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## Crypto-Litigation: An Empirical Overview for 2020–Present

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# Crypto-Litigation: An Empirical Overview for 2020-Present

*Moin A. Yahya\* & Nicole Pecharsky\*\**

## ABSTRACT

This article is an empirical analysis of the past two years of litigation around cryptocurrencies and other crypto-assets. We collected data points, from nearly 300 cases, over the past two years and then classified them by the various litigated issues. This article provides a breakdown of these issues as well as the jurisdictions from where these cases come from. The discussion reviews a few notable cases to illustrate what kinds of disputes have been brought to the courts. As we move into a new round of litigation due to a recent drop in the prices of cryptocurrencies, we hope that past experiences will guide lawyers and the courts in navigating the next wave of crypto-litigation.

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## I. INTRODUCTION

By 2020, courts were absorbing the impact of cryptocurrency’s reputation as the next “hot investment vehicle,” as well as dealing with the after-

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math of the previous cryptocurrency meltdown in 2018.<sup>1</sup> As we enter into a world with another bout of cryptocurrency meltdowns, as well as other crypto disputes,<sup>2</sup> we expect previous judicial experiences to provide some guidance into the coming disputes. Bitcoin, the original and main cryptocurrency, launched in 2008 with the publication of Satoshi Nakamoto's reputed white paper.<sup>3</sup> Bitcoin has seen its prices rise from effectively zero in 2008, to several hundred dollars in just a few years.<sup>4</sup> By 2017, Bitcoin crossed the \$1,000 mark.<sup>5</sup> By early 2020, Bitcoin hovered at the \$10,000 mark and shot up to the \$60,000 range late 2021.<sup>6</sup> Now, it has fallen back to around \$16,000, and it is unclear if this fall foreshadows a collapse in Bitcoin's price or is just a cyclic bottoming out.<sup>7</sup>

The fall in price has had additional repercussions elsewhere in the crypto sphere. Just recently, a crypto-platform, Luna, collapsed, as did its associated algorithmic stablecoin, Terra.<sup>8</sup> The prices of many other

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1. See generally Lawrence J. Trautman & Mason J. Molesky, *A Primer for Blockchain*, 88 UMKC L. REV. 239 (2019); Lawrence J. Trautman, *Bitcoin, Virtual Currencies, and the Struggle of Law and Regulation to Keep Pace*, 102 MARQ. L. REV. 447 (2018); see also, e.g., Frank Chaparro, *The Hottest Trend in Cryptocurrencies Was Just Dealt a Big Blow*, YAHOO! FINANCE (July 17, 2017), [https://finance.yahoo.com/news/hottest-trend-cryptocurrency-just-got-203429471.html?guccounter=1&guce\\_referrer=AHR0cHM6Ly93d3cuZ29vZ2xiLmNvbS8&guce\\_referrer\\_sig=AQAAABCsA\\_t9tZ3FnywRVV-y4glWNtW6FYtJl2\\_XemUkbrtNl\\_-laDttYotNaigvCqvNAckwFrRa6tjcFobpWU3d9ovzlYHFun3nWw\\_rZG2jO64VmIo1F4vY\\_IimQK90iibEzv3PS6GZ66OyDVqR8ForuWHB6m2Eel4qUXNA8TQMJC0m](https://finance.yahoo.com/news/hottest-trend-cryptocurrency-just-got-203429471.html?guccounter=1&guce_referrer=AHR0cHM6Ly93d3cuZ29vZ2xiLmNvbS8&guce_referrer_sig=AQAAABCsA_t9tZ3FnywRVV-y4glWNtW6FYtJl2_XemUkbrtNl_-laDttYotNaigvCqvNAckwFrRa6tjcFobpWU3d9ovzlYHFun3nWw_rZG2jO64VmIo1F4vY_IimQK90iibEzv3PS6GZ66OyDVqR8ForuWHB6m2Eel4qUXNA8TQMJC0m) [<https://perma.cc/7B7U-BN7E>]; Dennis Weidner, *Top 5 Decentralized Oracle Projects In Crypto*, CRYPTOTICKER (May 15, 2022, 7:50pm), <https://cryptoticker.io/en/top-5-crypto-oracles/> [<https://perma.cc/Z7CM-SUPN>].
  2. See David Gura, *Why Cryptocurrencies Have Gone From the Next Hot Thing to a Full-on Meltdown*, NAT'L PUB. RADIO (June 17, 2022, 5:00 AM ET), <https://www.npr.org/2022/06/17/1105343423/cryptocurrencies-winter-crash-bitcoin-celsius> [<https://perma.cc/U4YH-HJNU>].
  3. Satoshi Nakamoto, *Bitcoin: A Peer-to-Peer Electronic Cash System*, BITCOIN, <https://bitcoin.org/en/> [<https://perma.cc/5CJJ-D7V2>].
  4. See, e.g., *Bitcoin*, COIN MARKET CAP, <https://coinmarketcap.com/currencies/bitcoin/historical-data/> [<https://perma.cc/DV2T-V633>].
  5. See *id.*
  6. See *id.*
  7. See *id.*
  8. See Mike Dalton, *U.S. and South Korean Officials Meet to Discuss Terra Collapse*, CRYPTO BRIEFING (July 6, 2022), <https://cryptobriefing.com/u-s-and-south-korean-officials-meet-to-discuss-terra-collapse/> [<https://perma.cc/JV54-STVW>].

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cryptocurrencies have dropped dramatically.<sup>9</sup> The result, not unexpectedly, brought forth lawsuits and threats of lawsuits, regulatory investigations, and calls for increased regulation.<sup>10</sup> The collapse of Luna and Terra has generated a flurry of regulatory activity among U.S. and Korean officials; although, the regulatory activity is still in the investigative phase.<sup>11</sup> The bankruptcy filing by Three Arrows (3AC) will generate litigation both in terms of substantive bankruptcy law as well as procedural legal issues, such as the issuance of subpoenas,<sup>12</sup> especially since the founders of 3AC are somewhat elusive.<sup>13</sup> As calls for regulating cryptocurrencies grow,<sup>14</sup> so too do claims that cryptocurrencies are nothing more than Ponzi schemes. Some of these claims have come in the form of lawsuits. One such lawsuit, filed against Elon Musk, SpaceX, and Tesla, alleges that Musk manipulated the price of Dogecoin in order to run a Ponzi scheme.<sup>15</sup> Another lawsuit against the now defunct platform Celsius Network alleges that the defendant was running a

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9. See Edward Helmore, *Trillion-dollar Crypto Collapse Sparks Flurry of US Lawsuits—Who's to Blame?*, GUARDIAN (July 18, 2022, 7:00 EDT), <https://www.theguardian.com/technology/2022/jun/18/cryptocurrency-collapse-bitcoin-kim-kardashian-floyd-mayweather> [<https://perma.cc/DLN6-RFGC>].
10. See *id.*
11. Dalton, *supra* note 8; see also Anthony Clarke, *Terra Founder Do Kwon Allegedly Voted on his own proposal using one of his secret wallets*, CRYPTO SLATE (June 14, 2022, 5:00 AM UTC), <https://cryptoslate.com/terra-founder-do-kwon-allegedly-voted-on-his-own-proposal-using-one-of-his-secret-wallets/> [<https://perma.cc/94KA-KXDE>].
12. See Stacy Elliott, *Three Arrows Capital Liquidators Cleared by Judge to Issue Subpoenas*, DECRYPT (July 12, 2022), <https://decrypt.co/104947/three-arrows-capital-liquidators-cleared-by-judge-to-issue-subpoenas> [<https://perma.cc/69CT-QTP5>].
13. See Emma Roth, *Liquidators for Crypto Hedge Fund Three Arrows Capital say They Can't Find Founders*, THE VERGE (July 12, 2022, 5:57 PM CDT), <https://www.theverge.com/2022/7/11/23204465/three-arrows-capita-3ac-liquidators-crypto-hedge-fund-cant-find-founders-kyle-davies-su-zhu> [<https://perma.cc/KNF5-58YT>].
14. See Billy Bambrough, *Biden Official Reveals Crypto Plans Amid \$2 Trillion Terra Luna-Led Bitcoin, Ethereum, BNB, XRP, Solana, Cardano and Dogecoin Price Crash*, FORBES (July 3, 2022, 7:15 AM EDT), <https://www.forbes.com/sites/billybambrough/2022/07/03/biden-official-reveals-crypto-plans-amid-2-trillion-terra-luna-led-bitcoin-ethereum-bnb-xrp-solana-cardano-and-dogecoin-price-crash/?sh=14ff527924eb> [<https://perma.cc/TR62-Q48J>].
15. Brian Bushard, *Elon Musk, SpaceX and Tesla Sued For \$258 Billion In Alleged Dogecoin 'Pyramid Scheme'*, FORBES (June 16, 2022, 3:58 PM EDT), <https://www.forbes.com/sites/brianbushard/2022/06/16/elon-musk-spacex-and-tesla-sued-for-258-billion-in-alleged-dogecoin-pyramid-scheme/?sh=600687e981fd> [<https://perma.cc/W44G-V4JF>].

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Ponzi scheme.<sup>16</sup> The question of what happens to investors' funds once the trading platform collapses will undoubtedly occupy the minds of many in the days to come.<sup>17</sup> As if this wasn't enough, just a few days before this article was going to press, the cryptocurrency exchange FTX declared bankruptcy, leaving account holders \$8 billion short!<sup>18</sup>

The ongoing lawsuit by the Securities and Exchange Commission (SEC) against Ripple continues to sporadically pop into the headlines, as calls to regulate stablecoins grow.<sup>19</sup> Despite numerous actions by the SEC against creators and issuers of various cryptocurrencies for violations in connection with the offer and sale of securities, it was not until the summer of 2022 that the first crypto-insider trading case was filed.<sup>20</sup> The U.S. Attorney for the Southern District of New York charged three employees of the crypto-exchange Coinbase, Inc.<sup>21</sup> The charge states that the individuals knew of upcoming listings on the exchange and used this information to personally profit.<sup>22</sup> As such, subsequent to the SEC suit, parties have filed lawsuits claiming losses.<sup>23</sup> Coinbase has been unsuccessfully trying to compel arbitra-

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16. See Lukas I. Alpert, *Celsius Network was a 'Ponzi scheme,' Company's Former Investment Manager Alleges in Lawsuit*, MARKET WATCH (July 9, 2022, 12:59 PM ET), <https://www.marketwatch.com/story/celsius-network-was-a-ponzi-scheme-companys-former-investment-manager-alleges-in-lawsuit-11657241889> [<https://perma.cc/C99V-PYZV>].
17. See Ryan Browne, *Looking to Get Your Funds Out of a Collapsed Crypto Platform? Don't Get Your Hopes Up*, CNBC (July 19, 2022, 1:20 AM EDT), <https://www.cnbc.com/2022/07/19/what-happens-to-my-funds-if-a-crypto-exchange-goes-bankrupt.html> [<https://perma.cc/ERL8-E8EE>].
18. David Yaffe-Bellany, *Embattled Crypto Exchange FTX Files for Bankruptcy*, NY TIMES (Nov. 11, 2022), <https://www.nytimes.com/2022/11/11/business/ftx-bankruptcy.html> [<https://perma.cc/L2D6-FLQ7>].
19. See Ian Fong & Moin A. Yahya, *In Defense of the Free-Banking Stablecoins*, 27 J. TECH. L. & POL'Y 1 (2022).
20. Ashley Capoot, *Former Coinbase Manager and Two Others Charged in Crypto Insider Trading Scheme*, CNBC (July 21, 2022, 8:03 PM EDT), <https://www.cnbc.com/2022/07/21/former-coinbase-manager-and-two-others-charged-in-insider-trading-plot.html> [<https://perma.cc/BT83-3C5C>].
21. U.S. Attorney's Office Southern District of New York, *Three Charged in First Ever Cryptocurrency Insider Trading Tipping Scheme*, DEP'T OF JUST. (July 21, 2022), <https://www.justice.gov/usao-sdny/pr/three-charged-first-ever-cryptocurrency-insider-trading-tipping-scheme> [<https://perma.cc/EZ8N-BZ4B>].
22. *Id.*
23. Arnold Krimi, *Coinbase Hit with 2 Fresh Lawsuits Amid SEC Probe*, COINTELEGRAPH (Aug. 5, 2022), <https://cointelegraph.com/news/coinbase-hit-with-2-fresh-lawsuits-amid-sec-probe> [<https://perma.cc/DW92-FZUX>].

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tion in a pair of lawsuits, including a failed petition to the Supreme Court.<sup>24</sup> One case involves a Coinbase user who lost money to a scammer that gained access to his account, while the other involves a sweepstakes ran by Coinbase, where it was not disclosed that a purchase of cryptocurrencies was necessary (as required by California law).<sup>25</sup> These lawsuits are just some examples of current issues before the courts.<sup>26</sup> In order to understand how these cases may develop, we examined crypto-related issues that arose during the past two years. If these issues have already been adjudicated, then litigants may have some insight as to how their cases will be resolved in the future. Indeed, courts have been quite busy figuring out the intricacies and nuisances of cryptocurrencies, crypto-exchanges, and other developments in the crypto-world.

In this article, we have collected a set of cases decided since 2020. This time period picks up the litigation developments that would have commenced since 2018, when the price of Bitcoin last crashed. The resulting litigation may shed some insight into the types of cases that will arise in the next two to three years, especially given the current drop in the price of Bitcoin and other cryptocurrencies.

## II. RESEARCH METHODOLOGY AND GENERATION OF CASE DATA

Using Westlaw, a search was done for cases with the keywords “crypto!” and “crypto!”, with the timeline of 2020 onwards. This returned just under 500 cases, which were filtered down to eliminate cases that were irrelevant to this research question. The cases filtered out were those that had the phrase “crypto” but were concerned with cryptographic technologies or encryption technologies, therefore, not related specifically to cryptocurrency, crypto-assets, or crypto-securities. We also eliminated cases that were primarily patent disputes regarding some sort of encryption technology or creation of a unique cryptographic key, as well as medical cases where crypto was the prefix in some form of bacteria, therapy, or procedure. Between both state and federal cases, the final count was 299 cases. In Appendix A, we provide a set of statistics regarding these cases. Table 1 provides the breakdown of cases by year. There were ninety-two cases in 2020, 117 in 2021, and ninety so far in 2022 (as of July 20, 2022).

Table 3 provides case breakdowns by state of origin, including federal and state court cases. 94% of cases were initiated in federal court. A few states have seen crypto-litigation in their state court systems, including New

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24. Kimberly Robinson & Lydia Wheeler, *US Supreme Court Refuses to Fast Track Coinbase Arbitration Dispute*, BNN BLOOMBERG (Aug 10, 2022), <https://www.bnnbloomberg.ca/us-supreme-court-refuses-to-fast-track-coinbase-arbitration-dispute-1.1804189> [<https://perma.cc/PL8R-ZRWS>].

25. *Id.*

26. *See id.*

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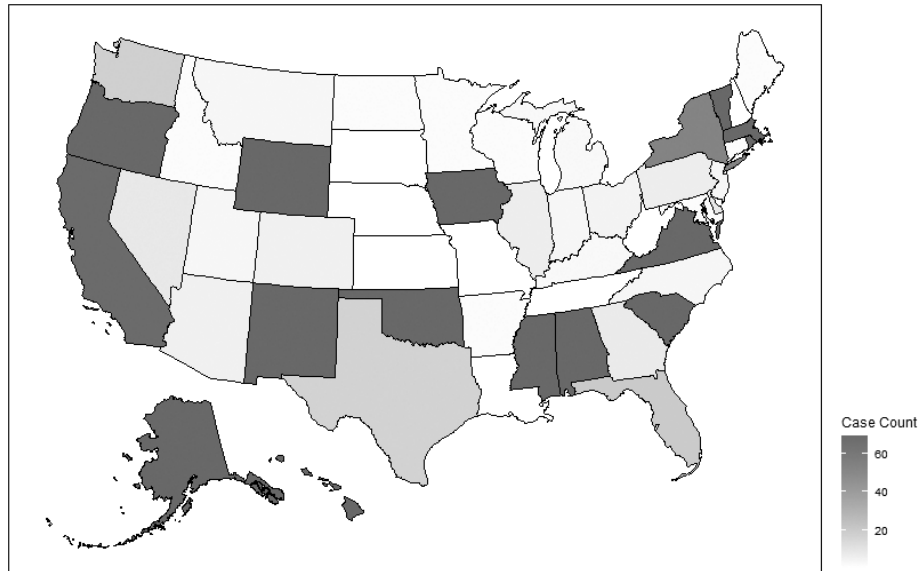
York, California, Washington, and Florida. Most of the cases were heard in the federal district courts, and Table 5 shows that only 16 of the 299 cases, or 5.35%, rose to U.S. appellate courts. Cases appeared in the Second, Fifth, Sixth, Eighth, Ninth, and Eleventh Circuit Courts of Appeals, with the Second Circuit and Eleventh Circuit leading the count. As a matter of prudence, we note that in addition to the district courts, a few federal bankruptcy courts, as well as some military courts, opined on matters relating to the crypto sphere.

Table 5 lists the various federal district courts that heard crypto-related cases. The Southern District of New York leads the case count with 41 cases, or 14% , followed by the Northern District of California with 31 cases or 10% of the total cases heard, then the Central District of California with 23 cases or 8% of cases, the Southern District of Florida with 12 cases or 4%, and, lastly, the District of Columbia and Washington with 10 cases or 3%.

We also counted the states where crypto cases were heard regardless of whether they were disputed in a federal or state court. This breakdown is given in Table 4. Most cases were heard in California. This comes as little surprise given the technology sector is dominant in California. California had 69 cases or 23% of the count followed by New York state at 53 or 18% of the cases. Florida, Washington, and Texas had 17 and 20 cases each, or around 6% of the total, respectively. These states are popular either due to the presence in the technology sector, cheap energy, or a hospitable regulatory environment.<sup>27</sup> A heat map is provided, depicting the distribution of crypto actions across the U.S.

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27. See Scott Nover, *Miami's Mayor Backed MiamiCoin Crypto—Then Its Price Dropped 95%*, QUARTZ, <https://qz.com/2165639/miamis-mayor-backed-miamicoin-then-its-price-dropped-95-percent/> [https://perma.cc/8GMC-7JYA] (explaining how Miami, for example, has become a sort of 'crypto haven' with its own mayor touting himself as the most crypto-friendly mayor in America).

**CHART 1: CRYPTOCURRENCY ACTIONS BY STATE**

In terms of the causes of action, we counted every unique cause of action asserted in each case. We also counted the remedies sought as a cause of action, e.g., injunction or motion to compel disclosure or discovery. With that, we counted 573 causes of action, which are listed in Table 2.

The top cause of action was fraud—73 cases, or 13% of the cases, included assertions of fraud. Violations of the Securities Exchange Act were causes of action in 42 cases. Breach of contract claims were close behind and were included in 40 cases or 7% of the cases. Claims of conversion, fraudulent misrepresentation, conspiracy, and theft of currencies were involved in 20–40 counts. Claims that cryptocurrencies were used to finance criminal activities, hacking claims, and unjust enrichment claims were tied at 18 or 3%. We note that some of these cases were brought as criminal cases, some were regulatory prosecutions, and some were civil cases where plaintiffs alleged criminal or criminal-type activities involving cryptocurrencies and exchanges.

### III. NOTABLE CASES AND ISSUES

Among the nearly 300 cases, several common themes or issues emerged. As Table 4 shows, there were over 570 issues identified within these cases. This section contains a brief overview of some of the key issues that were identified and includes some notable cases to highlight how these cases arose factually.

#### A. Fraudulent Investment Opportunities

The most common cause of action involved former investors launching claims, often class actions, against cryptocurrency companies or cryptocur-



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rency investment consultants, alleging fraudulent business practices. Over 100 cases, or 18%, involved allegations of fraudulent business activity. These general claims of fraud were often accompanied by parallel claims for fraudulent misrepresentation and inducement in soliciting investments by misrepresenting either the success of the cryptocurrency, the proprietary and “fail safe” nature of their investment algorithm, or their ability to have guaranteed returns on investments. Additional claims for unjust enrichment, conversion, and/or theft of currencies often followed when it was alleged that the primary investor or founder of the cryptocurrency company misappropriated investor funds for personal gain. Sometimes these claims were accompanied by a separate regulatory or prosecutorial case against the defendants.

For example, in *Lagemann v. Spence*,<sup>28</sup> twenty-two investors collectively sought recovery of funds they invested in a business scheme endorsed by the defendant. The defendant posted messages across various social media channels publicizing his successful trading activities and promising investors that they would see their investments multiply with no risk.<sup>29</sup> As it turned out, according to the allegations, there was no growth other than in the defendant’s earnings in the investors’ money.<sup>30</sup> Indeed, the investment vehicle was not registered with any government authority, let alone any securities regulators.<sup>31</sup> The financial statements were all falsified in the creation of the defendant’s Ponzi scheme.<sup>32</sup> The plaintiffs brought eleven causes of action including, fraudulent inducement, breach of fiduciary duty, fraudulent misrepresentation, negligent misrepresentation, unjust enrichment, and conversion.<sup>33</sup> The magistrate granted summary judgment against the defendant allowing recovery of the money invested, a decision affirmed by the district court.<sup>34</sup> In addition to this civil case, the U.S. Attorney charged the defendant.<sup>35</sup> The defendant entered a guilty plea where he was sentenced to jail time and restitution.<sup>36</sup>

Engagement in Ponzi schemes are prominent allegations in lawsuits against operators of various cryptocurrencies. These claims are typically brought by either former private investors or through government agencies

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28. *Lagemann v. Spence*, No. 18-CV-12218-GBDR, 2020 WL 5754800, at \*1 (S.D.N.Y. May 18, 2022).

29. *Id.* at \*2.

30. *Id.*

31. *Id.*

32. *Id.*

33. *Id.*

34. *Lagemann*, 2020 WL 5754800, at \*1.

35. U.S. Attorney’s Office Southern District of New York, *Cryptocurrency Trader Sentenced To 42 Months*, DEP’T OF JUST., <https://www.justice.gov/usao-sdny/pr/cryptocurrency-trader-sentenced-42-months> [<https://perma.cc/74NC-RM2P>].

36. *Id.*

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like the SEC or the Commodity Futures Trading Commission (CFTC).<sup>37</sup> Often, these actions occurred alongside parallel claims of money laundering, fraud, and conspiracy.<sup>38</sup> For example, in *Berdeaux v. OneCoin Ltd.*,<sup>39</sup> the plaintiffs, who invested in the defendant's coin, allege that the defendant's operation is nothing more than a Ponzi scheme. Plaintiffs initiated suit against the founders and organizers of a company that offered a cryptocurrency and a bank that the plaintiffs accuse of facilitating the fraud.<sup>40</sup> The defendant entity was headquartered in Dubai with offices in Bulgaria and Hong Kong.<sup>41</sup> The claim is that the defendants never created a cryptocurrency but rather a multi-level marketing scheme.<sup>42</sup> The bank was accused of assisting the other defendants in wiring the ill-gotten cash around the world to other banks where the defendants had accounts.<sup>43</sup> The court, however, found personal jurisdiction over the defendants lacking due to their foreign presence.<sup>44</sup> The court also dismissed the complaint against the bank for failure to state a claim.<sup>45</sup> This illustrates some of the challenges that plaintiffs face when seeking compensation in American courts.<sup>46</sup> The presence of defendants abroad, despite their use of local banks, may serve as jurisdictional obstacles for having a case heard in the first place.

There were also civil lawsuits seeking damages for losses stemming from classic “pump and dump” schemes.<sup>47</sup> These claims allege that a crypto company or crypto investment firm would artificially inflate their prices and volume, then dump shares on unsuspecting investors. In *Barron v. Helbiz, Inc.*, the plaintiffs purchased a cryptocurrency created, controlled, and issued

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37. *Id.*

38. *See, e.g.*, *Futures Trading Commission v. Safron*, No. 2:19-CV-01697, 2022 WL 1165699 (D. Nev. Mar. 16, 2022); *SEC v. Natural Diamonds Investment Co.*, No. 9:19-CV-80633, 2020 WL 95065 (S.D. Fla. Jan. 8, 2020); *Graceland v. Plutus Enterprises, LLC*, No. 8:21-CV-2356, 2022 WL 1212801 (M.D. Fla. Apr. 25, 2022) (alleging that the defendant “preyed on individuals” interested in cryptocurrency investments in perpetration of a pyramid scheme meant to defraud investors).

39. *Berdeaux v. OneCoin, Ltd.*, 561 F. Supp. 3d 379, 390–91 (S.D.N.Y. 2021).

40. *Id.* at 391.

41. *Id.*

42. *Id.* at 392.

43. *Id.* at 392–93.

44. *OneCoin*, 561 F. Supp. 3d at 395.

45. *Id.*

46. The individual defendants were criminally prosecuted and had regulatory actions taken against them globally. *Id.* at 394.

47. *See, e.g.*, *Barron v. Helbiz, Inc.*, No. 21-278, 2021 WL 4519887, at \*1 (2d Cir. Oct. 4, 2021).

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by the defendants.<sup>48</sup> They allege the defendants promised that the cryptocurrency would be the “exclusive currency of a smartphone-based transportation rental platform to be developed by” the defendants.<sup>49</sup> The platform would allow for several urban transportation solutions, such as renting “flying drone taxis . . . cars, bikes, and scooters to travel within cities.”<sup>50</sup> The defendants raised money by planning an Initial Coin Offering (ICO)<sup>51</sup> where the plaintiffs purchased these currencies.<sup>52</sup> Unfortunately for investors, no platform was developed, and the price of the currency fell dramatically.<sup>53</sup> The plaintiffs brought claims for breach of contract, “trespass and conversion of chattels, constructive trust, quiet title, and spoliation, and state statutory claims.”<sup>54</sup> The district court dismissed the claims because the tokens were sold abroad and did not involve domestic securities exchange.<sup>55</sup> The Second Circuit vacated and remanded.<sup>56</sup>

Similarly, in *Beranger v. Harris*, the plaintiffs, thirty-five individuals from all over the world, sued three defendants, including well-known comedian Kevin Hart, for negligent representation, unjust enrichment, and violations of state securities laws.<sup>57</sup> The plaintiffs alleged that they lost money after purchasing tokens issued by two of the defendants through an ICO.<sup>58</sup> After the ICO, the tokens rose in price through the sellers claims of celebrity investments and endorsements, including that of Kevin Hart.<sup>59</sup> However, after an initial rise in price, the token’s price plummeted and eventually became worthless.<sup>60</sup> The plaintiffs claimed that the entire ICO was nothing

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48. *Id.*

49. *Id.*

50. *Id.*

51. Trautman, *supra* note 1, at 492 (comparing an Initial Coin Offering (ICO) to an Initial Public Offering of company equity in the world of stocks and describing how those who start a new cryptocurrency raise funds from the public in exchange for tokens).

52. *Barron*, 2021 WL 4519887, at \*1.

53. *Id.*

54. *Id.* at \*2.

55. *Id.* at \*4.

56. *Id.*

57. *Beranger v. Harris*, No. 1:18-CV-5054-CAP, 2021 WL 4254940, at \*1 (N.D. Ga. Feb. 12, 2021).

58. *Id.*

59. *Id.*

60. *Id.*

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more than a classic “pump and dump” scheme.<sup>61</sup> Ultimately, the court removed Hart as a defendant.<sup>62</sup>

Business disputes alleging misstatements also arose in the Delaware court system. In *NVIDIA Corp. v. City of Westland Police and Fire Retirement System*, a typical corporate law dispute between shareholders and management regarding inflated earnings and its impact on the stock price arose.<sup>63</sup> Anticipating a large demand for computing processors used for crypto-mining operations, NVIDIA projected revenues that did not materialize when the price of Bitcoin fell in 2018.<sup>64</sup> This drop resulted in a lower-than-expected demand for processors, something that we can expect to see again today.<sup>65</sup>

## B. Regulatory Infractions

Violations of various regulatory statutes were featured in numerous lawsuits. Sixty-two cases and 10.81% of claims involved allegations of regulatory statute violations. There were approximately 7.33% (42 cases) of claims alleging violations of the SEA, 1.57% of the cases (9 cases) alleging violations of the Commodities Exchange Act, 1.22% of the cases (7 cases) alleging violations of the Computer Fraud and Abuse Act (CFAA), 3 cases alleging violations of the Federal Communications Act (FCA) (0.52%), and one case alleging a violation of the Electronic Funds Transfer Act.

For example, claims of “unregistered sale of securities” or other violations of the Securities Exchange Act occurred in the dataset. In *SEC v. Kik Interactive Inc.*, the SEC prosecuted a business that attempted to capitalize on the emerging market for digital tokens.<sup>66</sup> The SEC’s lawsuit was against an entity that was originally a messaging and real-time chat application for cellular phones.<sup>67</sup> The messaging application was popular but not profitable.<sup>68</sup> The entity that operated the application decided to sell a digital currency called Kin.<sup>69</sup> Kin was supposed to be a cryptocurrency operating on an

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61. *Id.* at \*2

62. *Beranger*, 2021 WL 4254940, at \*2. There was also a criminal prosecution related to this case. U.S. Attorney’s Office Northern District of Georgia, *Atlanta Film Producer Pleads Guilty for \$2.5 million Cryptocurrency-based Investment Scams*, DEP’T OF JUST., (July 21, 2022), <https://www.justice.gov/usao-ndga/pr/atlanta-film-producer-pleads-guilty-25-million-cryptocurrency-based-investment-scams> [<https://perma.cc/B75K-M7HA>].

63. *NVIDIA Corp. v. City of Westland Police and Fire Ret. System*, 282 A.3d 1, 5–7 (Del. July 19, 2022) as revised (July 25, 2022).

64. *Id.* at \*3.

65. *See id.*

66. *SEC v. Kik Interactive Inc.*, 492 F. Supp. 3d 169, 173 (S.D.N.Y. 2020).

67. *Id.*

68. *Id.*

69. *Id.*

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established blockchain, Ethereum.<sup>70</sup> The idea was that users of the messaging application could buy and sell products using Kin.<sup>71</sup> Users could even earn Kin on the messaging application.<sup>72</sup> For example, users could upload a music video which other users could then purchase with Kin.<sup>73</sup> The defendant sold the tokens both privately and publicly.<sup>74</sup> The private purchasers agreed the Kin they were buying were unregistered securities and not meant for resale.<sup>75</sup> The public purchasers bought the tokens on an “as-is” basis, with no guarantees or warranties.<sup>76</sup> Prior to the Kik sale of Kin, there were no SEC rules on ICOs.<sup>77</sup> Ultimately, the SEC prevailed over Kik in the lawsuit.<sup>78</sup> Since then, the SEC has aggressively pursued other entities like Telegram, also a messaging application,<sup>79</sup> and Ripple.<sup>80</sup> There is an entry in the dataset that deals with the ongoing *Ripple Labs* case.<sup>81</sup> In that case, the SEC was seeking eight years of personal financial information from two individuals involved in the operation of Ripple.<sup>82</sup> The district court denied the request.<sup>83</sup>

Sometimes the entities sued by the SEC for unregistered sales of securities were engaged in creative marketing. In one case,<sup>84</sup> the SEC brought suit against a number of individuals, as well as a company, for selling unregis-

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70. *Id.* at 173–74.

71. *Id.* at 179.

72. *Kik Interactive*, 492 F. Supp. 3d at 174.

73. *Id.*

74. *Id.* at 175.

75. *Id.*

76. *See id.*

77. *Id.* at 176.

78. Press Release, SEC, SEC Obtains Final Judgment Against Kik Interactive for Unregistered Offering (Oct. 21, 2020), <https://www.sec.gov/news/press-release/2020-262#:~:text=%E2%80%9CThe%20court%27s%20decision%20recognized%20that,the%20Securities%20Act%20of%201933> [https://perma.cc/ST5E-LVLN].

79. Press Release, SEC, Telegram to Return \$1.2 Billion to Investors and Pay \$18.5 Million Penalty to Settle SEC Charges (June 26, 2020), <https://www.sec.gov/news/press-release/2020-146> [https://perma.cc/BD5G-V42F].

80. Press Release, SEC, SEC Charges Ripple and Two Executives with Conducting \$1.3 Billion Unregistered Securities Offering (Dec. 22, 2020), <https://www.sec.gov/news/press-release/2020-338> [https://perma.cc/544Y-XM9F].

81. SEC v. Ripple Labs, Inc., No. 20-CV-10832, 2021 WL 1335918, at \*1 (S.D.N.Y. Apr. 9, 2021); *see also* Fong & Yahya, *supra* note 19.

82. *Ripple Labs*, 2021 WL 1335918, at \*1.

83. *Id.*

84. SEC v. Blockvest, LLC, No. 18-CV-228, 2020 WL 1910355, at \*1 (S.D. Cal. Apr. 20, 2020).

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tered securities in the form of digital assets offered via an ICO.<sup>85</sup> The SEC claimed the defendants falsely represented that the tokens were “registered” and “approved” by the SEC and other regulators.<sup>86</sup> The defendants had even “created a fictitious regulatory agency, the Blockchain Exchange Commission . . . in order to create legitimacy and an impression that their investment is safe.”<sup>87</sup> The SEC asserted the cause of action was fraud in connection with the purchase or sale of securities, under various sections of the Securities legislation and regulations.<sup>88</sup> In this case, the defendant engaged in other unsatisfactory behavior which led the SEC to successfully pursue “terminating sanctions” against the defendants.<sup>89</sup>

The CFTC has also brought actions alleging violations of the Commodities Exchange Act.<sup>90</sup> These usually involve claims of fraudulent solicitation of investments in crypto, whereby cryptocurrencies were classified as commodities.<sup>91</sup> Because there is still no settled legal viewpoint on how to classify cryptocurrencies, it is not surprising to see various agencies taking jurisdiction over cryptocurrencies based on their classification.<sup>92</sup> The U.S. Attorney also brought various criminal charges alleging wire fraud.<sup>93</sup> These criminal actions were accompanied by claims of conspiracy and money laundering involving soliciting cryptocurrency investments.<sup>94</sup>

Although not brought by an agency, claims that intersect traditional legislation with the novel aspects of cryptocurrencies are those brought via the

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85. *Id.*

86. *Id.*

87. *Id.*

88. *Id.*

89. *Id.* at \*19.

90. *See, e.g.,* Commodity Futures Trading Comm’n v. Saffron, No. 2:19-CV-01697, 2020 WL 3060739 (D. Nev. June 9, 2020); Commodity Futures Trading Comm’n v. Maldonado, No. 4:20-CV-03185, 2021 WL 4295250 (S.D. Tex. Sept. 21, 2021).

91. *Saffron*, 2020 WL 3060739, at \*1.

92. *See, e.g.,* United States v. Ologeanu, No. 5:18-CR-81, 2020 WL 1676802 (E.D. Ky. Apr. 4, 2020) (finding sufficient evidence of money laundering able to override a due process defense); United States v. Lambert, No. 19-CR-571, 2021 WL 289348 (S.D.N.Y. Jan. 28, 2021) (charging co-founders of tech company with fraudulent misrepresentations pursuant to selling digital assets); United States v. Sneed, No. 3:19-CR-0580-B, 2022 WL 35801 (N.D. Tex. Jan. 4, 2022) (denying motion to dismiss indictment for wire fraud and securities fraud related to marketing a fraudulent investment group).

93. *See, e.g.,* United States v. Rowland, No. 20-316-KSM-1, 2020 WL 6200182 (E.D. Penn. Oct. 22, 2020); United States v. Sterlingov, No. 21-399, 2021 WL 5275702 (D.D.C. Nov. 10, 2021).

94. *Rowland*, 2020 WL 6200182, at \*1.

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Americans with Disabilities Act (ADA). In *Mahoney v. Bittrex Inc.*, it was alleged that the plaintiff was discriminated against by a cryptocurrency exchange site for its failure to make the website accessible to blind individuals.<sup>95</sup>

### C. Negligence & Unfair Business Practices

In addition to claims of fraudulent business practices, there were also several causes of action where investors alleged negligence on the part of the crypto company for the improper handling of their investments.<sup>96</sup> In *Reynolds v. Binance Holdings Ltd.*,<sup>97</sup> the plaintiff claimed that due to a dispute with the defendant, a cryptocurrency exchange platform, he was prevented from withdrawing any funds from his account.<sup>98</sup> He sued in California and the defendant brought a motion to dismiss for lack of personal jurisdiction.<sup>99</sup> Even though the platform had many U.S. customers, the plaintiff failed to show any connection to California, and the court dismissed the case.<sup>100</sup> In *Johnson v. Maker Ecosystem Growth Holdings, Inc.*,<sup>101</sup> the plaintiff alleged that the defendant, the manager of a cryptocurrency platform, failed to secure the plaintiff's collateral investment in the platform due to a vulnerability in the system.<sup>102</sup> The case was sent to arbitration and involved some interlocutory matters.<sup>103</sup> Echoing these claims, in *Berk v. Coinbase, Inc.*, the plaintiffs sued a crypto-exchange claiming that they were negligent in managing platform.<sup>104</sup> These allegations of negligence stemmed from claims that the exchange did not take in sufficient deposits to allow an orderly market to develop and operate.<sup>105</sup> The plaintiffs claimed that there was a duty under California tort law to ensure a functioning marketplace.<sup>106</sup> The case was sent to arbitration pursuant to the terms of the user agreement.<sup>107</sup>

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95. *Mahoney v. Bittrex, Inc.*, No. CV-19-3836, 2020 WL 212010, at \*1 (E.D. Penn. Jan. 14, 2020).

96. *See, e.g., Saffron*, 2020 WL 3060739, at \*1.

97. *Reynolds v. Binance Holdings Ltd.*, 481 F. Supp. 3d 997, 1001 (N.D. Cal. 2020).

98. *Id.* at 1001.

99. *Id.*

100. *Id.*

101. *Johnson v. Maker Ecosystem Growth Holdings, Inc.*, No. 20-CV-02569-MMC, 2021 WL 24844, at \*1 (N.D. Cal. Jan. 4, 2021).

102. *Id.*

103. *Id.*

104. *Berk v. Coinbase, Inc.*, 840 Fed. Appx. 914, 915 (9th Cir. 2020) (unpublished).

105. *Id.*

106. *Id.*

107. *Id.*

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Conspiracy was another allegation brought under the category of unfair business practices. This cause of action was quite common and often ran parallel to other allegations of unsavory business practices including wire fraud, money laundering, and fraudulent misrepresentation.<sup>108</sup> Several of these cases also alleged civil conspiracy.<sup>109</sup> In *Gadasalli v. Bulasa*, it was alleged the defendants perpetrated a “dating scheme” to defraud plaintiff of 8 million in cryptocurrency,<sup>110</sup> while in *Gorman v. Shpetrik* it was alleged that ransom in the form of crypto was demanded in exchange for the removal of defamatory statements.<sup>111</sup>

Often accompanying claims of conspiracy, were claims from investors in cryptocurrency companies or bitcoin trading platforms for racketeering, violations of the RICO Act, conversion, and fraud. For example, in *Snyder v. STX Technologies, Ltd.*, the plaintiff alleges that the defendant had contracted with a third-party entity to send plaintiff the defendant’s investment information.<sup>112</sup> On the third party’s communication platform, the plaintiff alleged that the defendant published information that promoted an ICO, the promotions were aimed at non-U.S. citizens in order to avoid compliance with various securities laws.<sup>113</sup> The tokens then, according to the allegation, were resold on U.S. secondary markets.<sup>114</sup> The plaintiff also alleged that the defendant made several misleading and fraudulent statements indicating that the tokens’ prices would stay at a certain level based on various mathematical algorithms.<sup>115</sup> The plaintiff claimed that although they purchased several of these tokens, the defendant, at some point, unilaterally changed the price of tokens.<sup>116</sup> The claim included “third party beneficiary breach of contract,” promissory estoppel, fraudulent inducement, negligent misrepresentation, and violations of the state securities act.<sup>117</sup> Given that the defendant was not located in the plaintiff’s state and that the ICO had specified no sales to U.S. citizens, the defendant moved to dismiss the complaint on the grounds of

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108. *See, e.g.*, *Gudasalli v. Bulasa*, No. 4:22-CV-249, 2022 WL 991993 (E.D. Tex. Apr. 1, 2022).

109. *See id.*; *see also* *Gorman v. Shpetrik*, No. 20-4759, 2022 WL 717075 (E.D. Penn. Mar. 10, 2022).

110. *Gudasalli*, 2022 WL 991993, at \*1.

111. *Gorman*, 2022 WL 717075, at \*1.

112. *Snyder v. STX Tech. Ltd.*, No. 19-6132, 2020 WL 5106721, at \*1 (W.D. Wash. Aug. 31, 2020).

113. *Id.*

114. *Id.* at \*2.

115. *Id.* at \*1.

116. *Id.* at \*2.

117. *STX Tech.*, 2020 WL 5106721, at \*2.



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lack of personal jurisdiction.<sup>118</sup> The court ultimately found that there was personal jurisdiction.<sup>119</sup>

Similarly, in *BMA LLC v. HDR Global Trading*, the plaintiffs suffered financial losses on a “cryptocurrency derivatives trading platform,” which was owned and operated by the defendants.<sup>120</sup> They brought claims under the Commodity Exchange Act (CEA), RICO, and various state laws.<sup>121</sup> The plaintiff alleged that the defendant engaged in price manipulation on the platform, resulting in investor losses.<sup>122</sup> However, the plaintiffs’ allegations did not state the elements of each claim sufficiently to survive a motion to dismiss.<sup>123</sup> There were some criminal charges pending against other individuals not named in the case, but who were related to the defendants, alleging that the defendants had not complied with several financial regulations, including anti-money laundering and know-your-customer programs.<sup>124</sup> The CFTC also filed a civil suit against the defendant and related individuals, alleging that they failed to register the platform with the CFTC.<sup>125</sup> The plaintiffs described various price manipulation techniques such as “pump and dump” schemes and “liquidation cascades.”<sup>126</sup> The allegations describe very complex price manipulation systems that related to trades methods.<sup>127</sup> Ultimately the case was dismissed with leave to amend the pleadings.<sup>128</sup>

#### D. Criminal Prosecutions

Related to money laundering are other general criminal activities that use cryptocurrencies as the means of payment. For example, in *United States v. Ilg*, it was alleged that the defendant used cryptocurrency to hire a hitman to assault a coworker and his ex-wife.<sup>129</sup> Furthermore, there were several cases that alleged cryptocurrencies were the proceeds of crime.<sup>130</sup> Often, this

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118. *Id.* at \*1.

119. *Id.*

120. *BMA, LLC v. HDR Global Trading Ltd.*, No. 20-CV-03345, 2021 WL 949371, at \*1 (N.D. Cal. Mar. 12, 2021).

121. *Id.*

122. *Id.* at \*3.

123. *Id.* at \*1.

124. *Id.* at \*2.

125. *Id.*

126. *HDR Global Trading*, 2021 WL 949371, at \*3.

127. *Id.*

128. *Id.* at \*19.

129. *United States v. Ilg*, No. 2:21-CR-00049, 2021 WL 5575878, at \*1 (E.D. Wash. Nov. 29, 2021).

130. *See, e.g.*, *State v. Allwine*, 963 N.W.2d 178 (Minn. 2021) (alleging the defendant hired a hitman to kill his wife using cryptocurrency as payment); *United*

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involved actions where crypto was accepted as a form of payment for some illegal material, often drugs.<sup>131</sup> Criminal prosecution also includes cases where the crypto-assets were stolen.<sup>132</sup>

As one would expect in any criminal case, there are Fourth and Fifth amendment type challenges over searches and seizures related to crypto-assets.<sup>133</sup> An issue that several cases touched upon was whether crypto could be seized in connection to the seizure of property and finances connected to criminal activity.<sup>134</sup> Asset forfeiture type actions were also common.<sup>135</sup> Related to these types of criminal cases were tax and bankruptcy fraud cases involving crypto-assets. These actions involved questions of Bitcoin valuations or failure to disclose crypto-assets.<sup>136</sup>

In *United States of America v. Nicolescu*, the defendants appealed their criminal convictions for engaging in various computer crimes overseas.<sup>137</sup>

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States v. Staake, No. 17-CR-30063, 2021 WL 1579892 (C.D. Ill. Apr. 22, 2021) (alleging the defendant used cryptocurrency to purchase drugs).

131. See, e.g., *United States v. Rhule*, No. 20-CR-105, 2021 WL 63250 (W.D. Wash. Jan. 7, 2021); *United States v. Dawodu*, No. 21-163, 2022 WL 1556403 (D.D.C. May 17, 2022); *United States v. Akhavan*, No. 20-CR-188, 2021 WL 2776648 (S.D.N.Y. 2021).

132. See, e.g., *United States v. Lanier*, No. 1:18-CR-749, 2021 WL 5353932 (N.D. Ohio Nov. 17, 2021) (alleging the defendant possessed a notebook full of stolen cryptocurrency account information); *United States v. 9.881 Bitcoins*, No. 1:21-CV-592, 2022 WL 1511773 (E.D. Tex. Apr. 20, 2022) (alleging the defendant established Bitcoin addressed to store the proceeds of crime and to commit further fraud).

133. See, e.g., *Purbeck v. Wilkinson*, No. 1:21-cv-00047, 2021 WL 1550563 (D. Idaho Apr. 20, 2021); *In re Search of Multiple Email Accounts Pursuant to 18 U.S.C. § 2703 for Investigation of Violation of 18 U.S.C. § 1956*, 585 F. Supp. 3d 1 (D.D.C. 2022); *Harper v. Rettig*, No. 20-CV-771, 2021 WL 1109254 (D.N.H. Mar. 23, 2021), vacated and remanded, 46 F.4th 1 (1st Cir. Aug. 18, 2022) (plaintiff brought action against the IRS for allegedly violating his amendment rights by accessing financial records involving cryptocurrency transactions).

134. *Harper*, 2021 WL 1109254, at \*7.

135. See, e.g., *United States v. Approximately 69,370 Bitcoin*, No. 20-CV-07811, 2022 WL 888655, at \*1 (N.D. Cal. Mar. 25, 2022) (alleging that the bitcoin was derived from the “Silk Road”, a black-market site, and several actions also involved the seizure of Bitcoins allegedly used to purchase child pornography); *United States v. Twenty-Four Cryptocurrency Accounts*, 473 F. Supp. 3d 1 (D.D.C. 2020); *In the Matter of Search of One Address in Washington, D.C Under Rule 41*, 512 F. Supp. 3d 23 (D.D.C. 2021).

136. See *In re Persson*, No. 21-30038, 2022 WL 1547702, at \*1 (D.N.D. Bankr. May 16, 2022); see also *In re Reichmeier*, No. 18-21427-7, 2020 WL 1908328, at \*1 (D. Kan. Bankr. Apr. 15, 2020).

137. *United States v. Nicolescu*, 17 F.4th 706, 712–13 (6th Cir. 2021).

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The defendants had set up a series of scams on eBay where they managed to engage in various fraudulent activities.<sup>138</sup> Included in these scams was a scheme where scammers would send e-mails containing viruses to their victims, who had corresponded with them via eBay.<sup>139</sup> The virus would hijack the victims' computers.<sup>140</sup> The defendants used access to over 33,000 infected computers to set up Bitcoin mines.<sup>141</sup> This slowed the victims' computers down "to a crawl" due to the computing power being tied up in crypto-mining.<sup>142</sup> The scheme, however, generated thousands of dollars per month in bitcoins and, hence, cash for the defendants.<sup>143</sup>

Another interesting case involved an alleged conspiracy to violate the International Emergency Economic Powers Act (IEEPA).<sup>144</sup> In *United States v. Griffith*, it was alleged that the defendant conspired to violate the IEEPA by giving a presentation on cryptocurrency in North Korea.<sup>145</sup> The defendant worked in Singapore for the Ethereum foundation but fled to North Korea, without approval of the State Department, and made presentations there on cryptocurrencies.<sup>146</sup> The allegations are that the information he presented had the potential to allow for North Korea to use crypto-platforms to get around international sanctions, especially those related to money transfer.<sup>147</sup> The case was ultimately dealt with through pre-trial criminal procedure motions.<sup>148</sup>

#### E. Civil Suits for Criminal Activities

Straddling the world of civil and criminal law, many actions were civil in style but related to criminal or highly-improper activities.<sup>149</sup> These included cases alleging the hacking of personal crypto accounts.<sup>150</sup> A few cases

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138. *Id.* at 713.

139. *Id.* at 716.

140. *Id.* at 713.

141. *Id.*

142. *Id.*

143. *Nicolescu*, 17 F.4th at 713.

144. *United States v. Griffith*, 515 F. Supp. 3d 106, 111 (S.D.N.Y. 2021).

145. *Id.* at 106, 112.

146. *Id.* at 111–112.

147. *Id.*

148. *Id.* at 123.

149. *See, e.g.*, *Shapiro v. AT&T Mobility, LLC*, No.: 2:19-CV-8972, 2020 WL 4341778, at \*1 (C.D. Cal. May 18, 2020); *Ross v. AT&T Mobility, LLC*, No. 19-CV-06669, 2020 WL 9848766, at \*1 (N.D. Cal. May 14, 2020); *Gavrilovic v. T-Mobile USA, Inc.*, No. 21-12709, 2022 WL 1086136, at \*1 (E.D. Mich. Mar. 25, 2022).

150. *See Shapiro*, 2020 WL 4341778, at \*1.

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were launched against cellular providers on the grounds that they enabled the swapping of SIM cards, which in turn allowed hackers to steal the plaintiffs' cryptocurrencies.<sup>151</sup> Often, individuals would claim that an employee of the cellphone company enabled for, or was negligent in allowing, their device to be hacked via "SIM-swapping" schemes.<sup>152</sup> These schemes resulted in crypto accounts being hacked into and drained.<sup>153</sup> Often these actions were accompanied by claims of negligence on part of the company as a whole.<sup>154</sup>

Other classic hacking type claims were brought under violation of the CFAA.<sup>155</sup> Violations of the CFAA often stemmed from allegations of more "traditional" hacking practices, such as the use of proxy scanners,<sup>156</sup> the use of external services to infect internet connected devices,<sup>157</sup> or the use of Malware,<sup>158</sup> to hack into, and often steal cryptocurrencies. Notably, several actions under the CFAA alleged that former crypto company employees, stole or misappropriated intellectual property by entering the software and locking it from all other use.<sup>159</sup> In *BCRS1, LLC v. Unger*, the plaintiff is a company that hired another company, whose CEO is the defendant, to develop an online platform for cryptocurrency trading.<sup>160</sup> A dispute arose between the two, so no deal was finalized.<sup>161</sup> The plaintiff alleges that the defendant then hacked into their server and deleted all their intellectual property.<sup>162</sup> For this, the plaintiff sued the defendant for violations of the CFAA as well as for conversion under New York state law.<sup>163</sup> The court allowed the CFAA claims to proceed but dismissed the conversion claims because, under New York law, a conversion claim must allege that the defendant "exercised unauthorized dominion" over "a specific identifiable thing . . . to the altera-

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151. *See id.*

152. *See id.*

153. *See id.*

154. *See id.*

155. *See id.*

156. *United States v. Thompson*, No. CR-19-159, 2022 WL 1719221, at \*1 (W.D. Wash. May 27, 2022).

157. *Microsoft Corp. v. Does*, No. 1:20-CV-01171, 2021 WL 8444748, at \*3 (E.D. Va. Aug. 12, 2021).

158. *Google, LLC v. Starovikov*, No. 1:21-CV-10260, 2021 WL 6754263, at \*1 (S.D.N.Y. Dec. 16, 2021).

159. *Id.*

160. *BCRS1, LLC v. Unger*, No. 20-CV-4246, 2021 WL 3667094, at \*1 (E.D.N.Y. Aug. 18, 2021).

161. *Id.*

162. *Id.*

163. *Id.*

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tion of its condition or to the exclusion of the plaintiff's rights."<sup>164</sup> Here, the plaintiff only alleged that the defendant had deleted their intellectual property without specifying the nature of the property deleted.<sup>165</sup> The court noted that the plaintiff had not explained whether the deleted intellectual property, "was a purely intangible interest in intellectual property, an electronic record of that intangible interest, or some other form of electronically stored information."<sup>166</sup> The plaintiff, thus, had not identified "a specific identifiable thing" from which the conversion claim arose.<sup>167</sup>

Related to the CFAA violations were the allegations of violating the FCA.<sup>168</sup> These actions were against cellular providers for enabling the hacking of phone and crypto accounts by means other than SIM-swapping.<sup>169</sup> Actions under the FCA were often accompanied by allegations of negligence on the part of the cellphone company.<sup>170</sup> These hacking activities ultimately were done for the intermediate purpose of identity theft, which enabled hackers to access and steal the crypto-assets.<sup>171</sup> As such, identity theft claims accompanied the allegation of hacking.<sup>172</sup> In *Terpin v. AT&T Mobility, LLC*, a well-known player in the crypto community brought a lawsuit against a cellular company.<sup>173</sup> The plaintiff's phone was hacked, and the hackers tried to change his phone's password at the company's retail store over ten times, finally succeeding.<sup>174</sup> Hackers then gained access to his personal information, including cryptocurrency accounts.<sup>175</sup> Although the phone company managed to block the hackers from the plaintiff's number, it was too late, and a large amount of funds had been stolen.<sup>176</sup> The plaintiff met with a representative of

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164. *Id.* at \*8.

165. *Id.* at \*9.

166. *Unger*, 2021 WL 3667094, at \*9.

167. *Id.*; *see also* *Payward, Inc. v. Runyon*, No. 20-CV-02130, 2020 WL 5642612, at \*2 (N.D. Cal. Sept. 22, 2020).

168. *See, e.g.*, *Saddeh v. T-Mobile USA, Inc.*, No. 2:21-CV-12871, 2022 WL 193968, at \*1 (D.N.J. Jan. 21, 2022); *Etheridge v. AT&T, Inc.*, No. 4:21-CV-03002, 2022 WL 1185174, at \*1 (S.D. Tex. Apr. 19, 2022); *Gavrilovic v. T-Mobile USA, Inc.*, No. 21-12709, 2022 WL 1086136, at \*1 (E.D. Mich. Mar. 25, 2022).

169. *Id.*

170. *Id.*

171. *Id.*

172. *Id.*

173. *Terpin v. AT&T Mobility, LLC*, No. 2:18-CV-06975, 2020 WL 883221, at \*1 (C.D. Cal. Feb. 24, 2020).

174. *Id.*

175. *Id.*

176. *Id.*

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the company and received assurances that his account would be protected by higher levels of security measures.<sup>177</sup> Nonetheless, a few months later, his phone was hacked again.<sup>178</sup> It seems the hackers used simple hacks at one of the company's retail stores to access the plaintiff's phone number and gain control over other cryptocurrency wallets and accounts.<sup>179</sup> This allowed the hackers to steal millions more from his accounts.<sup>180</sup> The plaintiff sued the phone company for various claims including deceit, misrepresentation, negligence, and breach of contract.<sup>181</sup>

In *Morbitzer v. Doe*, the plaintiff sought the identity of a cellular phone user.<sup>182</sup> The plaintiff sought to serve a subpoena on a cellular phone company seeking to compel it to disclose the identity of a holder of a telephone number.<sup>183</sup> The number used to belong to the plaintiff.<sup>184</sup> It seems a subsequent user used the phone number to access various "email and social media accounts" by seeking to reset the password, where these accounts texted a code to the old number.<sup>185</sup> This allowed the unknown user to download the plaintiff's "financial, credit, tax, and business records from a secure online storage system, make unauthorized purchases and money transfers, and open an account in [the plaintiff's] name on a cryptocurrency exchange."<sup>186</sup> The plaintiff brought suit against an unknown defendant alleging violations of the CFAA.<sup>187</sup> Interestingly, because it seems that unlike some of the other cases where the plaintiff had an account trading cryptocurrencies, here it is the new user who established a new account using the plaintiff's identity.<sup>188</sup>

#### F. Bankruptcy & Tax Cases

In *In re Citadel*,<sup>189</sup> a bankruptcy case, the debtor was a group of companies that operated a Bitcoin mining operation as well as a data storage center.

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177. *Id.*

178. *Id.*

179. *Terpin*, 2020 WL 883221, at \*1.

180. *Id.*

181. *Id.* at \*2.

182. *Morbitzer v. Doe*, No. 21-CV-2038 (PJS/HB), 2021 WL 4273019, at \*1 (D. Minn. Sept. 21, 2021).

183. *Id.* at \*2.

184. *Id.* at \*1.

185. *Id.*

186. *Id.*

187. *Id.*

188. *Morbitzer*, 2021 WL 4273019, at \*1.

189. *In re Citadel*, No. 20-62725-JWC, 2021 WL 6068436, at \*1 (Bankr. N.D. Ga. Dec. 22, 2021).

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The Bitcoin operation received its power from a local power company.<sup>190</sup> One of the creditors had a secured claim, in first position, on the property where the Bitcoin mining operation was located.<sup>191</sup> However, another creditor may have had a lien on the personal property inside the mining operation.<sup>192</sup> The assets of the debtor had been sold, but the question for the court was to determine the allocation of the proceeds among the various creditors.<sup>193</sup> Mining Bitcoin requires a lot of power because of the heavy computing power needed.<sup>194</sup> As such, these operations will have a power purchase agreement with a local utility or power company.<sup>195</sup> In order to purchase power from a cheaper source than the local power company, the mining operation in question contracted with another power company.<sup>196</sup> The problem was that for the cheaper power to be supplied the mining company had to build infrastructure in order for the power to be transmitted.<sup>197</sup> Having this much power supplied cheaply meant the facility could also be used for the debtor's data storage operation, a business that had its own set of machines and corresponding creditors.<sup>198</sup> The question in this case was how to value the facility that had unique power access, unique infrastructure, and very specific functionality.<sup>199</sup> The determination of the facility's value, compared to the sale price of the assets, would allow the court to apportion the sale proceeds among the various creditors.<sup>200</sup>

In *Dam v. Waldron*, the district court affirmed the bankruptcy's court disposition of crypto-mining machines.<sup>201</sup> This case presents an intersection of bankruptcy law and the specifics of the crypto-mining world.<sup>202</sup> The debtor was a business that allowed cryptocurrency miners to use their facilities with access to cheap power rates.<sup>203</sup> The debtor would host these ma-

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190. *Id.*

191. *Id.* at \*2.

192. *Id.*

193. *Id.*

194. *See id.*

195. *In re Citadel*, 2021 WL 6068436, at \*2.

196. *Id.*

197. *Id.* at \*3.

198. *Id.* at \*2–3.

199. *Id.* at \*6.

200. *See id.* at \*9.

201. *Dam v. Waldron*, No. 2:20-CV-00391-SAB, 2021 WL 6137346, at \*1 (E.D. Wash. July 30, 2021).

202. *See id.* at \*1, \*3–5.

203. *Id.* at \*1.

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chines, which the miners could then access.<sup>204</sup> The issue is whether the debtor owned the machines, or whether the users actually owned the machines with the debtor merely hosting the machines for the miners.<sup>205</sup> The cheap power rates did not last forever, and the debtor filed for bankruptcy after the prices of cryptocurrency dropped in 2018.<sup>206</sup> After declaring bankruptcy, the trustee sold the machines to pay off the debtor's debts and the miners appealed.<sup>207</sup> The miners argued that the machines were theirs and not the debtors.<sup>208</sup>

On the tax side, in *Zietzke v. United States*, a summons was issued by the IRS to Coinbase, a crypto-exchange, seeking information on the petitioner's cryptocurrency transactions.<sup>209</sup> The petitioners filed suit in order to quash the summons.<sup>210</sup> The IRS treats cryptocurrency transactions "as monetary transactions with tax consequences."<sup>211</sup> In their 2014 notice, the IRS opined that "virtual currency is treated as property.<sup>212</sup> General tax principles applicable to property transactions apply to transactions using virtual currency."<sup>213</sup> Hence, the IRS views gains or losses when cryptocurrencies are sold as akin to gains and losses from the sale of any asset.<sup>214</sup> The IRS took issue with some earlier filings of the petitioners and wanted more information on their cryptocurrency transactions.<sup>215</sup> The magistrate recommended enforcing the summons.<sup>216</sup>

Just as in the criminal cases, there were cases surrounding process.<sup>217</sup> Motions for discovery were quite common, as this is how plaintiffs can ob-

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204. *Id.*

205. *Id.*

206. *Id.*

207. *Waldron*, 2021 WL 6137346, at \*1–2.

208. *Id.* at \*2.

209. *Zietzke v. United States*, No. 19-CV-03761-HSG(SK), 2020 WL 264394, at \*1 (N.D. Cal. Jan. 17, 2020).

210. *Id.*

211. *Id.* at \*2 (citing IRS. Notice, 2014-21, I.R.B. 938 (2014))

212. *Id.*

213. *Id.*

214. *Id.* at \*2.

215. *Zietzke*, 2020 WL 264394, at \*2.

216. *Id.* at \*1; *see, e.g., Sherman v. Sherman*, 650 S.W.3d 897 (Tex. App.—Fort Worth, no pet.) (divorce settlement where assets divided included the forced sale of cryptocurrency assets); *Popa v. Popa*, No. 2019-CA-1867, 2021 WL 3952885, at \*1 (Ct. App. Ky. Sept. 3, 2021) (disputing child support over the failure to disclose cryptocurrencies held by father).

217. *See, e.g., Williams v. Condensed Curriculum International*, No. 20-CV-05292, 2021 WL 5069946, at \*1 (N.D. Cal. Nov. 2, 2021); *Kleiman v. Wright*, No. 18-



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tain information needed to prosecute their civil claims. Similar to these cases are the family law cases where spouses seek disclosure of crypto-assets or use the assets to receive support.<sup>218</sup> These actions often involved motions to compel discovery regarding financial records that had crypto-assets.<sup>219</sup>

### G. Trademark, Employment, Contract Disputes & Other Civil Claims

Towards the purely civil end of claims, there were many actions wherein competing crypto companies alleged trademark infringement regarding their crypto names or algorithms.<sup>220</sup> Employment-related disputes also resulted in unfair competition claims, often involving two competing crypto companies or former employees and their past employers.<sup>221</sup>

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CV-80176, 2020 WL 113396, at \*1 (S.D. Fla. Jan. 10, 2020) (this case is part of an ongoing set of cases relating to a lawsuit concerning whether there was a partnership between Craig Wright and a now deceased individual, Eileen Brown. Additionally, this case relates to the question of the identity of Satoshi Nakamoto, something that was also the subject of another case in the U.K. Dan Milmo).

218. *See, e.g., Sherman*, 650 S.W.3d at 897 (divorce settlement where assets divided included the forced sale of cryptocurrency assets); *Popa*, 2021 WL 3952885, at \*1 (child support dispute over the failure to disclose cryptocurrencies held by father).
219. *See Gersh v. Anglin*, No. CV-17-50, 2021 WL 6808233, at \*1 (D. Mont. Nov. 1, 2021).
220. *See, e.g., Safex Foundation, Inc. v. Safeth, Ltd.*, 531 F.Supp.3d 285 (D.D.C. 2021); *Telegram Messenger, Inc. v. Lantah, LLC*, No. 18-CV-0281, 2020 WL 5074399, at \*1 (N.D. Cal. Aug. 24, 2020); *Tender Software Pty Ltd. v. ForestCoin, Inc.*, No. 2:21-CV-02169, 2021 WL 6104200, at \*1 (C.D. Cal. Sept. 15, 2021); *Bear Box, LLC v. Lancium, LLC*, No. 21-534, 2022 WL 605326, at \*1 (D. Del. Jan. 18, 2022) (dispute involving the trademark of a proprietary crypto mining system); *Luma v. Dib Funding, Inc.*, No. ELH-20-2504, 2022 WL 181156, at \*1 (D. Md. Jan. 19, 2022) (former investing partners or co-owners were in trademark and ownership dispute over a particular cryptocurrency).
221. *See, e.g., Zamfir v. Casperlabs, LLC*, 528 F.Supp.3d 1136 (S.D. Cal. 2021); *Matilock, Inc. v. Pouladdej*, No. 20-CV-01186, 2020 WL 3187198, at \*1 (N.D. Cal. June 15, 2020) (among the employment contract disputes were actions brought by former crypto company employees against their former employers seeking resolution of a particular employment dispute); *see, e.g., Adler v. Payward, Inc.*, 827 Fed. Appx. 133 (2d Cir. 2020); *Morozov v. ICOBOX Hub, Inc.*, No. 18-CIV-3421, 2020 WL 5665639, at \*1 (S.D.N.Y. May 5, 2020). *International Markets Live, Inc. v. Huss*, No. 2:20-CV-00866, 2020 WL 2559926, at \*1 (D. Nev. May 20, 2020) (alleging that a former employee of the cryptocurrency trading company breached their employment contract by selling trade secrets).

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Contract disputes surrounding crypto-services resulted in a number of lawsuits.<sup>222</sup> Often, actions taken under breach of contract were accompanied by allegations of unsavory business practices or fraudulent inducement and misrepresentation. These were often taken by former investors in the company or service that allege the crypto company breached their contract because it failed to provide the advertised services. In *Klein v. Kim*, the plaintiffs alleged that the defendant “fraudulently induced the plaintiffs to lend him money for cryptocurrency trading and then breached the parties’ contract.”<sup>223</sup> The plaintiffs alleged that they loaned cryptocurrencies to the defendant based on his representation that he possessed a large quantity of bitcoin, cash, and securities.<sup>224</sup> Subsequently, a series of loans were made by the plaintiffs, and initially repaid from the defendant, only to eventually see the repayments diminish despite assurances of solvency by the defendant.<sup>225</sup> The defendant never paid back the loans.<sup>226</sup> The district court granted summary judgment to the plaintiffs on their breach of contract claim, but not their fraud claims.<sup>227</sup> The court held that the plaintiffs would need to produce more evidence in support of a fraud claim through discovery, and they could file their claim for summary judgment after obtaining further evidence from the defendant.<sup>228</sup>

Similarly, in *Schaefer v. Graf*, the plaintiffs lost tens of thousands of dollars when they invested in a cryptocurrency investment fund managed by the defendant and his son.<sup>229</sup> In response to these losses, the plaintiffs brought claims for breach of contract, constructive fraud, conversion, and securities fraud.<sup>230</sup> The agreement between the parties saw the plaintiffs giving the son the authority to invest their funds in cryptocurrencies acknowledging that they may lose money in the process.<sup>231</sup> The plaintiffs allege that they would log into their accounts on the fund’s website and see that their investments were profitable, which induced them to keep their moneys invested instead of

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222. See, e.g., *Zamfir*, 528 F. Supp. 3d 1136; *Pouladdej*, 2020 WL 3187198, at \*1.

223. *Klein v. Kim*, No. 2:30-CV-01628-BJR, 2022 WL 717051, at \*1 (W.D. Wash. Mar. 10, 2022).

224. *Id.*

225. See *id.*

226. *Id.* at \*2. Similar to previous situations, a criminal complaint was filed against the defendant charging him with wire fraud, but with respect to other victims, not the plaintiffs. *Id.*

227. *Id.* at \*5.

228. *Id.* at \*4–5.

229. *Schaefer v. Graf*, No. 18-C-8236, 2021 WL 1784788, at \*1 (N.D. Ill. May 5, 2021).

230. *Id.*

231. *Id.*

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withdrawing them.<sup>232</sup> At some point, there were no funds left in their accounts, and the allegations imply fraud on the part of the defendant.<sup>233</sup> The defendant attempted to have the case dismissed on summary judgment, but the district court refused.<sup>234</sup> The court held that the agreement was an investment contract and, as such, subject to federal securities' laws.<sup>235</sup>

In another lawsuit, *Zaftr Inc. v. Lawrence*,<sup>236</sup> the plaintiff had paid the defendant for assistance in purchasing thousands of Bitcoin units from another party.<sup>237</sup> The plaintiff never received the Bitcoin, and consequently, sued the defendant for the return of the money paid.<sup>238</sup> The suit claimed “breach of contract, unjust enrichment, conversion, fraudulent misrepresentation/omission, negligent misrepresentation/non-disclosure, civil conspiracy, [and] violations of . . . (RICO).”<sup>239</sup> The defendant brought a motion to dismiss on all counts, which the court denied except for the RICO claims.<sup>240</sup>

Under the umbrella of the more traditional contract disputes, claims were brought using equitable estoppel and promissory estoppel.<sup>241</sup> There were several causes of action where independent contractors or businesses provided services to crypto companies but were left uncompensated.<sup>242</sup> In *Blockchain Mining Supply and Services Ltd. v. Super Crypto Mining*, the dispute related to the sale of high-powered computers used in crypto-mining.<sup>243</sup> Here, the issue was whether the court could order limited discovery on

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232. *Id.* at \*2.

233. *Id.*

234. *Id.* at \*4.

235. *Schaefer*, 2021 WL 1784788, at \*3–4.

236. *Zaftr, Inc. v. Lawrence*, No. CV-21-2177, 2021 WL 4989769, at \*1 (E.D. Pa. Oct. 27, 2021).

237. *Id.*

238. *Id.*

239. *Id.*

240. *Id.*

241. *See, e.g., Benthos Master Fund Ltd. v. Etra*, No. 20-CV-3384, 2020 WL 4700901, at \*1 (S.D.N.Y. Aug. 12, 2020) (analyzing similar facts to *Zaftr*, except the case was heard by an arbitrator and the district court affirmed the arbitrator's finding against the defendant).

242. *See, e.g., Magill v. Elysian Glob. Corp.*, No. 120-CV-06742-NLH-AMD, 2021 WL 1221064, at \*1 (D.N.J. Apr. 1, 2021) (plaintiff left uncompensated after working 50 hours a week on an Initial Coin Offering (ICO)); *Digilytic Int'l FZE v. Alchemy Fin., Inc.*, No. 20-CV-4650 (ER), 2022 WL 912965, at \*1 (S.D.N.Y. Mar. 29, 2022) (plaintiffs left unpaid for several services even after sending multiple invoices).

243. *Blockchain Mining Supply & Services Ltd. v. Super Crypto Mining, Inc.*, No. 18-CV-11099 (ALC), 2020 WL 7128968, at \*1 (S.D.N.Y. Dec. 4, 2020).

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the question of personal jurisdiction.<sup>244</sup> The court allowed limited discovery in order to establish whether there was a connection to New York.<sup>245</sup> Similarly, in *Columbia River Technologies 1, LLC v. Blackhawk Group LLC*, the plaintiff paid the defendant for “specialized high-power computers to be used as bitcoin mining equipment.”<sup>246</sup> However, the defendant was not the actual seller but rather a broker who arranged to buy the machines from another defendant.<sup>247</sup> The defendant took the money but did not deliver the machines and offered a refund to the broker.<sup>248</sup> The broker refused plaintiff’s direction, and plaintiff sued both the broker and the seller, as well as its manager, for breach of contract, unjust enrichment, conversion, and civil theft.<sup>249</sup> The court dismissed most of the claims against the seller, but left the claims against the broker for trial.<sup>250</sup>

In *Notestein v. Bittrex, Inc.*, the issue dealt with the ownership of units of cryptocurrency.<sup>251</sup> Technically, this case was about jurisdiction of the district court and whether to grant a party interpleader status; however, this case displays the essence of blockchain disputes.<sup>252</sup> The plaintiffs sued Bittrex, a well-known crypto-exchange.<sup>253</sup> They brought claims of breach of bailment, conversion, and business injury.<sup>254</sup> Bittrex is an exchange, so customers can trade cash and cryptocurrencies for other cryptocurrencies (and cash).<sup>255</sup> Bittrex maintains secure accounts for its customers and uses various security measures to verify customers’ identities.<sup>256</sup>

Keys to this lawsuit are the related cryptocurrencies Steem and Steem-Backed Dollars (SBD), which are run on the Steemit blockchain platform.<sup>257</sup> They are also traded on Bittrex.<sup>258</sup> Another organization took control of the

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244. *Id.*

245. *Id.*

246. *Columbia River Tech. 1, LLC v. Blackhawk Grp., LLC*, No. 19-CV-385-JDP, 2020 WL 5411320, at \*1 (W.D. Wis. Sept. 9, 2020).

247. *Id.*

248. *Id.*

249. *Id.*

250. *Id.* at \*5.

251. *Notestein v. Bittrex, Inc.*, No. 7:20-CV-00342, 2022 WL 972613, at \*1 (W.D. Va. Mar. 30, 2022).

252. *Id.*

253. *Id.*

254. *Id.*

255. *Id.*

256. *Id.*

257. *Bittrex*, 2022 WL 972613, at \*2.

258. *Id.*

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platform in early 2020, and many users were not thrilled. This resulted in a “hard fork”, which meant that there were new rules governing how Steem and SBD were run.<sup>259</sup> Additionally, some old Steem and SBD accounts were moved to new account’s on the Bittrex exchange.<sup>260</sup> Bittrex was aware of this development.<sup>261</sup> It was not involved in the development or the dispute, until a hacker transferred a large quantity of units (valued in the millions of dollars) of Steem from the new account to another account on the Bittrex exchange.<sup>262</sup> The hacker asked that the units of Steem in Bittrex’s account be distributed to a number of customers.<sup>263</sup> The problem is that it was not clear if the hacker had stolen the units of Steem and who the legitimate owners of these units of Steem were.<sup>264</sup> Steemit asked Bittrex not to give the named individuals the units of Steem, as they may have been involved in the hack.<sup>265</sup> The individuals are also suing Bittrex for the release of their Steem units.<sup>266</sup> All in all, there are at least three sets of parties involved in the dispute, and of course, the unknown hacker.<sup>267</sup>

#### H. Utilities, Insurance & Non-Business Type Claims

In the category of interesting and somewhat novel claims, at least as it relates to crypto disputes, we note the following claims. Given the large energy drain that crypto mining has, there were several actions involving claims related to the provision and cost of utilities. In *Blocktree Properties, LLC v. Public Utility District No. 2 and Cytline, LLC v. Public Utility District No. 2*, crypto miners brought action against the utilities company for increased electricity rates.<sup>268</sup> The utility company had one of the lowest rates in the country, so naturally miners flocked there to take advantage.<sup>269</sup> This put pressure on the utility’s ability to serve its remaining customers, and so, it

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259. *Id.*; see also Trautman, *supra* note 1, at 496.

260. *Id.* at \*2.

261. *Id.*

262. *Id.*

263. *Id.*

264. *Bittrex*, 2022 WL 972613, at \*2.

265. *Id.*

266. *Id.* at \*3.

267. *Id.* at \*1.

268. See *Blocktree Properties, LLC v. Pub. Util. Dist. No. 2 of Grant Cnty. Washington*, 447 F. Supp. 3d 1030 (E.D. Wash. 2020, *aff’d sub nom.*); *Cytline, LLC v. Pub. Util. Dist. No. 2 of Grant Cnty., Washington*, 849 Fed. Appx. 656 (9th Cir. 2021); see *Energy Keepers, Inc. v. Hyperblock, LLP*, No. CV-20-76-M-DWM, 2020 WL 3470330, at \*1 (D. Mont. June 25, 2020); *InPhaseMining.Com, LLC v. PetaWatt Massena, LLC*, No. CV-22-140, 2022 WL 1715210, at \*1 (E.D. La. May 10, 2022).

269. See *Blocktree Properties*, 447 F. Supp. 3d 1030; *Cytline*, 849 Fed. Appx. 656.

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obtained regulatory permission to raise its rates to the miners.<sup>270</sup> The miners made various constitutional federal statutory claims, which they lost.<sup>271</sup> These cases highlight the intersection of public utility and constitutional law with cryptocurrency's technological requirements.

Traditional insurance claims also showed up in the data. In *Bao v. Member Select Insurance Company*, an insurance claim regarding a house fire was made, where the house contained a GPU to mine crypto in the basement.<sup>272</sup> In *Powers v. American Crocodile International Group Inc.*, an alleged fire from an electric massage chair resulted in the loss of over \$300,000 in cryptocurrency.<sup>273</sup> The case hinged mostly on determining the question of which court had personal jurisdiction over the defendant.<sup>274</sup>

#### IV. CONCLUSION

Notwithstanding the emerging cases that stem from the latest downturn in cryptocurrency prices, the past two years suggest that courts have already had their fair share of crypto-related disputes. As such, many of issues that identified at the start of this article have already been dealt with by courts. Whether it is run of mill fraud or securities laws violations, the courts seem to have dealt with a large gamut of issues.

However, the one area that the cases in the dataset have not yet dealt with frequently is the emerging area of Non Fungible Tokens (NFTs) and the associated NFT thefts.<sup>275</sup> Other than one case in our dataset,<sup>276</sup> disputes over stolen NFTs do not seem to have reached American courts yet.<sup>277</sup> This will probably be an area of growing litigation given the nature of the thefts and other disputes taking place in the NFT world. That being said, many of the building blocks that define NFTs, and the issues associated with the misfea-

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270. See *Blocktree Properties*, 447 F. Supp. 3d 1030; *Cyline*, 849 Fed. Appx. 656.

271. See *Blocktree Properties*, 447 F. Supp. 3d 1030; *Cyline*, 849 Fed. Appx. 656.

272. *Bao v. MemberSelect Co.*, No. 21-CV-04119, 2022 WL 1211509, at \*1 (N.D. Ill. Apr. 25, 2022).

273. *Powers v. Am. Crocodile Int'l Grp., Inc.*, No. 19-12098, 2020 WL 419303, at \*1 (E.D. Mich. Jan. 27, 2020).

274. See generally *id.*

275. Lois Beckett, 'Huge mess of Theft and Fraud:' Artists Sound Alarm as NFT Crime Proliferates, THE GUARDIAN (Jan. 29, 2022), <https://www.theguardian.com/global/2022/jan/29/huge-mess-of-theft-artists-sound-alarm-theft-nfts-proliferates> [<https://perma.cc/4SCR-M67L>].

276. *Notorious B.I.G., LLC v. Yes. Snowboards*, No. CV-19-1946-JAK (KSX), 2021 WL 6752168, at \*1 (C.D. Cal. Dec. 22, 2021).

277. OUT-LAW News, *English High Court ruling on NFTs 'Hugely Significant' for Fraud Victims*, PINSENT MASONS (June 17, 2022), <https://www.pinsentmasons.com/out-law/news/english-high-court-nfts-hugely-significant-fraud-victims> [<https://perma.cc/DAQ3-A3TV>].

sance in that space, are closely related to the issues already dealt with by courts.

**APPENDIX A: CASE STATISTICS**

**TABLE 1**

<b>Case Counts by Year</b>	
2020	92
2021	117
2022	90
Total	299

TABLE 2

Causes of Action	Count	Relative Percentage Within This Classification	Unique Actions Within Category
Aiding and Abetting Fraud	2	0.35%	
Anti Trust Action	1	0.17%	
Artificial Inflation and Suppression i.e., “Pump and Dump Scheme”	6	1.05%	
Bank Fraud	2	0.35%	
Bankruptcy	4	0.70%	
Blocking Development Permit	1	0.17%	
Breach of Contract	40	6.98%	
Breach of Employment Contract	5	0.87%	
Breach of Fair Deal	1	0.17%	
Breach of Fiduciary Duties	9	1.57%	Includes Breaching of Fiduciary Duty by “Usurping Corporate Opportunities”, Breaching of Fiduciary Duty by “Misappropriating Intellectual Property”
Breach of Good Faith	3	0.52%	Includes Breach of “Trust”
Breach of Insurance Contract	2	0.35%	
Breach of Quiet Enjoyment	1	0.17%	
Civil Extortion	2	0.35%	
Civil Forfeiture	1	0.17%	
Conspiracy	21	3.66%	Includes Civil Conspiracy, Conspiracy to Commit Bank Fraud, Conspiracy to Defraud the IRS, Conspiracy to Money Launder, Conspiracy to Violate the International Emergency Economic Powers Act, Conspiracy to Distribute Controlled Substance



Causes of Action	Count	Relative Percentage Within This Classification	Unique Actions Within Category
Conversion	30	5.24%	
Copyright Infringement	10	1.75%	
Crypto as Proceeds of Crime	17	2.97%	
Crypto Used to Finance Criminal Activity	18	3.14%	Includes Crypto used to hire a “hitman”, Crypto used to purchase and sell drugs, Crypto used to access child pornography, Crypto used to fund terrorist organizations
Data Breach	1	0.17%	
Declaratory Relief	1	0.17%	
Defamation	4	0.70%	
Destruction of Evidence	1	0.17%	
Discrimination Under the Americans With Disabilities Act	1	0.17%	
Embezzlement	1	0.17%	
Equitable Estoppel	2	0.35%	
Extortion	1	0.17%	
Failure to Disclose Assets	1	0.17%	
Failure to Answer Trustee Summons	1	0.17%	
Forfeiture of Funds	1	0.17%	
Fraudulent Misrepresentation	27	4.71%	
Fraud	73	12.74%	Includes Fraudulent Transfer
Hacking	18	3.14%	Includes “SIM Swapping” Scam
Harassment	1	0.17%	
Identity Theft	5	0.87%	
Inducement	6	1.05%	Includes Fraudulent Inducement
Infliction of Emotional Distress	3	0.52%	
Interference	2	0.35%	

<b>Causes of Action</b>	<b>Count</b>	<b>Relative Percentage Within This Classification</b>	<b>Unique Actions Within Category</b>
Intentional Interference with Contractual Relations	2	0.35%	
Invasion of Privacy	5	0.87%	
Larceny	1	0.17%	
Libel	1	0.17%	
Mail Fraud	2	0.35%	
Malicious Prosecution	1	0.17%	
Misappropriation of Funds	4	0.70%	
Misappropriation of Trade Secrets	1	0.17%	
Misleading Advertisement	2	0.35%	
Money Laundering	9	1.57%	
Motion to Compel Discovery/Disclosure	8	1.40%	Discovery in relation to crypto assets
Motion to Dismiss/Strike	3	0.52%	
Negligence	12	2.09%	
Negligent Misrepresentation	10	1.75%	
Ownership Dispute	3	0.52%	
Ponzi Scheme	6	1.05%	
Promissory Estoppel	3	0.52%	
Prosecutorial Misconduct	1	0.17%	
Pyramid Scheme	3	0.52%	
Racketeering	8	1.40%	Includes violation of "RICO" Act
Recovery of Funds	4	0.70%	
Restraining Order	6	1.05%	
Search and Seizure	7	1.22%	
Seeking Injunction	1	0.17%	
Settlement Dispute	5	0.87%	Includes divorce settlements/asset disputes
Tax Fraud	2	0.35%	

<b>Causes of Action</b>	<b>Count</b>	<b>Relative Percentage Within This Classification</b>	<b>Unique Actions Within Category</b>
Theft of Currencies	21	3.66%	
Tortious Eviction	1	0.17%	
Trademark/Patent Infringement	12	2.09%	Includes selling of "Trade Secrets"
Trespass to Chattel	1	0.17%	
Unfair Competition	5	0.87%	
Unjust Enrichment	18	3.14%	
Utilities Claim	2	0.35%	
Vicarious Liability	2	0.35%	
Violation of 4th and 5th Amendment Rights	1	0.17%	
Violation of Commodities Exchange Act	9	1.57%	
Violation of Computer Fraud and Abuse Act	7	1.22%	
Violation of Consumer Protection Act	1	0.17%	
Violation of Court Order	1	0.17%	
Violation of Electronic Funds Transfer Act	1	0.17%	
Violation of Federal Communications Act	3	0.52%	
Violation of Securities Exchange Act	42	7.33%	Encompasses Unregistered Sale of Securities, Securities Fraud
Willful Misconduct	1	0.17%	
Wire Fraud	8	1.40%	
Writ of Attachment	1	0.17%	
<b>Total</b>	<b>573</b>		

**TABLE 3**

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Case Counts by Jurisdiction		
Jurisdiction	Freq.	Percent
Arizona	1	0.334448
California	2	0.668896
Florida	3	1.003344
Georgia	1	0.334448
Indiana	1	0.334448
Michigan	1	0.334448
New York	5	1.672241
Ohio	1	0.334448
Texas	1	0.334448
Washington	2	0.668896
Federal	281	93.97993
Total	299	100

**TABLE 4**

<b>Case Counts By State</b>		
<b>State</b>	<b>Count</b>	<b>Percentage</b>
Arizona	6	2.01%
Arkansas	2	0.67%
California	69	23.08%
Colorado	6	2.01%
Connecticut	2	0.67%
Delaware	8	2.68%
District of Columbia	10	3.34%
Florida	20	6.69%
Georgia	8	2.68%
Idaho	2	0.67%
Illinois	7	2.34%
Indiana	4	1.34%
Kansas	1	0.33%
Kentucky	3	1.00%
Louisiana	1	0.33%
Maine	2	0.67%
Maryland	2	0.67%
Massachusetts	1	0.33%
Michigan	3	1.00%
Military Court	3	1.00%
Minnesota	2	0.67%
Missouri	1	0.33%
Montana	4	1.34%
Nebraska	1	0.33%
Nevada	9	3.01%
New Hampshire	1	0.33%
New Jersey	4	1.34%
New York	53	17.73%
North Carolina	4	1.34%
North Dakota	2	0.67%
Ohio	5	1.67%
Pennsylvania	7	2.34%
South Dakota	1	0.33%
Tennessee	1	0.33%
Texas	17	5.69%

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State	Count	Percentage
Utah	4	1.34%
Virginia	2	0.67%
Washington	18	6.02%
West Virginia	1	0.33%
Wisconsin	2	0.67%
Total	299	100

TABLE 5

<b>Tabulation of Court</b>		
Court	Freq.	Percent
Court of Appeal, California	3	1
Court of Appeals Nevada	1	0.33
Court of Appeals Washington	1	0.33
Court of Appeals of Georgia	1	0.33
Court of Appeals of Kentucky	1	0.33
Court of Appeals of Texas	4	1.34
Court of Appeals of Washington	2	0.67
Court of Chancery of Delaware	3	1
Superior Court of Delaware	2	0.67
Superior Court of North Carolina	1	0.33
Supreme Court New York	1	0.33
Supreme Court of Delaware	1	0.33
Supreme Court of Indiana	1	0.33
Supreme Court of Minnesota	1	0.33
U.S. Air Force Court of Criminal Appeals	1	0.33
U.S. Army Court of Criminal Appeals	1	0.33
U.S. Navy-Marine Corps Court of Criminal Appeals	1	0.33
United State Court of Appeals, Ninth Circuit	1	0.33
United States Bankruptcy Appellate Panel of the Ninth Circuit	1	0.33
United States Bankruptcy Court, D. Kansas	1	0.33
United States Bankruptcy Court, D. North Dakota	1	0.33
United States Bankruptcy Court, D. Utah	1	0.33
United States Bankruptcy Court, N.D. Georgia	1	0.33
United States Bankruptcy Court, N.D. Ohio	1	0.33
United States Court of Appeals, Eighth Circuit	1	0.33
United States Court of Appeals, Eleventh Circuit	4	1.34
United States Court of Appeals, Fifth Circuit	1	0.33
United States Court of Appeals, Ninth Circuit	3	1
United States Court of Appeals, Second Circuit	5	1.67
United States Court of Appeals, Sixth Circuit	2	0.67
United States District Court, C.D. California	23	7.69
United States District Court, C.D. Illinois	1	0.33
United States District Court, D. Arizona	5	1.67
United States District Court, D. Colorado	6	2.01
United States District Court, D. Connecticut	2	0.67
United States District Court, D. Delaware	2	0.67
United States District Court, D. Idaho	2	0.67

Court	Freq.	Percent
United States District Court, D. Maine	2	0.67
United States District Court, D. Maryland	2	0.67
United States District Court, D. Massachusetts	1	0.33
United States District Court, D. Minnesota	1	0.33
United States District Court, D. Montana	4	1.34
United States District Court, D. Nebraska	1	0.33
United States District Court, D. Nevada	8	2.68
United States District Court, D. New Hampshire	1	0.33
United States District Court, D. New Jersey	4	1.34
United States District Court, D. North Dakota	1	0.33
United States District Court, D. South Dakota	1	0.33
United States District Court, D. Utah	3	1
United States District Court, D. Virginia	1	0.33
United States District Court, District of Columbia	10	3.34
United States District Court, E.D. California	3	1
United States District Court, E.D. Kentucky	2	0.67
United States District Court, E.D. Louisiana	1	0.33
United States District Court, E.D. Michigan	2	0.67
United States District Court, E.D. Missouri	1	0.33
United States District Court, E.D. New York	3	1
United States District Court, E.D. North Carolina	1	0.33
United States District Court, E.D. Pennsylvania	4	1.34
United States District Court, E.D. Tennessee	1	0.33
United States District Court, E.D. Texas	3	1
United States District Court, E.D. Virginia	1	0.33
United States District Court, E.D. Washington	3	1
United States District Court, E.D. Wisconsin	1	0.33
United States District Court, M.D. Florida	4	1.34
United States District Court, M.D. North Carolina	1	0.33
United States District Court, N.D. California	31	10.37
United States District Court, N.D. Florida	1	0.33
United States District Court, N.D. Georgia	5	1.67
United States District Court, N.D. Illinois	6	2.01
United States District Court, N.D. Indiana	1	0.33
United States District Court, N.D. New York	2	0.67
United States District Court, N.D. Ohio	2	0.67
United States District Court, N.D. Texas	2	0.67
United States District Court, N.D. West Virginia	1	0.33
United States District Court, S.D. California	7	2.34
United States District Court, S.D. Florida	12	4.01



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Court	Freq.	Percent
United States District Court, S.D. Indiana	1	0.33
United States District Court, S.D. New York	41	13.71
United States District Court, S.D. Ohio	1	0.33
United States District Court, S.D. Texas	3	1
United States District Court, W.D. Arkansas	2	0.67
United States District Court, W.D. New York	1	0.33
United States District Court, W.D. North Carolina	1	0.33
United States District Court, W.D. Pennsylvania	3	1
United States District Court, W.D. Texas	4	1.34
United States District Court, W.D. Washington	10	3.34
United States District Court, W.D. Wisconsin	1	0.33
Total	299	100