

EBay Stalking Victims Say Harassment Started At The Top

By **Chris Villani**

Law360 (October 3, 2022, 4:21 PM EDT) -- A Massachusetts couple who were the victims of a bizarre cyberstalking campaign carried out by eBay Inc. employees say a pair of recent criminal sentencing hearings for the conspirators show the company's top brass were in on the harassment campaign.

David and Ina Steiner, the husband and wife behind the online publication EcommerceBytes, argued in a filing Saturday that the criminal proceedings that resulted in multiyear **prison terms** for eBay's former senior director of safety and security, Jim Baugh, and eBay's former head of global resiliency, David Harville, undercut an effort by the company and top executives to duck the couple's civil suit.

EBay, its former CEO Devin Wenig, and his communications chief Steve Wymer are among those named as defendants in the civil litigation despite not being criminally charged, to the bewilderment of the Steiners, who posted online missives critical of the company.

The couple argued Baugh's sentencing memorandum and communications among the parties undermine "the bulk of the claims made by defendants eBay, Wenig, Wymer and Baugh" in their respective motions to dismiss the civil suit.

"Defendant Baugh's memorandum further lends support to plaintiffs' claims within its complaint that this was a conspiracy that started with defendant Wenig and trickled down," the Steiners argued, "that the culture within eBay created and fostered an environment where criminal activity was not only condoned but expected in order to destroy EcommerceBytes and the Steiners, that the executives would provide 'cover' for any illegal activity, and that the investigation conducted by eBay legal was a sham."

Baugh was sentenced last week to 57 months in prison for his role in the scheme, and Harville was handed a 24-month term behind bars.

The Steiners argued Baugh described the culture at eBay as an "insular, high-pressure environment," a claim given more weight by Baugh's past work in **clandestine services** for the CIA and providing security for then-Vice President Joe Biden.

The couple said the company's c-suite executives told Baugh they did not want to know the details of how the lower-level employees would silence the Steiners but made it clear they wanted the Steiners' site "neutralized." The company also promised to provide cover if any legal challenges arose, the Steiners argued, citing Baugh.

"Defendants Wenig, Wymer and eBay are now using their instruction to defendant Baugh not to share the precise details of the conspiracy to absolve themselves of all liability, when the executives set the entire conspiracy in motion and knew it would lead to criminal activity," the memorandum stated.

Wenig, who has denied involvement in the conspiracy, subjected Baugh to "intense, relentless pressure" relating to the Steiners' blog, and both he and his wife communicated with Baugh directly about EcommerceBytes postings, the Steiners said.

"For example, defendant Baugh and defendant Wenig texted each other directly where defendant Baugh updated him that he was using a fake Twitter account to communicate directly with the person behind an eBay parody account that was criticizing Wenig," the document said. "In short, defendant

Wenig was 'obsessed' with neutralizing the Steiners' website, which trickled down through the rest of the c-suite to defendant Baugh and the team he ultimately organized."

Baugh and Harville were among seven former company employees charged in the scheme, **all of whom pled guilty**.

Prosecutors said Baugh organized Harville and five other eBay workers to launch a volley of harassing online messages at the couple.

The online threats and insults were followed by a parade of disturbing deliveries mailed to the couple's home, including a book about surviving the loss of a spouse.

Members of the eBay team also flew to the Boston area to scout and surveil the Steiners and even attempted to break into their garage to plant a GPS monitoring bug on the couple's car, prosecutors said.

The couple have been **openly mystified** as to how the company and other bigwigs avoided prosecutors' crosshairs, with David Steiner flatly asking the court during the sentencing proceedings: "Why was eBay not held criminally responsible?"

The Steiners have lamented the fact that eBay was able to hire Morgan Lewis & Bockius LLP to investigate the incident and lobby the U.S. Department of Justice to not charge the corporation or its top executives. During his sentencing hearing, Baugh addressed the Steiners, telling the couple "I was 100 percent responsible for what happened on my watch. I take 100 percent responsibility for this, and there is no excuse for what I've done."

Martin G. Weinberg of Martin G. Weinberg Law PC, representing Wenig, pushed back on the notion that Baugh's sentencing memorandum suggested his client ordered the harassment campaign.

"The reality is he had no knowledge of what Mr. Baugh was planning to do, he didn't approve or direct it, he would have stopped it if he knew about it, and it was just so beyond what anyone can expect that the notion that Devin Wenig would have approved it if he knew is simply irrational," Weinberg said.

Weinberg added that "the only exchange between Mr. Baugh and Devin Wenig quoted in Baugh's sentencing memorandum is the antithesis of a request or direction to do anything illegal" — a reference to a text exchange in which Wenig tells Baugh "it's cool, don't worry" when told about Baugh's efforts to unmask the Steiners and adds that it "comes with the territory" when running a commerce company.

An attorney for Baugh declined to comment Monday, and counsel for the rest of the parties did not immediately respond to requests for comment.

The Steiners are represented by Rosemary C. Scapicchio, Jillise McDonough and Laura Panos.

eBay is represented by Daniel J. Feith, Scott T. Nonaka, Jack W. Pirozzolo and Kathryn Lundwall Alessi of Sidley Austin LLP.

Wenig is represented by Abbe David Lowell of Winston & Strawn LLP and Martin G. Weinberg of Martin G. Weinberg Law PC.

Wymer is represented by Caz Hashemi of Wilson Sonsini Goodrich & Rosati PC and Michael J. Pineault of Anderson & Kreiger LLP.

Harville is represented by Peter K. Levitt and Daniel Gelb of Donnelly Conroy & Gelhaar LLP.

Baugh is represented by William W. Fick, Daniel N. Marx and Amy Barsky of Fick & Marx LLP.

The cases are Steiner et al. v. eBay et al., case number 1:21-cv-11181, and U.S. v. Baugh et al., case number 1:20-cr-10263, in the U.S. District Court for the District of Massachusetts.

--Additional reporting by Brian Dowling. Editing by Janice Carter Brown.

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