Securities Law News

BDO's Audit Missteps Matter, AmTrust Shareholders Tell Justices

Aug. 13, 2025, 4:29 PM PDT

Investors of specialty insurer AmTrust Financial Services Inc. are urging the US Supreme Court to let stand a lower court decision finding auditors liable when they fail to protect shareholders.

Lawyers representing the investors pressed the high court in a brief filed Wednesday to deny a petition to review a US Court of Appeals for the Second Circuit decision that found AmTrust's auditor, BDO USA P.C., should face fraud claims over its botched work for the insurer.

At issue is whether shareholders consider auditor mistakes as material, or significant, information that could alter their investment choices. Not every breach of audit standards would meet that threshold, but BDO's incomplete audit of AmTrust and such "false reassurance" would, the investors argued.

"The court of appeals did not declare that a minor deviation from auditing standards renders a certification materially false," the investors said. "That question did not arise in this case because the audit failures were anything but minor."

The appeals court rejected BDO's argument that an "auditor can falsely claim to have complied with auditing standards with impunity, even if the auditor conducted no real audit at all," the investors said.

AmTrust shareholders also argued that there was no circuit split for the high court to settle.

In a May petition to the high court, BDO argued that "innocent" mistakes or misstatements by the auditor didn't alter the audit outcome or the information available to investors about AmTrust's financial health. The October appeals court ruling, the firm said, deviates from past Supreme Court decisions upholding a materiality standard that has protected auditors from "crushing liability" for such missteps.

BDO has acknowledged that it skipped certain steps during the audit and initially falsely reported that its work complied with US audit standards. The firm later completed those missed procedures.

BDO declined to comment. McDermott Will & Emery LLP represents BDO in its appeal to the Supreme Court.

The Manhattan-based Second Circuit found in October that “BDO consciously covered up its own misrepresentation” that its audit met US standards and that investors sufficiently argued that the firm “acted recklessly.”

Investors, represented by Robbins Geller Rudman & Dowd LLP, sued AmTrust, BDO, and several underwriters for misleading them about the company’s financial health after the insurer restated five years of results to correct accounting for warrant revenue on extended service plans and other accounting errors.

The corrections rippled throughout the company’s financial statements hitting net income, assets, and cash flows. The company’s market cap shed $1.6 billion on the news, according to the investor suit.

The case is BDO USA LLP vs. New England Carpenters Guaranteed Annuity and Pension Funds et al , U.S., 24-1151, 8/13/25 .

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Securities Law News

KinderCare IPO Investor Sues Over Child Endangerment Accusations

Aug. 13, 2025, 11:06 AM PDT

KinderCare Learning Cos. Inc. glossed over incidents of child abuse and insufficient care in its initial public offering paperwork, a proposed class action said.

The daycare and child educator's IPO documentation left out "numerous incidents of inappropriate conduct or otherwise substandard care," an investor told the US District Court for the District of Oregon. The complaint cited incidents of toddlers escaping and roaming into traffic, being locked alone in facilities and buses, and intentional "physical, verbal, and sexual abuse."

The registration statement was misleading in a way that would've mattered to investors during the Partners Group Holding AG-backed IPO last year, the complaint filed Tuesday said. It presented risks of negative business effects as a generic when specific incidents had already happened, making it misleading "when read in conjunction with the Registration Statement's repeated emphasis that KinderCare provides the 'highest quality care possible.'"

Edwin Dorsey's "The Bear Cave" said KinderCare, which receives government subsidies, failed to provide the nurturing environment it portrays to parents and taxpayers. An April report highlighted claims including an 11-month old testing positive for cocaine and a teacher being arrested for repeatedly punching a child in the head.

KinderCare said in April that incidents were isolated, it conducted investigations, and took actions to "ensure the safety of the children in our care, including the termination of teachers who were at fault.

Revelations hindered share prices, said investor Venkata Surya Teja Gollapalli. Last year's IPO was priced at $24 a share. KinderCare's stock price closed at $9.81 on Tuesday.

The lawsuit was filed the same day KinderCare reported disappointing second quarter results, citing softer-than-anticipated enrollment.

Keller Rohrback LLP, Robbins Geller Rudman & Dowd LLP, and Johnson Fistel PLLP represent Gollapalli. The proposed class aims to cover those who bought stock in or traceable to KinderCare's October IPO.

Gollapalli's suing KinderCare, certain executives and board members who were around for the IPO, and underwriters Goldman Sachs & Co. LLC, Morgan Stanley & Co. LLC, Barclays Capital Inc., and UBS Securities LLC. And Gollapalli's suing Partners Group, a Swiss private equity firm which owned KinderCare prior to the IPO and a controlling interest through affiliated entities after.

KinderCare didn't immediately respond to an email seeking comment. Partners Group declined to comment.

The case is Gollapalli v. KinderCare Learning Cos., Inc. , D. Or., No. 3:25-cv-01424, complaint filed 8/12/25 .

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Securities Law News

FirstEnergy Securities Class Certification Undone on Appeal (2)

Aug. 13, 2025, 4:10 PM PDT; Updated: Aug. 14, 2025, 5:44 AM PDT

FirstEnergy Corp. on Wednesday won a Sixth Circuit ruling rejecting class certification in a securities lawsuit it faces after being implicated in an Ohio political scandal.

The lower court judge who certified the class applied the wrong legal standard when it concluded the communications at the heart of this case were primarily omission-based, the US Court of Appeals for the Sixth Circuit ruled.

The unanimous three-judge panel emphasized its remand was limited, and that it was vacating the March 2023 certification order only to remand the case to Columbus, Ohio, US District Juge Algenon Marbley for reconsideration under the proper standard.

The securities case, filed in 2020, stems from conduct FirstEnergy undertook to affect state actions that ultimately helped its bottom line and what they did or didn't disclose to investors about them. This included a $60 million bribery scheme involving former Ohio House Speaker Larry Householder (R) to ram through a $1.3 billion bill that bailed out two nuclear power plants the utility owned at the time. The company also admitted that executives paid the state's top utility regulator a $4.3 million bribe.

Class certification would have covered all people who acquired FirstEnergy securities between February 2017 and July 2020.

The appellate panel heard oral arguments in July 2024. Attorneys for the Akron, Ohio-based company argued then that Marbley had incorrectly invoked a 1972 US Supreme Court standard for weighing actionable omissions in *Affiliated Ute Citizens of Utah v. United States* , when he should've relied solely on the high court's 1988 decision in *Basic Inc. v. Levinson* addressing affirmative misstatements.

Plaintiff's attorney Jason Forge asserted Marbley had applied the proper standard.

Foreshadowing the panel's ruling, Judge Julia Smith Gibbons said then, "Our problem is just really a pretty narrow one, which is trying to figure out if the district court's analysis in granting class certification was correct or incorrect."

‘Fly in the Face’

Though a misrepresentation omits part of the truth, an affirmative misstatement is “directly incorrect,” Judge Danny J. Boggs said in Wednesday’s ruling. The differences between the colloquial definition of “omission” and the term’s use in securities law precedent “counsel against allowing concealment via half-truth” to qualify for *Affiliated Ute*‘s presumption of reliance based on the obligation to disclose, he said.

Expanding that presumption would also “fly in the face” of a type of presumption of reliance based on the integrity of the market price and “the decades of precedent that have followed its strongly drawn line between omissions and misrepresentations,” Boggs said. Judges Eric L. Clay joined in the opinion.

FirstEnergy’s appellate stance drew friend-of-the-court support from the International Association of Defense Counsel, as well as the US Chamber of Commerce, the Securities Industry and Financial Markets Association better known as SIFMA, American Tort Reform Association, and a consortium of legal scholars including Richard Epstein, Joseph Grundfest and Karen E. Woody.

Under a 2021 deferred-prosecution agreement, FirstEnergy admitted that it conspired with public officials and others to pay millions of dollars in bribes. The company agreed to pay $230 million, the largest criminal penalty ever imposed by the U.S. Attorney’s Office for the Southern District of Ohio.

“FirstEnergy is pleased that the U.S. Court of Appeals for the Sixth Circuit has vacated the ‘defective’ class certification order in its HB6-related securities litigation and clarified the critical requirements for certifying a class,” said Sullivan & Cromwell Co-Chair Bob Giuffra in a statement. “On remand, the Sixth Circuit has directed the district court to conduct a ‘rigorous analysis’ of whether plaintiffs can meet those requirements. FirstEnergy will contest efforts to seek damages for losses that the company did not cause.”

The shareholders are also represented by Robbins Geller Rudman & Dowd LLP and Murray Murphy Moul + Basil LLP. FirstEnergy is also represented by Jones Day and Ballard Spahr LLP.

The case is Owens v. FirstEnergy Corp. , 6th Cir., No. 23-3940, 8/13/25 .

(Updates story originally published Aug. 12 with statement from Sullivan & Cromwell.)

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US appeals court wipes out order certifying FirstEnergy investor class action

8/14/25 REUTERS LEGAL 15:12:53 • Copyright (c) 2025 Thomson Reuters • Mike Scarcella

REUTERS LEGAL • August 14, 2025

(Reuters) -A U.S. appeals court has reversed an earlier decision allowing a group of investors to band together to sue Ohio electric utility FirstEnergy for billions of dollars in damages for alleged violations of federal securities laws.

The unanimous ruling on Wednesday by a three-judge panel of the 6th U.S. Circuit Court of Appeals in Cincinnati overturned a federal judge's 2023 order certifying a class action against FirstEnergy, one of the country's largest investor-owned electric systems.

The 6th Circuit called the order "defective" and directed the lower court judge to apply a more stringent legal standard that it said would serve as a new test for certifying class actions in similar cases.

The appeals court set a new standard for judges to weigh whether securities class action plaintiffs are alleging omissions in statements to investors, misrepresentations or a mix of both. Plaintiffs can face a higher bar to prove specific statements were misrepresentations.

Circuit Judge Danny Boggs, joined by Circuit Judges Eric Clay and Julia Smith Gibbons, also said the trial judge incorrectly overlooked a "rigorous-analysis" requirement in assessing the plaintiffs' claim of $8 billion in damages.

In a statement, a lead attorney for FirstEnergy said the utility welcomed the court's clarification on requirements for class certification.

"FirstEnergy will contest efforts to seek damages for losses that the company did not cause," said Robert Giuffra Jr, who represented FirstEnergy in its appeal.

An attorney for the investors did not immediately respond to a request for comment.

The lawsuit by FirstEnergy shareholders and noteholders stemmed from a years-long bribery scheme involving the company's payments to Ohio lawmakers. In 2021, FirstEnergy paid $230 million to the U.S. government to settle a federal criminal investigation.

Investors accused FirstEnergy of omissions and misrepresentations amid its failure to disclose the bribery scheme. FirstEnergy has admitted to making illegal political contributions but denied violating U.S. securities laws.

Lawyers for the investors argued to the 6th Circuit that "preventing investors from learning about the millions of dollars FirstEnergy was pouring into its criminal conspiracy was a central part of FirstEnergy's deception."

The U.S. Chamber of Commerce and Securities Industry and Financial Markets Association were among the groups that signed a court filing supporting FirstEnergy.

They warned the appeals court that leaving the trial judge's ruling in place would lower the bar for class certification and "increase the frequency of baseless securities fraud class actions."

The case is Diane Owens et al v. FirstEnergy Corporation et al, 6th U.S. Circuit Court of Appeals, No. 23-3940.

For Owens: Jason Forge of Robbins Geller Rudman & Dowd

For FirstEnergy: Robert Giuffra Jr of Sullivan & Cromwell

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Tennis players suing NCAA over prize money can band together in class action, judge rules

US Supreme Court reverses decision to rule on class action question

Judge green-lights class actions over US turkey prices

Apple loses bid to appeal order allowing consumer antitrust class action

References

FIRSTENERGY CORP.; SULLIVAN & CROMWELL LLP; ROBBINS GELLER RUDMAN & DOWD LLP; Government of The United States of America(RenoBranch)

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Sixth Circuit Outlines Broad Application of Attorney-Client Privilege and Work-Product Doctrine to Internal Investigations

wlf.org/2025/08/13/wlf-legal-pulse/sixth-circuit-outlines-broad-application-of-attorney-client-privilege-and-work-product-doctrine-to-internal-investigations

Glenn Lammi August 13, 2025

Featured Expert Contributor, White Collar Crime and Corporate Compliance

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* * *

A recent decision from the U.S. Court of Appeals for the Sixth Circuit demonstrates the limited showing necessary to assert attorney-client privilege and work-product protections in the context of internal investigations. In reversing a district court decision to allow discovery, a unanimous three-judge panel, led by Chief Judge Jeffrey Sutton, observed that "[w]hat matters for attorney-client privilege is not *what* a company does with its legal advice, but simply *whether* a company seeks legal advice." Citing to precedent, the court clarified that the question to be considered by a court is whether there was a decision to solicit legal advice irrespective of a company's reason for wanting that legal advice. Similarly, the court found that the question of whether the work-product doctrine applies hinges on whether there is any evidence to support the finding that anticipation of litigation was reasonable. This decision provides useful guidance for protecting the attorney-client privilege and work-product doctrine in internal investigations of all types.

Background

The case at issue, *[In re: FirstEnergy Corporation Security Litigation](https://)*, arises from one of the most significant public corruption schemes in U.S. history. Following the indictment and arrest of then-Ohio House Speaker Larry Householder and several others on federal charges related to their alleged involvement in a bribery scheme also involving Ohio's largest utility company, FirstEnergy Corporation (FirstEnergy, identified as "Company A Corp" in the indictment), FirstEnergy engaged outside counsel to investigate the involvement of the company and its employees and agents in the alleged scheme.

Not long after the arrest, the U.S. Department of Justice sent a subpoena to FirstEnergy, and several lawsuits and government investigations followed. The recent Sixth Circuit decision comes from one of those cases, a securities class action, in which counsel for the class sought production of materials from FirstEnergy's internal investigations. FirstEnergy resisted, arguing that those materials were protected from disclosure by the attorney-client privilege and work product doctrine. Plaintiffs sought to compel production, arguing that the materials were prepared "primarily" for business and human resources purposes, not to provide legal advice or in anticipation of litigation.

In opposition to the motion, FirstEnergy argued that the investigations were conducted because "FirstEnergy was facing sudden and extraordinary legal risk" thus supporting its position that the materials were protected from discovery. FirstEnergy primarily supported this argument through the declaration of one of its board members who explained that the company conducted the investigations because of potential criminal and civil liability. However, a special master, appointed to make findings and recommendations in the matter, found that the declaration was defective in that it did not contain all the language required by 28 U.S.C. § 1746. Specifically, the declaration did not state that its contents were true. In addition, the special master found that the plaintiffs had presented evidence that the subject investigation related to the "business and human resources/public relations arena, even if those same issues also logically overlap with anticipated litigation." Accordingly, the special master held that the discovery sought was not protected by the attorney-client privilege or work-product doctrine.

FirstEnergy filed objections to the special master's decision with the district court, but the district court overruled the objections. FirstEnergy then sought a stay from the Sixth Circuit, which after a delay of a year, granted that request. The core of the decision is the finding that the materials were protected, such that FirstEnergy was likely to succeed on the merits of its claim.

The Attorney-Client Privilege Protects Documents that Have a Business Purpose if the Company Sought Legal Advice

The Sixth Circuit rejected the district court's determination that the documents were not protected by the attorney-client privilege because they were used for a "business purpose." In that regard, the district court noted that privilege claims are narrowly construed, and, where there is both legal and business purpose, the question is whether the "predominant purpose" is to render legal advice. Dist. Ct. Order at 18-19. Because the investigation had been prepared in the ordinary course of business pursuant to SEC requirements and for non-litigation human resources/public relations purposes, the district court found that the materials were not attorney-client privileged.

By contrast, the Sixth Circuit found little support for the challenge. It set forth the standard for attorney-client privilege as where there are "confidential communications between a client and his attorney if the purpose of the communication is to obtain legal advice," and determined that it "doesn't matter *what* a company does with its legal advice, but simply *whether* a company seeks legal advice." That is a much broader reading of the privilege than the district court applied and one that all but dismisses any consideration of whether the purpose for seeking the materials was the provision of legal advice. Understanding the opinion to create a broad protection seems by design: the court flatly stated that "it is the rare company faced with such criminal and civil allegations that would not have a business-related reason for seeking such critical and essential legal advice." In other words, a business is expected to have a business-related reason for seeking legal advice.

Thus, the Sixth Circuit's reading of the law appears to be that evidencing a mixed purpose for the communication is largely moot. Where counsel is involved both for business reasons and to provide legal advice, it is not a sufficient challenge to point to the mixed purpose

Instead, where the business can show that it did in fact go to counsel, regardless of whether the purpose of the inquiry was for legal reasons or for business purposes, the protection can be upheld.

Surrounding Circumstances Can Prove Work Product Protection

As for the work product question, the district court agreed with the special master that the proper test was to determine whether the primary purpose for creating the materials in question was anticipation of litigation. However, the Sixth Circuit construed that test in a unique way, instead looking purely at the situation in which the documents were created, without any direct evidence of FirstEnergy's subjective intent. The court noted that "[t]he deluge began when the [DOJ] subpoenaed FirstEnergy immediately following the arrest for Householder, whose criminal complaint implicated FirstEnergy in wrongdoing." Within weeks after that, "eight lawsuits loomed over various FirstEnergy directors and officers, along with multiple investigations into FirstEnergy …." By the Sixth Circuit's reasoning, this timeline alone demonstrated that the company conducted the investigations in anticipation of litigation. Facing an "onslaught" of external investigations, FirstEnergy was entitled to a *de facto* presumption that its internal investigation was initiated in anticipation of litigation.

The Sixth Circuit's decision is significant in part because the court engaged in an "abuse of discretion" review. That level of review looks to whether the trial court "relies on erroneous finding of fact, applies the wrong legal standard, misapplies the correct legal standard when reaching a conclusion, or makes a clear error of judgment." The opinion does not make it clear which of these elements the trial court violated. Whichever one it did, the point is that the relative timing and significance of oncoming litigation can be sufficient to demonstrate this degree of error.

Discovery Practices May Have Contributed to the Result

When considering the opinion's future impact, litigants should assess how two specific aspects of the plaintiffs' litigation strategy influenced the Sixth Circuit's opinion. The class used a broad discovery request, seeking "production of all previously withheld documents … related to the internal investigation." Additionally, the class agreed that FirstEnergy did not need to provide a privilege log for "any" documents exchanged with outside counsel that were created after Householder's arrest. Those factors, common in litigation, were key to the Sixth Circuit's decision. The class argued that FirstEnergy's failure to provide details supporting its claims of protection defeated its claims of privilege. The Sixth Circuit, however, excused the failure to provide details because the class had agreed that no details need be provided and, additionally, seemed to chide the class for its broad request: "FirstEnergy's failure to identify any specific documents as privileged matched the plaintiffs' broad and undifferentiated request for 'all previously withheld documents … related to the internal investigation.'" Although broad requests and agreements not to provide privilege logs for communications with outside counsel after the beginning of litigation are common, such agreements can inform the outcome of a subsequent discovery dispute.

Conclusion and Suggestions for Best Practice

The *FirstEnergy* decision calls into question several seemingly well-settled principles. First, it seems no longer necessary to prove that a communication was made for the purpose of seeking legal advice. Instead, the fact of seeking legal counsel seems sufficient to establish the attorney-client privilege. Second, a party's determination that a document was prepared in anticipation of litigation can be supported solely through evidence of the circumstances surrounding the creation of the document. Third, common discovery practices such as seeking broad document production and agreeing that a privilege log is not required for communications with outside counsel can be compelling evidence of a privilege claim. Fourth, with all the foregoing said, attention to detail regarding procedural points (here, the proper procedure for making an unsworn declaration) can avoid subsequent issues. Even if the standards are in fact less onerous than previously seemed to be the case, exceeding those standards can bolster a litigant's chances of success in overcoming a challenge to its assertion of privilege.

California Brief

Semtech Holder Sues Over Forecast After Worst Rout in 30 Years

Aug. 13, 2025, 12:46 PM PDT

Semtech Corp. management misled investors about prospects for active copper cable products, prompting a record stock drop after the semiconductor supplier revealed a disappointing 2026 sales forecast, a shareholder lawsuit said.

Semtech said in a Feb. 7 financial filing that it expected its 2026 CopperEdge product net sales to be lower than its prior floor-case estimate of $50 million due to rack architectural changes. Share prices slipped 31% the next session in its greatest single-day fall since 1993, according to data compiled by Bloomberg.

The company's filing said the revised estimates came after feedback from a service rack customer—purportedly NVIDIA Corp., according to a complaint filed Tuesday in the US District Court for the Central District of California.

The stock had already closed down 9.9% Feb. 7 after Robert W. Baird & Co. lowered its price target from $80 to $60, warning of weakness in the company's active copper cable business.

Before this, Semtech had said that CopperEdge product shipments would ramp up, concealing from investors a heating issue hurt net sales and drove away a key customer, said the shareholder derivative action. Top brass hindered Semtech's reputation and wallet in having the company mislead shareholders over its sales and customer relations with NVIDIA, which allegedly stopped buying from the company in favor of developing its own processing unit.

Semtech's "CopperEdge technology bridges critical infrastructure gaps by dramatically extending copper interconnect capabilities," according to the company.

Two of the corporate caretakers wrongly reaped more than $700,000 off of insider stock sales during this time, said shareholder Michael Kent. Kent said wrongdoing lasted from Aug. 27, 2024—when CEO Hong Q. Hou touted a ramp up in shipments—through Feb. 7, 2025.

Levi & Korsinsky LLP represent Kent, who seeks damages and corporate governance reform for Semtech. Kent alleged breaches of fiduciary duties and unjust enrichment against the board, a former member, Hou, and chief financial officer Mark Lin. He alleged securities law violations by those two executives.

Another shareholder derivative action centered around the same allegations has been stayed in the same court. Both echo a proposed class action against Semtech, Hou, and Lin.

Semtech didn't immediately respond to a request for comment in a form submission. Nor did the law firm representing Semtech in that consolidated proposed class action, Sidley Austin LLP.

The case is Kent v. Hou , C.D. Cal., No. 2:25-cv-07487, complaint filed 8/12/25

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Securities Law News

Delaware Corporate Law Changes Endanger Investors, Scholars Say

Aug. 13, 2025, 12:15 PM PDT

Delaware's landmark corporate law overhaul earlier this year will undermine stability by handcuffing judges with rigid rules while inviting creative end runs by dealmakers, a group of scholars told the state's top court Wednesday.

The eight professors behind the filing are weighing in on a shareholder case against a BlackRock Inc. affiliate that targets sections of the new law carving out a safe harbor for certain types of self-dealing and making portions of the bill retroactive. Their friend-of-the-court brief offered an ode to the arcane legal concept that defines Delaware's elite business court: its status as an "equitable" tribunal designed for disputes that defy simple categories.

The coalition backing the legislation—corporate defense attorneys, private equity lobbyists, and the state's political establishment—argued it would restore predictability to litigation outcomes, undoing the damage of a crackdown on conflicts of interest that's driving corporate "DExits" to other states.

But while turning corporate planning into a check-the-box enterprise might make court fights easier to handicap, it would also transform the larger ecosystem into a Wild West for investors who will no longer be able to rely on judges to stop insiders from looting, the scholars said, throwing their support behind the legal challenge.

"Investors in Delaware corporations will find themselves subject to the whims of controlling stockholders and managers," the professors said. "The outcome of a stockholder's investment will turn not on longstanding principles of fairness, but whether a stockholder was lucky enough to have invested in a firm with beneficent managers."

Corporate Culture War

The dispute—involving a wind farm acquisition by Clearway Energy Inc., which is controlled by a joint venture between Blackrock and TotalEnergies SE—reflects the latest flashpoint in a cultural cold war among competing corporate constituencies that periodically escalates into open conflict.

Gov. Matt Meyer (D) pushed the statutory changes at the heart of the case after news in February that high-profile firms including Meta Platforms Inc. were considering leaving the state, which funds a quarter of its budget with billions in fees on business entities. Delaware is home to two-thirds of Fortune 500 companies.

It’s still unclear if the trickle of departures will widen into a flood, despite 18 months of attacks on Delaware’s judiciary from Elon Musk and his allies following his a $56 billion court loss.

The new law, State Senate Bill 21—which Meyer signed in March after a fierce legislative battle—imposed a narrow definition of controlling stockholders, bolstered the presumption that board members are capable of independent oversight, and cut back investor access to corporate records.

Arguments against the legislation have surfaced in several shareholder suits, including the Clearway case. The retroactivity sections violate Delaware’s due process clause, while the dealmaking safe harbor is incompatible with a state constitutional provision prescribing the equitable jurisdiction of Delaware’s Chancery Court, they say.

Fast Track

Delaware Chief Justice Collins J. Seitz Jr. agreed to fast-track the Clearway matter in June, saying it would be more efficient for the high court to deliver a legally binding interpretation in the near term instead of waiting for the growing wave of challenges to reach the appeal stage. The move amped up the pressure on a five-member tribunal currently reviewing the ruling against Musk.

The Clearway case kicked off Aug. 1. Answering briefs are due Sept. 5 from the joint venture and Meyer, who intervened in the case to defend the law. Oral argument is set for Oct. 8.

The scholars are represented by Labaton Keller Sucharow LLP. The investor leading the lawsuit, Thomas Rutledge, is represented by Bernstein Litowitz Berger & Grossmann LLP, Equity Litigation Group LLP, and Morris Kandinov LLP.

The joint venture is represented by Richards, Layton & Finger PA. Meyer is represented by Potter Anderson & Corroon LLP and Wachtell, Lipton, Rosen & Katz. Clearway is represented by Young Conaway Stargatt & Taylor LLP and Gibson, Dunn & Crutcher LLP.

The case is Rutledge v. Clearway Energy Grp. LLC , Del., No. 248, 2025, amici brief filed 8/13/25 .

A version of an AI summary at the top of this story was removed.

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Judge orders Chemours to immediately stop PFAS discharges

legalnewsline.com/west-virginia-record/judge-orders-chemours-to-immediately-stop-pfas-discharges/article_6b880fa8-5416-4b74-937c-826ec5de78b2.html

Chris Dickerson, Chris Dickerson August 14, 2025

CHARLESTON – A federal judge has ordered Chemours to stop discharging forever chemicals from its Wood County facility into the Ohio River.

U.S. District Judge Joseph R. Goodwin issued his memorandum opinion and order August 7 in the lawsuit filed in December by West Virginia Rivers Coalition and Little Hocking Water Association Inc. against The Chemours Company FC LLC regarding discharges from its Washington Works plant near Parkersburg.

“This case is simple and all too familiar,” Goodwin wrote in his 42-page order. “For years, defendant Chemours Company has discharged pollutants into the Ohio River. The level of discharge far exceeds the legal limits that bind Chemours, Those pollutants endanger the environment, aquatic life and human health. Today, that unlawful, unpermitted discharge stops.”

A Chemours spokesperson said the company was “disappointed” and “strongly disagree(d)” with the ruling and plans to appeal. The West Virginia Rivers Coalition hailed Goodwin’s order.

“This is a victory for public health and the Ohio River,” WVRC Deputy Director Autumn Crowe said. “The court recognized what communities have known for years: Chemours has been polluting our water and ignoring its legal obligations.”

The federal government regulates PFAS, HFPO-DA and other forever chemicals as well as setting limits on how much pollutants a facility can discharge.

In his order, Goodwin said Chemours “has treated its permit as full permission to act without constraint.”

“Chemours boldly violates its permit and admitted as much at the preliminary injunction hearing,” Goodwin wrote. “Chemours represents that – even with all reasonable efforts – it will take more than two years to achieve regular and consistent compliance with the permit.”

Goodwin said people who live on or engage with the Ohio River currently either have to abstain from using or drinking the water or subject themselves to adverse health effects.

“This choice violates the law,” Goodwin wrote. “When defendants like Chemours fail to abide by their own permits and when the government fails to intervene on behalf of the public, the Clean Water Act empowers citizens to bring an action to force compliance.”

The judge says he is “particularly concerned” about the nature of the injury in this case.

“Injury to the environment, and those living in the affected environment, is often incremental, cumulative and not always immediately visible,” Goodwin wrote. “That does not, however, render it speculative or abstract. … A defendant who violates a permit is not ‘probably’ harming the public – it is harming the public as a matter of law.”

One of the attorneys representing the plaintiffs agreed.

“The court’s decision is an especially strong endorsement of the value of citizen suits in enforcing the Clean Water Act,” said Jim Hecker, Senior Environmental Enforcement Attorney at Public Justice. “The court’s opinion emphasized that Congress gave citizens that enforcement power ‘precisely for cases like this one,’ where a polluter violates its permit for years and the government fails to enforce the law.”

Goodwin said there is no ambiguity in this case.

“Chemours has discharged unpermitted levels of toxic pollutants into the Ohio River,” he wrote. “Defendant knows that it has been violating the permit, and it is likely to continue. As a direct result, the public is exposed to real and ongoing harm.

“The Clean Water Act prohibits this. The public need not bear the burden or cost of defendant’s inaction. Instead, Congress has vested citizens with the power to enforce environmental protections in the face of governmental indifference. That enforcement power exists precisely for cases like this one.

“Defendant’s permit is not a suggestion; rather, its permit protects public health and environmental life while balancing the needs of manufacturing. But I cannot weigh the scales of that balance to inflict further harm on the communities that rely on clean water for life and livelihood.

“The Clean Water Act protects the public, and I will enforce it.”

Goodwin ordered Chemours to stop discharging the pollutants in excess of levels set in its permit and to “take any measures necessary to achieve and maintain compliance, including but not limited to production changes, process modifications, off-site treatment, or temporary cessation of operations.”

“Defendant could shut down its plant, modify its manufacturing processes, reduce production or send process wastewater off-site to achieve compliance,” Goodwin wrote. “Compliance may be expensive and burdensome, but it is possible.”

The trial in the case is scheduled for September 16.

The executive director of the West Virginia Rivers Coalition said the organization is hoping the trial will “resolve remaining issues, namely civil penalties, and to a full and fair process that reflects the public’s interest in clean, safe water.”

“The court made clear that Chemours has many ways to come into compliance, and thus protect the public, while continuing to operate,” Jennie Smith said. “Our intent has never been to cause layoffs but rather has always been straightforward: to ensure compliance with environmental safeguards to protect the health and well-being of the public.”

U.S. District Court for the Southern District of West Virginia case number 2:24-cv-701

News from Bloomberg Terminal

Her Dogs Kept Dying, And She Got Cancer. Then They Tested Her Water.

Aug. 14, 2025, 8:59 AM PDT

By Amudalat Ajasa

(Washington Post) -- ELKTON, Md. - Debbie Blankenship's wheelchair carved perfect lines in the grass as she rolled into her backyard garden, passing a wooden arch filled with small grapes, a bush with plump blueberries and yellow crates filled with sprouting potatoes.

She stopped at a dirt patch with a burial marker for her beagle - the latest of her dogs to die of cancer.

"They are all buried back here. It's like a pet cemetery," she said, catching her breath from navigating the hilly terrain. Gazing at the burial site, she spoke about her own long battle with cancer.

For decades, Blankenship chalked up her health problems, including losing her right leg to an infection, to bad luck. Then in 2023 she received a phone call from W.L. Gore & Associates, which makes waterproof membranes such as Gore-Tex and a host of other products. Gore wanted to test Blankenship's well water for PFOA, a highly toxic "forever chemical" that was used to make PTFE, commonly known as Teflon.

"That's when the light went off," she said. She and her dogs were the only members of the household to drink the well water. Her husband and children always drank bottled water.

Gore's offer to test Blankenship's well came after a former employee named Stephen Sutton sued the company in 2022, claiming the company's negligent use of per- and polyfluoroalkyl substances, known as PFAS, harmed workers and the surrounding community. The litigation triggered a public water crisis: A class-action lawsuit was filed the following year, and Maryland filed suit in 2024.

These stable chemical compounds tend to persist indefinitely in the environment, as well as in the human body. They have been linked to serious health problems including high cholesterol, cardiovascular disease, infertility, low birth weight and certain cancers.

The lawsuits claim that the company knew for decades that its use of these chemicals endangered public health and the environment but hid that fact from the state and the nearby community. Gore has denied concealing information about the presence of PFOA in its materials or any potential risks.

Maryland's Department of the Environment and Cecil County declined to comment, citing the pending litigation. In a statement made when the state filed its lawsuit, Maryland Attorney General Anthony G. Brown (D) said, "It is unacceptable for any company to knowingly contaminate our drinking water with these toxins, putting Marylanders at risk of severe health conditions."

Gore said in a statement that it has never manufactured PFOA and that only "trace levels" were present in raw materials purchased from suppliers. The company said all its vendors must now certify their materials are made without it.

"We dispute the allegations in the lawsuit filed by the State of Maryland and deny the allegations in the Sutton matter," said Amy Calhoun, a spokeswoman for Gore.

Poisoned wells

Gore has helped anchor Elkton's economy for more than 50 years. The privately held company, based in Delaware, operates 14 facilities in and around Cecil County. It reports $5 billion in revenue, employs more than 3,100 residents and has created a deep relationship with the community.

A wooden sign near the entrance of Kenmore Elementary School reads: "In partnership with W.L. Gore & Associates." A thin line of trees is the only barrier separating the school from Gore's Cherry Hill facility, where PTFE was received in powder form and transformed into products.

Blankenship's husband, Richard, who suffers from Alzheimer's, worked at Gore for nearly 40 years.

Water samples taken from Blankenship's well in May 2023 showed PFOA concentrations of 3.4 parts per trillion (ppt), according to documents reviewed by The Washington Post, below the Environmental Protection Agency's maximum contaminate level of 4 ppt. However, the agency has said that there is no safe level of exposure and that small amounts of the chemical can cause serious health impacts, including cancer.

Other well water samples from Blankenship's neighbors across the street from Gore's Cherry Hill site revealed PFOA concentrations as high as 800 ppt, according to tests conducted throughout 2023 by Gore and the Maryland Department of the Environment. Groundwater samples from the site were as high as 1,300 ppt. Monitoring wells near Gore's Fair Hill site contained concentrations of 1,800 ppt, while a nearby stream had PFOA concentrations of 740 ppt.

Gore's Calhoun acknowledged "some isolated numbers" at high concentrations in well water but said the impact on groundwater at the Cherry Hill facility was "limited."

"We do know now that a limited amount of PFOA has been released as part of our historic operations and in concentrations that by today's standards are higher than acceptable," she said. "Most importantly, Gore is committed to addressing the issue."

The scope of the contamination from Gore's facilities is not yet known. Sutton alleges in his suit that Gore knew by the late 1980s, through its own groundwater testing, that pollution from its Cherry Hill plant could travel to neighboring properties.

Philip Federico, an attorney at Brockstedt Mandalas Federico who represents Elkton residents, said in a statement that the firm filed suit because Gore knew about the risks of PFAS for four decades and continued dumping toxic chemicals into the community.

"Today, both the residents and agricultural interests of these communities are dealing with the life-altering consequences of PFAS exposure, including cancer, reproductive and fertility challenges, developmental delays, hypertension, and more," Federico said.

Gore said it eliminated PFOA from its supply chain in 2014. DuPont and other manufacturers agreed to phase out the chemical in the United States by 2015 under a voluntary agreement with the EPA. In recent years, the chemical industry has reached large settlements with states and local communities over PFAS contamination of public water supplies.

The EPA estimates that more than 158 million Americans are exposed to PFAS through their drinking water.

Unlike water from public water utilities, private wells are not subject to federal water regulations. Gore offered Blankenship and other residents within sampling areas around its facilities the choice of filtering their well water or connecting their homes to the local water utility. The company said it has installed 84 filtration systems and connected 13 homes to the utility.

While Blankenship is waiting for the county hookup, she is drinking bottled water provided by Gore and uses rainwater in her garden.

Linda Birnbaum, a former director of the National Institute of Environmental Health Sciences, said that based on the water sample results near the Cherry Hill plant, many of the nearby wells should be capped and closed because "it would be very difficult to clean them up."

"If this was a public water supply, those would have to be remediated," she said. "In many of the wells, their levels of PFOA are of concern."

Chemical dreams

Mark Strickler, 68, who moved to Cherry Hill after landing a job at Gore more than 40 years ago, said he sometimes dreams he is back on the production line. That is where he used to scoop up white PTFE powder and mix it with graphite and other materials to make fibers for industrial weaving applications and products such as dental floss. He said he was told by his supervisor that the chemicals were safe.

He recalled some "pretty nasty" times, when the odor from the chemicals gave him headaches or the PFAS-soaked scrap material would leave his hands numb for half an hour. Even so, Strickler said he recalls his time at Gore with fondness.

Then he wakes up to a harsh reality of the drinking-water contamination in his community.

"It was a surprise to me," Strickler said. "I'm disappointed in the company for polluting, when I thought they were more concerned about the culture of the company."

Despite his disappointment, Strickler said he considers Gore a good employer. After an aneurysm years ago, a graft created by Gore was inserted in his heart during one of his five heart operations, three of which required him to be "cut open like a lobster."

Blankenship, who wakes up in pain that she can only compare to that of childbirth, praised Gore even though she believes the company's operations could have contributed to her health problems.

"They've taken care of us. They were good to us. They're good to their employees," she said. Richard was still working at the company when they heard about the class-action lawsuit.

Last month marked the couple's 49th wedding anniversary. Instead of treating her illnesses in the hospital, she wanted to spend whatever time she has left at home with her husband.

"I'm tired of my body being invaded by tests and needles," she said, sitting in a wheelchair on her porch. "I'm just tired of battling, so I'll take my chances. I've laid it all on Jesus' feet."

Now she makes sure her dog drinks only from the three-gallon water jugs Gore delivers every month, saying she was determined to end the cycle.

"It was really too late," Blankenship said. "That's why I said the next dog we got, she will never drink the water."

Click Here to see the story as it appeared an the Washington Post website.

Click here to see the story as it appeared on the web site.

-0- Aug/14/2025 15:59 GMT

Post by @maxkennerly.bsky.social — Bluesky

bsky.app/profile/maxkennerly.bsky.social/post/3lwd3jpnpps2a

August 14, 2025

[Max Kennerly](https://bsky.app/profile/maxkennerly.bsky.social)

[@maxkennerly.bsky.social](https://bsky.app/profile/maxkennerly.bsky.social)

Gosh, can't imagine anything wrong with my law practice having a constant open microphone uploading all of my conversations to an AI data server. Voice input is great for accessibility and should be built-in, but I doubt most people want that to be their *primary* input method for a desktop/laptop.

August 13, 2025 at 5:29 PM

Recently discussed with some other attorneys about the danger of “using prompts to get chatGPT to disclose things it has been asked/shown/told by people with an @[opposing counsel].com email address”

Not to mention: considering how much trouble Windows has with handwriting input (which I like using on a tablet as a compromise between the kinesthesia of using a stylus and actually being able to read what I wrote), I refuse to yell at my computer because it doesn't like my accent.

I'm already seeing a lot of enshittification of screen input that I blame on misbegotten AI integration efforts: swiping on my phone and stylus input on my tablet both feel like they're getting worse. Speech input seems like another milestone on this road to Hell.

Unless we all get to work from home or we all get offices rather than cubes, OH HELL NO.

Roland Muts @rhcmuts.bsky.social
· 13h
"Roland, you're getting old." Heard that when I talked about the scourge of AI, open mics, Windows recording everything, etc and why it needs to go away. Is the end game simply #Linux?
R. Mel @cadystat.bsky.social
· 11h

Since the start of Trump 2025 I've cancelled streaming services, re-upped my library card, started donating monthly to public services and buying dvds / cds. Pretty soon I'll be mailing letters again and getting a landline while keeping my devices in a blackbox in the shed.

David Elwell @drelwell.bsky.social
· 11h

And I don't want to be in the same space with anyone communicating verbally with a computer. I'll excuse short phone conversations with relatives, though.

loaner of an only heart 🏳️‍⚧️ @notaname.bsky.social
· 13h

the phrasing "in the wake of AI" is killing me

Peter Butler @peter-butler.bsky.social
· 8h

terrible idea. no one wants it

John Robie @jrobie.bsky.social
· 11h

Microsoft is really leaning hard on having a locked-in userbase.

Kaerick @kaerick.bsky.social
· 13h

Can't imagine why they keep banning George Orwell's 1984 these days. How long before the telescreen monitors your Two Minutes Hate or your mandatory exercise program?

Hashnaif @hashnaif.bsky.social
· 13h

Like oligarchs, technologists, suffering minimal pushback from the courts, expand their intrusion into ordinary citizens' lives. Cf., en.wikipedia.org/wiki/The_Blob

The Blob - Wikipedia

en.wikipedia.org
John Castiglione @johncastiglione.bsky.social
· 13h
A thousand senior associates and junior partners who thought their discovery skills were about to be made obsolete are stretching their arms and cracking their knuckles about this.

More than copilot itself, I hate that my Ideapad has a keyboard key dedicated to it. The Windows Menu button is fine, useless but fine, and even the old right-click/menu keyboard button had a place in my heart, but this dumbshit button with its hideous icon is just a shit-shingle eating up space

Enough complaining about this. We heard you yesterday in the office and also at home and also on your phone and also (don't ask) at the store.

As it is, our phones, smartwatches are listening to us. Even our newest tv spoke up as to exiting building and calling fire department when my husband yelled out "they're on fire" while watching a ballgame.

Rising Star: Joseph Saveri Law Firm's Christopher K.L. Young

law360.com/classaction/articles/2358831/rising-star-joseph-saveri-law-firm-s-christopher-k-l-young

Law360 (August 13, 2025, 4:04 PM EDT) · Listen to article -- Christopher K.L. Young of Joseph Saveri Law Firm LLP helped secure a $375 million settlement for mixed martial arts fighters in a class action against the UFC after nearly a decade of litigation, earning him a spot among the class action attorneys under age 40 honored by **Law360 as Rising Stars**.

Christopher K.L. Young

Joseph Saveri Law Firm

- **Age:** 36
- **Home base:** San Francisco
- **Position:** Partner
- **Law school:** UCLA School of Law
- **First job after law school:** Attorney at the Los Angeles County Public Defender's Office

Why he is a class action attorney:

Young said his legal journey is guided by his deep ingrained desire to champion the "underdog," he told Law360. This initially pulled him into working in the Los Angeles County Public Defender's Office. After a stint clerking for Justice Lamar Baker of the California Court of Appeals, Young said, he developed a desire to tackle more complex litigation.

He added that he was able to satisfy both of these aims when joining Saveri Law.

"We represent individuals and small businesses who, for a lack of a better phrase, get screwed over by the biggest companies in the world," Young said. "These companies have revenue bigger than the [gross domestic product] of many countries, and they are represented by some of the biggest firms."

"That appeals to me," he said. "Just being able to fight for these underdogs is something that feels noble, and it aligns with what I've always wanted to do."

Class actions address the "little injustices" that might be ignored, like wage suppression or overcharging by pennies on essential components, Young said.

"If you don't punish small transgressions, people ignore the big ones," he added.

Young's role as co-lead counsel **representing fighters suing the UFC** is an example of the underdogs going up against a significantly more powerful entity, he said.

In the antitrust litigation, the fighters accused the UFC of unlawfully monopolizing the market for fight promotions. They claimed the UFC suppressed wages by acquiring competitors, locking fighters into exclusive contracts and impairing rival promoters' ability to compete.

Young helped lead trial preparation and mediation, which involved reviewing 775,000 documents, 41 depositions, and expert reports. After overcoming the UFC's dismissal attempts, Young helped secure for the fighters class certification, a first for a Section 2 monopolization labor case, he said. In February, weeks before opening arguments were set to begin, the case settled for $375 million.

Other notable labor disputes he's worked on:

Young played a pivotal role in the antitrust class actions against Jackson Hewitt Inc. He served as settlement class counsel for tax preparers who claimed there was an 18-year conspiracy to suppress wages among the franchisees through an agreement not to hire each other's employees without approval.

The workers faced a "very steep hill," with courts in prior no-poach cases against Jimmy John's and McDonald's Corp. ruling against class certification, Young said. The Seventh Circuit would later **overturn** the dismissal in the McDonald's case,

Young helped write briefs that partly leaned on the oldest known anticompetitive case law: an English court's 1414 ruling in a case known as Dyer's Case. This approach seemed to resonate with U.S. District Judge Michael E. Farbiarz, who called for more briefs instead of dismissing the case, Young said. Ultimately, the team scored final approval to a **$10.8 million all-cash settlement** in November 2024, with the judge specifically praising counsels' "strong briefs"

His proudest moment:

Settlements can be "a little unsatisfying" for Young, as he craves a more profound "victory" at trial, but the Jackson Hewitt litigation is among his proudest moments, he said.

In the face of steep odds against unfavorable precedent, he helped put together a brief that unearthed and deciphered obscure antitrust principles, recorded in dusty volumes and written in the French spoken by the upper class at the time.

"It was very satisfying," Young said. "You know, just finding rulings from the darkest, dustiest corners of legal archives. I'm sure I shortened my life span by breathing in that medieval fungus."

How the legal industry will change in the next 10 years:

"In the next 10 years, there's going to be more wrestling with AI in particular," Young said. "By that I mean these writing assistants, research assistants, especially with younger attorneys."

Young views artificial intelligence as a transformative but ethically fraught bit of technology. While he's not opposed to AI itself, he criticizes tech giants for using creators' work without "consent, compensation, or credit." Right now, he is actively participating in seven high-profile cases involving generative artificial intelligence and its use of intellectual property. Notable among them is a case against Meta Platforms Inc., which authors claim has illegally used their copyrighted books to train its Llama AI.

Young's clients aren't against the technology, but they argue there is a fundamental unfairness in stealing work, he said.

"It's no different from when large corporations were saying 20 or 30 years ago, 'You shouldn't be pirating songs or movies,'" Young said. "Now the shoe's on the other foot."

While a judge recently ruled Meta's AI training qualified as "fair use," the case continues over claims Meta distributed books illegally via **peer-to-peer networks**. Young's motivations remain focused on what he considers the ethics of it all. Promises of revolutionary technology must be paired with what is right.

"Just because you say, 'I'm going to change the world,' that doesn't excuse you stealing," he said.

--As told to Jonathan Capriel. Editing by Kristen Becker.

Law360's Rising Stars are attorneys under 40 whose legal accomplishments belie their age. A team of Law360 editors selected the 2025 Rising Stars winners after reviewing more than 1,100 submissions. Attorneys had to be under 40 as of April 30, 2025, to be eligible for this year's award.

Securities Law

Manage Newsletters

Elizabeth Warren Probes Lutnick Son on Reported Tariff Bets (1)

Aug. 14, 2025, 8:10 AM PDT

- **Questions raised on reports of litigation finance product**
- **Firm denies facilitating court claims on Trump tariffs**

Democratic Senators Elizabeth Warren and Ron Wyden wrote a letter to Cantor Fitzgerald LP Chairman Brandon Lutnick raising questions about possible conflicts of interest and insider trading in bets the firm reportedly made on the legality of Trump administration tariffs.

Lutnick is the son of US Commerce Secretary Howard Lutnick, a key figure in President Donald Trump's trade policies. The letter, dated Wednesday, was released by the senators on Thursday morning.

Brandon Lutnick, chairman of Cantor Fitzgerald, speaks during the Bitcoin 2025 conference in Las Vegas in May
Photographer: Ronda Churchill/Bloomberg

Warren and Wyden cited a late July report by Wired that alleged the financial services company created a "litigation finance" product that allows it to bet that the courts will strike down the tariffs.

Cantor spokesperson **Erica Chase** on Thursday morning disputed the reporting.

"What is being reported about our business is absolutely false. Cantor is not in the business of positioning any risk, taking views or facilitating business in litigation claims involving the legality of US tariffs," Chase said in a statement when asked to comment on the letter.

Warren and Wyden in their letter asked the firm to disclose within two weeks any transactions or agreements it has made relating to litigation claims.

"Public reporting indicates that Cantor has offered companies the opportunity to trade their legal claim to a future tariff refund in exchange for 20 to 30% of the duties the company paid," the letter said. "In this scenario, if the courts determine that the tariffs are illegal, the company stands to recover hundreds of millions of dollars."

Senator Elizabeth Warren
Photographer: Tierney L. Cross/Bloomberg

Among the questions the senators posed was how many tariff refund agreements Cantor Fitzgerald has finalized, whether it created them at the request of a specific client and if anyone at the firm had communicated with people in the US government about the tariffs or related legal cases, including Trump and the Commerce secretary.

Wyden in an email to Bloomberg accused Lutnick's son of "brokering huge bets on policies the Commerce Secretary is personally directing."

"When you've got the Commerce Secretary's son running the Commerce Secretary's old Wall Street firm," Wyden wrote, "you're going to face some tough questions about whether everything is on the level."

(Updates with additional detail beginning with third paragraph)

--With assistance from **Todd Gillespie**.

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GEO Group loses latest bid to nix $23 mln verdict over immigrant detainee pay

reuters.com/legal/government/geo-group-loses-latest-bid-nix-23-mln-verdict-over-immigrant-detainee-pay-2025-08-13

Daniel Wiessner August 13, 2025

A view of security fencing at a detention center operated by private prison company GEO Group for Immigration and Customs Enforcement (ICE), in New Jersey, U.S., May 10, 2025. REUTERS/Bing Guan/File Photo Purchase Licensing Rights, opens new tab

Aug 13 (Reuters) - Private prison operator GEO Group must pay more than $23 million to the state of Washington and hundreds of immigrant detainees who were paid $1 a day to participate in a work program, a U.S. appeals court ruled on Wednesday.

The full 9th U.S. Circuit Court of Appeals in San Francisco declined to reconsider a three-judge panel's January ruling that said GEO does not enjoy the same immunity from state minimum wage laws afforded to the federal government even though it operates a Tacoma, Washington, detention centre under a contract with the U.S. Immigration and Customs Enforcement.
The ruling was the latest blow for GEO in a pair of consolidated lawsuits first filed in 2017.

Six judges dissented, saying the ruling misread U.S. Supreme Court precedent extending government immunity to contractors and would interfere with federal immigration enforcement.

"Under this court’s decision, any State can impair any federal policy — no matter how central to the federal government — so long as the State regulates federal contractors rather than the federal government itself," wrote Circuit Judge Patrick Bumatay, an appointee of President Donald Trump. All of the judges who dissented are appointees of Republican presidents.

GEO Group in a statement said it would ask the U.S. Supreme Court to take up the case.

“Today’s decision clearly violates the Supremacy Clause [of the U.S. Constitution] and contravenes established law regarding intergovernmental immunity and federal preemption," the company said.

GEO is appealing a $17.3 million jury verdict for detainees who were paid $1 a day to cook, clean, perform repairs, and staff a barber shop and library at the Tacoma detention centre, and a separate $6 million award for the state.
The Washington Supreme Court, in response to certified questions from the 9th Circuit, ruled in 2023 that the detainees were GEO's employees under state law and had to be paid the

minimum wage.
That left the federal court to consider GEO's claim that because it was operating a government detention centre, it was shielded from state wage laws just like the federal government.

The 9th Circuit panel in January had said the government did not dictate the wages GEO must pay to detainees or require it to operate the work program, and also rejected the company's claim that the state minimum wage was preempted by federal immigration law.

On Wednesday, Circuit Judge Mary Murguia wrote for the 9th Circuit that the panel decision was well reasoned, and pushed back against Bumatay's claim that the court had set a dangerous precedent.

"Adoption of his position would allow any government contractor to refuse to pay state-mandated minimum wage to its employees," wrote Murguia, an appointee of President Barack Obama, a Democrat. "No one in this case, not even GEO, has suggested that this is the law."

The case is Nwauzor v. GEO Group Inc, 9th U.S. Circuit Court of Appeals, No. 21-36024.

For the plaintiffs: Jennifer Bennett of Gupta Wessler

For the state: Marsha Chien of the Washington Attorney General's Office

For GEO Group: Michael Kirk of Cooper & Kirk

Read more:

GEO Group can't nix $23 mln verdict over immigrant detainee pay
GEO Group must pay minimum wage to immigrant detainees, court rules
GEO Group appeal over $1-a-day detainee pay sent to Wash. top court
Jury says GEO Group must pay minimum wage to immigrant detainees
GEO Group can't avoid virtual trial in class action over dollar-a-day detainee pay
Immigrant detainees not owed minimum wage under FLSA- 4th Circuit
Reporting by Daniel Wiessner in Albany, New York; Editing by Noeleen Walder

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

Dan Wiessner (@danwiessner) reports on labor and employment and immigration law, including litigation and policy making. He can be reached at daniel.wiessner@thomsonreuters.com.

Issues To Consider From The Liberty Mutual Enforcement Action

fcpaprofessor.com/issues-to-consider-from-the-liberty-mutual-enforcement-action

August 14, 2025

This previous post highlighted the $4.7 million FCPA enforcement action against Liberty Mutual concerning an alleged bribery scheme involving a foreign subsidiary in India.

This post highlights additional issues to consider.

Timeline

According to the DOJ, Liberty Mutual made a "timely and voluntary self-disclosure of the misconduct to the Fraud Section in March 2024, which was identified during an internal investigation that was still ongoing at the time of the disclosure."

Given that four years has been the approximate length of FCPA scrutiny in recent years, 1.5 years of FCPA scrutiny is rather speedy.

Interesting

Granted, Liberty Mutual's FCPA scrutiny was in the "pipeline" long before the current DOJ released its revised FCPA guidelines in June 2025 (see here).

Even so, the Liberty Mutual enforcement action is an interesting "first" enforcement action since the revised FCPA guidelines.

According to the DOJ, the guidelines, among other things:

- were to "target[] enforcement actions against conduct that directly undermines U.S. national interests,"
- directed prosecutors to focus "on cases in which individuals have engaged in criminal misconduct and not attribute nonspecific malfeasance to corporate structures,"
- required prosecutors to "consider […] whether the alleged misconduct deprived specific and identifiable U.S. entities of fair access to compete and/or resulted in economic injury to specific and identifiable American companies or individuals"; and
- required prosecutors to "focus" FCPA enforcement on "alleged misconduct that bears strong indicia of corrupt intent tied to particular individuals …"

It is hard to find any of this – as to Liberty Mutual – in the enforcement action recognizing that the factual "allegations" are just one paragraph (as they often are in declinations with disgorgement).

Moreover, it is difficult to glean from the enforcement action just what viable FCPA anti-bribery violations Liberty Mutual committed.

It is black letter law that employees of foreign subsidiaries are not automatically agents of the parent company. The Supreme Court has noted that just because a subsidiary's services are important to a parent corporation does not therefore mean that a subsidiary is an agent of the parent corporation for purposes of imputing liability because to so hold would stack the deck, for it would always yield a pro-agency answer.

The Liberty Mutual enforcement action was based entirely on the conduct of "certain employees of the Company's subsidiary in India" followed by the conclusory statement that they were "acting as agents" of Liberty Mutual. In fact, the enforcement action acknowledges – as many do – that the subsidiary employees "took steps to conceal the true nature of the payments, including by classifying the payments as marketing expenses and using third-party intermediaries to make the payments to the officials."

Banking and Finance Laws

New York AG Presses for Antifraud Protections in Lawsuit Against Corporate Parent of Zelle Cash App

August 13, 2025 | By Brian Lee

Zelle headquarters in Scottsdale, Arizona. Credit: JHVEPhoto/Adobe Stock

The parent company for Zelle rushed into the burgeoning electronic payment industry with faulty network safeguards and anti-fraud measures, which led to more than $1 billion in theft from consumers during its initial six-year span, New York Attorney General Letitia James alleges in a lawsuit filed on Wednesday.

James' complaint asks the state Supreme Court of Manhattan to order Zelle's Arizona-based parent company, Early Warning Services, to maintain basic network guardrails and anti-fraud protections, along with restitution for its defrauded customers.

The complaint comes on the heels of the U.S. Consumer Financial Protection Bureau dropping a similar claim against Zelle in March, after the shift in executive branch leadership with President Donald Trump's second term.

In a statement, Zelle fired back that James' lawsuit lacked merit. It said virtually all—upward of 99.95%—of transactions on its platform are completed without reported fraud, which it claims is best in the industry.

"This lawsuit is a political stunt to generate press, not progress," Zelle said. "The Attorney General should focus on the hard facts, stopping criminal activity and adherence to the law, not overreach and meritless claims."

Early Warning Services is owned by Bank of America, Capital One, JPMorgan Chase, PNC, Truist, US Bank and Wells Fargo. The seven U.S. banking giants are not named co-defendants.

Venmo, PayPal and Cashapp aren't owned by banks, and Zelle rushed to market against those primary competitors with "significant and foreseeable cost," James notes in the lawsuit.

"EWS knew from the beginning that key features of the Zelle network made it uniquely susceptible to fraud, and yet it failed to adopt basic safeguards to address these glaring flaws or enforce any meaningful anti-fraud rules on its partner banks," James said in a statement.

The lawsuit said key design decisions made the network “an obvious conduit for fraudulent activity,” including a quick registration process and lack of verification that made infiltration easy.

Zelle's limited information displayed to consumers who send money over the network enabled scammers to use false or fraudulent email addresses, while the availability of immediate funds over the network "facilitated quick getaways" that deprived consumers of any chance to recover stolen money, the complaint continues.

Furthermore, the ability to seamlessly shift email addresses, bank accounts and banks enabled fraudsters to engage in multiple ongoing frauds while evading detection, the lawsuit alleges.

In 2019, EWS "finally" developed and proposed "modest" security enhancements and rules changes governing the network aimed at reducing fraud.

But James said it wasn't until 2023, after the federal CFPB conducted a significant probe uncovering the $1 billion-plus in stolen money, and investigations by members of Congress, that Zelle adopted the guardrails—measures that the state's top prosecutor deemed "too little, too late."

The lawsuit cites the example of an electricity consumer who was allegedly defrauded of nearly $1,500 by someone impersonating a Con Edison employee in August 2021. The caller had said the resident's electricity would be shut off if he didn't immediately pay the delinquent amount via Zelle.

“No one should be left to fend for themselves after falling victim to a scam,” James said. “I look forward to getting justice for the New Yorkers who suffered because of Zelle’s security failures.”

James indicated her office chose the Manhattan trial court because a substantial amount of transactions occurred within Manhattan.

Securities Law News

Tesla Asks SEC to Block Proposal Aimed at Musk Political Speech

Aug. 13, 2025, 2:59 PM PDT

Elon Musk's Tesla, known as much for its politically active CEO as its cars, doesn't want shareholders to even discuss clamping down on its executives' political speech.

The Securities and Exchange Commission should let Tesla Inc. exclude a shareholder proposal for a "political neutrality policy" from its corporate ballot because it constitutes "micromanagement" and would be too hard to enforce, according to a no-action request from the company recorded Wednesday on the SEC's website.

"Beyond the clear chilling effects on Leadership Members' freedom of speech and freedom of association, the minimum policy provisions requested by the Proposal could be both impossible and unlawful for the Company to implement," Tesla said.

The SEC will have to decide if the request meets recently loosened guidelines for omitting certain types of resolutions. To date this year, the commission has given Tesla the green light to omit a dozen proposals from its proxy statement.

The proposal, submitted by investor Jay Butera, would bar Tesla's leadership from public actions supporting or opposing any political party, candidate, or campaign—even if those actions are taken using personal resources. It comes in response to the market woes and governance concerns that have surrounded the electric vehicle maker for months.

Musk was the single-largest donor in the 2023-24 campaign cycle, contributing about $291.5 million to support Donald Trump and other Republican candidates, according to campaign finance reports.

Tesla sales were down globally earlier this year after Musk took a high-profile role in Trump's administration leading the unofficial, federal job-cutting Department of Government Efficiency, or DOGE.

Tesla's stock price dipped in early July after Musk announced plans to form a new political party following a spat with Trump. It fell again after the company reported declining auto sales for a second consecutive quarter at the end of July.

"Publicly-visible political activities among Tesla's directors and high-ranking officers are known to have harmed public perception of Tesla and its products," the proposal says. "Such activities also undermine Tesla's ability to maintain cordial relationships with present or future government officials whose regulatory cooperation is vital to Tesla's success."

Butera and Tesla could not be immediately reached for comment.

Political Speech 'Complex'

Tesla told the SEC that the proposal wouldn't allow enough flexibility to address the "complex" matter of political speech. A political neutrality policy, the company said, could punish executives for benign actions like volunteering, fundraising, or endorsing nonprofit organizations. Tesla also pointed to the SEC's support for keeping four other shareholder proposals off Tesla's proxy ballot on micromanagement grounds.

"The boundaries of what constitutes political speech or activity are subject to constant evolution," Tesla said. "The Board simply does not have the ability to enforce the proposed provisions under these sweeping, nebulous and rapidly shifting standards."

Tesla filed the no-action request to ask the SEC to forgo enforcement action if it doesn't put Butera's proposal up for a shareholder vote at its annual meeting on Nov. 6.

The SEC recorded two other no-action requests from Tesla on Wednesday. One concerned a proposal asking Tesla to let customers pay in Bitcoin, and the other related to a resolution asking the company to stop participating in Computershare DirectStock, which lets investors trade shares without a brokerage firm and reinvest dividends into buying more stock.

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https://www.wsj.com/business/autos/tesla-eyes-new-york-city-for-robotaxis-with-test-driver-job-posting-cb8e724a

BUSINESS | AUTOS

Tesla Eyes New York City for Robotaxis With Test-Driver Job Posting

As Tesla looks to expand its autonomous taxi service, it is taking early steps to test its software in the country's most populous city

By Becky Peterson Follow

Aug. 13, 2025 5:04 pm ET

A driverless Tesla robotaxi moved through Austin, Texas, traffic in June. PHOTO: ERIC GAY/ASSOCIATED PRESS

Tesla TSLA **-2.31%** ▼ is taking early steps to bring its robotaxis to New York City just weeks after competitor Waymo announced its own plans to test autonomous vehicles in the Big Apple.

In a recent job posting, Tesla said it is hiring data collectors to drive vehicles around the country's most populous city. The job location is listed as Flushing in the borough of Queens. The company said it was looking for "a highly motivated self-starter" who would work as a "prototype vehicle operator."

Those drivers will collect the audio and video needed to test and train software for the company's Autopilot team, which makes the technology behind its self-driving vehicle, as well as a less-advanced version available in personal vehicles known as Full Self-Driving (Supervised). The job pays up to $30.60 an hour, and a driver's license is required.

It will likely be a long time before Tesla brings its new Robotaxi app to New York. The company hasn't applied to test autonomous vehicles in the city, according to a spokesman for the city Transportation Department.

While New York City opened a permitting process for autonomous-vehicle operators last year, companies that get permits are required to have a safety driver behind the wheel to take over.

Waymo, which announced its interest in the market in June, said it had applied for that permit and is vying to be the first company to start testing. Meanwhile, it is collecting driving data in the city.

Tesla is hiring for similar data-collection roles in California, Texas and Florida as it works to expand the robotaxi ride-hailing service launched in Austin, Texas, in June. In a post on X, Tesla Chief Executive Elon Musk said the Austin service, which is now invite-only, will open to the general public in September.

The company also started an invite-only ride-hailing app in the Bay Area in July, though that service uses human drivers because the company isn't yet licensed to operate autonomous vehicles.

"I think we'll probably have autonomous ride-hailing in probably half of the population of the U.S. by the end of the year," Musk told investors last month.

Tesla still hasn't applied for a permit to test or operate robotaxis in California, according to a spokesman with the state Department of Motor Vehicles. Tesla has met with regulators in California as well as in neighboring Nevada. In Arizona, Tesla has applied to test and operate robotaxis in the Phoenix area.

Write to Becky Peterson at becky.peterson@wsj.com

Appeared in the August 14, 2025, print edition as 'Tesla Takes Steps to Bring Robotaxis to New York City'.

Videos

Securities Law News

B. Riley Hires Adviser in Effort to File Late Financial Reports

Aug. 13, 2025, 3:44 PM PDT

B. Riley Financial Inc. said it has augmented staffing in a bid to file its long-awaited 2024 financial report, after extending a deadline twice this year to remain listed on Nasdaq.

The Los Angeles-based firm hired a national accounting adviser in early July to support technical accounting, financial operations, documentation and internal control, B. Riley Chief Financial Officer **Scott Yessner**said on a conference call on Wednesday. It will remain engaged with the unnamed adviser throughout the 2025 auditing cycle, Yessner said.

"We're in the final stages of documenting our 10-K," Yessner said. "I can't be specific to the date. I can only describe it as 'shortly' and we're all motivated to get the 10-K done as soon as possible."

B. Riley expects to post a $772.3 million net loss for full-year 2024, primarily due to $510 million of writedowns, according to a statement on Wednesday. It previously estimated full-year losses would total $705 million to $725 million.

Yessner, who took on the role in June, has a bonus tied in part to catching up on the late filings and meeting new deadlines around the reports. The firm has until Sept. 30 to file its 2024 annual report to stay listed on Nasdaq.

B. Riley has been preparing the two quarterly reports for this year, and will be ready to have auditors to review them by the time the 10-K is published, Yessner said. It expects to be able to file the third-quarter report on time, he added.

The firm's financial reporting has been complicated by regulatory probes and writedowns on several investments, especially after one of its biggest holdings, retailer Franchise Group Inc., went bankrupt last year. B. Riley has been shoring up its balance sheet by selling assets and conducting bond exchanges.

B. Riley estimated it generated positive net income from operating businesses in the second quarter, for the first time since the third quarter of 2023.

Read More: B. Riley Estimates Improved Net Income for Second Quarter

Insurance

Aon sued for alleged fraud linked to credit insurance for start-ups

Lawsuit representing AI business Vesttoo sheds light on push by insurance broker into growing market

Aon says the lawsuit is 'a perverse attempt… to shift responsibility for Vesttoo's deliberate fraud to Aon, one of the fraud's biggest victims' © Alamy

Lee Harris in London

Published 5 HOURS AGO

Aon, the world's second-biggest insurance broker, is being sued for alleged fraud over its role in marketing a new form of insurance that helped start-ups raise money.

A trust representing creditors to the bankrupt technology company Vesttoo filed a case in Delaware bankruptcy court on Wednesday that sheds light on the broker's push, dating back to 2020, into the growing market for credit insurance.

Vesttoo, an Israeli artificial intelligence business once backed by Goldman Sachs and valued at $1bn in 2022, operated a marketplace where insurers could sell insurance-linked securities to investors. The company filed for bankruptcy in 2023 after it emerged that insurance policies sold using the platform had been backed by allegedly fraudulent letters of credit.

A subsequent investigation ordered by Vesttoo's board alleged two members of the company's senior leadership were directly involved in creating fraudulent documents.

A spokesperson for Aon said: "This lawsuit represents a perverse attempt by Vesttoo's bankruptcy estate to shift responsibility for Vesttoo's deliberate fraud to Aon, one of the fraud's biggest victims. Vesttoo has already acknowledged in its own investigative report that executives of the company, along with other co-conspirators, were responsible for the fraud and intentionally sought to mislead Aon and other impacted parties. We will vigorously defend Aon against these meritless claims."

The case was viewed by the insurance industry as a scandal largely driven by bad actors with links to Vesttoo.

However, the trust set up to recover value for creditors to Vesttoo, which include arms of insurance companies Beazley and Markel, alleged in the latest court filing that Aon also committed fraud as it sought to promote a new "IP-backed lending" product.

The product was developed amid a broader boom in credit insurance. Credit insurance has historically referred to trade-linked products — such as insuring the delivery of a shipment of bananas — but has grown to encompass a variety of financial guarantees for banks and other lenders exposed to default risk.

Aon started marketing its IP product in 2020, saying it would help "high-growth firms" with "leveraging" their intellectual property (IP) as collateral for debt financing.

A team at Aon estimated how much a company's intellectual property would be worth in a default, enabling the company to take out loans based on the value of its IP alongside its tangible assets. The company would then pay an insurance premium based on that valuation.

The risks associated with the policies were packaged as securities, and Vesttoo was used to help find capital markets investors in the products.

The lawsuit alleges that Aon's valuations of IP were "abysmal" and "resulted in vastly inflated IP valuations, with the liquidation value of the IP proving to cover just a small fraction (if any) of the debt it was meant to secure".

Aon estimated that just 3 to 6 per cent of companies would default, according to the lawsuit. Instead, the lawsuit says, borrowers "overwhelmingly" defaulted, prompting lenders to turn to IP collateral to try to cover their losses.

According to internal emails in the legal filing, Aon had raised concerns with the product, acknowledging that "pre-revenue borrowers are not well suited to CPI [collateral protection insurance] loans" because it was "incredibly difficult to project the value of the IP" for companies before they generated revenue.

The lawsuit points to a high-end men's razor start-up, ShaveLogic, whose IP consisted "primarily" of "patents related to the manner in which Shavelogic's razor cartridge attached to the handle and associated trademarks".

Aon valued ShaveLogic's IP at $468mn, according to the lawsuit. ShaveLogic later defaulted on its loan obligations under the transaction arranged by Aon, the lawsuit claims, and was later sold for just $70mn.

"Aon not only created the CPI product, it also created a market for the product by finding lenders and convincing them to extend loans to risky start-ups," the lawsuit alleges.

As late as July 2023, Aon chief executive Greg Case said on an investor call that Aon had built a marketplace for IP lending with "almost 30 insurers" and hit $2bn in aggregate insured transaction value. Since then, the broker has removed materials associated with the business segment from its website.

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Securities Law News

Millions on Polymarket Decided by Anonymous Crypto Holders (1)

Aug. 13, 2025, 10:23 AM PDT

With a global exchange that lets traders bet on the outcome of real world events — everything from elections to how often Elon Musk posts on X — Polymarket has become the talk of both Silicon Valley and Wall Street.

What's less talked about: Sometimes those outcomes are decided not by objective facts, but by a group of anonymous crypto traders thrashing it out in an online chatroom.

As Polymarket paves the way to return to the US market after three years, the largest platform in prediction markets is facing a growing backlash from users over the messy and sometimes illogical way it resolves its thorniest contracts.

Polymarket, which uses cryptocurrencies to process bets, outsources any markets where a dispute occurs to the holders of a digital token called UMA, who debate the matter before voting to decide the outcome. While anyone can monitor the deliberations and result, almost no information is available about who controls the UMA tokens — and hence who controls the outcomes.

The process has often produced results that have surprised and divided users. For instance, when more than $240 million was wagered on whether Ukraine's President Volodymyr Zelenskiy had worn a suit before the end of June, the final say went to UMA holders. They determined he hadn't, sparking anger among traders after media outlets showed photos and videos indicating the opposite.

Polymarket and its founder and Chief Executive Officer **Shayne Coplan** declined to comment for this story. Hart Lambur, CEO of Risk Labs, the issuer of the UMA token, said the system incentivizes voters to act in the long-term best interests of UMA, which means voting "their own true beliefs."

Volodymyr Zelenskiy at the NATO summit in The Hague, in June.
Photographer: Simon Wohlfahrt/Bloomberg

Still, Polymarket and the decentralized group that oversees UMA are working together with another firm called EigenLayer to design a different methodology.

"The issue that you see there is the tyranny of majority," said Sreeram Kannan, founder and CEO of EigenLayer, a decentralized finance project. "A majority can say something which is not true and then there is no consequence to that."

Lambur said the goal is to "improve the system" but declined to provide details.

Prediction markets like Polymarket and its rival Kalshi are making rapid strides into the world of traditional finance after hitting the headlines for correctly calling the 2024 presidential election. A legal victory lifted restrictions on such betting last year in the US, and a growing list of luminaries is involved with the industry. Peter Thiel's Founders Fund counts Polymarket in its portfolio, while Donald Trump Jr. is an adviser to Kalshi.

In the major prediction markets, traders buy "yes" or "no" shares tracking the outcome of a real-world situation. The amount of buying and selling of those instruments determines the implied probability — and therefore the price — of each outcome at any point in time. Traders profit if they sell their shares for higher or if the market resolves in their favor.

But while the winner of an election or a sports game is generally clear, not every outcome is inherently easy to establish. In a market betting on whether the Astronomer CEO will be “out” by a certain date after his affair was exposed at a Coldplay concert, does him being placed on leave count?

At Polymarket, if users believe a market should be “resolved” — meaning ended — they can put up some cryptocurrency to support their claim and make a proposal for UMA holders to review. Other users can then dispute that proposal if they disagree, setting in motion a public debate and subsequent secret vote to determine an outcome. The process is laid out on the Polymarket website.

Previously anyone could make a proposal, with around 7,000 made on UMA’s platform every month, about 1% of which were disputed, according to a February blog post on an UMA website. This week it was announced that the ability will be restricted to a list of experienced users, although the power to dispute a proposal remains open to all.

Because disputed markets stay open during deliberations, many users attempt to trade the UMA process, monitoring which way voters are leaning and placing bets on that basis. But with UMA holders hidden behind pseudonymous screen names, there is no way to know the true identity of who is voting or what their motivations might be.

“If the payoff of manipulating a market is larger than the cost of doing so, what we see over time in every system is that they end up being manipulated,” said Omer Goldberg, founder of Chaos Labs, a blockchain-focused risk management platform.

Multiple Discord servers, some with hundreds of members, have been set up to discuss the issue and what users can do about it.

In July, a Panama-based law firm filed a formal complaint with the Panama Gaming Control Board on behalf of one user alleging a small number of “whales” have influenced UMA votes in ways that allowed them to profit. Polymarket’s terms say any legal dispute must be arbitrated in the country.

The user behind the complaint, who asked not to be identified, shared a copy with Bloomberg News. Written in Spanish, it accuses Polymarket of failing to stop the fraud, and allowing high-net-worth-users “to act with complete impunity.”

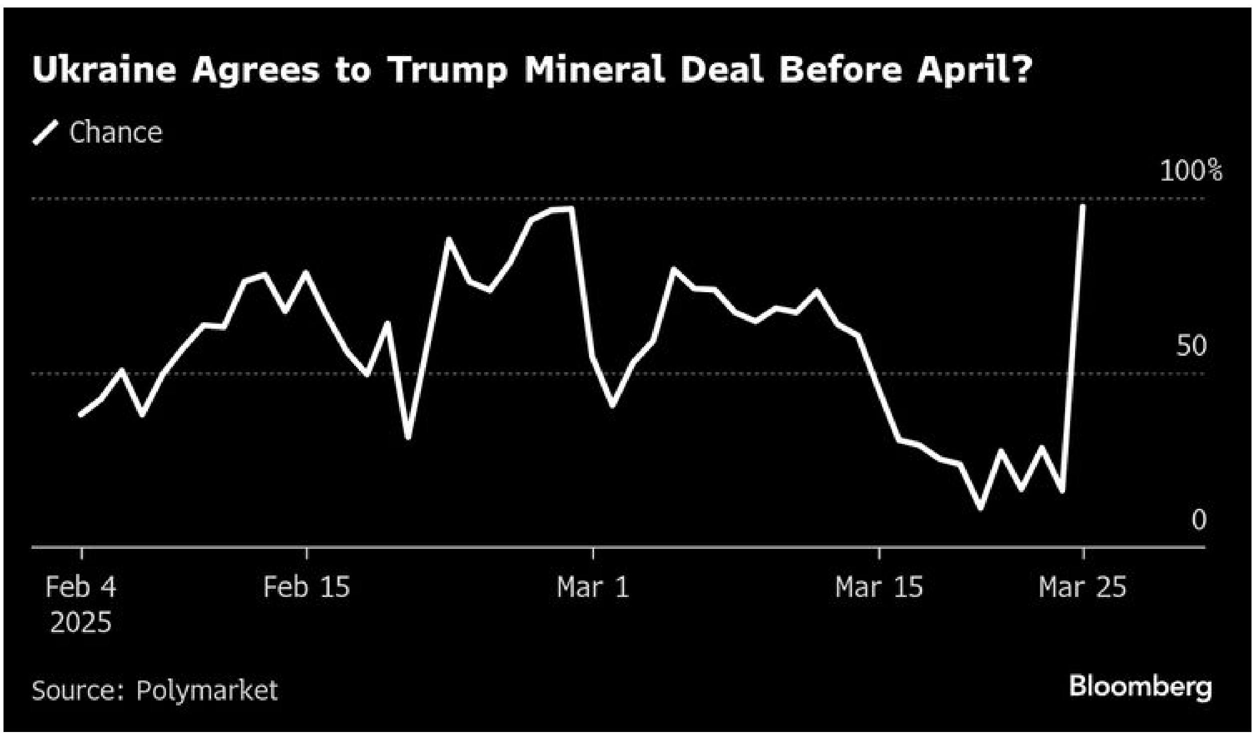
A spokesperson for the Panama Gaming Control Board confirmed receipt of the filing but declined to comment further on the specifics. He said that such complaints can take time to resolve. If any subsequent action is taken it could include a warning, suspension, or revocation of certification.

Even Coplan, the Polymarket CEO, may have expressed frustration with the current process last year. In a screenshot on X shared by a person who said he was a Polymarket user, a private message attributed to Coplan says that “candidly the UMA discord is a disaster.” Bloomberg isn’t able to independently verify the authenticity of the message. Coplan hasn’t publicly disputed it.

The existing dispute process is not entirely out of Polymarket's hands. The company is able to intervene by issuing what's known as a clarification — a statement that spells out the intent behind a contract. While it's not explicitly written into the rules, Lambur has said UMA voters are expected to align with these edicts.

The system doesn't always work as intended. In a market on whether Ukraine and the US would agree a mineral deal before April 2025, one user made an unexpected proposal to end the contract. It was quickly disputed, and Polymarket weighed in against the proposal. But the clarification came too late, and the market was resolved despite the firm's wishes. A user on Polymarket's Discord later claimed to have deliberately made the proposal at the weekend when they thought the company would be less likely to make a clarification.

Ultimately Polymarket has the power to overturn an UMA decision, but that is extremely rare. In a statement on the company's Discord after the mineral deal vote, it called the situation unprecedented and said it was "not a part of the future we want to build." It stopped short of reversing the outcome.



In part because they didn't want to be put in the position of policing the results of real world events like elections, US financial regulators had previously all but outlawed prediction markets. Polymarket in 2022 agreed to ban US traders from its platform in a settlement with the Commodity Futures Trading Commission, which oversees event contracts, for not being registered with the agency.

But Kalshi overturned many restrictions in court last year, and the Trump administration has since signaled support for making the industry more mainstream. The CFTC and Justice Department have both dropped investigations into Polymarket over violations of its 2022 settlement, and the company has just acquired a regulated derivatives exchange to help it re-enter the US market. It is also in the process of raising hundreds of millions of dollars in investment.

Read more: Two MIT Math Nerds Crack Open Legalized Gambling on Wall Street

Polymarket isn't alone in grappling with dispute resolution. Contracts in traditional areas of finance often become contentious, such as when creditors and borrowers face off over corporate restructurings. Meanwhile, Kalshi, which already has a US license, has on occasion angered its users over how it issues clarifications and resolves markets.

Last month, a Kalshi contract tied to whether "Linda Yaccarino leaves X this year" attracted a wave of "yes" bets after the media platform's CEO said she was stepping down. But the wagers didn't pay out because the payout criteria — rules that dictate when and how a market can be resolved — said it would only be resolved to "yes" if X has a new CEO, not if she simply left the company.

Kalshi, which retains sole discretion over disputes in its markets, kept the market open, but changed the title. A spokesperson for the company said it's legally required to resolve a market based on its rules, rather than a title.

"Capturing the spirit of a market in a few words is sometimes challenging, and we are always working hard to make sure our titles match the rules laid out in the contract," the spokesperson said. "We have learned from the user feedback on this title and we encourage users to always read the market rules before placing a trade."

In a few disputed cases, Polymarket has issued refunds to customers who say they were burned by unclear terms or an UMA vote not going to plan. But to date, that hasn't happened with the Zelenskiy suit question.

UMA holders voted that the Ukrainian leader, who generally opts for military garb, had not worn a suit despite videos and images of him at a NATO event in black pants and a jacket. Without reference to the Polymarket contract, several mainstream media outlets and Ukraine's official Instagram account described the attire as a suit. And even menswear influencer Derek Guy weighed in to say it was, specifically referencing the Polymarket betting.

Bloomberg News spoke to several US-based traders who still access Polymarket using a virtual private network, circumventing the platform's efforts to block them. James Risner, a 29-year-old research analyst, said he lost $9,000 on the surprise outcome of the Zelenskiy vote.

"Had I known upfront that this was the process, I wouldn't have touched this garbage with a 10-foot pole," he said. "I was like, who's making these choices? And then, what kind of idiot am I to be involved in it?"

(Adds further detail and context on Zelenskiy bet in third-last paragraph.)

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6th Circ. Clarifies Class Cert. Standard In FirstEnergy Suit

By **Lauren Berg**

Law360 (August 13, 2025, 11:22 PM EDT) -- A class of FirstEnergy investors suing in the wake of a $1 billion bribery scandal should not have been certified, the Sixth Circuit ruled Wednesday, saying the district court applied the wrong standard, but indicated the class could be recertified on remand.

The three-judge panel, in a published **opinion**, vacated **class certification** to the extent that the Ohio federal court applied the presumption standard derived from the U.S. Supreme Court's ruling in Affiliated Ute Citizens of Utah v. U.S. , which "applies to cases purely or primarily based on omissions." FirstEnergy Corp. had argued that Basic Inc. v. Levinson , which deals with alleged misrepresentations, applies to the investors' claims.

"The district court abused its discretion by holding that this mixed case was primarily based on omissions and that Affiliated Ute thus applied," the panel said. "But we emphasize that we are issuing a limited remand, vacating the class-certification decision only to the extent that the district court applied Affiliated Ute, which was the only issue presented to us on appeal."

"This appeal is not about whether it was proper for the district court to hold that 'plaintiffs would be entitled to the Basic presumption of reliance even if Affiliated Ute were inapplicable,'" it said.

The investors have accused FirstEnergy of concealing that it was **bribing politicians**, including former Ohio House Speaker Larry Householder — who was **sentenced to 20 years** in prison for the scheme — to secure a $1 billion bailout for its nuclear energy losses.

In **appealing** the investors' certification, FirstEnergy argued that the lower court abused its discretion by relying on two separate class certification standards, which the company said cannot coexist in a single case. It contended that only the Basic presumption applies while the investors argued that both presumptions apply.

In its opinion Wednesday, the appellate panel agreed with FirstEnergy that Affiliate Ute does not apply to the investors' claims.

To figure out if a mixed case, like this one, is primarily based on misrepresentations, the panel said it looks at four factors: whether the omissions are just the inverse of the misrepresentations or the only omissions are the truth that was misrepresented; "reliance is practically possible to prove by pointing to a misrepresentation and connecting it to the injury;" the primary thrust of the claims involves misrepresentations; or the omissions "have no standalone impact apart from" the misrepresentations.

If the case fails all of those factors, it is primarily based on omissions and is eligible to access the Affiliated Ute presumption, the panel said. But that's not the case here, it noted.

"The omissions here are only the inverse of the misrepresentations," the opinion stated, noting that the complaint alleges FirstEnergy's filings with the U.S. Securities and Exchange Commission made it seem like the company was pursuing legal "legislative solutions," while the "omission" was that the strategy was actually an illegal bribery scheme.

What's more, the investors can point to an alleged misrepresentation and connect it to their purported injury, according to the opinion. The panel noted that the investors "admit that most of their argument for application of Affiliated Ute is based on the statements that FirstEnergy did make."

"Unlike the plaintiffs who faced an impossible evidentiary burden in Affiliated Ute, plaintiffs here need not prove reliance on something that never happened," the panel said. "FirstEnergy's statements very much happened."

In addition, the investors' claims are "based more on what was said than on what was missing," and the omissions alleged in the case don't have stand-alone impact apart from the misrepresentations alleged, according to the opinion.

"To access the Affiliated Ute presumption, plaintiffs' claims must satisfy none of the four factors for determining whether a mixed case is primarily based on misrepresentations," the panel concluded. "But they satisfy every single one."

Turning to another issue with the class certification order, the appellate panel determined that the district court "incorrectly overlooked" the classwide-damages requirement established by the Supreme Court in Comcast Corp. v. Behrend , according to the opinion.

"The district court failed to conduct any analysis at all, let alone a rigorous one, of the Exchange Act claims brought in this case," the panel said, adding that "a district court considering class certification under Rule 23(b)(3) must conduct a 'rigorous analysis' to determine that 'damages are susceptible of measurement across the entire class."

"Here, however … the district court rejected FirstEnergy's objections to plaintiffs' experts in one sentence and concluded without any additional analysis 'that predominance exists with respect to damages for the same reasons as articulated in the previous section," it said.

But that "previous section" dealt with claims brought under the Securities Act, not the Exchange Act, according to the opinion. Those "fundamentally different" statutes "calculate damages entirely differently," the panel noted.

For instance, the Securities Act sets out a formula for calculating damages while the Exchange Act lacks any such damages calculation formula but does require proof of loss causation, which is not in the Securities Act, the opinion stated.

When presented with a class-certification order that fails to conduct a rigorous analysis, this court generally remands to the district court to perform the analysis in the first instance," the panel said, reversing and remanding for application of Comcast's analysis "to determine if plaintiffs … set forth a methodology for calculating damages on a classwide basis that is susceptible of measurement across the entire class and satisfies the predominance requirement of Rule 23(b)(3)."

Robert J. Giuffra Jr. of Sullivan & Cromwell LLP, counsel for FirstEnergy, told Law360 on Wednesday that his client is pleased the panel "vacated the 'defective' class certification order in its HB6-related securities litigation and clarified the critical requirements for certifying a class."

"On remand, the Sixth Circuit has directed the district court to conduct a 'rigorous analysis' of whether plaintiffs can meet those requirements," Giuffra said. "FirstEnergy will oppose any effort by plaintiffs to propose again a class that seeks damages for investor losses that the company did not cause."

Counsel for the investors did not immediately respond to a request for comment.

U.S. Circuit Judges Danny J. Boggs, Eric L. Clay and Julia Smith Gibbons sat on the panel for the Sixth Circuit.

FirstEnergy is represented by Robert J. Giuffra Jr., Sharon L. Nelles, David M.J. Rein and Morgan L. Ratner of Sullivan & Cromwell LLP.

The investors are represented by Jason A. Forge and Joseph D. Daley of Robbins Geller Rudman & Dowd LLP, and Brian K. Murphy of Murray Murphy Moul & Basil LLP.

The case is Diane Owens et al. v. FirstEnergy Corp. et al., case number 23-3940, in the U.S. Court of Appeals for the Sixth Circuit.

--Additional reporting by Ryan Harroff. Editing by Kristen Becker.

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Cassava Investors Get Class Certified In Alzheimer's Drug Suit

By **Sydney Price**

Law360 (August 13, 2025, 8:06 PM EDT) -- Investors accusing Cassava Sciences Inc. of inflating its stock price with manipulated research data of its Alzheimer's drug can proceed with their claims as a class, with the court finding the suit's named plaintiffs are adequate representatives despite Cassava's claims they were only "out to make a quick buck."

U.S. District Judge David Alan Ezra said Tuesday that the proposed class meets the numerosity, commonality, typicality and adequacy requirements for certification. Contrary to Cassava's objections, the purchase of a company's stock after disclosure of alleged fraud does not preclude typicality in this case, Judge Ezra determined.

Judge Ezra also said that just because the named plaintiffs are day traders and "in-and-out" traders, their claims are not necessarily at odds with the rest of the proposed class.

"While plaintiffs' damages may be different than some of the proposed class, 'such differences are typical in securities-fraud cases and do not render a lead plaintiff atypical,'" the order states.

The certified class includes those who purchased or otherwise acquired Cassava securities between Sept. 14, 2020, and Oct. 12, 2023, the order states.

The litigation, which consists of five similar suits consolidated in June 2022, alleges Cassava misled investors about its data management controls and misrepresented the efficacy of its Alzheimer's disease treatment under development, which led to sharp stock price declines when the investigation was revealed.

On the first day of the class period, Cassava's share prices shot up by 133%, or about $4.43, when it announced a recent clinical trial for Alzheimer's treatment simufilam — the company's lead drug candidate — found significant improvement in Alzheimer's biomarkers, "the exact opposite" of the initial analysis, the suit states.

Over the next few months, Cassava continued to tout the effectiveness of simufilam in press releases, financial filings and scientific journals, the suit alleges.

The truth fully emerged, however, on Oct. 12, 2023, when peer-reviewed academic journal Science published an article stating a City University of New York researcher associated with the research program for simufilam had been subject to an investigation by university officials for possible data manipulation, according to the complaint.

The report stated that the investigators "found evidence highly suggestive of deliberate scientific misconduct" from City University of New York professor Hoau-Yan Wang, who is not a defendant in the suit, according to the complaint.

On this news, Cassava's shares fell $2.68, or about 15%, to close at $14.86 per share on Oct. 13, 2023, the complaint said.

Wang was indicted last year in U.S. District Court for the District of Maryland on felony charges of major fraud against the United States, wire fraud and making false statements, according to the investors' complaint.

In September 2024, the U.S. Securities and Exchange Commission filed securities fraud claims against Cassava, its former CEO Remi Barbier and its former Senior Vice President of Neuroscience Dr. Lindsay Burns, who are also defendants in the shareholders' litigation. Cassava agreed to pay a $40 million civil penalty, and Barbier and Burns agreed to $175,000 and $40,000 penalties, respectively, to settle the SEC's claims.

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

The investors are represented by Daniel S. Drosman, Kevin A. Lavelle, Megan A. Rossi, Heather Geiger and Jeremy W. Daniels of Robbins Geller Rudman & Dowd LLP.

Cassava is represented by Gregg Costa, Trey Cox, Monica K. Loseman, Scott Campbell, John Turquet Bravard and Mary Beth Maloney of Gibson Dunn & Crutcher LLP.

The case is In re: Cassava Sciences Inc. Securities Litigation, case number 1:21-cv-00751, in the U.S. District Court for the Western District of Texas.

--Editing by Jay Jackson Jr.

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Chancery OKs $7.5M Atty Fee In $50M Lutnick Bonus Battle

By **Jeff Montgomery**

Law360 (August 13, 2025, 8:28 PM EDT) -- Class attorneys who secured a $50 million derivative suit settlement fully offsetting a disputed bonus paid in 2021 to former Newmark Group Inc. controller and current Commerce Secretary Howard Lutnick saw their proposed 25% attorney fee cut to 15% by a Delaware vice chancellor on Wednesday.

Ruling from the bench after arguments, Vice Chancellor Bonnie W. David approved a $7.5 million fee award for class attorneys at Robbins Geller Rudman & Dowd and Cooch and Taylor PA instead of a requested $12.5 million. The decision also gave a nod to a $15,000 incentive award for lead plaintiff Cardinal Capital Management LLC.

The vice chancellor, whose fee allocation matched the top end of what Newmark deemed supportable, rejected arguments about the case being settled at a late stage or the settlement returning 100% of the amount at issue.

"It's 100% recovery of the plaintiff's best claim, but not 100% of all the damages pled in the case," Vice Chancellor David said, noting a sidelining of the partnership unit claims during litigation.

Originally in dispute, Vice Chancellor David said, were additional claims for recovery of $146 million from an accelerated exchange of partnership units held by Newmark management.

Randall J. Baron of Robbins Geller told the vice chancellor that the settlement emerged from a one-day mediation session and provides "a 100% recovery of the core wrongdoing" in the case.

"As far as we understand, it's the only 100% recovery in Delaware history. This is a $50 million cash settlement going to the company," Baron said.

Kevin R. Shannon of Potter Anderson & Corroon LLP, counsel to Newmark, told the vice chancellor that, beyond the $50 million benefit, "the real issue is what percent of that benefit should be taken away from the company and given to plaintiff's counsel."

Delaware case precedents "look primarily in this context at what point does settlement occur in determining what percentages" might be awarded to counsel, Shannon said.

In Newmark, the settlement took shape after a single deposition and before any expert discovery, Shannon said — a stage that "typically" would be considered early, making it a candidate for 10% to 15% attorney fee share.

Vice Chancellor David, acknowledging fee precedents provide no hard and fast rules, said litigation had been limited in the case, filed in 2022. A single witness was deposed, and the parties had not gone through all the witnesses, she noted.

Baron acknowledged that in-depth discovery can lead to better settlements but branded pursuit of depositions in order to build numbers "just bad litigation," leading to waste and putting "function ahead of form and wasting [litigation] insurance assets — my friends on the other side charge a lot."

A consolidated, amended version of the Chancery Court suit argued that Lutnick — also Newmark's controlling shareholder, principal executive and a minority investor — browbeat the company and his three board colleagues into approving the bonus despite spending only "33% of his professional time working for Newmark."

Shannon said the 25% award would be a "significant" challenge for class attorneys. Court precedents have established bands for class awards, reserving 25% and higher fee shares of settlement proceeds for late-stage litigation, and 10% to 15% for mid-stage.

"Even if plaintiffs could somehow convince Your Honor this should be characterized as a mid-stage settlement, at best the plaintiffs were at the very starting point of mid-stage, and at best they would get the bottom of the range starting at 15%," Shannon said.

The $50 million Newmark bonus was allegedly pursued at Lutnick's suggestion following an accelerated payout on the company's Nasdaq shares, then valued at $847 million, according to the complaint.

Lutnick brought the Nasdaq shares to Newmark in 2017 when it was spun off from another Lutnick-controlled business, BGC Partners. The shares grew to be worth some $1.42 billion, with Lutnick arguing for a share of the gain.

The stockholders are represented by Christopher H. Lyons, Tayler D. Bolten, Randall J. Baron, A. Rick Atwood Jr., Benny C. Goodman III and Lion Wintermute of Robbins Geller Rudman & Dowd LLP, Steven J. Purcell, Robert H. Lefkowitz and Stephen Childs of Purcell & Lefkowitz LLP, R. Bruce McNew of Cooch and Taylor PA, and David A. Jenkins, Neal C. Belgam and Jason Z. Miller of Smith Katzenstein & Jenkins LLP.

Officer defendants Howard Lutnick, Barry Gosin, Michael Rispoli and Stephen Merkel are represented by C. Barr Flinn, Paul J. Loughman, Lauren Dunkle Fortunato and Skyler A.C. Speed of Young Conaway Stargatt & Taylor LLP and Eric Leon, Nathan Taylor and Meredith Cusick of Latham & Watkins LLP.

Director defendants Virginia S. Bauer, Kenneth A. McIntyre and Michael Snow are represented by Matthew D. Stachel, Sabrina M. Hendershot and Elizabeth Wang of Paul Weiss Rifkind Wharton & Garrison LLP.

Newmark Group Inc. is represented by Kevin R. Shannon, Jaclyn C. Levy, Christopher D. Renaud and Justin T. Hymes of Potter Anderson & Corroon LLP.

The case is In re: Newmark Group Inc. Derivative Litigation, case number 2022-0687, in the Court of Chancery of the State of Delaware.

--Editing by Philip Shea.

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Dick's Sporting Goods Suit Should Be Trimmed, Judge Says

By **Katryna Perera**

Law360 (August 13, 2025, 11:07 PM EDT) -- A Pennsylvania federal judge has recommended trimming a shareholder class action that claims Dick's Sporting Goods misled investors about inventory levels and losses because of theft after the COVID-19 pandemic, finding that some of the suit's challenged statements are forward-looking and inactionable, among other things.

U.S. Magistrate Judge Kezia O. L. Taylor issued a **report and recommendation** Tuesday recommending that seven of the suit's 19 allegedly misleading statements related to excess inventory be tossed, finding they are statements of corporate optimism or forward-looking.

The remaining 12 statements should be allowed to proceed because they are "present tense" and factual, the judge said, and other allegations in the complaint contradict them.

"Specifically, accounts of the [suit's confidential witnesses] reflect existence of excess inventory, of which defendants were aware from seeing it firsthand, as well as having access to 'weekly inventory and sales reports' related to inventory," the report said. "These accounts are sufficient for purposes of specificity and plausibility because plaintiffs have sufficiently 'demonstrate[d] that discovery would be reasonably likely to reveal evidence of the falsity of the[se] ... statements.'"

Judge Taylor also recommended dismissing investors' claim that Dick's and the individual defendants disclosed risk factors after they had already materialized, saying investors were alerted, specifically, to the possibility of not just a decline in sales and merchandise markdowns but a "significant" decline in sales and merchandise markdowns, before they happened.

"While it appears to be undisputed that throughout the class period there was a decline in demand and sales of outdoor and fitness equipment, plaintiffs have not pled that, at the time of these disclosures, this decline was 'significant,'" the report said. "These risk factors do not give rise to a securities fraud claim."

The suit's allegations that the defendants' disclosures about the level of inventory shrink, or theft, were misleading should also be dismissed, the judge said.

"Defendants' disclosures relative to the level of shrink, that included acknowledgments of 'increased theft,' were not misleading such that including additional detail was necessary," the report said.

Judge Taylor stopped short of recommending that the suit's scienter and loss causation claims be tossed. First, the judge said the corroborating accounts of 10 confidential witnesses related to excess inventory and the suit's claim that the defendants had access to this information support a claim of scienter.

Additionally, the timing of the individual defendants' stock sales, resulting in $47 million in gains, supports a strong inference of scienter, the judge said.

"At this stage, defendants' narrative of optimism and structural transformation is belied by the reality confronting the company, of which the individual defendants were aware based on their visits to the overloaded stores and/or their access to detailed weekly reports on inventory levels," the report said. "These facts render defendants' [contrary] explanation doubtful and, at a minimum, insufficient to overcome the competing inference of scienter."

Regarding loss causation, Judge Taylor said that because the investors do not need to plead their loss causation claim with particularity at this stage of the litigation, the complaint's identified disclosure and allegedly resulting stock price decrease is sufficient.

The suit, filed in 2024, claims that early in the COVID-19 pandemic, Dick's saw a surge in sales while gyms were closed and people sought other ways to stay active. Later sales slowed down, but the company and its top brass continued to represent that Dicks maintained "healthy" and "well-positioned" inventory.

Investors claim these representations were false and misleading because the company had lots of excess inventory that had to be stored off-site, in rented trailers and warehouses, because of a lack of space in stores. Additionally, the suit claims the company misled investors about the level of shrink it was experiencing, which resulted in millions of dollars of losses.

The truth began to emerge in May 2023 when investment firm TD Cowen released a report lowering its sales and earnings per share estimate for Dick's. According to the report, the company's stock price declined after the report was released. The share price fell again, by more than 24%, after an August 2023 earnings call during which the defendants acknowledged for the first time that shrink and excess inventory had a material financial impact on the company, according to the report.

The suit's individual defendants are Dick's CEO Lauren R. Hobart, Chief Financial Officer Navdeep Gupta and Executive Chairman Edward Stack.

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

The investors are represented by Lawrence F. Stengel of Saxton & Stump, Jeremy A. Lieberman, Emma Glimore and Villi Shteyn of Pomerantz LLP, Darryl J. Alvarado and T. Alex B. Folkerth of Robbins Geller Rudman & Dowd LLP and Alfred G. Yates Jr. and Gerald L. Rutledge of the Law Office of Alfred G. Yates Jr. PC.

Dick's Sporting Goods and the individual defendants are represented by Rebekah B. Kcehowski and Margaret C. Gleason of Jones Day and William Savitt, Lauren M. Kofke, Alison B. Brockman and Deborah A. Sparks of Wachtell Lipton Rosen & Katz.

The case is Plumbers and Pipefitters Local Union No. 719 Pension Trust Fund v. Dick's Sporting Goods Inc. et al., case number 2:24-cv-00196, in the U.S. District Court for the Western District of Pennsylvania.

--Editing by Nick Petruncio.

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KinderCare Faces Investor Suit Over Pre-IPO Abuse Claims

By **MJ Koo**

Law360 (August 13, 2025, 4:35 PM EDT) -- Early education company KinderCare Learning Companies Inc. is facing a proposed shareholder class action accusing it of misleading investors when the company went public in October 2024.

In a complaint filed Monday in Oregon federal court, shareholder Venkata Surya Teja Gollapalli alleges the company touted "the highest quality care possible" in its registration statement while hiding information about earlier incidents of child abuse, neglect, and safety violations at KinderCare facilities that came to light in later reports, and subsequently sent its share price lower.

"In truth, prior to the IPO, KinderCare provided substandard care, including numerous incidents of child endangerment, for example, instances where toddlers escaped facilities and roamed into traffic, children were left locked in facilities or buses, and kids were subject to intentional acts of physical, verbal, and sexual abuse," Gollapalli wrote.

The child care provider priced its shares at $24 in its initial public offering, but its business practices and safety record came under doubt in April 2025 when analyst Edwin Dorsey reported several pre-IPO incidents in which children at KinderCare centers allegedly were put in danger, the complaint says.

According to the complaint, the report detailed cases "far from 'the highest quality care possible,'" including an 11-month-old who became ill from cocaine exposure — later traced to a worker's backpack in the infant room — and a 2-year-old who was locked alone inside a facility when her mother arrived 15 minutes late for pickup.

Following the report's release, KinderCare's share price fell to about $9, the suit says, adding that the company admitted to and investigated the incidents, while facing questions from lawmakers over its federal funding and reputational damage from media coverage.

However, the company said nothing about the risks of increased regulatory scrutiny, reputational damage and potential lawsuits, Gollapalli said.

The investor alleged the company violated the Securities Act of 1933 by portraying its operations and safety standards in an overly positive light in its IPO filings, noting that KinderCare's share price has remained significantly depressed since falling below its IPO price after Dorsey's report.

"The Registration Statement was negligently prepared and, as a result, contained false statements of material fact, left out key information needed to make the statements not misleading, and failed to include disclosures required under the rules and regulations for preparing such documents," Gollapalli said.

The suit's defendants also include KinderCare CEO Paul Thompson, former CEO and board chair John T. Wyatt, CFO Anthony Amandi, and six other current or former directors.

It also names controlling shareholder Partners Group Holding AG and IPO underwriters Goldman Sachs & Co. LLC, Morgan Stanley & Co. LLC, Barclays Capital Inc., and UBS Securities LLC, which allegedly shared over $36 million in fees from the offering.

Gollapalli seeks to represent all investors who purchased KinderCare common stock in or traceable to the company's October 2024 IPO, excluding the defendants, their families, and affiliates. He is asking for compensatory damages with interest, reimbursement of legal and expert costs, and any equitable or injunctive relief the court deems appropriate, including a process for potential class members to opt out.

Counsel for Gollapalli and representatives of KinderCare did not immediately respond to a comment request on Wednesday.

The plaintiff is represented by Keil M. Mueller of Keller Rohrback LLP, Brian E. Cochran, Samuel H. Rudman and Richard W. Gonnello of Robbins Geller Rudman & Dowd LLP, and Michael I. Fistel Jr. of Johnson Fistel PLLP.

The defendants have not yet disclosed their legal representation in the case.

The case is Gollapalli v. KinderCare Learning Companies Inc. et al., case number 3:25-cv-01424, in the U.S. District Court for the District of Oregon.

--Editing by Vaqas Asghar.

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Semtech Investor Sues Brass Over Copper Goods Sales Drop

By **Katryna Perera**

Law360 (August 13, 2025, 10:41 PM EDT) -- The top brass of high-performance semiconductor company Semtech Corp. has been hit with a shareholder derivative suit in California federal court claiming that they misled investors about the performance and sales of the company's products and failed to disclose certain issues that led to the end of the company's partnership with Nvidia.

Shareholder Michael Kent filed a **complaint** on Tuesday in the U.S. District Court for the Central District of California
against Semtech's CEO, Hong Hou, its chief financial officer, Mark Lin, and several company directors. The company designs, develops, manufactures and markets a diverse portfolio of products for commercial applications. CopperEdge, one of the company's products, is a signal integrity technology primarily used in data centers to broaden the reach and performance of copper interconnects, the complaint says.

According to the complaint, one of the company's "most significant developments and promising growth opportunities" was its partnership with Nvidia, which positioned Semtech at the "center of the artificial intelligence and high-performance computing markets."

However, Kent alleges that between August 2024 and February 2025, the defendants consistently misled investors about Semtech's partnership with Nvidia and the net sales it had achieved from its CopperEdge products.

Specifically, the complaint states that the defendants failed to disclose that the CopperEdge products suffered from heating issues, which caused a reduction in sales and ultimately led Nvidia to stop purchasing from Semtech and develop its own processing unit. Additionally, the complaint states. the defendants failed to disclose that Semtech did not maintain adequate internal controls.

The truth began to emerge on Feb. 7, when investment firm Baird lowered its price target on Semtech's stock from $80 to $60 per share, according to the complaint. Kent says that Semtech's stock price fell by $5.99 per share, or 10%, from $60.50 on Feb. 6 to $54.51 on Feb. 7.

The same day, Semtech filed a report with the U.S. Securities and Exchange Commission announcing that, for the 2026 fiscal year, net sales from its CopperEdge products were expected to be lower than the company's previously disclosed floor case estimate of $50 million, with no expected ramp-up over the course of fiscal year 2026, the complaint states.

Semtech also disclosed that the "revised estimates are based on recent feedback from a server rack customer and correlated to discussions with end users of the server rack platform." Kent claims that the customer was Nvidia.

On this news, the complaint states, Semtech's stock fell $16.91 per share, or 30%, from $54.51 on Feb. 7 to $37.60 on Feb. 10.

The complaint also alleges that the individual defendants engaged in insider trading during the relevant period, generating combined proceeds of roughly $709,000.

The suit seeks damages, reforms and improvements to the company's corporate governance and internal procedures; restitution; attorney fees; and a jury trial. Semtech is also facing a **related**

class action suit in California federal court.

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

Kent is represented by Adam M. Apton, Gregory M. Nespole, Daniel Tepper and Correy A. Suk of Levi & Korsinsky LLP.

Counsel information for the defendants was not immediately available.

The case is Kent v. Hou et al., case number 2:25-cv-07487, in the U.S. District Court for the Central District of California.

--Editing by Karin Roberts.

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Roomba-Maker Execs Sued Over Post-Amazon Deal Issues

By **Katryna Perera**

Law360 (August 13, 2025, 7:10 PM EDT) -- The top brass of iRobot Corp., maker of the Roomba robotic vacuum cleaner, have been hit with a shareholder derivative suit in New York federal court claiming they exaggerated the effectiveness of the company's restructuring plan following the abandonment of a proposed $1.7 billion merger with Amazon.

Shareholder Anthony Wren filed a **complaint** Tuesday against several former and current executives and directors of iRobot, including company CEO Gary Cohen and Chief Financial Officer Karian Wong.

iRobot is primarily known for its Roomba robotic vacuum cleaner, the first to achieve commercial success. However, the complaint states that the company's performance over the last decade has steadily declined, except for a temporary boost in sales during the COVID-19 pandemic. According to the complaint, iRobot's market share fell to 64% by 2016 and further declined to just 46% by 2020.

The company's decline can be attributed to lower-priced alternatives offered by Chinese competitors and major consumer brands, such as Samsung and Shark Ninja Inc., launching their own robotic vacuum cleaner products, the complaint states.

In 2022, a "lifeline" appeared for the company when Amazon agreed to acquire it for $61 per share in an all-cash transaction valued at approximately $1.7 billion. However, in January 2024, the agreement fell apart when the companies announced that they had mutually agreed to terminate the acquisition due to regulatory concerns.

"In the agreement, the companies stated that there was 'no path to regulatory approval in the European Union.' Also, reports emerged indicating that the U.S. Federal Trade Commission was preparing a lawsuit aimed at blocking the deal," the complaint says. "At the same time, iRobot announced that Colin Angle would be stepping down as CEO and that the company would be laying off approximately 350 employees, or about 31% of its workforce."

Despite the failure of the Amazon acquisition, though, Wren claims iRobot "consistently expressed confidence in its 'ability to build on [its] legacy of innovation as a standalone company and to navigate this period successfully.'"

Following the termination of the acquisition, iRobot announced it would implement an operational restructuring initiative, known as "iRobot Elevate," aimed at stabilizing the company.

"This initiative focuses on 'profitability and advancing key growth initiatives to extend market share in the mid-tier and premium segments.' According to the company, the restructuring plan is designed to set a new strategic course for long-term, sustainable value creation," the complaint says.

However, the truth about the plan's effectiveness came to light on March 12, when iRobot released its financial results for the fourth quarter and full year of 2024 and "reported a loss of $2.06 per share on revenue of $172 million, reflecting a 44% decline compared to the same period last year," Wren says.

"The 4Q24/FY24 press release also warned investors that there is no guarantee the company's 'new product launches will be successful,' citing potential challenges such as 'consumer demand, competition, macroeconomic conditions, and tariff policies,'" the suit notes.

"As a result of these uncertainties and their potential impact on financial performance, the 4Q24/FY24 press release acknowledged there is 'substantial doubt about the company's ability to continue as a going concern for a period of at least 12 months from the date of the issuance of its consolidated 2024 financial statements,'" Wren says. "Additionally, the 4Q24/FY24 press release announced the company would cancel its fourth-quarter and full-year 2024 earnings call and webcast and would not be issuing a financial outlook for 2025."

Wren says market analysts "reacted swiftly" to the news, with a Seeking Alpha analyst downgrading iRobot from a "hold to sell rating," and expressing serious concerns about the company's future, the complaint states. The same day, The Motley Fool, an investment advice company, published an article stating that iRobot's "restructuring efforts — including a 50% reduction in its workforce — have yet to yield stability," according to the complaint.

On this news, Wren says, the price of iRobot's stock fell $3.25 per share, or 51.5%, from $6.31 per share March 11 to $3.06 per share March 13.

The company experienced a short increase in its stock price in May after news broke that U.S. tariffs on European Union imports would be postponed until July 2025, according to the complaint. However, despite the temporary boost in share price, Wren says market analysts continued to express concerns about iRobot's financial health.

"For instance, on May 29, 2025, Seeking Alpha observed that while the company's '[t]echnical indicators had turned bullish short-term,' even though the company's 'cash burn and deteriorating financials outweigh these positives,'" the complaint says. "Seeking Alpha added that iRobot's first quarter 2025 results revealed declining revenue, deepening losses, shrinking cash reserves, and deteriorating gross margins."

The suit seeks damages, restitution, improvements and reforms to iRobot's corporate governance and internal procedures, attorney fees, and a jury trial.

iRobot and counsel for Wren declined to comment Wednesday.

iRobot is also battling a securities **class action** in Massachusetts over the scuttled Amazon deal. In January, a federal judge permanently tossed the action, but the plaintiffs appealed to the First Circuit, where the case is ongoing.

Wren is represented by Timothy Brown, Saadia Hashmi, Elizabeth Donohoe and Zachary Benson of The Brown Law Firm PC.

Counsel information for the defendants was not immediately available.

The case is Wren v. Cohen et al., case number 1:25-cv-06625, in the U.S. District Court for the Southern District of New York.

--Editing by Kristen Becker.

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SPAC Behind EV Maker Nikola, Shareholders Strike Settlement

By **Clara Geoghegan**

Law360 (August 13, 2025, 4:47 PM EDT) -- Stockholders and board members for the blank-check company that took electric-vehicle maker Nikola public said they reached a $6.3 million deal to end a Delaware Chancery Court lawsuit that accused the SPAC of misleading investors about Nikola's prospects.

According to a **stipulation of settlement** filed Tuesday, the $6.3 million would be paid primarily by a directors and officers insurance policy for VectoIQ, the special-purpose acquisition company that in 2020 acquired Nikola and in a $3.3 billion deal brought the Arizona-based EV maker public. A Delaware bankruptcy judge overseeing Nikola's pending liquidation recently ruled that bankruptcy's automatic stay didn't apply to the insurance policy, allowing it to fund the settlement.

If approved by the Court of Chancery, the deal would end a derivative lawsuit and direct class claims brought by shareholders who owned VectoIQ stock in spring 2020 and alleged the SPAC's board failed to disclose that the merger would dilute their shares and provided misleading information about the company's technology and business. Over a year after the initial public offering, Nikola **paid $125 million** amid a U.S. Securities and Exchange Commission investigation into statements by the EV maker's founder and former CEO.

The company touted its ability to bring electric vehicles to the shipping and transportation industry with electric semi trucks. A report published **in September 2020** by Hindenburg Research cast doubts on claims made following the IPO by Nikola's founder and then-CEO, Trevor Milton, about its technology and product capabilities.

While the company decried the report as a "hit job" at the time and said it had hired attorneys to reach out to the SEC, its shares fell.

Milton stepped down shortly after the Hindenburg report and news that he was under criminal investigation. He was charged with securities fraud in **July 2021** as prosecutors alleged he made false statements about Nikola to drive up its stock price and lure in billions of dollars in investments. A New York federal jury in 2022 **found him guilty** on counts of securities and wire fraud, which he appealed. President Donald Trump **pardoned Milton** in March while the appeal was pending.

Following the Hindenburg report, Nikola **shareholders launched** proposed class actions in federal court, which were eventually consolidated in Arizona and certified. Nikola settled the federal class actions and is **vying to have** the $13 million claim from the settlement subordinated in its ongoing bankruptcy. Nikola filed for bankruptcy in February citing the **impacts of a battery recall.**

The September 2020 report also prompted several shareholders who owned VectoIQ stock before the merger to demand records, according to the stipulation.

Those shareholders later filed derivative claims against VectoIQ's former and current board members in Delaware Chancery Court — which were later consolidated — according to the filing, that accused them of failing to disclose that the merger would dilute the value of their shares.

The lawsuit was later amended to include direct class claims brought on behalf of VectoIQ shareholders who owned stock between May 8, 2020, when VectoIQ's registration statement to investors in connection with the merger took effect, and June 3, 2020, when the deal closed.

Statements provided to shareholders about the merger were misleading concerning Nikola's business prospects and technologies, the shareholders alleged.

According to the stipulation, the shareholders and board of directors reached a global settlement in August 2024. Since Nikola isn't a defendant in the lawsuit, the parties said they believed the settlement could proceed without breaking bankruptcy's automatic stay.

The stipulation noted that U.S. Bankruptcy Judge Thomas Horan, who is overseeing Nikola's case, issued an order in July stating that VectoIQ's insurers could pay out under certain director and officer policies without running afoul of the automatic stay.

The stipulated settlement filed Monday would end the stockholder's derivative and class claims against VectoIQ's current and former board members and establish a $6.3 million fund to settle the claims.

Counsel for the plaintiffs declined to comment on the settlement Tuesday. Counsel for the defendants did not immediately respond to requests for comment.

The plaintiffs are represented by Peter B. Andrews, Craig J. Springer, David M. Sborz and Andrew J. Peach of Andrews & Springer LLC, and Blake A. Bennett of Cooch and Taylor PA.

Defendants Richard J. Lynch, Robert Gendelman, Sarah W. Hallac and Victoria McInnis are represented by Joseph B. Cicero and Samantha Callejas of Chipman Brown Cicero & Cole LLP.

Defendant Stephen J. Girsky is represented by Matthew D. Stachel of Paul Weiss Rifkind Wharton & Garrison LLP.

The case In re: Nikola Corporation Derivative Litigation, case number 2022-0023, in the Court of Chancery of the State of Delaware.

--Additional reporting by Vince Sullivan, Alex Wittenberg, Linda Chiem, Rae Ann Varona and Pete Brush. Editing by Alex Hubbard.

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Paramount Investor Gabelli Sues Redstone, Skydance In Del.

By **Jeff Montgomery**

Law360 (August 13, 2025, 9:59 PM EDT) -- A fund of Paramount Global investor Mario Gabelli sued National Amusements Inc. successor Harbor Lights Entertainment, Shari Redstone and others in Delaware's Court of Chancery on Wednesday, seeking damages tied to the recently closed $8.4 billion Paramount-Skydance Media merger.

Gabelli Value 25 Fund had been battling for months in the same court — among other investors — for access to books and records as part of a probe of alleged insider wrongdoing in connection with developments leading up to Paramount's recently closed, $8.4 billion tie-up with Skydance.

Scant information was available late Wednesday on the suit, which was filed under seal, with only a supplemental information sheet available on the public docket citing claims for alleged breaches of fiduciary duty, aiding and abetting breaches of fiduciary duty, and unjust enrichment.

In a statement released late Wednesday, Gabelli's asset management company said, "the class action seeks damages for the unfair and inequitable merger consideration that National Amusements, Inc. ('NAI') and its affiliates received versus the consideration received by Class A shareholders other than NAI."

The Gabelli Fund was Paramount Global's second-largest common stockholder after Redstone's National Amusements Inc., and earlier this year held 4.8 million class A shares, then worth more than $127 million.

David Ellison's Skydance Media announced last year that it would move forward with a Paramount takeover in a transaction to be preceded by Skydance's $2.4 billion cash acquisition of National Amusements.

The Skydance-Paramount merger is expected to pay $4.5 billion to stockholders, plus $1.5 billion toward Paramount's balance sheet.

NAI owned ViacomCBS and, through Shari Redstone, controlled Paramount. Redstone was nonexecutive chairwoman of Paramount and president of National Amusements.

During a books and records trial before Magistrate in Chancery Selena E. Molina on April 1, Vincent R. Cappucci of Entwistle & Cappucci LLP, counsel to Gabelli Value 25, told the court that the Paramount transaction was part of a plan "by Ms. Redstone and NAI which began several years ago, first with the combination involving Viacom and CBS."

Cappucci alleged in a transcript of the trial that, "there is quite a bit of — I'm going to say suspect activity here. But what it all points to is that Ms. Redstone clearly favored the transaction which gave the most benefit and was most advantageous to National Amusements."

Investor funds that have challenged the maneuvering alleged that Skydance offered hundreds of millions of dollars in unfair and "egregious" benefits to Redstone.

Terms of the Skydance deal included a "no shop" provision barring Paramount from considering other buyer offers. National Amusements was to get an allegedly inflated $2.4 billion in a first step of the merger.

Also part of the alleged package was a buyout of Redstone's Central Park apartment in Manhattan and payment for the lease on her private jet, along with a $200 million indemnification agreement covering any breach of fiduciary duty claim targeting the deal.

Counsel for Gabelli did not immediately respond to a request for comment.

Gabelli Value 25 Fund Inc. is represented by Brian E. Farnan and Michael J. Farnan of Farnan LLP.

Counsel information for other parties was not immediately available.

The case is Gabelli Value 25 Fund Inc. v. Harbor Lights Entertainment Inc. (fka National Amusements Inc.) et al., case number 2025-0921, in the Court of Chancery of the state of Delaware.

--Editing by Linda Voorhis.

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UFC Fights Sanctions Bid, Cites Massive Document Dump

By **Elaine Briseño**

Law360 (August 13, 2025, 5:30 PM EDT) -- Ultimate Fighting Championship's parent companies told a Nevada federal court Tuesday that they have already filed nearly 4 million pages to comply with discovery deadlines in a wage dispute with fighters, arguing that the fighters' July request for sanctions, including default judgment, is unwarranted.

The fighters asked the court July 29 to **impose terminating sanctions**, asserting that TKO Operating Co. LLC and UFC operator Zuffa LLC have stonewalled fighters' efforts to obtain the materials that would shed light on contracts and compensation. The UFC defendants called the accusations "hyperbole" in a Tuesday **response** to the motion for sanctions, and blamed the discovery dispute on the plaintiffs.

"Throughout discovery in this case (which remains ongoing), defendants have consistently attempted to engage plaintiffs to address their expansive — and often, unreasonable and unworkable — discovery requests," UFC said. "Plaintiffs have refused to engage meaningfully, instead resorting to unproductive and unilateral demands, consistently under threat of sanctions."

The defendants, according to the response, produced 830,000 documents containing more than 3.8 million pages by a July 17 deadline and have provided thousands more since then. The documents include information on fighter pay broken down by event, contracts and monthly profits and losses, according to the filing.

The proposed class action was filed in June 2021 by Kajan Johnson and other fighters. It accuses UFC of locking fighters into restrictive, long-term contracts to prevent its competitors from gaining traction. UFC then used its dominant, monopolistic position to suppress wages and artificially reduce demand for live, professional, mixed martial arts bouts, the lawsuit alleges.

A court should only impose harsh terminating sanctions in extreme circumstances, and that is not the situation in this lawsuit, the defendants argued Tuesday, adding that they have met their discovery obligations, and that the motion is premature because at least one deadline has not passed. On June 5, the court set an Aug. 17 deadline for the production of additional documents.

The UFC defendants said the plaintiffs have taken no steps to resolve or respond to objections that the additional requests are too broad.

"Defendants remain committed to a fair and just discovery process," Tuesday's filing says. "Plaintiffs' motion for sanctions is entirely without merit and the court should deny it."

The defense did agree with the fighters on one point — the need for a court-appointed special master to oversee the discovery process. Had the plaintiffs "bothered to respond" to a request to meet and confer, they would have known this, UFC said.

The parties did not immediately respond to a request for comment Wednesday.

The individual fighters and proposed class are represented by Eric L. Cramer, Michael Dell'Angelo, Patrick F. Madden, Robert Maysey and Joshua P. Davis of Berger Montague, Joseph R. Saveri, Kevin E. Rayhill and Chris Young of the Joseph Saveri Law Firm LLP, Richard A. Koffman, Benjamin D. Brown and Daniel H. Silverman of Cohen Milstein Sellers & Toll PLLC, and W. Joseph Brucker, Kyle Pozan and

Brian Clark of Lockridge Grindal Nauen PLLP.

Zuffa, TKO and Endeavor are represented by Christopher S. Yates, Aaron T. Chiu, Sean M. Berkowitz and Laura R. Washington of Latham & Watkins LLP, William A. Isaacson and Jessica E. Phillips of Dunn Isaacson Rhee LLP, and Donald J. Campbell and J. Colby Williams of Campbell & Williams.

The case is Johnson et al. v. Zuffa LLC et al., case number 2:21-cv-01189, in the U.S. District Court for the District of Nevada.

--Editing by Amy French.

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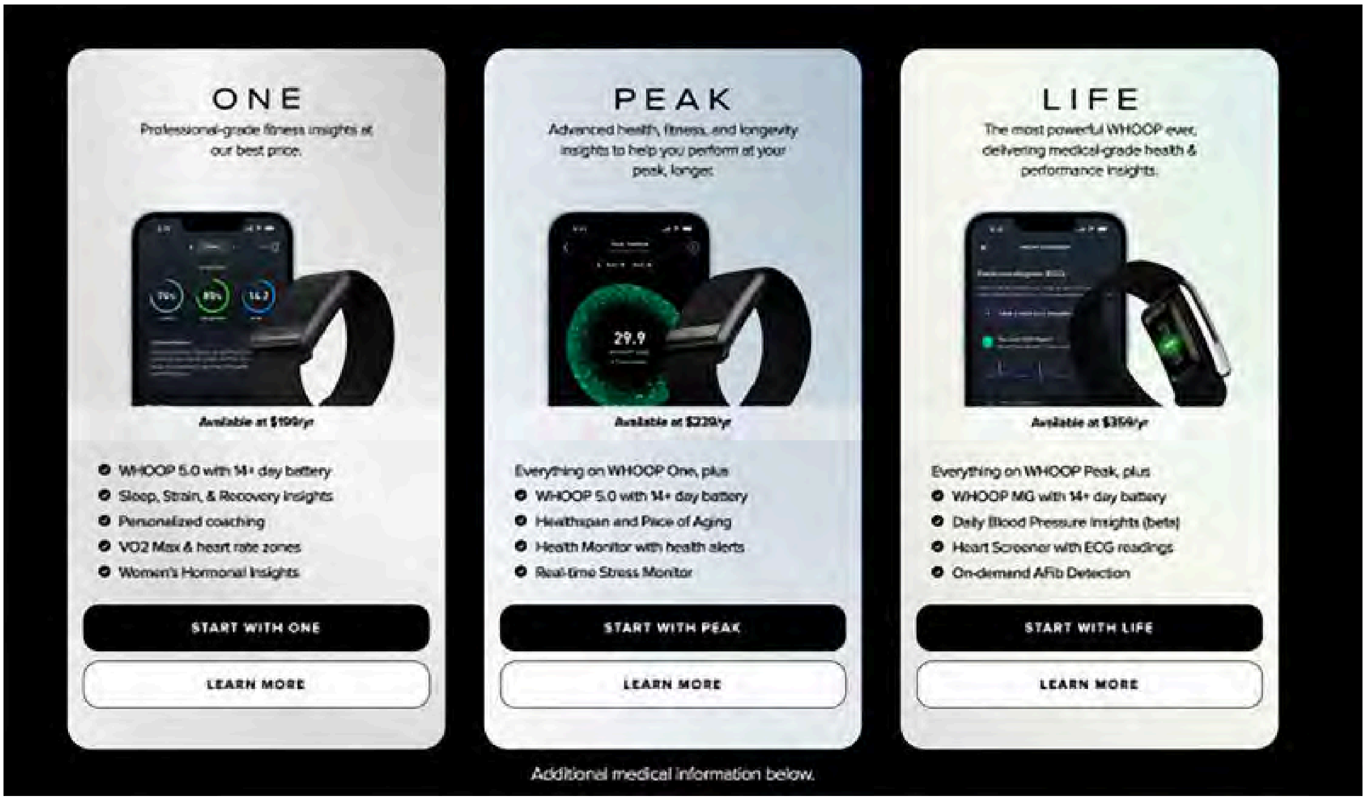
Whoop's Health Tracker Accused Of Sharing Users' Data

By **Lauren Berg**

Law360 (August 13, 2025, 11:02 PM EDT) -- Health and wellness company Whoop Inc., whose wearable devices track and collect users' heart rate, movement, blood pressure and other health metrics, is secretly sharing that data and other user information with an undisclosed third party, according to a proposed class action filed Wednesday in California federal court.



A California resident has accused health and wellness company Whoop Inc., whose wearable devices track and collect users' heart rate, movement, blood pressure and other health metrics, of secretly sharing that data and other user information with an undisclosed third party. (Court Documents)

Whoop's app "is a treasure trove of personal health information" about its users' mental and physical health, but instead of keeping that information private, the company shares the data with a third-party tracker, according to the **complaint** filed by California resident Steven Lomeli.

"Given the sensitivity of information Whoop collects, it assures consumers that their data is 'private and protected,'" the suit states. "Whoop explains, 'at Whoop, your health data — especially reproductive health — is always protected. We never sell your information, and any data used for research is aggregated or de-identified.'"

"Unbeknownst to consumers (and contrary to Whoop's representations), however, Whoop embedded a third-party tracker called Segment into its mobile app that allows Segment to collect consumer data from the Whoop app," it states.

Whoop offers a health and wellness fitness tracker that automatically detects and measures certain metrics that have an impact on health, according to the suit. Consumers who purchase and annual subscription to the Whoop mobile app, which ranges from $199 to $359 per year, receive a wearable device as part of their membership plan, the complaint states.

Lomeli alleges that Whoop discloses consumers' full name, email, height, weight, birth date, gender and other personally identifiable information, as well as heart rate, stress level, skin temperature and other vitals.

In addition, the company discloses the titles of educational videos the consumer has watched on the Whoop app, according to the complaint.

"Consumers were never informed that their personal health data and video watching history would be disclosed to an unknown third-party nor did they consent to such a disclosure," Lomeli said.

Lomeli wants to represent a nationwide class of people who watched a video in the Whoop app within the last two years, as well as a class of California residents who purchased a Whoop membership, according to the suit.

The suit asserts violations of the Video Privacy Protection Act and the California Medical Information Act. It seeks injunctive relief, damages, disgorgement of profits, litigation costs and attorney fees.

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

Lomeli is represented by Heather M. Lopez of Milberg Coleman Bryson Phillips Grossman PLLC.

Counsel information for Whoop was not immediately available.

The case is Steven Lomeli v. Whoop Inc., case number 3:25-cv-06828, in the U.S. District Court for the Northern District of California.

--Editing by Jay Jackson Jr.