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SECURITIES CLASS ACTION SERVICES

Two Putative Securities Class Actions Pending Against UnitedHealth Group Inc.

"UnitedHealth Group Inc. is defending against two putative securities class action law suits, as the company's share price has declined significantly and various news stories have emerged regarding the company."

Dow Jones Industrial component company and health insurer UnitedHealth Group Inc. ("UnitedHealth" or the "Company") has had a challenging 12 months. This period included: the nationally reported execution style killing of one its most senior executives, two putative securities class actions filed against it, the opening of U.S. DOJ criminal inquiry into the Company, and seeing its stock price cut by more than half.

On May 14, 2024, a prominent plaintiff's law firm filed an initial securities class action complaint against UnitedHealth for an alleged class period of between March 14, 2022, and February 27, 2024, inclusive in the U.S. District Court for the District of Minnesota.[1] On July 29, 2024, the court appointed the California Public Employees' Retirement System ("CalPERS") as Lead Plaintiff and Robbins Geller Rudman & Dowd LLP as Lead Counsel. Lead Plaintiff has filed five complaints in the action.

The most recent complaint (the "Complaint"),[2] filed on May 14, 2025, alleges a class period between September 22, 2021, and April 16, 2025, inclusive against UnitedHealth and various former or current executives ("Defendants"). The Complaint alleges that in order to inflate the Company's stock price, Defendants formulated, implemented, and oversaw a fraudulent Medicare Advantage upcoding scheme, misrepresented certain firewall protections at a division, and engaged in anti-competitive practices to consolidate the Company's control over healthcare services and eliminate competition. The Complaint alleges that investors were harmed when the truth was revealed, and the Company's share price dropped.

Among other things, Lead Plaintiff asserted in the Complaint that the truth began to be revealed on February 27, 2024, when the *Wall Street Journal* reported on a U.S. DOJ antitrust investigation into the Company and that over the ensuing months, a series of investigative reports were published relating to the alleged upcoding scheme. The Complaint further contended that a February 21, 2025, *Wall Street Journal* article revealed another U.S. DOJ civil investigation of the Company, this time into its Medicare Advantage billing practices. Finally, the Complaint asserted that on April 17, 2025, the Company slashed its 2025 earnings per share guidance by 12%, resulting in an over 20% decline in the Company's share price.

In a well-reported incident, on December 4, 2024, Brian Thompson, CEO of the Company's insurance business, UnitedHealthcare (named as a defendant in the Complaint), was sadly gunned down in Manhattan—just blocks away from SCAS' headquarters.

A suspect, Luigi Mangione, has been apprehended and charged with murder. News reports have stated that the words “deny”, “defend”, and “depose” were written on shell casings at the scene of the killing, an apparent reference to an alleged tactic of health insurers to deny claims.[3]

On May 7, 2025, another putative securities class action was filed against the Company in the U.S. District Court for the Southern District of New York, and an amended complaint was filed in that action on May 14, 2025 (“SDNY Complaint”).[4] The SDNY Complaint alleges a class period between December 3, 2024, and May 12, 2025. The SDNY Complaint alleges that the Company in the wake of Mr. Thompson’s murder was under heightened public scrutiny for alleged denial rates which made their statements false or misleading.

The SDNY Complaint alleges that on May 13, 2025, the Company announced that its CEO (a named defendant in the Complaint and the SDNY Complaint), Andrew Witty, was stepping down immediately, with former CEO Steve Hemsley (a named defendant in the Complaint) resuming his role as CEO. The Company’s share price fell from a close of \$378.75 on May 12th to close at \$311.38 on May 13th, or nearly 18%. The *Wall Street Journal* reported on May 14, 2025, that UnitedHealth was under criminal investigation focused on the Medicare Advantage program by the U.S. DOJ.[5] On May 15, 2025, the Company’s share price fell from \$308.01 to \$274.35, or more than 12%, although by May 19th, the stock price had recovered that drop.

On May 16, 2025, Lead Plaintiff in the District of Minnesota action moved to intervene in the SDNY action in order to transfer the case to the District of Minnesota and to vacate the lead plaintiff deadline.[6] If this motion is successful, the action in the SDNY will cease, with Lead Plaintiff likely consolidating the cases. Otherwise, two somewhat factually related actions would proceed in parallel.

In any event, the securities litigation against UnitedHealth will no doubt be watched closely by investors, as there is potential for a large, blockbuster settlement at some point if a case were to overcome a motion to dismiss. With a tragic killing that frightened many people working in Manhattan, the Company was catapulted into the news. UnitedHealth appears to be the subject of multiple investigations, and its stock price dropped from over \$610 in December 2024 to under \$275 by May 15, 2025, or approximately a \$300 billion decline in market capitalization. Thus, the saga of this Dow Jones Industrial component should be one of the more prominent in the coming months.

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	Case 1	Case 2
Securities	UnitedHealth Group Inc. (UNH) common stock	UnitedHealth Group Inc. (UNH) securities
Class Period	Between September 22, 2021 and April 16, 2025 inclusive	Between December 3, 2024 and May 12, 2025 inclusive
Citation	*California Public Employees' Retirement System v. UnitedHealth Group Inc., et. al.*, No. 24-cv-1743 (JMB/DTS) (D. Minn.)	*Roberto Faller v. UnitedHealth Group Inc., et al.*, No. 1:25-cv-03799-AKH (S.D.N.Y)
Jurisdiction	U.S. District Court for the District of Minnesota (D. Minn.)	U.S. District Court for the Southern District of New York (S.D.N.Y.)
Lead Plaintiff	California Public Employees' Retirement System	TBD/ Could be Transferred
Plaintiffs' Counsel	Robbins Geller Rudman & Dowd LLP	TBD/ Could be Transferred

[1] *Now styled as California Public Employees' Retirement System v. UnitedHealth Group Inc., et. al., No. 24-cv-1743 (JMB/DTS) (D. Minn.).*
[2] *Id. at ECF No. 110.*
[3] *See, e.g., Halpert, Madeline and Wendling, Mike. "Who is Luigi Mangione, CEO Shooting Suspect," BBC News, April 25, 2025, available at https://www.bbc.com/news/articles/cp9nxee2r0do.*
[4] *Roberto Faller v. UnitedHealth Group Inc., et al., No. 1:25-cv-03799-AKH (S.D.N.Y), at ECF No. 5.*
[5] *Weaver, Christopher and Wilde Mathews, Anna. "UnitedHealth Group Is Under Criminal Investigation for Possible Medicare Fraud," The Wall Street Journal, May 14, 2024, available at https://www.wsj.com/us-news/unitedhealth-medicare-fraud-investigation-df80667f?mod=hp_lead_pos2.*
[6] *Id. at ECF No. 7.*

"No portion of this white paper constitutes legal or financial advice, and no attorney-client relationship is intended or is established."

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The 2025 NLJ 500: Ranked by Head Count

law.com/nationallawjournal/2025/06/05/the-2025-nlj-500-ranked-by-head-count

ALM Staff

June 5, 2025

Methodology: The NLJ 500 is the National Law Journal's survey of the 500 largest law firms in the United States covering the previous calendar year. Data is collected from firms at the same time as the Am Law financial numbers. ALM sent surveys this year to more than 900 law firms to determine the 500 largest U.S.-centric firms by headcount. Firms smaller than No. 350 are divided into two tiers instead of earning individual ranks.

Lawyer totals are based on the average number of full-time equivalent (FTE) attorneys for Fiscal Year 2024. For firms that did not participate in the survey, ALM research estimates lawyer counts based on information that is available on firm websites and collected in ALM's Legal Compass database as of Dec. 31, 2024. Those numbers are reduced by 5 percent to estimate average FTE lawyers.

In the case of a tie of total lawyers, firms are ranked by their total number of partners, and ties at that level are broken by total number of equity partners. Equity partners are defined as lawyers who earn more than half their compensation from firm profits rather than from salaries. "Other" lawyers are non-partner and non-associate-track attorneys, such as of counsel. Temporary and contract attorneys as well as non-lawyer billing professionals and staff at firms are not included in these head counts. A firm must have more lawyers based in the U.S. than in any other single country to be included on this list.

The data is presented below in a sortable graphic and table. The full 2025 NLJ 500 report can be found here. For more ways to analyze the data, go to Law.com Compass.

2025 RANK	2024 RANK	LAW FIRM	2025 LARGEST U.S. OFFICE	2025 TOTAL ATTORNEYS	% Change	2025 TOTAL PARTNERS	2025 EQUITY PARTNERS
1	NA	Dentons	New York	5931	NA	2024	911
2	1	DLA Piper	New York	4827	5.8%	1378	336
3	2	Baker McKenzie	Chicago	4595	0.8%	1432	601
4	3	Kirkland & Ellis	New York	3828	8.9%	1676	573
5	4	Latham & Watkins	New York	3584	3.9%	957	553
6	5	Norton Rose Fulbright	New York	3290	6.8%	1087	523
7	6	Hogan Lovells	Washington	2703	5.5%	812	325
8	8	Greenberg Traurig	New York	2644	4.2%	1312	332
9	7	White & Case	New York	2598	1.5%	698	349
10	9	Jones Day	New York	2422	3.4%	883	883
11	10	Sidley Austin	New York	1979	-3.1%	661	279
12	11	Morgan, Lewis & Bockius	Washington	1960	-2.6%	807	790

2025 RANK	2024 RANK	LAW FIRM	2025 LARGEST U.S. OFFICE	2025 TOTAL ATTORNEYS	% Change	2025 TOTAL PARTNERS	2025 EQUITY PARTNERS
221	263	Roetzel & Andress	Akron, OH	191	21.1%	117	70
222	222	Godfrey & Kahn	Milwaukee	191	2.6%	96	96
223	216	White and Williams	Philadelphia	191	-1.9%	85	65
224	231	Arnall Golden Gregory	Atlanta	190	6.7%	114	46
225	225	Cole Schotz	Hackensack, NJ	190	4.2%	116	64
226	235	Cipriani & Werner	Blue Bell, PA	188	7.6%	113	20
227	194	Berry Appleman & Leiden	Richardson, TX	187	-17.3%	34	15
228	215	Choate Hall & Stewart	Boston	187	-5.0%	97	48
229	245	Cullen and Dykman	New York	185	10.0%	99	72
230	229	Robins Kaplan	Minneapolis	184	2.5%	93	61
231	237	Chiesa Shahinian & Giantomasi	Roseland, NJ	183	6.0%	95	58
232	219	Kean Miller	Baton Rouge	182	-4.8%	91	82
233	243	McDonald Hopkins	Cleveland	182	6.4%	93	56
234	271	Boies Schiller Flexner	New York	182	19.0%	91	33

2025 RANK	2024 RANK	LAW FIRM	2025 LARGEST U.S. OFFICE	2025 TOTAL ATTORNEYS	% Change	2025 TOTAL PARTNERS	2025 EQUITY PARTNERS
235	214	Morris, Manning & Martin	Atlanta	182	-8.8%	88	36
236	234	Archer & Greiner	Voorhees, NJ	181	2.8%	114	54
237	236	Dickie, McCamey & Chilcote	Pittsburgh	180	3.0%	125	106
238	221	Morrison Mahoney	Boston	179	-4.4%	98	52
239	248	Winthrop & Weinstine	Minneapolis	179	7.1%	75	75
240	230	Munger, Tolles & Olson	Los Angeles	179	0.2%	67	67
241	254	Porter Wright Morris & Arthur	Columbus, OH	177	9.3%	111	42
242	242	McAfee & Taft	Oklahoma City	177	2.9%	103	103
243	246	Robbins Geller Rudman & Dowd	San Diego	176	4.7%	89	89
244	228	Sandberg Phoenix & Von Gontard	St. Louis	176	-2.0%	65	24
245	239	Procopio, Cory, Hargreaves & Savitch	San Diego	175	1.7%	93	35
246	252	Bowman and Brooke	Los Angeles	175	7.4%	84	43

'Improvidently Granted': Supreme Court Dumps Case Over Size Of Class Actions

law.com/nationallawjournal/2025/06/05/improvidently-granted-supreme-court-dumps-case-over-size-of-class-actions

Jimmy Hoover June 5, 2025

Credit: Boris Zerwann/Adobe Stock

The U.S. Supreme Court dismissed as "improvidently granted" a case Thursday dealing with the proper size of class actions that federal courts may certify.

5 minute read

United States Supreme Court
The U.S. Supreme Court on Thursday dumped a case that, back in January, seemed likely to help beat back a rising tide of class actions swamping corporate defendants.

The court dismissed the case as "improvidently granted," just over a month after holding oral arguments. The court did not explain its reasons for the dismissal, though the "DIG," as such dismissals are called in Supreme Court parlance, is not totally unexpected.

During a hearing in late April, the justices expressed frustration over unforeseen procedural issues in the case that a group of plaintiffs said made it a poor vehicle to announce new rules on the law of class action certification.

"Isn't it an advisory opinion?" Justice Sonia Sotomayor asked, expressing concern about issuing a hypothetical ruling on the merits in the case due to underlying procedural issues.

The court's dismissal means that the Laboratory Corporation of America must continue fighting a certified class action from blind individuals who say Labcorp's service kiosks were not accessible to them, in violation of the Americans with Disabilities Act and a parallel California law.

The medical diagnostic testing company had argued that a federal district court improperly certified a class that included every blind person to have visited a Labcorp location with a non-accessible service kiosk, regardless of whether they actually planned to use one. In doing so, Labcorp said, the district court included people who suffered no actual injury and therefore lacked standing under Article III of the Constitution to pursue their claims in court.

When it took up the company's appeal in January, the Supreme Court agreed to decide whether a federal court may "certify a class action pursuant to Federal Rule of Civil Procedure 23(b)(3) when some members of the proposed class lack any Article III injury."

Labcorp said the size of the class could cost it around half-a-billion dollars per year.

The business community had rallied around the company. Including uninjured people in class actions is tantamount to "blackmail," as it unfairly pressures corporate defendants to settle for higher amounts to avoid crippling verdicts, wrote the U.S. Chamber of Commerce.

The Supreme Court, however, spent much of the April 29 hearing discussing what Justice Neil Gorsuch identified as a "squirrelly complication."

That complication, brought to the court's attention by the plaintiffs and a group of federal court scholars, is that Labcorp only filed its appeal over the district court's original May 2022 definition of the covered class. That definition included all legally blind individuals who were “denied full and equal enjoyment” of Labcorp’s services.

Initially, Labcorp objected to the May class definition as a “fail-safe class” that “jettison[ed] all ‘uninjured’ plaintiffs.” Labcorp argued that fail-safe classes are unfair because they tie membership in the class to the outcome of the merits of the litigation.

In response to the objection, the district court amended the class definition in August 2022 to cover those “who, due to their disability, were unable to use the Labcorp Express” kiosks. The plaintiffs thus complained to the Supreme Court that the company failed to appeal that definition and instead only filed a notice of appeal from the original May class definition that was supplanted by the district court as a result of Labcorp’s own litigation decisions.

"Any appeal of that superseded order is moot under the general rule that interlocutory appeals from superseded orders are moot," argued Deepak Gupta of Gupta Wessler, an attorney for the plaintiffs. "The traditional exceptions to mootness do not apply."

In a statement Thursday, Gupta said, "Labcorp attempted to use a procedurally flawed case to propose a sea change in the law."

"The Supreme Court rightly saw through that strategy and dismissed the case," Gupta added. "This is a win for our clients. Class actions are a critical tool for ensuring access to the courts. Today’s dismissal leaves the law of class actions intact, allowing people to band together to hold powerful corporations accountable for their misconduct."

This marks the third time this term that the Supreme Court has dismissed a class action after holding oral arguments in the case.,

"Each time, a repeat-player corporate Supreme Court advocate asked the Court to reverse the Ninth Circuit and limit class actions," Gupta said. "And each time, the Court ultimately declined to do so."

Labcorp was represented at the court by Noel Francisco of Jones Day, who served as U.S. solicitor general during President Donald Trump's first term in office.

This term's first DIG came in November in *Facebook v. Amalgamated Bank*, throwing out an appeal from Facebook in a securities case class action brought by investors over two 2018 stock drops that wiped out more than $200 billion from the company's market capitalization. One of those occurred following media reports about misuse of user Facebook data by the political consulting firm Cambridge Analytica.

The next came in December when the court ended its review of a U.S. Court of Appeals for the Ninth Circuit decision reviving a securities fraud lawsuit against software company Nvidia. Gupta had represented the plaintiff in that case as well, a Swedish investment management firm that accused Nvidia of covering up its exposure to the cryptocurrency market.

The case, *Laboratory Corporation of America Holdings v. Davis*, was docketed at the court as 24-304.

News from Bloomberg Terminal

Supreme Court Tosses Labcorp Bid to Limit Size of Class (1)

June 5, 2025, 8:29 AM PDT

- Subsequent court order redefined class at issue
- Class-action question not answered, Kavanaugh says

By Lydia Wheeler

(Bloomberg Law) --

The US Supreme Court rejected Labcorp's bid to limit who can join a class action that accused it of discriminating against blind people with its self-service check-in kiosks.

In an unsigned opinion on Thursday, the court dismissed the company's case as improvidently granted, meaning the justices think they shouldn't have taken it up in the first place.

A federal district court certified a class that could include upward of 100,000 Californians, who accuse the company of violating the Americans with Disabilities Act and California's Unruh Civil Rights Act.

The district court's May order defined the class as all legally blind people who visited a Labcorp patient service center in California whether they wanted to use a kiosk or not. An August order defined the class to include those who weren't able to access the kiosk because of their disability.

During arguments, the justices doubted they could rule on Labcorp's case because the class had been redefined.

"The May order is before us, but it's inoperative. The August order superseded it and replaced it," Justice Sonia Sotomayor said during the April 30 proceedings.

"Isn't us looking at the May order that's not the operative language right now, isn't it an advisory opinion?" she later asked.

Justice Brett Kavanaugh dissented from the decision to dismiss the case, which he said it was presumably doing because it didn't want to tackle the question of whether the matter is now moot and, in doing so, declined to answer an "important class-action question."

"I would rule that the case is not moot and would decide the question presented," he said, which is whether a federal court can certify a class when it includes people who haven't been injured by what's being disputed.

On the merits, Kavanaugh said he would side with Labcorp.

"Federal courts may not certify a damages class under Rule 23 when, as here, the proposed class includes both injured and uninjured class members," he said in referencing the federal rules of civil procedure.

Classes that are overinflated with uninjured members raise the stakes for businesses that are the targets of class actions and threaten massive liability, Kavanaugh argued. In this case, the blind patients are seeking up to $500 million per year in potential damages.

"That reality in turn can coerce businesses into costly settlements that they sometimes must reluctantly swallow rather than betting the company on the uncertainties of trial," Kavanaugh said, adding that "coerced settlements substantially raise the costs of doing business."

The case is *Laboratory Corp. of America Holdings v. Davis*, U.S., No. 24-304, 6/5/25.

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(Adding details from opinion, argument.)

Securities Law News

Instacart Defeats Investors' IPO Growth, Competition Lawsuit (1)

June 4, 2025, 12:49 PM PDT; Updated: June 4, 2025, 1:47 PM PDT

Instacart is free from investors' claims that the online grocery shopper overstated its growth potential and understated the threat of rivals in its initial public offering paperwork.

Judge Edward J. Davila signed the parties' joint stipulation and dismissed the suit against Maplebear Inc., which does business as Instacart, with finality Tuesday. Davila in May had tossed the investors' allegations, saying the plaintiffs failed to adequately plead any misstatements or the level of intent or reckless disregard to carry securities fraud claims, but left them the option to replead.

- The plaintiffs decided not to amend their most recent complaint, according to the stipulation, and the parties agreed to dismissal with prejudice
- Davila said in his May order that the investors failed to allege "that the brand-related events Instacart allegedly concealed or lied about actually happened," or properly plead "how the challenged forecasting statements relate to their theory of falsity"
- Investors alleged Instacart's brand awareness and market share were falling, that positive statements around its marketing were false or misleading, and that the company used a deficient forecasting process

Levi & Korsinsky LLP is lead counsel for the investors; an attorney didn't immediately respond to an email seeking comment. Freshfields US LLP, which declined to comment via email, represents Instacart and current and former executives and board members.

Willkie Farr & Gallagher LLP represents Instacart's IPO underwriters; an attorney said in an email that they "are very happy with the court's well-reasoned opinion dismissing this suit."

The case is Stephens v. Maplebear Inc. , N.D. Cal., No. 5:24-cv-00465, dismissed 6/3/25 .

(Updates to add that Instacart's counsel declined to comment in the sixth paragraph.)

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Securities Law News

Radius Health Private Equity Sale Targeted in Court by Investor

June 4, 2025, 12:54 PM PDT

- **COURT:** Del. Ch.
- **TRACK DOCKET:** No. 2025-0594

Radius Health Inc.'s top executives were driven by golden parachutes to engineer an underpriced sale that headed off a growing shareholder revolt, according to an unsealed lawsuit.

A Radius ex-investor is challenging the transaction in court, saying the biotech company's CEO stacked its board with loyalists and manipulated financial forecasts to make the deal more attractive, effectively inviting a private equity consortium to exploit obvious conflicts of interest. Gurnet Point Capital LLC and Patient Square Capital LP closed the acquisition—allegedly worth up to $890 million, including an upfront payment of nearly $500 million—in August 2022.

The allegations echo several recurring themes in Delaware's Chancery Court, the leading US forum for merger fights and other corporate cases, which sees a steady stream of litigation calling on its judges to police shareholder activism disputes. The court is also the prime venue for a cottage industry of lawsuits that say insiders sold out public investors to streamline a sale handing them unique side perks.

Radius CEO G. Kelly Martin embodied the corporate governance problem of "crafty executives" who "appoint their own friendly network" of directors, according to the court complaint made public Tuesday. Martin and his boardroom allies reacted to pushback from a leading proxy adviser, two activists, and the company's largest stockholder by rushing into a sale two weeks before an investor vote that likely would have ousted them, the suit says.

Radius—which isn't directly named as a defendant—didn't immediately respond to a request for comment. The case involves shareholder derivative claims, which are technically filed on a corporation's behalf against its leaders. Gurnet Point and Patient Square aren't named as defendants.

According to the proposed class action, Martin had a history of running "pharmaceutical companies like investment firms," with a focus on M&A transactions that often didn't result in a marketable product. He allegedly orchestrated a similar pivot after taking the helm at Radius, acquiring a drug candidate in January 2021 that led its research and development costs to balloon.

Institutional Shareholder Services Inc. reacted with “alarm,” as did Velan Capital Investment Management LP and Repertoire Partners LP, which collectively owned more than 7% of Radius through their affiliates, the suit says. After the two activist firms launched a bid for board seats, Rubric Capital Management LP—holding the second-largest Radius stake—allegedly wrote a letter publicizing its own discontent with the company’s direction.

“Sensing that his time was nearing its end, Martin positioned the company for a sale,” the lawsuit says. That’s allegedly when Gurnet Point swooped in with a buyout proposal worth less than an earlier bid Radius had “deemed unacceptable.” But a motivated board “determined that it needed to lower its projections to make the offer seem fair” before ultimately accepting the deal, according to the court complaint.

Company leadership then misled shareholders into approving the transaction, the lawsuit says. The suit—originally filed under seal May 28—seeks money damages.

The investor leading the litigation, Jonathan Slinkard, is represented by Ashby & Geddes PA and Levi & Korsinsky LLP. Martin and the other board members haven’t yet made court appearances.

The case is Slinkard v. Martin , Del. Ch., No. 2025-0594, complaint unsealed 6/3/25 .

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Class Action

UScellular Parent Stockholder Drops Suit Over Promotion Impact

June 5, 2025, 9:07AM PDT

A Telephone and Data Systems Inc. stockholder voluntarily dismissed her federal lawsuit against its board members and two of its subsidiary's executives over United States Cellular Corp.'s promotion to combat client churn.

The shareholder notified the US District Court for the Northern District of Illinois that she dropped her allegations, leaving the ability to refile, on Wednesday—two days after the TDS leaders asked Judge Rebecca R. Pallmeyer to stay the case while a similar derivative action played out in state court in Illinois. A shareholder derivative action is a lawsuit filed on behalf of a company against its corporate overseers.

- Both lawsuits followed a proposed securities class action, which alleged UScellular and its majority owner TDS misled investors about a promotion to combat voluntary client churn
- The Northern District of Illinois preliminarily approved a $7.75 million settlement to resolve those class action claims in May
- TDS's stock fell almost 26% the day in 2022 the companies said UScellular still faced a net loss of 31,000 postpaid subscribers and the promotion impacted profits, the federal derivative complaint said. It was a record single-day share price decline since 1981, the year the stock debuted, according to data compiled by Bloomberg

Wolf Haldenstein Adler Freeman & Herz LLC, Rigrodsky Law PA, and Grabar Law Office represent the shareholder in the federal derivative case, Karen Skye McMillan. Sidley Austin LLP represents the TDS leaders. None of these law firms immediately responded to emails seeking comment.

The case is McMillan v. Tel. and Data Sys., Inc. , N.D. Ill., No. 1:25-cv-02286, voluntary dismissal 6/4/25 .

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Securities Law News

Barclays Investors’ Exchange Traded Note Claims Miss Again (1)

June 4, 2025, 12:05 PM PDT; Updated: June 4, 2025, 3:41 PM PDT

- **Investors said bank sold unregistered volatility-linked notes**
- **Judge said reverse split wasn’t “for value” to reopen claims**

Barclays Plc rightfully beat investor claims rooted in a reverse split of its volatility-linked exchange traded notes, a federal judge ruled.

Judge Lewis J. Liman denied the investors’ motion to reinstate some of their proposed class action claims he previously dismissed arising from the Barclays’ banking unit’s sale of unregistered notes. And the US District Court for the Southern District of New York judge said amending their complaint would be futile, denying Tuesday their request to be able to file another.

Liman had tossed their consolidated second amended complaint with finality in March. The investors then sought to resurrect some of their allegations related to an April 2021 reverse split.

But Liman reiterated his finding that the reverse split, when Barclays replaced every four shares of VXX exchange traded notes an investor held with just one, wasn’t a sale under the federal act that governs newly-issued securities. Therefore the plaintiffs didn’t plausibly allege that they purchased unregistered ETNs, he said. When Barclays sold each of the VXX ETNs pre-split, it retained the right to conduct a reverse split, Liman said, leading him to determine that Barclays didn’t “receive anything of value as a result of the reverse split” based on the pleadings.

The Securities Act of 1933 specifies that the securities offered must be “for value,” he said.

Liman said his March order found that Barclays’ VXX pricing supplement wasn’t a relevant registration statement to bring claims under another section of the act. Thus, the investors didn’t adequately allege the notes were issued post-split from a purportedly defective registration statement.

Barclays has been required to define, designate, and pay a registration fee for the amount of securities it planned to issue since 2017 when its banking unit lost its "well-known seasoned issuer" status. But the bank didn't accurately track the number of notes it issued, finding in 2022 that it had put out $17.7 billion worth of unregistered securities, including VXX exchange traded notes. The bank commenced a rescission offer 2022.

Difficult to Distinguish

The plaintiffs in this case, who held VXX ETNs through the 2021 split, sued after their rescission claims were denied. Liman noted in March that Barclays had said ETN investors might face significant issues in proving their eligibility because valid and invalid notes were commingled in the same DTC accounts and hard to distinguish.

Liman dismissed a parallel short-seller's suit that same day in March, which alleged that Barclay's abrupt halt in selling securities, including those VXX ETNs, in March 2022 caused prices to skyrocket and left him in a short squeeze. He's appealed the tossing to the US Court of Appeals for the Second Circuit.

Barclays garnered final approval from another Southern District of New York judge in March for a $19.5 million investor class settlement in another case alleging that the bank inadvertently sold them unregistered securities.

Sbaiti & Company PLLC represents the investors in this case. Sullivan & Cromwell LLP represents Barclays and certain current and former executives and board members. Neither law firm immediately responded to an email seeking comment. Barclays declined to comment via email.

The case is May v. Barclays PLC , S.D.N.Y., No. 1:23-cv-02583, denied 6/3/25 .

(Updates to add that Barclays declined to comment in the 11th paragraph.)

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Securities Law News

Madoff Trustee Reaches $498 Million Deal With Luxembourg Fund

June 4, 2025, 1:07 PM PDT

- **Feeder funds have been litigating with trustee since 2008**
- **Settlement, if approved, is a 100% recovery of LIF transfers**

A pair of investment funds tied up in litigation stemming from Bernie Madoff's Ponzi scheme reached a $498 million settlement with the trustee liquidating his firm's estate.

The "recovery agreement" with Luxembourg Investment Fund and Luxembourg Investment Fund US Equity Plus represents 100% of the transfers the feeder funds received from Bernard L. Madoff Investment Securities, the trustee said in a Wednesday press release. LIF, which invested exclusively with BLMIS as UBS (Luxembourg) SA, was a Luxembourg investment fund, the release said.

The settlement is related to the trustee's efforts to recover money for victims of Madoff's historic scheme. The agreement would resolve the trustee's suit against LIF and the funds' customer claim, the release said.

The trustee will also receive as part of the deal a 15% share of proceeds from a suit LIF brought against UBS, the release said. LIF would receive, if the settlement is approved, an approximately $759 million allowed customer claim.

The settlement also calls for the trustee to pay LIF approximately $45.1 million, which includes "the net balance of the catch-up distribution due on the allowed claim," the release said. A hearing on the settlement agreement is set for June 25 in the US Bankruptcy Court for the Southern District of New York.

Attorneys for LIF didn't immediately respond to a request for comment.

At least $2 billion had also been transferred to Luxalpha SICAV and Groupement Financier Ltd, two other feeder funds, according to court records. Subsidiaries of UBS were the service providers for those funds as well as LIF.

The disputes are among several suits that were filed in relationship to Luxembourg, the world's second biggest fund market after the US, since Madoff's scheme was discovered in 2008.

The trustee has recovered about $14.8 billion for a customer fund over the past decade, according to his website.

Madoff, who founded his investment firm in 1960, died in 2021. He was serving a 150-year prison sentence after pleading guilty in 2009 to running a $17.5 billion Ponzi scheme that took money from new investors to pay old ones.

BakerHostetler represent the trustee, Irving H. Picard.

The case is Sec. Inv. Prot. Corp. v. Bernard L. Madoff Inv. Sec. LLC , Bankr. S.D.N.Y., No. 08-01789, settlement announcement 6/4/25 .

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The Monkey’s Paw Curls

businesslawprofessors.com/2025/06/the-monkeys-paw-curls

Ann Lipton June 5, 2025

Two years ago, I published a paper challenging the internal affairs doctrine and arguing that it should be relaxed in various ways. I didn’t exactly intend that to play out as it has with respect to Texas – as I blogged here and here – and now there’s a new lawsuit against United Airlines to add to the mix.

United Airlines is incorporated in Delaware, but it is headquartered in Illinois. The National Center for Public Policy Research, as the owner of 123 United Airlines shares, has sued the company in Illinois, alleging that under Illinois’s inspection statute, it is entitled to internal records regarding United’s decision to limit flights to Tel Aviv. The NCPPR is explicitly choosing *not* to seek inspection under Delaware law, on the ground that the changes to Delaware’s inspection statute wrought by SB 21 would make such a demand futile. Instead, NCPPR argues that inspection rights are outside the scope of the internal affairs doctrine, and therefore United is subject to Illinois’s inspection statute.

It seems that almost immediately after the lawsuit was filed, United reversed course and resumed Tel Aviv flights, but as far as I know, the lawsuit is still pending so it won’t stop me from blogging.

So, first, leaving aside the issue of state law, has NCPPR stated a proper purpose for seeking inspection? In general, it has identified two potential breaches of fiduciary duty to investigate: first, that United may have bowed to the “ideological and political pressure” exerted by “internal labor unions” who have organized a campaign against Israel; and second, United may have misled shareholders, or at least withheld information from them, in its public statements regarding the reasons for retrenchment, attributing them to safety concerns rather than political pressure.

Taking the second point first, state law – by which I mean Delaware law – absolutely does prohibit United from misleading shareholders. *See Malone v. Brincat*.

As to the first point, though – the substantive decision to reduce Tel Aviv flights – NCPPR’s objections read a lot like the (failed) claims in *Simeone v. The Walt Disney Company*. There, a shareholder also sought inspection on the grounds that the board may have objected to Florida’s “Don’t Say Gay” law on ideological grounds. In that context, a Delaware court explicitly held that taking a political stance *in response to labor demands* is an appropriate exercise of business judgment. As Vice Chancellor Will put it, "A board may conclude in the exercise of its business judgment that addressing interests of corporate stakeholders—such as the workforce that drives a company's profits—is 'rationally related' to building long-term value." After all, maintaining good relations with labor is a critical aspect of profit-seeking. Boards may seek to do so via pay raises, or improved working conditions, or any number of additional actions. So, in the *United* case, NCPPR's complaint lays out a plausible case that United was responding to *labor*'s ideological demands, but it's not obvious to me why the board's choice to appease labor in an employment dispute would not be well within its discretion under the business judgment rule. (For the same reason, NCPPR's claim that United was trying to please the ideological commitments of its partner Turkish Airlines does not, on its face, establish that United had abandoned shareholder welfare; there are lots of reasons one can imagine for trying to maintain good relations with business partners, even if the business partners themselves have non-profit-seeking motives.)

But that brings me to the internal affairs question. Is this Delaware's to decide? In fact, inspection rights are something of a grey area. A Delaware court recently held that they are subject to the internal affairs doctrine, but also noted disagreement on the issue. Now, an Illinois court is going to have to make that call (unless the case is abandoned due to United's change of heart, or United runs to Delaware to seek declaratory judgment, which frequently occurs in these kinds of conflicts). I think it will be *very difficult* for Illinois to decide this issue without considering the obviously *political* context in which the question arises. A court entertaining the complaint may either want to inject itself into a political controversy – in which case it will hold Illinois law controls – or it will want to offload political responsibility to Delaware – in which case it will hold this is an internal affairs issue (as I warned in my paper, "states all too often acquiesce in [the internal affairs doctrine], perhaps because it allows them to evade responsibility for difficult political choices."). In other words, this is such a highly charged issue, I worry that it is not an ideal vehicle for setting rules for the mine run of cases. Or maybe it just proves my original point, i.e., the internal affairs doctrine, as currently constituted, cedes too much power to Delaware to decide profound issues of public policy.

And another thing: New *Shareholder Primacy* podcast! Mike Levin interviews Brian Highsmith on his article about company towns – including Elon Musk's Starbase. Here at Youtube, here at Apple, and here at Spotify.

Class Action

Sonoco Products Defeats Challenge to 401(k) Fees, Forfeiture Use

June 5, 2025, 6:53 AM PDT

- **Complaint lacks sufficient details supporting comparisons**
- **Worker has three weeks to file amended complaint**

Sonoco Products Co. defeated a proposed class action challenging its retirement plan fees and how it uses 401(k) forfeitures, but the plaintiff can try again in an amended complaint, a federal judge ruled.

The lawsuit is full of conclusory allegations and lacks specific factual details that would support claims under the Employee Retirement Income Security Act, Judge Joseph Dawson III said for the US District Court for the District of South Carolina. The worker says the plan paid more for recordkeeping services than other similar plans did, but the complaint "does not provide adequate details about the comparator plans' service levels, fee structures, or administrative arrangements," Dawson said in a Wednesday order.

The judge also dismissed allegations that Sonoco, a packaging material producer, mismanaged the plan by using 401(k) money forfeited by departing workers for its own benefit. He pointed out that the plan document allows Sonoco to use 401(k) forfeitures to reduce its required contributions, and that an ERISA fiduciary "does not breach its duty of loyalty merely by complying with the lawful terms of a governing plan document."

However, Dawson left open the possibility that plaintiff Daniel Steen could bring viable ERISA claims over the company's forfeiture usage in an amended complaint.

"While Defendants' use of forfeited funds to reduce employer contributions may be consistent with the Plan's express terms and federal regulations, this fact alone does not necessarily preclude a fiduciary breach if the facts ultimately show the fiduciaries subordinated participants' interests to the employer's," he said. "However, based on the current pleading, Plaintiff has not plausibly alleged such disloyal conduct."

Dozens of large employers have been sued over the past two years over how they handle the unvested 401(k) money that can be forfeited when workers leave their jobs shortly after being hired. The cases, which have spurred mixed results in court, say companies violate ERISA when they opt to put forfeitures toward the contributions they're required to make to the plan, instead of using them to reduce the administrative expenses charged to workers.

Dawson gave Steen and the proposed class three weeks to file an amended complaint.

Sonoco is represented by Quinn Emanuel Urquhart & Sullivan LLP and Haynsworth Sinkler Boyd PA. Steen is represented by Johnson, Smith, Hibbard & Wildman; Shamis & Gentile PA; Edelsberg Law; and Jacobson Phillips PLLC.

The case is Steen v. Sonoco Prods. Co. , D.S.C., No. 4:24-cv-03105, 6/4/25 .

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Securities Law News

Intermountain Healthcare Sued Over Retirement Fund, Fees (1)

June 4, 2025, 8:25 AM PDT; Updated: June 5, 2025, 3:59 AM PDT

- **COURT:** D. Utah.
- **TRACK DOCKET:** No. 1:25-cv-00073 **(Bloomberg Law subscription)**

Utah's Intermountain Healthcare Inc. was hit with a proposed class action saying its retirement plans are mismanaged through excessive fees and a flawed stable value fund.

The complaint, filed Tuesday in the US District Court for the District of Utah, takes aim at a pair of retirement plans that together held more than $6.3 billion as of 2023. The plans overpaid for recordkeeping services and invested large sums in a stable value fund that produced significantly lower returns than similar options available on the marketplace while carrying greater risk, according to the complaint.

- The lawsuit, which seeks to certify a class of more than 80,000 people covered by the two plans, brings claims under the Employee Retirement Income Security Act's fiduciary duty and prohibited transaction rules
- The US Supreme Court recently endorsed a liberal pleading standard making it easier for employees to bring prohibited transaction claims under the statute
- Intermountain declined to comment on the allegations

Capozzi Adler PC and Isom Law Firm PLLC represent the plaintiffs.

The case is Johnston v. Intermountain Healthcare, Inc. , D. Utah, No. 1:25-cv-00073, complaint 6/3/25 .

(Updates June 4 story with company's response in third bullet)

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Marriott Wins Reversal of Data Breach Class Certification

law.com/2025/06/04/marriott-wins-reversal-of-data-breach-class-certification

Amanda Bronstad June 4, 2025

- The ruling threatens the future of the Marriott case and, for plaintiffs more generally, is a big loss for those suing over data breaches, most of which settle or get dismissed.
- Marriott's lawyer, backed by the U.S. Chamber of Commerce, told the Fourth Circuit that the class certification order, if affirmed, would become a 'national outlier' and dissuade defendants from pursuing multidistrict litigation.
- At issue is a waiver in Marriott's Starwood Preferred Guest Program terms and conditions that instructs all disputes 'will be handled individually without any class action.'

A federal appeals court dismantled certification of a class of Marriott International Inc. guests whose personal information was hacked in 2018.

Tuesday's ruling is the second that the U.S. Court of Appeals for the Fourth Circuit has entered over class certification in the Marriott data breach case. In 2023, the Fourth Circuit remanded the case for further discussion, but this time, in a big win for Marriott, reversed U.S. District Judge John Preston Bailey's class certification order entirely.

At issue is a waiver in Marriott's Starwood Preferred Guest Program terms and conditions that instructs all disputes "will be handled individually without any class action." Bailey found that the definition included any collective handling, not just class actions, such as multidistrict litigation, which Marriott had supported despite its waiver.

"We read the provision differently," Circuit Judge Pamela Harris wrote in the Fourth Circuit's unanimous opinion. "Parties in an MDL do not act in a representative capacity, and pretrial MDL consolidation does not strip cases of their 'individual' nature. We can find no other court holding that a defendant's participation in an MDL deprives it of the right to rely on a contractual class-waiver defense, and we will not be the first."

Marriott, represented by Matthew Hellman, co-chairman of Jenner & Block's appellate and Supreme Court practice, said in a statement, "We appreciate the Fourth Circuit's careful review of the issues and are gratified by their decision."

Samuel Issacharoff, a professor at New York University School of Law, who represented the plaintiffs on appeal, deferred comment to co-lead class counsel Amy Keller, of Chicago's DiCello Levitt, who did not respond to a request for comment.

The ruling threatens the future of the Marriott case and, for plaintiffs more generally, represents a significant setback for those suing over data breaches. The Marriott order is rare because most data breach class actions settle or get dismissed prior to certification.

Marriott's breach impacted 134 million hotel guests.

In 2022, then-U.S. District Judge Paul Grimm, of the District of Maryland, granted certification of various classes totaling 20 million guests. But, on Marriott's interlocutory appeal of that order, the Fourth Circuit remanded, ordering that Grimm, prior to certification, should have considered whether the class action waiver applied before issuing a certification order.

After Grimm retired, the U.S. Judicial Panel on Multidistrict Litigation, which had granted Marriott's request to coordinate the cases in Maryland, reassigned the litigation to U.S. District Judge John Preston Bailey, of the Northern District of West Virginia, sitting by designation. Bailey asked for supplemental briefs, then recertified the class without a hearing.

Matthew Hellman, with Jenner & Block.
Courtesy photo

Hellman, during Nov. 7 oral arguments, told the Fourth Circuit that Bailey's order, if affirmed, would become a "national outlier" and dissuade defendants from pursuing multidistrict litigation.The U.S. Chamber of Commerce filed an amicus brief insisting the order was "unprecedented."

In supplemental letters, both sides disagreed over the applicability of the U.S. Court of Appeals for the Ninth Circuit's March 10 decision denying Uber Technologies Inc.'s appeal of the U.S. Judicial Panel on Multidistrict Litigation's order coordinating thousands of sexual assault lawsuits in the U.S. District Court for the Northern District of California. Uber had argued that passengers had agreed to a waiver of collective actions, such as multidistrict litigation, but the Ninth Circuit disagreed.

The Fourth Circuit's opinion, however, focused on the specific wording of the Marriott waiver.

"Properly understood, the class-action agreement here does not commit the parties to litigate each plaintiff's case 'individually' in all respects, and Marriott's participation in consolidated pretrial proceedings is fully consistent with that provision," Judge Harris wrote. "In sum, we find that Marriott has not given up its class-waiver defense under the SPG Contract, that the plaintiffs' waiver of class litigation is valid and enforceable, and that the waiver applies to the plaintiffs' claims."

Litigation

TotalEnergies Accused in France of Greenwashing After Rebrand

June 5, 2025, 7:52 AM PDT

TotalEnergies SE was accused in a French court of greenwashing by misleading consumers about its climate goals in a series of ad campaigns just after it rebranded and changed its name from Total.

A group of nonprofits, which include Greenpeace France, attacked TotalEnergies' claim that it could achieve net zero emissions by 2050, saying it was incompatible with its continued expansion in oil production.

"The climate communications of TotalEnergies suggest that the company was transforming," Clémentine Baldon said during a Thursday hearing at a Paris court. She said it produced a "false impression" among consumers that the company was contributing toward achieving the objectives of the Paris climate accord.

The greenwashing case focusing on the energy giant's net zero ambition was branded as a first in France by the nonprofits. Elsewhere, TotalEnergies has been a target for NGOs over its advertising, leading to a critical decision in South Africa last year and an April ban in the UK from local ad regulators.

In a statement, TotalEnergies said that its strategy "is in line with with its short and medium term ambitions in terms of methane and carbon dioxide emission reductions."

The ads at the heart of the case stem from a campaign following the energy giant's change of name in 2021 . In recent years, the company has been investing almost a third of its capital expenditure in renewable energies and carbon capture and storage projects. The NGOs point to fresh investments from TotalEnergies in oil and gas — including in new exploration — since the rebrand.

Read more: TotalEnergies' Ad Found 'Misleading' Over Sustainability Claim

In the Paris case, the nonprofits, which also include Friends of the Earth France and Notre Affaire à Tous, asked judges to order TotalEnergies to take down the allegedly misleading ads.

In addition to the net zero claim, the NGOs also criticized TotalEnergies for presenting natural gas as a transition energy and the least-polluting of fossil fuels. Their lawyer, Clémentine Baldon, cited scientific conclusions from the International Energy Agency and Intergovernmental Panel on Climate Change to back her claims.

TotalEnergies said its communication on its name change and transition strategy "is part of institutional communication, and is distinct from commercial advertising." That, the company said in its statement, prevents the court from finding that there were any deceptive commercial practices.

The Paris judges are expected to issue a ruling in several weeks or even months.

--With assistance from **Francois de Beaupuy**.

Setting an Example: The Midsize Firm Opposing Trump's War on the Legal Industry

law.com/therecorder/2025/06/04/setting-an-example-the-midsize-firm-opposing-trumps-war-on-the-legal-industry

Amanda O'Brien June 4, 2025

- San Francisco-based litigation firm Keker Van Nest & Peters has been at the forefront of the criticism against the Trump administration's war against the legal industry.
- From a guest essay in the New York Times to a broadcasted interview on '60 Minutes', the firm and its leaders have garnered media attention for their stance against the administration's executive orders.

President Donald Trump’s attacks on Big Law have proven that not even law firms are immune to the trauma responses of fight, flight, fawn, and freeze. A fair number of firms, and especially the larger members of the Am Law 200, have opted for the freeze response, unwilling to offer commentary that might provoke the president’s wrath and impede the inflow of work.

Keker Van Nest & Peters, a midsize litigation firm based in San Francisco, has taken the opposite approach. The firm and its name partners, John Keker, Robert Van Nest, and Elliot Peters, have come out swinging against the administration, making the rounds across the media condemning the Trump administration’s actions against the legal industry and urging peers and larger law firms to unify in defense of the rule of law.

It’s a daring move, especially for a litigation firm known for trying an abundance of its cases in federal court. Yet the firm’s name is now more well-known than ever, and feedback from the legal community and beyond has been largely positive, according to Van Nest and the firm’s managing partner Laurie Carr Mims.

“Our firm is now known more broadly than it’s ever been known in the legal community and even beyond the legal community,” Mims said, describing hundreds of thank you notes coming from individuals across the country in the wake of John Keker’s '60 Minutes' interview condemning the administration’s actions against law firms.

Clients and potential clients were also impressed by the firm’s public response.

“We have had clients and potential clients say to us sometimes, on a confidential basis, that they are particularly looking at us for matters because of how we’ve responded to what they at least personally agree with as attacks on the rule of law,” Mims noted.

Keker Van Nest & Peters, founded originally as Keker & Brockett in 1978, has expanded from its two founders, John Keker and Bill Brocket, to encompass just under 140 attorneys. The firm specializes in intellectual property and litigation work; it also operates out of a single office in San Francisco, despite boasting a national workload.

That centralized presence played a key role in the firm's quick decision to speak out against the administration.

"Because we're in one location, we all have a very good sense of what the partnership feels and believes," Van Nest said. "Things finally boiled over in mid-March after Trump attacked Perkins and attacked all lawyers doing asylum and immigration work. That touched a raw nerve. We do a lot of immigration and asylum work, it's righteous work. It was an easy decision for us [to speak out]."

The unity behind the firm's decision has proved to be a prescient factor for responses amongst the larger legal community. Partnerships at firms such as Perkins Coie, Jenner & Block, Wilmer Cutler Pickering Hale & Dorr, and Susman Godfrey, all of whom received an executive order from the president, were reportedly unified in their firms' decision to sue the administration.

Firms that chose to make deals with the administration, which tended to lean more towards transactional work than litigation, had a more divided partnership when it came to deciding how to deal with the administration. While some attorneys at deal-making firms understood the business case behind striking a deal with the president and avoiding the perils of a crippling executive order, others were less pleased with their firms' risk-averse decisions. That division has led to some firm departures, especially among associates.

"We [were] willing to take on the risk. We've had a history of taking on the government when we see unconstitutional acts. We did so in the first Trump administration, we did so in the Biden administration," Mims said. "We stand up against the government. We currently have actions where we're adverse to the government. We want to continue that and we will continue that and continue to be vocal."

While the next stage of Trump's war against Big Law remains uncertain now that the administration has been subjected to permanent injunctions against executive orders targeting Perkins Coie, Jenner, and Wilmer, Mims and Van Nest indicated that the firm will remain vigilant.

Van Nest in particular emphasized the firm's focus on performing pro bono work, including work opposing the administration, now that a group of large law firms has offered a total of nearly $1 billion in pro bono work to causes the president supports in order to avoid an executive order.

“We are here to support our colleagues in continuing to do pro bono work including suing the administration when necessary, defending undocumented people, and defending and representing asylum seekers,” Van Nest said. “What we want to counter is the Trump administration’s efforts to intimidate lawyers into backing off. We don’t want anyone to back off.”

In continuing to oppose the administration, Van Nest continued, the firm hopes to inspire other attorneys to stand up for the rule of law.

“We are trying to set an example for others of continuing to do the pro bono work that’s necessary to defend the Constitution and represent folks who can’t afford to represent themselves otherwise.”

Theft charges dropped against ex-FirstEnergy executives in HB6 bribery scandal

cleveland.com/news/2025/06/theft-charges-dropped-against-ex-firstenergy-executives-in-hb6-bribery-scandal.html

https://www.facebook.com/jeremypelzernews June 4, 2025

Former FirstEnergy CEO Chuck Jones (left) and Mike Dowling, the company's former top lobbyist (sitting at right), are seen in court on Tuesday, February 13, 2024, for their arraignment in Summit County Common Pleas Court. (David Petkiewicz, cleveland.com)David Petkiewicz, cleveland.com

By

Jeremy Pelzer, cleveland.com

COLUMBUS, Ohio--A Summit County judge has dismissed theft charges against ex-FirstEnergy executives Chuck Jones and Mike Dowling, who stand accused of bribing a top state regulator to secure favorable treatment for the Akron-based electric utility.

Despite the dismissals, Jones and Dowling each still face more than two dozen other felony charges related to the bribery scandal that could result in lengthy prison terms if they're convicted.

Prosecutors say that Jones and Dowling paid a $4.3 million bribe in early 2019 to Sam Randazzo, then chair of the Public Utilities Commission of Ohio – an accusation the two men deny.

Part of the case made against Jones and Dowling was that, by paying the bribe with FirstEnergy money, they committed theft against their company. However, prosecutors also argued that the pair paid the bribe to benefit FirstEnergy, which agreed earlier this year to pay $20 million for the company to avoid prosecution.

Summit County Common Pleas Judge Susan Baker Ross, in a May 28 ruling, dismissed the theft charges, rejecting the argument that FirstEnergy could simultaneously be an unindicted co-conspirator and a victim at the same time.

“Based on the plain reading of the words the State (prosecutors) used within the indictments, the State alleges that the payments made to Randazzo were made with consent of FirstEnergy and for the purpose of benefitting FirstEnergy,” Ross wrote. “The State cannot now turn around and claim that Defendants were acting beyond the scope of FirstEnergy’s express or implied consent.”

Ross’ ruling, first reported by the Akron Beacon Journal, also threw out two of the underlying charges supporting another charge: engaging in a pattern of corrupt activity, a first-degree felony.

- Ohio leaders move toward greater state oversight over colleges and universities in financial trouble: Capitol Letter
- Ohio lawmakers push to ensure Browns would keep county sin tax money even after leaving Cleveland
- Ohio Senate unveils surprise new plan for state to give $600M for new Browns stadium

Jones and Dowling each still face that charge, as well as first-degree felony charges of bribery and telecommunications fraud, and third-degree felony charges of bribery, money laundering, and tampering with records, among others.

The two former executives are also facing federal charges that they arranged to pay $60 million in FirstEnergy bribes to former Ohio House Speaker Larry Householder to pass and defend House Bill 6, a 2019 state energy law that included enormous benefits for their company.

Randazzo, who was indicted in Summit County along with Jones and Dowling, took his own life in April 2024.

Tesla shares fall as growing Trump-Musk spat rattles investors

reuters.com/business/autos-transportation/tesla-shares-slide-musk-steps-up-criticism-ally-trump-2025-06-05

Akash Sriram, Kanchana Chakravarty June 5, 2025

Item 1 of 4 Tesla electric vehicles are pictured at one of the company's delivery centers in Valenton, near Paris, France, April 24, 2025. REUTERS/Benoit Tessier/File Photo

[1/4]Tesla electric vehicles are pictured at one of the company's delivery centers in Valenton, near Paris, France, April 24, 2025. REUTERS/Benoit Tessier/File Photo Purchase Licensing Rights, opens new tab

- Tesla's market value remains highest despite stock volatility
- Musk joins Senate Republicans in criticizing House budget bill
- Tesla sales decline in key markets amid political tensions
- EV subsidy cut in budget bill poses risk to Tesla
- Trump says he doesn't know if they'll share a great relationship anymore

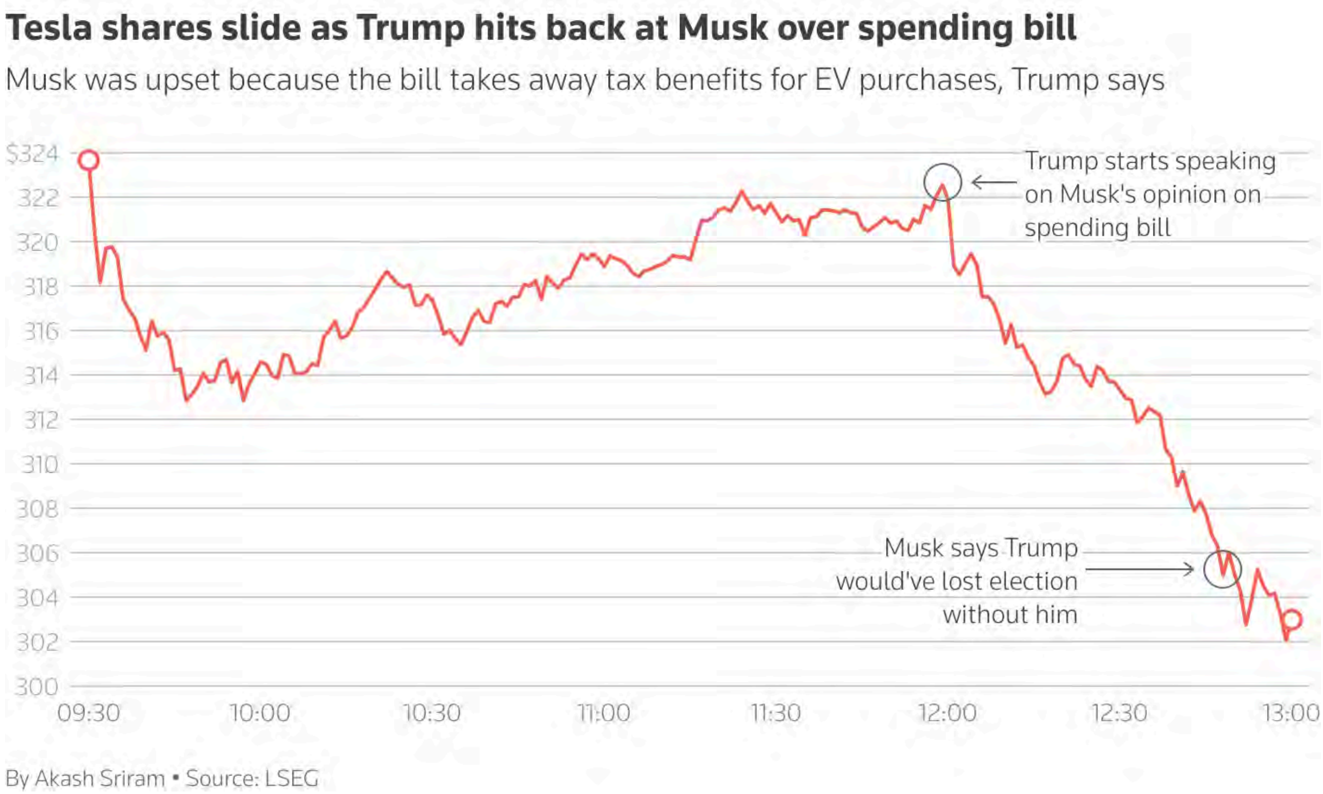
June 5 (Reuters) - Cracks in the relationship between President Donald Trump and Tesla CEO Elon Musk, his self-proclaimed "First Buddy", are scaring Tesla shareholders as the two fired salvos at each other in increasingly heated rhetoric on Thursday.

Shares fell nearly 9% on Thursday on a day otherwise devoid of news for the electric automaker, as traders dumped the stock in heavy trading after Musk stepped up his criticism of the president's tax bill.

Trump fired back, alleging Musk was upset because the bill takes away tax benefits for electric vehicle purchases, while investors feared their souring relationship could hurt Musk's sprawling business empire.

"Look, Elon and I had a great relationship. I don't know if we will anymore," Trump said. "He said the most beautiful things about me. And he hasn't said bad about me personally. That'll be next. But I'm very disappointed."

Musk, the world's richest man and a key figure in the Department of Government Efficiency's (DOGE) cost-cutting plan for several months, has blasted the bill, after he decided to spend less time in the White House and instead focus on his companies.



Tesla shares slide as Trump hits back at Musk over spending bill

On his social media platform X, Musk has called on Congress members to kill the legislation, calling it a "disgusting abomination".

"It more than defeats all the cost savings achieved by the DOGE team at great personal cost and risk," Musk, the largest Republican donor in the 2024 election campaign, said on X on Tuesday.

Musk's leadership of DOGE and his alignment with the Trump administration had put off some Tesla buyers. Sales of his EVs slumped in Europe, China and key U.S. markets like California, even as overall electric vehicle purchases continue to grow.

Musk has slowly started to separate himself from the White House in recent weeks, stung in part by the wave of protests against Tesla.

"Elon's politics continue to harm the stock. First he aligned himself with Trump which upset many potential Democratic buyers. Now he has turned on the Trump administration," said Tesla shareholder Dennis Dick, chief strategist at Stock Trader Network.

Musk's other businesses, SpaceX and Starlink, dominate their respective markets, but have also come under scrutiny due to Musk's relationship with Trump.

Those two businesses often serve as the default choice for commercial launches and satellite internet deployment, and foreign governments have increasingly looked to Starlink, with regulatory approvals smoothed by Musk's ties.

Tesla shares are down 12% since May 27, roughly coinciding with his decision to pull back from Washington activities. Losses accelerated on Thursday as 100 million shares changed hands, roughly the daily volume over the last 100 days.

The stock has been on a roller-coaster ever since Musk endorsed Trump in mid-July 2024 in his re-election bid, gaining 169% from that point through mid-December. That was followed by a 54% slide through early April as a "Tesla Takedown" protest intensified.
The House of Representatives version of the budget bill proposes largely ending the popular $7,500 EV subsidy by the end of 2025. Tesla and other automakers have relied on incentives for years to drum up demand, but Trump promised during the transition to end the subsidy.
Tesla could face a $1.2 billion hit to its annual profit, along with an additional $2 billion setback to regulatory credit sales due to separate Senate legislation targeting California's EV sales mandates, according to J.P. Morgan analysts.

"The budget bill contains bad stuff for Tesla with the end of the EV credits, and just generally his falling out with Trump has risks for Tesla and Elon's other companies," said Jed Ellerbroek, portfolio manager at Argent Capital Management.

Musk's public attacks have upset potential Republican Tesla buyers as well, Dennis Dick said. One White House official on Wednesday called the Tesla CEO's moves "infuriating." The billionaire joined Senate Republican deficit hawks this week to argue that the House bill does not go far enough in reducing spending.

Overall, Tesla shares are down 25% this year, including Thursday's losses. But the company is still the most valuable automaker worldwide by a long shot - carrying a market value of nearly $1 trillion, way above Toyota Motor's nearly $290 billion.

Tesla trades at 140.21 times profit estimates, a steep premium to other Big Tech stocks such as Nvidia.

Reporting by Akash Sriram and Kanchana Chakravarty in Bengaluru; Editing by Anil D'Silva and Arun Koyyur

Akash Sriram
Thomson Reuters

Akash reports on technology companies in the United States, electric vehicle companies, and the space industry. His reporting usually appears in the Autos & Transportation and Technology sections. He has a postgraduate degree in Conflict, Development, and Security from the University of Leeds. Akash's interests include music, football (soccer), and Formula 1.

House Democrat demands Trump disclose details about Musk drug use

courthousenews.com/house-democrat-demands-trump-disclose-details-about-musk-drug-use

Elon Musk speaks during a news conference with President Donald Trump in the Oval Office of the White House, Friday, May 30, 2025, in Washington. (AP Photo/Evan Vucci)

WASHINGTON (CN) — The top House Democrat on the lower chamber's oversight panel implored the White House to turn over any information it has on Elon Musk's use of illicit substances while serving as an adviser to President Donald Trump.

The unusual request comes amid reports that Musk, who recently rounded out his time as a special government employee working closely with the president, used a laundry list of drugs while campaigning on behalf of Trump during the 2024 election season — charges the billionaire himself has denied.

In a letter to the president dated Wednesday, Massachusetts Representative Stephen Lynch raised concern about what he said were the "alarming" reports of Musk's drug use and demanded to know whether the administration was aware whether he had continued using drugs while working as a White House adviser.

"Given his prominent role in the Trump Administration, the American people deserve to know the history and extent of Mr. Musk's drug use and any influence illicit drugs may have had on his efforts to illegally and recklessly dismantle our government," said Lynch, who is currently the acting Democratic ranking member of the House Oversight Committee. “If Mr. Musk is struggling with substance abuse, it is my hope that he gets the assistance and treatment he needs.”

The billionaire Tesla CEO and X owner has for months worked closely with the Trump administration, leading his Department of Government Efficiency outfit to root out what Musk and White House allies have framed as runaway government waste. The effort has drastically reshaped operations at several federal agencies, implementing a mass buyout of government employees and even shuttering some federal organizations such as the U.S. Agency for International Development.

But in recent days, Musk’s history of recreational drug use has snapped back into focus. The New York Times reported last week that Musk had regularly consumed several different drugs while working as a surrogate for the Trump presidential campaign in 2024. According to the Times, the billionaire traveled the country with a “daily medication box” and that he had used LSD, cocaine, ecstasy and psychedelic mushrooms at private parties.

Reports of Musk’s drug use predate his time in Trump's White House. The billionaire told former CNN anchor Don Lemon in an interview last year that he at one point had a prescription for ketamine, a powerful tranquilizer. He said at the time that he did not think he had ever abused the drug.

The Times reported last week that Musk had used ketamine so frequently that it had affected his bladder.

Citing the Times’ story, Lynch on Wednesday suggested that Musk could have been under the influence of drugs while running his government efficiency outfit, pairing what he said was the “drastic and erratic nature” of his decisions while advising the Trump administration with new information about the billionaire’s drug use.

“The American people deserve to know whether Mr. Musk was under the influence while he gleefully took a ‘chainsaw’ to our federal government,” the Massachusetts Democrat said.

Lynch demanded that the president turn over any information that he or administration officials had about whether Musk “consumed any illicit substances” while working as a special government employee or senior adviser to the White House, or whether they were aware of such drug use before Inauguration Day.

The lawmaker also requested information that would shed light on whether the billionaire had used any of these substances while on White House grounds or in the executive office building complex, and he further asked Trump to provide Congress with documentation of Musk’s drug use on the 2024 campaign trail.

It’s not the first time that congressional Democrats have urged the Trump administration to explain reports of Musk’s drug use related to his role in the government. Lawmakers last month sent two similar information requests to the White House, the Pentagon and the FBI but never received a response.

Lynch on Wednesday again asked the administration to respond to the May inquiry.

Musk, for his part, has vehemently denied reports that he used drugs on the campaign trail. Speaking to reporters in the Oval Office on Friday, the billionaire slammed the New York Times for “false reporting” and posted on X, formerly Twitter, that he was “NOT” currently taking drugs and that the Times was “lying their ass off.”

“I tried *prescription* ketamine a few years ago and said so on X, so this is not even news,” Musk wrote. “It helps for getting out of dark mental holes, but haven’t taken it since then.”

After several months working alongside the Trump administration, the billionaire said last week that he would step away from his role as a presidential adviser. Shortly after leaving the White House, though, Musk publicly broke with the administration and Republicans, criticizing a GOP-led budget reconciliation package and threatening primary challenges for lawmakers who voted for it.

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Categories / Government, National, Politics

Michigan Residents Baffled as Tesla Dumps Dozens of Cybertrucks in Local Shopping Center

thedailybeast.com/michigan-residents-aggravated-as-tesla-dumps-dozens-of-cybertrucks-in-local-shopping-center

Paulina Rodriguez June 4, 2025

Trumpland
PARKING PLOT

Jim West/UCG/Universal Images Group via Getty ImagesUCG/Universal Images Group via G

Residents of Farmington Hills, Michigan, a suburb of Detroit, were left baffled last week when their local shopping center was overrun with unattended Tesla vehicles, mostly Cybertrucks.

Some residents, who estimate they've seen up to 100 Cybertrucks left in the shopping center's parking lot, initially assumed the trucks were unsold inventory from a nearby dealership.

[redacted] 1/2

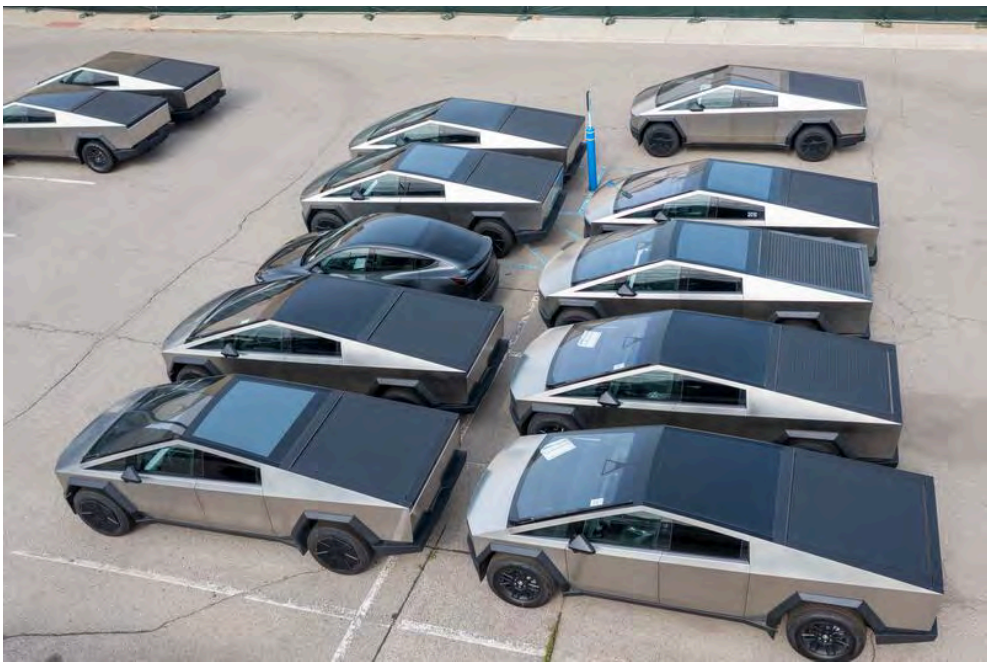
However, Tesla employees who spoke with *CBS Detroit* insisted the vehicles have already been sold. They say the company is merely storing these units at the shopping center, which shares an owner with a local Tesla service center, until it can deliver them to their new owners.

City officials, however, say Tesla never got their approval to use the lot, and that doing so is a clear violation of local policy.

Insiders Reveal Why 'B*tthurt' Musk Is Trashing Trump's BillHISSY FIT

Leigh Kimmins

Charmaine Kettler-Scmult, director of planning and community development for Farmington Hills, told *CBS Detroit*that the city had already reached out to the shopping center about removing the Cybertrucks, explaining that “storage of vehicles is not a permitted use” of the parking lot.



Some Farmington Hills residents estimate they've seen up to 100 Cybertrucks left in the Hunter's Square shopping center parking lot. Jim West/UCG/Universal Images Group via G

Outside of Farmington Hills, however, Cybertrucks seem to be a tough sell. Only about 40,000 Cybertrucks have sold since the model launched in 2023, a far cry from the 250,000 units Musk once predicted Tesla would sell annually.

Beyond Cybertrucks, overall Tesla sales have crashed across Europe, where even consumers interested in electric vehicles are increasingly disinterested in buying from Musk.

In April, Tesla was dethroned for the first time ever as Europe’s top-selling electric vehicle manufacturer, being outsold by Chinese company BYD.

Then in May, Tesla’s sales fell 29 percent in Spain, 53.7 percent in Sweden, and a staggering 67 percent in France. Meanwhile, in Germany, Europe’s largest car market, sales of Tesla vehicles have been in a nosedive for five consecutive months.

Tesla's sales fell drastically across Europe during Musk's chaotic time with DOGE, while the company's reputation score plummeted stateside. REUTERS/Nathan Howard

The sharp decline in Tesla’s sales isn’t surprising, considering Elon Musk’s stint with DOGE severely damaged his business reputation. Last month, the annual Axios Harris poll revealed that Tesla, which once ranked eighth in respondents’ list of their 100 most trusted American companies, had fallen to 95th place.

Just last week, CNN obtained a letter to Musk from a group of Tesla investors in which they criticized him for “divert[ing] his time and attention from actively managing Tesla’s operations.” The letter also demanded that he spend at least 40 hours a week working at Tesla.

Miller Meltdown as Musk Exits With His Wife and Rips TrumpBITING BACK
Cameron Adams

Though he initially lashed out at the investors behind the letter, Musk himself has hinted that he knows his time in the White House hurt his other business dealings. In an interview with *Ars Technica*, Musk admitted that his “relative time allocation… probably was a little too high on the government side.”

Musk departed his White House position with a bizarre press conference on May 30, so it’s too soon to know if doing so has helped to stymie Tesla’s free fall.

For now, the company maintains that its unapproved use of the Michigan parking lot is merely storage for the few trucks that *have* sold.
Got a tip? Send it to The Daily Beast here.

Musk’s Tesla seeks to guard crash data from public disclosure

reuters.com/legal/government/musks-tesla-seeks-guard-crash-data-public-disclosure-2025-06-04

Mike Scarcella June 4, 2025

The logo of Tesla is pictured at a Tesla Super Charging station in Saint-Herblain near Nantes, France, March 27, 2025. REUTERS/Stephane Mahe/File Photo Purchase Licensing Rights, opens new tab

June 4 (Reuters) - Tesla (TSLA.O), opens new tab has asked a judge to reject a demand for some of its vehicle crash data held by the U.S. National Highway Transportation Safety Administration, saying that public disclosure of the information could cause competitive harm.
Tesla, the electric carmaker owned by billionaire entrepreneur Elon Musk, said in a federal court filing, opens new tab in Washington, D.C., on Tuesday that the requested information is confidential and could be used by rival companies to assess Tesla’s technology.
Tesla was responding to a lawsuit filed by The Washington Post last year against the NHTSA seeking records about crashes that occurred while driver-assistance systems were in use.

Tesla is widely known for its so-called advanced driver-assistance systems, including Autopilot and Full Self-Driving (FSD).

Tesla has defended its technology and said that its self-driving software requires active driver supervision and does not make vehicles autonomous.

Tesla and the safety agency did not immediately respond to requests for comment, and neither did a lawyer for The Washington Post.

The highway safety agency in a separate filing also argued that the Post’s demand sought information that is exempt from the federal public records laws.

The Post has said that the NHTSA releases some crash report information, “but it withholds critical details about the technologies in use and the circumstances and locations of the crashes.”

Tesla in its court filing said it and the auto safety agency should be allowed to keep secret certain crash-related narrative information, including road conditions and driver behavior.

Tesla also said the agency cannot be forced to share information about the hardware and software versions of the driver assistance programs that may have been in use at the time of a vehicle crash.

Public release of the information would allow Tesla’s competitors to assess the efficacy of each version and also allow them to calculate how many crashes are associated with different systems, Tesla said.

Lawyers for the Post have argued that the version information of the Tesla software and hardware is not kept private, since Tesla drivers can access that information on their own within their vehicle.

In October, NHTSA opened an investigation into 2.4 million Tesla vehicles featuring full self-driving technology after four reported collisions, including a 2023 fatal crash.
Tesla in 2023 recalled more than 2 million U.S. vehicles to install safeguards in its Autopilot advanced driver-assistance system.
The case is WP Co LLC v. National Highway Traffic Safety Administration, U.S. District Court for the District of Columbia, No. 1:24-cv-01353.

For Wp Co: Charles Tobin of Ballard Spahr

For NHTSA: Kartik Venguswamy of the U.S. Attorney’s Office

For Tesla: Taylor McConkie of Tesla

Read more:

US agency eases some self-driving safety rules, sending Tesla stock soaring
Tesla settles wrongful death lawsuit claiming sudden acceleration in Ohio crash
US probes Tesla's Full Self-Driving software in 2.4 mln cars after fatal crash
Tesla blamed drivers for failures of parts it long knew were defective

Elon Musk gets more time to respond to US SEC lawsuit over Twitter stake

reuters.com/sustainability/boards-policy-regulation/elon-musk-gets-more-time-respond-us-sec-lawsuit-over-twitter-stake-2025-06-05

Reuters June 5, 2025

Item 1 of 2 Tesla CEO Elon Musk attends the Saudi-U.S. Investment Forum, in Riyadh, Saudi Arabia, May 13, 2025. REUTERS/Hamad I Mohammed/File Photo

[1/2]Tesla CEO Elon Musk attends the Saudi-U.S. Investment Forum, in Riyadh, Saudi Arabia, May 13, 2025. REUTERS/Hamad I Mohammed/File Photo Purchase Licensing Rights, opens new tab

June 5 (Reuters) - The U.S. Securities and Exchange Commission has given Elon Musk six more weeks to respond to its civil lawsuit accusing the world's richest person of waiting too long in 2022 to reveal his large stake in Twitter, the social media company he later bought and renamed X.

In a filing in federal court in Washington, D.C., the SEC and Musk agreed to push back the deadline for Musk's response to July 18 from June 6, calling it "reasonable and in the interest of conserving judicial resources."

The SEC has said Musk's 11-day delay in disclosing his initial 5% Twitter stake let him to buy more than $500 million of the company's shares at artificially low prices, at the expense of unsuspecting investors. The agency's lawsuit seeks to force Musk to pay a civil fine and give up profits he didn't deserve.

Reporting by Jonathan Stempel in New York; Editing by Leslie Adler

Litigation

Tesla Worker Drops Most Wage Claims, Case Returns to State Court

June 5, 2025, 6:57AM PDT

- **Parties will trim, remand case after judge questioned removal**
- **Worker alleged Tesla owes California class pay, reimbursements**

A Tesla Inc. worker agreed to drop more than a dozen wage claims against the Elon Musk-helmed automaker, which in exchange will fight the remaining allegations in state rather than federal court.

The worker's complaint alleged Tesla stiffed a proposed California employee class on pay. The parties' joint stipulation, filed Wednesday in the US District Court for the Central District of California, trims the bulk of the complaint without prejudice and proposes remanding the Private Attorneys General Act portion of the case to state court.

Plaintiff Abraham Garcia alleged Tesla violated California wage laws, including rules on minimum and overtime pay, meal and rest breaks, and business expense reimbursements. He sued in state court in 2024 on behalf of other current and former Tesla employees who worked for the company during the past four years.

Tesla removed the case to federal court in January and asked Judge Fernando L. Aenlle-Rocha to compel arbitration in February.

The judge last month ordered the parties to show cause why the entire case shouldn't be sent back to state court. Tesla based its removal on the Class Action Fairness Act, but the allegations in the company's notice "do not demonstrate by a preponderance of the evidence that the amount in controversy exceeds $5 million," as that law requires, the May 22 order said.

The voluntary dismissal moots any response to the show-cause order, according to the stipulation.

Long Beach, Calif.-based Jose R. Garay and Wheeler Law Firm APC represent Garcia. Morgan, Lewis & Bockius LLP represents Tesla.

The case is Garcia v. Tesla Inc. , C.D. Cal., No. 2:25-cv-00302, stipulation filed 6/4/25 .

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FT Alphaville Palantir Technologies Inc

Palantir is nuts. When’s the crash?

An AI darling faces its dusky interregnum

© REUTERS

Bryce Elder

Published 5 HOURS AGO

Mass surveillance. Pandemic tracking. Predictive policing. Insurrection detection. Drug testing. Political lobbying. AI deployment. NHS restructuring. Employee snooping. Vaccine rollouts. Spac investment. Referencing Tolkien. It’s hard to avoid priors with Palantir. To do no more than list its activities can make a person sound like a crank and/or co-founder.

That’s why a recent note from Trivariate Research caught our attention. A boutique founded by former hedge fund manager and Morgan Stanley chief US equity strategist Adam Parker, Trivariate rarely does single stocks. When it does, it just does data.

What most interests Parker is not what Palantir does, it's how much it costs. According to his calculations, Palantir is one of the most expensive US large-cap stocks ever to exist.

Palantir

Share price, $

Source: LSEG via markets.ft.com

Palantir's $314bn market capitalisation makes it a top-30 constituent of the S&P 500, between Coca-Cola and Bank of America. Its PE ratios look nuts enough — 565x trailing, 228x forward — but they're as nothing compared with sales multiples.

According to a Trivariate screen of 2000 established US non-financial stocks that goes back to the start of the century, only six have traded at a higher EV-to-forecast-sales ratio than Palantir does today:

Company	EV-to-Forecast Sales	Month Stock First Got to 70x
Palantir Technologies Inc.	79.90	Apr '25
MicroStrategy Incorporated	248.50	Oct '24
Roivant Sciences Ltd.	70.90	Aug '23
Cloudflare, Inc.	71.60	Oct '21
BridgeBio Pharma, Inc.	74.30	Aug '21
FuelCell Energy, Inc.	76.80	Jan '21
Plug Power Inc.	71.20	Jan '21
Acceleron Pharma Inc.	71.80	Jul '20
Moderna, Inc.	98.10	Feb '20
bluebird bio, Inc.	123.30	Feb '19
Alnylam Pharmaceuticals, Inc.	83.70	Jun '17
Cheniere Energy, Inc.	91.00	May '14
Comverse Technology Inc.	192.90	Jul '10
Aetna Inc.	70.20	Aug '03

FINANCIAL TIMES Trivariate Research, FTAV • Top 2k US equities, revenue >$50mn, ex-financials, end-October '00 to May '25, except Palantir and MicroStrategy, which are ratios as of June 4 2025

Five of the 15 stocks listed above are moonshot biotechs and one is ~~Micro~~Strategy, which is in its own category of weird. Of those to peak before 2024, not many were good long-term investments.

Comverse Technology was dead by 2013 and its CEO went to jail in 2017, having been on the run for more than a decade. Bluebird Bio was taken private this week for less than a fifth of its 2019 valuation. Moderna is down 94 per cent from its mid-pandemic high. FuelCell Energy’s down 99 per cent in four years, as is Plug Power. Cheniere Energy, an LNG exporter, halved in 2015 then took five years to reclaim the level.

The broader point to make is that enterprise values of 70 times forecasted sales are never normal. Most years, the number of established US stocks hitting just 30 times sales is zero.

Toppy forward valuations only really happened during the dotcom boom and the free-money pandemic era, which makes last year an outlier: Soundhound AI and Astera Labs both joined the >30x sales club in December (and had lost 60 per cent of their value by early April).

Some of these examples are extreme outliers, but stocks on Trivariate’s screen that hit 30 times forecasted sales have underperformed the S&P 500 on average by 22.5 per cent over the next year and ended the period trading at just 18 times sales.

The derating is partly due to multiple compression and partly due to downgraded forecasts. Companies enter the bubble zone after growing annual revenue by 45 per cent on average. Analysts expect them to repeat the trick and are disappointed: year-two average sales growth slows to just 28 per cent.

Where does that leave Palantir?

To find anything comparable you need to go back to the year 2000, when the makers of network widgets and software routinely traded at three-digit sales multiples.

Using trailing revenue rather than forecasts, Parker and team list the top-five most expensive stocks of the dotcom bubble as Ariba, Brocade, Juniper, Verisign and Tibco Software. Things didn’t work out great for them:

© Trivariate Research

Palantir resembles a one-stock bubble. It’s over three times more expensive than the next most expensive company (excluding Strategy) and is forecast to deliver sales growth that’s unprecedented for a company of its size, yet it is no better than what’s available elsewhere for much cheaper:

Parker and team note that the end-June S&P 500 rebalance will raise Palantir's index weighting over the large-cap threshold, and argue that this will compel active managers to apply some sanity checks:

> Palantir may be fundamentally awesome, we don't know. But we do know that no company has grown fast enough to justify this valuation, and that *many* companies are forecasted to grow faster according to consensus expectations. For large cap portfolio managers who are going to do new work on this before it hits their index, it's hard to imagine this looks attractive.

That's one take. Other analysis is available:

> EXCLUSIVE: Alex Jones Responds To The Palantir Hysteria & Lays Out What's Really Happening pic.twitter.com/dHUvPwH58k
>
> — Alex Jones (@RealAlexJones) June 2, 2025

Further reading:

— Everything is nuts. When's the crash?

Atomic Wallet users say life savings lost in bitcoin hack

DJ dailyjournal.com/articles/385979-atomic-wallet-users-say-life-savings-lost-in-bitcoin-hack

Jun. 5, 2025

Atomic Wallet faces a putative class action after a $100M cryptocurrency theft by North Korea's Lazarus Group, with plaintiffs alleging negligence despite known security flaws from a 2021 audit.

Atomic Wallet, with more than 10 million cryptocurrency users, was hit with a putative class action Wednesday by plaintiffs claiming their life savings in bitcoin were among the $100 million stolen in June 2023 by a notorious North Korean hacking group.

The complaint, filed in federal court in San Francisco, accuses Atomic Wallet of negligence and fraudulent misrepresentation. The plaintiffs claim the company became aware of security flaws during a 2021 internal audit but failed to address them.

Some of the plaintiffs lost as much as $500,000 in bitcoin, according to the filing. *Alasu et al. v. Atomic Protocol Systems et al.*, 3:25-cv-04684 (N.D. Cal. filed June 4, 2024).

The FBI confirmed in a September 2023 news release that the Lazarus Group in North Korea, also known as APT38, was responsible for the attack.

The group was responsible for other high-profile attacks, including the 2014 retaliatory attack on Sony Pictures for producing "The Interview." The movie depicted a journalist traveling to North Korea to interview the country's dictator.

Kiley Grombacher, co-founding partner for Bradley Grombacher in Westlake Village and lead attorney for the plaintiffs, called the hack a "preventable disaster" in a news release Wednesday.

"This wasn't a sophisticated hack. This was a preventable disaster. And Atomic Wallet knew it was coming," Grombacher said. "They were warned by their own security auditors that their product was unsafe. They failed to fix it, failed to warn anyone, and as a result our clients' life savings are gone."

Atomic Wallet's media office could not be reached for comment.

The company's September 2023 post to its website confirmed the attack, claimed that less than 0.1% of users were affected, and stated that no more reports were received of wallets being breached.

"Wallet app security has always been our top priority," the post stated. "None of the possible issues are confirmed as potentially causing massive breaches. Builds are verified by an external security team. Our security infrastructure has been updated, and the investigation is still ongoing."

The complaint claimed the vulnerabilities cited in Atomic Wallet's news release were discovered earlier than September 2023.

"Defendants knew of existing security vulnerabilities in the Atomic Wallet platform since at least April 2021. ... Defendants were informed by its security auditor Least Authority that funds held in Atomic Wallet may be at risk due to 'existing security vulnerabilities' and that Atomic Wallet should not be deployed or used until the security vulnerabilities were sufficiently remediated but took no measures to inform users of those risks or protect against those risks," the complaint stated.

The Lazarus Group has been in the crosshairs of federal regulators and law enforcement officials for years.

In February 2021, the U.S Department of Justice charged three members of the group with conspiracy to commit cyberattacks and financial crimes against entertainment companies and financial institutions throughout the world between 2014 and 2020.

The DOJ estimates the damage from the hackers' alleged crimes at $1.3 billion. The indictment included the hack of Sony Pictures and an attempted attack on AMC Theaters in 2014. The criminal case is pending.

The group was one of the three "North Korean state-sponsored malicious cyber groups" that were sanctioned by the U.S. Department of the Treasury in 2019.

#385979

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Chancery Strips Amazon, Others From $1.3B Zoox Merger Suit

By **Jeff Montgomery**

Law360 (June 4, 2025, 3:34 PM EDT) -- Delaware's chancellor has kept alive breach of fiduciary duty claims against most directors and two officers of self-driving taxi venture Zoox Inc. over its $1.3 billion acquisition by Amazon, while dismissing Amazon itself and rejecting stockholder fee-shifting claims.

Chancellor Kathaleen St. J. McCormick **found** Tuesday that Zoox stockholders James Wei and Yanxin Zhang adequately alleged there were conflicts involving at least half the company's board related to the tie-up, which left about $100 million to common stockholders.

As a result, the court found it reasonably conceivable that the suit, filed in 2020, must be judged on more plaintiff-friendly entire fairness standards, based on claims that the deal price and process were both unfair.

However, "to the extent that plaintiffs argue Amazon attempted to seize on conflicts within the board to its benefit, the facts pled support an inference that Amazon did a bad job of it," the chancellor wrote in dismissing Amazon from the case.

Zoox "extracted concessions from Amazon that benefitted all its equityholders at nearly every turn. That is not a basis from which the court can infer Amazon knowingly participated in a fiduciary breach."

Kept in the case was a count alleging breaches of fiduciary duty against six of the eight originally named directors as well as a count alleging breaches by Zoox CEO Aicha Evans and co-founder and chief technology officer Jesse Levinson. A similar claim against chief legal officer Christopher Nalevanko was dismissed, as was the aiding and abetting claim against Amazon.

According to the decision, the deal produced a "classic" mixed bag of results, with preferred stockholders benefiting up to a point from their stakes in a bonus plan and liquidation preference. The deal reserved proceeds for common stockholders if the price fell between $1.07 billion and $2 billion, but final terms ultimately left only about $100 million, or an extra 70 cents per share, for that group.

The four-count amended complaint, filed on behalf of two Zoox stockholders in May 2023, asserted three breach of fiduciary duty counts — one each against the officers, directors and Amazon.

The suit also claimed that deal terms were tainted by allegations of bad faith on the part of Zoox, the directors and Amazon, with a fourth count seeking that they pay non-indemnifiable stockholder legal fees.

"For the most part, this was a win for the noteholders, preferred stockholders, and certain management members only," the decision observed. "Atop the typical distortive effects that the economic rights of preferred stockholders offer in the intermediate case, the bonus plan supplied an additional conflict."

Some 25% of the cost of the bonus plan overall meanwhile fell on the common stockholders.

The decision found that preferred stockholder directors lacked independence from those whose interests in the deal conflicted with common stockholder aims. The priorities were reflected in management declaring that the acquisition was the only option, with Amazon the best choice.

During dismissal arguments in 2024, William Savitt of Wachtell Lipton Rosen & Katz argued that Zoox was an innovative transport company parked for years on the edge of financial calamity. The strongest alternative to Amazon's offer, he said, carried "crushing strings" and a requirement for $200 million from another source.

In the opinion, Chancellor McCormick likened statements by Levinson supporting the Amazon deal to statements in another case she presided over in which Richard L Stollmeyer, CEO of business software-as-service company Mindbody Inc. was seen as self-interested in backing an acquisition by Vista Equity Partners Management.

In Mindbody, stockholders won an extra $1 per share over the $36.50 price Vista paid, which was upheld by the Delaware Supreme Court. The chancellor said the case revealed a "subjective desire" by Stollmeyer "for near-term liquidity and the opportunity to continue as CEO of the post-[m]erger entity."

Evans and Levinson favored Amazon "because they could retain their roles of CEO and CTO, with the freedom to run Zoox as an independent subsidiary," the decision found. An offer from Cruise, General Motors' autonomous vehicle subsidiary, would've merged Zoox into a business that already had its own top executive and tech chief, she said.

The chancellor noted that her ruling "side-stepped" and requested further briefing on disclosure-related claims, citing failures to "neatly" address those issues.

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

The stockholders are represented by Joel Friedlander, Jeffrey M. Gorris and David Hahn of Friedlander & Gorris PA, and Randall J. Baron and David A. Knotts of Robbins Geller Rudman & Dowd LLP.

Zoox, Amazon and the other defendants are represented by Garrett B. Moritz and Benjamin M. Whitney of Ross Aronstam & Moritz LLP, and William Savitt, Anitha Reddy, Adam M. Gogolak and David P.T. Webb of Wachtell Lipton Rosen & Katz.

The case is Wei et al. v. Levinson et al., case number 2023-0521, in the Court of Chancery of the State of Delaware.

--Editing by Adam LoBelia.

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BREAKING: High Court Passes On Class Cert. Question

By **Katie Buehler**

Law360 (June 5, 2025, 10:53 AM EDT) -- The U.S. Supreme Court on Thursday declined to weigh in on whether district courts can certify a class that contains uninjured members, finding it took up a case that raised that question too soon.

In an **8-1 opinion**, the justices dismissed as improvidently granted an appeal of a Ninth Circuit decision affirming class certification for a group of legally blind patients who accuse laboratory diagnostics company Labcorp of violating the Americans with Disabilities Act by failing to make its self-service check-in kiosks accessible to them. The decision postpones a potentially landmark decision that would've provided clarification for class action litigants.

Justice Brett Kavanaugh filed a solo dissent, saying he would decide the case despite some procedural issues raised at oral arguments.

"On the question presented, I would hold that a federal court may not certify a damages class that includes both injured and uninjured members," he wrote. "Rule 23 requires that common questions predominate in damages class actions. And when a damages class includes both injured and uninjured members, common questions do not predominate."

Labcorp had asked the Supreme Court in a September 2024 petition for review to reverse the Ninth Circuit's decision in this case, arguing it was based on circuit precedent that violates both standing principles and federal rules regulating class actions.

A three-judge panel upheld the blind patients' class certification despite claims that it swept in some uninjured members as defined under the circuit's 2022 **en banc opinion** in Olean Wholesale Grocery v. Bumble Bee Foods , which established that classes could be approved as long as common questions predominated over individualized ones — even those dealing with injury or entitlement to damages. The Supreme Court **passed on a chance** in 2022 to review the precedential opinion, which Labcorp argued has contributed to a **messy array of divisions** among circuit courts when it comes to class certification standards.

But at oral arguments in April, several justices **appeared wary** of issuing an advisory opinion in this case since the challenged class definition is no longer operative. While the Ninth Circuit upheld a May 2022 district court decision certifying the class, the class of patients told the justices that an August 2022 amended definition, which was issued at the class' request to get rid of "fail-safe" language — wording that states anyone with a valid claim is a class member — and that Labcorp never appealed, controls now.

While the Supreme Court's majority didn't explain its reasons for dismissing the case, Justice Kavanaugh presumed in his dissent that it was because the justices didn't "want to tackle the threshold mootness question."

"To be clear, the court does not hold that the case is moot," he wrote. "Rather, the court simply declines to decide either the threshold mootness question or the important class-action question on which we granted certiorari. Unlike the court, I would resolve those questions."

Labcorp is represented by Noel J. Francisco, Brinton Lucas, Madeline W. Clark and David Wreesman of Jones Day.

The class is represented by Deepak Gupta, Matthew W.H. Wessler, Jonathan E. Taylor, Gregory A. Beck, Gabriel Chess and Jennifer D. Bennett of Gupta Wessler LLP.

The government is represented by Sopan Joshi, Charles W. Scarborough and Jeffrey E. Sandberg of the U.S. Solicitor General's Office.

The case is Laboratory Corporation of America Holdings v. Davis et al., case number 24-304, in the Supreme Court of the United States.

--Editing by Alex Hubbard.

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Heart Device Maker iRhythm Gets Investor Claims Trimmed

By **Katryna Perera**

Law360 (June 4, 2025, 8:23 PM EDT) -- A California federal judge has trimmed a class action accusing digital healthcare company iRhythm Technologies of making false and misleading statements about its heart-event monitoring device, finding that the suit does not plausibly plead knowledge of wrongdoing for most individual defendants, among other things.

U.S. District Judge Jacqueline Scott Corley issued an **order** on Tuesday tossing only one of the four categories of misleading statements challenged in the suit. The case claims that iRhythm and members of its top brass made false and misleading statements about the company's ZioAT device, which transmits heart event data from patients for physician monitoring.

The plaintiff — a pension fund for firefighters in Oklahoma — alleged four categories of false and misleading statements, according to the order, but Judge Corley on Tuesday only tossed the category that included statements that the Zio AT is a "mobile cardiac telemetry" device.

According to the order, the pension fund claimed these statements were false or misleading because they implied that the Zio AT was intended for "high-risk patients and near real-time monitoring." The order states that the U.S. Food and Drug Administration told iRhythm in a May 2023 "warning letter" that it should not be marketing the Zio AT as an MCT device because of the associated implications.

However, on Tuesday, Judge Corley tossed the statements from the suit because the pension fund failed to provide a definition for an MCT device "supported by well-pleaded, particular factual allegations."

According to the order, the operative complaint includes a definition of an MCT device from the Mayo Clinic's website, but it does not sufficiently allege that MCT "meant a device with the particular characteristics the Mayo Clinic identifies, or that investors would have understood MCT to mean the Mayo Clinic's definition."

"And plaintiff does not allege MCT has a plain meaning or that the term's meaning is well-understood or established so that the company's statements are provably false," the judge said. "Plaintiff fails to substantiate its definition of MCT as including the 'near-real-time' and 'continuous' requirements, but plaintiff 'must plead facts that will support this crucial premise in order to satisfy the [Private Securities Litigation Reform Act]."

The remaining categories of allegedly false and misleading statements remain in the suit. They include statements about Zio AT's "near-real-time" reporting capabilities, the device's appropriateness for use by high-risk populations, and Zio AT's accuracy.

Judge Corley also tossed the suit's scienter claims as to all but one individual defendant — iRhythm CEO Quentin Blackford.

According to the order, the FDA's 2023 warning letter was addressed to Blackford, who signed company filings with the U.S. Securities and Exchange Commission that disclosed FDA correspondence, and he "attested" to the Zio AT's wireless transmission limit, after which the device would stop transmitting any telemetry data.

"Plaintiff's factual allegations support an inference that after Mr. Blackford was aware of the transmission and inaccuracy issues and the resulting inappropriateness of the Zio AT for patients requiring near-real time transmission, he and iRhythm continued to tout the device as appropriate for such patients," the order states.

However, the scienter claims against the remaining individual defendants fail due to conclusory allegations and the insufficiency of the defendants' job titles to impute scienter.

The operative complaint, filed in October, claims the defendants knew that the Zio AT had a wireless transmission limit, an hours-long lag time in transmitting data and other issues that made the device inappropriate for use by high-risk patients.

But the capabilities and accuracy of the device were still touted during the proposed class period, leading to a stock price drop when the truth was finally revealed.

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

The pension fund is represented by John J. Rizio-Hamilton, Katherine M. Sinderson, Thomas Z. Sperber, Brittney Balser and Jonathan D. Uslaner of Bernstein Litowitz Berger & Grossman.

iRhythm and the individual defendants are represented by Kristin Tahler, Christopher Porter, Jesse Bernstein, Brenna Nelinson and Amy Shehan of Quinn Emanuel Urquhart & Sullivan LLP.

The case is Glazing Employers and Glaziers Union Local #27 Pension and Retirement Fund v. iRhythm Technologies Inc. et al., case number 3:24-cv-00706, in the U.S. District Court for the Northern District of California.

--Editing by Vaqas Asghar.

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Judge Grills Kidde-Fenwal About Missing Info In Disclosures

By **Emily Lever**

Law360 (June 4, 2025, 9:00 PM EDT) -- A Delaware bankruptcy judge Wednesday questioned why firefighting foam maker Kidde-Fenwal did not include in plan disclosures details about the recoveries its creditors can expect under its Chapter 11 proposal, as the debtor prepares to send its reorganization plan out for a vote.

At an all-day hearing, U.S. Bankruptcy Judge Laurie Selber Silverstein quizzed counsel for Kidde-Fenwal Inc., now known as KFI Wind-Down Corp., about the proposed disclosure statement, which describes a bankruptcy plan establishing settlement trusts to compensate 11 different classes of claimants bringing tort claims over so-called forever chemicals in the company's products.

Judge Silverstein did not issue any ruling during the hearing, but asked the debtor's attorney why the disclosure statement did not specify the projected recovery for each creditor class, either in terms of percentage or raw dollar amount.

"Normally, we have a recovery chart. We don't have one here. Why?" she asked.

"The total asserted value of claims and what the debtor thinks they are — those kind of numbers we often see," the judge added. "From a claimant's standpoint, what's the pool? It's not a secret, so why isn't it in the disclosure statement?"

A group of insurers, including National Union Fire Insurance Co. of Pittsburgh and Lexington Insurance, objected to the disclosure statement on the grounds that it was incomplete and would provide little information on the value of claims on behalf of the estate.

The $2.4 billion cash distribution to parent company Carrier Global Corp., in exchange for forgoing insurance proceeds, is also a black box, Jennifer Hardy of Willkie Farr & Gallagher LLP, counsel for the insurers, told the court.

Under the plan, the debtor would allocate $1.75 billion each of insurance proceeds to Carrier and to the general aqueous firefighting foams settlement trust, then 20% to Carrier and 80% to the trust until Carrier has received $2.4 billion in total, and the rest of the insurance proceeds thereafter would go to the settlement trust, according to the disclosure statement.

"There is no information on value of claims KFI is giving up," Hardy said. "What claims against Carrier are out there?"

The debtor's liquidation analysis is disingenuous because it assumes a Chapter 7 proceeding would lead to the exact same scenario contemplated by its current plan, plus the added expense of Chapter 7 trustee fees, and thus incorrectly concludes a Chapter 11 is more economically advantageous, the insurers' lawyer continued.

"What's actually more likely is the Chapter 7 trustee would lift the stay and allow the MDLs to proceed," Hardy said, referencing the multidistrict litigation over chemicals known as per- and polyfluoroalkyl substances, or PFAS.

Representatives of the attorneys general of New York and other states challenged Carrier's proposed $540 million deal that would release the parent firm from forever-chemicals litigation liability, saying it was an end run around a recent U.S. Supreme Court in drugmaker Purdue Pharma LP's bankruptcy case.

The states asserted in their objection that the proposed settlement, initially revealed in a U.S. Securities and Exchange Commission filing in October, is a roundabout form of a nonconsensual third-party release of the kind the high court shot down in its Purdue decision.

The official committee of unsecured creditors backed the liquidation plan, arguing the objection from insurers was an attempt to avoid coverage, and said that objections from state attorneys general are at best issues for confirmation.

Kidde-Fenwal filed for bankruptcy in May 2023 because of the thousands of lawsuits it was facing from firefighters, water suppliers, governmental entities and others over its firefighting foam.

Claimants asserted that the products contain PFAS that are dangerous to public health and the environment. The company was facing more than $1 billion in claims when it entered Chapter 11.

In its SEC filing in October 2024, Carrier explained it will enter three distinct settlement agreements: one with KFI, a second with the official committee of unsecured creditors appointed in KFI's bankruptcy case, and a third with the co-leads of the plaintiffs' executive committee appointed in the firefighting foam MDL in South Carolina federal court.

The states are represented by their respective attorneys general.

The objecting insurers are represented by Jennifer Hardy, Gabrielle Crofford, Joseph G. Davis, Barnett Harris, Yara Kass-Gergi and Simone Marton of Willkie Farr & Gallagher LLP and William E. Chipman Jr. of Chipman Brown Cicero & Cole LLP.

Carrier is represented by Paul M. Basta, Kenneth S. Ziman and Robert A. Britton of Paul Weiss Rifkind Wharton & Garrison LLP.

The official committee of unsecured creditors is represented by David J. Molton, Cathrine M. Castaldi and Eric R. Goodman of Brown Rudnick LLP and Sander L. Esserman of Stutzman Bromberg Esserman & Plifka PC.

The debtor is represented by Andy Dietderich, Brian D. Glueckstein, Justin J. DeCamp and Benjamin S. Beller of Sullivan & Cromwell LLP and Derek C. Abbott and Andrew R. Remming of Morris Nichols Arsht & Tunnell LLP.

The case is In re: KFI Wind-Down Corp., case number 1:23-bk-10638, in the U.S. Bankruptcy Court for the District of Delaware.

--Additional reporting by Vince Sullivan and Lauren Berg. Editing by Covey Son.

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Barclays Investors Can't Redo Unregistered Securities Suit

By **Katryna Perera**

Law360 (June 4, 2025, 10:31 PM EDT) -- A New York federal judge has declined to reconsider his dismissal of a securities class action alleging Barclays misled investors about its internal controls and unregistered securities sales, which eventually triggered so-called short squeezes, finding that the plaintiffs' most recent arguments are "unavailing" for the same reasons that led to their dismissal.

According to an **opinion and order** issued by U.S. District Judge Lewis J. Liman on Tuesday, plaintiffs Ruth May, Donna Ledgerwood, Justin Reed, Jeffrey Knapp and Mark Howarth — together known as the May plaintiffs — asked for reconsideration of two conclusions the judge reached in his **March dismissal order**.

The underlying suit stems from Barclays PLC's loss of its "well known seasoned issuer" — or WKSI — status, which had allowed the London-based investment bank to sell certain securities without prior review by the U.S. Securities and Exchange Commission.

Barclays lost its WKSI status after it **agreed to pay $97 million** to settle a U.S. Securities and Exchange Commission enforcement action in May 2017 for investment client overcharges. Following the status change, the bank was required to disclose to the SEC various bank-issued notes before issuing them. However, in March 2022, the bank discovered internal controls were not in place to track the bank's issuance and sales of certain securities from its so-called shelf registration statements.

As a result, the bank had issued and sold billions of unregistered securities in multiple exchange-traded notes, including one called "Barclays Bank PLC iPath Series B S&P 500 VIX Short-Term Future" — or VXX — which had allowed traders to bet on the short-term volatility of the S&P 500 Index option contracts listed on the Chicago Board of Options Exchange.

In light of its registration statement errors, the bank could not issue additional notes, which triggered a trading activity frenzy, including prolonged short squeezes that the investors generally allege caused huge losses.

The May plaintiffs **allege** they were among the VXX buyers who bought the over-issued securities before a 4:1 reverse split.

In their motion for reconsideration, the plaintiffs first asked the judge to rethink his conclusion that the reverse split was not a sale or offer under the Securities Act of 1933, and therefore, the plaintiffs had failed to allege that they purchased unregistered VXX ETNs from Barclays.

According to Tuesday's order, Judge Liman determined that Barclays did not receive anything of value as a result of the reverse split, but the plaintiffs argue Barclays received value in the form of plaintiffs' "pre-split ETN's and/or cancelation of Barclays' obligations under them."

"In effect, Plaintiffs argue that because the relinquished shares had value, Barclays should be viewed as having sold or disposed of the post-split shares in exchange for that value, regardless whether Barclays already possessed the contractual right to force the split," the opinion states.

But Judge Liman disagreed with the plaintiffs' argument, saying that just because the pre-split shares had value does not mean that "Barclays' exchange of every four of those shares for one of the post-split shares is a sale within the meaning of the Securities Act."

"In purchasing the pre-split VXX ETNs, plaintiffs gave Barclays the contractual right to effectuate the split and thus had no decision to make and no new value to give up when the split occurred," the opinion states. "To the extent plaintiffs argue that they did give up something of new value in the split, they point only to arguments that the court expressly rejected ... those arguments fail again for the same reasons."

The plaintiffs also asked the judge to reconsider his ruling that the plaintiffs' Section 11 claim failed because they failed to plead that their VXX notes "were issued under or registered to [an] allegedly defective registration statement," a necessary element of a Section 11 claim.

The plaintiffs say the court erred in not treating a pricing supplement from Barclays related to the reverse split as the deficient registration statement.

But Judge Liman said that because the plaintiffs acquired their shares to "whatever pre-split registration statement was operative at the time of the acquisition," they cannot now invoke the pricing supplement for traceability.

The judge also again denied the plaintiffs' request for leave to amend their claims, saying it would be futile.

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

The plaintiffs are represented by Mazin A. Sbaiti, Jonathan Bridges, Kevin N. Colquitt and Griffin S. Rubin of Sbaiti & Company PLLC.

Barclays is represented by Jeffrey T. Scott, Matthew J. Porpora and Julia A. Malkina of Sullivan & Cromwell LLP.

The case is May et al. v. Barclays PLC et al., case number 1:23-cv-02583, in the U.S. District Court for the Southern District of New York.

--Additional reporting by Dorothy Atkins.

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Android User Says Meta Secretly Links Browsing To Profiles

By **Lauren Berg**

Law360 (June 4, 2025, 10:00 PM EDT) -- Meta Platforms Inc. secretly exploits an Android communication channel to tie users' browsing information to their Facebook and Instagram profiles, rendering that information completely identifiable and making it easier to target users with advertisements, according to a proposed class action filed Tuesday in California federal court.

Meta's behavior not only violates Android security protocols like "sandboxing," which keeps app and website data separate, and browsers using incognito mode, but also Google's security policies — all in the name of acquiring as much information about users as possible, according to the **complaint** filed by California resident Devin Rose.

"The less anonymous users are, the more they can be targeted with advertisements on Facebook and Instagram, and the more opportunity to target such users will be worth to advertisers," the suit says. "So, by exploiting this channel, Meta rendered Android users completely de-anonymous and exponentially increased the value of the data it collects."

"However, Meta did this not only in violation of federal and California privacy laws, but without either users or websites' knowledge or consent," it contends.

According to the complaint, Meta's Pixel tracking tool can be installed on websites to help businesses and advertisers measure what visitors are looking at, what they're buying and other such metrics, but it also allows Meta to intercept and collect users' activity on those websites.

"Meta causes the browser to secretly and simultaneously duplicate the communication with the website, transmitting it to Meta's servers alongside additional information that transcribes the communication's content and the individual's identity," the complaint states. "This entire process occurs within milliseconds."

In the case of Android mobile phones, apps are not supposed to be able to access data collected from or on websites, and vice versa, according to the suit. But beginning in September 2024 and continuing through at least this month, Meta abused internet protocols, causing Google Chrome and other browsers on Android phones to secretly send unique identifiers to apps installed on a device, the complaint states.

This abuse allowed Meta to bypass security and privacy protections to pass cookies and other identifiers from websites containing its Pixel to Android apps for Facebook and Instagram, tying browsing history to account holders, according to the complaint.

"This process renders the browsing history of Android users completely identifiable and more comprehensive than intended, as Meta collects a user's browsing information and ties the browsing information to [personally identifiable information] like full name, e-mail address and other contact information provided on Facebook and Instagram profiles that is not anonymous," Rose says.

"And, of course, Meta profits considerably from this data collection, as Meta's advertising business depends on compiling as much data about users as possible to enable the greatest precision for ad targeting," he adds.

Rose wants to represent a nationwide class of potentially tens or hundreds of millions of Android users "with a Facebook or Instagram account who (i) have the Facebook or Instagram app installed on their Android phone, (ii) visited on their Android mobile phones a website between September 2024 and June 2, 2025, where the Meta Tracking Pixel was installed, and (iii) whose browsing information was collected by Meta.

He also wants to represent a subclass of California residents.

The suit claims intrusion upon seclusion, violations of the California Invasion of Privacy Act, unjust enrichment and violation of the Electronic Communications Privacy Act. It seeks compensatory, punitive and statutory damages, litigation costs and attorney fees.

Meta declined to comment Wednesday. Counsel for Rose did not immediately respond to a request for comment.

Google has faced its own **privacy allegations** over its "incognito" or private browsing mode.

In January 2024, Google **cut a deal** to end a suit that accused it of surreptitiously tracking Chrome users running the browser's incognito mode. Class attorneys in that case **sought $218 million** in fees.

The Ninth Circuit in **August 2024 reversed** the **dismissal** of another proposed class action accusing Google of **surreptitiously collecting** Chrome users' data. The consumers are now seeking class certification, a move that U.S. District Judge Yvonne Gonzalez Rogers expressed doubt about at a **hearing in March** while also observing that the case raises "classic" trial questions.

And in January, a Texas appeals court **wiped out** the state's deceptive trade practices suit alleging Google misleads consumers about the privacy available through its "Incognito" mode, saying the lower court doesn't have jurisdiction to hear the case.

Texas first sued Google in 2022 alleging that the tech giant was misleading users into thinking their search histories and location, among other things, were kept private through the use of Google's "incognito" mode.

But the Court of Appeals for the Thirteenth District of Texas on Jan. 9 found that the state's claims did not have a sufficient tie to Texas to grant the lower court jurisdiction over the case.

Rose is represented by Philip L. Fraietta and Emily A. Horne of Bursor & Fisher PA.

Counsel information for Meta was not immediately available.

The case is Devin Rose v. Meta Platforms Inc., case number 3:25-cv-04674, in the U.S. District Court for the Northern District of California.

--Additional reporting by Dorothy Atkins, Allison Grande and Spencer Brewer. Editing by Kristen Becker.

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Titan Of The Plaintiffs Bar: Bernstein Litowitz's Salvatore Graziano

By **Sydney Price**

Law360 (June 4, 2025, 4:00 PM EDT) -- When Bernstein Litowitz Berger & Grossmann LLP's Salvatore Graziano made the switch from prosecution to securities litigation in the '90s, he realized he had an uphill battle ahead of him.

Salvatore Graziano

Bernstein Litowitz

What keeps him motivated?

"I just continue to be determined to prove the merit in our cases. Achieving that success is very rewarding."

Graziano, who earned his law degree from New York University School of Law, began his career as a criminal prosecutor. He was an assistant district attorney in the Manhattan District Attorney's Office before practicing securities litigation.

"As a prosecutor, I'd walk into court and, most of the time, the judge was already on my side, the jury was on my side and the court officers were on my side," Graziano remembered. "So now I'm in this new field — I'm a private securities litigation attorney, and everything is the opposite."

Over the years, Graziano has become one of the most trusted litigators in the space. In 2024 alone, he helped lead three major investor suits before the U.S. Supreme Court against Macquarie, Facebook and Nvidia, earning him recognition as one of **Law360's 2025 Titans of the Plaintiffs Bar**.

Graziano said he and his clients were fortunate to have the support of the solicitor general in all three of those cases.

"That was an important partnership, and I hope it can continue," he said.

In the Facebook case, the Supreme Court dismissed Facebook's appeal after oral arguments as **"improvidently granted,"** which left intact the Ninth Circuit's ruling in favor of the investors.

The investors had alleged Facebook's risk disclosures were misleading, because they presented the risk of improper third-party data access and misuse as a hypothetical possibility — even though such an incident had already occurred with the Cambridge Analytica scandal.

"It's a pattern that a company purports to warn about a risk that could happen when the risk already has happened, and they don't disclose it," Graziano said.

Graziano did not personally argue before the high court, but he told Law360 he was deeply involved in every other aspect.

Other cases that went to the high court that Graziano worked on included litigation against Nvidia, a case in which investors had alleged the company misled them about the degree to which its record revenue growth depended on highly volatile cryptocurrency-mining sales.

Similar to the Facebook case, the Supreme Court dismissed Nvidia's appeal as "improvidently granted."

Before becoming a securities litigator, Graziano also had an interest in fraud prosecution, but explored the idea of plaintiff-side class action work after taking advice from an acquaintance to look into it. By 1995, Graziano had made the switch. Around the same time, Congress passed the Private Securities Litigation Reform Act, which Graziano said permanently altered his field for the better.

The PSLRA established heightened pleading standards, as well as the 60-day window in which putative class members may move for appointment as lead plaintiff and demonstrate their losses, which encouraged large institutional investors to come forward.

According to a study conducted by PwC, more than 27% of all securities litigation was led by pension funds by 2002.

Thirty years after its passage, Graziano reflected on how groundbreaking the act was.

"Suddenly there were very large institutional investors who stepped up to be lead plaintiffs," Graziano said. "They were committed to the cases, they were committed to the results. My goals for what I wanted to do were just transformed with that change. It was just so much better to go to court and represent, for example, the largest investor in the state of New York."

Graziano also credits his success to the support of his colleagues, and those who have worked with him have witnessed his commitment to his work. Laura Posner, a partner at Cohen Milstein Sellers & Toll PLLC, previously worked with Graziano at Bernstein Litowitz and continues to collaborate with him on cases as co-counsel.

One standout memory for Posner was a landmark case against Schering-Plough over its cholesterol drug Vytorin. The plaintiffs had alleged Merck and Schering-Plough, which merged in 2009, announced negative results regarding Vytorin's efficacy after touting its benefits, resulting in significant share declines.

The case was settled on the eve of trial in 2013 for $688 million — the second-largest securities class action recovery against a pharmaceutical company in history and among the largest securities class action settlements ever.

"We did many mock trials in preparation for the actual trial," Posner recalls. "I learned a lot watching [Graziano] explain complex ideas about securities and pharmaceuticals to jurors.

"[Graziano] and I continue to work together on various appellate and Supreme Court cases on behalf of the plaintiffs bar, and on legislation and regulatory action impacting investors. He's very dedicated to investors' rights and doing what is in the best interest of shareholders."

Andrew Zivitz, a partner at Kessler Topaz Meltzer & Check LLP, has litigated numerous cases with Graziano over the past 15 years as co-lead counsel. Graziano refuses to take the easy way out, and his clients are better off for it, Zivitz said.

"We had a case in which we were lead counsel and [Bernstein Litowitz] served as additional counsel," Zivitz recalled. "We sent the [Bernstein Litowitz] team a lengthy filing to review. Within 24 hours, Sal called me and provided what ended up being valuable feedback."

Zivitz added: "He could easily have given the assignment to a younger member of his team, but he chose to do it himself. Characteristic of the kind of advocate he is."

After 30 years in the practice, Graziano said he is still as passionate about his work as ever.

"It's a bit of a cliché, but you have to love what you do," he said. "I just continue to be determined to prove the merit in our cases. Achieving that success is very rewarding."

--Editing by Lakshna Mehta.
