



The Daily Docket

Reuters

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Good morning. The [SEC is facing a legal assault from business groups](#), and two imminent rulings from the U.S. Supreme Court could spell more trouble for the agency. Plus, the next trial over claims that Zantac causes cancer [is called off](#), Uber [loses its challenge to California's gig worker law](#), and Kirkland [has been pulled into litigation](#) over a data breach linked to a file transfer tool. All that, and [the jury is still deliberating](#) in Hunter Biden's criminal case. Let's go.

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[A legal assault is weakening the SEC, and SCOTUS looms](#)

A legal assault on the SEC is chipping away at its powers to oversee Wall Street, and it's likely to intensify with two imminent Supreme Court rulings, write [Chris Prentice and Michelle Price](#).

The 5th Circuit last week [overturned a major SEC rule](#) imposing stricter oversight of private funds. The ruling is another example of how business groups are using conservative-leaning courts to overturn SEC rules, limit its ability to write similar ones and bring enforcement actions.

The agency is facing several lawsuits from financial firms and their trade groups arguing the agency is overstepping its authority to impose ill-conceived and costly rules. A Reuters review of Westlaw filings showed a sharp uptick in the number of open appeals against the SEC in the 5th Circuit from 2019 to last year. It is facing litigation in other conservative-leaning courts, too.

This month – as soon as this week – the Supreme Court is also expected to rule on two other cases with major implications for the SEC. One relates to its authority to use in-house judges with securities law expertise to decide enforcement actions, which is often speedier than going through the courts. Conservative justices last year expressed concern that it denies defendants a jury trial.

The other SCOTUS case challenges a legal doctrine known as "Chevron deference," a bedrock of agency rulemaking, which calls for judges to defer to federal agencies' the interpretation of U.S. laws deemed to be ambiguous.

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- > [US industry wants to see "Voldemort of administrative law" die](#)
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[The buzz](#)

- The 5th Circuit said it [decided not to adopt what would have been a first-of-its-kind rule](#) at the appellate level regulating the use of generative artificial intelligence by lawyers appearing before it. The court said it had decided not to adopt a rule it first proposed in November after taking into consideration the use of AI in the legal practice and public comment from lawyers, which had been largely negative.

- The 2nd Circuit [revived a \\$180 million legal malpractice lawsuit](#) against DLA Piper after finding that the lawsuit should have been heard in New York state court, not federal court. The appeals court vacated a federal judge's May 2023 ruling that dismissed the allegations by Chinese software company Link Motion for being filed too late. The [2nd Circuit's ruling](#) did not address whether Link Motion's lawsuit was time-barred, leaving that for a state judge to decide.
- Kirkland [has been pulled into litigation](#) over a wide-ranging data breach linked to a file transfer tool that compromised data at hundreds of organizations. A [proposed class action](#) accused Kirkland and several companies, including health insurer Humana, of not doing enough to safeguard personal information affected by a May 2023 hack of Massachusetts-based Progress Software's MOVEit Transfer file management software.
- Joshua Ditelberg, a Republican nominee to the NLRB, represented [several prominent companies at law firm Seyfarth Shaw](#), including Amazon, automaker Rivian, Airbnb and UnitedHealth, according to a federal ethics disclosure that includes his work in private practice since 2022. The disclosure form reported that Ditelberg has received \$473,300 in salary and bonus from Seyfarth since 2023.

[88%](#)

That's the percentage of Yale Law School students that said culture is "extremely" or "very" important when deciding which law firms to interview with and which offers to accept. According to a [new study](#) by campus group Yale Law Women+, culture, compensation and advancement opportunities led the list of factors that Yale law students weigh when choosing a firm to join. [Read more to find out which major law firms came out on top in certain categories.](#)

"It is not unfair or deceptive for Amazon to fail to abide by promises it did not make."

—U.S. District Judge Kymberly Evanson in Seattle, who dismissed [a proposed consumer class action](#) against Amazon that accused the e-commerce giant of failing to meet its stated "guaranteed" delivery for some purchases. Evanson [ruled](#) that she would dismiss the case for now, finding the customer had not shown how Amazon's delivery practices would violate Washington's consumer protection law.

Coming up today

- The jury [will resume deliberations this morning](#) in the case of Hunter Biden, the U.S. president's son accused of lying about his drug addiction to illegally buy a gun in 2018. Jurors deliberated for an hour on Monday.
- Theranos founder Elizabeth Holmes will ask a 9th Circuit panel to strike her [conviction and 11-year prison sentence](#) for defrauding investors in the failed blood-testing startup once valued at \$9 billion. Prosecutors said during the trial that Holmes misrepresented Theranos' technology and finances. Holmes testified that she believed her statements were accurate at the time.
- U.S. District Judge Daniel Crabtree in Wichita, Kansas, is holding a hearing in a lawsuit filed by a group of Republican-led states challenging a major Biden administration student loan forgiveness and repayment plan. The hearing comes after Crabtree [ruled](#) that the states of South Carolina, Texas and Alaska ["just barely" alleged enough facts](#) to find they had legal standing to challenge the Biden administration's plan in court. But he rejected arguments that eight other states led by Kansas had standing to challenge the Biden administration's Saving on a Valuable Education (SAVE) Plan because it would reduce their income tax revenues or, alternatively, would harm their ability to recruit state employees.

In the courts

- A woman who claimed in a lawsuit that GSK's discontinued heartburn drug Zantac caused her breast cancer [dropped her case shortly before it was set to go to trial](#) in Illinois state court on Monday, the company announced. GSK said in a statement that it did not settle with the woman,

Eugenia Kasza, whose lawsuit would have been the second to go to trial after the first ended last month with a victory for GSK and Boehringer Ingelheim, which also sold Zantac.

- A California administrative judge rejected Tesla's bid to dismiss claims by a top state regulator [accusing the automaker of overstating its vehicles' self-driving capabilities](#). [In a decision](#), Judge Juliet Cox of the state Office of Administrative Hearings said the accusations by California's Department of Motor Vehicles, if true, would support an enforcement action against Tesla.
- The U.S. Supreme Court [agreed to hear](#) a bid by Meta's Facebook to scuttle a private securities fraud lawsuit accusing the social media platform of misleading investors in 2017 and 2018 about the misuse of its user data. The court also took up a lawsuit brought by more than 200 hospitals that serve low-income populations [accusing the federal government of shortchanging them](#) on Medicare funding.
- California's attorney general added a disgorgement remedy to a lawsuit his office filed last year in a bid to force the world's biggest oil companies [to give up profits the state alleges they made while deceiving consumers](#) about their role in contributing to climate change. The legal action comes months after a new state law went into effect that allows the attorney general to seek profits obtained from companies while they violated laws against unfair competition and false advertising.
- A Massachusetts public middle school [did not violate a student's free speech rights](#) under the U.S. Constitution by requiring the boy to stop wearing a T-shirt that said "There are only two genders," the 1st Circuit said. The [ruling](#) said the shirts could be understood to communicate that male and female are the only two valid gender identities, and so it could not conclude that educators acted unreasonably in finding that the shirts demeaned the identity of transgender and gender non-conforming students.

Industry moves

- McDermott added private equity finance partner Ellen Snare in New York. She previously was at King & Spalding. ([McDermott](#))
- Cozen O'Connor hired labor and employment partner Sandi Dubin in New York from Ogletree Deakins. ([Cozen](#))
- Freshfields brought on two corporate partners in New York. M&A partner [Joshua Ayal](#) joins from Kirkland and capital markets partner [Jacqueline Marino](#) joins from Davis Polk.
- Cooley added two compensation and benefits partners, including Michael Bergmann in D.C. from Cadwalader and Scott McCall in San Diego from Wilson Sonsini. ([Cooley](#))
- **Saul Ewing picked up corporate partners Michael Petrizzo in Philadelphia and Julia Taylor in D.C. from Armstrong Teasdale. ([Saul Ewing](#))**
- Perkins Coie added D.C.-based patent litigation partner Chris Marando from Arnold & Porter. ([Perkins Coie](#))
- Greenberg Traurig added D.C.-based partner Seth Goldberg, along with two scientists, to its environmental practice from Steptoe. ([Greenberg Traurig](#))

Lawyer speak: [Digital assets and DAOs: new theories of liability](#)

Decentralized autonomous organizations (DAOs) are often seen as a critical component of a truly decentralized digital asset project. The question of whether DAOs are legally cognizable entities, including partnerships, is a novel one that is currently working its way through the courts and has been the subject of certain state legislation, write Alex Drylewski, Stuart Levi and Daniel Michael of Skadden. The answer could potentially deter individuals and entities from participating in DAOs [and significantly impact the viability of decentralized governance structures](#)