

Musk sues law firm because he's mad that Twitter paid \$90 million bill

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Elon Musk's X Corp. this week sued a law firm that Twitter hired last year after Musk tried to break their \$44 billion merger agreement. Musk's lawsuit in San Francisco County Superior Court alleges that Wachtell, Lipton, Rosen & Katz overcharged Twitter when it collected \$90 million—including \$84.3 million on the same day Musk completed his purchase of Twitter.

"This action for equitable relief arises out of an effort by Wachtell to fundamentally alter its fee arrangement as litigation counsel in the twilight of its representation of Twitter to obtain an improper bonus payment in violation of its fiduciary and ethical obligations to its client," claimed the lawsuit filed by X Corp., the successor company to Twitter. "Wachtell exploited a corporate client left unprotected by lame duck fiduciaries who had lost their motivation to act in Twitter's best interest pending its imminent sale to Elon Musk and his entities, X Holdings I, Inc. and X Holdings II, Inc."

When Musk tried to pull out of his commitment to buy Twitter, the company hired Wachtell in July 2022 to handle the lawsuit that eventually forced Musk to complete the merger. Musk

finally honored the merger contract in October when it became clear that he would likely lose in court.

The Musk/Twitter deal closed on October 27. Wachtell allegedly charged Twitter \$90 million for several months of work, with \$84.3 million being paid on the day the merger closed. The \$90 million fee included earlier invoices totaling nearly \$18 million, the lawsuit said.

“Fully aware that nobody with an economic interest in Twitter’s financial well-being was minding the store, Wachtell arranged to effectively line its pockets with funds from the company cash register while the keys were being handed over to the Musk Parties,” Musk’s lawsuit said.

Musk’s Twitter apparently hasn’t paid many bills since then, as the company is facing more than 20 lawsuits over allegedly unpaid bills for rent and various services. Twitter is also facing lawsuits from ex-employees over unpaid severance and bonuses, and a lawsuit from former CEO Parag Agrawal and other ex-executives over unpaid reimbursements.

\$84.3 million mostly a “success fee”

The bulk of the \$84.3 million paid to Wachtell on October 27 was allegedly a “success fee” for forcing Musk to close the deal. Musk’s lawsuit said it “is impossible to determine what portion of the \$90 million total fee due to Wachtell under the Closing Day Letter Agreement represents the referenced success fee.” Based on other invoices and accrued fees, the success fee is said to be either \$61 million or \$72 million.

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The X Corp. lawsuit describes how the payment was allegedly approved and paid before Musk could stop it:

In the middle of the board’s final October 27 meeting, former

Twitter general counsel Sean Edgett sent the chart of fees that the Twitter board was meeting to approve. Upon seeing the magnitude of the fees being presented for the board's approval, one former Twitter director immediately exclaimed in an email reply to Edgett:

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My

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God

Despite any initial shock, Twitter's lame duck board members voted to approve Wachtell's excessive and unconscionable fee.

Immediately following the Twitter board's rubber-stamp approval, [Chief Legal Officer Vijaya] Gadde signed Wachtell's letter agreement. Then, to ensure that the eleventh-hour fee payment went through before the Musk Parties (Twitter's new owners) could learn about the massive gift included in that fee, Edgett expedited the wire payment on the invoice for the balance (\$84,294,962.97) of the \$90 million total fee that Wachtell had submitted to Twitter the day before. Twitter's \$84 million wire to Wachtell was posted only ten minutes before Gadde and Edgett were terminated upon the closing of the merger.

Wachtell has previously represented Musk and Tesla in other matters.

Musk asks for full \$90 million

The lawsuit accuses Wachtell of unjust enrichment, breach of fiduciary duty, aiding and abetting breach of fiduciary duty, and violations of California's Business & Professions Code. We contacted Wachtell, Lipton, Rosen & Katz today and will update

this article if we get a response.

“Due to its egregious violations of its professional duties and applicable ethical rules, Wachtell should be required to forfeit its entire \$90 million total fee under the Closing Day Letter Agreement and make restitution in the amount of \$90 million,” the lawsuit said.

If the court doesn’t require Wachtell to forfeit the entire fee, Musk argues that it “should be ordered to make restitution for the difference between the \$90 million total fee it received and the reasonable fees it would have received had it adhered to the billing guidelines it agreed upon in the June 21 Engagement Letter.”

Wachtell originally “signed an engagement letter for an hourly fee representation” but “failed to obtain a written agreement for any fee tied to the results of the underlying case,” Musk’s lawsuit alleges. The last-minute success fee indicates that “Wachtell apparently believed that it—unlike other law firms bound by ethical and fiduciary obligations—was free to solicit a handout, aid and abet corporate waste by former Twitter executives in the death throes of their fiduciary roles, and walk away with a total fee that made it \$90 million richer,” the lawsuit said.

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