

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x  
CHASE WILLIAMS, *et al.*,

Plaintiffs,

v.

20 CV 2809 (LAK)

BLOCK ONE, *et al.*,

Defendants.

Hearing

-----x  
CRYPTO ASSETS OPPORTUNITY  
FUND, LLC, *et al.*,

Plaintiffs,

v.

20 CV 3829 (LAK)

BLOCK ONE, *et al.*,

Defendants.

-----x  
New York, N.Y.  
November 17, 2021  
9:45 a.m.

Before:

HON. LEWIS A. KAPLAN,

District Judge

APPEARANCES

GRANT & EISENHOFER P.A.  
Attorneys for Plaintiffs

BY: DANIEL L. BERGER  
CAITLIN MAYNA

-and-

IEVGENIIA VATRENKO

DAVIS POLK & WARDELL LLP  
Attorneys for Defendants

BY: EDMUND POLUBINSKI III

1 (Case called)

2 MR. BERGER: Good morning, your Honor, Daniel Berger  
3 from Grant & Eisenhofer, lead counsel for plaintiffs.

4 THE COURT: Good morning.

5 MS. MAYNA: Caitlin Mayna from Grant & Eisenhofer for  
6 lead plaintiff as well.

7 THE COURT: Good morning.

8 MS. VATRENKO: Ievgeniia Vatrenko, additional counsel  
9 for lead plaintiff.

10 THE COURT: Good morning.

11 MR. POLUBINSKI: Good morning, your Honor, Ted  
12 Polubinski from Davis Polk. I'm here for all defendants.

13 THE COURT: Good morning.

14 MR. POLUBINSKI: Good morning.

15 THE COURT: Mr. Berger, obviously, I have some serious  
16 misgivings about this. Here is your chance.

17 Let me start with one. I'm really unpersuaded, at  
18 least at this moment, that either of the two cases you rely on  
19 heavily, Judge Stanton's and the one from California --

20 MR. BERGER: Tezos is the case.

21 THE COURT: -- got it right. It seems to be a  
22 predicate of your position that they did get it right.

23 But, in any case, question number 1 is why Crypto  
24 Assets isn't conflicted here, at least with respect to the plan  
25 of allocation, because it's, by no means, clearly a domestic

1 purchaser, from the record I can see, within the meaning of  
2 *Morrison*. There are domestic purchasers in the class.

3 And Crypto's incentive seems to be to -- I am not  
4 saying this in a pejorative way -- the financial incentives,  
5 the structure of the financial incentives seem to me to give  
6 them an interest in shifting consideration toward people in its  
7 position, that is to say, people who don't satisfy *Morrison* at  
8 the expense of those who do.

9 MR. BERGER: May I respond, your Honor?

10 THE COURT: That's the purpose. That's why we are  
11 here.

12 MR. BERGER: Your Honor, let me apologize if the  
13 record was not clear or we didn't make the correct record.  
14 Crypto did purchase coins domestically on domestic exchanges.  
15 It purchased coins on an exchange called Tagomi and an exchange  
16 called GDAX. So among its purchases --

17 THE COURT: Has the SEC recognized either of those as  
18 a domestic exchange?

19 MR. BERGER: I don't know the answer to that. But I'm  
20 not certain -- I don't believe it matters because the exchanges  
21 are located in the United States.

22 THE COURT: What does that mean here?

23 MR. BERGER: At least under the *Poloniex* case recently  
24 that your Honor referred to in your questions to us, it means  
25 that the transaction occurred on the exchange in the United

1 States similar to if it had occurred within a share of stock on  
2 the New York Stock Exchange. If the United States located  
3 individual or fund buys a coin on Tagomi, for example, a United  
4 States located exchange, we believe, under *Morrison*, that is a  
5 domestic purchase.

6 THE COURT: What proportion of the purchases made by  
7 Crypto were made on what you say is a domestic exchange and  
8 what percent were not?

9 MR. BERGER: I have to calculate it, but it's less  
10 than 50 percent, but more than 25 percent. But that's  
11 something we could certainly supply to the Court.

12 But, your Honor, we don't believe that that renders  
13 Crypto atypical for purposes of the plan of allocation or  
14 anything else in the case.

15 THE COURT: It is certainly atypical as compared to  
16 somebody who had, indisputably, 100 percent of its purchases on  
17 a domestic exchange.

18 MR. BERGER: That is correct, your Honor. As we  
19 communicated to the Court, this is a case, when it came to the  
20 settlement discussions where if we wanted to settle this case,  
21 we had to settle for complete peace with respect to everyone  
22 who acquired these coins domestic or nondomestic.

23 THE COURT: I understand that. That's what the  
24 defendant always wants.

25 MR. BERGER: Correct.

1 THE COURT: I leave out of the analysis, I think, the  
2 fact that the defendant may well be paying for a judgment, if I  
3 approve the settlement, that insofar as it relates to claims by  
4 people who don't have causes of action under U.S. law, won't be  
5 worth the paper it's printed on in foreign fora. That's their  
6 business.

7 MR. BERGER: Exactly, your Honor. But that's what  
8 they insisted upon and it was our judgment, Crypto's  
9 judgment -- Crypto was involved in these discussions. We  
10 communicated with them throughout.

11 It was our judgment that, given the risks inherent in  
12 this litigation going forward, the settlement still made sense,  
13 even insofar as it included nondomestic purchasers of the  
14 coins.

15 THE COURT: Then Crypto's economic incentives are to  
16 see to it that it can get as much as it can for the majority of  
17 its purchases, develops the allocation plan for what to do with  
18 the \$27 million that benefits it, as distinguished from those  
19 who are indisputably domestic purchasers.

20 MR. BERGER: Your Honor, with all respect, we don't  
21 believe that's what the plan provides. If I could just take a  
22 moment and describe it.

23 THE COURT: For the sake of argument, if it's a  
24 majority, if its purchasers are majority foreign, there is a  
25 point at which it's better off shifting the allocation toward

1 foreign purchasers, even at the expense of its domestic  
2 purchasers, isn't there?

3 MR. BERGER: Mathematically, yes, your Honor, of  
4 course I can't disagree with that.

5 If I could just take a moment to describe the plan  
6 which we developed with our expert.

7 There were two aspects to the plan. Class members who  
8 bought coins on the initial coin offering that was done in a  
9 Dutch auction over a period of years in this case. It's our  
10 argument, defendants disagree, that all of those purchases are  
11 domestic purchases. The reason that they are domestic  
12 purchases is that those were purchases that were made directly  
13 from the company, from Block One, the issuer, and they were  
14 made on Block One's website located in the United States. So  
15 the way you made a purchase is, you went online and you bought  
16 it online in the United States.

17 THE COURT: Ethereum, where did that fit into this?

18 MR. BERGER: The initial con was the ERC-20 token  
19 before they actually issued their coin a year later. That was  
20 the coin that was purchased at that time and then it was  
21 transferred to the --

22 THE COURT: That was purchased from who?

23 MR. BERGER: Block One.

24 THE COURT: What did Ethereum have to do with those  
25 purchases?

1 MR. BERGER: That was the token itself that was  
2 purchased at the time. It was a token that was recorded on the  
3 Ethereum Blockchain, as I understand it.

4 THE COURT: Who did it belong to?

5 MR. BERGER: The coin belonged to -- the coin was sold  
6 by Block One and it was sold to purchasers.

7 THE COURT: If it's on the Ethereum Blockchain, how is  
8 it that it is sold by your client?

9 MR. BERGER: It was sold to class members in the  
10 initial coin offering.

11 THE COURT: So I heard you say.

12 MS. VATRENKO: Yes, your Honor.

13 THE COURT: This is my fault, no doubt. But I have  
14 learned, because I have a daughter who is much older than you  
15 who I haven't understood for years, because everybody in her  
16 generation and younger speaks faster than I listen, any time  
17 somebody comes in here I have this problem. Could you please  
18 slow down.

19 MS. VATRENKO: Yes, your Honor.

20 The ERC-20 tokens are the tokens that are created  
21 using a standard ERC-20 standard on the Ethereum Blockchain.

22 THE COURT: You have lost me already.

23 MS. VATRENKO: My apologies. Anybody can create them.  
24 You can mint those tokens. I can mint those tokens using  
25 programming language. And they are created on the Ethereum

Blockchain. But anyone can create them and sell them. That's what Block One did. Even though the tokens were created on the Ethereum Blockchain, the contract belonged to Block One and that's who --

THE COURT: When Block One creates it on the Ethereum Blockchain, who owns it?

MS. VATRENKO: Whoever has access to the contract address from which they are created, which in this case was Block One.

THE COURT: Where was Ethereum when all this was happening?

MS. VATRENKO: Ethereum was everywhere.

THE COURT: That's a problem, maybe. Thank you.

MR. BERGER: In any event, if I may return to the plan of allocation.

To the extent that what the plan provides is that if you acquired the token directly from Block One in the initial point offering, your damages are the difference between the consideration you paid and \$2.66, which is the price that the tokens were trading at the end of our period or the price at which you sold, whichever is greater. Those persons get the maximum possible recognized loss.

THE COURT: That group includes or doesn't include Crypto itself.

MR. BERGER: Crypto did not buy directly from Block



1 One, correct, your Honor.

2 One other detail about that. Those individuals, at  
3 least we alleged in our complaint, also have '34 Act claims, so  
4 we calculate their loss for '34 Act, and they get the bigger,  
5 the first or the second. They get the bigger and that's their  
6 recognized loss.

7 THE COURT: Got it.

8 MR. BERGER: To the extent individuals purchased  
9 tokens on exchanges or in the aftermarket after -- it was  
10 actually during the same period of time -- but did not actually  
11 purchase directly from Block One, they get their '34 Act  
12 damages, which our expert calculated using standard events  
13 study methodology to determine the amount by which the tokens  
14 were inflated during the period working off the alleged  
15 corrective disclosures, and we gave people the maximum amount  
16 for that. That's the plan of allocation and then we evaluate  
17 all the claims. We determine who has provided sufficient  
18 documentation.

19 THE COURT: A lot of people in that second group  
20 indisputably have no '34 Act claims, right, because of  
21 *Morrison*?

22 MR. BERGER: There are certainly some people in that  
23 group who, yes, would not be able to go to trial on those  
24 claims, correct.

25 THE COURT: What proportion?

1 MR. BERGER: I can't say. I don't think that's a  
2 problem, your Honor, in a settlement.

3 THE COURT: I understand the Second Circuit seems to  
4 say that you can settle even worthless claims. I understand  
5 that proposition.

6 But then the question becomes, in a case like this,  
7 how do you allocate the money? It seems to me there is a  
8 question as to how you allocate the money as between people who  
9 obviously would have no '34 Act claims and people who  
10 indisputably would.

11 MR. BERGER: In order to make that allocation you  
12 would have to determine some level of certainty that someone  
13 was a nondomestic purchaser and didn't have a '34 Act claim.

14 But there are many arguments available to purchasers  
15 to support that they would have a domestic claim; for example,  
16 that it was bought on a U.S. exchange.

17 THE COURT: The U.S. exchange seems to be well  
18 established. I understand that.

19 MR. BERGER: You bought directly from the issuer here,  
20 Block One, also in the United States.

21 With respect to transactions that were --

22 THE COURT: As to the second, it depends on where the  
23 obligation was formed.

24 MR. BERGER: Correct, your Honor.

25 THE COURT: The fact that it's the issuer in the

1 United States is not the be all and end all.

2 MR. BERGER: Correct. But in any case the obligation  
3 was formed in the United States because the way it worked was,  
4 if you wanted to buy from the issuer, you went online into  
5 their website, which was located in the United States, and the  
6 obligation was formed when your transaction occurred on their  
7 website in the United States. In other words, you went on, you  
8 filled out the form online, you hit send, and when they got it,  
9 obligation. And the contract --

10 THE COURT: And the record establishes that the  
11 obligation occurs purely in the United States in that case?

12 MR. BERGER: Your Honor, I am not quite sure what your  
13 Honor refers to -- the defendants would dispute this, your  
14 Honor. This is our contention, of course. We have not gotten  
15 past a motion to dismiss. If it were litigated to a motion to  
16 dismiss, the defendants would disagree. Our view is that we  
17 have got a good argument, more than a good argument, that they  
18 occurred here in the United States.

19 Now, what is not in the record, I'm happy to provide  
20 to the Court, we have an example of the agreement that was used  
21 by Block One that people had to sign before Block One sold them  
22 the coins.

23 THE COURT: And it says what?

24 MR. BERGER: If your Honor will give me just one  
25 minute.

1 I am going to quote from a number of places. This is  
2 the EOS token purchase agreement. Company and buyer hereby  
3 agree as follows. There is a section that says binding  
4 agreement. Buyer understands and agrees that buyer is subject  
5 to and bound by this agreement by virtue of buyer's purchase of  
6 EOS tokens.

7 And then paragraph 1.1, article 1: This agreement  
8 shall be effective and binding on the parties when buyer A  
9 clicks the check box on the official [https eos.io](https://eos.io) website --  
10 that's the website -- to indicate the buyer has read,  
11 understands, and agrees to the terms of this agreement.

12 THE COURT: So it becomes binding at the instant the  
13 key is hit, right?

14 MR. BERGER: Right.

15 THE COURT: And that key can be hit anywhere in the  
16 world.

17 MR. BERGER: Yes. But you have to be connected to the  
18 U.S. website. So it only works --

19 THE COURT: That's not actually the way it works  
20 because what happens is that when you click the key, a packet  
21 of information is dispatched into the Internet and eventually  
22 it winds up at the website. When I say eventually, it doesn't  
23 take years, I understand that. It moves close to the speed of  
24 light. But the moment at which the purchaser is bound occurs  
25 when the purchaser is in many cases offshore.

1 MR. BERGER: Your Honor, if somebody clicks their  
2 computer and the connection is broken, the fact that you  
3 clicked it doesn't mean it's binding. It's binding when it is  
4 actually received on the server.

5 THE COURT: Says who? The language you read me said  
6 something else.

7 MR. BERGER: Your Honor, that's what I would argue,  
8 and I do contend and I believe there would be support for that  
9 because, otherwise, there could be lots of people who claim  
10 that they bought these tokens and they were never received by  
11 Block One. I could say I bought the token, I clicked on the  
12 machine, where is my tokens? They say: We don't have it.

13 I think the evidence -- I certainly understand, your  
14 Honor. There is no case law on this.

15 THE COURT: I know.

16 MR. BERGER: But we would argue that the facts, if we  
17 got to prosecute this case, would show that the binding  
18 agreement occurred here in the United States because that's  
19 where the server was located. That's where the binding  
20 agreement occurred.

21 THE COURT: There are probably analogous cases. They  
22 are probably in the old English reports 200 years ago. What  
23 happens where a seller makes an offer to sell, and the guy on  
24 horseback delivers it in an envelope with a nice red wax seal  
25 on it and three days later the person to whom the offer is

addressed writes out a little note and puts the seal on it and says, I accept, and hands it to the guy who is going to ride the horseback to the seller, and somewhere along the way it goes astray.

Now, is there a contract or not?

MR. BERGER: I'm not sure, your Honor. But I also think one of the things here --

THE COURT: I'm virtually a hundred percent certain there is case law on that. I think I had to study it in law school.

MR. BERGER: I think I did too, your Honor, but I don't remember.

THE COURT: Neither do I. But fair is fair. The analogy fits.

MR. BERGER: I suppose, your Honor.

But the other thing that sort of I'm puzzled with and I would want to think through, is this is a Dutch auction. If they don't get the bids, then I'm not sure what sense this contract makes. In other words, the way the Dutch auction works is, as I understand it is, you put in a bid at a certain price and then they match it or don't match it. But the only way they can do that is when they get the information on their website.

THE COURT: Do I have all this in the record?

MR. BERGER: No, your Honor does not have all this in

1 the record, which of course we are certainly happy to put  
2 before your Honor to the extent that you would like it.

3 THE COURT: I love to get cases settled as much as the  
4 next guy, but I'm thinking down the road here, and I feel I  
5 have to do that.

6 MR. BERGER: Of course. We are happy to make whatever  
7 record your Honor would like, including a record about this.

8 Again, I'm sure my good friend, Mr. Polubinski, will  
9 disagree -- I know he disagrees about this, because it's in  
10 their interest to disagree -- if this case is not settled, if  
11 your Honor doesn't approve the settlement, we will have this  
12 argument on the merits in front of the Court.

13 THE COURT: Sure. And who know where that goes.

14 MR. BERGER: Exactly.

15 THE COURT: I don't have any clue as to where that  
16 goes.

17 By no means my only concern here, but one of my  
18 biggest, is this problem about the allocation and typicality  
19 and adequacy.

20 MR. BERGER: The only thing I would add to that, and I  
21 know the Court knows this, but we think this is quite similar  
22 to the case in front of Judge Rakoff, the *Petrobras* case.

23 THE COURT: Not really because in that case there were  
24 several independently represented plaintiffs, all of whom  
25 participated in the negotiations and some of whom were purely

1 in one camp and some weren't, as respected the allocation.

2 That's a different case from this, isn't it?

3 MR. BERGER: That is different, your Honor. We didn't  
4 have multiple representatives who represented each. But, for  
5 that reason, we proposed a plan of allocation, and we proposed  
6 it to the Court and provided it to our client that gives the  
7 maximum amount that is allowable under the securities laws as  
8 recognized loss to everyone.

9 THE COURT: The maximum amount to everyone.

10 You are telling me if claims come in from 100 percent  
11 of those theoretically available claimants, they are all going  
12 to get 100 cents on the dollar?

13 MR. BERGER: No, your Honor, that's not what I meant  
14 to say. What I meant to say is, in determining the amount of  
15 the recognized loss, we use the maximum amount that would be  
16 recoverable for those claims.

17 THE COURT: That's one of my concerns because a  
18 significant part of the class either has no claim or a very  
19 weak claim and another part of the class has a strong claim  
20 relatively.

21 MR. BERGER: Correct, your Honor. But there are  
22 reasons why many of the claims in this case are weaker and  
23 strong. For example, the defendants made a statute of  
24 limitations argument with respect to the claim that we asserted  
25 that theories securities were sold without a registration



1 claim. The defendants argued that the statute of limitations  
2 expired on those claims. We had a serious risk.

3 There are two other cases, as your Honor knows, in  
4 this court where judges have dismissed those claims on statute  
5 of limitations grounds.

6 There were other risks with respect to the '34 Act  
7 claims. There were certainly risks with respect to *Morrison*.

8 We evaluated all those risks and, at this stage of the  
9 litigation, the client determined that it did not make sense to  
10 discount any claims for any of those reasons. That's very  
11 typical in class actions like this. It is not necessarily  
12 discounting claims because of an evaluation of risk or  
13 potential ability to recover at trial.

14 THE COURT: The difficulty is that your client is one  
15 of the people that maybe has one of the weaker claims, the lead  
16 plaintiff, because of *Morrison*.

17 MR. BERGER: No, your Honor. The client's claims with  
18 respect to transactions on non U.S.-based exchanges are  
19 certainly weaker. But the client also has stronger claims.  
20 Comes back to the first question. I understand that, your  
21 Honor. That's correct.

22 THE COURT: Let me just consult my notes and see if  
23 there is something else I want to bring to your attention, and  
24 then we will see where we go from there.

25 These are possibly of a lesser order of magnitude. I

1 didn't find the response to my inquiry about how the  
2 administrator would verify transactions entirely satisfactory.  
3 It was kind of vague. It relies, in part, on screenshots. I  
4 never heard of doing anything on that basis.

5 MR. BERGER: Again, your Honor, I may ask for some  
6 assistance from one of my colleagues here who is a little bit  
7 more familiar.

8 But with respect to transactions that were done on  
9 exchanges as opposed to -- let's put aside for a moment the  
10 purchases directly from Block One. Those transactions can be  
11 demonstrated by a screenshot of your wallet, so that's the  
12 information that you would provide and that will show the  
13 details of the transaction and will demonstrate ownership of  
14 the security.

15 THE COURT: Isn't it a common practice among people  
16 who engage in illegal fishing transactions and the like to send  
17 targets what amount to fake purported screenshots? They  
18 imitate Amazon's screens. They imitate Chase Manhattan's  
19 screens all the time. So you are going to verify on the basis  
20 of somebody submitting a screenshot. I'm not a programmer, but  
21 I gather they are very easily counterfeited.

22 MR. BERGER: Honestly, your Honor, I don't believe  
23 that that's the case. If I have a wallet, if I have an  
24 ownership interest in this coin, in this cryptocurrency, that  
25 is my evidence of it, and no one else can get into that except

1 me.

2 It's similar to my securities account on Schwab. If  
3 someone somehow manages to hack into my Schwab account, maybe  
4 they can get a picture of my Schwab, although I believe, my  
5 understanding is, it is exponentially harder to hack into a  
6 wallet on a Blockchain. It's certainly possible. I think we  
7 have done everything reasonable to assure ourselves that there  
8 is evidence of the transactions in this case.

9 I was just checking to make sure what I told the Court  
10 is correct. I am assured it is. Of course, there is the  
11 potential for counterfeiting, but given the nature of  
12 cryptocurrency and ownership of it, it's harder actually than  
13 to counterfeit my Schwab account.

14 THE COURT: I don't have anything else specific for  
15 you this morning, but you see where my concerns are, my  
16 principal concerns. And what I'd like to do is give you some  
17 time to amplify the record, if you want it. Do you?

18 MR. BERGER: I think I would like to amplify the  
19 record, your Honor.

20 I'll tell you what I would submit to the Court, and  
21 then I'll ask my colleagues if they think of anything else. I  
22 would submit to the Court the evidence of the lead plaintiff's  
23 domestic purchases on these exchanges, and we will get as much  
24 information as we can on the exchanges to establish that the  
25 lead plaintiff, at least some portion of their transactions are

1 domestic. I'll submit to the Court the agreement, the purchase  
2 agreement with Block One that I quoted from this morning. I  
3 will submit to the Court some more detail on how the plan of  
4 allocation was developed.

5 THE COURT: That would be helpful.

6 MR. BERGER: I can't do anything, your Honor, about  
7 who Crypto is and the fact that they have both domestic and  
8 perhaps foreign transactions, so I can't solve that problem for  
9 the Court. If that's the Court's concern, I can perhaps brief  
10 it, but the lead plaintiff in this case who was involved in  
11 negotiating the settlement, putting the settlement before the  
12 Court does not solely have domestic transactions. That's just  
13 where we are.

14 THE COURT: The breakdown is important, though.

15 MR. BERGER: We will submit that to the Court as well.

16 THE COURT: How much time do you want?

17 MR. BERGER: I think we could get that to the Court by  
18 Monday, your Honor?

19 THE COURT: OK with me. Next week is not a week that  
20 a lot is going to happen around here.

21 MR. BERGER: Maybe we will take until Wednesday, your  
22 Honor.

23 THE COURT: Fine.

24 MR. BERGER: Thank you very much.

25 THE COURT: Thank you.

1 Does the defense want to say anything here?

2 MR. POLUBINSKI: Your Honor, I think what the defense  
3 would say is a couple of things.

4 The first is we obviously don't take a position on the  
5 plan of allocation or, more generally, I think on some of the  
6 issues about adequacy and typicality that your Honor raised,  
7 and we will look forward to seeing what Mr. Berger submits.

8 I guess the two points I would make is that, as you  
9 probably would anticipate, I think the defendants, as they have  
10 made clear in their motion to dismiss, believe they have strong  
11 arguments to dismiss claims as against all members of the  
12 proposed settlement class, and there are a number of bases for  
13 that. Mr. Berger alluded to them. Some of them are statute of  
14 limitations, some of them are failure to state claims in other  
15 ways, and some of them, as your Honor pointed out, are *Morrison*  
16 related, which are stronger as to some than as to others.

17 One thing I would say about that is, as I think your  
18 Honor alluded to, the law is developing, still developing as to  
19 *Morrison* particularly as it's applied in this context. One of  
20 the things that the defendants wish to do in this case and in  
21 this settlement is to try to resolve that uncertainty in a way  
22 that parties do when they resolve cases.

23 And maybe the last point that I'll make on that score  
24 is one that Mr. Berger alluded to, which is from the  
25 defendants' perspective, a global settlement with this class is

1 an essential condition to getting this done.

2 THE COURT: I don't see how you really got that, no  
3 matter what happens. I am trying to remember the case Judge  
4 Holwell decided some years ago involving some French  
5 transactions or a French company.

6 There are going to be lots of issues as to the effect  
7 abroad of whatever I do specifically if I approve the  
8 settlement. I don't know how much peace you are buying. I  
9 assume you do, or at least think you do. That's your business.  
10 It's not something that concerns me vis-a-vis the settlement.

11 MR. POLUBINSKI: Your Honor, I hear the points that  
12 you are making, and I think that our client is prepared to deal  
13 with those issues, if it ultimately needs to, in terms of the  
14 enforceability of the settlement outside the U.S. borders.  
15 Nevertheless, I think the fact is that the global settlement is  
16 something that is an important condition, again --

17 THE COURT: Sure. I understand that.

18 What's the defense's idea of what the total damages  
19 would be if a class were certified and the plaintiffs won on  
20 the merits?

21 MR. POLUBINSKI: I do not know that, your Honor, right  
22 now.

23 THE COURT: What's the plaintiff's view of that?

24 MR. BERGER: Your Honor, if we prevailed on all of the  
25 claims?

1 THE COURT: Yes.

2 MR. BERGER: Well, Block One sold tokens in the  
3 initial coin offering and received about \$4 billion. So I  
4 guess I'd start there, although I'm not sure -- we would have  
5 to have some calculation of damages. It would probably be  
6 somewhat less. But our understanding, working with our expert,  
7 is that the damages in the case looked in the range of about \$2  
8 billion when all was said and done.

9 THE COURT: When all is said and done. Again, I'm not  
10 being pejorative, I have approved a lot of settlements, and I  
11 negotiated a lot of settlements. But it's a  
12 pennies-on-the-dollar settlement.

13 MR. BERGER: Correct. We certainly acknowledge that.  
14 But it's a pennies-on-a-dollar settlement where with respect to  
15 the nonregistration claims, we have decisions from two  
16 respected judges in this Court that said that they are gone on  
17 the statute of limitations grounds. I tried to persuade, your  
18 Honor, but I am not sure.

19 I think our '34 Act claims are much better actually.  
20 Those claims have risks, as your Honor knows, scienter,  
21 causation. It would be an enormously difficult loss causation  
22 case. So the opportunity to settle this case and get some  
23 recovery for the members of the class we thought was important.

24 THE COURT: Obviously, one of the things that goes  
25 through my mind about this, and it relates very heavily to the

1 Morrison issue, I think, is whether American courts ought to be  
2 in the business of, in effect, providing some kind of limited  
3 insurance coverage to companies that have exposure overseas for  
4 overseas transactions in the form of class action settlements  
5 with classes that include people who probably don't have any  
6 claims in the United States to begin with or may not have  
7 claims in the United States to begin with. I don't know where  
8 that cuts ultimately, but it's something to think about.

9 I thank you. We will see where we go from there.

10 (Adjourned)