statements.

The US Supreme Court's decision in *Slack Techs., LLC v. Pirani* prompted commentators to predict that plaintiffs would struggle to establish standing if they brought claims under Section 11 of the Securities Act of 1933 when a company offered stock through a direct listing.

Two recent district court decisions, one from Colorado and the other from New Jersey, demonstrate that courts are still grappling with this issue.

Slack

Workplace messaging company Slack Technologies used a direct listing to go public on the New York Stock Exchange in 2019, instead of conducting a traditional initial public offering.

Unlike a traditional IPO, when companies register shares with a Securities Act filing, Slack's direct listing simultaneously offered unregistered and registered shares. As a result, purchasers had difficulty determining whether their acquired shares were registered.

After Slack's stock price declined, a shareholder filed a putative class action alleging the company's direct listing registration statement was materially misleading and violated Section 11. Slack argued the shareholder lacked standing because he hadn't alleged that he purchased shares traceable to the allegedly misleading registration statement.

A district court denied Slack's motion to dismiss, and the US Appeals Court for the Ninth Circuit upheld the district court's decision, but the US Supreme Court reversed and tossed the shareholders' complaint, explaining that a Section 11 plaintiff must "plead and prove that he purchased shares traceable to the allegedly defective registration statement."

Palantir

The US District Court for the District of Colorado reached a similar conclusion in *Cupat v. Palantir Technologies* [], dismissing a shareholder complaint alleging that data analytics software company Palantir Technologies filed a materially misleading registration statement in connection with its direct listing.

Applying *Slack*, the court held that the plaintiffs' Section 11 claim failed because they couldn't trace their shares to the allegedly misleading registration statement. Holding that traceability must be pleaded with specificity, the court rejected each of the plaintiffs' pleas.

The plaintiffs had argued it was "overwhelmingly likely" they purchased at least one registered share because "at least 17.9%" of available shares to trade were registered and the plaintiffs purchased more than 1.2 million shares.

This "probabilistic tracing theory" argument was rejected as inconsistent with *Slack* because "a plaintiff must plead facts supporting a plausible inference that its shares *are* traceable, not simply facts supporting a plausible inference that its shares are *probably* traceable to the challenged registration statement."

The plaintiffs also alleged that "with appropriate discovery" they could prove that they acquired shares that could be directly traced to the registration statement. The court rejected this argument as well, explaining that standing must be established at the outset, not after discovery. Further, the court wasn't persuaded that any permitted discovery could have proven "actual chain-of-title tracing."

The plaintiffs further argued that any unregistered shares they purchased "should be deemed registered on an integrated offering theory." Under this theory, registered and unregistered shares would be treated the same because they both became available on the public market at the same time as part of a single financing plan involving one class of securities for the same type of consideration and general purpose.

The court found this argument "difficult to square with *Slack*" because "what the *Slack* plaintiff was asking the Supreme Court to do"—and what the Supreme Court chose *not* to do—"was treat unregistered shares as if they were registered."

Coinbase

Shareholders in New Jersey, however, survived a motion to dismiss in *In re Coinbase Glob., Inc. Sec. Litig.*, a case involving a putative class action against cryptocurrency exchange Coinbase, which had gone public via a direct listing.

The court denied Coinbase's argument that the shareholders hadn't adequately pleaded that their purchases were traceable to the registration statement.

It held that allegations that the plaintiffs bought Coinbase stock on the first day it was listed "at prices near the opening price and when 88% of shares outstanding were registered pursuant to the Offering Materials" were sufficient to "plausibly allege" that the plaintiffs purchased shares that could be traced to the offering materials.

Coinbase sought review by the Third Circuit on April 11, arguing the district court erred in allowing the case to proceed based on “a *possibility* that the plaintiff purchased registered shares, not that a plaintiff *actually* purchased registered shares.” The Third Circuit hasn’t yet decided whether to accept the appeal.

Practical Implications

If courts enforce Section 11’s strict tracing requirements, as described by *Slack* and construed in *Palantir*, plaintiffs may, as a practical matter, have trouble pursuing Section 11 claims arising from allegedly misleading statements in direct listing registration statements.

While plaintiffs could still bring claims under Section 10(b) of the Securities Exchange Act of 1934, Section 10(b) imposes additional pleading requirements.

Although *Slack*, *Palantir*, and *Coinbase* all involved direct listings, these cases may have broader application to a common fact pattern in which an issuer conducts both an IPO and a later follow-on offering.

In that scenario, shareholders sometimes bring Section 11 claims based on purchases on or after the date of the follow-on offering even if they can’t trace whether their shares were originally sold in the IPO or in the follow-on offering.

If courts conduct a similar analysis in that scenario as the analysis conducted by the District of Colorado in *Palantir*, then companies should succeed in getting Section 11 claims dismissed at the pleading stage for lack of standing.

The cases are: *Slack Techs., LLC v. Pirani*, 2023 BL 186463, U.S., 22-200, 6/1/23 ; *Cupat v. Palantir Techs., Inc.*, 2025 BL 134866, D. Colo., 22-cv-02384-GPG-SBP, 4/4/25 ; *In re Coinbase Glob., Inc. Sec. Litig.*, 2024 BL 311016, D.N.J., 2:22-cv-04915 (BRM) (LDW), 9/5/24

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Author Information

Samuel P. Groner and Katherine L. St. Romain are litigation partners at Fried, Frank, Harris, Shriver & Jacobson.

Natasha Menon, a law clerk at Fried Frank, contributed to this article.

Write for Us: Author Guidelines

To contact the editors responsible for this story: Max Thornberry at jthornberry@bloombergindustry.com; Rebecca Baker at rbaker@bloombergindustry.com

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Coinbase Seeks Third Circuit Review of Federal Court's Traceability Ruling

 [law.com/thelegalintelligencer/2025/05/27/coinbase-seeks-third-circuit-review-of-federal-courts-traceability-ruling](https://www.law.com/thelegalintelligencer/2025/05/27/coinbase-seeks-third-circuit-review-of-federal-courts-traceability-ruling)

Jay A. Dubow and Erica H. Dressler and Milica Krnjaja

May 27, 2025

L-R: Jay A. Dubow, Erica H. Dressler and Millie Krnjaja of Troutman Pepper Hamilton Sanders. Courtesy photos

Expert Opinion

Coinbase Global Inc. has asked the U.S. District Court for the District of New Jersey to certify an immediate appeal of the court's decision, which allowed Securities Act of 1933 claims to proceed based on a statistical probability theory of traceability.

Securities Litigation

Coinbase Global Inc. (Coinbase) has asked the U.S. District Court for the District of New Jersey to certify an immediate appeal of the court's decision, which allowed Securities Act of 1933 claims to proceed based on a statistical probability theory of traceability. If certified, the appeal would allow the U.S. Court of Appeals for the Third Circuit to clarify whether: the plaintiffs can satisfy the traceability requirement of Section 11 of the Securities Act through statistical inference alone; and the same traceability requirement applies to Section 12(a)(2) of the Securities Act.

Section 11 of the Securities Act addresses alleged misrepresentations or omissions in registration statements, while Section 12(a)(2) of the Securities Act pertains to alleged misrepresentations or omissions in prospectuses and oral communications related to a prospectus. The Securities Act imposes strict liability on issuers, in contrast to the Exchange Act of 1934, which requires proof of fraud. Given the lower burden of proof under the Securities Act, Section 11 mandates that the plaintiffs plead and prove they purchased shares issued pursuant to the allegedly false or misleading registration statement.

This is typically not a difficult task following a traditional Initial Public Offering (IPO), where a company issues new shares under a single registration statement, which is then filed with the Securities and Exchange Commission (SEC) and made available to the public. With this process, all of a company's shares trading on the market are traceable to a single registration statement. The tracing requirement, however, poses an issue for the plaintiffs dealing with "direct listings," where both registered and unregistered shares are commingled on the market.

Direct listings are a relatively new mechanism for securities issuers to list stocks on an exchange without going through an IPO. The first was in 2018, after several companies approached the New York Stock Exchange (NYSE) about the possibility of selling shares

publicly on the exchange without an IPO due to drawbacks, such as high transaction costs. The NYSE facilitated this idea through proposed rules approved by the SEC.

These direct listings now allow private companies to register preexisting shares before they can be sold to the public. Additionally, holders of preexisting shares that are exempt from registration can also sell their shares. Thus, unlike an IPO, both registered and unregistered shares (with certain exceptions) are immediately available for purchase in public markets. Due to the availability of both registered and unregistered shares, it can be difficult for shareholders who purchase through the public market to trace their shares back to a particular registration statement or offering.

For this reason, the plaintiffs often attempt to rely on a statistical inference to allege traceability, claiming that, based on the percentage of registered shares in the market, there is a high probability that at least some of the purchased shares were part of the challenged offering.

The U.S. Supreme Court addressed some of these issues in *Slack Technologies v. Pirani*. In the underlying case, a shareholder filed a suit in the U.S. District Court for the Northern District of California after Slack went public through a direct listing. The plaintiff argued that Slack violated Sections 11 and 12(a)(2) of the Securities Act.

In response, Slack moved to dismiss the complaint, arguing that the plaintiff had failed to show that he purchased registered shares issued pursuant to the challenged registration statements, rather than the unregistered shares that were also in the market at the same time. The district court denied the motion, and the Ninth Circuit affirmed, finding that sales of unregistered shares in a direct listing could give rise to Section 11 liability because their public sale cannot occur without the only operative registration in existence.

The Supreme Court vacated that decision, holding that regardless of whether a security is sold in a direct or public listing, a Section 11 plaintiff must plead and prove that he purchased shares traceable to the allegedly defective registration statement. The court then remanded the case for the U.S. Court of Appeals for the Ninth Circuit to consider whether the plaintiff could demonstrate that he purchased shares registered under the challenged registration statement. The Supreme Court left open the question of whether Section 12 imposes the same traceability requirements.

On remand, the Ninth Circuit concluded that the plaintiff could not make the required showing under Section 11. The court rejected the plaintiff's argument that he could show traceability with a statistical inference, calling it "legally flawed" and explaining that even a very high probability of purchasing at least some registered shares failed to establish traceability. The court further held that Section 12(a)(2) also imposes a traceability requirement, which plaintiff failed to meet.

With this holding, the Ninth Circuit joined the Fifth Circuit, whose holding in *Krim v. pcOrder.com*, rejected the statistical inference theory of traceability under Section 11, stating that such a theory "'would impermissibly expand the statute's standing requirement' because every purchaser could rely on the same statistics to bring their claims, regardless of whether they actually purchased shares registered pursuant to the relevant offering materials."

The plaintiff shareholders filed the underlying lawsuit after Coinbase went public through a direct listing in early 2021. In connection with the direct listing, Coinbase filed a registration statement and prospectus under which its shares were registered. Plaintiff shareholders alleged that this registration statement and prospectus contained material misstatements that violated Sections 11, 12(a)(2), and 15 of the Securities Act, and Section 10(b) of the Exchange Act.

Coinbase moved to dismiss the Securities Act claims. Coinbase argued that the plaintiffs could not demonstrate their shares were registered, as required to establish liability under those statutes. Specifically, Coinbase argued that the plaintiffs could not satisfy the requirement to trace their shares to the challenged materials simply by making a statistical inference from the ratio of registered to unregistered shares available in the market at the time of their purchase.

The district court disagreed. With respect to Section 11 traceability, the court found that the plaintiffs plausibly alleged traceability by pointing to the timing of their purchases, purchase price, and the percentage of registered shares in the market at the time of purchase. The court applied the same analysis to the plaintiffs' Section 12(a)(2) claim and also noted that it was not entirely convinced that Section 12 applies only to registered shares, implying it might not even have a traceability requirement.

Coinbase now seeks immediate appellate review of the court's decision. Citing conflicting decisions in various district courts across the nation, Coinbase argues that the appeal is necessary to clarify if a statistical inference theory of traceability is cognizable under Section 11 and whether the traceability requirement applies to Section 12(a)(2) claims. Coinbase also pointed out that the district court's decision was issued prior to the Ninth Circuit's holding rejecting the statistical inference theory.

Implications

The Supreme Court's decision in the *Slack* case, along with recent rulings from the Ninth and Fifth Circuits, highlight significant challenges for the plaintiffs attempting to bring Securities Act claims in the context of direct listings. These decisions emphasize the critical requirement for the plaintiffs to prove that their shares are directly traceable to the specific registration statement alleged to be defective. This traceability requirement is particularly

problematic in direct listings, where registered and unregistered shares are mixed in the market, complicating efforts to establish a direct connection to the registration statement without relying on statistical inference.

If the Third Circuit adopts the approach taken by the Ninth and Fifth Circuits, the plaintiffs in its jurisdiction may encounter substantial difficulties in pursuing Securities Act claims related to direct listings. The traceability requirement could effectively restrict the plaintiffs to pursuing claims under the Exchange Act, which demands a higher burden of proof. On the other hand, if the Third Circuit affirms the lower court, it would create a circuit split that could result in further Supreme Court review of this issue.

Jay Dubow is a partner with Troutman Pepper Locke, resident in the Philadelphia office. He focuses his practice on complex business litigation, specifically on defending against shareholder derivative and securities class action litigation. He can be reached at 215-981-4713 or jay.dubow@troutman.com.

Erica H. Dressler is a partner with the firm, resident in the Philadelphia office. She represents clients in complex business litigation. Dressler can be reached at 215-981-4691 or erica.dressler@troutman.com.

Milica "Millie" Krnjaja is an associate at the firm, resident in the Philadelphia office. She is a member of the business litigation practice. She can be reached at 215-981-4435 or millie.krnjaja@troutman.com.

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May 15, 2025

By Amanda O'Brien

🕒 8 minute read

April 24, 2025

The New Presidential Administration Ushers in Significant Changes at the Securities and Exchange Commission

By Katayun I. Jaffari, Mehrnaz Jalali and Rikisha Collins

🕒 9 minute read

March 25, 2025

Class Action

Bluebird Beats Investor Lawsuit Over FDA Black Box Warning (1)

May 27, 2025, 6:11 AM PDT; Updated: May 27, 2025, 8:25 AM PDT

- **Investor didn't adequately allege CEO misled on therapy label**
- **Judge said more information needed on voucher statements**

Bluebird Bio Inc. defeated allegations it misled investors over the terms regulators would apply for approving its sickle cell disease treatment and odds of getting a coveted voucher, a federal judge ruled.

The investor's amended complaint didn't plausibly allege a strong inference of intent or recklessness to defraud investors about Bluebird's ability to earn a voucher to expedite the Food and Drug Administration review process for specific therapies, Judge Patti B. Saris said in her May 23 order. The lead plaintiff's theory rested on "fraud by hindsight," and an agreement concurred to by another biotechnology company to buy Bluebird's potential voucher boosted the inference that the defendants believed the FDA could award it, the US District Court for the District of Massachusetts judge said.

Plaintiff Larry Cattran also didn't plausibly allege the CEO's statements foreclosed the possibility of the Food and Drug Administration requiring a black box warning, Saris said. And neither side offered adequate explanation of the possibility of a shared active ingredient from a previously approved treatment precluding Bluebird from getting that priority voucher to evaluate the alleged falsity of related statements, she said.

The May 23 ruling comes as the Somerville, Mass.-based gene-therapy company, skirting the risk of default and bankruptcy, goes private through an acquisition by Carlyle and SK Capital Partners LP. Shareholders can receive \$3.00 a share in cash plus a contingent value right of \$6.84 per share payable depending on a net sales milestone, or simply \$5.00 a share. Bluebird in a press statement issued Tuesday urged its stockholders to tender their shares before Friday.

"Absent a majority of stockholders tendering, bluebird is at significant risk of defaulting on its loan agreements with Hercules Capital. It is extremely unlikely that stockholders would receive any consideration for their shares in a bankruptcy or liquidation," the company said.

Shares Fall

The FDA requires "black box warnings" for certain treatments that carry serious safety risks. On Dec. 8, 2023, Bluebird said the FDA approved therapy lovo-cel but required that its label warn about the risk of blood cancers. The company said then that the FDA had rejected its priority review voucher application.

Share prices slid almost 41% that day, then Bluebird's steepest single-day slide since its 2013 market debut, according to data compiled by Bloomberg.

Cattran alleged Bluebird misled investors on the possibility of the label warning, relationship between lovo-cel and blood cancers, and its odds of getting a voucher. But a reasonable investor would've understood the purported misstatements and omissions conveyed a lack of certainty on the label, and Cattran didn't support his "conclusory allegation" that three deaths during lovo-cel's trial were from the therapy, Saris said.

Saris has given Cattran 30 days to explain why he should be able to amend his complaint.

"We are encouraged that the Judge provided us with a roadmap for the additional allegations she wants in the Amended Consolidated Complaint," said William B. Federman, founder and managing partner of Federman & Sherwood, in an email. The law firm is lead counsel for the proposed class, which would include those who got stock between April 24, 2023, and Dec. 8, 2023. Mazow/McCullough PC is liaison counsel.

Ropes & Gray LLP, which declined to comment in an email, represents Bluebird, two current and one former executive.

The case is *Gill v. Bluebird Bio, Inc.*, D. Mass., No. 24-cv-10803, 5/23/25 .

(Updated with additional reporting throughout.)

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

To contact the editors responsible for this story: Drew Singer at dsinger@bloombergindustry.com; Andrew Harris at aharris@bloomberglaw.com

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NY's Highest Court Affirms Dismissals of Derivative Suits Involving Non-US Companies

K [dandodiary.com/2025/05/articles/shareholders-derivative-litigation/nys-highest-court-affirms-dismissals-of-derivative-suits-involving-non-us-companies](https://www.dandodiary.com/2025/05/articles/shareholders-derivative-litigation/nys-highest-court-affirms-dismissals-of-derivative-suits-involving-non-us-companies)

Kevin LaCroix

May 27, 2025



Two decisions last week by the New York Court of Appeals – New York’s highest court – may represent the end of plaintiffs’ lawyers’ recent attempts to turn the state’s courts into a focal point for derivative litigation involving non-U.S. companies. Both of the Court’s decisions affirmed the dismissals of derivative suits that had been filed in New York state court against directors of non-U.S. companies — Barclays and Bayer, respectively — asserting claims against them under their respective home countries’ laws. A copy of the court’s May 20, decision in the Barclays case can be found [here](#). A copy of the court’s May 20 decision in the Bayer case can be found [here](#).

Background

Readers may recall that in 2021, plaintiffs’ lawyers launched as many as ten shareholder derivative suits in New York state court against non-U.S. companies, including Barclays and Bayer. As I discussed in a blog post at the time, the filings set off alarm bells because they raised the possibility that the plaintiffs’ lawyers might have found a way to circumvent limitations for derivative litigation in the various companies’ home country courts. There was also concern that the plaintiffs’ lawyers might have found a way to pursue litigation against non-U.S. companies notwithstanding the restrictions imposed by *Morrison v. National Australia Bank* to sue non-U.S. companies in U.S. securities class action lawsuits.

Because of the concerns surrounding these lawsuits, there was a sense of relief when the various trial courts in which many of these suits were pending granted the defendants’ motions to dismiss, as discussed [here](#). The plaintiffs in those various cases of course did have the right to appeal, and it turned out, the plaintiffs in the Barclays and Bayer cases did appeal, and the appeals eventually made their way up to the New York Court of Appeals. These appeals in the Barclays and Bayer case were the matters that the Court of Appeals decided last week.

The Barclays Decision

In the Barclays case, the Court of Appeals affirmed the lower courts' holding that the plaintiffs in the case lacked standing under English law to pursue the derivative claims against the Barclays directors. The Court agreed with the defendants that under the principles of the "internal affairs doctrine," the "substantive law of the place of incorporation governs disputes relating to the rights and relationships of corporate shareholders and managers."

The plaintiff had tried to argue that amendments to various provisions of the New York Business Corporation Law overrode the internal affairs doctrine. The Court rejected this argument, saying that "the statutory provisions on which the plaintiff relies do not clearly manifest a legislative intent to displace the long-settled internal affairs doctrine, and thus do not preclude a defense that plaintiff lacks standing under English substantive law to maintain this derivative action."

The Bayer Decision

In the separate Bayer case, the Court of Appeals also affirmed the lower courts' dismissal of the case. The trial court had granted the dismissal motion on three independent grounds: lack of personal jurisdiction, forum non conveniens, and lack of standing under German law. The intermediate appellate court affirmed on all three grounds. The Court of Appeals affirmed the lower courts' rulings on forum non conveniens grounds, saying that the trial court had "considered all relevant factors and made no legal error in doing so."

Discussion

Both of these decisions are significant, in that they provide substantial grounds for non-U.S. company defendants to oppose claimants' efforts to try to use U.S. courts to pursue derivative claims against the directors and officers of non-U.S. companies, perhaps in ways that would not be available to the claimants in the home courts of the companies' countries.

The Barclays decision is particularly important in that regard, as it affirms that – consistent with the requirements of the internal affairs doctrine – non-U.S. companies that are sued in derivative claims in New York courts retain all of the substantive defenses that would be available in their home countries' courts. The fact that the plaintiff in the Barclays case lacked standing under English law was in fact case dispositive, even though there would have been no barriers to standing under New York law. Upholding these principles, particularly on the basis of the internal affairs doctrine, provides substantial assurance that non-U.S. companies cannot be subject to derivative suits without defenses that would be available to them in their home countries.

In a May 21, 2025 memo by the Sullivan & Cromwell law firm entitled “New York’s Highest Court Rejects Efforts to Make New York a Hub for Non-U.S. Derivative Litigation” (here), the law firm observed that “these two decisions from New York’s highest court likely will be dispositive precedent in most, if not all, of the remaining pending derivative actions, and could signify the end of plaintiffs’ short-lived efforts to turn New York into a hub for derivative litigation against non-U.S. companies.” The law firm memo adds that “the decisions are a victory for principles of comity and will provide non-U.S. companies with much-needed certainty about their exposure to U.S. derivative litigation.”

All of that said, it is important to add the note here that it is emphatically *not* the case that a non-U.S. company can never be subject to derivative litigation in a New York Court. Readers with long memories may recall the May 2024 decision by a New York state court trial judge, involving a derivative suit under Cayman law against a Cayman-domiciled company, in which the court denied the defendants’ motion to dismiss. In a decision that is very deeply fact-based, the court held that it had personal jurisdiction over the individual defendants and rejected the defendants’ *forum non conveniens* arguments.

The court’s decision in that case does show that New York’s courts may still be available for derivative suits against non-U.S. companies, at least in certain circumstances, notwithstanding even the rulings of the Court of Appeals discussed above.

Indeed, readers with even longer memories will recall that earlier a New York trial court had also denied the dismissal motions in the high-profile Renren case, also involving derivative claims under Cayman law against a Cayman company, underscoring the fact that at least in certain circumstances non-U.S. companies could have to face corporate disputes filed in New York state court. The Renren case itself arguably highlights the significance of this fact, given that the case ultimately settled for approximately \$300 million, and was for a time the largest ever derivative lawsuit settlement.

In other words, even though the possibility of a non-U.S. company having to face a corporate lawsuit in a New York court is, in light of the two recent decisions of the Court of Appeals, remote, the risks of such a suit is not zero. However, non-U.S. companies subject to derivative suits in New York court will, as a result of these recent decisions, have substantial defenses in the event of such a lawsuit.

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Securities Law News

ImmunityBio Board Settles Shareholders' Cancer Therapy Lawsuit

May 23, 2025, 11:58 AM PDT

ImmunityBio Inc. leadership agreed to add an independent member to its board to end shareholder allegations that they caused the company to overhype Food and Drug Administration approval odds for its bladder cancer therapy.

The biopharmaceutical company will amend its disclosure and audit committees' charters, among other reforms, said the agreement filed in the US District Court for the Southern District of California Thursday. The shareholders alleged corporate leaders breached their fiduciary duties to ImmunityBio and investors by lacking adequate oversight and causing the company to conceal issues at a third-party manufacturing facility that would likely cause the FDA to reject its therapy's license application in 2023.

- The shareholders' counsel said they'd seek up to \$2.5 million in attorneys' fees and litigation expenses
- The same court preliminarily approved ImmunityBio's \$10.5 million settlement to end an investor class action over similar claims in March
- The FDA ultimately approved the therapy, Ankiva, in 2024

Wilson Sonsini Goodrich & Rosati PC represents the ImmunityBio current and former executives and board members, including Dr. Patrick Soon-Shiong. Kuehn Law PLLC is lead counsel for the consolidated shareholders. Wolf Haldenstein Adler Freeman & Herz LLP, Schubert Jonckheer & Kolbe LLP, The Rosen Law Firm PA, Shuman, Glenn & Stecker, and Rigrodsky Law PA represented various shareholders. None of these law firms immediately responded to an email seeking comment.

The case is *Luven v. Soon-Shiong*, S.D. Cal., No. 3:24-cv-02014, 5/22/25.

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

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

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Securities Law News

This Week in Chancery Court: Squarespace Deal Books and Records

May 27, 2025, 2:01 AM PDT

Internal documents from Squarespace Inc. related to its \$7.2 billion acquisition last year are the subject of a trial this week in Delaware Chancery Court.

Here's a look at the highlights from a holiday-shortened court calendar:

Thursday: Mich. Elec. Emp. Pension Fund v. Squarespace, Inc., Del. Ch., No. 2024-1041, trial 5/29/25.

At issue: A pension fund filed a books-and-records lawsuit in October seeking Squarespace's documents related to its sale to Permira Advisers LLC's. The Michigan Electrical Employees' Pension Fund alleges the website publishing and software company has withheld CEO Anthony Casalena's communications with Permira leading up to the private equity firm's February 2024 offer for a take-private deal, according to a pre-trial brief. The company says it's already turned over 5,000 pages of documents and the pension fund doesn't need to see Casalena's emails.

Court action: A one-day trial will be held in Wilmington, Del.

Squarespace's \$7 Billion Sale Draws Scrutiny From Pension Fund

Thursday: In re Cornerstone Bldg. Brands, Inc. S'holder Litig., Del. Ch., No. 2023-0092, hearing 5/29/25.

At issue: Whether Vice Chancellor J. Travis Laster will give final approval to a \$45 million settlement proposed to resolve litigation alleging the leadership at Cornerstone Building Brands Inc. manipulated the company's forecasts to lower the price of its \$5.8 billion take-private buyout by private equity firm Clayton, Dubilier & Rice LLC in March 2022. The plaintiffs' attorneys who've been leading the consolidated litigation, Labaton Keller Sucharow LLP and Block & Leviton LLP, also seek approval for \$9.65 million in fees and expenses.

Court action: A settlement hearing will be held in Wilmington, Del.

CD&R, Cornerstone Board Sued by Funds Over \$5.8 Billion Buyout

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

Delaware Amended Its Corporate Laws, So Texas and Nevada Did, Too

K [dandodiary.com/2025/05/articles/corporate-law/delaware-amended-its-corporate-laws-so-texas-and-nevada-did-too](https://www.dandodiary.com/2025/05/articles/corporate-law/delaware-amended-its-corporate-laws-so-texas-and-nevada-did-too/)

Kevin LaCroix

May 26, 2025

In order to try to stem the supposed tide of Delaware corporations reincorporating in other states (particularly Texas and Nevada), Delaware recently enacted a set of revisions to its corporate law. Whether or not the legislative changes are sufficient to reduce the number of so-called “DEXits” remains to be seen. But the other states are not just standing by idly waiting to see what happens. They have been at work in their own corporate law laboratories. As discussed below, the legislatures of both Texas and Nevada have in recent days both passed significant revisions to their respective corporate laws. The changes not only represent significant shifts in the corporate law arena, but also could entail significant changes in the corporate litigation world, as well.

Texas

Texas’s legislature has been hard at work trying to make it a more attractive destination for companies to incorporate. Indeed, Texas has made a sufficient number of changes that it has gained a reputation, at least in some circles, for its statutory innovation.

The most important part of Texas’s recent statutory changes in the corporate law arena is Senate Bill No. 29, which the Texas legislature adopted on May 7, 2025. As discussed in a May 21, 2025, memo from the Fenwick and West law firm on the *Harvard Law School Forum on Corporate Governance* entitled “Texas Corporate Law Changes Challenge Delaware’s Dominance” (here), S.B. 29 provides for “significant amendments to the Texas Business Organizations Code (TBOC).” Texas Governor Greg Abbott signed the bill into law on May 14, 2025. The legislation is titled “Texas: Open for Business.”

The Texas legislation introduces a number of significant changes to the TBOC, all intended, as the law firm memo’s authors put it, “to make Texas the preferred state for incorporation.”

Among other things, S.B. 29 codifies the business judgment rule and the specific requirements for rebutting the business judgment rule presumption; allows corporations to impose a minimum beneficial ownership requirement on shareholders who are trying to bring a derivative action on behalf of a corporation; allows corporations to waive jury trials in their governance documents; and restricts the materials that may be obtained through a books and records request (specifically providing that e-mails and other electronic communications are not considered “records” for purposes of a books and records request).

In addition to S.B. 29, the Texas legislature also passed S.B. 1057, which allows any “nationally listed corporation” based in Texas, under specified circumstances, to incorporate a provision in their governing documents that would impose stock ownership requirements on shareholders seeking to submit proposals to the corporation. Texas Governor Abbott signed this bill into law on May 19, 2025.

Nevada

The Nevada legislature, aware of developments in its sister states’ legislatures, has meanwhile produced some revisions of its own to its corporations code. As UNLV Law Professor Benjamin Edwards details in a post on the *Business Law Prof Blog* (here), on May 22, 2025, the Nevada legislature adopted several revisions to the state’s corporations code.

Among other things, the statutory revisions enable Nevada corporations to adopt charter provisions waiving jury trials for stockholder lawsuits and introduces statutory revisions defining the fiduciary duties owed by controlling stockholders, as well as limiting their liability. The controlling shareholder provisions specify that the only fiduciary duty owed by a controlling stockholder is to refrain from exerting undue influence over a director or officer with the purpose and proximate effect of inducing a breach of fiduciary duty by the director or officer in connection with a contract or transaction in which the controlling stockholder has a material financial interest.

The legislation also allows for disinterested directors to approve a transaction with a controlling stockholder, which would provide a presumption that there was no breach of fiduciary duty. The legislation also gives controlling stockholders protection similar to the Nevada business judgment rule for officers and directors.

Professor Edwards notes that in adopting the legislation, Nevada aims to “maintain Nevada’s competitive advantage as a leader in stable, predictable and common-sense corporate law.”

Discussion

If nothing else, it is clear that as far as the legislatures of Delaware, Texas, and Nevada are concerned, it is game on when it come so competing to become companies’ preferred state of incorporation. Indeed, it seems that the legislatures are far from done. Among other things, the law firm memo to which I linked above about the Texas legislation notes that there are already a number of other additional proposed legislative changes in the works.

One over-arching question behind all of this is whether the other states’ changes are sufficient to overcome the perceived advantage that Delaware continues to have in the incorporation race. Delaware undoubtedly continues to be the presumptive jurisdiction of choice due to its well-developed case law, respected judiciary, and perceived user-friendly

corporate infrastructure. While Texas and Nevada do indeed get points for innovation, they are also still relatively unknown quantities. The reputations they eventually will have are yet to be established.

There are other factors at play here that could drive corporate decision-making, beyond what the states' respective legislatures may do. For example, as Professor Edwards points out in a separate May 16, 2025, post on the *Business Law Prof Blog* (here), whatever advantages Texas may be able to muster in the state competition, it also may be perceived as less attractive by at least some companies due to potential exposure to intellectual property litigation in Texas. As Professor Edwards notes, law firms have long warned companies about the risks of Texas exposure because of intellectual property litigation risks. Incorporating in Texas, Professor Edwards notes, carries a unique risk because it makes venue proper in Texas for intellectual property litigation.

The state competition for incorporations undoubtedly will continue and it seems likely that we can anticipate that the states' respective legislatures will continue to innovate. Along the way, the landscape for corporate litigation is also changing, in ways that undoubtedly are defendant friendly. Codifying and clarifying the business judgment rule, restricting the availability of derivative litigation to shareholders with certain minimum interests, introducing procedures to cleanse conflicted controller transactions, restricting the scope of material available for books and records requests, all of these things not only make corporate litigation relatively less attractive to plaintiffs but may even make the litigation less likely.

To be sure, not all of these changes have been adopted in each of the three competing states. But the states clearly are watching each other, collectively moving toward a set of new standards that clearly could mean that corporate litigation in general is going to be different going forward.

Of course it remains to be seen exactly what all this will mean, in terms both of the numbers and kinds of cases that get filed, and what success the cases that are filed will have on the merits. In terms that matter to D&O insurers, it will be some time before the effects of these changes can be quantified – and until they can be quantified, it is relatively unlikely that the legislative changes alone will translate into D&O insurer pricing and risk selection decisions. But while it may be some time before the changes can be quantified, we can already at least say that the landscape of corporate litigation is changing, relatively rapidly, in ways that seem likely to matter.

Audit: Allocation of opioid settlement funds to parishes, sheriffs lacks accountability

 [legalnewsline.com/louisiana-record/audit-allocation-of-opioid-settlement-funds-to-parishes-sheriffs-lacks-accountability/article_a4f4b880-571d-4411-bd0e-a27aa6886b50.html](https://www.legalnewsline.com/louisiana-record/audit-allocation-of-opioid-settlement-funds-to-parishes-sheriffs-lacks-accountability/article_a4f4b880-571d-4411-bd0e-a27aa6886b50.html)

Michael Carroll

May 27, 2025

Michael Waguespack
Louisiana Legislative Auditor

Tens of millions of dollars from opioid settlement agreements are flowing to parishes and sheriff's offices with only limited oversight and accountability, according to a report from Louisiana's legislative auditor.

The Louisiana Opioid Abatement Taskforce (LaOATF), the state's advisory body for the legal settlement funds, reports that \$98.5 million in opioid settlement funds have been provided to parishes and sheriffs as of September 2024, with the taskforce administration receiving about \$3.7 million and \$17.5 million set aside for a fund that compensates attorneys who helped to obtain the settlement funds for local governments.

But much of the money remains unspent, according to the report published this month by Legislative Auditor Michael Waguespack. As of September, nine parishes and 19 sheriffs have not spent any of their allotted funds, the audit found. Only \$8.6 million has been spent by the local agencies, with much of it used for opioid treatment and recovery, as well as training, research and planning by first-responders, according to the report.

"Parishes and sheriffs have encountered barriers to spending opioid settlement funds such as a lack of staff and a lack of programs and services in their area," a report summary states, adding that the agencies want more guidance from LaOATF about the best ways to use the funds.

Another issue is that the memorandum of understanding (MOU) governing the use of the funds in Louisiana mandates that parishes submit an annual report with the taskforce detailing expenditures, but sheriffs do not have the same requirement, according to the report.

Meanwhile, less than 68% of the expenditure reports that were due last year have been submitted to LaOATF, the report says.

The first opioid settlements were reached with companies that manufactured, marketed or dispensed the pain-relief pills in 2021, and Louisiana has taken part in 15 such settlements, according to the report. Between 2019 and 2023, 5,256 opioid-overdose deaths were

recorded in the state, reflecting past declarations that the opioid epidemic had become a national public health emergency, the audit said.

Attorneys representing the state's Opioid Abatement Administration Corp. said the auditor's report shows big-picture aspects of how settlement funds are being used.

"The report really allows people to see how it's working and how it can work better," Vic Franckiewicz Jr., the corporation's outside counsel, said, adding that it also provides a look at what other states are doing with their opioid settlement funds.

"There is already full accountability for this money," Curtis Nelson, executive counsel for the corporation, told the *Louisiana Record*. Nelson said cooperative endeavor agreements between the corporation and local agencies require that the funds be used as intended. If that doesn't occur, the agencies risk losing funding in future years, he said.

The attorneys stressed that the funds flowing to local agencies in past years had not been predictable amid continuing settlement proceedings with manufacturers and marketers. In turn, it has not been easy for local agencies to plan ahead for the use of those funds, they said.

Parishes and sheriffs are expected to receive a \$600 million share of these funds from 2022 to 2038.

A spokeswoman for the Louisiana Department of Health said that in the wake of a recent taskforce meeting, the department has been moving to provide advice on how local agencies can invest the money effectively in prevention and treatment initiatives.

"The department is in the process of developing this guidance, but will focus on 1) accessible and effective ways to support overdose prevention and SUD (substance use disorder) treatment, such as naloxone distribution and access to medications for opioid use disorder like suboxone, and 2) how the department can better coordinate with sheriffs and parishes ..." Emma Herrock, the department's communications director, told the Record in an email.

Among the department's initiatives will be assuring better health care transitions for inmates who are about to be released and the reduction of maternal overdose deaths in the state, Herrock said.

LaOATF has agreed to all of the auditor's recommendations to ensure added accountability of the settlement funds. The recommendations include coordination between the taskforce and attorney general to ensure settlement agreement rules are followed, giving LaOATF more authority to ensure local agencies are complying with the MOU, getting information

from public health professionals and those who have lived with opioid addiction to determine how to best use the funds, and amending the MOU to mandate that sheriffs file yearly expenditure reports.

But amending the MOU can be difficult since scores of local government agencies nationwide and state governments were involved in the settlements.

“It’s an idea that has a lot of merit but is difficult to implement in practice,” Franckiewicz said.

Class Action

Deep Dive

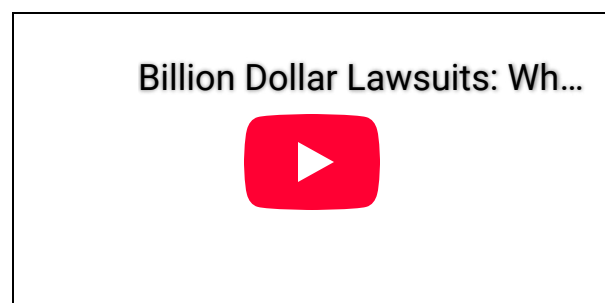
J&J's Failed Talc Bankruptcy Puts Some Mass Tort Firms in Bind

May 27, 2025, 2:00AM PDT

- **Thousands of J&J talc claims in limbo after bankruptcy**
- **Plaintiff firms in tough spot after collapse of \$9 billion deal**

Johnson & Johnson's failure to resolve mass tort talc litigation through the US bankruptcy system wasn't just a setback for the health-care giant, but also a costly blow for plaintiffs' lawyers who got behind the effort.

The pharmaceutical giant's return to civil courts to face roughly 60,000 lawsuits alleging its baby powder and other consumer talc products were tainted with cancer-causing asbestos has disrupted the calculated plans by some firms to settle thousands of claims in one fell swoop in bankruptcy.



WATCH: Billion Dollar Lawsuits: When Litigation Finance Meets Mass Torts

After devoting time and resources into pushing a \$9 billion Chapter 11 settlement with large contingency fee returns, these attorneys now have until mid-June to file about 30,000 suits in civil court before statutory time limits. Bringing that many cases will cost several million dollars in filing fees alone—without any guarantee of a return on investment.

"It looked like a good bet going in," said attorney Brian Glasser of Bailey & Glasser LLP, who represented plaintiff firms that opposed the bankruptcy proceedings. "But I think there's essentially no possibility there will be 90,000 lawsuits."

The March 31 dismissal of J&J's third talc unit bankruptcy closed the door on the company's multiyear campaign to cabin off and settle tens of thousands of personal injury suits. It also exposed part of the role that financing plays in mass tort talc litigation, and it has put some firms like Watts Law Firm LLP in a tough spot.

"I think it's a missed opportunity," said attorney Mikal Watts, a mass tort fixture whose firm spent \$68 million growing its J&J talc claimant count above 17,000. "We thought it was worth a try."

Bankruptcy Bet

J&J engineered its first talc subsidiary bankruptcy in 2021, as personal injury lawsuits against the company swelled following a more than \$2 billion court victory for a group of ovarian cancer plaintiffs. J&J used a legal strategy known as the Texas Two-Step to place a talc liability-holding subsidiary into bankruptcy and negotiate a mass settlement.

After its first two bankruptcy efforts collapsed under court scrutiny, J&J retooled its approach by inking agreements with a growing network of plaintiffs' firms. In a final run at the Two-Step strategy last year, newly created subsidiary Red River Talc LLC filed for bankruptcy in Houston proclaiming more than 80% of claimants were backing a Chapter 11 plan.

But that attempt failed too. A bankruptcy court trial that exposed deficient claim voting protocols also brought to light the extent to which some attorneys viewed J&J's bankruptcy gambit as an opportunity to score big for themselves and clients without proving difficult cases.

"One in our business acquires clients when you think it makes economic sense to do so, so that you can get a return on what is a very large investment," Watts testified in February. "So I did that thinking I would make money settling talc cases."

Attorney Anne Andrews of Andrews & Thornton similarly acknowledged that her firm began acquiring talcum powder claimants in 2022, after the bankruptcy process began. Andrews & Thornton's retainer agreements with more than 10,000 J&J talc exposure clients indicated the firm might only represent them in a bankruptcy setting.

"Verdicts are challenging, period," she said at trial. "And talc claims are very challenging."

Watts, Andrews, and others who supported the Chapter 11 plan now have 30,000 potential lawsuits to file in the coming weeks. But few familiar with the litigation expect the current case load to surge that much, especially considering the upfront expenditures.

Medical records and filing fees can exceed \$1,000 for each suit, and that's before "significant labor costs," Glasser said.

Andrews told Bloomberg Law that her firm is representing claimants beyond the bankruptcy and is getting cases ready for clients looking to sue. She couldn't specify how many of the 10,000 bankruptcy claimants she represents will be filing suit before the deadline but said it's a large number.

Watts said his firm is also preparing to file thousands of cases in federal and state courts.

Delayed Returns

J&J talc litigation is one of the largest in the mass tort space, but its bankruptcy attempts have delayed a settlement. Many lawyers and their financial backers didn't anticipate nearly a decade of case work.

"On the financing side, this is a nightmare," said Steve Nober, president and CEO of Consumer Attorney Marketing Group, a mass tort marketing firm that also works with litigation funders.

Although litigation funders have traditionally stuck to financing commercial cases, many have recently plowed money into mass torts, where deals are structured differently. Instead of financing one or a handful of cases, the funding is structured like a loan typically using the law firm's entire docket as collateral.

Before the Red River bankruptcy, plaintiffs' firm Beasley Allen accused joint venture partner Smith Law Firm of pushing clients to support the Chapter 11 settlement because of pressure to pay off a large debt – "perhaps as high as \$240 million" – to its litigation funder.

"I am sitting in the middle often where I know law firms are not in good shape and would be interested in a secondary funder to take the cases," Nober said.

Cesar Bello, a partner at Corbin Capital Partners who leads the firm's litigation finance effort, said his company didn't have much exposure to the talc litigation until recently, when it took on a law firm with a big talcum powder inventory.

He said the deal involved participating in a piece of a refinance of the law firm, which he declined to name due to confidentiality, with another funder. The law firm is involved with leadership in talc cases and its current loan and cash on hand can cover costs associated with filing bankruptcy claims as lawsuits.

"If not, you probably made a bet on a bad horse," he said.

To contact the reporters on this story: Alex Wolf in New York at awolf@bloomberglaw.com; Emily R. Siegel at esiegel@bloombergindustry.com

To contact the editors responsible for this story: Maria Chutchian at mchutchian@bloombergindustry.com; Rob Tricchinelli at rtricchinelli@bloombergindustry.com

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Insurance**Burford Capital accuses Chubb of abusing market power**

Leading litigation funder hits back at insurance company after it urged peers to cut ties with sector



Chubb's Evan Greenberg had urged brokers and insurers to stop profiting from the litigation funding industry © Bloomberg

Lee Harris in London

Published 7 HOURS AGO | Updated 07:12



Burford Capital's boss has accused Chubb of abusing its market power after the US insurer said it would freeze out lawyers, bankers and asset managers who worked with litigation funders.

Chris Bogart, chief executive of [Burford Capital](#), told the Financial Times that recent remarks by Chubb's head Evan Greenberg urging insurers to cut ties with litigation funders amounted to "an inappropriate use of corporate power" and could be anti-competitive.

Greenberg, speaking at a trade conference in Chicago this month, had urged brokers and insurers to cut ties with the litigation funding industry, which he has accused of driving up the costs of lawsuits. In comments first reported by news platform Insurance Insider, he added that [Chubb](#) would sever ties with lawyers, bankers or asset managers if they continued working with funders. Chubb declined to comment.

The litigation funding sector has boomed in recent years. But it has also attracted pushback from insurers including Chubb, which have argued that such arrangements help fuel “excessive litigation”, pitting them against funders such as Burford.

“My disagreement with Evan is that I think it’s inappropriate to take the market power that large insurers have and try to use it to deny access,” Bogart told the FT. If the insurance industry teamed up to deny access to a “perfectly legal” market, it could raise concerns about anti-competitive practices, he said.

“It would be a little bit like an insurance executive coming along and saying, ‘I don’t want any more development in my neighbourhood, so we’re going to not write any new construction or homeowners policies in my neighbourhood’,” he added.

Litigation funding has become big business in recent years, with groups such as Burford supporting lawsuits around the world against companies including Amazon, Microsoft and Thames Water.

But the sector has attracted criticism from insurers, with Greenberg accusing funders of helping to push up the cost of lawsuits. In [a 2024 letter to shareholders](#) he criticised “third parties” that had “turned their bets on jury awards into an asset class” and said funding had helped to trigger a proliferation of cases “based around clever theories designed to find fault . . . where it simply doesn’t exist”.

Aon, the world’s second-largest broker, last year stopped offering insurance cover for litigation funders. The company said on Tuesday this was because “nuclear verdicts and litigation funding” in the US were creating “an unsustainable marketplace for our corporate and insurance clients”.

While insurers often find themselves at loggerheads with litigation funders in the course of covering big clients against potential losses from individual court cases, some also provide products tailored to the sector.

Assets held in insurance “wrappers”, which can cover losses above a set threshold on pools of uncorrelated legal investments, have grown so much that private credit funds such as Mubadala-backed Fortress Investment Group have lent money against litigation funding portfolios with insurance wrappers, one market participant said.

But the high cost of litigation payouts is worrying insurers, following a number of blockbuster awards handed out by juries in the US. Average damages in US trials [hit a record last year](#), thanks in part to “nuclear verdicts” against tech groups Microsoft and Amazon.

Swiss Re, the world’s second-largest reinsurer, issued a profit warning late last year, saying it would set aside billions of dollars in additional reserves to pay claims stemming from US lawsuits.

“I’m applauding Evan Greenberg,” chief executive Andreas Berger said on Swiss Re’s most recent earnings call, adding, “I welcome any constructive effort to address the abuse” of the legal system.

Bogart said he thought the litigation sector would thrive despite Greenberg’s hostility. “Is he also going to cut off all the law firms that do litigation as well?” he said.

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Tenants sue for toxic debris inspections after Eaton Fire

DJ [dailyjournal.com/articles/385623-tenants-sue-for-toxic-debris-inspections-after-eaton-fire](https://www.dailyjournal.com/articles/385623-tenants-sue-for-toxic-debris-inspections-after-eaton-fire)

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May 27, 2025

Eaton Fire cleanup workers lack PPE, risking their health. Altadena, Pasadena tenants sue Los Angeles County, Pasadena for failing to inspect rentals for toxic ash, seeking declaratory relief.

A destroyed property in Pacific Palisades. Photo: Shutterstock

Most of the work crews clearing the toxic debris left by the Eaton Fire are not wearing masks or other protective gear, according to a report published by the University of Illinois Chicago and conducted by a laborers' advocacy group.

For the report, a team from the National Day Laborer Organizing Network conducted a windshield survey in Altadena on May 7 and May 9. The group identified 240 active worksites in the Altadena fire zone where more than 1,200 workers were present. Of those, 1,065 were involved in clean-up activities at the time of the survey. Only 20% of the workers observed were wearing respiratory masks. Some 73% wore hard hats, 18% wore safety glasses and 24% wore gloves.

"Cleanup work following urban fires is fraught with dangers, from exposure to toxic substances to physical and environmental hazards," the report said.

"Despite California law requiring employers to provide PPE, observations indicate that many workers lack critical protective gear such as respirators, safety glasses, and coveralls. This absence poses severe health risks, including respiratory illness and long-term complications from exposure to toxic substances," it continued.

The Eaton Fire burned more than 14,000 acres, destroyed thousands of structures and led to 18 deaths. It also blanketed the area with lead, asbestos and other contaminants, according to various reports.

Altadena and Pasadena residents on Thursday filed two lawsuits accusing Los Angeles County and the city of Pasadena of violating Health & Safety Code Section 17970.5 by failing to inspect rented homes for those substances. Section 17970.5 says a city or county must inspect a building if it receives a complaint that it is substandard or has lead contamination. The complaints were signed by Lena Silver of Neighborhood Legal Services of Los Angeles County and Whitney R. O'Byrne of Morrison & Foerster LLP.

The lawsuits point at comments from officials acknowledging the potential dangers of smoke, soot and ash from the Eaton Fire.

"The county's failure to inspect rental units for toxic smoke, ash, and soot-related damage to identify conditions that endanger health and safety, and the County's failure to enforce violations as required by law, has delayed or inhibited necessary remediation for tenants who are, or risk being, exposed to these harmful and toxic substances in their homes," states the complaint against Los Angeles County. *Altadena Tenants Union, et al., v. County of Los Angeles, et al.*, 25STCP01915 (L.A. Super. Ct., filed May 21, 2025) and *Pasadena Tenants Union, et al., v. City of Pasadena, et al.*, 25STCP01916 (L.A. Super. Ct., filed May 21, 2025).

Both groups of plaintiffs seek declaratory relief.

"I think it's a strong and righteous claim," said Kabateck LLP's managing partner, Shant A. Karnikian. KBK represents homeowners affected by the Eaton Fire and other wildfires but is not involved in either of the tenant cases.

"The county is supposed to be looking out for the conditions of these units. The law requires it. Even the landlords stand to benefit from it, because it would substantiate the insurance claim the landlord is going to make," Karnikian continued.

A representative from the county CEO's office said they had no comment. Pasadena officials did not respond to a request for comment.

A putative class action accusing Southern California Edison of widespread lead and asbestos contamination from the Eaton Fire was filed in Los Angeles County Superior Court in May. Edison is accused of sparking the Eaton Fire. Edison is disputing that allegation.

That complaint cites environmental tests performed separately by Caltech geochemistry professor Francois Tissot and the non-profit advocacy group Eaton Fire Residents United. It says virtually all the homes they tested had lead contamination, with a significant portion in excess of EPA limits. *Amber Diaz, et al. v. Southern California Edison*, 25STCV13469 (L.A. Super. Ct., filed May 7, 2025)

#385623

Bobcat Fire settlement: Edison pays \$82.5M for damage

DJ [dailyjournal.com/articles/385625-bobcat-fire-settlement-edison-pays-82-5m-for-damage](https://www.dailyjournal.com/articles/385625-bobcat-fire-settlement-edison-pays-82-5m-for-damage)

U.S. Attorney Bill Essayli

The largest wildfire cost recovery in the Central District of California was settled on Friday after Southern California Edison agreed to pay \$82.5 million to the U.S. over damages associated with the 2020 Los Angeles County wildfire in and around the Angeles National Forest.

"This record settlement against Southern California Edison provides meaningful compensation to taxpayers for the extensive costs of fighting the Bobcat Fire and for the widespread damage to public lands," U.S. Attorney Bill Essayli said in a statement.

"My office will continue to aggressively pursue recovery for suppression costs and environmental damages from any entity that causes harm to the public's forests and other precious national resources."

Assistant U.S. Attorneys Joseph W. Tursi and Sarah Quist filed the lawsuit and negotiated the settlement.

A Southern California Edison spokesperson, Gabriela Ornelas, said in a statement: "Our hearts are with the people who were affected by the Bobcat Fire. We are pleased to have resolved this matter and will continue to advance wildfire mitigation measures to further enhance public safety and resiliency."

Hueston Hennigan LLP partners John C. Hueston and Douglas J. Dixon, along with counsel Emily M. Munson, defended the electric utility company. They were not available for comment by press deadline on Friday.

In 2023, on behalf of the U.S. Forest Service, the government sued Edison and its tree maintenance contractor, claiming the fire was caused by a failure to properly maintain trees that came into contact with power lines. The contractor defendant, Utility Tree Service, was dismissed from the case and was not involved in Friday's settlement. *U.S. v. Southern California Edison Company et al.*, 2:23-cv-07254 (C.D. Cal., filed Sept. 1, 2023).

The Bobcat Fire, among California's most destructive, raged between September and November 2020 and burned more than 114,000 acres of land - including over 100,000 acres in the Angeles National Forest - and destroyed hundreds of structures and vehicles.

On May 14, the settlement was put on the table, according to a press release from Essayli's office. Days later, Edison - without admitting wrongdoing or fault - agreed to pay \$82.5 million to resolve the claims.

According to the complaint, the Forest Service spent upward of \$56 million to fight the fire, and the U.S. incurred property and natural resource damages of over \$65 million plus burned area emergency response costs of over \$769,000.

#385625

Daily Journal Staff Writer
devon_belcher@dailyjournal.com

Class Action

Kellogg, FedEx Retiree Appeals Spur Pension Law History Lesson

May 27, 2025, 7:17 AM PDT

- **Separate cases argued before 6th Cir. panel earlier this month**
- **Historical take on legal terms given in court-requested briefs**

A pair of appeals challenging pension amounts for certain Kellogg Co. and FedEx Corp. retirees has spurred a Sixth Circuit debate over how a specific phrase in federal benefits law was understood 50 years ago.

The dispute centers on what it means for one pension format to be the “actuarial equivalent” of another format under the 50-year-old Employee Retirement Income Security Act. Retirees accusing FedEx and Kellogg successors Kellanova and WK Kellogg Co. of shortchanging their pensions say this statutory phrase was a term of art under actuarial science, and it requires calculations that reflect real-life conditions with an eye toward “cost neutrality” between benefit options.

“Sources from the 1950s through the 1970s make clear that the concept of actuarial equivalence was grounded in actuarial science, *not* a plan sponsor’s discretion (or preferences or policy choices),” both sets of retirees said in substantially similar briefs. “The term had an objective meaning, aimed at ensuring accuracy in benefit valuation.”

The Kellogg defendants offered a different interpretation, telling the US Court of Appeals for the Sixth Circuit that the term “‘actuarial equivalent’ was not a precisely defined term of art in 1974 any more than it is today.” Nothing in the historical record suggests the actuarial field required the use of “frequently updated tables and assumptions that Plaintiffs advocate here.”

FedEx also disputed that the term “actuarial equivalent” includes implicit limits on which actuarial assumptions can be used. “If laws imposed requirements in regard to the selection of actuarial assumptions, they did so through separate explicit requirements, not through a mere reference to being an ‘actuarial equivalent,’” the company said in its brief.

The separate cases accuse FedEx and the Kellogg defendants of shortchanging the retirement benefits of workers who choose pensions that make post-death payments to their surviving spouses. The proposed class actions say both companies calculated these benefits using outdated formulas and decades-old actuarial tables that don’t reflect recent increases in lifespan, causing these pensions to be worth less than a traditional, single-life pension in violation of ERISA.

Both cases were dismissed in 2024 by federal judges who declined to read ERISA as including a requirement that these pension calculations rest on actuarial assumptions that are “reasonable.” The retirees appealed, and a Sixth Circuit panel including Judges Jane Branstetter Stranch, John K. Bush, and John B. Nalbandian heard arguments in both cases on May 8. A week later, the judges asked the parties to file supplemental briefs discussing what “actuarial equivalent” meant when ERISA was enacted in 1974.

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

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

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

The cases are Reichert v. Kellogg Co., 6th Cir., No. 24-1442, supplemental briefs 5/23/25 ; Watt v. FedEx Corp., 6th Cir., No. 24-5945, supplemental briefs 5/23/25 .

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

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

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Class Action

Zacks Investment Data Breach Suits Get Withdrawn by Plaintiffs

May 27, 2025, 9:22 AM PDT

Victims of a Zacks Investment Research Inc. data breach have withdrawn their proposed class actions, and a federal court has thus dismissed their cases with prejudice.

Allyson Eggert, Valerie Bicker, and Joseph Trouy all alleged in separate complaints in the US District Court for the Northern District of Illinois that because of Zacks' negligence, names, addresses, and phone numbers were exposed in a data security incident. The plaintiffs said their info made it to the dark web.

- Bicker's case was dismissed May 23, before Zacks had filed an answer to the complaint
- Eggert's and Trouy's cases were dismissed on May 20; all three cases were overseen by different judges
- Zacks, and counsel for the plaintiffs, didn't immediately respond to a request for comment

Milberg Coleman Bryson Phillips Grossman PLLC represented Eggert. Lynch Carpenter LLP represented Bicker. Kopelowitz Ostrow Ferguson Weiselberg Gilbert PA represented Trouy.

Greenberg Traurig LLP represented Zacks.

The cases are Eggert v. Zacks Inv. Rsch. Inc. , N.D. Ill., No. 1:25-cv-01755, 5/20/25 , Bicker v. Zacks Inv. Rsch. Inc. , N.D. Ill., No. 1:25-cv-02279, 5/23/25 , and Trouy v. Zacks Inv. Rsch. Inc. , N.D. Ill., No. 1:25-cv-02344, 5/20/25 .

To contact the reporter on this story: Ufonobong Umanah in Washington at uumanah@bloombergindustry.com

To contact the editor responsible for this story: Naomi Jagoda at njagoda@bloombergindustry.com

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Pixels, Privacy, and Precedent: The Shifting Legal Landscape of Web Tracking Class Actions

 [law.com/newyorklawjournal/2025/05/27/pixels-privacy-and-precedent-the-shifting-legal-landscape-of-web-tracking-class-actions](https://www.law.com/newyorklawjournal/2025/05/27/pixels-privacy-and-precedent-the-shifting-legal-landscape-of-web-tracking-class-actions)

John C. Cleary and Jonathan E. Schmalfeld

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State and federal courts continue to grapple with an influx of class action lawsuits targeting website analytic technologies and practices. These suits typically allege a range of injuries based on common law privacy rights, breach of contract, and federal and state statutory schemes with “per violation” penalties.

Adding to the complexity, the cited statutes often involve wiretapping laws or other privacy protection laws enacted before the dawn of the modern internet. Litigants and courts are left with daunting statutory interpretation issues, applying antiquated terms and concepts to transmission or receipt of third-party information through internet-enabled technologies such as pixels, beacons, tags, cookies, or scripts or, perhaps in the not-to-distant future, artificial intelligence tools and apps.

These cases and their pretrial rulings, often on issues of first impression, have been applied to e-commerce and data collection practices that, until recently, were widely regarded as non-injurious, lawful and low-risk.

Despite the volume of litigation, results in these cases remain mixed, with few definitive decisions on the merits and a great deal of legal uncertainty still surrounding core issues.

Ongoing Battles Against Big Tech

Much of the attention and judicial activity in this area has centered on litigation against “Big Tech” companies. These companies provide innumerable services and web capabilities to individuals. They also supply businesses with software and analytics services using that software to help leverage marketing and advertising opportunities on their platforms.

Cases alleging that the use of such software violates consumer privacy rights were initially situated largely in California, where courts are sorting through complex issues concerning user consent, data sharing, and the application of decades-old privacy statutes to modern internet architecture.

Those lawsuits have since been brought across the country after attempts at early dismissals of the California cases against Big Tech companies were often unsuccessful.

Suits Against Players Other Than Big Tech

The enterprising members of the privacy plaintiffs class action bar have not hesitated to side-step Big Tech in new cases and are simply filing direct suits or “aider and abettor” suits against website owners and hosts and other e-commerce players in courts across the country.

Though some rulings in early high-profile cases have provided helpful reference points for litigants and courts nationwide, the cases as a whole have yet to produce comprehensive guidance.

Indeed, not surprisingly, court-to-court and even judge-to-judge variability in legal interpretation continues to plague this area – both as to substantive privacy law as well as the procedural options available to defendants to dispose of cases fairly and efficiently at the earliest possible juncture.

Many of the longest running web-tracking suits are entering their fourth or fifth year, bogged down by pretrial motion practice and discovery disputes. This volatility leaves many companies using technologies which have become ubiquitous across the modern internet in the crosshairs of similar litigation.

This is especially disruptive for small and mid-sized e-commerce businesses, which are left with little option but to independently litigate these claims, often without a clear legal roadmap. Relief from courts, Congress, or state legislatures appears unlikely in the near term.

Class Certification and Arbitration Hurdles

To date, no major web-tracking class action has proceeded to trial on the merits, and relatively few have reached definitive rulings on contested motions for class certification. However, certain themes are emerging in judicial decisions that merit close attention.

First, the consent defense is proving to be a formidable obstacle to class certification. Increasingly, courts are recognizing that whether a user consented to data tracking is a fact-intensive inquiry that varies significantly based on the specific context of the interaction.

This includes considerations such as the device used, the nature of disclosures made, and the user’s pre-existing knowledge and expectations and individual behavior on the website at issue. These factual nuances often render the consent issue unsuitable for class-wide resolution and undermine the typicality and predominance elements required under Federal Rule of Civil Procedure 23 and similar state rules of civil procedure.

Second, issues of ascertainability continue to impede certification efforts. Plaintiffs often struggle to identify a clearly defined class or to propose a reliable method for determining class membership without individualized fact-finding.

Courts have repeatedly emphasized the difficulty in drawing administrable lines around who was “tracked,” when, and under what circumstances—particularly when website visits are anonymous or involve dynamic identifiers.

Even after discovery, it can be difficult to ascertain which website users were tracked and the extent of that tracking on an individual or collective basis. See *Martinez v. D2C, LLC*, Case No. 23-21394-Civ-Scola, 2024 WL 4367406, at *7-8 (S.D. Fla. Oct. 1, 2024) (denying class certification due to individual issues negating the ability to show numerosity of allegedly affected individuals).

Arbitration agreements and accompanying provisions such as class action waivers and jury trial waivers can be a valuable tool for defendants seeking to reduce exposure and procedural complexity. However, their enforcement is not without challenge.

Plaintiffs may argue that the arbitration clause is unenforceable, poorly disclosed, or inapplicable to their claims. Courts are often skeptical of efforts to apply arbitration agreements to users if the user’s consent to arbitrate is tenuous or ambiguous.

Moreover, while a successful motion to compel arbitration can end litigation in court, it may also fragment the defense strategy and increase the risk of inconsistent outcomes across multiple forums.

All that said, the recent class certification decision in the *Flo Health* case, *Erica Frasco v. Flo Health Inc., et al.*, No. 3:21-cv-00757

In *Flo Health*, a California District Court granted class certification in a healthcare web tracking case, finding that common issues of law and fact—such as uniform privacy representations by Flo Health and consistent data-sharing practices—predominated over individual ones, thereby satisfying Rule 23 requirements.

It also rejected the defendants’ arguments that arbitration clauses, class action waivers, and implied consent defeated certification, holding the waiver unconscionable, the arbitration defense undeveloped, and the consent defense unsupported by evidence sufficient to bar class wide adjudication.

The different rulings in *D2C, LLC* and *Flo Health* typify the difficulties companies face in determining how a particular court will rule and creating a meaningful risk/benefit assessment in the course of adopting the latest available technologies and defending those technologies when faced with a web-tracking litigation matter.

New York Courts and Jurisdictional Dynamics

New York courts are increasingly engaged in adjudicating web-tracking class actions. These cases typically find their way into the state through forum selection clauses in consumer agreements or the physical and economic presence of major e-commerce players in the New York area.

As with other jurisdictions, New York judges are being asked to interpret statutes drafted in pre-digital eras and to apply them to ubiquitous internet technologies. While trial and appellate courts in New York have yet to crystallize a definitive approach, practitioners and their clients should expect more robust jurisprudence to emerge in the coming year.

To the surprise of many, the Massachusetts Supreme Judicial Court jumped out in front of New York (and California) last year in its ruling in *Vita v. New England Baptist Hosp.*, No. SJC-13542, 243 N.E.3d 1185 (2024), curtailing the most strained aspects of the Massachusetts state privacy law that were being cited in support of class action liability in the health care sector for web-tracking functionality.

In a lengthy ruling, the court parted company with the approach taken in recent California cases and instead ruled that the legislature could not have contemplated and therefore could not have intended to prohibit the web-tracking capabilities in suit.

In federal courts, the Second Circuit recently upheld the dismissal of a web-tracking class action brought against digital streaming provider Flippo Media Inc. alleging the use of such technologies violated the federal Video Privacy Protection Act (the VPPA). See *Solomon v. Flippo Media, Inc.*, Case No. 23-7597 (2nd Cir. May 1, 2025).

In its ruling, the court in *Flippo Media* sided with the Third and Ninth Circuits and held that the VPPA's prohibition on the disclosure of personally identifiable information does not extend to computer code which an ordinary person would not be able to use to identify a consumer's video-watching habits.

The New York legislature recently passed the New York Health Information Privacy Act (New York HIPA), which would require companies to seek and obtain written consent to track health data use beyond necessary processing. That legislation is awaiting signature from the Governor to become law.

If enacted, even though it has no private right of action, this law can be expected to spawn further interest in web-tracking litigation against New York healthcare providers just as the federal Health Insurance Portability and Accountability Act (HIPAA) has been invoked by plaintiff lawyers to buttress web-tracking claims against healthcare providers across the country.

The New York HIPA is the type of law that companies need to be monitoring for, because even if it does not explicitly call out web-tracking technologies or provide for a private right of action, it has privacy mandates and implications that are intended to “raise the bar” of privacy compliance.

As with so many of its predecessors, it will prompt some regulated companies to step up their compliance, while others will fall behind, and yet others will be baffled as to what more can be expected of them. It is no surprise that this can be a breeding ground for yet further web-tracking litigation.

Addressing Website Tracking Litigation Risk

The most straightforward way to minimize website tracking litigation risk is to avoid deploying third-party tracking tools to website domains, subdomains, or discrete sections of websites at all. However, a complete ban on these tools could significantly hinder business objectives.

A more strategic approach can preserve marketing advantages while complying with current law and mitigating legal exposure. Elements to be considered in the formulation of such a plan would include:

Using in-house or external legal and technical resources to identify and characterize any third-party tracking technologies and other tools in use. This should include regular scrutiny of web-tracking technologies, including pixels, cookies, session replay tools, and third-party integrations, as well as the contractual requirements and insurance frameworks applicable to these technologies.

Developing a user consent management platform with geofencing or use case-specific opt-in features, and reconfirming that consent mechanisms are conspicuous, comprehensible, and tailored to jurisdiction-specific requirements, especially in jurisdictions where much of this litigation is brought such as California and other states with privacy statutes which implicate website analytics technologies.

Reviewing and updating website privacy policies, cookie banners, and website consents to accurately reflect the use of tracking tools and maintaining robust internal documentation of user consent flows and privacy policy updates.

In line with business processes and priorities regarding dispute resolution, review and revise terms of use to include enforceable arbitration clauses, class action waivers and jury trial waivers, keeping in mind the latest jurisprudential trends and prerequisites affecting their use and enforceability.

With these steps, companies can better navigate the competing imperatives of vibrant and robust marketing versus the need for compliance with current law governing websites and tracking activities, all toward the end goal of minimizing the risk of online tracking class actions while being in a strong posture if a suit is filed and needs to be defended.

John C. Cleary *heads up the firm's Privacy Litigation Group and serves as a Tech Transactions and Data Privacy Shareholder at Polsinelli.* **Jonathan E. Schmalfeld** *is a Tech Transactions and Data Privacy Associate at Polsinelli.*

Trouble with AI 'hallucinations' spreads to big law firms

 [reuters.com/legal/government/trouble-with-ai-hallucinations-spreads-big-law-firms-2025-05-23](https://www.reuters.com/legal/government/trouble-with-ai-hallucinations-spreads-big-law-firms-2025-05-23)

Sara Merken

May 23, 2025

AI (Artificial Intelligence) letters are placed on computer motherboard in this illustration taken, June 23, 2023. REUTERS/Dado Ruvic/Illustration Purchase Licensing Rights, opens new tab

May 23 (Reuters) - Another large law firm was forced to explain itself to a judge this week for submitting a court filing with made-up citations generated by an artificial intelligence chatbot.

Attorneys from Mississippi-founded law firm Butler Snow apologized to U.S. District Judge Anna Manasco in Alabama after they inadvertently included case citations generated by ChatGPT in two court filings.

Butler Snow partner Matthew Reeves said in a Monday filing that he regretted his "lapse in diligence and judgment" for failing to verify the citations.

The 400-lawyer firm, which did not immediately respond to a request for comment, is defending former Alabama Department of Corrections Commissioner Jeff Dunn in an inmate's lawsuit alleging he was repeatedly attacked in prison. Dunn has denied wrongdoing. The judge has not yet said whether she will impose sanctions over the filings.

Jamila Mensah of Norton Rose Fulbright, one of the lawyers representing plaintiff Frankie Johnson, declined to comment.

AI-generated fictions, known as "hallucinations," have cropped up in court filings and landed attorneys in hot water ever since ChatGPT and other generative AI programs became widely available more than two years ago. Courts have sanctioned and admonished attorneys around the country for violating professional rules that require them to vet their work however it is produced.

Many of the cases have involved small law firms or self-represented litigants. But examples of big firms or big companies grappling with AI hallucinations are growing.

Last week a lawyer at law firm Latham & Watkins, which is defending AI company Anthropic in a copyright lawsuit related to music lyrics, apologized to a California federal judge after submitting, opens new tab an expert report that cited an article title invented by AI. Lawyers for the music publishers suing Anthropic have asked the judge to exclude the report. The judge has not yet ruled on the request.

Earlier this month, a court-appointed special master imposed sanctions, opens new tab and ordered law firm K&L Gates and a smaller firm, Ellis George, to pay \$31,100 for what he

called a "collective debacle" in which they included inaccurate case citations and quotations stemming from the use of AI in a filing.

Lawyers from the two firms are representing former Los Angeles County District Attorney Jackie Lacey in a dispute with insurance giant State Farm. A spokesperson for K&L Gates and a lawyer at Ellis George did not immediately respond to requests for comment. State Farm and its lawyers at Sheppard Mullin did not immediately respond to similar requests.

The special master, retired judge Michael Wilner, wrote in the order that he had been "affirmatively misled" by the filing. "I read their brief, was persuaded (or at least intrigued) by the authorities that they cited, and looked up the decisions to learn more about them – only to find that they didn't exist," he wrote. "That's scary."

Daniel Linna, a senior lecturer and director of law and technology initiatives at Northwestern's law and engineering schools, said the inclusion of AI-generated fabrications in court briefs is in part a result of a lack of education and training.

Despite the perils, AI also has the potential to increase the quality of legal briefs and improve access to justice, he said.

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EXCLUSIVE TECHNOLOGY

The Self-Driving Truck Startup That Siphoned Trade Secrets to Chinese Companies

TuSimple shared with Beijing best-in-class autonomous driving system—and became example of Washington's shortcomings in keeping critical technology in U.S.

By [Heather Somerville](#) [Follow](#)

May 27, 2025 5:30 am ET



ILLUSTRATION: EMIL LENDOF/WSJ, CASSIDY ARAIZA FOR WSJ

A week after one of America's largest self-driving truck companies promised the U.S. government it would stop sharing sensitive technology with Chinese partners, [TuSimple](#) TSPH **0.00%** ▲ transferred a trove of data to a Beijing-owned firm.

"They want a lot of details," Xiaoling Han, a U.S.-based TuSimple Holdings employee, said to a colleague. A leading Chinese commercial-truck manufacturer, Foton, sought the data from TuSimple's many test drives around Texas. "It is pretty time consuming," Han wrote in a February 2022 chat exchange seen by The Wall Street Journal.

TuSimple was a leader in the global race to develop self-driving trucks that could solve chronic driver shortages, make freight hauling cheaper and bolster military operations. Founded by two Chinese entrepreneurs with money from a Chinese business mogul, the San Diego-based company set a record when its truck traveled 80 miles in Arizona without a human driver.

It shared that technical feat and others achieved on American highways with its partners in China, according to hundreds of pages of previously unreported company correspondence viewed by the Journal.

Within a year and a half, TuSimple voluntarily [shut down its U.S. operations](#), auctioned off its trucks and delisted from the Nasdaq. Its leaders moved hundreds of millions of dollars raised from U.S. investors from the company's accounts to China, according to legal documents, and started new business ventures.



TuSimple autonomous trucks parked at the company's Tucson, Ariz., facility in 2021. PHOTO: CASSIDY ARAIZA FOR THE WALL STREET JOURNAL

The story of TuSimple's technology transfer and the political imbroglio that followed laid bare the weaknesses in U.S. laws aimed at facilitating foreign investment while protecting American know-how. It is now informing a transformation of how [the U.S. polices companies with Chinese ties](#).

In February, President Trump told his administration to stop using a particular type of agreement intended to monitor the behavior of risky companies. That is in part because his advisers had been so frustrated by the scope of intellectual property TuSimple was able to export to China, people familiar with the matter said.

Some officials now believe the U.S. has erred in trusting Chinese entities to abide by such agreements, and should be more willing to block China-backed business deals outright.

The TuSimple case also helped shape new Commerce Department rules issued this year prohibiting sales of internet-connected cars and their components that have ties to China, according to a person familiar with the matter. Similar rules for commercial vehicles—including heavy trucks—are forthcoming.

Documents viewed by the Journal show how TuSimple shared with Chinese partners an array of data that amounted to the design of an American-made autonomous driving system.

They show the sharing continued between when TuSimple signed a national-security agreement with the U.S. government in February 2022, and its deadline to comply six months later.

That agreement ordered TuSimple to separate its business and technology from China-based employees and partners with firewalls and governance controls, and to prevent the sharing of intellectual property. It was enforced by the Committee on Foreign Investment in the U.S., or Cfius, an interagency national-security panel.

A Cfius investigation ultimately determined that TuSimple's tech sharing hadn't violated its national-security agreement, but it fined the company for other infractions, according to a person with knowledge of the events. TuSimple paid a \$6 million settlement without admitting fault.

TuSimple co-founder Xiaodi Hou, who left the company in 2023, said no information prohibited by the company's national-security agreement "was ever shared with anyone."

Hou and Mo Chen co-founded TuSimple a decade ago with money from Charles Chao, who runs a Chinese media empire called Sina. They built much of the company in the U.S., which offered an easier regulatory environment, the world's largest freight-trucking market and abundant access to capital.

TuSimple in 2021 raised \$1.4 billion in the first-ever U.S. public listing by a self-driving trucking company, and signed business deals with the [United Parcel Service](#), [Volkswagen](#) and Navistar International.

As TuSimple gained momentum in the U.S., Chen founded another startup in China called Hydron that said it had plans to build hydrogen-powered trucks for TuSimple. Hydron, also funded by tens of millions from Sina, according to people familiar with the matter, had few operations of its own and shared employees and an office with TuSimple in Beijing.

Hydron in late 2021 struck an agreement to develop autonomous driving trucks with Foton in a deal that was negotiated by TuSimple, according to a document seen by the Journal. Foton is a subsidiary of China state-owned BAIC Group,

TuSimple co-founder Xiaodi Hou PHOTO: HARRY MURPHY/SPORTSFILE/WEB SUMMIT/GETTY

which has an agreement with a Chinese military university to work on driverless technology. BAIC and Foton didn't respond to requests for comment.

One email, Slack message and videoconference at a time, TuSimple sent Chinese partners technical instructions for server dimensions, brake designs, sensors, steering, power supply and chips, according to documents seen by the Journal. Some of the documents, which also contain schematics and compute requirements, were translated from Chinese.

In the Beijing office shared by TuSimple and Hydron, employees routinely downloaded the autonomy source code developed by engineers in the U.S. through joint access to a repository, former employees said.

Hou said TuSimple never shared protected information with Hydron and isn't aware of any plan to collaborate with Foton. Documents seen by the Journal show TuSimple's staff communicating frequently with Foton.

At times, TuSimple shared technology that had been developed with American partners, including Navistar. Han, the TuSimple employee, asked colleagues to provide Foton truck steering and control system designs that were created "based on the results of previous discussions with Navistar," according to a March 2022 email.

A spokesman for Navistar, now called International Motors, declined to comment. Han and Chen didn't respond to requests for comment.

Cfius representatives visited TuSimple's headquarters in April 2022 and concluded that TuSimple hadn't violated its agreement, according to people familiar with the matter. Later that year, Cfius members referred company leadership to the Justice Department for [possible trade-secrets theft and economic espionage](#) charges.

The U.S. government across administrations has identified maintaining America's superiority over China in technology, including autonomous driving, as a pressing national-security priority. But autonomous driving systems aren't explicitly covered by export controls, and the phalanx of foreign-investment reviews and criminal investigations have provided limited protection.

The Federal Bureau of Investigation and Securities and Exchange Commission [opened investigations](#) into TuSimple's relationship with Hydron in 2022. The following year, the Commerce Department intercepted an attempt by TuSimple [to ship Nvidia artificial-intelligence chips](#) out of the country and launched an investigation.

In a recent public filing, TuSimple said it had reached an agreement on a settlement with the SEC that awaited commission approval. The status of the other investigations couldn't be learned.

A law firm hired by TuSimple's board to investigate TuSimple's various dealings with Hydron reported finding evidence of deep and longstanding ties with the Chinese company, according to a document seen by the Journal.

Hou is making another run at self-driving trucks with a new company in Texas called Bot Auto. The startup is staffed with former TuSimple employees, including Han, and funded partly with Chinese capital. Hou, a U.S. citizen, said no foreign entity has a controlling or majority stake in his company.

Chen and TuSimple Chief Executive Cheng Lu dismissed the U.S. government probes during a September press conference in China. The pair is now using money from TuSimple to fund a new venture in China creating AI for animation, with help from Chao's company Sina.

"These investigations are relatively minor issues," Lu said.

Write to Heather Somerville at heather.somerville@wsj.com

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Securities Law News

Andrew Left's Lawyer Says Case Doesn't Fit Trump Priorities (1)

May 23, 2025, 1:57 PM PDT

Short seller **Andrew Left** is making a new push to sway the US Justice Department to drop fraud charges filed against him last year, hiring a former federal prosecutor to make fresh arguments directly to the Trump administration.

The strategy hinges on convincing the Justice Department that the case against Left isn't in line with President Donald Trump's enforcement priorities. It's an argument that could gain traction with a department that has already dropped some criminal cases as a result of the president's directives.

Left, whose stock tips were closely watched by thousands of investors, was charged with securities fraud in July 2024 following a wide-ranging probe into the industry. He and his firm, Citron Research, are accused of using false and misleading social-media posts about his trading plans in more than a dozen companies to nudge their stock up or down enough to make a quick profit.



Andrew Left

Photographer: Patrick T. Fallon/Bloomberg

Left's new lead lawyer, Eric Rosen, said the veteran trader is "heartened" by what he describes as the Trump administration's investor protection priorities. "Because of that, we are continuing to engage with administration officials on the hopes that they will re-evaluate this case, consistent with the directives of the president," he said in a statement.

Left has pleaded not guilty and moved to have the case dismissed. "There was no fraud, no deception, no victim — just protected speech followed by lawful trading," Rosen said. A hearing is set for July 7 in federal court in Los Angeles.

The Justice Department declined to comment on the case.

Court filings this week show Left replaced his lead defense attorney with Rosen, a seasoned former prosecutor. The founding partner of Dynamis LLP, Rosen is known for leading one of the biggest DOJ criminal cases of the past decade — the so-called Varsity Blues college admissions case — before going into private practice.

Rosen has been working on the case for several months but is now calling the shots.

Read More: College Scandal Parents Say 'VIP List' Proves Admissions a Game

Trump has already stepped in to help individuals in financial cases since he took office in January. In March, Trump commuted the sentence of Ozy Media co-founder **Carlos Watson**, who was convicted of lying to investors in his startup. Trump also pardoned Nikola Corp. founder **Trevor Milton**, convicted of fraud over misrepresentations about the electric-truck maker's financial progress, as well as the three co-founders of the crypto exchange BitMex who pleaded guilty in 2022 to violating the Bank Secrecy Act.

As of February, the Justice Department was continuing to press its case. In response to Left's motion to dismiss, prosecutors said in a court filing that Left had "engaged in a classic securities fraud scheme."

"He provided false and misleading information to investors, while hiding his true intentions so he could profit at their expense," the US said.

The indictment relies heavily on Left's social-media posts, as well as emails about the effects of his commentary. Prosecutors pointed to those posts in urging the judge to let the case proceed to trial.

A judge last month denied Left's request to dismiss a parallel civil suit by the US Securities and Exchange Commission. In both cases, Left is accused of setting "extreme" target prices for companies in hopes that investors who saw his posts would trade one way while he traded another. The case has already led to some self-imposed changes in the industry as a number of short sellers beefed up their disclaimers in response to the charges.

Rosen hopes the government will set the record straight on Left's activity and drop the charges the way it recently ended a long-running foreign bribery case against former executives at Cognizant Technology Solutions Corp. before trial, citing Trump's new priorities.

"The case against Andrew Left merits reconsideration," Rosen said.

(Adds that the DOJ declined to comment in fifth paragraph.)

To contact the reporter on this story:

Erik Larson in New York at el Larson4@bloomberg.net

To contact the editors responsible for this story:

Misyrlena Egkolfopoulou at megkolfopoul@bloomberg.net

Anthony Aarons, Steve Stroth

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Securities Law News

Two Ex-Lottery.com Executives Plead Guilty to Securities Fraud

May 23, 2025, 12:42 PM PDT

- Sentencing before Judge Alvin K. Hellors set for November
- CEO of SPAC that took Lottery.com public was previously indicted

Two former Lottery.com Inc. executives have pleaded guilty to securities fraud charges in connection with a scheme to fraudulently inflate the financial results of a company that promoted itself as the lottery equivalent of Uber or Doordash.

Ryan Dickinson, the company's former chief financial officer, pleaded guilty Thursday in the US District Court for the Southern District of New York to one count of conspiracy to commit securities fraud, to make false and misleading statements in proxy statements, and to make false filings to the US Securities and Exchange Commission.

He also pleaded guilty to one count of securities fraud, one count of making false SEC filings, and one count of improperly influencing the conduct of audits.

Former chief revenue officer Matthew Clemenson pleaded guilty to the same charges, minus the count for influencing the conduct of audits.

The pleas are part of a case that federal prosecutors filed in February against the ex-CEO of the blank-check company that acquired Lottery.com to launch it into the public markets. That indictment accuses Vadim Komissarov of defrauding investors in Trident Acquisitions Corp. by reporting fake revenues about Lottery.com and selling off his shares before the market found out.

The guilty pleas come a year after Bloomberg Tax chronicled Lottery.com's near collapse, including details how revenue that it reported in its first quarter as a public company was almost entirely fictitious. Later, the story disclosed, Dickinson allegedly helped persuade a California church to loan most of its cash reserves, \$2.7 million, to cover his personal tax obligations. The church lost all of its money, it later alleged in a lawsuit. The federal charges do not include allegations about the church claims.

The federal charges revolve largely around a \$30 million financing deal and an overpriced acquisition of a Mexican gaming company that were both allegedly designed to inflate the company's revenues.

Lottery.com went public in November 2021 via a merger with Trident, a so-called special purpose acquisition company, or SPAC. The startup, originally known as AutoLotto, set out to be the DoorDash or Uber of lottery ticket sales, allowing customers to skip the trip to the corner store and buy tickets on their phones via an app.

Behind the flashy phone technology, the company had to rely on couriers to make in-person paper ticket purchases and struggled to comply with a complex web of state gambling regulations. By mid-2022, the company couldn't make payroll, and its board later forced management to shut down the lottery operations.

Lottery.com has since changed its business focus to sports entertainment and overhauled its C-suite, even as it has come under scrutiny in Texas for playing a part in what lawmakers say was a rigged lottery drawing.

Both Dickinson and Clemenson are set to be sentenced by Judge Alvin K. Hellers in late November. Komissarov, who has been charged with securities fraud, conspiracy, obstruction, and perjury, has pleaded not guilty.

Clemenson and Dickinson are represented by McDermott Will & Emery. Komissarov is represented by Loeb & Loeb LLP.

The case is United States v. Dickinson/Clemenson, S.D.N.Y., No. 1:25-cr-00061, pleas entered 5/22/25 .

To contact the reporter on this story: Holly Barker in Washington at hbarker@bloombergindustry.com. To contact the reporter on this story: Nicola M. White in Washington at nicwhite@bloomberg.net.

To contact the editors responsible for this story: Bernie Kohn at bkohn@bloomberglaw.com; Jeff Harrington at jharrington@bloombergindustry.com

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Securities Law News

Deep Dive

US Audit Board Urged to Reform as Congress Weighs Its Future

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- Debate over PCAOB's fate opens well of critiques
- Fresh inspections strategy, greater transparency top list

The US audit regulator will confront calls for change from both supporters and detractors even if it survives an effort in Congress to reassign its duties to the SEC.

Debate over the future of the Public Company Accounting Oversight Board has sparked calls for reforms short of dismantling the Enron-era regulator, including redirecting the board's inspections toward lingering problems that could undermine audit quality and providing more transparency into its standard setting.

"We're looking for long-term change to the way things are operating at the PCAOB," said Allison Henry, vice president for professional and technical standards with the Pennsylvania Institute of CPAs. "We want to take advantage of this opportunity to say can we make thoughtful change that helps the process to ensure that we're focused on achieving high audit quality."

Auditors have clashed with the board as Chair Erica Williams took a more muscular approach to oversight. Under her leadership, enforcement penalties have tripled and the board adopted new tools to hold auditors accountable.

Now, the board finds itself in the crosshairs of the Trump administration's deregulatory agenda that aims to shutter much larger federal agencies.

Congress is rethinking a model it created in 2002, as part of the Sarbanes-Oxley Act, of an independent agency responsible for setting standards, inspecting audits, and enforcing its rules. A sweeping tax-and-spending bill the Republican-controlled House passed last week would sunset the board and its funding and transfer its responsibilities to the Securities and Exchange Commission, which oversees the board's work.

The board declined to comment. Williams, who was appointed by former SEC Chair Gary Gensler, has defended the both the board's work and Congress' original oversight design. She has warned that it could take years to recreate PCAOB's inspection program, which has a global reach and has benefited investors by advancing the quality of audits.

Transparency, Inspections Top List

Bringing more transparency to the audit watchdog—from how it determines financial penalties to development of its rule-writing program—is on the list of concerns for auditors and others who closely watch the board's work. Its enforcement strategy and structure especially concern smaller auditors who may lack the resources to challenge the board's disciplinary process.

The push-pull between the regulator and the audit industry isn't new, nor is the debate over the purpose and structure of the board, which was the subject of the Supreme Court's 2010 ruling in *Free Enterprise Fund v. PCAOB*.

But dramatic swings in approach and agenda as the board's leadership shifted twice since 2017 have left auditors and those who represent them frustrated.

"The expectations of the auditor from the regulator in my opinion should be consistent year after year," said David Sullivan, former US and global audit quality leader for Deloitte. "That consistency drives higher audit quality, which drives trust."

PCAOB inspections gauge performance by checking how well auditors comply with the board's rules and professional standards. But the board's technical assessments of the thorniest areas of an audit have long left investors and auditors seeking a better report card.

Instead of focusing on the number of technical violations, inspections should target pervasive problems that could undermine the audit—details not shared publicly, said Robert Knechel, a scholar at the University of Florida.

"We've got the reporting exactly backwards," Knechel said.

Inspection findings initially rose under Williams as the board scrutinized audits covering the turbulent years during the height of the Covid-19 pandemic, but have started to decline.

Williams also launched an ambitious project to update the board's aging rules and in many cases set a higher bar for quality. Auditors sought to scale back and slow down those proposals.

Whether the board, or another outside entity, should set standards for US public company audits is another aspect of the board's work observers would like to see examined.

Some argue that a bigger, more diverse board in the mold of US accounting and international audit standard setters would better insulate PCAOB from political swings. More expertise is needed at the table to write workable rules than the current five-member board can offer, its critics say.

"I wonder if we could make it more independent then would that result in less politicization of our standards." Henry said.

Watchdog's Fate Contested

Despite the criticisms, oversight from the regulator has improved audits, reducing financial statement errors and litigation, auditors and their advocates say.

The board's inspections impose discipline that has benefited the industry and capital market, Sullivan said.

The board last week announced the formation of a small firm resource group to hear directly from small auditors about their ideas and concerns. The PCAOB has also issued a steady stream of guidance to help firms of all sizes adopt a series of foundational rules.

Still, some who support the regulator's overall mission say the board's recent approach goes too far.

PCAOB should focus on helping auditors to improve and to comply with its standards, not punish them, said Eldar Maksymov, an associate accounting professor at Arizona State University.

"Whenever PCAOB comes in, it's like a boogeyman," he said. "They are more afraid of PCAOB than they are afraid of litigation. That is not a healthy dynamic."

Jacob Frenkel, who has represented auditors before the board, said Congress should eliminate the PCAOB because the board is misusing its inspections as a pipeline for enforcement actions.

"The intent was to improve audit quality not to wipe out an entire segment of CPA firms," said Frenkel, a partner with Dickinson Wright PLLC.

Despite the calls for change, supporters like Paul Munter, a former SEC chief accountant who stepped down in January, argue they don't require fundamental restructuring.

"There are things they could do better, perhaps more balanced," Munter said. "Those are improvements in the operations of the PCAOB as opposed to the case for why they shouldn't exist."

To contact the reporter on this story: Amanda Iacone in Washington at aiacone@bloombergtax.com

To contact the editors responsible for this story: Amelia Gruber Cohn at agrubercohn@bloombergindustry.com; Benjamin Freed at bfreed@bloombergindustry.com

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Securities Law News

US Urges Justices Review Right to Sue Over Corporate Resolutions

May 23, 2025, 10:40 AM PDT

- No implied right of action in 1940 act section, government said
- Friend of the Court brief backs funds' cert petition

Activist investors' ability to file private lawsuits to repeal corporate resolutions under a provision of the 1940 Investment Company Act goes against Congress' intent, threatens regulator discretion, and could harm investment funds, the federal government told the US Supreme Court.

The Justice Department delivered that message in a friend of the court brief filed Thursday urging the justices to review a US Court of Appeals for the Second Circuit ruling recognizing such a right last year.

The Second Circuit's "erroneous recognition" of an implied right under the ICA's Section 47(b) has allowed Saba Capital Management LP and similar groups "to bring numerous suits seeking to rescind resolutions adopting control-share provisions and other resolutions regarding shareholder rights," according to the the government's brief.

If this section of the act implies a private right of action, someone could potentially sue over contractual terms alleged to violate any of the ICA, upsetting the balance Congress struck for it and interfering with the Securities and Exchange Commission's enforcement and exemption decision-making, US Solicitor General D. John Sauer said.

The government urged the Supreme Court to grant four closed-end funds' petition for a writ of certiorari.

When Saba Capital Master Fund Ltd., managed by its similarly-named LP, started getting substantial stakes in these funds, the funds' directors adopted a resolution under Maryland law designed to make it harder for outside investors to gain control of them, the brief said. Saba sued these and other closed-end funds in the US District Court for the Southern District of New York, alleging these resolutions would strip the activist investor's share of voting rights in violation of the ICA and Section 47(b) allowed it to sue and seek rescission of the limitations.

Both the district court, in granting cancellation of the resolutions, and Second Circuit in a summary order found that the funds' limitations violated a portion of the ICA because they rendered the shares not "voting stock."

But Section 47(b) doesn't provide a cause of action to initiate private lawsuits seeking cancellation of contracts that allegedly violate the ICA, the government said. The way its written, the section says only in ongoing suits otherwise allowed in state and federal court can the section be applied to render contracts unenforceable and potentially retractable as an adequate remedy, the government said.

The Second Circuit erred in concluding otherwise in a different 2019 case, *Oxford University Bank v. Lansuppe Feeder LLC*, splitting with decisions finding the rule doesn't create any implied private right of action by the Third and Ninth Circuits, the brief said. The funds' case is a good vehicle for the Supreme Court to address that split, said the brief.

Susman Godfrey LLP represents Saba. Skadden, Arps Slate, Meagher & Flom LLP, K&L Gates LLP, and Sidley Austin LLP represent the fund petitioners. None of these law firms immediately responded to emails seeking comment.

The case is FS Credit Opportunities Corp. v. Saba Cap. Master Fund, Ltd., U.S., No. 24-345, amicus brief filed 5/22/25.

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

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

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<https://www.wsj.com/finance/currencies/trumps-media-company-to-raise-2-5-billion-to-buy-bitcoin-75420822>

MARKETS & FINANCE | CURRENCIES

Trump Media Shares Fall Sharply on Plans to Raise Billions to Buy Bitcoin

Plans come after Trump hosted a dinner last week for the top buyers of his memecoin

By [Alexander Osipovich](#) [Follow](#) and [Jennifer Calfas](#) [Follow](#)

Updated May 27, 2025 11:44 am ET



President Trump's second administration has taken a consistently favorable stance toward the crypto industry. PHOTO: JACQUELYN MARTIN/ASSOCIATED PRESS

President Trump's media company plans to raise about \$2.5 billion from institutional investors to buy bitcoin, the latest entanglement of his private business ventures and the cryptocurrency markets.

[Trump Media & Technology Group](#) DJT **-9.85%** ▼ said Tuesday it plans to sell \$1.5 billion of the company's stock and \$1 billion in convertible debt to about 50 institutional investors. The company said the investment closes its [strategic acquisition fund](#) created to buy, merge or join companies that align with the president's "America First" policies.

The company, which operates the president's Truth Social platform, plans to use the funding to create a treasury that will hold bitcoin. Trump Media said Crypto.com and Anchorage Digital will provide custody of the bitcoin treasury.

"We view Bitcoin as an apex instrument of financial freedom, and now Trump Media will hold cryptocurrency as a crucial part of our assets," Trump Media Chief Executive Devin Nunes said.

Stock-price performance

Trump Media & Technology Group



Source: FactSet

Shares for the company dropped more than 10% in late morning trading Tuesday. Bitcoin, which last week hit a record high of above \$111,000, was up 0.6% Tuesday, to \$110,151.

Trump Media earlier this year [launched a finance company](#) called Truth.Fi, and said it would allocate around \$250 million into cryptocurrency and other investments.

Trump Media's announcement puts it in a rapidly growing group of companies that have added bitcoin to their balance sheets. Most prominent among them is [MicroStrategy](#), a software company that has amassed

more than \$60 billion worth of bitcoin and plans to issue billions of dollars worth of convertible debt to buy more.

Other companies that hold bitcoin include Tesla, Rumble, maker of the video-sharing platform popular with conservatives, and [Semler Scientific](#), a healthcare-technology company that started acquiring bitcoin last year.

The second Trump administration has been particularly friendly to the crypto industry, with Congress expected to advance legislation favored by the industry.

Last week, Trump [hosted the top buyers](#) of his memecoin for a gala dinner. Government watchdog groups have said the dinner could potentially [violate federal rules](#) against soliciting gifts. Trump's sons have also backed a crypto venture called World Liberty Financial and [a bitcoin-mining company](#) that plans to go public.

Trump's policies toward bitcoin—the oldest and largest cryptocurrency—could potentially affect the value of Trump Media's bitcoin stash. The president owns more than 50% of Trump Media's shares through a revocable trust.

In March, Trump ordered the creation of a bitcoin strategic reserve to consolidate the U.S. government's bitcoin holdings. Under his order, new acquisitions to the reserve must be done in a “budget-neutral” way to avoid additional costs to taxpayers, although the Trump administration hasn't detailed how it plans to do that. The government already holds a sizable amount of bitcoin that it has seized from criminals.

Proponents call bitcoin “digital gold,” arguing that [its limited supply](#)—capped at 21 million coins—will eventually make it a safer store of value than traditional currencies, despite its history of volatility.

Write to Alexander Osipovich at alexo@wsj.com and Jennifer Calfas at jennifer.calfas@wsj.com

Corrections & Amplifications

President Trump hosted the top buyers of his memecoin for a gala dinner at one of his golf clubs. An earlier version of this article incorrectly said that the dinner was held at the White House. (Corrected on May 27)

Videos

Steve Herman : "Trump Media informs SEC it intends to raise \$2.5 billion from institutional investors to invest in Bitcoin.

[https://www.sec.gov/ix?](https://www.sec.gov/ix?doc=/Archives/edgar/data/0001849635/000114036125020420/ef20049689_8k.htm)

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— Bluesky

 bsky.app/profile/newsguy.bsky.social/post/3lq67shzlk2r

Steve Herman 

@newsguy.bsky.social

Trump Media informs SEC it intends to raise \$2.5 billion from institutional investors to invest in Bitcoin.

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Trump Media to raise \$2.5 billion to invest in bitcoin

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Reuters

May 27, 2025

Representations of cryptocurrency bitcoin are seen in this illustration picture created in Paris, France, March 9, 2024. REUTERS/Benoit Tessier/Illustration/File Photo Purchase Licensing Rights, opens new tab

- Move aligns with trend of companies adding crypto to balance sheets
- Bitcoin custody by Anchorage Digital and Crypto.com
- Senator Warren questions regulatory oversight of Trump's crypto ETFs

(DJT.O), opens new tab will raise about \$2.5 billion to invest in bitcoin, U.S. President Donald Trump's social media company said on Tuesday, as it looks to diversify its revenue. The company is raising the funds by selling \$1.5 billion in stock at its last closing price and \$1 billion in convertible notes priced at a 35% premium, it said in a statement.

The bitcoin will be held on Trump Media's balance sheet alongside existing cash and short-term investments totaling \$759 million as of the end of the first quarter. Crypto platforms Anchorage Digital and Crypto.com will provide custody for the bitcoin holdings.

"We view bitcoin as an apex instrument of financial freedom," Trump Media CEO Devin Nunes said, hailing the move as a "big step forward" in the company's plan to acquire "crown jewel assets consistent with America First principles."

The move is part of a recent trend of public companies adding bitcoin and other cryptocurrencies to their balance sheets to capitalize on rising token prices as the Trump administration embraces digital assets.

Strategy (MSTR.O), opens new tab - formerly known as MicroStrategy - has long been an aggressive investor in bitcoin and saw its shares soar more than six-fold last year, taking its market value to almost \$94 billion. The company held \$23.91 billion in crypto assets at the end of 2024.

Several other companies have tried to replicate Strategy's success, including GameStop (GME.N), opens new tab and several biotech firms.

Last month, Cantor Fitzgerald announced that it would team up with Tether and SoftBank Group to launch Twenty One Capital, a bitcoin-buying entity that formed from a merger with blank-check vehicle Cantor Equity Partners. The combined vehicle is valued at \$3.6 billion. Trump Media has been exploring potential mergers and acquisitions as it aims to diversify into financial services.

Last month, it reached a binding agreement to launch various retail investment products, including crypto and exchange-traded funds aligned with Trump's policies.

The Trump family, long rooted in skyscrapers and country clubs, has opened multiple beachheads in crypto, quickly gaining hundreds of millions of dollars. Those other crypto forays include Trump NFTs, a meme coin, a stake in a newly formed bitcoin producer called American Bitcoin and World Liberty Financial, a decentralized crypto platform that also offers a stablecoin pegged to the U.S. dollar.

But the crypto push has attracted scrutiny from lawmakers, including Democratic Senator Elizabeth Warren, who last month asked the U.S. securities regulator about its plans to supervise ETFs due to be launched by Trump Media.

Reporting by Aditya Soni and Arsheeya Bajwa in Bengaluru and Hannah Lang in New York;
Editing by Shilpi Majumdar and Rod Nickel

Our Standards:

Securities Law

Trump Media Plans to Raise \$3B to Spend on Cryptocurrencies: FT

May 26, 2025, 9:14 AM PDT

Trump Media and Technology Group plans to raise \$2b in equity and \$1b via a convertible bond to buy cryptocurrencies such as Bitcoin, the Financial Times reports, citing six people briefed on the matter.

- The capital raise could be announced ahead of a meeting of crypto investors and advocates in Las Vegas this week, where Vice President JD Vance, Trump's sons Donald Jr and Eric, and Trump's crypto tsar David Sachs are expected to speak, according to the Financial Times
- The terms, timing and size of the capital raise could change

To view the source of this information click [here](#)

To contact the reporter on this story:

Dale Quinn in Mexico City at dquinn40@bloomberg.net

To contact the editor responsible for this story:

Zachary Fleming at zfleming2@bloomberg.net

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Senator Chris Murphy Charges that Trump “Has Opened a Channel for Bribery”

 wallstreetonparade.com/2025/05/senator-chris-murphy-charges-that-trump-has-opened-a-channel-for-bribery

Pam Martens

May 26, 2025



Last Thursday, two things happened that tens of millions of Americans believed could *never* happen in their country. First, the sitting President of the United States, Donald Trump, brazenly and openly courted monetary investments from foreign actors in one of his personal crypto business schemes *in exchange* for access to the President at an invitation-only reception and dinner, at which the press was barred from attending.

The marketing site for the event included this language: “The Top 25 \$TRUMP Meme Coin Holders on the leaderboard will enjoy a **Private VIP Reception** with President TRUMP and Separately by us to a **Special VIP TOUR.**”

In law-abiding countries this is known as illegal quid-pro-quo by a sitting government official. The U.S. previously dealt with such matters with criminal prosecution. But that was before Donald Trump turned the U.S. Department of Justice, the U.S. Attorney General, and the FBI Director into his handmaidens.

Secondly, instead of resolutions of impeachment or congressional investigations, the Republican majority in Congress did effectively nothing to challenge Trump’s spiraling foray into lining his pockets using the imprimatur of the U.S. Presidency – just as they did nothing

to stop the 34-count felon (convicted *unanimously* by a jury of 12 members that were vetted by both prosecutors and Trump's defense counsel) from holding a second term as President of the United States, despite Trump fomenting an attack on the U.S. Capitol building on January 6, 2021 in an effort to stop the peaceful transfer of power to the duly-elected President Joe Biden.

Democrats, who lack the votes in Congress to take meaningful action against Trump, were left with few options other than holding a fiery press conference on Thursday in advance of Trump's crypto dinner that same night.

At the presser, Senator Chris Murphy (D-CT) said: "This is the most corrupt White House in the history of the country." Senator Murphy explained that Trump has created demand for his crypto meme coin by "essentially opening a channel for bribery. If you buy his coin, the price goes up and he makes more money. If you buy his coin, you get secret access to the President...."

Senator Richard Blumenthal (D-CT), a former federal prosecutor who prosecuted drug traffickers and organized crime, told attendees at the press conference: "This story is about Republicans complicit in Donald Trump's corruption. They are aiding and abetting corruption by their silence."

Senator Jeff Merkley (D-OR), a former national security analyst for the Pentagon, called Trump's crypto schemes "a Mount Everest of corruption." Merkley also attended the lively protest outside the Trump National Golf Club in Potomac Falls, Virginia on Thursday evening, where the crypto dinner was held.

Congressman Sam Licarrdo (D-CA), a former criminal prosecutor in the Santa Clara County District Attorney's office, said this at the Democrats' press conference: "It's time to make corruption criminal again." Liccardo called Trump's meme coin a "pump and dump scheme" which has thus far cost thousands of Americans who



Protest Signs Outside of Trump's Private, Invitation-Only Crypto Dinner on May 22, 2025

invested in it more than \$2 billion in losses. (For important background, see our January article: **It’s Being Called the Biggest Grift by a President in U.S. History: Trump and First Lady Launch their Own Crypto Coins.**)

Senator Elizabeth Warren (D-MA), the ranking member of the Senate Banking Committee and a former Harvard Law professor, called Trump’s crypto dinner “an orgy of corruption.” (Watch the entire press conference in the PBS YouTube video below.)

Well known author and attorney Norm Eisen described the dinner to NPR as “the most profound ethics and constitutional emoluments violations in the history of our presidency.”

The New York Times’ political reporter, Peter Baker, appeared to struggle in his Sunday article to find English language words that could capture the depravity and insidious nature of Trump’s presidential grifting. Baker took a stab at it with this:

“The Trumps are hardly the first presidential family to profit from their time in power, but they have done more to monetize the presidency than anyone who has ever occupied the White House. The scale and the scope of the presidential mercantilism has been breathtaking. The Trump family and its business partners have collected \$320 million in fees from a new cryptocurrency, brokered overseas real estate deals worth billions of dollars and are opening an exclusive club in Washington called the Executive Branch charging \$500,000 apiece to join, all in the past few months alone.

“And Mr. Trump hosted an exclusive dinner at his Virginia club for 220 investors in the \$TRUMP cryptocurrency that he started days before taking office in January. Access was openly sold based on how much money they chipped in — not to a campaign account but to a business that benefits Mr. Trump personally.”

Baker was astute in zeroing in on how Trump’s torrent of corrupt acts makes it next to impossible for the media to stay focused. Baker writes: “...at a time when Mr. Trump provokes a major news story every day or even every hour — more tariffs on allies, more retribution against enemies, more defiance of court orders — rarely does a single action stay in the headlines long enough to shape the national conversation.”

Nothing illustrates this better than the fact that less than 72 hours after Trump’s brazenly corrupt crypto dinner, two of the key Sunday talks shows — NBC’s *Meet the Press* and *Face the Nation* on CBS — didn’t find the crypto dinner newsworthy enough to report on to the American people.

On Sunday’s *State of the Union* with Jake Tapper and Dana Bash on CNN, Tapper did question House Speaker Mike Johnson about Trump’s crypto dinner. Johnson, incredulously, had this to say:

"I don't know anything about that dinner. I do know that President Trump is the most transparent president in the most transparent administration probably in history. He has nothing to hide, and he's out there trying to advance America's interests. That's what America First policies are all about. And that's what our big reconciliation bill will deliver for the people. We're really proud of the product."

House Speaker Johnson was clearly engaging in the Trump administration's adopted version of Orwellian reverse-speak. Trump's entire adult life has been built around attempting to hide his corrupt behavior from public view. Consider Manhattan District Attorney Alvin Bragg's case against Trump, in which Trump was unanimously convicted by a jury on each of the 34 felony counts. These felony counts involved concealment of crimes and/or blatantly nontransparent behavior. Bragg outlined the charges as follows in 2023:

"The People of the State of New York allege that Donald J. Trump repeatedly and fraudulently falsified New York business records to conceal crimes that hid damaging information from the voting public during the 2016 presidential election. Manhattan is home to the country's most significant business market. We cannot allow New York businesses to manipulate their records to cover up criminal conduct. As the Statement of Facts describes, the trail of money and lies exposes a pattern that, the People allege, violates one of New York's basic and fundamental business laws. As this office has done time and time again, we today uphold our solemn responsibility to ensure that everyone stands equal before the law.

"According to court documents and statements made on the record in court, from August 2015 to December 2017, TRUMP orchestrated his 'catch and kill' scheme through a series of payments that he then concealed through months of false business entries.

"In one instance, American Media Inc. (AMI), paid \$30,000 to a former Trump Tower doorman, who claimed to have a story about a child TRUMP had out of wedlock.

"In a second instance, AMI paid \$150,000 to a woman who alleged she had a sexual relationship with TRUMP. When TRUMP explicitly directed a lawyer who then worked for the Trump Organization as TRUMP's Special Counsel ('Special Counsel') to reimburse AMI in cash, the Special Counsel indicated to TRUMP that the payment should be made via a shell company and not by cash. AMI ultimately declined to accept reimbursement after consulting their counsel. AMI, which later admitted its conduct was unlawful in an agreement with federal prosecutors, made false entries in its business records concerning the true purpose of the \$150,000 payment.

"In a third instance – 12 days before the presidential general election – the Special Counsel wired \$130,000 to an attorney for an adult film actress. The Special Counsel, who has since pleaded guilty and served time in prison for making the illegal campaign contribution, made the payment through a shell corporation funded through a bank in Manhattan.

"After winning the election, TRUMP reimbursed the Special Counsel through a series of monthly checks, first from the Donald J. Trump Revocable Trust – created in New York to hold the Trump Organization's assets during TRUMP's presidency – and later from TRUMP's bank account. In total, 11 checks were issued for a phony purpose. Nine of those checks were signed by TRUMP. Each check was processed by the Trump Organization and illegally disguised as a payment for legal services rendered pursuant to a non-existent retainer agreement. In total, 34 false entries were made in New York business records to conceal the initial covert \$130,000 payment. Further, participants in the scheme took steps that mischaracterized, for tax purposes, the true nature of the reimbursements."

Related Article:

Over 1,600 of the Brightest Scientific Minds in Technology Have Signed a Letter Calling Both Crypto and Blockchain a Sham

Tesla EU sales slump 53% in April: Trade group

 [courthousenews.com/tesla-eu-sales-slump-53-in-april-trade-group](https://www.courthousenews.com/tesla-eu-sales-slump-53-in-april-trade-group)



A Tesla electric vehicles dealership and showroom in Ghent, Belgium, April 6, 2025. (Jonathan Raa / NurPhoto via AFP)

PARIS (AFP) — Sales of cars made by Elon Musk's Tesla slumped by more than half in April as Chinese electric carmakers saw their share surge, the continent's manufacturing association said Tuesday.

While sales of electric cars rose overall in the 27 European Union nations, Tesla's share fell dramatically amid the spotlight on Musk's work with U.S. President Donald Trump and the U.S. company's aging range.

The European Automobile Manufacturers' Association, ACEA, said Tesla sales in April fell to 5,475 cars, down 52.6% from the same month last year.

In the first four months of 2025, Tesla sales have fallen 46.1% against the same period last year to 41,677 cars.

Once the standout leader in electric car sales, Tesla was overtaken in April by 10 rivals including Volkswagen, BMW, Renault and Chinese automaker BYD, according to JATO Dynamics consultants.

Tesla announced in April that its worldwide sales in the first quarter had fallen 13%, increasing pressure on Musk, though the company partly blamed lost production amid an upgrade to its Model Y standard-bearer.

Musk has since announced he will reduce his work helping Trump slash U.S. government spending and last week said that Tesla sales were "doing well."

Hybrid leaders

Skoda's new Elroq led electric car sales while Tesla's Model Y, the former frontrunner, came ninth.

Sales of electric cars overall rose 26.4% from last year to take a 15.3% share of the market in April, according to the ACEA.

The rise is uneven across Europe as different governments and manufacturers give different incentives to buy electric. Germany, Belgium, Italy and Spain have seen a major rise while electric car sales in France have fallen.

"The share of battery-electric vehicles is slowly getting momentum, but growth remains incremental and uneven across EU countries," said Sigrid de Vries, ACEA's director general.

"In order for battery-electric vehicles to become a mainstream choice, it is essential that governments continue to implement the necessary enabling conditions, such as purchase and fiscal incentives, recharging infrastructure and electricity prices.

"The sustained popularity of hybrid vehicles among consumers also shows the merit of keeping a technology-neutral approach," she added.

Sales of hybrid cars with a small electric battery still dominate the European market, rising 20.8% since the start of the year, while petrol-only cars have fallen 20.6% over the same time.

The Volkswagen group remains the top brand in Europe, with sales up 2.9% in April.

But Chinese brands were a major factor in the popularity of electric and hybrid cars, according to JATO and have 7.9% of the European market.

The BYD, MG, Xpeng and Leapmotor brands saw sales rise 59% over the year in electric and hybrid sales, while other manufacturers put on 26%.

JATO expert Felipe Munoz said it remains to be seen whether the European Union imposes tariffs on Chinese hybrid cars as it has for electric vehicles.

—

By TAIMAZ SZIRNIKS Agence France-Presse

Categories / Business, Consumers, Environment, International, Politics

Tesla misses out on European EV growth as Model Y fails to revive sales

 [reuters.com/business/autos-transportation/car-sales-europe-dip-slightly-april-teslas-49-drop-tempers-ev-gains-2025-05-27](https://www.reuters.com/business/autos-transportation/car-sales-europe-dip-slightly-april-teslas-49-drop-tempers-ev-gains-2025-05-27)

Jesus Calero

May 27, 2025

- European car sales down 0.3% year-on-year in April
- Battery-electric car sales jump 27.8%
- Tesla sales drop 49%, falling for fourth straight month

May 27 (Reuters) - Tesla's (TSLA.O), opens new tab sales in Europe fell 49% in April from a year earlier, even though battery-electric car sales rose 27.8%, as the U.S. EV maker's upgrade of its Model Y shows little sign of reviving the brand's fortunes in the region.

Overall car sales in Europe dipped 0.3%, with the strongest growth coming from electric and plug-in hybrid cars, data from the European Automobile Manufacturers Association (ACEA) showed.

WHY IT'S IMPORTANT

Tesla's European sales fell for the fourth straight month, as a backlash against CEO Elon Musk's political views combined with a tepid reception for the new Model Y and heightened competition from European and Chinese players.

Tesla's European market share dropped to just 0.7% from 1.3% a year ago.

European carmakers are striving to cut costs amid stiff competition, U.S. tariffs on auto imports, and a slowing global economy, with the outlook uncertain despite eased U.S.-China trade tensions.

BY THE NUMBERS

April sales in the European Union, Britain and the European Free Trade Association fell to 1.07 million cars, following 2.8% growth in March, the ACEA data showed.

Registrations at Chinese state-owned SAIC Motor (600104.SS), opens new tab and Japan's Mitsubishi (7211.T), opens new tab rose 24.5% and 22.1% respectively, while they fell 24.5% at Japan's Mazda (7261.T), opens new tab.

In the EU alone - not including Britain and the EFTA - total car sales have fallen 1.2% so far this year.

That is despite continued growth in demand for EVs, with registrations of battery-electric (BEV), plug-in hybrid (PHEV) and hybrid-electric (HEV) cars rising 26.4%, 7.8% and 20.8% respectively.

EV sales in the bloc - whether BEV, HEV or PHEV - accounted for 59.2% of passenger car registrations in April, up from 47.7% in the previous year.

Among the largest EU markets, total car sales in Spain and Italy increased by 7.1% and 2.7% respectively, while in France and Germany they dropped by 5.6% and 0.2%.

In Britain, registrations were down 10.4%.

Reporting by Jesus Calero and Amir Orusov in Gdansk and Victoria Waldersee in Berlin.
Editing by Alison Williams and Mark Potter

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

Meta CEO Mark Zuckerberg Bets on Trump, But MAGA Is Skeptical

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Mark Zuckerberg says recent changes to Meta's content policies reflect an authentic representation of his personal views.

Illustration: Luca Schenardi for Bloomberg Businessweek

In early February, Mark Zuckerberg boarded his Gulfstream G650 for a trip to Washington, DC—a cross-country route he was flying with newfound frequency. After years on the outs, the chief executive officer of Meta Platforms Inc. had regained something valuable he'd lost: direct access to the president.

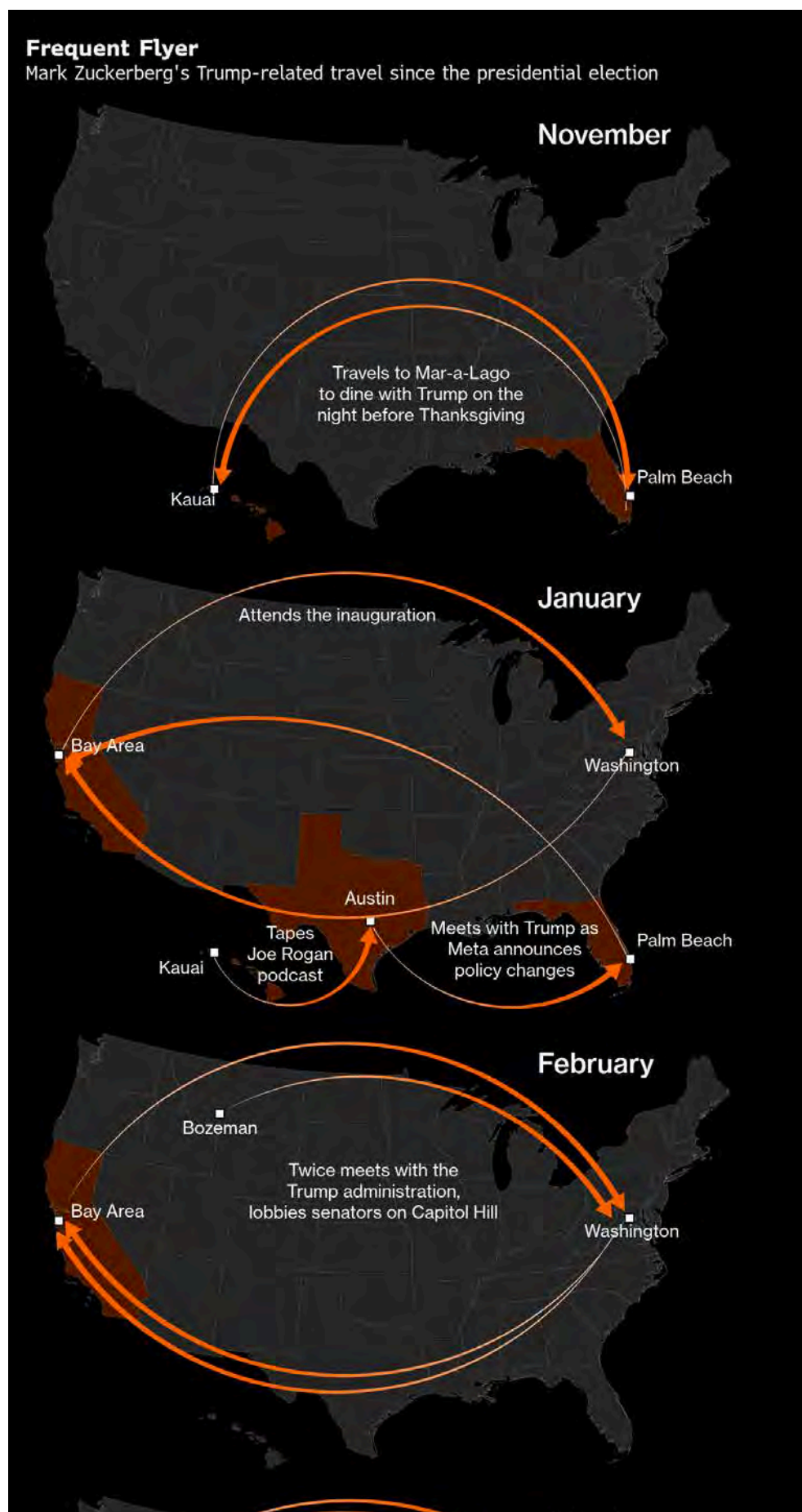
Since November, Zuckerberg had already had a string of postelection get-togethers with Donald Trump. He'd made multiple trips to Mar-a-Lago in Florida, and he'd sat in the Capitol Rotunda with other tech executives when the president-elect took the oath of office in January. Meta had also donated \$1 million to the inauguration, and Zuckerberg co-hosted a black-tie reception that evening in Trump's honor. In a sign that he plans to spend more time in Washington, Zuckerberg in March purchased a \$23 million mansion just paces from Vice President JD Vance's residence at the Naval Observatory.

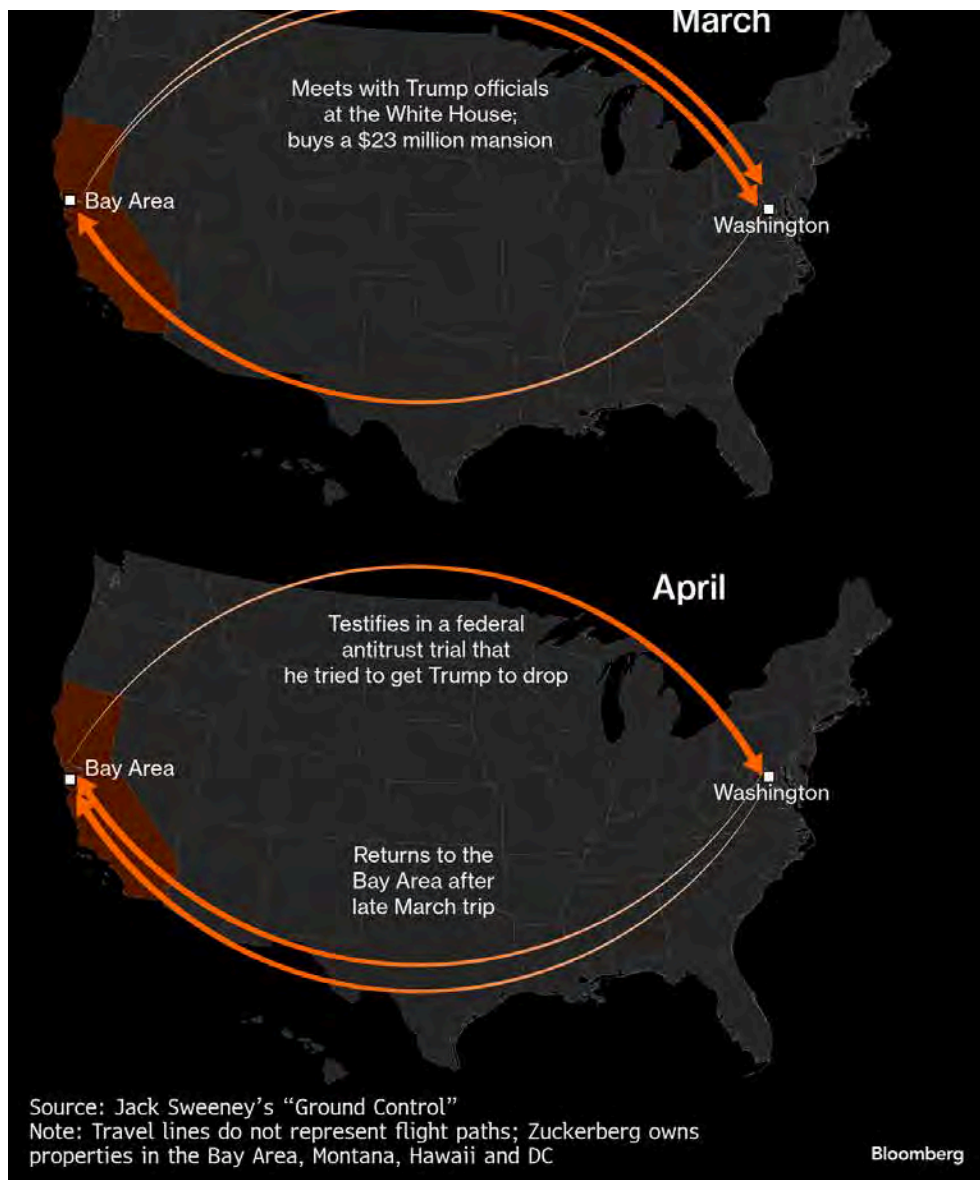
Omny Studio: Mark Zuckerberg Loves MAGA Now. Will ...

On this particular February visit, Zuckerberg had a short chat with Trump, according to people familiar with the meeting, but his agenda centered on a discussion with Vance. The vice president was headed to Paris for a summit on artificial intelligence, and Zuckerberg

wanted him to hammer home to European leaders that their regulators were treating Meta unfairly, making it difficult to roll out AI products.

When Vance spoke in Paris five days later, his speech delivered exactly the sort of message Zuckerberg had had in mind, warning against overregulation in AI and abandoning the Biden administration's more careful approach to the technology. Vance said he was troubled by reports about governments "considering tightening the screws" on US tech companies, telling his audience that "America cannot and will not accept that, and we think it's a terrible mistake."





Vance's speech seemed like tangible evidence that Zuckerberg's clout in DC was on the upswing. Joe Biden's disdain for Meta was evident well before he assumed office, and once in, he pointed to the company as the source of some of the US's greatest problems, among them the spread of conspiracy theories, the surge in political polarization and the exploitation of children. He repeatedly called for the repeal of Section 230 of the Communications Decency Act of 1996, a rule shielding internet platforms from legal liability for content posted by their users, which Silicon Valley considers a critical protection. Biden's appointees to the Federal Trade Commission and the Department of Justice had pursued an aggressive antitrust agenda that included Meta among its targets, and his administration had pushed Meta to control misinformation in ways the company deemed inappropriate.

Unlike Trump and President Barack Obama before him, Biden never met with Zuckerberg personally, and Meta insiders had heard he was known to throw around demeaning nicknames for Zuckerberg in private. ("Little Twerp" and "F---erberg" were among the

favorites, according to Biden aides.) A spokesperson for Biden's office declined to comment for this article.

Zuckerberg had been hinting at a move toward Trump even before the election. He'd described the candidate's reaction to an assassination attempt in July as "badass," called him personally on several occasions last summer and bashed the Biden administration in a letter to Congress. Once the election results were in, Zuckerberg sprinted Trumpward. He appointed Ultimate Fighting Championship CEO Dana White—a Trump ally—to Meta's board of directors, elevated Republican strategist Joel Kaplan to chief global affairs officer and rolled back diversity efforts both at his company and his family's philanthropic organization, the Chan Zuckerberg Initiative. Meta weakened hate speech policies, broke up its civil-rights team and eliminated the outside fact-checking system that had so infuriated Trump during his first term. The company even paid Trump \$25 million to settle a lawsuit he'd filed after it suspended him from Facebook and Instagram, even though insiders viewed the case as an easy win for the company.



Zuckerberg's MAGA Phase Risks Leaving Meta Friendless

The speed and scope of these moves by Zuckerberg have left many onlookers with a sense of whiplash. He declined to be interviewed for this article, but *Bloomberg Businessweek* spoke with more than 50 people about his approach to politics, including more than 30 current and former Meta employees and a dozen government officials who've engaged with Meta during the Obama, Biden and Trump administrations. (Many of them asked for anonymity out of fear of retribution.) What emerges is a portrait of someone who isn't motivated by a political ideology as much as a finely tuned sense of self-preservation.

"Mark is always going to do what's best for the business," says Katie Harbath, a former Republican digital strategist who worked on Facebook's public policy team from 2011 to 2021. "He is always worried about being out-innovated, and he is always thinking about his own legacy," she says. For years, Zuckerberg's vocal and financial support of liberal approaches to immigration reform and diversity initiatives had been driven by the same calculation, Harbath says. When those values were no longer politically expedient, she adds, he shed them easily.

It's become clear since Trump took office that business leaders will need to overhaul their formula for playing politics. The president's vindictiveness creates risks for holdouts, and his transactional style leaves open the chance of substantial rewards for those who win him over. Zuckerberg's bending of the knee stands out as a particularly revealing test case.



Zuckerberg at Trump's inauguration.

Photographer: Ricky Carioti/The Washington Post/Getty Images

There are reasons to question how well it's working out, Vance's chiding of the Europeans notwithstanding. Trump is still looking for a way to keep key Meta rival TikTok operational in the US, despite widespread suspicion in Congress that its ties to China represent a national

security risk. He's done little to signal support for Section 230, which remains in Congress' crosshairs. The president's tariff policies have sparked concerns of a looming recession: When reporting first-quarter earnings, Meta warned that it expects its hardware costs to go up because of Trump trade policies. It also made more than \$18 billion in sales from China-based advertisers last year, a revenue stream that remains at risk as negotiations between the countries continue.

The limits of Zuckerberg's influence were also on display in the weeks before the FTC's antitrust suit against Meta went to trial in April, when his last-ditch effort to persuade Trump and FTC Chairman Andrew Ferguson to settle the case was unsuccessful. Zuckerberg and other executives spent days on the witness stand going over the company's inner workings in uncomfortable detail, and Meta rested its case on May 21. If the FTC prevails, Meta could be forced to spin off Instagram and WhatsApp, a prospect that would destroy the \$1.6 trillion business Zuckerberg has built. The FTC didn't respond to requests for comment.

At least so far, the actions Zuckerberg has taken to make Meta more Trump-friendly haven't resulted in much tangible gain. "We haven't seen evidence one way or another that these changes have benefited Meta," says Stefan Slowinski, an analyst at BNP Paribas Exane.

None of this should be particularly surprising. Trump has been regularly attacking Zuckerberg and his company for alleged anti-conservative bias for almost a decade. During the 2024 campaign, Trump referred to him as "ZUCKERBUCKS" in a post on Truth Social, claiming without evidence that he might be engaging in election fraud, and suggested he could end up in prison. A coffee-table book published in September and written by Trump also made the threat to imprison Zuckerberg.

If Zuckerberg's about-face has come off as craven to liberals, the MAGA crowd isn't necessarily buying it either. "There's still tremendous distrust," says Alex Bruesewitz, a digital strategy adviser to Trump, who runs his political social media accounts and who Meta briefed on its Trump-friendly content moderation changes before announcing them. "I don't know what it will take for our base and our voters to forgive him fully. I don't know if they will."

For years the working assumption in Silicon Valley and DC was that tech leaned Democratic. The industry's young, largely California-based workforce aligned more closely with the party on social issues. Obama was the first president to successfully leverage a digital campaign in his path to the Oval Office, and Democrats were content to take a light-touch approach to internet regulations. Zuckerberg, who was 24 when Obama took office, interacted regularly with the president.

The company's user base expanded from about 200 million to almost 2 billion during Obama's administration. The scale made Facebook ever more important, but mistrust began to mount over the company's approach to privacy and its influence over politics. Then came

the 2016 presidential election. Zuckerberg was shocked and confused by Trump's victory, but said the suggestion that misinformation on Facebook had played a role was "crazy." Still, the company quickly attempted to mollify concerns about how its platform had become vulnerable to manipulation, developing stronger tools for fact-checking and content moderation. Democrats were unmoved. Trump and other Republicans began attacking the company for what they claimed was anti-conservative censorship. From 2018 to 2024, Zuckerberg was hauled before congressional committees on eight separate occasions to answer questions about Meta's policies and business.

The company tried its best to make inroads with the first Trump administration. Kaplan, at the time Meta's vice president of global policy—who'd been deputy chief of staff for President George W. Bush and had briefly considered taking a job in the new administration—worked to build relationships with Trump's inner circle. At the same time, he sought to convince Zuckerberg that aligning the company with a business-friendly Republican administration and conservative Supreme Court were of vital importance. (Within Meta, this approach to fending off a potential breakup or other existential regulatory threats became known as the "Clarence Thomas strategy," according to people familiar with the matter.) As the 2020 election approached, Kaplan's pitch about the benefits of a Republican administration was resonating with Zuckerberg. On the sidelines of a tech conference where he was speaking, Zuckerberg turned to a staffer with a question: "Joel keeps telling me Republicans are better for us than Democrats. They are, right?"



Kaplan, left, has long argued that Meta's interests align with Republican political priorities.
Photographer: Christophe Morin/Bloomberg

From Zuckerberg's perspective, he'd tried to play it down the middle and gotten punished for it from all sides. The Chan Zuckerberg Initiative donated more than \$400 million in election-related grants, awarded to 49 states for unobjectionable actions such as helping fund poll workers, voting equipment and face masks for volunteers. But Republicans accused him of trying to sway the election in Biden's favor, and Zuckerberg also grew frustrated that Democrats didn't give him much credit for the gesture, according to people familiar with his thinking.

Throughout the election, it was clear Zuckerberg wasn't winning Biden over. In a campaign Q&A with the *New York Times*, the Democratic candidate said that he'd "never been a big Zuckerberg fan" and that he saw the CEO as a "real problem."

Any hope of a fresh start following Biden's victory was dashed almost immediately. Trump used Facebook to reject the election results and spread florid conspiracy theories. "We knew this would happen. We pleaded with Facebook for over a year to be serious about these problems," Biden Deputy Communications Director Bill Russo tweeted just days after the election. "They have not. Our democracy is on the line. We need answers."

The violence on Jan. 6 reinforced the incoming administration's view that Facebook's inaction on misinformation had serious consequences. Biden never sought a personal relationship with Zuckerberg after taking office. His staffers, however, were in almost constant communication with the company—and at times with Zuckerberg directly—over misinformation related to the pandemic and the rollout of the first vaccines. Although Facebook announced actions to crack down on misleading content, the White House wasn't impressed.

In emails and text messages that became public as a part of a Republican-led congressional inquiry into allegations of online censorship, White House officials expressed frustration and outrage about Facebook's approach to misinformation. "You are hiding the ball," began the subject line of one email. In the messages, White House officials accused Facebook of giving them the runaround. "Not for nothing, but the last time we did this dance, it ended in an insurrection," one Biden staffer wrote. In internal messages, company executives complained that its staff members were being harassed.

The feud spilled into public on a swampy Friday afternoon in July 2021, when a reporter yelled a question about Facebook and Covid just as Biden was climbing onto his helicopter for a weekend at Camp David. "They're killing people," Biden replied. "I mean it, really. Look, the only pandemic we have is among the unvaccinated, and they're killing people."

The unexpected comments sent staff in the West Wing and at Facebook into a tizzy. Nick Clegg, who oversaw the company's policy organization, messaged his colleagues that Biden officials had been "highly cynical and dishonest" about the interactions over Covid

misinformation, adding that Facebook had gotten positive feedback from the surgeon general's office earlier that day, contrary to Biden's remarks.

Zuckerberg and Sheryl Sandberg, then the company's chief operating officer, mulled going public about the discussions as a way to push back against Biden. Zuckerberg said he suspected Biden's comments were part of a coordinated pressure campaign. "I also wonder if we should change our model of how we work with the [White House] on this," he wrote to colleagues, in messages that came out during the congressional inquiry. "If they're more interested in criticizing us than actually solving the problems, then I'm not sure how it's helping the cause to engage with them further."

The president walked back his comment the following week, though he continued to criticize social media companies—and especially Zuckerberg's—until the final days of his presidency. Zuckerberg retreated from the role of statesman. He changed the name Facebook to Meta in late 2021, a rebrand that reflected a new vision for the company and had the added benefit of distancing it from recent controversies. Then he tasked Clegg with serving as president of global affairs, turning his attention toward the metaverse and AI.

Throughout his struggles with Washington, Zuckerberg couldn't help but notice that a more satisfying approach was being modeled by another tech CEO: Elon Musk. The two had been rivals for years, and not always in a friendly way. When Musk laid out doomsday scenarios related to AI, Zuckerberg described such talk as "irresponsible"; Musk said in 2023 that Instagram makes people "kind of depressed" and called Zuckerberg a "cuck." The two men flirted with meeting in a UFC-style cage match, but Musk backed out, citing a back injury.

Several times a year, a Meta marketing team conducts polls measuring public opinion about, among other things, Zuckerberg himself. Past polling has looked at whether he's seen as "honest," "mature" or "passionate" and how he measures up against other tech leaders, according to documents viewed by *Businessweek*. Zuckerberg has regularly been mocked as being robotic or disingenuous, whereas Musk has often been described as a visionary. Zuckerberg has also expressed frustration that Meta's own polling has previously shown that people considered him less innovative than Musk.

Zuckerberg also watched Musk flout federal regulations, conduct mass firings and act boorishly online, all without suffering serious consequences. After years spent apologizing for missteps and trying to build his own political capital, Zuckerberg grew jealous of how Musk could disregard any and all criticism, according to people who've worked with him. He developed what those people have described as "Elon envy."

Around this time Zuckerberg began to adopt the "masculine energy" popular in corners of the internet that embraced Musk. He got into mixed martial arts, grew his hair out and started wearing gold chains and a T-shirt implicitly comparing himself to a Roman emperor. He

appeared on manosphere-friendly podcasts hosted by Joe Rogan and Theo Von. “I don’t apologize anymore,” Zuckerberg deadpanned at a live taping of the tech-focused *Acquired* podcast in September, prompting laughter from the audience. “We’ve noticed,” responded one of the hosts.

Well-attuned to the aesthetics of the MAGA movement, Bruesewitz, the Trump adviser, took note of Zuckerberg’s “conscious decision to kind of start pivoting,” echoing right-wing talking points. “Maybe he’s had a change of heart,” Bruesewitz told *Businessweek* before the presidential election. With a newly sympathetic Zuckerberg and Musk at the helm of X, Bruesewitz said the social media environment was shifting to look less like it did in 2020 and more like the Trump-friendly landscape of 2016.

Since Trump’s election, Meta has walked back the approach it took for much of the previous eight years. In addition to the laundry list of policy changes in January, the company moved its trust and safety teams to Texas as a sop to conservatives who complain about Californians’ left-wing bias. (Employees say this gesture was meaningless, given that many of those staffers were already located in the state.) Zuckerberg also replaced Meta’s fact-checking program with a crowdsourcing feature similar to the one Musk uses on X.

Meta has often copied competitors’ products but rarely acknowledges it’s doing so at the time. In this case, Zuckerberg openly credited Musk and has used X’s open-source algorithm as the basis of its fact-checking replacement. The two have spoken privately on multiple occasions since the election, according to people familiar with the situation.

Zuckerberg has always held enough voting power within his company to take it wherever he chooses. But Meta insiders say he was more willing in the past to consider the counsel of other executives and board members. Key advisers who once had his ear, including Sandberg and Elliot Schrage, the former global communications and policy chief, have long since departed. Well-respected board members Jeff Zients, Ken Chenault, Erskine Bowles and Reed Hastings, known for their ties to the Democratic Party and experience working with governments around the world, have also moved on.

Privately, colleagues say changes including eliminating fact-checking and loosening content rules reflect a more authentic version of Zuckerberg’s beliefs. Still, many people who’ve worked with him over the years have found themselves questioning whether his values still align with their own—or if they ever truly did. “I thought tech was progressive,” says Kelly Stonelake, former director of product marketing in Meta’s virtual reality unit, who, after 15 years with the company, is suing Meta for sexual harassment and discrimination. (Meta has asked a federal court to dismiss the lawsuit.) “But we were really just good at performing inclusion and progressivism because that was a means to an end.”

There are signs of flagging morale. Some current employees do “wellness checks” with each other at the beginning of meetings. Others have created secret book clubs to discuss *Careless People*, the bestselling memoir by Sarah Wynn-Williams, Meta’s former director of public policy. The company saw the book, which includes unflattering personal portrayals of Zuckerberg and his top deputies as well as a sharp critique of its dealings with foreign governments, as a violation of a non-disparagement agreement. It has taken Wynn-Williams to arbitration to keep her from promoting it. (Meta “maintains a gag order to silence Ms. Wynn-Williams for speaking the truth,” says Ravi Naik, a lawyer representing her, adding that the company is pursuing a \$50,000 penalty for each violation.)

Some evidence remains of Meta’s continued aspirations to be a conscientious workplace, such as the posters pinned around its campus that preach things like, “Nothing at Facebook is someone else’s problem.” But Meta’s leadership has sent signals to its staff that protests aren’t going to fly this time around. When an employee voiced concerns about Meta’s new direction on an internal workplace tool earlier this year, Chief Technology Officer Andrew Bosworth replied that employees who disagreed with the changes could either leave or get on board.

There are reasons even for critics to stick around. Meta remains a lucrative place to work—its share price is up more than 600% since its 2022 lows—at a time when predictions of an economic downturn have sparked concerns about job security. In January, Meta said it would fire about 3,600 employees who were publicly labeled low performers, a move some employees saw as a way to quash ideological dissent. Additional layoffs have followed. (A Meta spokesperson denies the idea that layoffs were intended to suppress internal critics.)

The internal tension was on display among Meta’s highest ranks when the company flew its senior leaders to Menlo Park, California, for annual planning meetings in January. Included on the itinerary was a Q&A with Zuckerberg, attended solely by employees who carry the title of vice president or above.

Zuckerberg had just announced the policy changes, and in a large auditorium on campus known as the Museum, executives unhappy with the company’s new direction quizzed him about his decisions to change directions on diversity, equity and inclusion as well as content moderation, according to people familiar with the event. Eva Chen, who oversees fashion partnerships at Meta, seemed frustrated by Zuckerberg’s comments earlier that month on Rogan’s podcast, when he talked about corporate America needing more “masculine energy.” She asked Zuckerberg for his definition of masculine energy in front of the group.

Zuckerberg attempted to clarify his comments, acknowledging that “masculine” may have been a poor choice of words. But he didn’t take them back. US businesses needed to be more competitive and aggressive, he said. As to the other questions, Zuckerberg was unapologetic. He’d made his decisions and wasn’t interested in relitigating them.

Over the past decade, many powerful people have tried to adapt to Trump's whims and gotten burned. The president has mocked Zuckerberg on multiple occasions for coming to the White House during his first term to "kiss my ass," and, since returning to office, he hasn't shown him the affection that he's demonstrated for Musk. But that doesn't mean Trump dislikes the pandering. When asked to comment for this article, White House spokesperson Anna Kelly sent an email saying Trump "takes meetings with many CEOs who are eager to participate in the Trump economy."

Investors see potential upside as well, says Shweta Khajuria, an analyst for Wolfe Research LLC. Changing its policies to align with Trump's doesn't undercut the company's financial performance, she says, and reduces the chance it will be hit with new regulations. If Democrats take the White House or Congress in the future, she predicts Zuckerberg will "just adjust to work with that administration too."

Others see more risk to Meta if the political winds shift. For all the enviable access Musk secured with his support for Trump, his association with the administration has done real damage to his popularity—and to Tesla's sales. Political strategists inside and outside Meta say there's a feeling that Zuckerberg, too, may have "overcorrected" toward Trump; Zuckerberg himself was aware of how his changes to company policies could alienate Democrats even as he was making them. He's already directed executives to map out ways to secure their support in the future, according to people familiar with the efforts.

But Meta may find it hard to pivot, given the real damage that progressives see coming from the company's shifting policies. Advocacy groups are already tracking increases in hate speech and harassment against minority groups, women and trans people. The Center for Countering Digital Hate said in a February report that hundreds of millions of posts each year that would have previously been deemed harmful will likely stay up on the platform—a finding that Meta has said is based on "flawed" methodology.

Alejandra Caraballo, a clinical instructor at Harvard Law School who's spent years engaging with Meta on its content policies, says such online abuse can translate into real-world harm. "What do you think is going to happen when you greenlight a policy that allows people to call LGBTQ people mentally ill, when you greenlight slurs against trans people?" she asks, adding she is not speaking for Harvard. "It's very clear there's essentially a quid pro quo with Mark Zuckerberg: If that's the decision they have to make, they'll sacrifice trans people, they'll sacrifice women, they'll sacrifice minority groups."

Even Meta's own Oversight Board—an independent entity it formed to weigh in on complicated content moderation decisions—said in late April that the changes were "announced hastily, in a departure from regular procedure, with no public information shared

as to what, if any, prior human rights due diligence the company performed.” It has advised the company to assess and report the potential harm of its new policies. Meta said it would respond to the recommendation within 60 days.

Given all this, Zuckerberg would have a significant challenge presenting himself as a reliable actor if Democrats return to power. The worst-case scenario is that he ends up with enemies on all sides. This possibility was on display on April 9, when Wynn-Williams testified before Congress. Republican Senator Josh Hawley, a Trump ally who’s been among the most outspoken critics of Silicon Valley from the right, noted that Zuckerberg’s new political positioning conveniently aligns with the MAGA movement. “Do you buy this latest reinvention?” he asked Wynn-Williams.

She began her answer by asking rhetorically whether securing a gag order to keep her from discussing her book publicly was the action of someone who believed in free speech. “This is a man who wears many different costumes,” she continued. “Now his new costume is MMA-fighting or whatever, free speech—we don’t know what the next costume is going to be, but it will be something different.

“It’s whatever gets him closest to power,” she said.



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

9th Circ. Judges Grapple With Funko Investors' Fraud Claims

By **Rachel Riley**

Law360 (May 23, 2025, 7:22 PM EDT) -- Ninth Circuit panelists said Friday they were "struggling" with an appeal from a group of investors in a proposed class securities fraud case against toymaker Funko, expressing skepticism that the shareholders had shown corporate leadership knowingly misrepresented the status of a software update that flopped.

Led by Construction Laborers Pension Trust of Greater St. Louis, the shareholders have urged the Ninth Circuit to revive their suit, contending Funko failed to disclose issues with the software shift when they first arose in 2022 and continued to tout a "healthy and high-quality" inventory even when the excess was no longer sellable.

But during a Friday hearing, Circuit Judges Salvador Mendoza Jr. and Michelle T. Friedland expressed doubt that the shareholders had cited specific statements by the company that executives would have known were untrue.

"You keep on referring to this one statement about quality of inventory, but you are required to provide us with very specific statements that you claim are false," Judge Mendoza said, adding that he's "struggling to find" other examples.

The investors allege Funko's former CEO Andrew Perlmutter and Chief Financial Officer Jennifer Fall Jung misrepresented the progress on an effort to switch to the new inventory and operations software, known as Oracle, in conjunction with a distribution center relocation project. The suit also claims that the company identified the potential for information technology problems and excess inventory within quarterly U.S. Securities and Exchange Commission filings, even though the issues had already begun to hinder Funko's business and eventually contributed to declining share values.

The plaintiffs — seeking to represent purchasers of company stock between March 2022 and March 2023 — have **appealed** a federal district judge's May 2024 ruling **dismissing** their suit on the grounds that they had failed to prove the company's statements were false or misleading.

Andrew S. Love of Robbins Geller Rudman & Dowd LLP, representing the investors, told the panel on Friday that the executives continued to assure shareholders regarding the quality of Funko's inventory throughout 2022, even though the company struggled with processing and locating products when the Oracle software wasn't operating in time for the opening of the new distribution center in April of that year.

"The allegation is that this was a disaster from the get-go," Love said. "That the implementation was such a problem, even before the class period, that the [chief operating officer] had to take over the project."

But Judge Friedland questioned the gravity of the software problems, given the reported financial toll of the failed rollout.

"I know you say this was a huge problem for the company, but it doesn't seem like it necessarily was a huge-enough problem for the company to assume that everyone knew it," Judge Friedland said. "Even if it's reckless."

Funko later abandoned the Oracle project and announced a write-down of \$32.5 million in capitalized

costs, according to its December **appellate brief**. The company has argued the impacts were minimal for a corporation with \$1.3 billion in net sales in 2022.

The judges also seemed unconvinced by Funko's stance that it cannot be liable for its forward-thinking risk disclosures, made at a time when none of those risks had come to pass.

"The allegation is that was already happening. The software system was not performing as designed," Judge Friedland told Funko's counsel. "If they imply a false thing about the present, they are not just forward-looking."

Kevin M. McDonough of Latham & Watkins LLP, representing Funko, responded that the company had simply projected an initial timeline for the Oracle project that didn't pan out. Even after the project was delayed that spring, Funko had still expected to continue with the Oracle rollout when the disputed statements were made, he said.

"In other words, there were not issues with the functioning of the Oracle software," McDonough said. "The issue was it was not implemented yet."

U.S. Circuit Judges Marsha S. Berzon, Michelle T. Friedland and Salvador Mendoza Jr. sat on the panel for the Ninth Circuit.

The investors are represented by Andrew S. Love, Hillary B. Stakem, Ting H. Liu and Jessica E. Robertson of Robbins Geller Rudman & Dowd LLP.

Funko and the former executives are represented by Kevin M. McDonough, Graham Ambrose, Thomas J. Giblin, Elizabeth A. Parvis and Christine C. Smith of Latham & Watkins LLP, and David I. Freeburg and Lianna Bash of DLA Piper.

The case is Construction Laborers Pension Trust of Greater St. Louis et al. v. Funko Inc. et al., case number 24-4909, in the U.S. Court of Appeals for the Ninth Circuit. The underlying case is number 2:23-cv-00824, in the U.S. District Court for the Western District of Washington.

--Additional reporting by Katryna Perera. Editing by Melissa Treolo.



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

Coinbase Investor Sues Over Hack Fallout, UK Fine

By **Aislinn Keely**

Law360 (May 23, 2025, 7:26 PM EDT) -- A Coinbase stockholder brought a proposed class action against the crypto exchange, claiming she and other investors felt the fallout after the firm suffered a headline-grabbing data breach and an earlier run-in with a U.K. regulator.

Investor Brady Nessler said in her Thursday complaint that Coinbase's stock price fell by more than 7% when it disclosed that an unknown actor had bribed overseas customer service agents to gain access to some users' personal data. The complaint highlighted that days prior, the firm omitted certain details about the information breached.

"As a result of Defendants' wrongful acts and omissions, and the precipitous decline in the market value of the Company's common shares, Plaintiff and other Class members have suffered significant losses and damages," Nessler argued.

In addition to the market fallout from the hacks, the complaint brings securities claims against Coinbase over repeated disclosures with the U.S. Securities and Exchange Commission that allegedly failed to share the extent of "legal exposure" the firm faced by failing to live up to a 2020 agreement with the United Kingdom's Financial Conduct Authority.

The FCA levied a **£3.5 million fine** against Coinbase subsidiary CB Payments Ltd in July 2024 "for repeatedly breaching a requirement that prevented the firm from offering services to high-risk customers," according to the FCA's notice. The resulting news led Coinbase's share price to dip by 5%, according to Nessler.

CBPL is a Coinbase entity that enables customers to deposit funds into wallets to trade crypto through other Coinbase Group entities, and the subsidiary entered into an agreement with the FCA in October 2020 after the regulator allegedly found its anti-money laundering systems lacking. CBPL voluntarily agreed to beef up its controls to prevent high-risk individuals from using the platform, according to the complaint.

But Nessler asserted that CBPL breached the FCA agreement and onboarded thousands of high-risk customers to the platform, "creating legal exposure." From April 2021 through 2024, Coinbase omitted that CBPL had breached the FCA agreement and the alleged "legal exposure" it created from its SEC filings, Nessler charged.

The suit argued these disclosures failed to share material facts and were therefore misleading.

In addition to naming Coinbase Global Inc., the suit also names CEO Brian Armstrong and Chief Financial Officer Alesia J. Haas as individual defendants because they allegedly signed off on the disclosures and public statements made about the data breach.

"Because of their positions of control and authority as senior executives and/or directors, the Individual Defendants were able to, and did, control the contents of the various reports, press releases and public filings which the Company disseminated in the marketplace during the Class Period concerning the Company's results of operations," said the complaint.

Coinbase has faced a series of proposed class actions since disclosing it had suffered a breach of certain user information. **Many of the suits** make claims of negligence, brought by users who argue the firm should have done more to safeguard their data. Nessler's suit appears to be the first to bring claims on behalf of investors over the stock price fallout.

Coinbase and counsel for Nessler did not immediately respond to a request for comment on Friday.

Since the breach, Coinbase has vowed to "aggressively pursue all remedies" against the unknown hacker in its SEC disclosure of the incident and said it is already working with law enforcement on the matter. It also said publicly that it intends to reimburse users who are scammed as a result of the breach, which stole personal information that can be used to impersonate accounts or authorities to convince victims to hand over funds. Passwords or other key account information was not accessed, Coinbase has said.

At the time of the FCA fine, Coinbase said in a public statement that it took the FCA findings seriously and CBPL continues to enhance its controls.

The proposed class is represented by Eric Lechtzin of Edelson Lechtzin LLP and John C. Herman, Candace N. Smith and Carlton R. Jones of Herman Jones LLP.

Counsel information for Coinbase was not immediately available on Friday.

The case is Nessler v. Coinbase Global Inc. et al., case number 2:25-cv-02637, in the U.S. District Court for the Eastern District of Pennsylvania.

--Additional reporting by Alex Davidson. Editing by Vaqas Asghar.

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McMahon Tries To Limit Misconduct Docs In WWE Merger Suit

By **Sarah Jarvis**

Law360 (May 23, 2025, 7:03 PM EDT) -- The former CEO of World Wrestling Entertainment Inc. has pushed back against efforts to force him to hand over documents relating to his alleged sexual misconduct and hush money payments in a class action over the company's merger with Ultimate Fighting Championship, telling the Delaware Chancery Court they are irrelevant to the shareholders' suit.

In a Thursday **opposition filing**, McMahon urged the court to deny the shareholders' **motion to compel** him to provide the documents, which had accused the former CEO of refusing to produce any discovery materials related to the suit's sexual misconduct topics unless they expressly discuss them merger or "reflect discussions with 'decision-makers.'"

"Plaintiffs' insistence on the production of communications about years-old relationships with intimate partners that have no connection to the merger, their rejection of reasonable compromise offers, and their refusal to propose any compromise solutions on this issue exposes this motion for what it so transparently is: an improper and abusive attempt to use the discovery process to harass and pressure McMahon and his family," McMahon said.

Counsel for the parties didn't immediately respond to requests for comment Friday.

The \$21.4 billion merger at the heart of the suit was announced in April 2023 and closed the following September. Under the agreement, WWE shareholders rolled all existing equity into TKO Group Holdings, which formed when the WWE merged with Endeavor Group, UFC's parent company.

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

Shareholders have argued their document requests are relevant to this case because they will shed light on McMahon's motivations for pushing through the merger and allegedly steering the process to favor Endeavor, despite other bidders expressing interest with higher bids. The suit claims McMahon was "highly motivated" to sell WWE to Endeavor, which is owned and controlled by his longtime friend, Ari Emanuel.

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

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

But McMahon argued in his opposition filing that he has already agreed to provide documents about his motivations, incentives and decisions regarding the merger, "including where those documents involve the sexual misconduct allegations."

McMahon added that the allegations were already in the public record when the merger was being negotiated, noting that the complaint itself cites public allegations of sexual conduct against him dating back to 1992.

But even assuming the disputed documents were "marginally relevant" to this case, that relevance is outweighed by the likelihood the documents would be leveraged to improperly harass, embarrass "or otherwise prejudice" McMahon, he argued.

"If this court grants plaintiffs' motion, this case will devolve into a mini-trial over the sexual misconduct allegations, rather than a case focused on whether WWE's stockholders got a fair process and a fair price," he argued. "This court should deny plaintiffs' attempt to prejudice and harass McMahon using the mechanism of discovery."

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

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

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

--Additional reporting by Katryna Perera. Editing by Adam LoBelia.

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2nd Circ. Rejects Novel Short-Swing Trading Theory

By **Jessica Corso**

Law360 (May 23, 2025, 8:16 PM EDT) -- Controlling shareholders who sell stock at a time when their company is conducting a share repurchase program cannot be sued to recoup so-called short-swing profits, the Second Circuit said in rejecting a novel legal theory Friday.

A three-judge panel of the court upheld the dismissal of a pair of lawsuits brought by Andrew Roth, a shareholder in the Estée Lauder Cos. Inc. and telecommunications provider Altice USA Inc. Roth claimed corporate insiders of those companies improperly profited off share repurchases to the tune of \$56.7 million and \$17.3 million, respectively.

But the appellate court said a provision of the securities laws that requires corporate insiders to return short-swing profits to the corporation does not apply when the party buying the shares is the corporation. That provision is Section 16(b) of the Securities Exchange Act of 1934.

"[I]f Roth's theory were valid, issuers could pursue claims against their insiders based on the issuers' own conduct," the panel said, in an opinion authored by Circuit Judge Dennis Jacobs. "Section 16(b)'s equitable remedy is not designed to produce the inequitable result that Roth imagines."

Section 16(b) prohibits beneficial owners — those holding 10% or more of a company's shares — from buying and then selling shares, or vice versa, over a period of less than sixth months in order to prevent insider trading. Roth said the controlling shareholders he sued more than met the definition as they both held around 50% of the companies' shares when the repurchase was made.

The Second Circuit said that for the provision to apply, the "paired" purchase and sale has to be of the same type of security. But under the laws of Delaware, where both companies are incorporated, shares repurchased by a company are automatically converted into treasury shares.

"Treasury shares are, as a matter of law, valueless," the court said.

"Because a transaction in these 'subject securities' renders those shares valueless, no one has an opportunity to profit from any such transaction," it said.

Although the cases against Estée Lauder and Altice's controlling shareholders were filed separately, they were consolidated in the Second Circuit because they both advance the same novel legal theory, the court said.

U.S. District Judge Guido Calabresi agreed with the majority's conclusion that the lawsuits should be dismissed but wrote in a separate concurrence that much of the majority's analysis "is not needed to reach the outcome we all agree on."

He said the law was "far from clear" on whether controlling shareholders taking advantage of share repurchases violated the swing profit rule and that the law must be clear for a party to be held liable.

"This is not to say that what was done may not lead to abuse," Judge Calabresi said. "There are certainly ownership situations in which parties in control can make use of inside information to make huge profits by doing what was done here."

He said Congress or the U.S. Securities and Exchange Commission might decide to clarify the law later and he would have ruled more narrowly so as not to "make such governmental actions more difficult."

U.S. District Judge Alison Nathan joined Judge Jacobs in the majority opinion.

Attorneys for Roth and the companies did not immediately respond to a request for comment Friday.

Roth is represented by Glenn Ostrager, Joshua Broitman and Roberto Gomez of Ostrager Chong Flaherty & Broitman PC.

Estée Lauder's controlling shareholders are represented by Zachary Tripp, Carolina Zalka, Adam Banks and Shai Berman of Weil Gotshal & Manges LLP.

Altice's controlling shareholders are represented by Joseph Floren, Ari Micah Selman and Michael Paslavsky of Morgan Lewis & Bockius LLP.

The cases are Roth v. LAL Family Corp., case number 24-2464, and Roth v. Drahi, case number 24-2761, both before the U.S. Court of Appeals for the Second Circuit.

--Editing by Stephen Berg.

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2 Firms Tapped To Lead Visa Derivative Suits Over DOJ Claims

By **Sydney Price**

Law360 (May 23, 2025, 3:17 PM EDT) -- A California federal judge has combined lawsuits accusing Visa's executives and directors of allowing the company to understate the regulatory risk it faced by engaging in anticompetitive actions currently at the center of a lawsuit brought by the U.S. Department of Justice last year, and appointed two law firms to lead the litigation.

U.S. District Judge Noel Wise on Thursday determined that three investor suits launched against Visa involve the same subject matter and common questions of law and fact. She appointed The Brown Law Firm PC and Rowley Law PLLC to co-lead the consolidated litigation.

"Plaintiffs contend that The Brown Law Firm PC and Rowley Law PLLC are well-qualified to coordinate prosecution of the claims they assert derivatively on behalf of the company," the order states.

The **three suits**, which were filed in January and March, claim that Visa's allegedly anticompetitive misconduct came to light when the DOJ issued its complaint against Visa in September.

The DOJ said in its complaint that Visa prefers to partner with "emerging players" before they become "disruptors," therefore cementing its market share and depriving competitors of the opportunity to release products that would threaten Visa's market dominance, according to the derivative litigation.

The DOJ alleged Visa uses its monopoly power to entice issuers to enter into agreements that limit the amount of rival networks on Visa-branded debit cards, therefore limiting the choices available to merchants, the derivative complaints state.

For several months, Visa made public statements that did not reveal that it was actually engaging in anticompetitive behavior and was at heightened risk for the legal action that it vaguely warned investors of, the suits state.

In addition to nominal defendant Visa, the litigation's individual defendants include Visa CEO Ryan McInerney, Chief Financial Officer Chris Suh and several other company executives and directors. Together, the individual defendants netted \$12.6 million in personal profits by insider trading during the relevant period, the suits allege.

The truth did not emerge, the suits allege, until Sept. 23, when media outlets reported that the DOJ was planning to file a lawsuit alleging antitrust violations. When the suit was filed the following day, Visa shares fell \$15.85 each to close at \$272.78, according to the complaints.

The suits accuse the defendants of unjust enrichment, gross mismanagement, wasting corporate assets and violations of the Exchange Act.

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

Visa and the individual defendants are represented by Mark R.S. Foster of Skadden Arps Slate Meagher & Flom LLP.

The case is *In Re Visa Inc. Stockholder Derivative Litigation*, case number 5:25-cv-01052, in the U.S. District Court for the Northern District of California.



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Using Federal Forum Provisions To Nix State Securities Cases

By **Andrew Ehrlich, Audra Soloway and Daniel Sinnreich** (May 23, 2025, 3:06 PM EDT)

On April 23, the Court of Appeal of the State of California, Fourth Appellate District, **affirmed** the dismissal of claims brought under Sections 11 and 15 of the Securities Act of 1933 against an issuer and its underwriters based on a federal forum provision, or FFP, in the issuer's articles of incorporation.

The appellate court's decision in *Bullock v. Rivian Automotive Inc.* adds authoritative support to past opinions enforcing FFPs and affirms that underwriters — and, by extension, other defendants that are not parties to a corporate charter — have standing to enforce FFPs. The opinion is welcome news for companies seeking to eliminate costly, uncertain and often duplicative Securities Act litigation in state courts.



Andrew Ehrlich

Background: State Court Securities Act Filings and FFPs

The Securities Act provides for concurrent jurisdiction in state and federal courts.

In 2018, the U.S. Supreme Court **unanimously held** in *Cyan Inc. v. Beaver County Employees Retirement Fund*^[1] that claims brought solely under the Securities Act in state court are not removable to federal court due to the Securities Act's antiremoval provision, Title 15 of the U.S. Code, Section 77v(a).



Audra Soloway

Following *Cyan*, the securities plaintiffs bar dramatically increased the number of Securities Act class actions filed in state courts, which are generally perceived as more favorable forums for plaintiffs than federal courts due to more lenient pleading standards and, according to some courts, the lack of certain statutory protections for defendants. According to Cornerstone Research, the number of state court Securities Act filings quadrupled from 13 in 2017 to 52 in 2019 — more than the number filed in federal court that year.^[2]

Securities Act defendants also increasingly faced parallel, simultaneous lawsuits in both state and federal courts that could not be consolidated or even coordinated, which led to increased burdens on public companies, including substantially higher directors and officers insurance premiums.



Daniel Sinnreich

To counter this trend, corporations began adopting FFPs in their charters providing that federal district courts are the exclusive forum for any lawsuit brought against the corporation asserting claims under the Securities Act.

In March 2020, the Delaware Supreme Court **held** in *Salzberg v. Sciabacucchi*^[3] that FFPs included in corporate charters are facially valid under the Delaware General Corporation Law, and do not violate federal law or policy.

As corporations increasingly adopted FFPs, state courts were called on to determine whether, and how, to enforce FFPs.

Beginning in September 2020, state courts from California to New York began granting motions to dismiss Securities Act claims due to the presence of FFPs in issuers' charters, and the number of state court Securities Act filings began to decline — but not disappear. These decisions also left certain issues unresolved or subject to conflicting opinions, including whether and in what circumstances courts will enforce FFPs to dismiss claims not only against an issuer, but also against underwriters and other Securities Act defendants that are not parties to a corporate charter.[4]

Bullock v. Rivian Automotive

In November 2021, Rivian, a manufacturer of electric vehicles incorporated in Delaware and headquartered in California, held an initial public offering, selling 176 million Class A shares at \$78 per share and raising over \$13.7 billion in gross offering proceeds. Plaintiffs filed a putative class action in California state court in February 2023 asserting Securities Act claims against Rivian and its underwriters, alleging that the IPO registration statement contained materially misleading information that overstated Rivian's financial outlook, and failed to disclose supply chain constraints, inflationary pressures and other challenges.[5]

Rivian moved to dismiss the Securities Act claims based on the FFP in its charter, which provides that "the federal district courts of the United States of America shall, to the fullest extent permitted by law, be the sole and exclusive forum for the resolution of any complaint asserting a cause of action arising under the Securities Act of 1933."

The IPO underwriters filed a joinder to the motion to dismiss. The trial court granted the motion to dismiss for all defendants on the basis of the FFP, and the plaintiffs appealed.

On April 23, a three-judge panel for California's Fourth Appellate District Court affirmed the dismissal and rejected the arguments advanced by the plaintiffs, all of which are arguments commonly asserted by securities plaintiffs seeking to remain in state court.

First, the plaintiffs argued that the FFP violated the antiremoval and antiwaiver provisions of the Securities Act. The court found that the FFP did not violate the antiremoval provision because Rivian did not seek removal in the current action — it sought dismissal.

The court also followed U.S. Supreme Court and appellate precedent holding that the antiwaiver provision — which voids any waiver of compliance with the Securities Act — does not apply to procedural provisions, such as a waiver of the right to select a judicial forum.

Second, the plaintiffs argued that Delaware General Corporation Law Sections 102 and 115 — which govern what may be included in a corporation's certification of incorporation and permit Delaware corporations to adopt forum selection provisions — violated the commerce and supremacy clauses of the U.S. Constitution.

The court rejected this argument, noting that "nothing in the Delaware statutory scheme precludes a plaintiff from bringing a [Securities Act] claim in state court." Rather, it allows corporations and shareholders to agree to forum selection provisions that limit such claims to federal courts.

The court noted that Delaware courts have a "legitimate interest" in allowing its corporations to adopt FFPs because they allow for the consolidation and coordination of claims and the avoidance of inefficiencies.

Third, the plaintiffs argued that the FFP was an unenforceable contract of adhesion because it was outside the reasonable expectations of the shareholders, and was unduly oppressive and unconscionable.

The court held, to the contrary, that California law favors mandatory forum selection clauses and enforces such clauses unless they are unfair or unreasonable. Rivian's FFP was neither because it was made public in its charter when the IPO became effective and was not outside the reasonable expectations of shareholders.

Furthermore, the panel held that there was nothing "substantively unconscionable in the waiver of

the waivable procedural right to a state forum, particularly where, as here, the provision does not restrict a plaintiff's procedural right under the statute to file suit in a local federal court."

Lastly, the plaintiffs argued that the court erred in granting the underwriters' joinder because the underwriters were not intended third-party beneficiaries of the FFP. The court did not address this argument and instead affirmed the lower court's basis for granting the joinder motion, which was that the underwriters had standing to enforce the FFP because the allegations against them and Rivian were "so intertwined that they cannot be separated."

The plaintiffs alleged that the underwriters helped to draft, approve the content of, and disseminate the registration statement and market the IPO, as well as "deliver the shares ... to purchasers." The underwriters were sufficiently "closely related to the contractual relationship" that principles of judicial economy favored their enforcing the forum selection provision, despite being noncontracting parties, according to the court.

Implications

In the past five years, in response to the onslaught of state court Securities Act filings after Cyan and with the blessing of the Delaware Supreme Court in Salzberg, corporations have increasingly adopted FFPs to mitigate the risk and expense of defending Securities Act claims in state courts. In that time, more than 10 state courts across the country have enforced FFPs to dismiss Securities Act lawsuits, including appellate courts in California, New Jersey and Utah, and additional trial courts in New York and Massachusetts.[6]

In the same period, proxy adviser Institutional Shareholders Services began favoring FFPs, recommending in its 2025 policy recommendations that shareholders "[g]enerally vote for federal forum selection provisions in the charter or bylaws that specify 'the district courts of the United States' as the exclusive forum for federal securities law matters, in the absence of serious concerns about corporate governance or board responsiveness to shareholders." [7]

The widespread adoption and vigorous enforcement of FFPs has yielded results. State court Securities Act filings have sharply declined, from a peak of 52 in 2019 all the way down to five in 2024 — the lowest number of such filings since 2013.[8] The number of parallel federal and state court filings has also decreased significantly, from a peak of 25 parallel suits in 2019 to one in 2024.[9]

The unanimous appellate decision in Rivian serves as a reminder that corporations that anticipate going public should strongly consider adopting FFPs in their corporate charters, and confirms that corporations with FFPs should feel confident enforcing them, including through a motion to dismiss, if they are sued under the Securities Act in state court.

The Rivian decision also helpfully clarifies that underwriters, and other closely related defendants that are not parties or signatories to the corporate charter, may enforce FFPs to escape state court. This is particularly welcome in California, where at least one trial court had declined to dismiss Securities Act claims against underwriters that were not signatories to an FFP.

This continued trend is good news for corporations and marks progress in restoring Securities Act lawsuits to federal courts and reducing the litigation costs that arise from duplicative state court litigation.

Andrew J. Ehrlich is a partner and co-chair of the securities litigation and enforcement group at Paul Weiss Rifkind Wharton & Garrison LLP.

Audra J. Soloway is a partner and co-chair of the securities litigation and enforcement group at the firm.

Daniel S. Sinnreich is counsel at the firm.

Paul Weiss associate Sarah Shin contributed to this article.

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[1] 583 U.S. 416 (2018).

[2] See Cornerstone Research, Securities Class Action Filings: 2024 Year in Review at 4, 17.

[3] 227 A.3d 102 (Del. 2020).

[4] Compare In Re Uber Technologies, Inc. Securities Litigation, No. CGC-19-579544, Order on Motion to Dismiss (Cal. Super. Ct. Nov. 16, 2020) (dismissing claims as to all defendants including underwriters), with [Wong v. Restoration Robotics, Inc.](#) , No. 18CIV02609, Order on Motion to Dismiss (Cal. Super. Ct. Sept. 1, 2020) (dismissing claims against issuer and individuals but not underwriters).

[5] 2025 WL 1177303 (Cal. App. 4th Dist. Apr. 23, 2025).

[6] See, e.g., [Hook v. Casa Systems](#) , Index No. 654548/2019, Order on Motion to Dismiss (N.Y. Sup. Ct. Sept. 15, 2021); [Shen v. Casa Systems](#) , 2020 WL 8839637 (Mass. Super. Ct. Jan. 11, 2020); [Volonte v. Domo](#) , 528 P.3d 327 (Utah Ct. App. Mar. 9, 2023); [Kuehl v. electroCore](#) , 2023 WL 3444383 (N.J. Super. Ct. App. Div. May 15, 2023).

[7] ISS, United States Proxy Voting Guidelines Benchmark Policy Recommendations, Jan. 9, 2025, at 29.

[8] See Cornerstone Research, Securities Class Action Filings: 2024 Year in Review at 17.

[9] Id. at 4.

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Law360 Reveals Titans Of The Plaintiffs Bar

By **Rachel Rippetoe**

Law360 (May 26, 2025, 9:00 PM EDT) -- This past year, a handful of attorneys secured billions of dollars in settlements and judgments for both classes and individual plaintiffs against massive companies and organizations like Facebook, Dell, the National Association of Realtors, Johnson & Johnson, UFC and Credit Suisse, earning them recognition as Law360's Titans of the Plaintiffs Bar for 2025.

This year's list includes 11 attorneys handling a variety of class actions, shareholder disputes and fiduciary duty actions. Collectively, they've earned thousands of plaintiffs, from home sellers to victims of sexual assault, million-dollar and sometimes even billion-dollar settlements.



Adam Slater

Slater Slater Schulman

Benjamin D. Brown

Cohen Milstein Sellers & Toll

Beth Graham

Grant & Eisenhofer

**Philippe Selendy
& Jennifer Selendy**

Selendy Gay

Ned Weinberger

Labaton Keller Sucharow

Lisa S. Tsai

Reid Collins & Tsai

Salvatore J. Graziano

Bernstein Litowitz Berger & Grossmann

Joseph Saveri

Joseph Saveri Law Firm

Michael Sobol

Lieff Cabraser Heimann & Bernstein

Steve W. Berman

Hagens Berman Sobol Shapiro

While some of the attorneys come from larger, household-name plaintiffs firms, like Lieff Cabraser Heimann & Bernstein LLP and Grant & Eisenhofer PA, there are also many titans from smaller boutiques.

These small law attorneys pack a big punch, like wife and husband duo Jennifer and Philippe Selendy of Selendy Gay PLLC. The attorneys met while working at Cravath Swaine & Moore LLP, according to a 2014 Financial Times story dubbing Philippe Selendy "the man who took on Wall Street," referencing the \$25 billion in trial victories and settlements he won for taxpayers after the 2008 financial crisis.

The two powerhouse attorneys are both recognized this year for their work leading a trial team to a \$1.1 billion award against Johnson & Johnson for the former shareholders of medical robotics developer Auris Health, which was acquired by J&J. Plaintiffs alleged that J&J fraudulently induced Auris into the merger agreement and committed breaches of contract by pushing its own inferior robot rather than focusing on regulatory efforts for Auris' robots.

The Selendys aren't the only attorneys on this year's list who have worked together on big litigation. Titans Steve W. Berman of Hagens Berman Sobol Shapiro LLP and Benjamin D. Brown of Cohen Milstein Sellers & Toll PLLC were both on the team representing a class of home sellers who secured a \$418 million settlement with the National Association of Realtors and multiple major brokerages, who the class accused of conspiring to charge artificially inflated broker commissions for home sellers.

Another attorney to reach a landmark settlement last year was Adam Slater of Slater Slater Schulman LLP. In September, he helped reach a \$320.5 million settlement with the Diocese of Rockville Centre for approximately 600 survivors of sexual abuse. The firm said it was the largest diocese settlement in New York state history. Slater personally represented 100 survivors who alleged that they had been assaulted by priests as children. He said in a statement at the time that the majority are now in their 60s or 70s.

"They have been waiting decades for justice, and we are extremely pleased to reach this settlement on their behalf," Slater said in the statement.

Former Law360 Competition MVP Joseph Saveri of Joseph Saveri Law Firm also made the list this year. In March 2024, after 10 years of litigation including trial preparation and multiple rounds of mediation, his clients, a class of professional mixed martial arts fighters, reached a \$375 million settlement against UFC, which they accused of suppressing their wages.

And Michael Sobol of Lieff Cabraser has earned recognition for his work on a series of class actions alleging various video streaming services and media companies disclosed private customer information to Meta and Facebook. Two of those actions settled last year for over \$2 million each.

Several attorneys led shareholders to favorable settlements last year, including Ned Weinberger of Labaton Keller Sucharow LLP, who just hours before going to trial won a \$1 billion settlement for former holders of Dell Class C stock. The litigation stemmed from a 2018 \$23.9 billion transaction that involved the conversion of Class V stock into the new Class C common stock.

And Salvatore Graziano of Bernstein Litowitz Berger & Grossmann LLP helped preserve a favorable Ninth Circuit ruling for his shareholder clients suing Facebook over its disclosures surrounding the Cambridge Analytica scandal. He led a team of lawyers who secured a U.S. Supreme Court ruling in 2024 that dismissed Facebook's appeal — arguing that it wasn't obligated to disclose that Cambridge Analytica accessed and misused user data without users' consent — as "improvidently granted."

Congratulations to the accomplished lawyers who earned a spot on Law360's 2025 Titans of the Plaintiffs Bar list.

--Editing by Adam LoBelia.



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9th Circ. Mulls 'Two John Smiths' In Classmates.com Class

By **Jeff Overley**

Law360 (May 23, 2025, 11:19 PM EDT) -- Ninth Circuit judges Friday scrutinized a vast class of Californians whose identities were allegedly misappropriated by yearbooks platform Classmates.com, discussing ways to distinguish people with the same names and the case's implications for internet search giants — as well as how one judge's class of '62 yearbook might be a small part of the litigation.

During hourlong oral arguments Friday at the James R. Browning U.S. Courthouse in San Francisco, a three-judge panel probed the propriety of class certification for an estimated 100,000 Golden State residents whose names are searchable on the Classmates website, allegedly in violation of California's right of publicity statute.

Classmates owner PeopleConnect Inc. and lead plaintiff Alicia Nolen used their briefs to tee up 10 specific issues for the Ninth Circuit's review, and Friday's sometimes-convoluted arguments delved into many of them, making it difficult to discern which side might prevail and on what grounds. But one of the central themes was PeopleConnect's contention that U.S. District Judge Edward M. Chen granted certification without a viable vision for weeding out uninjured class members.

"The district court, having recognized that there are members of the class who ... would not have meritorious claims, didn't come up with a workable plan to winnow out those claims," Jenner & Block LLP partner Ian Heath Gershengorn, counsel for PeopleConnect, said Friday.

The judges extensively pressed Gershengorn on that assertion, posing many questions about the lawyer's insistence that affidavits wouldn't suffice to prove eligibility for \$750 in per-person damages authorized under the publicity law, codified as Section 3344 of the California Civil Code.

"They can say, 'I typed in my name. My name is in there. I'm a member of this class,'" U.S. Circuit Judge Salvador Mendoza Jr. suggested Friday.

Gershengorn replied that screening isn't so simple, telling Judge Mendoza that there would still be the question of "am I readily identifiable from my name, which would come up if I were searched, and that's the question that ... we would be fighting about, and that's the thing that would overwhelm the class."



Law360

Ian Gershengorn Pushes Back Against Clas...



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U.S. Circuit Judge Michelle T. Friedland then jumped in and observed that "the affidavit would have to say, 'I searched my name, and I saw my picture, and I know it's me.'" But that still wouldn't do the trick, according to Gershengorn, who replied that "'I know it's me' ... is not the test under the statute."

"If you can search in the way that Judge Friedland has suggested, and come up with this person, now you're going to have an argument about whether that person is that person?" U.S. Circuit Judge Marsha S. Berzon then asked.

The Jenner & Block partner responded in the affirmative, saying Judge Chen found "that there may be occasions in which people share the same name ... or have similar names, and therefore individualized inquiries may be necessary."

Benjamin R. Osborn, counsel for the class, faced pressure to address the same-names concern almost immediately after his argument began, with Judge Friedland asking, "What do we do if there's two John Smiths?"

Osborn tried to suggest that the concern isn't serious, saying that PeopleConnect's lawyers "failed to identify a single case of that actually happening." But Judge Friedland was unpersuaded, saying it's "pretty obvious that ... in these huge public schools, there are going to be some people with the same name."

Launched in 1995 during a pre-Facebook era when social networking consisted of little more than AOL chat rooms, Classmates.com is an online library with digital scans of roughly 450,000 school yearbooks obtained via purchases and donations. In recent years, the website has become **a magnet for class cases in several states** with right of publicity laws, and other online platforms — such as Ancestry.com — have been hit with **comparable cases**.



Law360

Benjamin Osborn Tangles Over Class Winn...



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PeopleConnect separately runs several websites — such as TruthFinder, Intelius and Instant Checkmate — that offer background check services and have attracted legal challenges of their own; one noteworthy example was a class action that accused Instant Checkmate of flouting Illinois' right of publicity law and produced **a \$10 million settlement** in 2023.

In the run-up to Friday's arguments, PeopleConnect attracted supportive amicus briefs. The briefs predicted broad ramifications if there are legal consequences for posting identities next to subscription advertisements on Classmates.com and making those identities a key result in the website's search engine.

"This theory would, on its face, apply to general-purpose sites like Google as well when they tout their own products, suggesting its overbreadth," 10 law professors wrote in an amicus brief urging reversal of the class certification ruling.

In another amicus brief, the U.S. Chamber of Commerce echoed that warning, writing that Judge Chen's certification means that "a potential violation of [Section] 3344 would arise anytime a banner ad appears near search results." That's something that "happens billions of times every day," and creating legal liability would "threaten disaster for the digital economy," the Chamber wrote.

Judge Berzon cited the amici's "parade of horrors" on Friday, asking Osborn to address fears that "everything that Google leads you to becomes a California privacy problem." The plaintiffs counsel suggested that the fear is overblown, saying that Google's results present "a much looser connection to a commercial use and a commercial purpose."

Prior to Friday's arguments, the Ninth Circuit directed the litigants to be prepared at oral argument to discuss Labcorp v. Davis, a pending U.S. Supreme Court case that stems from a Ninth Circuit decision and asks whether classes can be certified **if some members aren't injured**. But there was ultimately little focus on the Labcorp case, with the lawyers and judges noting that Supreme Court justices signaled at recent arguments that they **may dismiss the case** as improvidently granted.

Instead, much of Friday's argument centered on divergent views of Judge Chen's conclusions, including whether he adopted an adequate winnowing plan and whether he factored the merits of lead plaintiff Nolen's case into his class certification holding. The jurists sometimes sounded open to affirming class certification, but they also sounded wary of the case's premise.

Judge Berzon captured that wariness Friday, referencing the Classmates.com homepage with a lighthearted description that hearkened back to her teenage years.

"All they're showing on the front of their website is that we have the class of, you know, 1966 from East Meadow High School [in New York]. That's where I went — '62 actually," Judge Berzon said during Osborn's argument. "That's what they're publicizing. They're not publicizing me."

Osborn chuckled as Judge Berzon invoked her Long Island high school, but he quickly offered a serious response that characterized the Classmates.com business model differently: "They're publicizing a search bar where you can search for anyone — including for members of the class of 1962."

PeopleConnect is represented by Ian Heath Gershengorn, Clifford W. Berlow and Debbie L. Berman of Jenner & Block LLP.

The class is represented by Michael F. Ram and Marie Noel Appel of Morgan & Morgan PA, Raina C. Borrelli and Samuel J. Strauss of Strauss Borrelli PLLC and Benjamin R. Osborn.

U.S. Circuit Judges Marsha S. Berzon, Michelle T. Friedland and Salvador Mendoza Jr. sat on the panel for the Ninth Circuit.

The case is Nolen v. PeopleConnect Inc, case number 24-3894, in the U.S. Court of Appeals for the Ninth Circuit.

--Additional reporting by Steven Trader. Editing by Michael Watanabe.



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Amazon.com Sued Over Toxic Metals Found In Rice Products

By **Dorothy Atkins**

Law360 (May 23, 2025, 6:54 PM EDT) -- Consumers hit Amazon.com with a proposed class action in Washington federal court Friday, seeking to hold the retail giant liable for selling rice products that allegedly contain "alarmingly high" levels of toxic heavy metals.

In a 32-page complaint, plaintiffs Ashley Wright and Merriman Blum allege that recent testing of 145 rice samples conducted by the nonprofit Healthy Babies Bright Futures shows that more than a dozen rice products sold on Amazon's online marketplace are contaminated with toxic heavy metals, including arsenic, cadmium, lead and mercury, which pose serious health risks for children and which are unsafe to consume.

"Amazon sold these rice products with alarmingly high levels of heavy metals to an intended consumer audience that includes children, with no warning whatsoever about the dangers of heavy metals," the complaint says. "Reasonable consumers would want to know about the presence of toxins in any product, especially one that is intended for human consumption, such as the rice products at issue."

Wright, who has a 12-year-old daughter, and Blum both allege they recently bought Iberia Basmati 100% Aged Original rice from Amazon, not knowing the products may contain heavy metals. Both named plaintiffs claim they wouldn't have purchased the products, or they would have paid less for them, if they had known the rice may contain heavy metals.

The complaint notes that heavy metals like lead and arsenic pose significant adverse health risks to humans, and there is no level of those toxins that is considered safe for human consumption.

Despite those clear risks, the HBBF study revealed that all rice products tested contain more than 10 parts per billion of arsenic, with some products containing levels of arsenic as high as 149 ppb, even though the U.S. Food and Drug Administration has set the maximum allowable arsenic levels in bottled water at 10 ppb, according to the complaint.

The HBBF study also revealed that the products contained detectable levels of cadmium, with one product containing cadmium at a level of 105 ppb, or 100 ppb more than the 5 ppb amount allowed by the FDA in drinking water, the suit says.

The complaint adds that at least 12 of the rice products Amazon sells contain detectable amounts of lead, and 14 of the products contain detectable amounts of mercury.

The results of the tests are particularly concerning given that rice is a food staple, the suit says, that makes up a large portion of the diets among minority communities, including consumers who identify as Asian American, Hispanic or Latino.

The complaint identifies 18 separate rice products sold by different food companies, including Whole Foods Market, Ben's Original, Iberia Basmati, Royal, RiceSelect, Andy's, Riso Scotti, Marsh Hen Mill, Carolina Mill Plantation, 4 Sisters and Khazana.

The consumers allege that Amazon could make its own rice products with lower levels of heavy metals, or it could test their own products or third-party products, and disclose the levels of heavy metals in the rice on their product pages, so consumers are aware of what they are consuming.

The lawsuit seeks to certify a nationwide class of consumers who, during the applicable statute of limitations, purchased the rice products from Amazon in the U.S. for household use.

The two-count complaint asserts a violation of the Washington Consumer Protection Act and a claim of fraudulent concealment, and it seeks an order barring Amazon from continuing to sell the products and an order awarding plaintiffs costs, attorneys fees, interest, restitution and damages, including punitive damages and disgorgement.

A representative for Amazon said Friday the company would not comment on the allegations "as it is pending litigation."

Counsel for the consumers didn't immediately respond to requests for comment.

Rice is the most widely consumed solid food in the world and a dietary staple for over 1 billion children, even though for the past two decades researchers have recognized rice as being a major source of arsenic and other heavy metals, according to the complaint.

The lawsuit comes roughly a month after the medical journal The Lancet published the results of a peer-reviewed study in April concluding that rice will become increasingly toxic as carbon dioxide emissions rise, potentially putting billions of people at risk of cancers and other diseases.

The consumers' lawsuit notes that Amazon's marketplace sells roughly 12 million goods to consumers, and its sales make up between 65% and 70% of all online marketplace sales in the U.S., accounting for more than half of all online retail sales revenue in the country.

Rice product sellers aren't the only companies that have been targeted by consumers over claims their food products contain unsafe levels of heavy metals. In recent years, baby food makers, including Gerber, Nurture and Beech-Nut and **overseas food giants** like Nestle, Danone and Hero have faced multidistrict litigation over similar claims.

The suits were filed following **a report issued in February 2021** by an economic and consumer policy subcommittee of the U.S. House of Representatives that found some commercial baby foods are tainted with significant levels of toxic metals, including arsenic.

Wright and Blum are represented by Steve W. Berman and Meredith Simons of Hagens Berman Sobol Shapiro LLP and Rebecca A. Peterson of George Feldman McDonald PLLC.

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

The case is Wright et al. v. Amazon.com Inc., case number 2:25-cv-00977, in the U.S. District Court for the Western District of Washington.

--Editing by Andrew Cohen.



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Ex-McKinsey Exec Sentenced For Obstructing Purdue Probe

By **Emily Lever**

Law360 (May 23, 2025, 6:07 PM EDT) -- A Virginia federal judge has sentenced a disbarred attorney and former McKinsey & Co. partner to six months in prison for obstructing an investigation into the consulting giant's work with opioid manufacturer Purdue, federal prosecutors announced Friday.

Martin Eric Elling, who pled guilty in January to deleting emails and strategy documents related to McKinsey's work marketing Purdue Pharma LP's highly addictive opioid drug OxyContin, was sentenced Thursday by U.S. District Judge Robert S. Ballou to six months — half the twelve-month sentence requested by the government.

Elling will also be fined \$40,000 and be on supervised release for two years, during which he must complete 1,000 hours of community service, the U.S. Department of Justice said in a statement Friday.

On May 15, prosecutors asked Judge Ballou **to sentence Elling to 12 months** in prison, followed by three years of supervised release, with a fine of up to \$250,000 for pleading guilty to one count of knowingly destroying and concealing evidence.

"Such serious conduct, in such a serious context, by a man who certainly knew better, warrants a sentence greater than what the [sentencing guideline] suggests," according to the government's sentencing memorandum.

Defense counsel argued in their own sentencing memo that Elling should be sentenced only to probation because a prison term would likely cause Thailand, where he currently resides, to revoke his visa and bar him from the country.

The government accused Elling of deleting numerous documents from a McKinsey-issued laptop in August and September 2018, soon after learning that the Massachusetts Office of the Attorney General had named a former Purdue board member in a lawsuit over OxyContin marketing.

Elling emailed himself a reminder to "delete old pur documents from laptop," and a forensic analysis of the laptop confirmed he removed an email folder named "Purdue Pharma" and a Windows folder named "Purdue," federal prosecutors alleged.

McKinsey's pharmaceutical and medical products practice worked with Purdue from 2004 until 2019 on 75 different projects, the government said. In a 2013 effort, Elling was head of client services for a team advising Purdue on how to boost sales of OxyContin, including ramping up marketing to doctors who prescribed the drug especially prolifically, according to case documents.

Following the government's investigation, Purdue and its affiliate agreed to pay more than \$600 million for misbranding OxyContin by falsely marketing it as less addictive, less subject to abuse and diversion, and less likely to cause dependence and withdrawal than other pain medications.

Purdue's then-president, general counsel and chief medical officer also pled guilty to misbranding-related charges, and they agreed to a total of \$34.5 million in fines, court papers showed.

In December 2024, McKinsey also agreed to pay \$650 million to resolve charges related to its work helping Purdue Pharma market and boost sales of OxyContin, reaching a five-year deferred

prosecution agreement with the U.S. attorney's offices in the Western District of Virginia and the District of Massachusetts, as well as the U.S. Department of Justice's Consumer Protection Branch.

A month after the consulting firm cut its plea deal with prosecutors, Elling also copped to one criminal count.

He "fully accepts responsibility for his conduct, for which he is extremely sorry," Elling's defense team told Law360 in an emailed statement Thursday. "He accepts the sentence imposed by the court. He intends to spend the remainder of his life seeking to regain the trust of those whom he disappointed with his conduct, by supporting his family and friends and giving back to the less fortunate, as he has done for the past decades."

Elling is represented by Marjorie J. Peerce, John F. Hundley and Katherine L. Oaks of Ballard Spahr LLP and Thomas J. Bondurant Jr. and Jessiah S. Hulle of Gentry Locke.

The government is represented by Randy Ramseyer of the U.S. Attorney's Office for the Western District of Virginia.

The case is USA v. Elling, case number 1:24-cr-00045, in the U.S. District Court for the Western District of Virginia.

--Additional reporting by Dorothy Atkins, Julie Manganis and Ben Zigterman. Editing by Covey Son.

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Meta, App Maker Flo Can't Escape All Of Privacy Class Action

By **Craig Clough**

Law360 (May 23, 2025, 8:27 PM EDT) -- A California federal judge ruled Thursday that Flo Health Inc. and Meta cannot escape all the claims in a class action brought by users of a menstrual cycle app who allege their privacy was violated, denying parts of both companies' summary judgment bids.

An **order** from U.S. District Judge James Donato ruled that Meta must face a certified class claim alleging it violated the California Invasion of Privacy Act and Flo must face a claim accusing it of violating the Confidentiality of Medical Information Act, but granted summary judgment on other claims.

The judge held that "[d]isputes of fact abound with respect to the scope of consent, the timing of Meta's 'interception' or 'eavesdropping,' whether Meta 'intended' to intercept communications, whether Meta's interception occurred while the communications were 'in transit,' and the like."

On the Confidentiality of Medical Information Act claim against Flo, the judge wrote that Flo's arguments are "not well taken," including the contention that it is not a health care provider, as there "are fact disputes about Flo's services and practices" based on evidence in the record.

First filed in 2021, the lawsuit currently before Judge Donato followed a complaint and settlement agreement between Flo and the Federal Trade Commission that ended with the latter requiring Flo to gain affirmative consent before sharing personal health information with advertising companies.

The FTC's probe came after a 2019 investigation by the Wall Street Journal into the app, which at the time was the most downloaded health and fitness app in Apple's app store, with more than 100 million total users.

Google is also a defendant in the suit, although Thursday's order only applied to Meta Platforms Inc. and Flo.

In an order issued May 19, Judge Donato **certified** both a nationwide class and a California subclass of what is likely to be millions of Flo app users who entered menstruation or pregnancy information into the app between Nov. 1, 2016, and Feb. 28, 2019. The plaintiffs have claimed that Flo surreptitiously shared this "highly personal" health information with fellow defendants Google LLC and Meta Platforms Inc. through their software development kits for fine-tuning personalized ads and other marketing uses, despite repeatedly reassuring users that it would not disclose their information in this manner.

Thursday's summary judgment order dismissed claims against Meta on the Wiretap Act, with the judge noting that class certification was not brought on this claim. The judge also tossed the California Comprehensive Computer Data Access and Fraud Act claim against Meta, writing that class certification was denied on the claim due to the plaintiff's expert on the issue being excluded, and also tossed the individual named plaintiff's claim that Meta aided and abetted Flo's intrusion upon seclusion.

The order also tossed several claims against Flo that were not certified, and all of one named plaintiff's claims based on the judge finding the individual did not use the Flo app until after the class period. But the order kept in place a certified class claim for violations of the Confidentiality of

Medical Information Act and rejected the company's arguments that the claims are time-barred.

"A jury will need to decide whether Flo's privacy disclosures sufficed to give users constructive notice of the alleged misconduct, and with respect to the discovery rule, plaintiffs set forth evidence from which a reasonable jury could find that they did not learn about the alleged misconduct until January 2021," the judge wrote. "Flo's public representations after the publication of the Wall Street Journal article create fact issues about the applicability of the fraudulent concealment doctrine which will need to be resolved by the trier of fact."

Counsel for the parties did not immediately respond to requests.

The app users are represented by Christian Levis and Amanda Fiorilla of Lowey Dannenberg PC, Diana J. Zinser and Jeffrey L. Kodroff of Spector Roseman & Kodroff PC, Carol C. Villegas, Michael P. Canty, Danielle Izzo, Jake Bissell-Linsk and Gloria J. Medina of Labaton Keller Sucharow LLP, James M. Wagstaffe of Adamski Moroski Madden Cumberland & Green LLP, Ronald A. Marron, Alexis M. Wood and Kas L. Gallucci of The Law Offices of Ronald A. Marron, Kent Morgan Williams of Williams Law Firm, and William Darryl Harris II of Harris Legal Advisors LLC.

Flo Health is represented by Brenda R. Sharton, Benjamin M. Sadun and Theodore E. Yale of Dechert LLP.

Meta is represented by Andrew B. Clubok, Melanie M. Blunski, Kristin Sheffield-Whitehead, Catherine A. Rizzoni and Michele D. Johnson of Latham & Watkins LLP and Elizabeth K. McCloskey and Abigail A. Barrera of Gibson Dunn & Crutcher LLP.

Google is represented by Benedict Y. Hur, Simona A. Agnolucci, Eduardo E. Santacana, Tiffany M. Lin, Yuhua Alice Chi and Argemira Flórez of Willkie Farr & Gallagher LLP.

The case is Erica Frasco v. Flo Health Inc. et al., case number 3:21-cv-00757, in the U.S. District Court for the Northern District of California.

--Additional reporting by Allison Grande. Editing by Michael Watanabe.



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Seattle Cancer Center Inks \$11.5M Class Data Breach Deal

By **Rachel Riley**

Law360 (May 23, 2025, 7:32 PM EDT) -- A Washington state judge has given final approval to an \$11.5 million class action settlement to end litigation against Seattle-based Fred Hutchinson Cancer Center over a 2023 data breach that exposed patient information, with the judge awarding \$3.8 million in attorney fees in a deal class counsel values at more than \$50 million.

Fred Hutchinson and its hospital system partner University of Washington have agreed to pay \$11.5 million to class members and undertake cybersecurity improvements expected to cost \$13.5 million, according to the settlement. Giving the **final green light** to the deal Tuesday, King County Superior Court Judge Wyman Yip awarded class counsel more than \$3.8 million in fees, to be paid from the settlement fund.

After hackers accessed patients' personal information during the November 2023 cyberattack, Fred Hutchinson was hit with a wave of lawsuits starting in December 2023 by affected individuals who claimed the cancer care center and its research partner UW failed to safeguard their private data. The cases were later consolidated.

The patients accused Fred Hutchinson and UW of negligence, breach of implied contract and unjust enrichment, and brought a fourth claim against Fred Hutchinson for violation of the Washington Consumer Protection Act.

The cancer care center and university continue to deny any fault, according to the **settlement agreement**. Fred Hutchinson and UW also maintain that the plaintiffs cannot show they suffered harm based on the allegations or could satisfy the requirements to try the case as a class action in Washington, the settlement states.

The class, certified for settlement purposes only, consists of 2.1 million people whose private information "was potentially or actually compromised" in the data security incident. The deal entitles class members who filed valid claims by a May 7 deadline to a pro rata cash fund payment of \$599, up to \$5,000 in reimbursement for documented out-of-pocket losses, and two years of medical identity theft protection and monitoring services.

"We are proud to have negotiated this settlement, which provides \$52.5 million in relief to the class consisting of \$11.5 million in cash, \$13.5 million in remedial measures by Fred Hutch to secure patient data, and \$25.5 million worth of class member subscriptions for medical fraud monitoring and insurance," said class counsel Kim D. Stephens of Tousley Brain Stephens PLLC.

A Fred Hutchinson spokesperson acknowledged in a Friday statement that the cancer care center has secured final approval for the settlement resolving the November 2023 cybersecurity incident.

"We greatly value the trust of our patients and employees, and take the security of personal information very seriously," the spokesperson said in an email. "We remain committed to safeguarding personal information and continue to make significant investments to strengthen our data security."

Judge Yip **granted** preliminary approval to the deal on Jan. 7, after the parties reached basic terms on the agreement during an August 2024 mediation facilitated by a retired judge.

In the final approval order issued on Tuesday, Judge Yip also approved \$2,500 service awards for each of the class representatives, Shawna Arneson, Jennifer Aspelund, Robert Ayers, Kayla Browne, Jennifer Clayton, Gary Holz, Arlene Rappaport Reed and a representative identified as Jane Doe.

The class members are represented by Kim D. Stephens and Cecily C. Jordan of Tousley Brain Stephens PLLC and M. Anderson Berry of Arnold Law Firm. The plaintiffs steering committee also included Raina C. Borrelli and Samuel J. Strauss of Strauss Borrelli PLLC, Brian C. Gudmundson of Zimmerman Reed LLP, Ashley M. Crooks of Hausfeld LLP and John J. Nelson of Milberg Coleman Bryson Phillips Grossman PLLC.

Fred Hutchinson is represented by Casie D. Collignon of Baker & Hostetler LLP.

UW is represented by Erin Earl of Perkins Coie LLP.

The case is In re: Fred Hutchinson Cancer Center Data Breach Litigation, case number 23-2-24266-1, in King County Superior Court, Washington.

--Editing by Linda Voorhis.

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Sonos Pushed New App Despite Knowing Problems, Suit Says

By **Rae Ann Varona**

Law360 (May 23, 2025, 10:10 PM EDT) -- Sonos device owners from several states have lodged a putative class action against the audio system company, telling a California federal court that Sonos forced an app redesign on owners that caused connectivity problems and removed features users had relied on.

Owners of Sonos wireless speaker systems allege in the suit filed Thursday that the company pushed the release of the new app last spring despite knowing it had numerous bugs and lacked functions users enjoyed in previous app versions. The users assert that Sonos knew that releasing its app would degrade the performance of Sonos devices, yet went on touting that it would provide a faster, better and smoother listening experience.

"To date, over a year after its release, the app redesign still does not have all of the features that were included in previous app versions, and users continue to experience significant performance problems," the users said in the **complaint**.

The users seek to represent a nationwide class of Sonos device users whose apps run any version of the redesign. They also seek to represent subclasses of users from their home states of California, New York, Florida, Georgia, Maryland, Michigan, New Jersey, Pennsylvania and Texas.

They assert violations of the Computer Fraud and Abuse Act and several state laws.

Sonos unveiled its newly designed app in April 2024, saying in a press release that it was the "most extensive app redesign ever," and was modernized for an "easier, faster and better experience."

Former Sonos CEO Patrick Spence said the company, "after thorough development and testing," was "confident this redesigned app is easier, faster and better."

But according to the product owners, the Santa Barbara company was aware that the app had numerous bugs and lacked previously available functions in light of internal testing and concerns employees had raised.

Product owners say Sonos rushed the release of the redesigned app to avoid delaying the launch of its inaugural headphones. What resulted was an app that "substantially degraded the performance of Sonos devices," the owners said.

They say each of them experienced their Sonos devices glitching, lagging or "not working at all." Their devices and the app would frequently lose connection, causing audio to suddenly stop, they say, and audio would start playing unexpectedly, sometimes at high volumes.

The owners say they also experienced being unable to change the volume or group speakers together.

Sonos has acknowledged that the app redesign degraded device performance, including in an August 2024 earnings call, in which Spence said customers were having an experience "worse than what they previously had," according to the owners' complaint.

The owners say Spence had also sent out a letter to users in July acknowledging issues since launch

and that fixing issues had delayed a prior plan to incorporate missing features.

But "despite company promises that it would promptly fix the app, performance problems caused by the app redesign continue to plague users to this day," the owners say.

Spence stepped down as CEO in January.

The product owners say they were forced to update to the redesigned app when their device firmware was updated, sometimes automatically. They've also effectively been stuck with the app redesign, with no way to restore a prior version, according to their complaint.

Product owners stated in the suit that they would have paid "at least \$100 to \$1,500 to uninstall the app redesign" and revert to an older version.

Sonos did not immediately respond to a request for comment Friday.

The product owners are represented by Jeremy A. Lieberman, Michael Grunfeld, Jonathan D. Park and Jennifer Pafiti of Pomerantz LLP.

Counsel information for Sonos was not immediately available.

The case is Robert Bornemann et al. v. Sonos Inc., case number 2:25-cv-04656, in the U.S. District Court for the Central District of California.

--Editing by Linda Voorhis.

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