

## Securities Law News

# Big Lots Stock Manipulation Suit Revived to Revisit Standing

May 27, 2025, 1:15 PM PDT

- Appeals court says lack of standing decision was an error
- Ruling revives unique Ohio lawsuit over “greenmailing”

An Ohio state trial judge who tossed a lawsuit filed by Big Lots Stores Inc. shareholders accusing activist investors of violating a rarely-used stock price manipulation law wrongly did so without deciding whether the shareholders could sue, an appeals court ruled Tuesday.

The Ohio Court of Appeals, 10th District sent the case—which says Ancora Holdings Inc. and Macellum Capital Management LP committed “greenmailing”—back to the Franklin County Common Pleas Court to decide the standing issue. Greenmailing is when buyers acquire a large amount of stock and threaten a company’s takeover unless the company buys the stock back at an inflated value.

The original judge on the case—Daniel R. Hawkins (R), now a justice on the Ohio Supreme Court—decided the suit on the merits against the shareholders and presumed they had the authority to sue, the opinion said. Standing “is a threshold jurisdictional matter that must be addressed before a court reaches the merits of an action,” Judge Carly M. Edelstein (D) wrote for herself, Judge Laurel Beatty Blunt (D) and Judge M. Shawn Dingus (D) as they handed the shareholders another chance to litigate the unique lawsuit.

The panel said the bevy of other issues before it—including whether Hawkins’ merits ruling was correct, whether Big Lots could substitute for the shareholders as a party or at least intervene, and whether changes Ohio lawmakers made to the greenmailing law during the appeal were constitutional—were moot or premature.

### ‘Shareholder Activism’

The case centers on the purchase and sale of Big Lots stock and whether Ancora and Macellum illegally manipulated stocks. The shareholder plaintiffs in the Columbus-based company—which filed for bankruptcy last year—alleged in a 2021 lawsuit that the firms manipulated the trading price of Big Lots after amassing an 11% stake in the company.

The firms in January 2020 approached Big Lots officials with concerns, and the following month delivered a letter nominating people for the company's board of directors. After public and private discussions over company strategy and the makeup of its board of directors, two members backed by the firms were appointed.

During this time, the stock price increased. From August to October 2020, the firms unloaded their stock, reducing their stake down to 3% and making about \$100 million in the process.

Hawkins ruled in 2024 that the plaintiffs didn't show that the firms violated the anti-greenmail law. Specifically, he said there must be evidence that conduct was intentional and that the firm's actions were "shareholder activism" that didn't rise to the level of being manipulative under the law.

He expressed doubts that the shareholders had the authority to sue but decided to "proceed under the presumption that Plaintiff has statutory standing to pursue this matter."

The shareholders and Big Lots are represented by Robbins Geller Rudman & Dowd LLP and Murray Murphy Moul & Basil LLP. Big Lots is also represented by Thompson Hine LLP. The Ancora defendants are represented by Squire Patton Boggs. The Macellum defendants are represented by Tucker Ellis.

The case is *Corpus Christi Firefighters' Ret. Sys. v. Macellum Cap. Mgmt. LP*, Ohio Ct. App., 10th Dist., No. 24-AP-000269, 5/27/25 .

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Securities Law News

# Drugmaker Organon Investor Sues After Quarterly Dividend Cut (1)

May 27, 2025, 12:41 PM PDT; Updated: May 27, 2025, 3:30 PM PDT

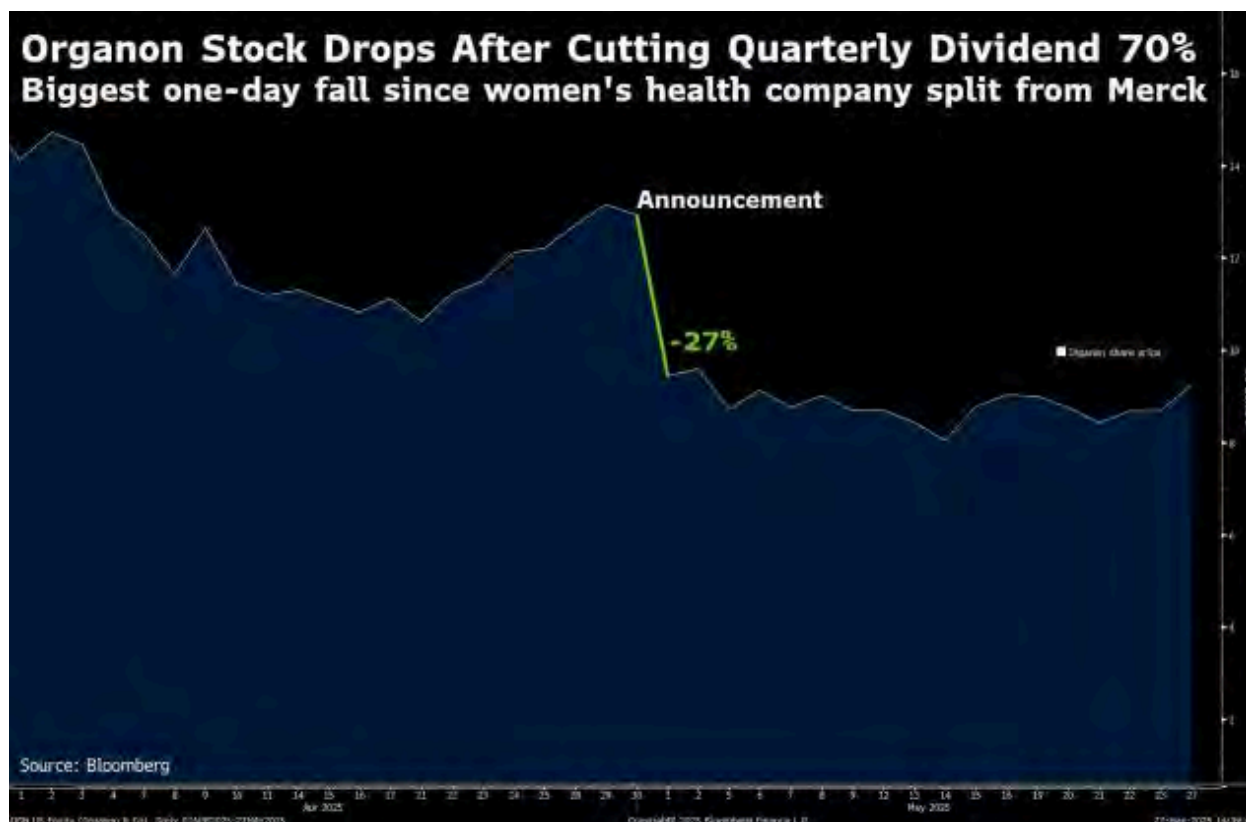
- **COURT:** D.N.J.
- **TRACK DOCKET:** No. [2:25-cv-05322](#) (Bloomberg Law subscription)

Organon & Co. misled investors about prioritizing shareholder payments before announcing it slashed quarterly dividends 70% before a record selloff, a proposed class action said.

Share prices plummeted almost 27% May 1, the day the women's health company announced the cut to focus on debt reduction after an acquisition, a stockholder's complaint told the US District Court for the District of New Jersey. It was the stock's biggest one-day drop since Organon spun off from Merck & Co. Inc. in 2021, according to data compiled by Bloomberg.

Before the announcement, Organon and two top executives had emphasized prioritizing its capital allocation strategy with regular, quarterly dividends—when a company pays shareholders a bit of its earnings—said the complaint filed May 23. But they hid Organon's new prioritization of a debt reduction strategy and overstated its financial health despite headwinds after acquiring Dermavant and its key skin care cream in 2024, said investor Joseph Hauser.

Organon, CEO Kevin Ali, and CFO Matthew Walsh disclosed the dividend drop to \$0.02 a share from \$0.28 to put funds toward reducing debt in a first fiscal quarter of 2025 press release and earnings call May 1, Hauser said. At least two analysts lowered their price targets after the announcement, suggesting investors had put "significant weight" on past statements and the regularity of its dividends as a corporate priority, Hauser said.



The proposed class would include those who got stock from Oct. 31, 2024—when the Organon executives touted the acquisition and its financial status while sharing third quarter of 2024 financial results—through April 30, 2025.

Levi & Korsinsky LLP represents Hauser, who seeks damages among other relief for alleged Securities Exchange Act of 1934 violations.

Organon said it doesn't comment on pending litigation in response to an email seeking comment.

The case is *Hauser v. Organon & Co.*, D.N.J., No. 2:25-cv-05322, complaint filed 5/23/25.

(Updated to add Organon declined to comment in the seventh paragraph.)

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**Securities Law News**

# Next Meats Insider Beats Suit Over Short-Swing Trades Outside US

May 27, 2025, 1:24 PM PDT

- Vegetarian 'meat' maker's stock trades over the counter in US
- Domestic 'exchange' and sale criteria not met, court says

The CEO of Tokyo-based Next Meats Holdings Inc. and a company he controls can't be sued for profits from their stock transactions within a six-month period under a US securities law, a federal court ruled.

The statute doesn't apply outside the territory of the US, and the complaint didn't adequately allege either a domestic exchange or particular domestic transactions, Judge Margaret M. Garnett said May 23 for the US District Court for the Southern District of New York.

The law is Section 16(b) of the Securities Exchange Act, which bars most "short-swing" sales and purchases of stock by insiders. Violation of the provision doesn't hinge on the insider's intent, so short-swing trades can be an attractive target for investors seeking to recoup money for the corporation, as shareholder Mark Rubenstein sought to in his derivative suit against Next Meat's CEO.

And some traders are unaware they they're insiders, as an elderly investor has recently argued in seeking US Supreme Court review.

But the law applies only domestically. Although Next Meats, which makes vegetarian food products, is a Nevada corporation, it has principal offices in Tokyo, the court said.

Rubenstein claimed that CEO Koichi Ishizuka—and White Knight Co., which Ishizuka controlled—collectively owned more than 10% of Next Meats' common stock, and were therefore statutory insiders. They sold some of their holdings for \$0.85 per share in May 2022 and then, within six months of that sale, bought an even greater amount of Next Meats stock for a penny per share, Rubenstein claimed.

Ishizuka and White Knight allegedly made about \$400,000 in short-swing profits, the investor said.

An Exchange Act suit can proceed where the security is listed on a domestic exchange, Garnett said. But Next Meats is traded over the counter in the US, she said. "By definition, securities that trade OTC are not traded on a securities exchange," she said.

And the stock purchases' and sales' contractual steps all took place in Japan, so "irrevocable liability"—a way to show a domestic transaction—didn't occur in the US, Garnett said. And a transfer agent's New Jersey address doesn't mean title transferred in the US, she said.

David Lopez, who practices in Southampton, N.Y., and Miriam Tauber, who practices in New York, represented Rubenstein. David DeStefano, who practices in New York, and T.J. Jesky, who practices in Chicago, represented the defendants.

The case is Rubenstein v. Ishizuka , 2025 BL 178531, S.D.N.Y., No. 23-CV-04332, 5/23/25 .

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## Litigation

### **Chubb, AIG Win in Appeal Over D&O 'Bump-Up' Insurance Provision**

May 28, 2025, 7:54AM PDT

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- **Seventh Circuit shoots down Towers Watson's appeal**
- **Decision preserves trial court win for D&O carriers**

A federal appeals court handed a win to insurers on a controversial directors and officers provision, ruling that the "bump-up" exclusion barred coverage for a settlement—including a portion that went toward attorneys' fees—in post-merger shareholder litigation against Willis Towers Watson Plc.

The settlement represented an effective increase, or "bump up," of the deal price, precisely what the insurance provision is intended to bar, the US Court of Appeals for the Fourth Circuit said in a Wednesday opinion, affirming a lower court order. The ruling is a win for Towers Watson's insurers, including units of Chubb Ltd. and American International Group Inc.

The bump-up provision, which is often raised by carriers to deny coverage for settlements or judgments in post-deal litigation, has fueled fights in courts across the country over who must cover the hefty payouts to shareholders. Other bump-up disputes are currently pending before state appellate courts in Delaware and Texas, as well as in various trial courts across the country.

The Fourth Circuit panel concluded that settlements of claims brought under Section 14(a) of the 1934 Securities Exchange Act can, and in this case did, represent an effective increase in consideration, dismissing Towers Watson's argument that shareholders can't technically seek to recover the difference in deal price under 14(a).

"While a clever argument, it is beside the point," Judge G. Steven Agee wrote for the panel,

The ruling stands in sharp contrast to a January decision by a Delaware state court, which is currently on appeal. In that case, the court held that a settlement paid to Harman International Industries Inc. didn't represent an increase in consideration for its acquisition by Samsung Electronics Co. and wasn't barred by the bump-up exclusion.

Counsel for Towers Watson didn't immediately respond to a request for comment.

Judges James A. Wynn Jr. and Allison Jones Rushing also sat on the Fourth Circuit panel.

Clement & Murphy PLLC; Cohen Ziffer Frenchman & McKenna; and Whiteford, Taylor & Preston LLP represent Towers Watson. O'Melveny & Myers LLP represents the Chubb unit. Arnold & Porter Kaye Scholer LLP represents the AIG unit.

The case is Towers Watson v. Nat'l Union Fire Ins. Co. , 4th Cir., No. 24-01302, 5/28/25 .

## Class Action

### **Insurers Beat Meta in Forum Fight Over Social Media Lawsuits**

May 28, 2025, 5:09 AM PDT

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- **Insurers win on remand, case to return to Delaware state court**
- **Federal judge dismisses Meta's parallel lawsuit in California**

A California federal judge sent a dispute between Meta Platforms Inc. and its insurers over coverage for social media litigation back to Delaware state court, where two Hartford Insurance Group Inc. units first filed suit.

Meta had no valid basis for removing the case to federal court, and the Delaware Superior Court can resolve the social media giant's pending motions to dismiss or pause the suit, Judge Yvonne Gonzalez Rogers of the US District Court for the Northern District of California said in a Tuesday order granting insurers' motion to remand.

The insurers had initially submitted their motion to a Delaware federal court before the case was transferred to the underlying multidistrict litigation, where Meta stands accused of getting kids hooked on social media. Gonzalez Rogers also dismissed a parallel action filed by Meta in the California federal court because Hartford's suit was filed first.

The ruling marks a major development in a months-long battle between Meta and its insurers over where the dispute should be litigated.

After Hartford sued Meta in the Delaware state court, Meta removed the case to federal court and filed its own suit in California, in the same court handling the underlying MDL. Hartford and Chubb Ltd. units have pushed to send the case back to Delaware state court and end Meta's lawsuit, while Meta has pursued a pause on coverage litigation altogether pending resolution of the underlying social media lawsuits.

But Meta's removal to federal court was improper, Gonzalez Rogers said, because the forum defendant rule bars removal if a defendant is a citizen of the state where an action was brought.

"Meta elected to incorporate in Delaware. It cannot now use equitable estoppel to shield it from a lawsuit in its home jurisdiction," the judge said.

She also dismissed Meta's argument that it was the "natural" plaintiff. "If that were the case, insurers could never bring declaratory claims against insureds," Gonzalez Rogers said.

Meta has attempted to shake Hartford's suit either by obtaining a stay while the court resolves the social media giant's own case, or by getting the court to toss the suit altogether. The Delaware court may rule on those motions now that the case is set to be returned.

Meta didn't immediately respond to a request for comment Wednesday.

Covington & Burling LLP and Berger McDermott LLP represent Meta. Ruggeri Parks Weinberg LLP and Bayard PA represent Hartford. Holwell Shuster & Goldberg LLP, Clyde & Co LLP, and Stamoulis & Weinblatt LLC represent Chubb.

The cases are Instagram LLC v. Hartford Casualty Ins. Co. , N.D. Cal., No. 4:24-cv-09500, 5/27/25 and In Re: Social Media Adolescent Addiction/Personal Injury Products Liability Litigation , N.D. Cal., No. 4:22-md-03047, 5/27/25 .

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# UFC Faces New Antitrust Claims Following \$375M Class Action Settlement



law.com/2025/05/27/ufc-faces-new-antitrust-claims-following-375m-class-action-settlement

Sulaiman Abdur-Rahman

May 27, 2025

- Counsel for a mixed martial arts fighter filed an antitrust class action against the Ultimate Fighting Championship.
- The Sherman Act claims are similar to the wage-suppression claims made in a second case pending in Nevada federal court.
- Latham & Watkins; Paul, Weiss, Rifkind, Wharton & Garrison; and counsel from Las Vegas-based Campbell & Williams helped UFC settle another related lawsuit for \$375 million.

The Ultimate Fighting Championship faces another antitrust class action in Nevada federal court weeks after plaintiffs and UFC defendants received final approval on their \$375 million settlement agreement resolving wage-suppression claims.

Counsel for mixed martial arts fighter Mikhail Cirkunovs filed a complaint May 23 alleging the UFC maintained an anticompetitive scheme to eliminate would-be competition and artificially suppress MMA fighter wages in violation of the Sherman Act.

“The UFC has used the ill-gotten monopoly and monopsony power it has obtained and maintained through the scheme alleged herein to artificially suppress compensation for UFC Fighters in the Class to below competitive levels,” counsel for Cirkunovs alleged in the complaint. “Since at least late September 2020, the UFC has also used its ill-gotten monopoly and monopsony power and coercive contract terms to force members of the Class to sign contracts containing Arbitration Clauses and/or Class-Action Waivers.”

Berger Montague; Cohen Milstein Sellers & Toll; Lockridge Grindal Nauen; the Joseph Saveri Law Firm; and Claggett & Sykes filed the complaint on behalf of Cirkunovs, an MMA fighter who competed in 13 UFC bouts from 2015 through 2022 under the name Misha Cirkunov.

Latham & Watkins; Paul, Weiss, Rifkind, Wharton & Garrison; and counsel from Las Vegas-based Campbell & Williams helped the UFC resolve similar claims in a \$375 million settlement U.S. District Judge Richard F. Boulware II of the District of Nevada fully approved March 3 in *Le v. Zuffa*.

The settlement agreement provided cash relief to more than 1,000 members of an MMA fighter class and allowed many members of the class to pursue additional damages in a related case captioned as *Johnson v. Zuffa*.

Zuffa LLC is a Nevada limited liability company doing business as UFC.

Counsel for the UFC filed a motion in April asking Boulware to deny class certification or strike class allegations in the *Johnson* case. Boulware has scheduled a motion hearing for June 3.

Zuffa, TKO Group Holdings Inc. and Endeavor Group Holdings Inc. are named as defendants in the latest antitrust class action accusing UFC of Sherman Act violations.

UFC did not immediately respond to a request for comment on the class action.

Cirkunovs seeks treble damages and a court order invalidating any arbitration clause or class action waiver in the contracts between members of the proposed class and UFC.

Co-counsel for the plaintiff did not immediately respond to a request for comment on the *Cirkunovs v. Zuffa* lawsuit.

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May 23, 2025

By Chris O'Malley

🕒 5 minute read

May 21, 2025

## Not as Simple as It Seems: Antitrust Division's Push to Call More Grand Jury Witnesses

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By Craig Y. Lee and Terence Parker

# Live Nation, Ticketmaster push back on monopoly claims in antitrust case

DJ [dailyjournal.com/articles/385856-live-nation-ticketmaster-push-back-on-monopoly-claims-in-antitrust-case](https://www.dailyjournal.com/articles/385856-live-nation-ticketmaster-push-back-on-monopoly-claims-in-antitrust-case)

**May 28, 2025**

In a new court filing, the companies claim they offer superior services and financial terms, not coercion, as the reason major venues choose their platforms. The case is being heard alongside broader government antitrust litigation that may reshape the live entertainment industry.

Live Nation and Ticketmaster argued that a consumer antitrust action over their concert ticketing service is built off a distorted view of the live entertainment industry that does not reflect an unlawful monopoly.

"Plaintiffs' complaint conjures a false vision of the live entertainment industry in which key players - from the world's most famous and powerful performers to the country's largest live event venues and fierce competitors like SeatGeek and StubHub - are somehow trapped under the 'monopolistic thumb' of defendants Live Nation and Ticketmaster. This account of the industry simply bears no resemblance to reality," the companies' counsel wrote in a reply brief to the complaint over Memorial Day weekend.

The brief, filed by Latham & Watkins LLP partner Timothy L. O'Mara, is in response to a putative consumer class action that accused Live Nation and its Ticketmaster subsidiary of monopolizing the concert ticketing market with inflated prices and fees. *Heckman et al. v. Live Nation Entertainment Inc. et al.*, 2:22-cv-00047 (C.D. Cal., filed Jan. 4, 2022).

Live Nation argued most of its ticket and promotion revenue goes directly to artists and venues, "something no firm with monopoly power would allow," and the consumers' claims ignore Ticketmaster's "relatively new" entry to the secondary ticketing market that has been "dominated for years" by SeatGeek and StubHub.

The complaint - filed by Quinn Emanuel Urquhart & Sullivan LLP partner Adam B. Wolfson on behalf of nationwide consumers - also alleges the companies abuse their purported control of the market by "threatening" venues if they do not use Ticketmaster as their primary service provider for larger events and major concerts.

However, Live Nation claims there's no basis for this allegation, in particular, because of a consent decree that was amended years ago to prohibit such activity when the two companies merged in 2010.

"The most overblown allegation in the complaint is that Live Nation 'threatens' or 'punishes' venues with fewer concerts unless they use Ticketmaster. ... Not even the independent Monitor who is tasked with keeping tabs on Live Nation has ever found that Live Nation violated the amended consent decree," the answer brief stated.

"Rather, venues - particularly, the larger, sophisticated 'major concert venues' at issue here - choose Ticketmaster because it offers superior technology that empirically sells more tickets ... and great financial terms."

Neither of the lead attorneys could immediately be reached Tuesday for comment.

The consumer's case against Live Nation and Ticketmaster is similar to a separate multi-state antitrust action the Department of Justice filed against the companies in New York. Additionally, the government's lawsuit seeks to separate the companies. *U.S. v. Live Nation Entertainment et al.*, 1:24-cv-03973 (S.D. N.Y., filed May 23, 2024).

In the consumer action in Los Angeles, the plaintiffs' counsel successfully opposed several of Live Nation's attempts to drop or pause the case. This included motions to compel arbitration in 2023 - which also survived an appellate review - and dismiss the case. Both issues were ruled by U.S. District Judge George Wu, who found the consumers' claims satisfied prongs of the antitrust standing inquiry and sufficiently alleged a redressable injury.

Live Nation further rejected the consumers' suit by arguing their monopoly claims were built off a manipulation of the live entertainment market to fit an unfounded theory.

"Plaintiffs gerrymander their proposed markets by artificially limiting them to 'major concert venues,'" the answer brief stated.

"For primary ticketing, that definition isolates the most sophisticated venues who are most likely to pick Ticketmaster because of its superior product. And limiting a secondary marketing market to major concert venues does not reflect market realities."

In a third case, also before Wu, Live Nation and Ticketmaster were able to successfully dismiss fraud and misrepresentation claims brought by hundreds of Taylor Swift fans who accused them of unlawfully botching the ticket sales of the singer's 2023 "Eras Tour." Although Wu ruled the plaintiffs in that case failed to sufficiently plead any of their antitrust theories, he allowed them the opportunity to make amendments and re-file it by July 14.

O'Mara of Latham & Watkins also leads the defense in that case. *Barfuss et al. v. Live Nation Entertainment Inc. et al.*, 2:23-cv-01114 (C.D. Cal., filed Feb. 14, 2023).

#385856

# Critical Mass With Law.com's Amanda Bronstad: Data Breach Class Actions Converge on Coinbase, Oregon Jury Awards \$35M in Latest Wildfire Verdict

 [law.com/2025/05/28/critical-mass-with-lawcoms-amanda-bronstad-data-breach-class-actions-converge-on-coinbase-oregon-jury-awards-35m-in-latest-wildfire-verdict](https://www.law.com/2025/05/28/critical-mass-with-lawcoms-amanda-bronstad-data-breach-class-actions-converge-on-coinbase-oregon-jury-awards-35m-in-latest-wildfire-verdict)

Amanda Bronstad

May 28, 2025

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

**This week:** **Coinbase** faces nearly a dozen class actions after disclosing a cyberattack this month. The seventh jury to award damages over 2020 **wildfires** in Oregon came back with \$35 million for 10 people. Find out who represents **Delta Air Lines** in lawsuits over the flight that was overturned in Toronto this year.

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

Tina Wolfson, with Ahdoot & Wolfson. Courtesy photo

## Breach Lawsuits Could Consolidate, But Where is Coinbase Based?

Cryptocurrency exchange **Coinbase Inc.** was hit with about a dozen class actions after disclosing on May 15 that a hacker claiming to have obtained data about its customers, including Social Security numbers and bank accounts, had demanded a \$20 million ransom not to publish the confidential information. Coinbase refused to pay the ransom. Most of the suits, identified by **Law.com Radar**, are in U.S. District Court for the Southern District of New York, or the Northern District of California.

On May 19, plaintiffs attorneys Tina Wolfson(**Ahdoot & Wolfson**) and Gary Klinger(**Milberg Coleman**) moved to coordinate 11 class actions against Coinbase in the Northern District of California. Although Coinbase claims to not have a headquarters in San Francisco, where it was founded, the lawyers wrote in a motion before the **U.S. Judicial Panel on Multidistrict Litigation**:

*"Until 2020, Coinbase maintained its headquarters in San Francisco, California. Thereafter, Coinbase announced that it had become a 'remote-first,' 'decentralized company, with no headquarters.' While Coinbase maintains several physical offices across the United States, California is home to 1,132 of 3,458 US employees, and the San Francisco Bay Area contains the most employees anywhere in the U.S. Recent reporting indicates that Coinbase may be re-establishing its headquarters in San Francisco."*

Multnomah County Circuit Court Judge Steffan Alexander. Courtesy photo

## Latest Oregon Wildfire Verdict Brings Total Awards to \$265M

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An Oregon jury hit **PacifiCorp** with its seventh award—\$35 million to 10 people—in trials over a series of 2020 wildfires. The May 21 verdict, for \$5.3 million in economic damages and \$30.2 million in noneconomic damages, brings the total jury awards against PacifiCorp, parent company of Pacific Power, to \$265 million for approximately 69 plaintiffs. The trials are part of a lawsuit with 5,000 class members in which the first jury, in 2023, found PacifiCorp liable for the wildfires.

Matthew Pruesch (**Keller Rohrbach**), along with **Edelson** and **Stoll Berne**, represented the plaintiffs in the latest trial. **Hueston Hennigan** represented PacifiCorp, which is part of **Berkshire Hathaway**.

Plaintiffs lawyers have asked **Multnomah County Circuit Judge Steffan Alexander** to schedule “back-to-back trials of up to five per month” in 2026, but PacifiCorp insists such a trial plan “risks significant legal prejudice.”

**Speaking of wildfires:** Lawyers are back in court Wednesday in downtown **Los Angeles Superior Court** in lawsuits filed over the Jan. 7 wildfire in the Pacific Palisades region of Los Angeles. Plaintiffs lawyers want to add defendants, including **Southern California Edison**, which already faces more than 100 lawsuits over the Jan. 7 wildfire that hit Altadena, an unincorporated region of Los Angeles County near Pasadena, California. In a May 22 status report, lawyers in the Palisades cases wrote:

*“Because the fire destroyed properties in the City of Los Angeles, City of Malibu and the unincorporated portions of Los Angeles County, plaintiffs believe that various utilities in addition to LADWP share responsibility for this destruction of properties in their respective service territories.”*

Michael McQuillen of Adler Murphy & McQuillen. Courtesy photo

## Who Got the Work?

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Michael McQuillen (**Hinshaw & Culbertson**) stepped in to represent **Delta Air Lines Inc.** and subsidiary **Endeavor Air Inc.** in lawsuits filed over Flight 4819, which overturned after touching down earlier this year at **Toronto Pearson International Airport**. He filed a May 22 motion before the **U.S. Judicial Panel on Multidistrict Litigation** to transfer 11 cases to Minnesota, where the flight, carrying 76 passengers and four crew members, left **Minneapolis-St. Paul International Airport** on Feb. 17 and where Endeavor is based. Also,

nine cases are pending in Minnesota. No one died, but some, including plaintiffs, were injured.

Here's what else is happening:

**Lemon Lawsuit: Ford Motor Co.** filed a racketeering lawsuit against five lemon law attorneys in Southern California. The May 21 lawsuit alleges that **Knight Law Group**, the **Altman Law Group** and **Wirtz Law** billed "phantom legal fees" and "hoodwinked all of the judges" in hundreds of lemon law cases for the past decade. The suit, brought under the **U.S. Racketeer Influenced and Corrupt Organizations Act** by Daniel Saunders(**Kasowitz Benson Torres**), alleges that at least 50% of the \$100 million billed by the defendant lawyers was fraudulently inflated. Last year, Ford and other automakers lobbied for changes in California's lemon law, which is the **Song-Beverly Consumer Warranty Act**.

**Roundup Trial:** Another **Roundup** trial began in Missouri, with Tobi Millrood(**Kline & Specter**) representing Albert Grantges, diagnosed with non-Hodgkin lymphoma in 2014. **St. Louis County Circuit Judge Brian May**, in the St. Louis suburb of Clayton, oversaw four previous Roundup trials, all of which ended in defense verdicts. Michelle Ramirez (**Sidley Austin**) is trial counsel for **Monsanto**, owned by **Bayer**. Kline & Specter has teamed with **Arnold & Itkin** on many Roundup trials in Philadelphia.

**Boeing Plea:** The families of people killed in the **Boeing** 787 Max 8 crashes in 2018 and 2019 opposed the **U.S. Department of Justice's** new proposed deal that would allow Boeing to withdraw its guilty plea. Boeing faced a criminal fraud charge for allegedly misleading the **FAA** about the plane's flight control system and, in 2021, reached a deferred prosecution agreement with the DOJ. But, on May 23, the DOJ, which last year found Boeing had breached its deferred prosecution agreement, said it didn't plan to proceed with a criminal fraud trial next month over the crashes, which killed 346 people.

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

# W.Va. legal team pursuing action over ultra processed food

 [legalnewsline.com/west-virginia-record/w-vva-legal-team-pursuing-action-over-ultra-processed-food/article\\_0c992e12-4a63-47de-bdca-614d8cb12b1b.html](https://www.legalnewsline.com/west-virginia-record/w-vva-legal-team-pursuing-action-over-ultra-processed-food/article_0c992e12-4a63-47de-bdca-614d8cb12b1b.html)

Chris Dickerson

May 28, 2025

Ultra Processed Foods  
National Kidney Foundation

CHARLESTON – Two Charleston law firms are pursuing legal action against the manufacturers of ultra processed foods that are believed to be the sources of an epidemic of Type 2 Diabetes and Nonalcoholic Fatty Liver Disease in Mountain State children.

Hill Peterson Carper Bee & Deitzler along with Powell & Majestro haven't filed lawsuits yet, but they are encouraging people to respond. That includes those diagnosed before 18 years of age and currently under 30 years old who have been diagnosed with type 2 Diabetes; Nonalcoholic Fatty Liver Disease; or have been diagnosed with Nonalcoholic Steatohepatitis. Parents and grandparents of individuals who meet these criteria also are encouraged to reach out.

The firms have created a website – [type2lawsuit.com](https://type2lawsuit.com) – for individuals to share information and help contribute to the legal outreach. Citizens that meet the criteria also can call 888-325-3044 to see if they qualify.

West Virginia has the highest percentage of diagnosed adults (Type 2 Diabetes) in the United States, according to the West Virginia Department of Health and Human Resources. In 2023, 18.2 percent of adults in West Virginia were diagnosed with Type 2 Diabetes. An additional 65,210 West Virginians are estimated to have undiagnosed diabetes. West Virginians have also experienced higher prevalence of co-morbid conditions such as obesity, physical inactivity, hypertension and hyperlipidemia.

Earlier this year, Gov. Patrick Morrissey called for and the West Virginia Legislature enacted legislation addressing food dyes and additives in the recently completed legislative session.

U.S. Department of Health and Human Services Secretary Robert F. Kennedy Jr. joined Morrissey in Martinsburg in March to call for healthier diets and daily exercise to reduce public health challenges.

The lawyers say one of the leading factors that will be considered is intake of ultra processed foods. According to the American Medical Association, consuming ultra processed foods on a regular basis increases a person's risk of health complications – including cardiovascular disease, certain cancers, obesity, and Type 2 Diabetes.

“Ultra processed foods are industrial creations made with little — if any — whole foods that often contain large amounts of added sugar and salt,” said Stephen Devries, MD, a preventive cardiologist and executive director of the educational nonprofit Gaples Institute in Chicago. He also said ultra processed foods “are typically infused with artificial colors and additives.”

**Securities Law News**

Opinion

# Matt Levine's Money Stuff: Sell Crypto on the Stock Exchange

May 27, 2025, 11:35 AM PDT

**Crypto treasury companies**

Last Tuesday, SharpLink Gaming Inc. was an online marketing company for sports betting with a stock price of about \$2.91 per share and an equity market capitalization of about \$2 million. It was listed on the Nasdaq, but only barely; a few weeks ago it had to do a reverse stock split to stay above Nasdaq's \$1 minimum stock price, and it also didn't meet Nasdaq's minimum \$2.5 million shareholders' equity requirement. So on Tuesday it announced a stock offering, raising \$4.5 million at \$2.94 per share, with a use of proceeds of "regaining compliance with Nasdaq's minimum requirement for total stockholders' equity." Though it added: "We may elect to use a portion of the proceeds to acquire crypto currencies in connection with execution of the potential treasury strategy we currently have under consideration."

And why wouldn't it? SharpLink was only in the very most technical sense a US public company: It had a public listing, but with a \$2 million market capitalization it did not really meet the requirements for a public listing, and its business — with revenue in the mid seven figures — did not really justify the expense and complexity of being a public company. In the past, that would be bad.

In 2025, though, it is good. SharpLink combined two assets that are currently in high demand and in, uh, not that short but short enough supply:

1. It has a public listing.
- 2. It's not doing much with it.

This means that it's the perfect candidate to pivot to being a crypto treasury company. As I often comment around here, the US public stock market will pay \$2 or more for \$1 worth of crypto. Every crypto entrepreneur has noticed this. If you have a big pot of Bitcoin or Ethereum or Solana or Dogecoin or Trumpcoin or anything else, you should wrap it in a US public company and sell it to stock investors for twice its actual value. But to wrap it in a public company, you need a public company. There are only so many of those, and they are busy. If you called, like, Apple Inc. and said "hey we'd like to merge our big pot of Dogecoin with you so that our coins are worth more," Apple would say no. The trick is to call a company that is (1) a public company but (2) only barely. Those companies' phones are ringing off the hook.

And so today we got this press release:

#### SharpLink Gaming Announces \$425,000,000 Private Placement to Initiate Ethereum Treasury Strategy

SharpLink continues its online performance-based marketing company serving the U.S. sports betting and global iGaming industries

Upon the closing of the Private Placement, SharpLink will adopt an Ethereum Treasury Strategy

Joseph Lubin, the Founder and CEO of Consensus and Co-Founder of Ethereum, will become Chairman of the Board of Directors of the Company effective upon the closing of the private placement

Consensus, a blockchain software company run by a co-founder of Ethereum, would like to run a \$425 million pot of Ethereum that the stock market values at much more than \$425 million. SharpLink was just there. So Consensus and its co-investors ("prominent crypto venture capital firms and infrastructure providers such as ParaFi Capital, Electric Capital, Pantera Capital, Arrington Capital, Galaxy Digital, Ondo, White Star Capital, GSR, Hivemind Capital, Hypersphere, Primitive Ventures, and Republic Digital among others") will put in \$425 million to buy SharpLink stock at \$6.15 per share, and SharpLink will buy Ethereum with the money. The stock opened today at \$33.93 per share and was trading around \$35 at 1:30 p.m., for a market capitalization of \$2.5 billion. SharpLink's *planned* \$425 million stash of Ethereum is worth \$2.5 billion on the stock market.

Note that SharpLink apparently doesn't own any Ether. The investors are contributing \$425 million in dollars, not Ethereum. This is not "we've got a stash of Ethereum and might as well sell it on the stock exchange"; it's "man the stock exchange is paying \$2 for \$1 of Ethereum, we'd better do that arb." Or, in this case, \$6 for every \$1 of Ethereum.

And: Right? Everyone should do this arb? This is not investment advice but honestly what am I doing with my life. Right now, if you have a few hundred million dollars lying around, you can buy any crypto you like with it, and the US stock market will give you an immediate 500+% paper profit. All you need — besides the startup cash — is a little public company to put your crypto in.

Remember the New Jersey deli that briefly had a \$2 billion fully diluted market cap? It was just *slightly* before its time. The deli was designed for this sort of trade, or rather its corporate parent was: It was a shell of a public company with a placeholder business (the deli) that was intended to merge with some other, private, probably foreign company to give it a US listing. For reasons that were never entirely clear to me, the deli people also manipulated its stock and are now going to prison, but that is not essential to the trade. What is essential is finding a good merger partner. The deli got shut down before the rise of crypto treasury companies, but man, what a great trade *that* would have been. A single New Jersey deli merging with a \$425 million pot of Ethereum *would* have justified its \$2 billion market cap, sort of. A few hundred million dollars' worth of crypto, plus a wisp of a public company, is worth billions of dollars now.

SharpLink's stock was up 35% last Thursday and 79% last Friday, before the deal was announced today. I suppose it's possible that the deal leaked and there was insider trading, but I wouldn't bet on that. SharpLink was already open about considering a crypto treasury strategy, and it was the perfect candidate for it (had public listing, wasn't doing much with it). Even without inside information, it was reasonable to think "hey this little company is going to put out some sort of crypto press release and go up several hundred percent, I might as well buy it." This is not investing advice, and when I say "reasonable" in that sentence I do not mean it in the conventional sense. Just, you know.

Everything about this is weird but let me focus on three particularly weird things. First: This keeps working? I've been writing a lot about crypto treasury companies for months now — MicroStrategy Inc. more or less invented the idea and has been doing it for years — and there has been an absolute explosion of them recently. Intuitively one would think that they can't *all* work. MicroStrategy is a large public company with a real investor relations function, a good marketing schtick for retail, a huge stash of Bitcoins, a first-mover advantage, a clever and diversified funding strategy, inclusion in levered exchange-traded funds and some stock indexes, etc.; if some sorts of investors (mutual fund managers? certain retail investors?) want Bitcoin exposure but can't buy actual Bitcoins or futures or ETFs, MicroStrategy is a high-profile option and perhaps does deserve to trade at a premium. But the zillions of quick copycats all trade at premiums too. The stock market just consistently loves brand-new crypto treasury companies. I have no explanation for this. "It looks a little bit like crypto keeps playing a prank on the stock market, and the stock market keeps falling for it," I wrote, a month ago, and it looks a lot more like that now.

Second: People keep *doing* it. This is less surprising: As I also wrote last month, “if you run a crypto investment fund it is absolute malpractice not to acquire a small, not-particularly-operating US public company” to do this trade. If you are in any sort of crypto-adjacent business, by far the lowest cost of capital available in the world comes from acquiring a public company and pivoting it to a crypto treasury model. And so we’ve talked about Tether and SoftBank and Bitfinex and Nakamoto Holdings and others getting into this game. The Financial Times reports that Trump Media & Technology Group is going to get into it, which, I mean, of course, how could it not. Still. There’s a reason that many of the public companies involved here (other than MicroStrategy) are small and semi-defunct, and Apple is not getting into the crypto treasury business: If you run a real business, you are probably more interested in running that business than you are in getting a high stock price with one weird trick. The same might be true for some crypto entrepreneurs. One assumes that Vitalik Buterin, the main founder of Ethereum, is more interested in improving Ethereum than he is in selling pots of it at high prices to stock investor. But a lot of people can’t resist the high stock price.

Third: How do you cash out? SharpLink created \$2 billion of paper profits out of thin air this morning. Now what? Presumably the private placement investors (Consensys and its co-investors) can’t sell their stock immediately — they probably have lockups and would need to register their shares — and anyway they own about 97% of the stock and if they sold it all it would tank. In the year before last Friday, the stock traded an average of about 75,000 shares per day, so they would have to sell more than three years’ volume. The stock market values their \$425 million stash of Ethereum at \$2.5 billion, but they can’t just take that \$2.5 billion out; it’s locked up in the stock market.

It does seem like a problem worth working on, though. Modern finance has discovered a new method for reliably creating billions of dollars of stock market value out of thin air. It’s not literally the case that anyone can do it in an hour, but a lot of people can apparently do it pretty consistently without much effort. But it is just a cool party trick if you can’t *convert that value into cash*. Being a billionaire because you own 97% of SharpLink Gaming is fun, but 100% of SharpLink Gaming was worth \$2 million a week ago, so you might worry about how long it will last. You might want to take some money off the table, and just naively selling the stock doesn’t seem like it would work.

There are boring answers. “Now they run a multi-billion dollar company with an extremely low cost of capital; they can keep issuing new shares to the public to buy more Ethereum, growing their empire and influence, and when you run a big company like that you can pay yourself a large salary.” Meh. They had hundreds of millions of dollars to begin with; they don’t want a *nice job*. The question is, how can they extract that \$2 billion?

I don’t have a good answer, and if I did I would probably be doing it. I will note, however, that this feels like a very *crypto* problem, one that is quite common in crypto but that the recent wave of treasury companies has transferred to the stock market. The classic crypto story is:

1. You create some magic beans, and own most of them.

- 2. Relatively few of the beans trade — most of them just sit in your wallet — but the ones that do trade at a high market price, giving the beans a large market capitalization.
- 3. This makes you a billionaire on paper, but if you were to sell your beans the market would crash and you'd get nothing.
- 4. Being a billionaire on paper is nice and gets you various perks and self-esteem, but you have some reason to think that the magic bean market can't be this good forever, so you'd really like to cash out.

There are all sorts of examples, but the most famous is probably the collapse of Sam Bankman-Fried's crypto exchange FTX and his crypto investment firm Alameda Research, which looked like valuable companies worth tens of billions of dollars, until a lot of that value turned out to be in various cryptocurrencies ("Samcoins") that they had created and that went poof when confidence in FTX declined in November 2022. I wrote about it at the time, and I quoted something that Bankman-Fried had previously said to me on a podcast, about a box of crypto and its associated token:

If everyone kind of now thinks that this box token is worth about a billion dollar market cap, that's what people are pricing it at and sort of has that market cap. Everyone's gonna mark to market. In fact, you can even finance this, right? You put [the] token in a borrow lending protocol and borrow dollars with it. If you think it's worth like less than two thirds of that, you could even just like put some in there, take the dollars out. Never, you know, give the dollars back. You just get liquidated eventually. And it is sort of like real monetizable stuff in some senses.

In crypto, if you have magic beans that are currently priced at \$1 billion, maybe someone will lend you \$500 million of real money against them, with no recourse to you. In the stock market ... look you're going to have a hard time borrowing 50%, or 10%, of the market value of a 97% stake in a crypto treasury company whose market cap has increased 100,000% in a week, but, man, I would try.

### Applied game theory

There is another famous example in crypto of someone monetizing a stash of magic beans. In October 2022, an "applied game theorist" named Avi Eisenberg applied some game theory to a decentralized crypto futures exchange called Mango Markets. Mango operated a market where people could trade perpetual futures contracts on various crypto tokens, including its own token, MNGO. The futures contracts were settled against "oracle" prices derived from several other crypto exchanges: Your Mango Markets futures went up or down depending on the price of the underlying crypto token on those other reference exchanges. Mango also allowed customers to borrow crypto against the value of their positions; if you had a \$100 profit on your futures trades, Mango would lend you, say, \$50 against that position, secured by your futures, with no recourse to you.

So Eisenberg did this trade:

1. He bought a few million dollars' worth of perpetual futures on MNGO on Mango Markets.
- 2. He simultaneously *sold* a few million dollars' worth of those same futures, leaving him flat.
- 3. He then went out to the reference exchanges and bought some MNGO tokens.

- 4. MNGO doesn't trade that much, so his buying pushed up the price.
- 5. This made his long futures position very valuable.
- 6. He went back to Mango Markets and borrowed against his long MNGO futures position, withdrawing crypto from Mango Markets.
- 7. Then he *sold* his MNGO tokens on the reference exchanges, which pushed down the price.
- 8. This made his short futures position more valuable, so he borrowed against that one too.
- 9. "In total, Eisenberg borrowed and then quickly withdrew over \$100 million in cryptocurrency from Mango Markets."

Colloquially, you might say that Eisenberg stole \$100 million from Mango Markets: He manipulated the price of the token, which inflated the value of his futures, and then he borrowed against that value to extract \$100 million from the market. The borrowing was non-recourse — as it kind of has to be in a decentralized crypto market — so he never had to pay it back.

He did get arrested though. We have talked about this several times before, including (1) when he did it, (2) when he tweeted a "statement on recent events" explaining that he had done it but it was cool because "all of our actions were legal open market actions, using the protocol as designed, even if the development team did not fully anticipate all the consequences of setting parameters the way they are," and (3) when he was arrested, because US federal prosecutors did not agree with that. Eisenberg was convicted at trial last April, but on Friday a judge threw out his convictions. Bloomberg News reports:

US District Judge Arun Subramanian on Friday vacated Avraham Eisenberg's fraud and manipulation convictions and acquitted him of a third charge. The judge ruled that the trial evidence didn't support the jury's decision that Eisenberg had made false representations to Mango Markets, a decentralized finance platform run by smart contracts.

Here is the opinion. There are two separate problems here. One problem is that Eisenberg was prosecuted in New York, but he did his applied game theory in Puerto Rico, and he applied it to crypto exchanges that sort of famously exist nowhere. The three reference exchanges where he manipulated MNGO prices — FTX, AscendEX, and Serum — were certainly not located in New York; FTX was headquartered in the Bahamas, AscendEX in Romania, and Serum is a decentralized exchange that might not have a headquarters. "There is no allegation that the Mango Markets platform had ties to New York." There is a widespread belief that, if you do any sort of financial crime, *surely* it touches New York, and so New York federal prosecutors can go after you, but there are some limits, and crypto has found them.

There is a sort of stereotypical belief in crypto that if you put stuff "on the blockchain" it will somehow become immune to the jurisdiction of national laws. That is not quite true! Eisenberg could, apparently, be prosecuted in Puerto Rico, and maybe even Romania. But putting stuff on the blockchain *might* make it immune to the jurisdiction of *the US Attorney's Office for the Southern District of New York*, which is honestly a pretty good trick.

Anyway that's the first problem: The judge vacated Eisenberg's convictions for commodities manipulation because they were obtained in the wrong place. The Justice Department could, if it wants, try again in Puerto Rico on those charges. But Eisenberg was also convicted of wire fraud, and the judge threw out that conviction entirely; prosecutors can't try again.

The issue there is that, while Eisenberg definitely did some *manipulation*, it's not clear that he did any *fraud*. Commodities laws — which seem to apply to crypto tokens including MNGO — prohibit “the use of any manipulative device” in connection with any derivatives trade, and so Eisenberg was charged with commodity manipulation. But he was also charged with wire fraud, which requires telling a lie for money using a computer. “Establishing a scheme to defraud requires proof of a material misrepresentation,” and the judge concluded that, whatever Eisenberg did, he didn't *lie* to anyone. The government argued that he did (from the opinion, citations omitted):

At trial, the government pointed to two alleged misrepresentations that Eisenberg made: First, he deceived Mango Markets into believing he was taking out a loan of cryptocurrency, when in fact he intended to steal it; and second, he misrepresented the value of his collateral, making Mango Markets believe it was valuable, when it was artificially inflated and worthless.

But neither of those are lies. It might seem like clicking “borrow” when you never intend to repay the loan could be fraud, but in the context of a non-recourse loan on a crypto platform, that isn't really true. The way those platforms work is that you are not personally liable to repay the loan: The platform can only use your collateral for repayment, and it would not be unusual to walk away from an underwater loan. As the judge put it:

What happens if a user borrows funds but the value of their collateral plummets? They get liquidated. There was no evidence that the “borrow” function on Mango Markets entailed an obligation to repay—or any other obligation for that matter—even if that's how the term is conventionally understood.

So while in other contexts a contractual agreement to “borrow” might give rise to a claim of fraud if an individual intentionally misrepresents or omits something relevant to the terms of the agreement or the parties' negotiations, here there were no terms and no negotiations. There was just the word “borrow.”

Or as Bankman-Fried put it: “Never, you know, give the dollars back. You just get liquidated eventually.”

As for misrepresenting the value of his collateral, Eisenberg didn't actually do that: Mango Markets calculated the value of the collateral on its own, using market prices (which he manipulated). Delightfully, this isn't fraud, *because of a case about Libor manipulation*:

Of course, Eisenberg knew that the value of his portfolio was the product of his market manipulation, and he knew it wouldn't stay valuable for long. So although the value of Eisenberg's portfolio may have been technically accurate at the specific moment in time when he borrowed against it, the government argues that Eisenberg's representation about its value was deceptive. ...

The government argues that when Eisenberg borrowed, he implicitly represented to Mango Markets that the collateral in his account had not been manipulated, and that it was in fact valuable, both of which were false. But that theory runs into the Second Circuit's decision in *United States v. Connolly*. There, Deutsche Bank (DB) submitted daily reports to the British Bankers' Association (BBA) about "the rate at which DB could borrow cash in the interbank market." Defendants, who were traders at the bank, sometimes requested that the LIBOR submitters make submissions beneficial to their positions. The evidence at trial included testimony from another DB employee and the LIBOR submitters themselves that "altering DB's LIBOR submissions to benefit DB trader positions was 'wrong' at the time they engaged in it."

Among other things, the court rejected the government's argument that the submissions carried an "'implied certification' that there had in fact been no trader influence on the submission." Even though there was evidence that market participants understood that trader influence on LIBOR submissions was improper, the absence of any rule or instruction prohibiting that conduct was dispositive. The court observed that while the BBA later adopted rules prohibiting this kind of conduct (just like Mango Markets did after Eisenberg's scheme), "during the earlier period at issue in the present case, there were no such guidelines or prohibitions."

We talked about Connolly in 2022: Libor was a made-up number, so the Deutsche Bank traders couldn't have committed a crime by making it up wrong. One can see the analogy to the price of the MNGO token.

Anyway the point here is that, at least for wire fraud, the terms and conditions matter. If Mango Markets had said to its users "if you want to borrow against your positions you have to promise that you're not doing any market manipulation," then Eisenberg's trades would have been fraud. But it didn't say that — it didn't say anything — so they weren't.

Another stereotypical belief in crypto is that "code is law": If some crypto system allows you to do something, then you are allowed to do it, "even if the development team did not fully anticipate all the consequences of setting parameters the way they are." Background legal norms and expectations and terms and conditions don't matter; all that matters is what is coded into the system.

That isn't quite the result in this case. The result in this case is: Code *can* be law. If you run a crypto platform and you say "hey try not to do any manipulation or hacking or whatever," and then someone does manipulation, they can get in trouble. But if you run a crypto platform and *don't* say that, if you say "here's how the platform works, go for it," and someone finds a manipulation, that's fine, or at least it's not wire fraud.

Which makes sense? Once, in talking about Eisenberg's trades, I wrote that "you could imagine having two market regimes and letting people opt into one or the other": a "Nice Market," with rules against manipulation and insider trading, and a "Fun Market," where any source of edge that you can find is fair game. I suggested that crypto, with its relative lack of real-world importance or interconnection with the financial system (which is changing!), could be a good place to allow Fun Markets, but of course on a strictly opt-in basis. That might be, a little bit, the actual rule.

None of this helps Eisenberg all that much, though, because as Bloomberg notes, when he was arrested for the crypto stuff, "US agents found 1,274 images and videos of child pornography downloaded between 2017 and 2022," and "he was sentenced in May to about four years in prison for child pornography possession."

## D-Sol

Here is sort of a funny Wall Street Journal story about how David Solomon, the chief executive officer of Goldman Sachs Group Inc., "was fed up with his critics inside Goldman Sachs" and decided to "crack down":

Solomon told Goldman's board that he was going to take action, pushing out troublemakers who he said were undermining him with their leaks, people familiar with the matter said. The board told Solomon he had their support. By last year, longtime executives who had openly criticized his strategy were gone. The departures sent a message inside Goldman: No one is safe if they go up against the CEO.

The funny part is that the internal criticism seems to have been mostly about Goldman's embrace of consumer businesses, which was Solomon's big strategic push early in his time as CEO:

At a dinner with roughly a dozen partners, Ed Emerson, a top trader, blasted the consumer business. ...

Longtime partner Jim Esposito, co-head of the global banking and markets division, was another critic of the consumer strategy. Esposito said in group meetings and in one-on-ones with Solomon that the firm was making mistakes expanding the business, and that he didn't agree with Solomon's all-in approach on consumers. ...Esposito wrote a memo for Solomon offering strategic recommendations, including why the consumer business wasn't right for Goldman.

But, because he was the boss, Solomon overruled his critics and moved further into the consumer business:

Solomon pushed forward with a roughly \$2 billion acquisition of specialty lender GreenSky in 2021, overruling deputies who had counseled against the deal when it first came up a few years earlier. ...

Esposito told a colleague that during another meeting, Solomon told Esposito that Disney chief Bob Iger had given him some advice: At some point the CEO has to pick the strategic direction himself, and the leadership team has to be on board.

And ... he was wrong and the critics were right? "In 2023, Goldman agreed to sell [GreenSky] at a loss," and "the bank is exiting consumer lending and refocusing on its core businesses of advising giant companies and wealthy individuals." The basic contours of the story seem to be that Solomon made a bad strategic decision, various partners wrote memos explaining why it was bad, he pushed them out, and they were correct.

At one level: Yes, of course, that's how companies work; "at some point the CEO has to pick the strategic direction himself, and the leadership team has to be on board." If they're not, they get pushed out. If the strategic direction is *wrong*, well, then the CEO picks a different strategic direction, and perhaps a few more subordinates get pushed out as scapegoats. (In 2023, "the board had launched a review about what had gone wrong with the consumer business and who should be held responsible.") If the CEO is generally good at running the business, he might get a mulligan on a bad strategic direction.

At another level, we have talked a few times about another gripe from Goldman partners under Solomon, which is that there has been a decline in the bank's historical partnership culture. In the old days, if the senior partner picked a strategic direction and the other partners disagreed, *and they were right*, they would have a lot of ability to (1) influence the strategic direction and (2) at least carp a lot at him for being wrong. In the modern, hierarchical, normal-public-company form of Goldman, the partners just have to fall in line.

### Trumpcoin dinner

I guess there are two main reasons to meet with an official in President Donald Trump's administration:

1. To try to get them to do what you want, or
- 2. To see if they'll tell you what they're going to do, so you can insider trade on it.

As we have discussed a few times before, the Trump administration has a tendency to drastically lurch from policy to policy, and also to leak about the lurches in advance, so there are some possible trading opportunities.

Last week Trump held an exclusive dinner for the people who paid the most money for his memecoin. I have always analyzed that as, you know, what it sounds like: People pay Trump money to have dinner with him so they can lobby him for the policies or personal goodies that they want. But of course there is also the second possibility: People pay Trump money to have dinner with him in case he comes to the dinner and says "I'm gonna build a US Solana reserve" or whatever and there are trades to be done.

Here is a New York Magazine report on the dinner, which is very funny — "one attendee estimates that there were 'five to eight' women" at the 220-person dinner — but also quotes one pretty sensible trader named Morten Christensen, who bought \$50,000 of Trumpcoin and hedged by shorting futures, and who was there for the insider trading:

"When this opportunity pops up and you figure out a way to do it risk free? Yeah, I'll take that opportunity for sure," he says. But the bonus he hoped for did not work out. "Me and my friends were hoping that he would slip something that we could trade on," he says. One of his friends even livestreamed to a 20-person group on Discord in case there was market-moving news. "So we were all having our wallets open and our exchanges open to be able to make a trade if he said something, but he didn't say anything."

Ah well. It was a reasonable bet though.

## Things happen

HSBC Cuts Dozens of Analyst Jobs in Investment Banking Overhaul. EU plans sweeping stress test of non-banks. Why Exxon and Chevron Are Fighting So Hard Over an Oil Project in Guyana. Investors pile into rocks to absorb carbon emissions. Japanese Bonds Surge on Bets That Government May Tweak Issuance. The Prince, His Money Manager and the Corruption Scandal Rocking Monaco. Trump Threatens to Redistribute \$3 Billion in Harvard Grants to Trade Schools. Anthropic's new AI model turns to blackmail when engineers try to take it offline. Kid Cudi says Diddy broke into his home, unwrapped his family's Christmas gifts, and shut his dog in the bathroom. Man sleeps through massive container ship running aground on his front lawn.

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- 1. SharpLink has 698,598 shares of stock outstanding after the stock offering last week, plus 1,496,612 shares underlying "pre-funded warrants," i.e. basically stock. So call it 2.2 million shares of stock before the private placement. And then the private placement is 69,100,313 shares at \$6.15 per share, for a total of about 71.3 million shares outstanding after all the offerings. Each share outstanding thus represents about \$5.96 worth of Ethereum. But if you multiply 71.3 million times \$35 you get \$2.5 billion.
- 2. A small caveat here: Most reports of SharpLink's market capitalization are much, much lower than \$2.5 billion, because they multiply the current share price times the current shares outstanding, ignoring the vast increase in shares from the new private placement. If you go online and see that SharpLink has a reported market capitalization of \$20 million or \$80 million, you might think "hmm that's too low for a \$425 million stash of Ethereum" and click buy. So there is a possible confusion explanation for some of the price action, along the lines of what we once discussed when QXO Inc. had very few shares outstanding and a somewhat confusing market cap.
- 3. I have no idea what the actual haircuts were. My 50% hypothetical is the normal amount for stock brokers. In crypto you could imagine much lower limits (due to volatility), or much higher limits (due to, you know, crypto).
- 4. Quoted from Friday's opinion.
- 5. Or perhaps in New York, with more evidence that, like, the servers are in New York or whatever.
- 6. Disclosure, where I used to work.
- 7. I mean, they also criticized him for his side gig of being a DJ, and he quit that too, so they were right again?
- 8. We have also previously discussed that trade.

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Securities Law News

# Trump Media to Raise \$2.5 Billion in Capital to Buy Bitcoin (1)

May 27, 2025, 7:18 AM PDT

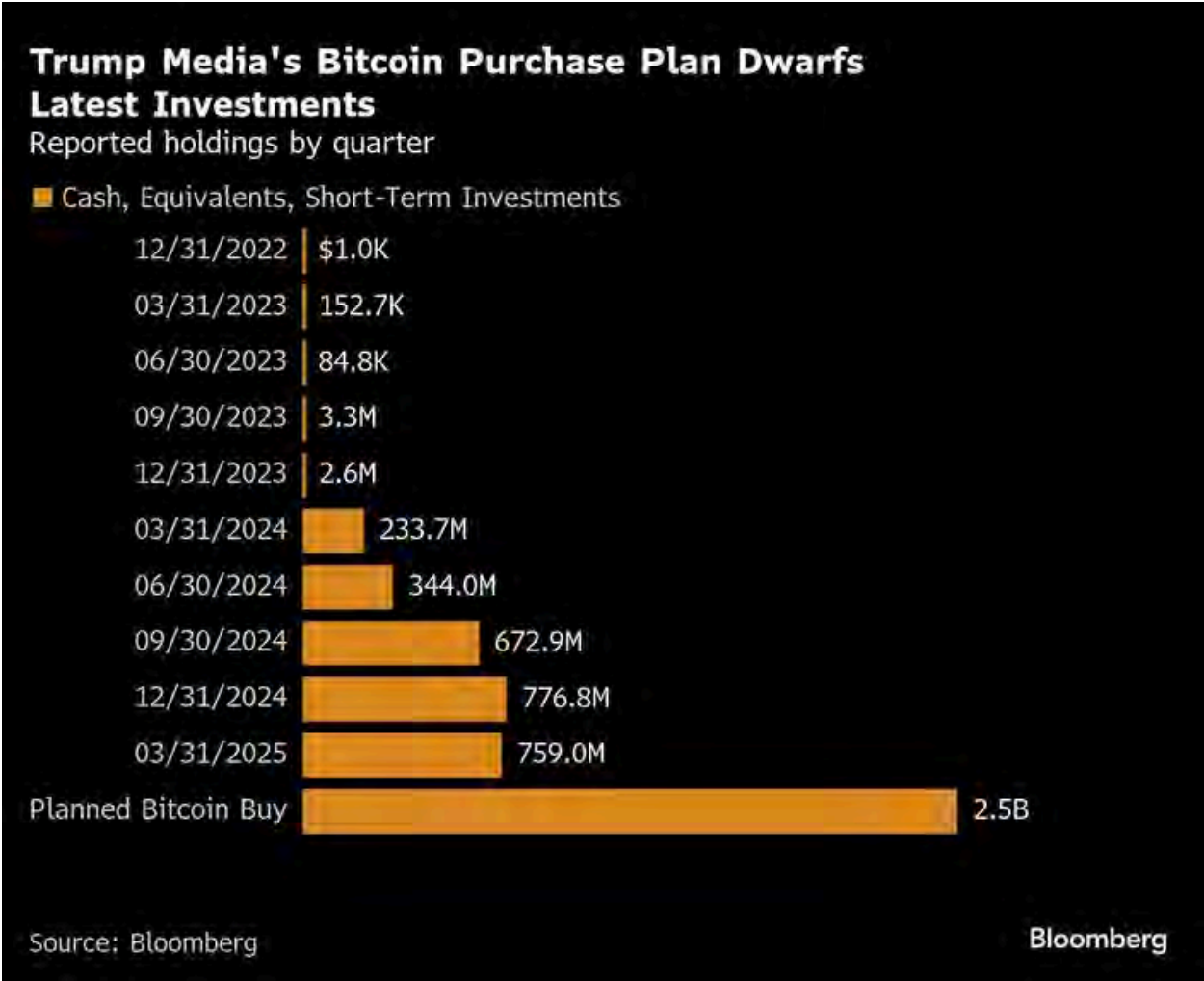
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Trump Media & Technology Group Corp., the company behind Truth Social, agreed to sell around \$1.5 billion in stock and \$1 billion in convertible bonds to buy Bitcoin for its treasury.

The company's shares fell as much as 9.8% on Tuesday after rallying premarket following a Financial Times report on its plans to raise capital to spend on cryptocurrencies.

Trump Media is the latest company connected to President Donald Trump to invest in crypto. PSQ Holdings, which his son **Donald Trump Jr.** sits on the board of, also announced plans on Tuesday to explore a digital asset treasury strategy. They join numerous other companies in following the model that **Michael Saylor** created at Strategy, by using equity and debt offerings to fund Bitcoin purchases.

Trump Media will add Bitcoin to its balance sheet along with its current cash, cash equivalents and investments, which were worth \$759 million at the end of the first quarter, according to a filing Tuesday.



“This investment will help defend our Company against harassment and discrimination by financial institutions, which plague many Americans and U.S. firms, and will create synergies for subscription payments, a utility token, and other planned transactions across Truth Social and Truth+,” Trump Media CEO and Chairman Devin Nunes wrote in a release.

Read More: Trump Media Is Coming for Brokerage Accounts With ETF Push

The convertible bonds are being offered with zero coupon and a conversion premium of 35%, the filing shows. The offering is expected to close on or about May 29.

Crypto.com and Anchorage Digital will provide custody for the Bitcoin treasury, while Yorkville Securities and Clear Street are acting as lead placement agents for the offerings.

Cantor Fitzgerald & Co., an arm of the Wall Street business Trump’s Commerce Secretary Howard Lutnick ran for more than three decades, acted as financial adviser on the deal. Lutnick transferred his ownership of Cantor Fitzgerald LP to trusts for the benefit of his children earlier this month.

(Updates with details throughout.)

**Due Diligence** **Mergers & Acquisitions****Trump world tries to corner crypto**

Plus, a rundown of the mess at Builder.ai and a feud over litigation finance



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**One scoop to start:** Citadel Securities' profits jumped nearly 70 per cent in the first quarter to \$1.7bn, as the high-speed trading firm benefited from a [surge of volatility](#) across financial markets as Donald Trump retook office.

**Another scoop:** McKinsey has cut more than 10 per cent of its staff in the past 18 months, [reversing a big expansion plan](#) that peaked during the coronavirus pandemic when consulting services were in high demand and the firm increased its workforce by almost two-thirds.

**And a third:** Private equity groups TPG and Blackstone made an approach to [take Hologic private](#), offering to purchase the US medical technology group for more than \$16bn, according to people familiar with the matter.

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### In today's newsletter:

- The Maga crypto bonanza
- What went wrong at Builder.ai?
- Litigation finance gets lit

## Spacs, Trump and crypto converge in Vegas

Trump world is in Las Vegas this week for the self-proclaimed world's biggest Bitcoin conference.

To create sufficient hype for the confab, as if there wasn't enough already, the crypto crowd has revealed a series of deals in recent days that further yoke **Donald Trump** and his acolytes to the asset class.

But before we get into those deals, let's first go over who will be in Vegas.

Members of Trump's inner circle in DC, including vice-president **JD Vance** and White House crypto tsar **David Sacks**, are both supposed to attend, and so will the president's sons **Donald Trump Jr** and **Eric Trump**.

And there will, of course, also be high-profile figures who sit just outside the bounds of Trump's inner circle but who have undeniably close ties to the administration, such as **Brandon Lutnick**, the chair of **Cantor Fitzgerald**.

In Vegas, the US government will give its full-throated blessing of an asset class that's been treated as second-tier and outright speculative.

The president has already put his money where his mouth is.

While you were perhaps out on a boat for Memorial Day, DD's Antoine Gara and a team from the FT scooped that Trump's family media company [planned to raise](#) billions to buy cryptocurrencies such as bitcoin.

It was a clear sign that **Trump Media & Technology Group** was betting on the digital assets repeatedly championed by the president's administration. It follows a series of crypto plays such as a Lutnick-backed blank cheque vehicle called **Twenty One Capital** aiming to replicate the ferocious bitcoin buyer **MicroStrategy**, now known as **Strategy**.

TMTG said in a statement on Monday afternoon that "apparently the Financial Times has dumb writers listening to even dumber sources". On Tuesday morning, the deal was [officially announced](#).

Then there was another deal unveiled on Tuesday by **Vivek Ramaswamy's Strive Asset Management** and Nasdaq-listed investment group **Asset Entities**.

The two firms, which announced a proposed merger earlier this month, said they hoped to raise as much as \$1.5bn to support a "first wave of bitcoin acquisitions" targeting ailing biotech companies trading below their cash value.

The concept, of course: exit the biotech operations and plough the cash into crypto.

## How do you make half a billion dollars disappear?

For the roster of blue-chip investors in **Builder.ai**, which has [collapsed](#) in a suspected revenue inflation scandal, the answer is painfully simple: entrust it to a firm that employs a "chief wizard".

A little more than a year ago, **Sachin Dev Duggal**, the charismatic founder and chief wizard of artificial intelligence start-up Builder.ai, was feted at the **World Economic Forum** in Davos as a visionary genius.

He was lauded for seizing on the burgeoning potential of AI technology years before **ChatGPT** was a twinkle in **Sam Altman's** eye.

Now the company he founded is on the verge of insolvency, with the more than \$500mn invested by the likes of the **Qatar Investment Authority**, **Insight Partners** and **SoftBank** expected to be flushed away.

(Note that \$75mn of this was invested mere months ago in a bid to rescue the company as it faced dwindling cash balances and mounting debt).

Even **OpenAI's** principal backer **Microsoft** got in on the action with a strategic partnership and equity investment in Builder.ai in 2023.

If you're new to the Builder.ai story, there's a lot of FT reporting to catch up on.

DD's Alexandra Heal led a series of probing investigations into Duggal and his company last year. She revealed that he was [named by authorities](#) in India in relation to a high-profile criminal probe and had been [dogged by legal disputes](#) during a meteoric business career. (Duggal has denied wrongdoing in all cases).

Then last week came the big reveal. The FT reported that prior to its collapse, an [internal investigation](#) at Builder.ai found evidence of potentially bogus sales and indicated that there might have been a concerted effort to inflate revenues.

But don't count out Builder.ai's fallen chief wizard just yet: the FT also broke news last week that Duggal had sounded out investors on a [potential deal](#) to buy the failed UK software company out of insolvency.

Gone are the days when Builder.ai boasted of centimillion dollar funding rounds. Duggal conveyed to one potential investor that his bold gambit required less than \$10mn in initial funding.

# Litigation finance funds mega payouts

Since insurers are in the business of covering clients against unexpected losses, they don't usually get much sympathy when they face big claims.

But the sector has been increasingly annoyed at the chunky payouts they've faced from US lawsuits. Americans have always loved to take things to court, but insurers say legal payouts are getting costlier in a trend fuelled by litigation funding.

(They also [blame](#) "negative societal attitudes with anti-corporate sentiments, distrust in institutions and general dissatisfaction".)

The fight turned public when the boss of the world's biggest publicly traded litigation funder told the FT that recent remarks from **Chubb** chief executive **Evan Greenberg** had amounted to "[an inappropriate use of corporate power](#)" and could be anti-competitive.

**Burford Capital** chief executive **Chris Bogart** was referring to comments Greenberg made at a trade conference in Chicago earlier this month, during which he urged brokers and insurers to cut ties with the litigation funding industry.

Greenberg added that Chubb would sever ties with lawyers, bankers or asset managers if they continued working with funders.

Big companies such as Microsoft and **Amazon** have been hit with [eye-popping damage awards](#) by US juries, and **Aon**, the world's second-largest broker, last year stopped offering insurance cover for litigation funders.

The broker said litigation funding had created "an unsustainable marketplace for our corporate and insurance clients".

But insurers aren't ready to cut ties with litigation funders just yet, since several have developed lucrative products tailored to the sector.

Assets held in insurance "wrappers", which can cover losses above a set threshold on pools of uncorrelated legal investments, are one such product that has grown.

They've become so prevalent 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.

## Job moves

- Chinese billionaire **Li Zhenguo** has [stepped back](#) from the day-to-day management of the solar group **Longi** as the industry faces turmoil with falling profits and factory overcapacity undermining years of rapid growth.
- **JPMorgan Chase** has hired **Lyndon Park** as managing director for shareholder M&A capital markets. He previously worked as managing partner for global ESG advisory and shareholder activism at **ICR**.
- **Bow River Capital** has tapped **Mark Hantho** as executive chair. He was most recently vice-chair of banking, capital markets and advisory at **Citi**.
- **Mayer Brown** has hired **Aideen Brennan** as partner for the firm's global corporate and securities practice in New York. She joins from **Sidley Austin**.

## Smart reads

**Losing streak** The Luxembourg start-up founded by Reform UK treasurer Nick Candy [lost millions of pounds](#) over a decade, the FT reports.

**Public spat** Rating agencies remain essential gatekeepers in the financial ecosystem, Lex writes. Bickering between them is a [healthy sign](#) for the private credit industry.

**Reconsidering America** The US was once a haven for foreign investors, with Asia ploughing trillions of dollars into the country, Bloomberg reports. That bet is [starting to unravel](#).

# Bitcoin Torture Case Underscores Growing Risks of Digital Asset Theft

[law.com/newyorklawjournal/2025/05/27/bitcoin-torture-case-underscores-growing-risks-of-digital-asset-theft](https://www.law.com/newyorklawjournal/2025/05/27/bitcoin-torture-case-underscores-growing-risks-of-digital-asset-theft/)

Michael A. Mora

May 27, 2025



- Prosecutors detail the violent extortion of an Italian man over crypto access.
- Experts attribute the incident to rising global threats associated with digital assets.
- The incident has prompted a renewed focus on digital asset security and travel risk.

A second suspect surrendered Tuesday over his involvement in a kidnapping case where an Italian man refused to reveal his bitcoin password, leading him to suffer over three weeks of torture in an upscale New York City apartment before he could escape.

The suspect, William Duplessie, 33, a Miami and Switzerland businessman, turned himself in to the New York City Police Department, becoming the second person arrested in the abduction and torture of Michael Valentino Teofrasto Carturan. John Woeltz, 37, the first person arrested, was held without bail on Saturday on kidnapping and other charges in the matter.

Scott Armstrong, a principal at McGovern Weems in Washington, D.C., and a former federal prosecutor who served as senior leadership in cases involving cryptocurrencies, said that “putting aside the violence, the alleged conduct is now the modern-day heist.”

“Before, bad actors would try to rob houses for jewelry and valuables,” Armstrong observed. “Now, they are targeting individuals for private keys and cold wallets. I suspect this type of conduct will continue.”

Prosecutors alleged that Woeltz and a male accomplice demanded that Carturan, after a business deal gone bad, send them bitcoin by threatening to have his family killed, leading the Italian man to come to New York City. Upon arrival, the defendants allegedly kidnapped Carturan, leading to three weeks of torture at the upscale six-story townhouse, where the 28-year-old was held bound by the wrists.

During those three weeks, Woeltz and a male accomplice are alleged to have tried to force Carturan to reveal his password by carrying the Italian crypto millionaire to the top flight of stairs in the building and holding him over the ledge, and separately, urinating on him, pistol-whipping him, forcing him to take drugs and subjecting him to further abuse.

However, on Friday, Carturan allegedly told his captors that he would reveal his password and, when Woeltz went to retrieve Carturan's laptop from another room, Carturan fled down the stairs, ran outside with bloodied bare feet, and flagged down a traffic agent who called the authorities, according to prosecutors.

Authorities then searched the townhouse and recovered a saw, firearms ammunition, night-vision goggles, cocaine and additional items, as well as Polaroid photos of Carturan with a gun held to his head. Woeltz, who faces up to life in prison for the felony kidnapping charge, is next due in court on Wednesday.

Outside of New York City, George S. Georgiades, general counsel at Borderless.xyz, a stablecoin payments network, noted that there have been a couple of attempted kidnapping incidents in Paris, France, and elsewhere. As a result, Georgiades said, there has been a heightened focus on cybersecurity amongst the general counsel community.

"Bad actors that are pursuing this are very sophisticated, and in some cases, state-sponsored," Georgiades said. "It is important to be vigilant in security, where you travel, how you travel and who in the organization has access to these wallets."

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# What About AI-Related Enforcement Under the Trump Administration?

**K** [dandodiary.com/2025/05/articles/artificial-intelligence/what-about-ai-related-enforcement-under-the-trump-administration/](https://www.dandodiary.com/2025/05/articles/artificial-intelligence/what-about-ai-related-enforcement-under-the-trump-administration/)

Kevin LaCroix

May 28, 2025



Among the many executive orders launched at the outset of the current Trump administration was the January 23, 2025 Executive Order that declared the administration's commitment to maintaining the U.S. at the "forefront of artificial intelligence (AI) innovation." The Executive Order set out the administration's commitment to removing policies and directives that "act as barriers to American AI innovation."

The Executive Order meant a variety of things when it referred to removing barriers, and the statement does at least raise the question about what the administration's – and in particular, the SEC's – enforcement approach to AI will be, if the goal is to remove barriers. As discussed below, there are signs to suggest that the administration will continue to monitor and address AI-related misrepresentations, notwithstanding its commitment to removing barriers to AI innovation.

Readers will recall that during the Biden administration, then-SEC Chair Gary Gensler had publicly called for vigilance and scrutiny with respect to so-called "AI-washing" – that is, companies' overstatement of their AI-related capabilities and prospects. Under Gensler, the SEC pursued a number of AI-related enforcement actions (for example, [here](#)). Paul Atkins has now assumed the role of SEC Chair under the new Trump Administration, and one of the questions is whether the SEC will take a different approach to AI-related enforcement, particularly in light of the Trump administration's commitment to removing barriers to AI innovation.

A May 12, 2025, memo from the Weil law firm provides at least part of the answer to this question. The memo, entitled "Recent SEC and DOJ Enforcement Actions and Charges Signal that AI-Washing is Firmly Within the Crosshairs of the Trump Administration" ([here](#)), identifies and describes two AI-related enforcement actions initiated under the Trump Administration. One of the two matters discussed is the civil action and parallel criminal complaint launched against Albert Saniger, CEO of Nate, Inc., which I discussed in a prior post ([here](#)).

The memo concludes by saying that the two recent actions, as well as the accompanying statements by DOJ and SEC officials, “seem to demonstrate that this administration views AI-washing as a significant threat to U.S. innovation in the field of AI, by chilling investments in, and diverting funding away from, legitimate companies in the space, and suggest that the SEC and DOJ will continue to scrutinize AI-related disclosures made by market participants.”

The conclusion that the administration will continue to watch AI-related disclosures is underscored by an SEC official's statements at a recent conference. As reported in a May 15, 2025, *Law360* article (here), an enforcement attorney working on the SEC's newly formed cybersecurity and emerging technologies unit, speaking at a conference organized by Securities Docket, reaffirmed that the agency is focused on AI-related misrepresentations. The attorney is quoted as saying that “Overall, I would say we have an overarching focus on rooting out those seeking to misuse this new technology and to harm investors.”

In her remarks, the SEC attorney elaborated on the kinds of things the agency is reviewing. She said that among other things, the agency's areas of interest include the use of AI in predictive data analytics, AI-based trading algorithms, the use of chatbots and the use of artificial intelligence to provide investment advice. The attorney said that “We're looking at whether there's transparency around the technology, whether it's described accurately, whether there's responsible communications to customers,” adding that “It's easy to use a term like ‘AI,’ but is it automation of code or is it actually AI?”

The enforcement agencies' recent actions, as reflected in the two matters discussed in the law firm memo to which I linked above, suggest the agency will continue to pursue AI-related enforcement actions, a conclusion underscored by the SEC attorney's recent comments.

In thinking about the potential liability risks associated with AI, it is important to consider not just the potential regulatory and enforcement exposure but also to consider the possibility of corporate and securities litigation relating to AI. There have been a number of AI-related securities class action lawsuits filed in recent months; according to the *Stanford Law School Securities Class Action Clearinghouse* (here), there have been five AI-related securities suits filed in 2025, after 13 were filed in 2024.

The AI-related lawsuits have included not only securities class action lawsuits, but also have included shareholder derivative lawsuits. For example, on April 30, 2025, a plaintiff shareholder filed a derivative lawsuit in the Southern District of New York against certain directors and officers of the software firm, Sprinklr. A copy of the complaint can be found here. The complaint essentially alleges AI-washing, contending that the company overstated its potential benefits from its adopting of AI tools.

A May 16, 2025 *Corporate Counsel* article about the new Sprinklr lawsuit (here) quotes Geoffrey Fehling of the Hunton Andrews Kurth law firm as saying that plaintiffs' attorneys hungry to bring more cases will be seizing on instances where companies' high hopes for AI failed to materialize, adding that "More reliance on AI leads to more representations about the usage, benefits, scale and impact of the technology that can be challenged later by investors or scrutinized by regulators."

The bottom line is it appears that AI will remain as a hot topic in the D&O liability and insurance arena for the foreseeable future. All signs suggest that AI related disclosures and representations will continue to be the subject of regulatory scrutiny and enforcement, and that AI-related corporate and securities litigation will continue as well.

## Litigation

### **Musk Must Face Suit Over Power as Trump Aide, Judge Says (2)**

May 27, 2025, 9:38 PM PDT

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Elon Musk will have to face a lawsuit that claims the billionaire wielded illegal power by orchestrating President Donald Trump's dramatic cuts in federal government jobs and spending, a judge ruled.

US District Judge Tanya Chutkan on Tuesday denied a request by the Justice Department to toss the case filed by Democratic state attorneys general against Musk and the Department of Government Efficiency. But she dismissed a claim against Trump, saying courts can't limit the actions of a president performing his official duties.

Chutkan ruled the 14-state coalition presented specific enough allegations and preliminary evidence to proceed with claims that Musk was granted the same authority as Trump's Senate-confirmed cabinet. While Musk has been the public face of DOGE, he's denied he holds a formal position or has any authority to direct agencies to carry out the president's cost-cutting agenda. Musk said last month he'll [significantly](#) scale back his DOGE work to be "[super focused](#)" on his businesses, including Tesla Inc. and SpaceX.

The judge found that the Trump administration had adopted a "perverse reading" of the US Constitution's system of checks and balances and appeared "to sanction unlimited executive power."

"Under this reasoning, the President could authorize an individual to act as a Prime Minister who vetoes, amends, or adopts legislation enacted by Congress, as an Ultimate Justice who unilaterally overrules any decision by the Supreme Court, as a King who exercises preeminent authority over the entire nation, or allow a foreign leader to direct American armed forces," Chutkan wrote.

Read More: [Elon Musk's Power in Trump's Government Is Challenged in Court](#)

"We will keep fighting Elon Musk and DOGE to ensure the Trump administration follows the law," Arizona Attorney General **Kris Mayes** said in a statement.

A White House spokesperson did not immediately respond to a request for comment.

Musk and his US DOGE Service have faced a slew of legal challenges since Trump took office in January. In addition to questioning the role of Musk and his DOGE-affiliated staff, some suits are seeking to block their access to agency systems and records that contain vast troves of Americans' financial and personal information.

While rulings to deny motions to dismiss normally can't be appealed, the Justice Department could argue for an exception because the case presents significant questions about presidential power and interpreting the US Constitution.

The lawsuit accuses Musk of violating the Constitution's Appointments Clause, which limits high-level decisions about US agency operations and personnel to officials who are nominated by the president and confirmed by the Senate. The states argued Trump "bypassed" Congress and "unilaterally granted massive, unchecked executive authority to Elon Musk and DOGE to destabilize the government."

In court papers, the Democratic officials highlighted public statements Trump made about putting Musk in charge and Musk's comments appearing to take ownership of moves to shutter USAID and carry out a barrage of federal funding cuts, among other things. They argued that he wasn't simply making recommendations to Senate-confirmed agency heads, but rather was "compelling" and "directing" them to act or "overruling" decisions they'd made.

### **No 'Formal Power'**

In urging Chutkan to dismiss the case, Justice Department lawyers argued that even if they conceded Musk had "massive" or even "decisive" influence over US domestic policy, he didn't have the "formal power to act." As long as a Senate-confirmed official "takes formal responsibility" for decisions that Musk recommended, there couldn't be a constitutional violation, the government said.

Chutkan wrote that Musk's title of "special government employee" might be his "formal classification" but "not necessarily the position he holds." She said the government had unsuccessfully tried to "minimize" Musk's role and that the states put forward enough evidence at this stage that he was directing the actions of DOGE-affiliated staff at 17 federal agencies.

The government argued the states lacked standing to file the suit because they couldn't prove they faced imminent and concrete injuries from Musk and DOGE's efforts to carry out Trump's directive to identify waste, fraud and abuse at federal agencies.

But Chutkan again concluded that the states put forward enough evidence for now that their government offices and public institutions were affected by cuts to federal funding and programs that they allege Musk spearheaded. The attorneys general also argued that DOGE staff "created a substantial risk of cybersecurity breaches" by improperly getting access to "sensitive" state data.

Chutkan's decision comes after the US Court of Appeals for the DC Circuit in March [paused](#) her earlier ruling allowing the state attorneys general to demand records and information from Musk and the US DOGE Service. The appeals court had delayed that fight until Chutkan ruled on whether to let the case go forward.

The case is *New Mexico v. Musk*, 25-cv-429, US District Court, District of Columbia (Washington).

(Updates with comment by Arizona attorney general in sixth paragraph.)

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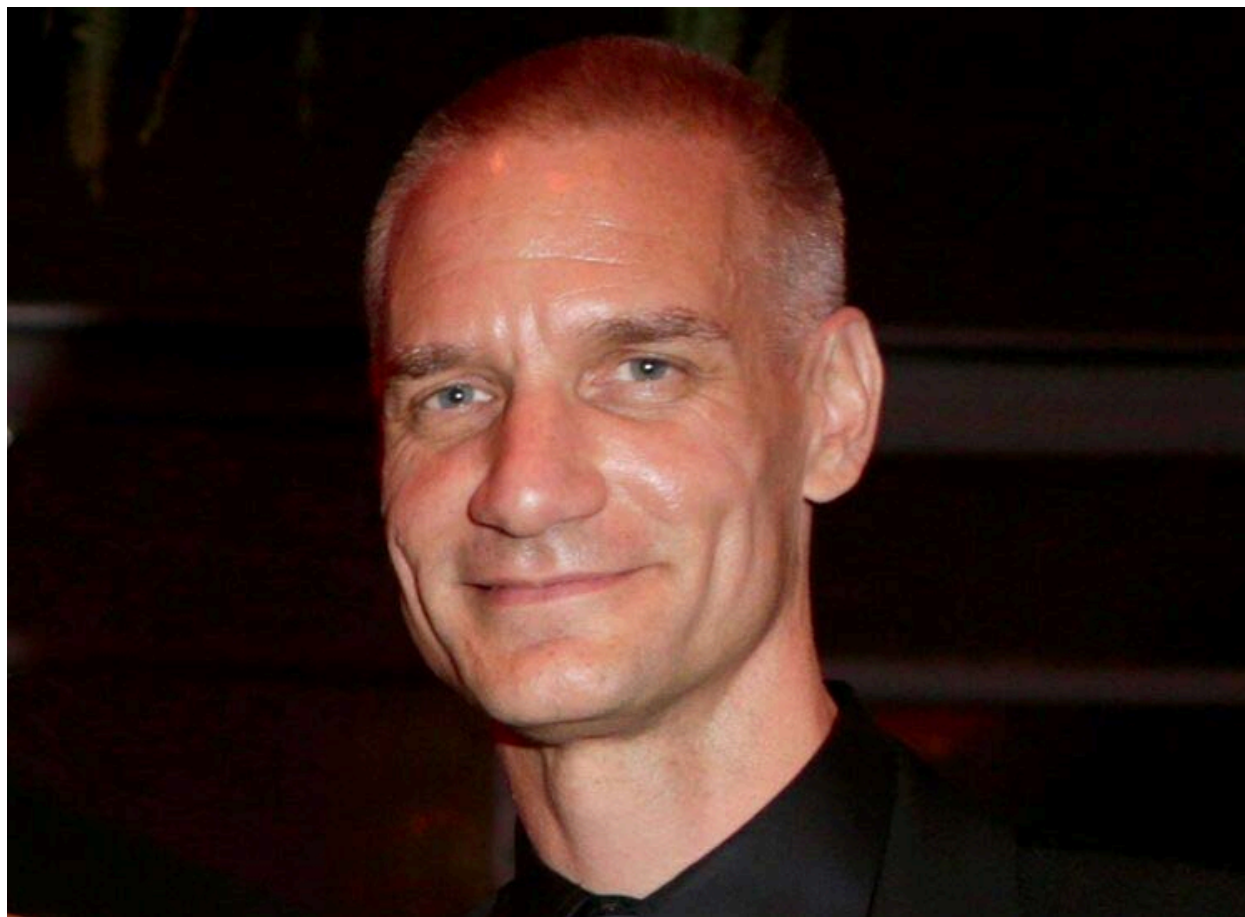
## Litigation

### **Ex-Goldman Banker Leissner to Be Sentenced Over 1MDB Scandal**

May 28, 2025, 6:40AM PDT

Nearly seven years after pleading guilty to his role in one of the largest financial scandals in history, former Goldman Sachs Group Inc. banker **Tim Leissner** is set to find out on Thursday if he's going to prison.

Leissner, 53, admitted to helping siphon billions of dollars from the Malaysian investment fund, 1MDB, to pay about \$2 billion in bribes to foreign officials while splitting another \$1 billion in kickbacks with others in the scheme. Leissner, Goldman's former Southeast Asia chairman, cut a deal with US prosecutors that allowed him to remain free if he helped the investigation and testified against former banking colleague **Roger Ng**.



Tim Leissner

Photographer: Jeff Vespa/Getty Images North America

Leissner faces as many as 25 years in prison over his involvement in the fraud that toppled the Malaysian government and led to investigations in six countries. Goldman, his former employer, paid more than \$5 billion to settle global probes related to 1MDB, including \$2.9 billion in one of the largest penalties in history for a violation of US anti-bribery laws.

In their push for leniency, prosecutors said Leissner provided "extraordinary" help, and that he also continues to assist them with undisclosed investigations into "other crimes." Goldman pushed back against the request.

In addition to helping embezzle billions of dollars in 1MDB funds, Leissner admitted to pocketing \$73.4 million diverted from the fund and another \$80 million from **Jho Low**, the fugitive financier who was the alleged mastermind of the scheme. Leissner used it to bankroll a lavish lifestyle, buying a \$15 million yacht, part of the Inter Milan soccer team and a Beverly Hills mansion.

"You could say this case is a critical illustration why these kinds of prosecutions matter, certainly for taxpayers and people who care about the rule of law and behaving correctly in the markets," said **Bennett Gershman**, a professor at Pace University's law school.

Leissner is asking to be spared prison, saying he provided crucial evidence against former Malaysian prime minister **Najib Razak**, Abu Dhabi sheiks and Goldman Sachs as part of a roadmap for prosecutors.

"In the process of telling the government and the world about 1MDB, I have had to publicly face the fact that I helped steal billions of dollars not just from individuals, but from an entire nation," Leissner said in a letter to the judge.

Prosecutors, Goldman and a lawyer for Leissner, declined to comment beyond their court filings.

Read More: [Goldman Accuses 1MDB Banker of 'Serial Lies' Ahead of Sentencing](#)

Leissner's day of reckoning has been a long time coming. US District Judge Margo Brodie in Brooklyn, New York, has put off the sentencing at least a dozen times since his guilty plea. Legal experts say it could be attributed to Leissner's ongoing cooperation or the government's hope that Low would finally be arrested.

Ng's trial was also delayed for nearly three years due to the pandemic before he was convicted in 2022. Leissner's former colleague was sentenced to 10 years in prison and sent home to Malaysia where he testified at a corruption trial for former prime minister Najib last month.

Najib is on trial for a second time over corruption charges tied to 1MDB. Earlier this month, a US judge rejected Najib's request to compel Leissner to answer questions under oath about the fraud. Najib denies wrongdoing.

Leissner was the government's star witness against Ng. During 10 days on the stand it often seemed that he was the one on trial: he admitted helping set up offshore accounts to hide the looted 1MDB money, forged documents and revealed he was even a two-time bigamist.



Jho Low in Washington, DC, in 2015.

Photographer: Stuart Ramson/Invision for the United Nations/AP

The 1MDB fraud involved staggering sums. The US Justice Department has recovered at least \$1.4 billion in assets, including a Beverly Hills boutique hotel, artworks by Monet and Van Gogh and even a trio of “flawless” diamonds Low bought from a jeweler who also designed pieces for **Beyonce**.

While Goldman worked on Malaysian development projects, Leissner and Ng secretly became partners in Low’s schemes, Leissner said. From 2009 to 2014, the bankers arranged three 1MDB bond transactions, raising some \$6.5 billion with Goldman earning \$600 million.

At the same time, Leissner said he and Ng helped Low siphon billions of dollars from 1MDB and paid more than \$1.6 billion in bribes to government officials, including Najib, the former Malaysian prime minister, who is serving a six-year prison term.

Low has been charged in the US, Malaysia and Singapore over 1MDB. Low remains a fugitive and Singapore said last year that an Interpol Red Notice seeking his arrest remains in effect.

Before US charges against him were filed, in 2017 Low denied wrongdoing and said attempts to link him to the case were based on “unfounded assumptions.”

No matter what sentence the US judge imposes, Leissner potentially faces legal proceedings in southeast Asia. Malaysia’s Home Minister **Saifuddin Nasution Ismail** said earlier this month that the nation has submitted an extradition request for Leissner.



Najib Razak, Malaysia's former prime minister, at the Kuala Lumpur Courts Complex in 2024.

Photographer: Samsul Said/Bloomberg

In trying to stay out of jail in the US, Leissner's lawyers argue he has grown up since his days at Goldman. Working with the government "has profoundly and permanently changed the course of his life."

After pleading guilty, Leissner moved to Dallas, trading in his Instagram-worthy existence for a quieter life in the Lone Star State.

In court filings, he emphasized his work with a group called Freedom Shield Foundation on issues combating human trafficking and food insecurity and says he even assisted with "the rescue of several hundred US citizens stuck in Gaza."

"He was always polite and attentive to others, a crucial quality when collaborating with partner churches," Carrie Grace, the former executive director of Freedom Shield, which closed in 2023, said in an email to Bloomberg. "He consistently arrived early and stayed until the work was complete, often being among the last volunteers to leave."

In court filings, Leissner also cited the fact that he surrendered more than 3.3 million shares in Celsius Holdings Inc., the popular energy drink maker, as part of his plea deal. The stake's value grew exponentially, soaring at one point to be worth more than \$800 million and is currently worth more than \$368 million.

"I gave it up because it was the right thing to do," he said.

But a star-studded group of people say the stock never belonged to Leissner in the first place. A legal battle is raging over the shares' ownership, with Leissner's estranged wife **Kimora Lee Simmons**, Def Jam Records founder **Russell Simmons** and Ng filing competing claims for the stock.

All of them portray Leissner in a less-favorable light, saying that he lied or deceived them to buy the stock with their money. Lawyers for the parties declined to comment or didn't immediately respond to calls.

Eventually, Brodie, the judge who will sentence Leissner, will have to determine if any of them has a right to the stock, or if it should go to the government.

--With assistance from Madlin Mekelburg.

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# New Fortress Energy receives notice from Nasdaq for non-compliance

 [reuters.com/business/energy/new-fortress-energy-discloses-notice-nasdaq-2025-05-27](https://www.reuters.com/business/energy/new-fortress-energy-discloses-notice-nasdaq-2025-05-27)

Reuters

May 27, 2025

New Fortress Energy's liquefied natural gas (LNG) import terminal is pictured near San Juan, Puerto Rico, July 28, 2022. REUTERS/Gabriella N. Baez/File Photo Purchase Licensing Rights, opens new tab

(NFE.O), opens new tab on Tuesday said it received an expected notice from Nasdaq on non-compliance with the stock market's listing rule for not submitting its quarterly reports with the U.S. Securities and Exchange Commission.

Earlier this month, the company had flagged it would extend its quarterly filing with the U.S. securities regulator due to a delay in completing the previously announced sale of its business in Jamaica and the resignation of its accounting chief.

New Fortress Energy has 60 days from receiving the Nasdaq notice to submit a compliance plan. If approved, the company will have until November 11, or 180 days from the original due date, to file its Form 10-Q and regain compliance.

However, the company expects to file the Form 10-Q well ahead of the Nasdaq deadline.

Last year, the company began exploring options such as bringing in strategic partners or selling assets after deferring shareholder dividends to preserve cash and working out a deal with bondholders to push back maturities.

Its financial woes stem from its inability to secure long-term LNG agreements for its power-generation assets in Latin America due to its credit not being investment-grade, forcing the company to acquire the gas at higher prices.

New Fortress in May posted a quarterly loss due to weak performance across segments and announced the completion of its \$1.06 billion Jamaica asset sale to Excelerate Energy. The notice will not pose an immediate impact on the listing or trading of the company's securities on the Nasdaq Stock Market.

Reporting by Pooja Menon in Bengaluru; Editing by Vijay Kishore

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# EV-Maker Polestar Faces Investor Suit Over Financial Reports

By **Sydney Price**

Law360 (May 27, 2025, 5:57 PM EDT) -- Swedish electrical vehicle company Polestar has been hit with a proposed shareholder class action accusing it of misleading investors by failing to maintain proper internal controls, which caused it to misreport liabilities and assets on its balance sheets for several quarters.

According to the complaint filed by shareholders Frank Rodriguez and Kina Thomas on Friday, Polestar Automotive Holding UK Plc completed a merger with special purpose acquisition company Gores Guggenheim Inc. in June 2022. The suit alleges that the proxy statement shareholders based their merger approval votes on was negligently prepared, and, for nearly three years, Polestar failed to disclose that its financial disclosures were false and that its internal controls were weak.

In January, Polestar restated its sales numbers for the previous 10 quarters, with some revised quarters showing a variation of approximately 10% from the previously reported results, according to the complaint.

In addition to Polestar, the suit's individual defendants include several of its current and former executives, including former CEO Thomas Ingenlath, as well as several former Gores Guggenheim executives and directors.

The suit's class period begins June 24, 2022, the day Polestar shares began trading publicly. For several months, Polestar published financial statements that underreported accrued liabilities and assets, and failed to disclose the company's internal control issues, the suit claims.

Then, on Jan. 9, Polestar announced it had amended its definition of "global volumes," according to the suit. The previous definition had included total external sales of new vehicles with and without repurchase obligations, as well as vehicles used by Polestar employees.

The company's revised definition of "global volumes" meant "retail sales representing sales to end customers," according to the complaint.

Polestar said management determined it materially understated assets under construction and understated accrued liabilities in financial statements between 2022 and 2024, the suit states.

On this news, shares of Polestar fell 14 cents, or about 11%, to close at \$1.09 on Jan. 16, according to the complaint.

The suit accuses Polestar and the individual defendants of acting with scienter, or actual knowledge of wrongdoing or reckless disregard and of violating the Exchange Act.

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

Barry Gainey, Thomas J. McKenna and Gregory M. Egleston of Gainey McKenna & Egleston.

Counsel information for the defendants was not immediately available Tuesday.

The case is Rodriguez et al. v. Gores Guggenheim Inc. N/K/A Polestar Automotive Holding UK PLC et al., case number 2:25-cv-05403, in the U.S. District Court for the District of New Jersey.



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# Drone Co. Overhyped Army Contract Prospects, Investor Says

By **Emilie Ruscoe**

Law360 (May 27, 2025, 10:59 PM EDT) -- Drone maker Red Cat Holdings Inc. faced a proposed investor class action alleging it misled investors about its expectations for capitalizing on a prospective U.S. Army contract, hurting shareholders as markets reacted to adverse news about the contract and the company's potential revenue from the deal.

In a complaint filed Friday in New Jersey federal court, Red Cat investor Dylan Olsen said the company's share price fell after it made certain disappointing disclosures about its participation in a portion of the Army's Short Range Reconnaissance acquisition program.

In particular, Olsen pointed to a Red Cat representative's March 2023 statements that its subsidiary could produce "thousands of drones per month" at a relevant facility that was "complete and ready to go" — statements that the company walked back only months later.

In July 2023, Olsen said, the company stated that the facility it had referenced in those March comments was actually only "substantially completed" and added that the facility could reach a maximum production capacity of 1,000 drones a month over "2 to 3 years, provided that additional capital investments are made and manufacturing efficiencies realized."

Following those comments, the investor said, trading prices for Red Cat shares fell nearly 9%, from \$1.12 to \$1.02, hurting investors.

The investor also pointed to the company's September 2024 announcement of its financial results for the first quarter of its 2025 fiscal year, which included per share losses and revenue results that fell below an average of analyst forecasts for the company.

At the time, Olsen said, a company representative told investors that it had spent "the past four months ... retooling [the Salt Lake City facility] and preparing for high volume production," which had required a pause in production of its Teal 2 drone.

The manufacturing pause, and its work building Army prototypes, had affected sales for the drone, the company said, stating that it "couldn't produce and sell Teal 2 units[] while retooling [its] factory."

Following these statements, Olsen said, trading prices for Red Cat shares fell from \$3.16 to \$2.36, a decline of over 25%.

Later, the investor said, after the company had officially secured a contract in the Army acquisition program, a short-seller released a report about the company, citing a review of Army documents in claiming that Red Cat's contract was worth approximately \$20 million to \$25 million.

Olsen claimed this news surprised investors, who'd previously been informed by the company that the relevant tranche of the Army acquisition program was for "approximately 12,000 drones" when an earlier portion of the program had awarded \$100 million for nearly 1,100 drones.

"At all relevant times, defendants suggested or otherwise asserted that the [Short Range Reconnaissance acquisition program's] Tranche 2 contract was worth potentially hundreds of millions to over a billion dollars in contract revenues," Olsen claimed.

Following the January 2025 release of the short-seller report, Olsen said, trading prices for Red Cat shares fell from \$10.91 to \$8.56, a decline of nearly 22%.

On Tuesday, counsel for Olsen declined to comment and representatives for Red Cat didn't immediately respond to a request for comment.

Olsen is represented by Thomas H. Przybylowski, Jeremy A. Lieberman and J. Alexander Hood II of Pomerantz LLP and Brian Schall of the Schall Law Firm.

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

The case is Olsen v. Red Cat Holdings Inc. et al., case number 2:25-cv-05427, in the U.S. District Court for the District of New Jersey.

--Editing by Bruce Goldman.

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# Tesla Asks Delaware Justices To Slash \$176M Class Atty Fee

By **Jeff Montgomery**

Law360 (May 27, 2025, 4:47 PM EDT) -- Attorneys for Tesla Inc. have told Delaware's Supreme Court that counsel for stockholders who secured a disputed \$735 million in savings from director cash and options rollbacks deserve less than the \$176.2 million fee awarded the team.

The \$68.4 million to \$70.9 million fee alternative recommended by the company's counsel in **a brief** filed late Friday was far short of the \$230 million that stockholders originally argued was warranted based on early estimates of a \$919 million benefit for the company on savings from excessive board compensation.

In January, Chancellor Kathaleen St. J. McCormick of Delaware Chancery Court **whittled the initial proposal** by attorneys for Police and Fire Retirement System of the City of Detroit to \$176 million for three firms, as compensation for what the lower court estimated as savings to the company of \$734 million, reflecting a combination of director stock, option and cash concessions.

The company's attorneys argued for an appellate court short-circuiting of even that amount.

"Because this litigation benefited Tesla at most \$295,492,233, the largest conceivable fee award would be \$70,918,136, representing 24% of that still-considerable sum," Tesla's counsel argued.

The math check argued that canceling stock options "does not generate new cash inflows to Tesla," but instead saves as little as \$19.9 million in an accounting charge beyond the \$276.6 million in savings on cash portions of the awards.

Fees originally proposed for class counsel McCarter & English LLP, Fields Kupka & Shukurov LLP and Bleichmar Fonti & Auld LLP in the nearly 5-year-old case would rank among the larger derivative settlements in Court of Chancery history.

Current and former board members, including CEO Elon Musk's brother Kimbal Musk and media mogul James Murdoch, **initially agreed** to collectively return the class estimated equivalent of \$735 million in past compensation. They also agreed to permanently forgo compensation between 2021 and 2023 and to have their future compensation packages examined by an independent consultant.

The settlement also would apply to current or former board members Robyn Denholm, Ira Ehrenpreis, Lawrence J. Ellison, Antonio J. Gracias, Stephen T. Jurvetson, Linda Johnson Rice, Kathleen Wilson-Thompson and Hiromichi Mizuno.

The electric car and solar energy system manufacturer claimed during the litigation that the suing pension fund was a beneficiary of Tesla's business success, with company revenues increasing from \$413.3 million in 2014 to \$24.6 billion in 2019 and \$81.46 billion in 2022.

Tesla's latest fee brief argued that the lower end of its proposal, at \$68.4 million, exceeds the average multiplier for common fund settlements and "is more than enough to compensate counsel for their effort, their risk, and the outcome they achieved."

At most, the brief added, the litigation benefit could be pegged at \$295.5 million, with the "largest conceivable fee" amounting to a "still considerable" \$70.9 million.

"Detroit also manufactures a purportedly 'long line' of opposing authority finding that, when calculating fees, the net benefit of returned options is equal to the options' 'intrinsic' face value," Tesla argued. But "none of the four cases Detroit invokes involved comparable restrictions on reissuing or reselling returned options to those Tesla faces here."

While the stockholders argued that Chancellor McCormick did prune the stockholder request, the company said that "awarding the moon to counsel that requested the stars is still a windfall."

"The fact that the requested fee was so excessive that the trial court had to reduce it by over \$50 million to arrive at what is still one of the largest fee awards in Delaware history does not render the fee award reasonable," Tesla's attorneys argued.

Tesla's counsel argued that the lower court failed to take into account the same court's guidance to "consider the size of the award" in 2024's *In re Dell Technologies, Inc. Class V Shareholders Litigation*, which approved \$266.7 million to class attorneys who settled a suit with Dell for \$1 billion.

"In Dell, the parties engaged in multiple rounds of motions practice, conducted far more expansive discovery, and made it all the way to the trial court steps," the Tesla brief said.

"In contrast, the parties here did not litigate any significant motions, produced 97% fewer documents, and had not even completed expert discovery," but stockholders received a reasonable fee-and-rate multiplier nearly double that in Dell, the brief said.

"The fact that counsel here received nearly twice the lodestar premium of that awarded in Dell, despite working less than half the hours, highlights the degree to which the award is a windfall," Tesla's attorneys argued.

The proposed settlement would resolve a pension fund shareholder's lawsuit filed in 2020 that accused the company of giving directors compensation packages worth an average \$8.7 million in 2018 alone — at the time described as more than 29 times higher than the average for S&P 500 index company boards.

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

The investors are represented by Andrew S. Dupre of Akerman LLP, William Fields, Christopher Kupka and Samir Shukurov of Fields Kupka & Shukurov LLP, and Robert B. Lackey, Joseph Fonti, Nancy Kulesa, George Bauer and Thayne Stoddard of Bleichmar Fonti & Auld LLP.

Tesla is represented by Brian T. Frawley, Matthew A. Schwartz, Jeffrey B. Wall and Morgan L. Ratner of Sullivan & Cromwell LLP, John L. Reed and Ronald N. Brown III of DLA Piper, and Jason C. Jowers and Sarah T. Andrade of Bayard PA.

The board members are represented by Raymond J. DiCamillo, Kevin M. Gallagher and Kyle H. Lachmund of Richards Layton & Finger PA, and Evan R. Chesler and Vanessa A. Lavelly of Cravath Swaine & Moore LLP.

The case is *In re: Tesla Inc. Director Compensation Stockholder Litigation*, case numbers 52, 2025 and 53, 2025, in the Supreme Court of the State of Delaware.

--Additional reporting by Bonnie Eslinger, Katryna Perera and Jessica Corso. Editing by Robert Rudinger.



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## 'I Need To Be Careful': Judge Wades Into Musk-Firm Conflict

By **Jessica Corso**

Law360 (May 27, 2025, 2:59 PM EDT) -- A New York federal judge questioned his authority to weigh in on Bernstein Litowitz Berger & Grossmann LLP's hiring decisions after it sought permission to employ a former U.S. Securities and Exchange Commission attorney who Elon Musk claims could disadvantage him in a shareholder lawsuit, asking the firm and Musk to brief him on what may be an issue of first impression.

U.S. Magistrate Judge Gabriel W. Gorenstein said at a telephonic hearing on Tuesday that he didn't know what authority he had to decide whether Bernstein Litowitz can hire Jorge Tenreiro, the former chief litigation counsel at the SEC.

The law firm has asked the magistrate to approve its conflict screening procedures for Tenreiro after Musk **objected to them**. Musk said he's worried that the former SEC attorney's involvement in a government case against him will disadvantage him as he fights a shareholder lawsuit headed by Bernstein Litowitz.

"My issue is one I would call ripeness," Judge Gorenstein said on Tuesday. "It seems ... that this is the first time in history that a judge will have ruled on a request of this kind."

He later said that whatever he decides "is surely going to decide" how similar requests are treated in the future.

"I need to be careful," he added.

Judge Gorenstein asked the parties to brief the ripeness issue by Friday.

Bernstein Litowitz **told the New York court** last month that it plans to hire Tenreiro, who in addition to heading the SEC's litigation efforts also served as the leader of the agency's cryptocurrency enforcement unit for two years.

On Tuesday, Salvatore Graziano, a partner at the firm and a leading attorney in the case against Musk, told Judge Gorenstein that Tenreiro has been formally offered a role as partner contingent on the judge's ruling. The former SEC attorney hasn't accepted a position anywhere else and is awaiting a ruling so he can start, Graziano said.

"The hope was that he would join in April, and it's now May," Graziano said. He said that Bernstein Litowitz is asking the judge to approve the conflict screening procedures, because without it, the firm worries it would open itself up to being disqualified from overseeing the proposed class action.

The lawsuit, **filed in 2022**, accuses Musk of failing to immediately report that he had amassed a significant stake in Twitter in order to keep stock prices low and save himself \$143 million. The billionaire later purchased the social media platform and took it private, renaming it X.

The SEC **lobbed similar allegations** against Musk in the waning days of the Biden administration, when Tenreiro was chief litigation counsel.

Bernstein Litowitz told the court that the prospective new hire's involvement in the SEC's case against Musk was "minimal" and that he would not be involved in the firm's litigation against Musk.

But Musk's attorneys said that Tenreiro's knowledge of the government's case was enough that it could disadvantage their client, and argued that Bernstein Litowitz's "tightknit securities fraud practice and its relatively small New York office will make effective screening impossible."

Jesse Bernstein of Quinn Emanuel Urquhart & Sullivan LLP, one of the attorney's representing Musk, told Judge Gorenstein on Tuesday that he was "not aware of a situation exactly like this," but that he hadn't extensively researched the ripeness issue yet and would be happy to provide more feedback in a Friday letter to the court.

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

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

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

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

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

--Editing by Nicole Bleier.

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# Bluebird Bio Beats Investor Suit Over FDA Cancer Warning

By **Sydney Price**

Law360 (May 27, 2025, 10:47 PM EDT) -- Massachusetts-based biotechnology company Bluebird Bio Inc. has beaten a shareholder suit accusing it of misleading investors about the likelihood of the U.S. Food and Drug Administration's decision requiring a "black box warning" on one of its products due to the cancer risk it posed.

U.S. District Judge Patti B. Saris said in an opinion and order on Friday that the investors have not shown Bluebird made any actionable misstatements or omissions about its gene therapy for sickle cell Lyfgenia, also known as lovo-cel, ahead of approval by the FDA to prop up expectations and bolster share prices.

Judge Saris will allow the shareholders to amend their claims, according to the order.

In the suit, which was most recently amended in August, the investors allege that on a November 2023 earnings call, Bluebird acknowledged that two patients had died during clinical trials after developing leukemia, and that this would be mentioned in the safety events of the FDA label, but "what part of the label or where is yet to be determined," according to the complaint.

The complaint stated that the truth emerged when the FDA approved Lyfgenia on Dec. 8, 2023, but added a black box warning — the most serious type of warning issued by the agency — highlighting the risk of developing blood cancer, and did not give Bluebird a priority review voucher to be redeemed for guaranteed priority evaluation of a future drug or biologic application.

The FDA announcement caused stock prices to plummet from \$4.81 per share on Dec. 7, 2023, to \$2.86 on Dec. 8, 2023, as analysts and investors reacted to the news, according to the complaint.

Judge Saris said Bluebird CEO Andrew Obenshain's failure to directly say that the FDA could require a black box warning for the drug was not an actionable omission. Given his repeated use of the phrases "I don't think" and "I think" during a May 2023 conference, a reasonable investor would have understood he was expressing an opinion that "lacked certainty about the FDA's focus with regard to the label."

"Obenshain gave no impression as to whether the FDA would require such a warning or how the FDA would respond to the two leukemia deaths in the clinical trials," Judge Saris said. "And he was not obligated to enumerate all possible ways that safety concerns could manifest on lovo-cel's label."

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

The investors are represented by William B. Federman and Jessica A. Wilkes of Federman & Sherwood.

Bluebird and the individual defendants are represented by Monica Mleczko and Robert G. Jones of Ropes & Gray LLP.

The case is Garry Gill et al. v. Bluebird Bio Inc. et al., case number 1:24-cv-10803, in the U.S. District Court for the District of Massachusetts.

--Editing by Emily Kokoll.



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## Next Meats Beats Investor Suit Over 'Short Swing' Profits

By **Katryna Perera**

Law360 (May 27, 2025, 9:33 PM EDT) -- The controlling shareholders of Japan-based Next Meats have beaten, for good, a suit alleging they collected unlawful short-swing profits after a New York federal judge found the plaintiff could not satisfy the so-called Morrison test of demonstrating a domestic securities transaction that can be tried in U.S. courts.

U.S. District Judge Margaret M. Garnett issued an **order** Friday agreeing with defendants Koichi Ishizuka and White Knight Co. Ltd. that applying Section 16(b) of the Securities Exchange Act to the securities transactions at issue in the complaint would be "impermissibly extraterritorial."

Ishizuka is a Japanese citizen and the CEO of Next Meats Holdings Inc., and White Knight Co. is a Japanese entity he owns and controls, according to the order. Together, Ishizuka and White Knight Co. are the beneficial owners of more than 10% of Next Meats' common stock, the order stated.

The suit argues the defendants must disgorge the short-swing profits they reaped from the sales and purchases of their Next Meat securities under Section 16(b) of the Exchange Act. According to the order, Section 16(b) requires officers, directors or beneficial owners to disgorge any profits made from the purchase or sale of an issuer's securities within any six-month period.

However, the defendants moved to dismiss the suit's operative complaint, arguing that no U.S. court has expressly held whether Section 16(b), also known as the short-swing profits rule, applies extraterritorially, and the transactions at issue in the complaint do not meet the so-called Morrison test, which determines whether a transaction is domestic in nature and the Exchange Act applies.

According to the order, the Morrison test, established by the U.S. Supreme Court in **Morrison v. National Australia Bank Ltd.** in 2010, requires that at least one of two prongs be satisfied for a transaction to be considered domestic and for the Exchange Act to apply — either the purchase or sale of the security must be made in the United States, or the transaction must involve a security listed on a domestic exchange.

In the current action, plaintiff Mark Rubenstein, a Next Meats shareholder, claims that at all relevant times, Next Meats' common stock was traded over the counter "on exchanges or through market-makers located within this district."

However, Judge Garnett noted that "by definition," securities that trade OTC are not traded on a securities exchange and that for over a decade, courts in the Second Circuit have consistently found that the OTC market is not a domestic exchange for the purposes of Morrison's first prong.

"As such, Morrison's first prong is not satisfied here because Next Meats is only quoted or traded OTC, and is not listed or traded on any domestic exchange," the order stated.

The second prong of the Morrison test requires that the purchase or sale of a security be made in the United States, and the short-swing profit rule may still apply if the second prong is satisfied, according to the order.

The second prong is met if the parties incurred "irrevocable liability" in the United States, or the title of the security was transferred in the United States, the order said.

Judge Garnett said Friday that Rubenstein has not alleged any facts in the complaint "supporting a plausible inference" that the defendants incurred "irrevocable liability" in the United States.

"Nor did plaintiff make any arguments in its briefing to the effect that irrevocable liability was incurred domestically. It appears undisputed that all contractual steps for the transactions at issue, and thus the point of irrevocable liability, took place in Japan," the order stated.

Additionally, the judge said the complaint does not include any facts regarding the location of the transfer of title.

In a statement to Law360 on Tuesday, David DeStefano of The Law Office of David DeStefano PLLC, who represents the defendants, said they believe the judge "got it right."

Counsel for Rubenstein did not immediately respond to requests for comment.

Rubenstein launched his suit in 2023, claiming that the defendants are "statutory insiders" of Next Meats who realized short-swing profits of approximately \$391,000 from their trades of the company's securities.

Next Meats is a Nevada corporation with its principal offices in Tokyo, according to the order. The company manufactures vegetarian "meat" products, which are sold in retail stores and restaurants across the United States.

Rubenstein is represented by Miriam Tauber of Miriam Tauber Law PLLC and David Lopez of the Law Office of David Lopez.

The defendants are represented by David DeStefano of The Law Office of David DeStefano and T.J. Jesky of the Law Offices of T. J. Jesky.

The suit is Rubenstein v. Ishizuka et al., case number 1:23-cv-04332, in the U.S. District Court for the Southern District of New York.

--Editing by Kristen Becker.



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## Proterra Investors Push For Final OK Of \$29M Settlement

By **Hailey Konnath**

Law360 (May 27, 2025, 11:04 PM EDT) -- Proterra Inc. investors have asked a California federal court to sign off on a \$29 million deal resolving allegations that the bankrupt electric-vehicle maker's executives misled them about liquidity issues, according to a motion for final approval of the settlement filed Tuesday.

The investors called the all-cash deal following two years of litigation a "tremendous result." It's much larger than the median recovery obtained in similar securities actions, they noted.

"The settlement provides a substantial, certain, and prompt recovery for the class while avoiding the significant risks of continued litigation, including the risk that the class could recover less than the settlement amount (or nothing at all) after years of continued litigation and inevitable appeals," the investors said.

To date, no one has objected to the proposed agreement, they added.

In the consolidated action, the investors allege that Proterra's top brass "made materially false and misleading statements and/or omitted material information concealing from investors that Proterra's core division — the 'Transit' line of electric vehicle buses — was plagued by known defects, known supply chain problems, and negative margin contracts with certain municipal customers."

The alleged misrepresentations and omissions were used to take Proterra public via a merger with special purpose acquisition company ArcLight, the investors claimed. They worsened when the executives hid that Proterra "had made the secret decision to starve Transit of capital in order to fund new initiatives and that Proterra's revenue growth and gross margins did not support its 'strategic' growth strategies, decimating its financial condition," the investors said.

The suit was initially filed by Jeremy Villanueva in July 2023. It was later consolidated with several **similar suits** against Proterra, which filed for bankruptcy in August of that year. Cyress Jam was eventually appointed lead plaintiff, and Levi & Korsinsky LLP was appointed lead class counsel, according to Tuesday's filing.

U.S. District Judge Eumi K. Lee granted preliminary approval in April, according to the case docket.

Specifically, the settlement involves two classes: a Securities Act class and an Exchange Act class. The first class includes everyone who acquired public shares in Proterra "pursuant and/or traceable to the proxy/registration statement" filed with the U.S. Securities and Exchange Commission on Feb. 21. The second includes everyone who acquired Proterra common stock between Aug. 11, 2021, and Aug. 7, 2023, according to a stipulation filed earlier this year.

Also on Tuesday, Levi & Korsinsky and co-counsel Pomerantz LLP requested 25% of the settlement amount to be awarded as attorney fees, as well as \$150,230 in litigation costs. The firm also asked that Jam be awarded \$10,000 for his service as lead plaintiff and the other seven named plaintiffs get \$5,000 each.

Counsel for the individual defendants declined to comment, and counsel for the investors didn't immediately respond to a request for comment late Tuesday.

The plaintiffs are represented by Adam M. Apton of Levi & Korsinsky LLP and Joshua B. Silverman and Christopher P.T. Tourek of Pomerantz LLP.

The individual defendants are represented by Victor L. Hou, Jared Gerber and Jennifer Kennedy Park of Cleary Gottlieb Steen & Hamilton LLP and by Amy Jane Longo and Matthew L. McGinnis of Ropes & Gray LLP.

The case is Cyress Jam et al. v. Proterra Inc. et al., case number 5:23-cv-03519, in the U.S. District Court for the Northern District of California.

--Additional reporting by Sydney Price. Editing by Kelly Duncan.

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## Chancery Footnotes Raise Post-SB 21 Stir In Delaware

By **Jeff Montgomery**

Law360 (May 27, 2025, 8:13 PM EDT) -- A Delaware vice chancellor has created a stir with expansive opinion footnotes pushing back on the state Supreme Court's rejection of a controller's liability to stockholders after rechartering a business in more board-friendly Nevada, close on the heels of a bitter legislative debate over reworking Delaware corporate law.

The decision surfaced two months after state lawmakers approved S.B. 21, retroactive Delaware General Corporation Law amendments that gave more protections to directors, officers and controlling stockholders involved in conflicted transactions. Debate over the bill was sharpened by worries of a corporate exodus from Delaware to states with looser fiduciary rules.

More recently, in bottom-of-the-pages comments in an unrelated investor cash-out dispute, Vice Chancellor J. Travis Laster opined that the justices partly relied in a mid-case appeal in February on "intuition" to reject his application of a plaintiff-friendly standard of review for TripAdvisor's reincorporation in Nevada.

The vice chancellor's recent footnotes are "being emailed and texted around by practitioners," Ann Lipton, Tulane University Law School's Michael M. Fleishman professor in business law and entrepreneurship, said of Vice Chancellor Laster's commentary in *Ban v. Manheim*.

Some of the vice chancellor's comments, Lipton said, "highlight a point that might represent continuing tension going forward, which is, other than the loss of litigation rights, what other rights might controlling shareholders unilaterally remove from the minority without being subject to entire fairness scrutiny."

Lawrence A. Hamermesh, a retired Widener University Law School professor and former executive director of the Institute for Law and Economics at the University of Pennsylvania Carey Law School, described Vice Chancellor Laster's comments as unusual.

The footnotes "read like a dissent at the Supreme Court level, on the question of identifying a conflict of interest. There are probably implications for ripeness doctrine as well (i.e. defining whether and when a case or controversy actually arises)," Hamermesh wrote in an email to Law360.

Vice Chancellor Laster zeroed in on the issues in a May 19 Chancery Court decision in *Ban v. Manheim*. That decision ordered the founder and controller of a Philadelphia-based center that oversees an investment incentive program for foreign nationals to pay nearly \$6.9 million to a member whose shares were called in and cashed out unfairly.

In one of 153 footnotes, and while acknowledging no need to go into it, the vice chancellor segued into what he described as high court inconsistency on TripAdvisor, docketed as *Maffei v. Palkon*.

In a mid-case appeal in TripAdvisor on Feb. 4, the justices reversed Vice Chancellor Laster's decision to keep alive damage claims in connection with the company's proposed reincorporation in Nevada.

The justices concluded that business judgment deference, rather than more-plaintiff-friendly entire fairness standard, should govern the court challenge. Rejected as "speculative" were TripAdvisor stockholder claims of damage from the corporate charter redomestication to a more board- and controller-friendly state.

Under the Supreme Court's view, the benefit alleged by stockholders in TripAdvisor, the vice

chancellor said, becomes "immaterial unless a transaction that could give rise to litigation has occurred or is temporally imminent."

TripAdvisor and other recent Chancery rulings led to major Delaware General Corporation Law amendments while *Ban v. Manheim* was working through the courts. The vice chancellor's recent footnote comments on TripAdvisor, meanwhile, followed two months of legislative backlash: passage of Senate Bill 21, legislation that was backed by Delaware's governor, the corporate bar and most lawmakers and that shielded corporations from some potentially costly fiduciary duty breach litigation.

The legislative action followed rulings by both Vice Chancellor Laster and Chancellor Kathaleen St. J. McCormick, in particular, that were seen by the corporate bar and some companies as tilted too far toward plaintiffs. Tesla's Elon Musk has been among the more vocal critics.

Adding to signs of flux: Chancellor McCormick last week sought mid-case clearance to seek state Supreme Court constitutional review of March-passed S.B. 21 itself. That measure, along with another passed last year, were cited by supporters as reactions to charter moves — "DExit" decisions — by companies unhappy with the direction of Delaware courts.

University of Arkansas School of Law professor Robert Anderson said Friday it was not uncommon for the Court of Chancery and Supreme Court to have "a back and forth dialogue" in opinions. He added that TripAdvisor had been "unusually frank," and observed that it was "not uncommon for Vice Chancellor Laster to comment more broadly than the cases called for."

But Anderson also described the number of Supreme Court decisions overruling Chancery Court in recent years as "unheard of." The differences have arisen as Texas and Nevada are working to develop corporation law provisions that both managers and controlling shareholders would like, "but Delaware for whatever reason can't follow."

In a posting last week on X, Anderson observed that "Big-picture, this is Laster's latest salvo in the internecine war he and Chancellor McCormick are waging against the Delaware General Assembly and (to a lesser extent) the Supreme Court."

Anderson added: "Laster admits in his screed (which spans three pages) that TripAdvisor analysis is not necessary for the decision at hand" in *Ban v. Manheim*, "then proceeds to critique the unrelated decision in a multi-paragraph footnote. It seems the Court's reversing him was still stinging a bit."

While saying that the decision in *Ban v. Manheim* did not require him to "delve too deeply" into the Feb. 4 TripAdvisor decision, the vice chancellor questioned the justices' adoption of business judgment deference in their decision.

The justices, Vice Chancellor Laster wrote in a footnote, relied on "intuition that the effect of an increase in liability protection and the concomitant diminution in litigation risk becomes speculative and immaterial unless a transaction that could give rise to litigation has occurred" or is imminent.

"That intuition remains one I do not share," the vice chancellor wrote in the 69-page *Ban v. Manheim* opinion. "People plan ahead— often far ahead. Sophisticated people like directors and officers, aided by expert lawyers, invariably plan far ahead." He added that "lawyers spend hours negotiating contracts" to address client concerns about "non-imminent" legal risks.

The state high court nevertheless reversed Vice Chancellor Laster in TripAdvisor after finding that — barring ties to an actual, relevant transaction — business judgment deference should apply against claims that TripAdvisor's controller received disproportionate benefits from the move.

A "delicate balance between the different interests of the bar," corporate and plaintiff, are involved, Anderson said, adding that in the background competition among states for corporate chartering: "I think it would be very difficult for Delaware to copy Texas' 3 percent shareholder threshold for bringing fiduciary duty claims."

Legislation approved in Texas this year allows companies to adopt a minimum 3 percent ownership hurdle before a stockholder can bring a derivative claim, although stockholders can band together to

reach the threshold.

A single stockholder can bring a derivative action in Delaware, in contrast, although there are other requirements, including an effort to demand company action on the derivative claims or evidence that the effort would have been futile.

Stakes in the Delaware controversy are high. Corporate franchise revenues in the balance currently account for more than 20 percent of Delaware's state general fund revenues, with personal and related income from the legal profession and ancillary services also provide meaningful revenue, especially to Wilmington, the state's largest city.

In the same week as the *Ban v. Manheim* decision, state revenue and economic forecasters flattened near-term estimates for the state's mainstay corporate franchise tax after years of steady growth.

Nevada provided evidence for the concern last week when state lawmakers there approved a rule allowing state-chartered companies to put corporate disputes to a judge instead of a jury under more board-friendly terms. The move was widely seen as an enticement for litigation-wary directors of Delaware-chartered companies.

Gregory V. Varallo, a Bernstein Litowitz Berger & Grossmann LLP partner and Delaware office head, said in an email that his firm and other "investor side firms made clear to our elected representatives and the Governor, we believe that SB 21 was neither necessary nor wise."

Varallo added: "We are aware of many large institutional clients who are discussing how they should vote regarding proposals to reincorporate companies away from Delaware; and whether they should reallocate capital away from Delaware companies, especially companies with a controlling stockholder, because those investments have become incrementally riskier as a direct result of the legislation."

Hamermesh played a role in work on S.B. 21, and was a co-author along with former Delaware Supreme Court Chief Justice Leo E. Strine Jr. and ex-Delaware Justice Jack B. Jacobs of a paper in 2021 that influenced S.B. 21. Strine and Hamermesh also published an earlier paper on Delaware corporate law issues in 2001, along with the late former Chancellor William T. Allen.

The vice chancellor wrote in a second footnote that he did not share the "foundational premise" of the Supreme Court's finding in *TripAdvisor* that a change in stockholder litigation rights "did not conceivably give rise to a material, non-ratable benefit on the fiduciaries who approved it," unless there was a recent or imminent deal that would trigger litigation.

Charles Elson, a retired University of Delaware corporate governance professor and founding member of the university's Weinberg Center on Corporate Governance, said Vice Chancellor Laster's footnotes make his position clear but would have "little impact on the decision other than letting the world know" that he disagrees with the justices.

"This is the consequence. You've basically turned the law inside out and you've removed predictability," Elson said of S.B. 21. The interesting thing is, if the intent was to keep companies in Delaware, what it did was force Nevada and Texas to stoop even lower on the fiduciary scale, which is going to be attractive to those kind of companies — they didn't want accountability and someone will offer them less accountability that we have."

The parties did not immediately respond to requests for comment.

--Editing by Michael Watanabe.



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# Anthropic Declaration Partly Stricken Over AI Hallucination

By **Hailey Konnath**

Law360 (May 27, 2025, 11:32 PM EDT) -- A California federal magistrate judge has partially stricken an expert report filed by Anthropic in copyright infringement litigation that cited a nonexistent study — an error created by the artificial intelligence company's own Claude AI tool — calling the issue "serious," but "not quite so grave as it first appeared."

U.S. Magistrate Judge Susan van Keulen said the citation "is a plain and simple AI hallucination." The academic journal article cited in the expert declaration doesn't exist, and the philosophy professors listed as its authors have never actually worked together, according to the order.

"It is not clear how such an error — including a complete change in article title — could have escaped correction during manual citecheck by a human being," Judge van Keulen said in the Friday order.

However, the link in the footnote does send the reader to the legitimate article that the lawyers intended to cite, the judge said. She struck one paragraph in the declaration rather than the whole thing, adding that "this issue undermines the overall credibility" of the declaration.

Music publishers suing Anthropic argue that the April 30 declaration **violated the presiding judge's standing order** in civil cases. That order, from U.S. District Judge Eumi K. Lee, doesn't explicitly prohibit lawyers from using generative AI tools, but it does require that they "personally confirm for themselves the accuracy of any research conducted by these means, and counsel alone bears ethical responsibility for all statements made in filings."

On top of that, any court submission containing AI-generated content must include a certification that lead trial counsel has personally verified its accuracy, and "failure to include this certification or comply with this verification requirement will be grounds for sanctions," according to the order.

The erroneous citation at the heart of the dispute was included in a footnote in a declaration filed by Anthropic data scientist Olivia Chen. Anthropic acknowledges that the footnote featured an "erroneous author and title" that was generated when Claude AI, Anthropic's large language model AI chatbot, was used to format the other, legitimate citations. However, the company argues that the citation still provides a link to the correct publication, volume, pages numbers and year of publication of the legitimate article at issue.

Judge Van Keulen initially called the errors "very serious and grave" and ordered Anthropic to respond to them and also preserve "any and all documents and discussions" relating to the development of the declaration.

In her order last week, the judge noted that because the underlying article "exists, was properly linked to and was located by a human being using a Google search." That means this isn't a case where attorneys and experts abandoned their judgment and critical thinking skills in favor of AI, she said.

"A remaining serious concern, however, is Anthropic's attestation that a 'manual citation check' was performed but 'did not catch th[e] error,'" Judge Van Keulen said.

Beyond that, the attorneys didn't personally verify or certify that the verification happened, contrary to the standing order's requirements, she said.

In the suit, music publishers including Universal Music Publishing Group, Concord Music Group Inc. and ABKCO Music & Records Inc. claim Claude **rips off their intellectual property** by reproducing lyrics to thousands of copyrighted songs on command.

Anthropic has denied the allegations, arguing it actually put in place measures that prevent this type of verbatim copying. The litigation is in the middle of contentious discovery.

Anthropic and counsel for the publishers didn't immediately respond to requests for comment late Tuesday.

The publishers are represented by Matthew J. Oppenheim, Audrey L. Adu-Appiah, Jennifer Pariser, Andrew Guerra, Timothy Chung and Nicholas C. Hailey of Oppenheim & Zebrak LLP, Jeffrey G. Knowles of Coblenz Patch Duffy & Bass LLP, and Richard S. Mandel, Jonathan Z. King and Richard Dannay of Cowan Liebowitz & Latman PC.

Anthropic is represented by Sarang V. Damle, Ivana Dukanovic, Joseph R. Wetzell, Andrew M. Gass, Brittany N. Lovejoy, Sara E. Sampoli, Allison L. Stillman and Rachel S. Horn of Latham & Watkins LLP.

The case is Concord Music Group Inc. et al. v. Anthropic PBC, case number 5:24-cv-03811, in the U.S. District Court for the Northern District of California.

--Additional reporting by Dorothy Atkins, Ivan Moreno and Thy Vo. Editing by Kristen Becker.

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## AG Watch: Texas Expands Use Of Consumer Protection Laws

By **Paul Singer, Beth Chun and Andrea deLorimier** (May 27, 2025, 5:29 PM EDT)

*This article is part of a regular column that features insights from former state attorney general office leaders, who share observations on that state's latest enforcement news and trends, and compliance implications.*

In recent years under Attorney General Ken Paxton, Texas has demonstrated the breadth of its public interest authority by bringing actions in areas not traditionally associated with consumer protection law.

For example, on April 8, Paxton announced that his office had issued a civil investigative demand to USA Fencing after the team disqualified a biologically female competitor for "taking a knee instead of competing against a biological male." [1]

The office's press release explains that this action, and USA Fencing's policies more broadly, may constitute "false, deceptive, and misleading acts and practices" under the Texas Deceptive Trade Practices Act. [2] USA Fencing responded to the incident by explaining that the fencer was not disqualified for refusing to compete against a biological male, but instead for violating a team policy providing that athletes may not refuse to fence against another athlete who is properly entered in the match.

Separate from that policy, USA Fencing also has a specific policy regarding transgender and nonbinary athletes providing that the team does not discriminate on the basis of gender identity and that permits athletes to participate in events consistent with their gender identity. [3]

However, given regulatory uncertainty, USA Fencing recently previewed a revised policy providing that athletes must compete according to their biological sex. [4] That policy will become effective only if "oversight bodies" or "U.S. federal law" require such updates. [5]

This action is just one of many brought by Texas recently under its expansive consumer protection authority. For over 50 years, Texas, like most other states, has empowered consumers through broad consumer protection laws, including the DTPA. [6]

Also like many states, Texas law differentiates between an individual cause of action under the DTPA and an action brought in the public interest by the state itself. The latter enjoys a much broader authority and an extremely low barrier to suit, which, when coupled with presuit investigative powers and significant remedies, gives the state a powerful tool to combat fraud.

While historically the DTPA has been used by the state in more traditional cases involving fraudulent conduct, such as deceptive or misleading advertising, or misrepresenting the features of a good or service, the state's authority is arguably much broader.

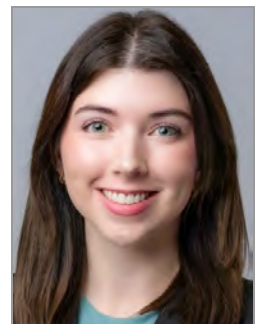
Since taking office in 2015, Paxton has continued to push the envelope of the type of conduct



Paul Singer



Beth Chun



Andrea deLorimier

covered by the DTPA.

## **Paxton's Use of DTPA Authority**

### ***Opioids and Synthetic Drugs***

Similar to the tobacco litigation from the 1990s, Paxton initiated a series of public health-oriented cases that were rooted in his DTPA authority. Most notably has been his efforts in litigating against and settling with multiple manufacturers, distributors and retailers related to the sale of prescription opioids throughout the state.

While these cases have drawn attention for the amount of recoveries (approximately \$3 billion in Texas alone), the legal theories used in part draw on misrepresentations that were made not to the consumers who ultimately used the medications, but to the doctors who prescribed them. One such example is 2018's *Texas v. Purdue Pharma*, in the 345th Judicial District Court of Travis County, Texas.[7]

Texas also used its broad authority in reaching a settlement with e-cigarette company JUUL in 2022 over allegations of deceptive and misleading marketing of its products to children.[8]

Texas has used this same authority against manufacturers of synthetic cannabinoids.[9] In 2018, for example, in *Texas v. Happie Hippie Partnership*, in the 13th Judicial District Court of Harris County, Texas, Paxton argued that Happie Hippie, a smoke shop, and its operators deliberately lead consumers to believe that synthetic drugs sold at their business were safe and legal.

Specifically, Happie Hippie included on its packaging a claim that its products were "legal for sale in all 50 states." Paxton argued that this was false and misleading because these drugs can cause "serious side effects" and "manufacturers and distributors of synthetic cannabinoids can face civil penalties of up to \$20,000 per violation" under Section 17.46(b)(31) of the DTPA.[10]

Paxton brought similar claims against dozens of other synthetic drug stores, explaining in another case that "[his] office will not tolerate synthetic drugs being marketed as safe and legal substances when they present such devastating health risks to users." [11]

### ***Human Trafficking***

In addition to addressing opioids, the DTPA has also been used in protecting public safety by shutting down illicit massage parlors involved in human trafficking — like the 2020 decision in *Texas v. Happy Foot Spa* in the 333rd Judicial District Court of Harris County, Texas.[12]

In such cases, the state argued that the massage parlors were deceptively operating without the proper licenses. Like cannabinoids, operating a massage parlor without a proper license has a specific statutory provision under the DTPA.[13]

### ***DEI and ESG***

Paxton has also used his DTPA authority in recent years to bring actions related to companies' diversity, equity and inclusion policies and financial institutions' implementation of environmental, social and governance factors in making investment decisions.

While on the surface these reflect sensitive political-oriented policy objectives, Paxton has found consumer protection anchors in each that he has utilized in investigations and enforcement actions.

For example, in November 2024, Paxton led a multistate coalition in the lawsuit *Texas v. Blackrock Inc. & Vanguard Group Inc.*, alleging that Blackrock and Vanguard conspired to manipulate the energy market by utilizing their ownership of shares in the coal market to pressure coal companies into adhering to environmental principles.[14] Notably, part of these allegations included misleading investors about the companies' ESG strategies, which the states claimed violated consumer protection laws including the DTPA.[15]

In December 2024, Paxton sued the NCAA in *Texas v. National Collegiate Athletic Association* in the

237th Judicial District Court of Lubbock County, Texas, for marketing sporting events as "women's" competitions but allowing transgender individuals born male to compete, alleging that doing so constituted a false, deceptive or misleading practice that was "designed to trick consumers." [16]

In all, these latest actions are a significant shift from the more traditional use of the DTPA to combat fraud in the state but demonstrate the breadth of powers the attorney general can wield, and the seemingly countless situations that can lead to liability under the DTPA.

### **State Actions Under the DTPA**

The attorney general has unique authority to bring suit under the DTPA, which can be found in Section 17.47 of the Texas Business and Commerce Code. [17] This section empowers the attorney general to obtain a temporary or permanent injunction, civil penalties of \$10,000 per violation, and restitution for identifiable consumers. [18]

To bring an action, the attorney general needs only to demonstrate that the consumer protection division has reason to believe that a person has engaged, is engaging, or is about to engage in conduct declared unlawful by the DTPA, and the matter would be in the public interest (an undefined term). [19]

What is notable however is what isn't found in these requirements.

#### ***There is no need to show consumer standing.***

Unlike a private citizen, who must show that they meet the statutory definition of a consumer under the DTPA, the state takes the position that it does not need to identify any consumers when it brings an action.

In fact, the attorney general has historically brought cases where the harmed individuals would not be able to meet the statutory definition of a consumer, leaving the attorney general as the only plaintiff that could pursue a DTPA violation. The Texas Supreme Court acknowledged this key difference in *Riverside National Bank v. Lewis* in 1980:

A 'person' may have engaged in a deceptive act by presenting any misleading information concerning any item of value. [20] Any person engaging in such deceptive practices may be subjected to a suit by the Consumer Protection Division of the Attorney General's Office, under § 17.47. But, one who engages in deceptive acts may not be subjected to a private suit for damages under the Act unless the aggrieved party is a consumer. [21]

#### ***There is no mention of "reliance" or "harm."***

Similar to the argument that a consumer may not be required under Section 17.47 of the DTPA, the state will also point to the fact that Section 17.47 does not mention reliance or harm as a threshold to suit.

Indeed, the attorney general has at times brought actions before any harm could have occurred, consistent with the language of Section 17.47, which allows for injunctive relief against a person who is about to engage in illegal conduct. [22] However, reliance and harm will be relevant in determining appropriate remedies.

#### ***There is no objective standard.***

Notably, the section applies when the consumer protection division itself has reason to believe a violation has occurred or will occur and is in the public interest. The language of the DTPA appears to give broad discretion to the attorney general and the consumer division, which may create a significant bar for anyone trying to challenge whether the attorney general has standing to investigate or prosecute a consumer protection violation.

Equally important is the breadth of what is "declared unlawful" under the DTPA when the state is the plaintiff. While individual consumers are mostly limited to bringing actions for violations of the "laundry list" of conduct found in Section 17.46(b), the state is able to bring an action under Section

17.47(a), which prohibits "false, misleading, or deceptive acts or practices in the conduct of any trade or commerce."

"Trade and commerce" is broadly defined as the "advertising, offering for sale, sale, lease, or distribution of any good or service, of any property, tangible or intangible, real, personal, or mixed, and any other article, commodity, or thing of value." [23]

## Takeaways

For companies considering their compliance practices, there are several takeaways from these recent trends by Paxton.

First, there should be an acknowledgment that the Texas Legislature has given the attorney general broad authority to investigate and prosecute claims that are false, deceptive and misleading, which can touch virtually all aspects of trade or commerce in the state.

The legislature has considered amendments to the DTPA in the past that would have the effect of reining in some of this authority but has consistently rejected these efforts. This tacit approval of Paxton's actions should serve as a reminder that nearly all practices within a company may be subject to review by the office. As a result, topics that may seem more policy-driven can still find themselves addressed through consumer protection tools.

This power may have limits, however, as the breadth of this authority is also under judicial review. Recent actions by the office have prompted litigation challenging the scope of the attorney general's authority. For example, in November 2023, Paxton launched an investigation against Media Matters following its report that social media company X had placed advertisements for major national brands alongside white supremacist and antisemitic content.

Rather than respond to the civil investigative demand, Media Matters challenged the attorneys general authority in *Media Matters for America v. Paxton* in the U.S. District Court for the District of Columbia, alleging violations of the First Amendment. [24] At the district court level, a preliminary injunction was granted staying the enforcement of the civil investigative demand, finding that the investigation had a chilling effect on Media Matters' First Amendment rights. That case remains on appeal.

Another lesson is that Texas has committed the resources necessary to pursue these investigations and is prepared to both defend challenges to its authority and aggressively enforce its laws. While some state attorneys general offices have limited resources for consumer protection enforcement, Texas' consumer protection division is a well-staffed team that spans multiple cities in the state and has the ability to pull resources from other areas of the attorney general's office and its approximately 4,000 staff members.

The consumer division itself is divided into several teams, able to handle a variety of specialized topics. As a result, the office will likely dig into a matter and will be prepared to fight, no matter how large and well-funded a target may be.

So, for companies that find themselves on the receiving end of a civil investigative demand or lawsuit, they should not assume that they can overwhelm the office's resources when defending the matter, as the office will be able to allocate sufficient resources to staff the matter.

Finally, it is important to recognize that in most of these cases, the DTPA "hook" that is utilized is based on a theory of some express or implied representation, or an omission of material information, that ultimately misleads the public about the company's practices.

Central to this analysis is how the public perceives a business and its goods or services. As such, it is extremely valuable for businesses operating in Texas to continuously evaluate their public-facing statements to ensure they do not unintentionally fall onto the attorneys general radar.

For example, it is important for businesses to review online complaints, brand websites, social media and other sources for accuracy and consistency. Businesses should ensure that statements do not conflict and can't arguably mislead the public — since Texas may argue ultimately that the

"consumer" being protected may not be the "customer."

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***Disclosure: Paul Singer and Beth Chun represented the state of Texas in the opioid and JUUL matters mentioned in the article.***

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[1] Attorney General Ken Paxton Announces Investigation into USA Fencing for Violating State Law, Ken Paxton Attorney General of Texas (April 8, 2025), <https://www.texasattorneygeneral.gov/news/releases/attorney-general-ken-paxton-announces-investigation-usa-fencing-violating-state-law>.

[2] See id.

[3] USA Fencing Board Prepares for Potential Changes from Governing Bodies on Transgender and Non-Binary Athlete Eligibility Policy, USA Fencing (April 18, 2025), <https://www.usafencing.org/transgender-and-nonbinary-policy>.

[4] <https://www.usafencing.org/news/2025/april/18/usa-fencing-board-prepares-for-potential-changes-from-governing-bodies-on-transgender-and-non-binary-athlete-eligibility-policy>.

[5] Id.

[6] Tex. Bus. & Comm. § 17.47.

[7] Texas v. Purdue Pharma L.P. et al., No. D-1-GN-18-002403 (345th Judicial District Court, Travis County, Tex., May 15, 2018).

[8] Paxton Announces \$439 Million Multistate Settlement With JUUL for Deceptive Marketing and Sales Practices; Texas to Recover \$42.8 Million, Ken Paxton Attorney General of Texas (Sept. 6, 2022), <https://www.texasattorneygeneral.gov/news/releases/paxton-announces-439-million-multistate-settlement-juul-deceptive-marketing-and-sales-practices>.

[9] See, e.g., [Texas v. Happie Hippy Partnership et al.](#) , No. 2016-70877 (113th Judicial District Court, Harris County, Tex. March 8, 2018).

[10] AG Paxton Obtains \$2 Million Judgment Against Happie Hippy Smoke Shop for Selling Illegal Synthetic Drugs, Ken Paxton Attorney General of Texas (April 20, 2018), <https://www.texasattorneygeneral.gov/news/releases/ag-paxton-obtains-2-million-judgment-against-happie-hippie-smoke-shop-selling-illegal-synthetic>.

[11] AG Paxton: Permanent Injunction Ends Illegal Sale of Synthetic Drugs by San Antonio Convenience Store, Ken Paxton Attorney General of Texas (Jan. 12, 2018), <https://www.texasattorneygeneral.gov/news/releases/ag-paxton-permanent-injunction-ends-illegal-sale-synthetic-drugs-san-antonio-convenience-store>.

[12] See, e.g., [Texas v. Happy Foot Spa](#) , No. 2020-14987 (333rd Judicial District Court, Harris

County, Tex. March 5, 2020).

[13] Tex. Bus. & Comm. § 17.46(b)(33).

[14] Attorney General Ken Paxton Sues BlackRock, State Street, and Vanguard for Illegally Conspiring to Manipulate Energy Markets, Driving Up Costs for Consumers, Ken Paxton Attorney General of Texas (Nov. 27, 2024), <https://www.texasattorneygeneral.gov/news/releases/attorney-general-ken-paxton-sues-blackrock-state-street-and-vanguard-illegally-conspiring-manipulate>.

[15] Id.

[16] Attorney General Ken Paxton Demands NCAA Stop Allowing Biological Males to Compete in Women's Sports After Intentionally Deceptive Policy Change, Ken Paxton Attorney General of Texas (Feb. 20, 2025), <https://www.texasattorneygeneral.gov/news/releases/attorney-general-ken-paxton-demands-ncaa-stop-allowing-biological-males-compete-womens-sports-after>.

[17] Tex. Bus. & Com. Code § 17.47.

[18] Id.

[19] Id.

[20] See Tex. Bus. & Com. Code §§ 17.46(a), 17.45(6).

[21] Riverside at 173.

[22] *West et al. v. Texas* , No. 03-05-00724-cv (Tex. App. – Austin 2006).

[23] Tex. Bus. & Com. § 17.46(b).

[24] *Media Matters for America et al., v. Paxton* , No. 24-7059 (D.C. Cir. 2024).