

## EBay Execs Seek To Bar Criminal Deal From Harassment Trial

By **Julie Manganis**

Law360 (February 20, 2026, 6:00 PM EST) -- Three former eBay executives facing trial next month in a harassment lawsuit by a Massachusetts couple who say they were targeted over their blog posts, asked a judge on Friday to bar the plaintiffs from referring to a deferred prosecution agreement eBay entered in a separate criminal case.

Allowing David and Ina Steiner, the publishers of EcommerceBytes, to question a witness about the agreement, under which eBay agreed to pay a \$3 million **penalty**, would create a "significant and incurable" prejudice to the former executives, their attorneys said in a motion Thursday.

"The DPA is replete with inadmissible hearsay, including the [U.S. Attorney's Office's] opinions about eBay's conduct and the company's response to the harassment campaign, as well as selective, prejudicial excerpts of documents," counsel for former eBay CEO Devin Wenig, communications director Steven Wymer and vice president Wendy Jones said in the joint motion.

With jury selection set to get underway March 2, the motion is one of several outstanding issues for U.S. District Judge Patti B. Saris to resolve ahead of what is expected to be a six-week trial in the Steiners' lawsuit against the company and the executives, who, they say, ordered a campaign of retaliation over posts critical of Wenig's leadership of the auction and retail site.

The trial will be split into two phases; in the first, the jury will be asked to determine liability, and in the second the amount of any potential damages.

The executives say they did not anticipate that the Steiners would seek to admit the agreement during the first phase of the trial, based on their support for bifurcating the trial.

The 73-page agreement, the executives said, includes characterizations by prosecutors in the separate criminal case of their alleged knowledge or role in the harassment campaign — "the central question" for jurors. Allowing it to be used during the liability portion of the trial "would taint all other evidence and impair the jury's ability to impartially evaluate it, even with a potential limiting instruction, they argue.

The Steiners **sued** the company, the executives and a number of other employees in 2021. Seven lower-level employees eventually pled guilty to criminal charges for their roles in the campaign, and eBay as a corporate defendant entered the deferred prosecution agreement in 2024.

According to the agreement in the criminal case, employees traveled from eBay's California headquarters to the couple's home outside Boston, arranged for them to receive disturbing items in the mail, including live insects, a bloody pig mask, and literature on dealing with a death. Neighbors received pornographic materials with David Steiner's name, and an anonymous post on the site Craigslist invited strangers to their home.

**Martin G. Weinberg, an attorney for Wenig, said the dispute over use of the DPA is among a number of issues the court must address, but one that warrants particular attention.**

**"The defense has elevated the motion to exclude the DPA from amidst a large set of challenging evidentiary issues that will ultimately be resolved by the court because of the significant risk that a company's litigation decision to enter the DPA would spill over and compromise the right of a fair trial of the three individual defendants," Weinberg told Law360 on Friday.**

The Steiners had not filed a response to the motion as of Friday afternoon.

Messages seeking comment for counsel for the other defendants and for the Steiners did not receive responses on Friday.

Aside from the legal disputes over the DPA and several other proposed exhibits, Judge Saris is also grappling with the practicalities of trying a multidefendant case over an extended period of time.

During a status hearing earlier this month, the judge called the logistics "daunting," flagging questions from how to fit counsel for the parties and their support staff at court tables and at sidebar discussions, to where to hold the jury pool during individual questioning.

The judge also cited other possible challenges during the trial, including losing potential jurors due to its length, the possibility of snowstorms in March, and a judicial conference mid-month that will take her out of Boston for several days.

The Steiners and Steiner Associates LLC/eCommerceBytes are represented by Andrew G. Finkelstein, Brian D. Acard, Kenneth B. Fromson and Lawrence D. Lissauer of Finkelstein & Partners LLP, Marc A. Diller of Diller Law LLP, Christopher R. Murphy of Foster, Scalli & Murphy Law PC, Todd S. Garber and Erin Kelley of Finkelstein Blankinship Frei-Pearson & Garber LLP, and Max Finkelstein of Jacoby & Meyers LLP.

EBay is represented by Jack W. Pirozzolo, Kathryn L. Alessi, Scott T. Nonaka, Daniel J. Feith and Emily A. Rose of Sidley Austin LLP.

**Wenig is represented by Martin G. Weinberg of Martin G. Weinberg PC**, Abbe David Lowell of Lowell & Associates PLLC and Kelly A. Librera of Winston & Strawn LLP.

Wymer is represented by Caz Hashemi, Melissa Mills and Trevor Templeton of Wilson Sonsini Goodrich & Rosati PC, and Lon F. Povich of Anderson & Kreiger LLP.

Jones is represented by Andrew J. O'Connor, Casey Stewart, Christopher Durham, Sarah E. Walters and William L. Roberts of Ropes & Gray LLP.

The case is Steiner et al. v. eBay Inc. et al., case number 1:21-cv-11181, in the U.S. District Court for the District of Massachusetts.

--Editing by Alex hubbard.