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23andMe's bankruptcy could bolster its ICO and other settlement deals

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23andMe's recent bankruptcy filing may give it leverage in negotiations related to its 2023 data breach with the UK ICO and in private litigation.

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On 23 March 2025 the genetic testing services provider filed a Chapter 11 voluntary petition in the US Bankruptcy Court for the Eastern District of Missouri to sell its assets. According to 23andMe chief restructuring officer Matthew Kvarda's declaration, 23andMe co-founder Anne Wojcicki resigned as chief executive and board chair on 21 March 2025, the same day the special committee approved the bankruptcy petition.

23andMe's special committee had rejected previous proposals, including from Wojcicki, to buy the company. According to Kvarda, lagging business performance and litigation costs stemming from a 2023 data breach that exposed approximately 7 million individuals' personal information has weakened the company's position and compromised its prospects.

"The cumulative effects of 23andMe's business performance, the Company's negative cash flows, and pending litigation and claims arising from the Cyber Security Incident proved to make it difficult, if not impossible, for the Company to access or attract equity or debt financing on an out-of-court basis on actionable terms, effectively limiting the Company's runway to find a solution to its existing cash-on-hand," he wrote.

Chapter 11 of the US bankruptcy code generally allows a debtor to reorganise to stay in business and pay creditors over time.

The day after the company filed Chapter 11, the UK Information Commissioner's Office (ICO) announced its plans to fine 23andMe £4.59 million (US$5.9 million). According to an ICO statement, the regulator had notified 23andMe of the enforcement action and accompanying fine earlier this month.

While 23andMe's bankruptcy doesn't wipe out any government agency's pending actions or ongoing investigations, Nardello & Co partner Howard Master noted the company's filing has complicated regulators' ability to obtain financial judgments against the company.

"Under [section 362 of Chapter 11], a non-US governmental agency should have the power to initiate or continue an enforcement action against a company even after it files for bankruptcy," wrote Master in an email. "The only thing it can't do is enforce a money judgment (including a fine) outside of the bankruptcy proceeding. Thus, negotiation and payment of fines by a bankrupt company is complicated and needs to be resolved along with other claims for payment in the bankruptcy proceeding itself."

In addition to the ICO, a host of other regulators are investigating the San Francisco-headquartered company. For instance, in 2024, the ICO and Office of the Privacy Commissioner of Canada co-launched a probe of the 2023 data incident.

According to Kvarda's declaration, the attorneys general of 42 states and Washington, DC have launched an investigation regarding the cybersecurity incident. Kvarda's deposition also noted 12 foreign regulators, including joint UK-Canada investigation, have inquired about the 2023 incident.

Dilworth Paxson partner Peter Hughes noted, "The bankruptcy doesn't stop another government agency with going forward with investigations and doing their police and regulatory powers. But if they are trying to collect money, they have to a get in line with everyone else."

Indeed, 23andMe and plaintiffs' counsel have proposed settling a class action in the US District Court for the Northern District of California for US$30 million. After some 23andMe customers attempted to intervene, the parties announced on 15 March 2025 that they intended to go forward with the settlement.

Nine lawsuits have also been filed in California state courts, according to Kvarda. 23andMe also faces class actions in Ontario and British Columbia. Approximately 35,000 US claimants have asserted or threatened arbitration claims while nearly 3,700 UK customers have asserted a pre-arbitration demand.

While facing financial strains and widespread litigation isn't ideal, Hughes said 23andMe's bankruptcy can be useful in its negotiations with regulators.

"It gives the debtor more leverage than if they weren't in bankruptcy," he said. "They are not going to be paying claims at 100 cents on the dollar."

"We don't know yet what the distribution will be on pre-petition claims in the bankruptcy case, but if they sell the assets and only pay creditors 10 cents on the dollar on pre-petition claims, then any fines or judgments based on the pre-bankruptcy data breach will have much less of an impact on 23andMe," Hughes added.

Alston & Bird partner Kelly Hagedorn noted 23andMe could also stop providing its services in the UK if the ICO's finalised monetary fine – and its likely conditions setting data practice requirements – are too onerous.

"I imagine for their attorneys and their new CEO [Joe Selsavage] there's a lot of different strategic things to consider," she said. "At a business level does this work for us anymore? Do we want to stay in the UK? . . . Do we want to remediate that, how much will that cost? If we want to remediate that and offer our services in the UK, how do we best work with the ICO to reduce the amount of the monetary fine that we can [pay, along with] the reorganising of our company?"

Hagedorn noted the ICO also considers a company's financial status before doling out monetary penalties. 23andMe's Chapter 11 filing may force both parties to have frank conversations.

"The financial penalty will also be important to [the ICO] but if that needs to be modified to allow the company to go through the restructuring and . . . make the data processing align with the UK GDPR, I would imagine that's a conversation they are willing to have with the company. I think there will have to be realistic conversations on both sides," Hagedorn said.