

## Roche Cyrulnik, Kirby McInerney Bid For Lead In Bitcoin Suit

By **Philip Rosenstein**

Law360 (January 28, 2020, 8:47 PM EST) -- Three sets of firms are vying to be interim class counsel in a consolidated blockbuster bitcoin manipulation case in New York federal court, with newly formed Roche Cyrulnik Freedman LLP, Kirby McInerney LLP and Robbins Geller Rudman & Dowd LLP in the running.

Four cases **were consolidated** on Monday in the U.S. District Court for the Southern District of New York with overlapping allegations that Tether, the issuer of a "stablecoin" cryptocurrency of the same name, and cryptocurrency exchange Bitfinex engaged in a "part-fraud, part-pump-and-dump, and part-money laundering" scheme that eventually cost cryptocurrency investors hundreds of billions of dollars.

Later Monday evening, three of the four now-consolidated plaintiffs filed motions to appoint their representative law firms as interim class counsel.

Cryptocurrency investor David Leibowitz asked the court to appoint Roche Cyrulnik, Schneider Wallace Cottrell Konecky LLP and Selendy & Gay interim class counsel, highlighting that his putative class was the first to file a case against Bitfinex and Tether for manipulation of the bitcoin market. **Leibowitz filed suit** in the Southern District of New York in early Oct. 2019.

"The Leibowitz complaint is also the only complaint with a class representative who has purchased several other cryptocurrencies whose manipulation may bear on the class recovery; the other complaints do not offer this optionality in class representativeness," the Leibowitz plaintiffs wrote in their Monday filing.

Kyle Roche, counsel for the Leibowitz plaintiffs, told Law360, "In addition to being first to file, the complaint our firm brought on behalf of the class is the most legally sound and well-researched."

"Our firm brings unparalleled experience and expertise in cryptocurrency litigation," Roche said, "and our partnerships with Selendy & Gay and Schneider Wallace reflect our commitment to assembling an all-star team of litigators determined to do what it takes to recover on behalf of those who were injured."

They are competing against Kirby and the Radice Law Firm, two firms that **filed a similar case** in Washington federal court in Nov. 2019 on behalf of Eric Young and other cryptocurrency investors similarly situated.

Young argues that Kirby and Radice's "in-depth pre-filing investigation of market participants and in consultation with experienced experts" made their complaint "superior" to the others. They also challenged Roche Cyrulnik's argument of being the first to file as "overstated." Further supporting their appointment, Young noted that the fourth consolidated plaintiff, Bryan Faubus, has agreed to support the appointment of Kirby and Radice as interim class counsel.

"An objective reading of the various complaints reveals the substantial superiority of our clients' allegations backed by sophisticated econometric analysis," Karen Lerner, counsel for the Young plaintiffs, told Law360.

The third plaintiff, Joseph Ebanks, is also seeking the appointment of his counsel, Robbins Geller. Ebanks added, however, that in the event the firm is not chosen, the court should allow Robbins Geller to represent a subclass of only bitcoin purchasers, not the expansive class of purchasers of bitcoin, bitcoin futures and other cryptocurrencies.

"All competing complaints allege broad and unwieldy class definitions that may hinder recovery for the primary victims of defendants' scheme: bitcoin purchasers," Ebanks argued.

The cases, which Bitfinex and Tether have called "**simply preposterous**," allege that 2.8 billion tether tokens issued by Tether between 2017 and 2018 were used to flood the Bitfinex exchange and buy up other cryptocurrencies. Because the market was led to believe tethers were fully backed by U.S. dollars, the demand and prices for cryptocurrencies spiked, creating a bubble that ultimately wiped out \$450 billion in value when it burst, the suit alleges.

The suits rely on the findings in a university professor's unpublished report, first made public in June 2018 and updated on Oct. 3, that concluded Tether and Bitfinex had coordinated to manipulate the price of Bitcoin. A day before the Leibowitz complaint was filed, Tether and Bitfinex vehemently opposed the reports' allegations in similar postings on their websites, acknowledging that they expected a lawsuit to be filed imminently.

In support of Kirby and Radice's appointment as class counsel, Young said that his complaint provided additional analysis beyond the publicly available reports. Instead, "the Leibowitz complaint relies exclusively on publicly available information and does not reflect the same rigorous pre-filing investigation and econometric analysis as conducted by the Kirby/Radice Team."

Counsel for the Young plaintiffs and Ebanks did not immediately respond to requests for comment.

Tether and Bitfinex are represented by James Walden, Daniel A. Cohen, Stephanie T. Levick of Walden Macht & Haran LLP, Michael J. Lee of the Law Office of Michael J. Lee and Sunjina Ahuja and Christopher Beal of Dillon Miller Ahuja LLP.

The Leibowitz plaintiffs are represented by Kyle W. Roche, Devin "Velvel" Freedman, Jason C. Cyrulnik, Amos E. Friedland, Edward J. Normand and Joseph M. Delich of Roche Cyrulnik Freedman LLP and Todd M. Schneider, Jason H. Kim, Matthew S. Weiler and Kyle G. Bates of Schneider Wallace Cottrell Konecky Wotkyns LLP.

The Young plaintiffs are represented by David E. Kovel, Karen M. Lerner, Thomas W. Elrod and Anthony E. Maneiro of Kirby McInerney LLP and John Radice of the Radice Law Firm PC.

Faubus is represented by Brian P. Murray and Gregory B. Linkh of Glancy Prongay Murray LLP.

Ebanks is represented by Samuel Howard Rudman of Robbins Geller Rudman & Dowd LLP.

The consolidated case is Leibowitz et al. v. iFinex Inc. et al., case number 1:19-cv-09236-KPF, in the U.S. District Court for the Southern District of New York.

--Editing by Jay Jackson Jr.

*Correction: An earlier version of this article contained incorrect counsel information. The error has been corrected.*

*Update: this story has been updated with a comment from counsel for the Young plaintiffs.*