U.S. SECURITIES FRAUD CLASS ACTIONS AGAINST NON-U.S. ISSUERS: 2024 DEVELOPMENTS

Dechert LLP

Table of Contents

Introduction

In 2024, plaintiffs filed 36 securities class action lawsuits against non-U.S. issuers, up by three from the 33 filings in 2023. Although this number indicates an uptick in non-U.S. issuer filings, it remains significantly lower than the high of 88 filings in 2020.[1]

- As was the case in 2023, 2022, and 2021, the Second Circuit unsurprisingly continues to be the jurisdiction of choice for plaintiffs bringing securities claims against non-U.S. issuers. In 2024, plaintiffs favored the Second Circuit by an even larger margin, filing 67% of non-U.S. issuer class actions in the Second Circuit (24 of 36), as compared with last year's 45% (15 of 33). A majority of these lawsuits (18 of 24) were filed in the Southern District of New York ("S.D.N.Y."), with the six remaining Second Circuit lawsuits filed in the Eastern District of New York ("E.D.N.Y."). Roughly 17% of the 36 lawsuits were filed in the Ninth Circuit (6), followed by three in the Third Circuit. Only one case was filed in each of the First, Sixth and Eleventh Circuits.
- Unlike the past three years, most non-U.S. issuer lawsuits were no longer against companies with headquarters and/or principal places of business in China. Of the 36 non-U.S. issuer lawsuits filed in 2024, seven were against companies headquartered in the United Kingdom, followed by a tie for second between companies based in Canada (5) and Israel (5), and a tie for third between companies based in China (3) and Germany (3).
- Pomerantz LLP claimed the top spot with the most first-in-court filings against non-U.S. issuers in 2024 (10), followed by Bronstein, Gewirtz & Grossman, LLC (7), usurping the Rosen Law Firm, P.A. (6). The Rosen Law Firm made 11 first-in-court filings in 2023 and held the lead for most first-in-court filings from 2018 through 2021. The Rosen Law Firm was appointed lead counsel in the most cases in 2024 (4), followed by Robbins Geller Rudman & Dowd LLP (3).
- The fourth quarter of 2024 proved the most active for securities class action filings against non-U.S. issuers, with 13 cases filed. Combining Q4 filings with those in Q3, the second half of 2024 yielded most of the 2024 filings, totaling 23 out of 36.
- Although the 36 lawsuits spanned 16 different industries, the largest number of filings involved the automobile industry (6), followed by the biotechnology and drugs industry (5) and software and programming industry (5).

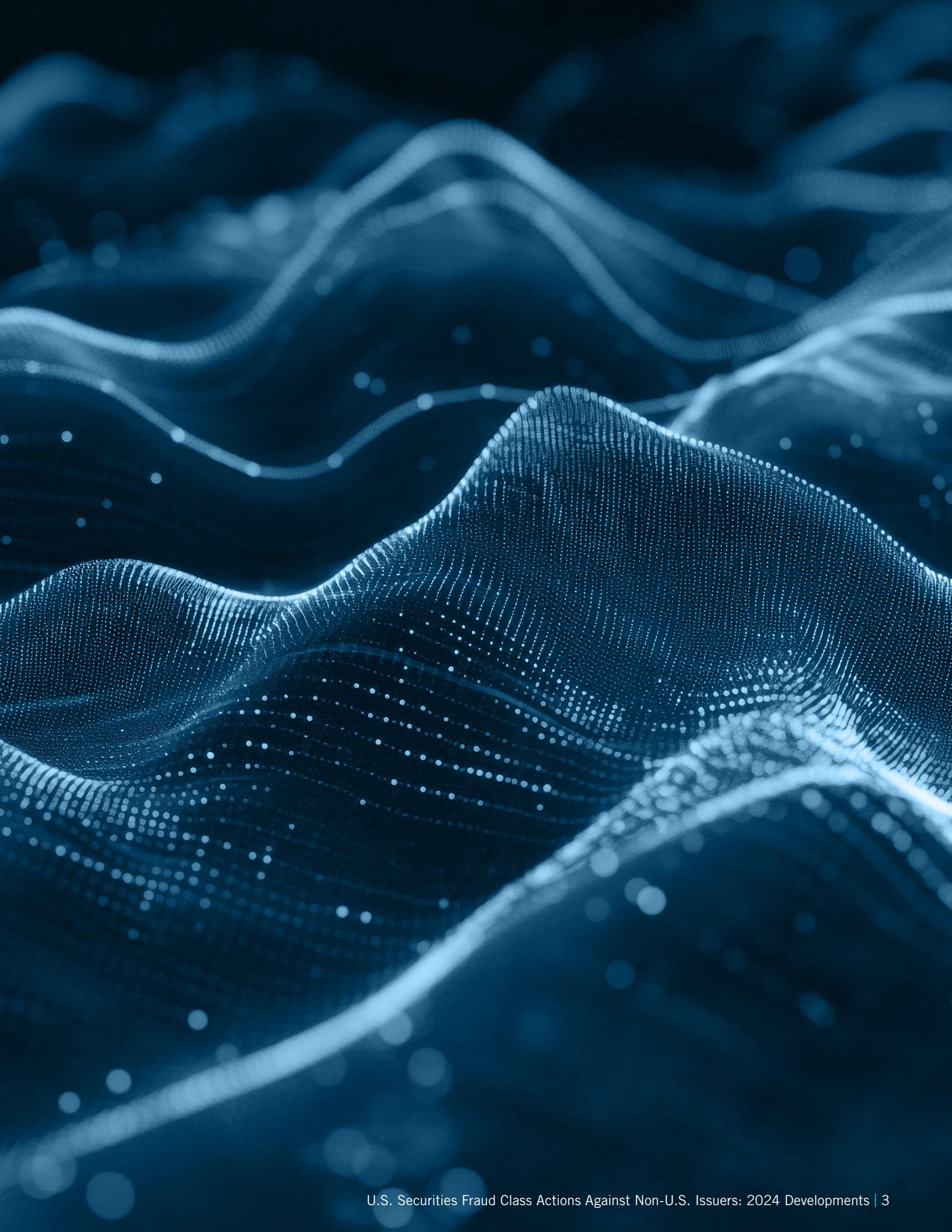
[1] Unless otherwise noted, the figures in this white paper are based on information reported by the *Securities Class Action Clearinghouse* in collaboration with Cornerstone Research, Stanford Univ., Securities Class Action Clearinghouse: Filings Database, Securities Class Action Clearinghouse (last visited February 20, 2025). A company is considered a "non-U.S. issuer" if the company is headquartered and/or has a principal place of business outside of the United States. To the extent a company is listed as having both a non-U.S. headquarters/principal place of business and a U.S. headquarters/principal place of business, that filing was also included as against a non-U.S. issuer.

An examination of the types of cases filed in 2024 reveals the following substantive trends:

- Four of the 36 cases were filed against electric vehicle ("EV") companies, with three of those companies specializing in designing and manufacturing EVs, and one in developing an electric takeoff and landing jet.
- Four cases were filed against biotechnology or pharmaceutical companies, concerning a COVID-19 vaccine, medical treatments made through the use of umbilical cords, and artificial-intelligence assisted drug recovery therapy.
- Two cases also involved companies that use artificial intelligence ("AI").
- Eleven cases involved allegations of overstated growth and revenues. These cases spanned industries, including AI, advanced vehicle technology, automobiles, semiconductors, software and programming, banking, aerospace communication, oil and gas, and retail.

In 2024, courts rendered 22 decisions on motions to dismiss securities class actions against non-U.S. issuers filed in 2023 and 2022.

- Six of those 22 decisions resulted in partial dismissals, as compared with only two partial dismissals in 2023, allowing portions of the claims to proceed to discovery.
- Out of those 22 decisions, one motion to dismiss was denied in its entirety, allowing all claims to proceed. Last year, no court denied a motion to dismiss a securities class action against a non-U.S. issuer in its entirety.
- Seven of those 22 decisions were dispositive, meaning they resulted in the closure of the case with no motion for reconsideration or pending appeal.
- Fifteen of those 22 decisions (68%) resulted in complete dismissal of all claims, 10 without prejudice and five with prejudice.
- Three of those 22 motion to dismiss decisions are pending appeal.
- Of those 22 decisions, 17 held that the plaintiffs had failed to allege, at least in part, an actionable misstatement or omission and seven determined that the plaintiffs had failed to allege, at least in part, a strong inference of scienter. Six courts relied on both independent reasons together to conclude that plaintiffs had failed to state a claim for relief.



Non-U.S. Companies Remain Targets for Securities Fraud Litigation

In 2024, the number of securities class actions against non-U.S. issuers increased in proportion to a subtle increase in overall securities class action filings, which grew from 213 cases in 2023 to 222 total filings in 2024. In 2024, 36 class actions were filed against non-U.S. issuers, as compared with 33 in 2023 and 34 in 2022.[2]

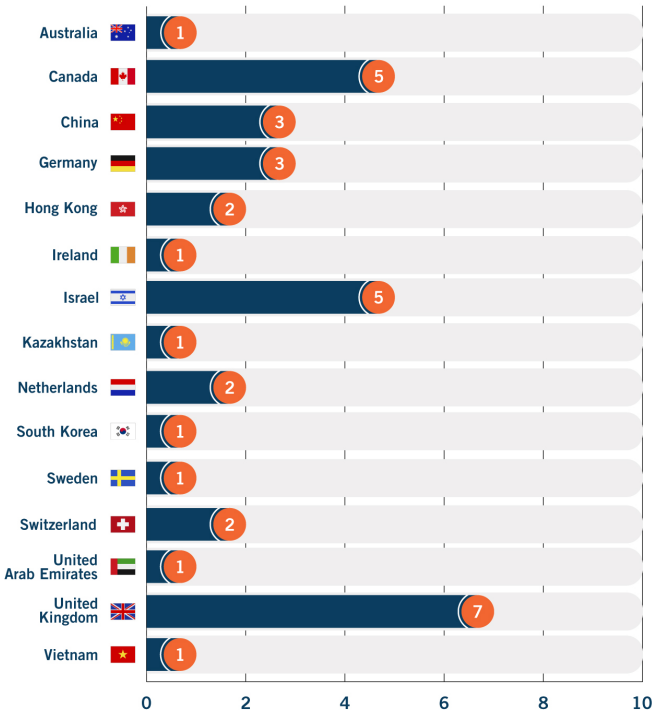
This survey provides an overview of securities lawsuits against non-U.S. issuers in 2024. First, we analyze the number of cases filed, including trends relating to location filed, the types of companies that plaintiffs targeted, and the nature of the underlying claims. Next, we analyze key decisions rendered on motions to dismiss in 2024 and their impact on the legal landscape of these types of suits. Finally, we outline issues and best practices that non-U.S. issuers should consider implementing to mitigate the risk of such lawsuits.

Filing Trends

In 2024, the percentage of securities class actions filed against non-U.S. issuers remained relatively stable. Approximately 16% of securities class actions (36 in total) were filed against non-U.S. issuers, as in 2023, when just under 16% of securities class actions targeted non-U.S. issuers. Like years past, certain filing trends emerged:

- The Second Circuit, particularly the S.D.N.Y., continued to see the most activity in 2024. With 18 filings in the S.D.N.Y., it was the preferred court for 50% of plaintiffs alleging securities violations against non-U.S. issuers. This share indicates an increase in S.D.N.Y. filings, up from about 36% in 2023. After the Second Circuit, the Ninth (6) and Third (3) Circuits had the highest numbers of suits filed against non-U.S. issuers. Only one case was filed in each of the First, Sixth and Eleventh Circuits.
- Most suits were filed against companies headquartered in the United Kingdom (7), followed by companies based in Canada and Israel (5 each), and China and Germany (3 each).

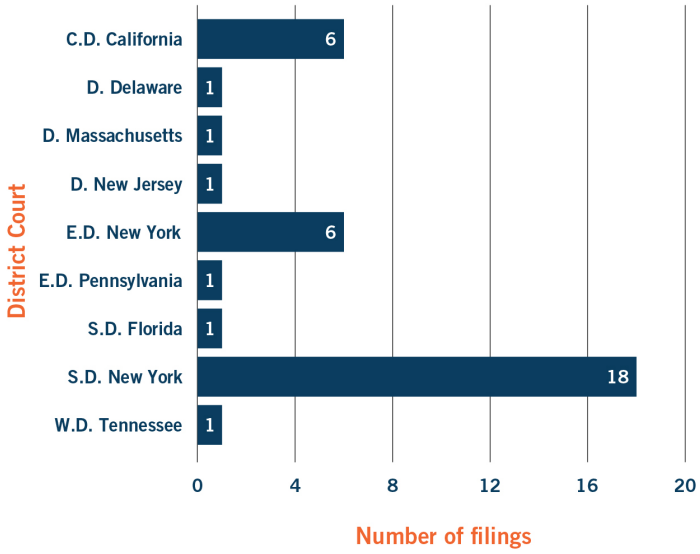
Filings by Location of Headquarters and/or Principal Place of Business



- Of the seven suits filed against companies based in the United Kingdom, two were filed in the S.D.N.Y., with the remainder in the District of New Jersey ("D.N.J."), the District of Massachusetts ("D. Mass."), the Western District of Tennessee ("W.D. Tenn."), the Southern District of California ("S.D. Cal.") and the District of Delaware ("D. Del.").

[2] The number of total filings is based on our review of the Stanford Clearinghouse database for filings made in 2024. The number of non-U.S. issuer filings is based on those filings against issuers with headquarters outside of the U.S. *See* Stanford Law School, Securities Class Action Clearinghouse: Filings Database, (2025); Cornerstone Research, Securities Class Action Filings: 2023 Year in Review, at 1 (2025); Dechert LLP, 2023 Developments in the U.S. Securities Fraud Class Actions Against Non-U.S. Issuers, at 1 (2025); Dechert LLP, 2022 Developments in the U.S. Securities Fraud Class Actions Against Non-U.S. Issuers, at 2 (2025).

Filings by District Court



- Of the five suits filed against Canadian companies, four were filed in the S.D.N.Y and one was filed in the Central District of California ("C.D. Cal.").
- Of the five suits filed against companies headquartered in Israel, all of them were filed in the S.D.N.Y.
- Of the three cases filed against Chinese companies, one was filed in the S.D.N.Y, one in the E.D.N.Y and one in the C.D. Cal.
- Of the three suits filed against German companies, one was filed in the S.D.N.Y., one in the E.D.N.Y. and one in the Southern District of Florida ("S.D. Fla.").
- The non-U.S. issuer class actions span various industries, with the largest portions involving: (i) the automobile industry (6)—two of which were filed against Israeli companies, and the remaining four targeted companies in Canada, Vietnam, China and the Netherlands; and a tie for second between (ii) the biotechnology and drugs industry (5)—with two suits filed against companies headquartered in the United Kingdom, and the others involving companies in Germany, Hong Kong and Israel; and (iii) the software and programming industry (5)—where each suit was filed against companies based in different countries.

Substantive Trends

Misrepresentations and/or Omissions Relating to Business Prospects, Financial Projections, and Adverse Information in the EV Sector

In 2024, four cases targeted EV companies, alleging that these non-U.S. issuers overstated business prospects, provided misleading financial information and failed to disclose material adverse information.

First, plaintiffs filed suit in the S.D.N.Y. against the Lion Electric Company ("Lion"), a manufacturer and designer of all-electric trucks and buses incorporated and headquartered in Quebec, Canada.[3] The amended complaint alleges that the Canadian company grossly inflated its production and sales forecasts to secure a merger with Northern Genesis, a Delaware company formed for the purpose of effectuating a strategic transaction for its stockholders.[4] As a consequence of the Lion and Northern Genesis merger, Lion would become a SEC-registered company listed on the New York Stock Exchange.[5] The plaintiffs claim that the projections in the proxy used to solicit Northern Genesis' approval of the merger were based on unrealistic sales assumptions and that Lion's value was materially below the per-share merger consideration.[6] The plaintiffs allege that the difference between the proxy's projections and the company's annual reports filed in 2022, 2023 and 2024 illustrate the proxy's artificially inflated projections.[7] The amended complaint contends that, following these annual reports, the market corrected its valuation of Lion, and Lion's shares fell from a peak of US$20.44 in 2021 to a low of $0.71 in 2024.[8]

In addition, plaintiffs filed suit in the E.D.N.Y. against two EV companies—VinFast Auto Ltd. ("VinFast"), a Vietnamese company, and Li Auto, Inc. ("Li Auto"), a Chinese company—after each company allegedly overstated its business capabilities and failed to meet delivery targets, leading to revised estimates and strategic missteps.

---

3 *Bouchard-A v. The Lion Elec. Co.*, No. 24-cv-2155, ECF No. 47, ¶¶ 3, 18 (S.D.N.Y.).
4 *Id.* at ¶¶ 3, 25.
5 *Id.* at ¶ 26.
6 *Id.* at ¶ 5.
7 *Id.* at ¶¶ 76-79.
8 *Id.* at ¶ 73.

The complaint against VinFast alleges that the Vietnamese company lacked sufficient capital to execute its growth strategy and overstated the strength of its business model and operational capabilities, including its financial prospects following a merger with Black Spade, a "cross-border" investment company.[9] Unable to meet its 2023 delivery targets, the complaint alleges that VinFast delivered only 34,855 EVs, below its 40,000-50,000 projection.[10] After *Barrons* published an article detailing VinFast's failure to meet its 2023 sales target, the complaint alleges that VinFast's ordinary share price declined sharply by 84.78%.[11]

Similar to VinFast's alleged overstatements, the complaint against Li Auto alleges that the Chinese EV company overstated the demand for its vehicles and the efficacy of its operating strategy when launching Li MEGA—Li Auto's first battery-powered EV model.[12] The plaintiffs contend that Li Auto revised its delivery estimates due to lower-than-expected order intake, and mis-timed the operating strategy for Li MEGA, planning as if it had reached a scaling phase while it was still in the validation phase.[13] Just as VinFast found it difficult to reach its delivery targets, so too did Li Auto, revising its vehicle deliveries for the first quarter of 2024 to between 76,000 and 78,000 vehicles, compared to its target of between 100,000 and 103,000 vehicles.[14] On March 21, 2024, Li Auto issued a press release acknowledging that its operating strategy for Li MEGA was "mis-paced" and revising its delivery estimates.[15] On this news, Li Auto's share price fell US$2.55 per share, or 7.48%, closing at US$31.53 per share in 2024.[16]

Finally, plaintiffs filed suit in the S.D.N.Y. against Lilium N.V. ("Lilium"), a start-up electric aviation company incorporated in the Netherlands and headquartered in Germany.[17] The complaint alleges that the company overstated its fundraising progress and failed to disclose imminent insolvency while developing its EV takeoff and landing jet.[18] In 2024, Lilium disclosed that "funding for the company [was] not feasible" and stated that the company would be "obligated to file for insolvency."[19] Following this news, Lilium's stock price fell 15.5%, and 36.97% the following day.[20]

Together, these cases highlight a new trend of increased scrutiny directed towards non-U.S. issuers in the EV sector and, specifically, their financial and manufacturing projections.

Misrepresentations and/or Omissions Relating to Business Prospects, Financial Projections, and Adverse Information in the Biotechnology and Pharmaceutical Sectors

Five non-U.S. issuers in the biotechnology and pharmaceutical sectors face securities litigation for allegedly making false or misleading statements or omissions concerning the companies' financial condition, business practices or risk disclosures.

Of these five biotechnology and pharmaceutical companies, three face litigation in the S.D.N.Y. In *Ladewig v. BioNTech SE*, the amended complaint alleges that BioNTech, a biotechnology company organized and headquartered in Germany, made materially false and misleading statements regarding revenue projections for its COVID-19 vaccine, dubbed Comirnaty, which was developed in conjunction with Pfizer.[21] The amended complaint alleges that BioNTech misrepresented the vaccine revenues as ongoing rather than temporary, concealing a decline in demand and guiding investors to expect an additional €5 billion in 2023 vaccine revenue.[22] The emergence of the Omicron variant rendered Comirnaty obsolete, according to the amended complaint, leading to significant inventory write-offs and a market capitalization

9 *Comeau. v. VinFast Auto Ltd.*, No. 24-cv-2750, ECF No. 1, ¶¶ 3, 9 (E.D.N.Y.).

10 *Id.* at ¶ 12.

11 *Id.* at ¶¶ 12-13.

12 *Banurs v. Li Auto Inc.,* No. 24-cv-3470, ECF No. 1, ¶¶ 3, 4 (E.D.N.Y).

13 *Id.* at ¶¶ 4-5.

14 *Id.* at ¶ 5.

15 *Id.* at ¶ 28.

16 *Id.* at ¶ 29.

17 *Kloster v. Lilium N.V.*, No. 24-cv-81428, ECF No. 1, ¶¶ 2, 14 (S.D.N.Y.) (transferred to the S.D. Fla. on November 15, 2024 with Plaintiffs' consent).

18 *Id.* at ¶ 7.

19 *Id.* at ¶¶ 5, 29.

20 *Id.* at ¶¶ 6, 30.

21 *Ladewig v. BioNTech SE*, No. 24-cv-337, ECF No. 40, ¶¶ 2, 24, 30.

22 *Id.* at ¶ 3, 8.

drop of over US$1 billion dollars.[23] On BioNTech's press release in 2023 announcing its inventory write-offs, BioNTech's share price fell by 6.38%.[24]

Another biotechnology company, Global Cord Blood Corporation ("GCBC"), also faces suit in the S.D.N.Y.[25] GCBC, which is incorporated in the Cayman Islands and headquartered in Hong Kong, processes and stores umbilical cord blood for expectant parents to use in future medical treatments.[26] In *In re: Global Cord Blood Corporation Securities Litigation*, the plaintiffs allege that GCBC misled investors by failing to disclose its fraudulent misappropriation of funds to companies controlled by the individual defendant Yuen Kam ("Kam").[27] Kam is the founder, chairman, controlling shareholder, and CEO of Golden Meditech Holdings Limited ("Golden Meditech"), a company incorporated in the Cayman Islands and based in Hong Kong.[28] Prior to the class period, Golden Meditech was the controlling shareholder of GCBC.[29]

The amended complaint alleges that Kam secretly controlled GCBC through its directors and officers.[30] Specifically, the amended complaint alleges that GCBC created a sham transaction to acquire Cellenkos, Inc. ("Cellenkos"), a small drug development company incorporated in Delaware and based in Texas, with no revenue and no regulatory product approvals.[31] GCBC allegedly agreed to acquire Cellenkos for an inflated price of US$664 million to cover up the misappropriation of at least US$606 million of GCBC's funds from 2015 to 2022 to Golden Meditech and its subsidiaries.[32] However, GCBC's majority shareholder during the class period, Blue Ocean, prevented the transaction from closing by opposing it in the Cayman Islands Grand Court, where details of the sham transaction emerged.[33] Upon that news, GCBC's share price dropped by 9.1%, falling from US$2.20 per share to US$0.22.[34]

A third company in the biotechnology and pharmaceutical industry, Taro Pharmaceutical Industries Ltd. ("Taro"), also faces suit in the S.D.N.Y.[35] Taro is an Israeli research-based pharmaceutical manufacturer headquartered in New York.[36] According to the complaint, Taro failed to disclose material information necessary for stockholders to properly assess Taro's merger with Sun Pharma, the largest pharmaceutical company in India.[37] Specifically, the complaint alleges that the proxy statement soliciting shareholder approval for the merger included incomplete and misleading information about Taro's valuation. The proxy allegedly:

- overstated Taro's cost of capital at 10-12% annually;
- discounted Taro's future EBITDA by 45% due to past performance issues that were no longer relevant; and
- incorrectly stated that Taro's privatization would not result in any company savings, despite the elimination of SEC reporting requirements.[38]

Accordingly, the complaint alleges that the misrepresentations contained in the proxy "deprived [plaintiffs] of their right to cast an informed vote."[39]

The two remaining complaints against non-U.S. issuers in the pharmaceutical and biotechnology sector were filed by the Rosen Law Firm in the C.D. Cal. and Bronstein, Gewirtz & Grossman LLC, with the Rosen Law Firm as lead counsel, in the D.N.J. The California complaint alleges that AstraZeneca PLC ("AstraZeneca"), a pharmaceutical company based in the United Kingdom, understated its legal risks by failing to disclose insurance fraud and the detention of its president of operations in China.[40] The New Jersey-amended complaint alleges that Exscientia p.l.c. ("Exscientia"), a biotechnology company based in the United Kingdom that uses AI to aid the drug recovery process, provided incomplete and misleading risk disclosures regarding the loss of its executives and failed to disclose executive misconduct, including sexual

23 *Id.* at ¶¶ 13, 15, 17.
24 *Id.* at ¶¶ 15-16.
25 *In re: Glob. Cord Blood Corp. Sec. Litig.*, No. 24-cv-3071, ECF No. 60, ¶ 2 (S.D.N.Y.).
26 *Id.* at ¶¶ 2, 17.
27 *Id.* at ¶¶ 2-4.
28 *Id.* at ¶¶ 18, 21.
29 *Id.* at ¶ 18.
30 *Id.* at ¶¶ 3, 7.
31 *Id.* at ¶ 5.
32 *Id.* at ¶ 7.
33 *Id.* at ¶ 8.
34 *Id.* at ¶¶ 8, 82.
35 *Mitchell v. Taro Pharm. Indus. Ltd., et al.*, No. 24-cv-6818, ECF No. 1, ¶¶ 5, 11 (S.D.N.Y.).
36 *Id.* at ¶ 11
37 *Id.* at ¶¶ 5, 24.
38 *Id.* at ¶ 27.
39 *Id.* at ¶ 42.
40 *Saleh v. AstraZeneca PLC*, No. 24-cv-11021, ECF No. 1, ¶¶ 7, 33 (C.D. Cal.).

harassment and inappropriate relationships.[41] Both cases against AstraZeneca and Exscientia focus on alleged misconduct by corporate executives.

Cases Against Other Non-U.S. Issuers Involved Allegations of Overstated Growth and Revenues, and Fraudulent Financial Practices

Of the 36 cases filed against non-U.S. issuers, eleven involve allegations of overstated growth and revenues. These cases span industries, including AI, advanced vehicle technology, automobiles, semiconductors, software and programming, banking, aerospace communication, oil and gas, and retail.

Of these cases, two filed in New York District Courts allege that the companies overstated their AI capabilities. In *Hoare v. ODDITY Tech Ltd.*, the plaintiffs allege that Oddity, an Israel-based consumer technology platform in the beauty and wellness industry, overstated its AI technology capabilities and the extent to which that technology drove its sales.[42] Similarly, in *Fan v. Xiao-I Corporation*, the plaintiffs allege that Xiao-I Corporation, a global AI company incorporated in the Cayman Islands and headquartered in China, overstated its AI capabilities, research and development resources, and overall ability to compete in the AI market.[43]

Moreover, two complaints filed in the S.D.N.Y. allege that non-U.S. issuers specializing in advanced vehicle technology made misleading and overly positive statements regarding their products' profitability and market demand. In *Lucid Alternative Fund, LP v. Innoviz Technologies Ltd.*, the plaintiffs allege that Innoviz Technologies Ltd., a company incorporated and headquartered in Israel that specializes in the development of software enabling the mass production of autonomous vehicles, overstated the benefits of its contracts and partnerships, misrepresenting its profitability to investors.[44] And in *In re Mobileye Global Securities Litigation*, the plaintiffs claim that Mobileye Global Inc. ("Mobileye"), a provider of advanced driver-assistance systems incorporated in Delaware and headquartered in Israel, allegedly misled investors about the true market demand for its products.[45] Mobileye allegedly touted record sales and revenue growth while demand for its flagship product was declining.[46] Additionally, Mobileye allegedly engaged in a channel stuffing scheme, shipping millions of units beyond actual market demand and recognizing hundreds of millions of dollars in revenue prematurely, leading to a 70% stock price collapse.[47]

Further, three complaints involve allegations of non-U.S. issuers misleading investors through overly positive statements while concealing certain critical issues. In *Long v. Stellantis N.V.,* plaintiffs allege that Stellantis N.V. ("Stellantis"), a designer, manufacturer and distributor of vehicles across five portfolios incorporated and headquartered in the Netherlands, provided overwhelmingly positive statements to investors while disseminating materially false and misleading statements concerning inventory levels, pricing and market share stabilizations.[48] The Netherlands-based distributor of well known brands such as Maserati and Jeep allegedly failed to disclose important information including financial and operational problems, lower-than-expected revenue and unfavorable business expansions.[49]

Similarly, plaintiffs allege that STMicroelectronics N.V. ("STM"), a Swiss semiconductor company, made overly positive statements to investors while concealing significant issues with its forecasting ability.[50] Despite expressing confidence in its revenue projections for fiscal year 2024 and claiming to understand recovery paths of the industrial and automotive sectors, STM allegedly lacked the visibility needed to generate accurate guidance.[51] Finally, in the E.D.N.Y., plaintiffs allege that Mynaric AG ("Mynaric"), a German-based

41 *In Re Exscientia p.l.c. Sec. Litig.,* No. 24-cv-5692, ECF No. 17, ¶¶ 2, 98-101 (D.N.J.).

42 *Hoare v. ODDITY Tech Ltd.*, No. 24-cv-5037, ECF No. 1, ¶¶ 2, 5, 14 (E.D.N.Y.) (transferred to the S.D.N.Y. on August 22, 2024 with plaintiffs' consent).

43 *Fan v. Xiao-I Corp.*, No. 24-cv-7837, ECF No. 1, ¶¶ 9, 26 (S.D.N.Y.).

44 *Lucid Alt. Fund, LP v. Innoviz Tech. Ltd*, No. 24-cv-1971, ECF No., 1, ¶¶ 2, 4, 13 (S.D.N.Y.).

45 *In re Mobileye Glob. Sec. Litig.,* No. 24-cv-310, ECF No. 56, ¶¶ 1-2, 24 (S.D.N.Y.).

46 *Id.* at ¶ 1.

47 *Id.* at ¶¶ 8-12.

48 *Long v. Stellantis N.V.,* No. 24-cv-6196, ECF No. 1, ¶¶ 3, 12, 18 (S.D.N.Y.).

49 *Id.* at ¶¶ 18, 38-39.

50 *Wang v. STMicroelectronics N.V.*, No. 24-cv-6370, ECF No., 1 ¶¶ 3, 12 (S.D.N.Y.).

51 *Id.* at ¶ 3.

designer and producer of laser communication products for aerospace communication networks, overstated its business and financial prospects and failed to make significant disclosures.[52] The German company's product range includes the CONDOR series, which assists in satellite-to-satellite communications in space.[53] According to the complaint, the company failed to disclose that lower-than-expected production yields and component shortages were causing delays for the product, and that these issues would negatively impact revenue growth and lead to an operating loss.[54]

Additionally, two complaints allege that non-U.S. issuers failed to make significant disclosures. Plaintiffs allege that Endava PLC ("Endava"), a software and programming company based in the United Kingdom, failed to disclose declining demand for the company's services and canceled projects, which would adversely affect the company's fiscal 2023 and 2024 revenue and earnings.[55] Similarly, plaintiffs allege that Toronto-Dominion Bank ("TD") failed to disclose adverse facts concerning the state of its anti-money laundering ("AML") program.[56] The plaintiffs contend that the Canadian bank concealed or downplayed the significance of the company's AML program failures and did not indicate that an asset cap or other punitive or compliance measures would be imposed, which would hinder TD's growth for the foreseeable future.[57] According to the complaint, these statements caused shareholders to purchase TD securities at inflated prices.

Moreover, two complaints allege that non-U.S. issuers inflated their revenue figures through fraudulent financial schemes. Brooge Energy Limited ("Brooge"), a company in the oil and gas industry incorporated in the Cayman Islands and headquartered in Dubai, allegedly inflated its revenue for 2018, 2019, and 2020 by, at times, over 80%.[58] According to the complaint, Brooge exaggerated its revenue figures through accounting fraud, supported by fake invoices provided to the SEC and auditors.[59] Plaintiffs similarly allege that Dada Nexus Limited ("Dada"), an online platform for local on-demand retail and delivery in China, failed to disclose that its net revenues and operations and support costs were overstated due to Dada's fraudulent financial transactions.[60] Dada engaged in the fraudulent scheme of "roundtripping" fake transactions to inflate revenue, providing funds to third parties who used those funds to purchase online advertising and marketing services from Dada. Dada then recouped these funds and recorded these "sales" as revenue.[61] As of November 27, 2024, the California court presiding over the case has provided preliminary approval of a settlement agreement among the parties.[62]

In sum, the cases filed against non-U.S. issuers in 2024 demonstrated a broad array of alleged misrepresentations and/or omissions across various industries, highlighting a trend of overstated growth and financial projections and misleading statements regarding financial health and operational capabilities. From AI and advanced vehicle technology to oil and gas and retail, the allegations underscore the importance of transparency and accurate reporting.

---

52 *Torstorff v. Mynaric AG*, No. 24-cv-7602, ECF No., 1 ¶¶ 4, 18 (E.D.N.Y.).

53 *Id.* at ¶ 2.

54 *Id.* at ¶ 4.

55 *Mueller v. Endava, plc*, No. 24-cv-6423, ECF No. 1 ¶ 3, 10 (S.D.N.Y.).

56 *Tiessen v. The Toronto-Dominion Bank*, No. 24-cv-8032, ECF No., 1 ¶ 3 (S.D.N.Y.).

57 *Id.* at ¶¶ 3, 12.

58 *White v. Brooge Energy Ltd.*, No. 24-cv-959, ECF No. 46, ¶¶ 3, 14 (C.D. Cal.).

59 *Id.* at ¶¶ 3, 86.

60 *Wang v. Dada Nexus Ltd.*, No. 24-cv-239, ECF No. 45, ¶¶ 2-3 (C.D. Cal.).

61 *Id.* at ¶ 3.

62 24-cv-239, ECF No. 68, ¶ 6 (C.D. Cal.).

Motion to Dismiss Decisions

In 2024, courts issued 22 decisions resolving motions to dismiss securities class actions against non-U.S. issuers filed in 2023 and 2022. Of those 22 decisions, 15 granted dismissal of the complaint in its entirety (10 without prejudice and 5 with prejudice); 6 granted dismissal in part, allowing a portion of the claims to continue into discovery; and 1 denied dismissal in its entirety. Seven decisions were dispositive, resulting in closing the case with no motion for reconsideration or pending appeal. Three decisions were appealed to the Courts of Appeals for the Second (2) and Ninth (1) Circuits.

Of the 22 decisions in 2024, 12 were issued by the S.D.N.Y., followed by four in the D.N.J., two in the C.D. Cal., and one each in the District of Maryland, the Western District of Texas ("W.D. Tex."), the District of Arizona ("D. Ariz."), and the Northern District of California. The DJS Law Group and Pomerantz LLP represent the plaintiffs in the sole case that will proceed to discovery in its entirety.[63] The Rosen Law Firm and Pomerantz LLP each represent plaintiffs in one case proceeding to discovery in part. In 2023, seven of 18 decisions were dispositive; this year, seven of 22 decisions were dispositive, with six decisions allowing for plaintiffs to proceed to discovery in part, as compared with two partial dismissals last year.

The courts' rationale in allowing certain claims—and one entire case—to proceed is instructive for non-U.S. issuers. In 2024, as in 2023 and 2022, the primary reason courts dismissed complaints was because plaintiffs failed to allege an actionable misstatement or omission, though courts also found that plaintiffs failed to allege a strong inference of scienter. Of the 22 decisions, 17 held that the plaintiffs had failed to allege, at least in part, an actionable misstatement or omission and seven determined that the plaintiffs had failed to allege, at least in part, a strong inference of scienter. Six courts relied on both independent reasons to conclude that plaintiffs had failed to state a claim for relief.

Six Decisions Granted Dismissal Only in Part

Of the 22 decisions in 2024, six granted dismissal only in part, allowing a subset of the plaintiffs' claims to proceed to discovery. These cases spanned industries, including software & programming (2), financial services (1), retail (1), alternative energy (1), and schools (1). The six cases also spanned countries, including Israel (2), China (2), the United Kingdom (1), and Singapore (1).

In one of these cases—*Mislav Basic, et al. v. BProtocol Foundation*—the court originally granted the defendants' motion to dismiss the amended complaint in its entirety and entered a final order and judgment closing the case.[64] However, upon the plaintiffs' motion to amend the final judgment, reopen the case, and enter partial final judgment, the court reconsidered and amended its order of dismissal.[65]

In the amended complaint, the plaintiffs allege that they invested and lost money in a crypto asset exchange, Bancor Protocol, which was run by the defendants BProtocol Foundation ("BProtocol"), LocalCoin, Ltd. ("LocalCoin"), Bancor DAO, and certain individual defendants, because the defendants falsely represented that Bancor Protocol offered certain "impermanent loss protection," which the defendants allegedly described as insurance against losses inherent in investing crypto assets rather than simply holding them.[66] The plaintiffs allege that BProtocol, a private corporation formed under Swiss law, and LocalCoin, a private corporation formed under Israeli law, attempted to transfer governance of Bancor Protocol to defendant Bancor DAO, which is an unincorporated general partnership not registered in any jurisdiction and with no physical office.[67]

[63] *See Continental Gen. Ins. Co. v. Mallinckrodt Plc*, No. 23-cv-3662 (D.N.J.).

[64] *See Basic v. BProtocol Found.,* No. 23-cv-533, ECF Nos. 68, 72, 73 (W.D. Tex.).

[65] *BProtocol*, ECF Nos. 74, 77.

[66] *BProtocol*, ECF No. 37 at ¶¶ 6-1.

[67] *Id.* at ¶¶ 3, 20-22.

Defendants BProtocol, LocalCoin, and the individual defendants—but not Bancor DAO—moved to dismiss the amended complaint for lack of personal jurisdiction.[68] The W.D. Tex., by approving and adopting a report and recommendation of a magistrate judge, found that the court lacked personal jurisdiction over BProtocol, LocalCoin, and the individual defendants because they did not purposefully avail themselves "of the privileges of conducting activities in the United States" and the United States' securities laws were therefore inapplicable to their conduct.[69] The court, therefore, dismissed plaintiffs' claims against all defendants, despite Bancor DAO never having appeared in the litigation nor moving to dismiss the amended complaint.[70]

Upon the plaintiffs' motion, however, the court amended its judgment and reinstated the plaintiffs' claims against Bancor DAO, observing that it had erred in dismissing those claims.[71] Plaintiffs also requested that the court enter a final judgment as to the claims against BProtocol, LocalCoin, and the individual defendants so that plaintiffs could pursue an immediate appeal as to those claims, but the court denied that request, citing interests of judicial efficiency.[72] Thus, plaintiffs' claims against Bancor DAO will continue to discovery—or, perhaps more likely, a default judgment.

In *Lian v. Tuya Inc.*, the S.D.N.Y. granted in part and denied in part defendant Tuya Inc.'s ("Tuya") motion to dismiss the plaintiffs' amended complaint.[73] Tuya, which is incorporated in the Cayman Islands and headquartered in China, offers a platform through which smart devices communicate and interact with end users and other online services.[74] Tuya's customers include brands, manufacturers, operators, and system integrators in the smart home, smart business, healthcare, education and agriculture industries, many of whom sell their products on Amazon.[75] The amended complaint alleges that many of Tuya's customers engaged in "brushing," which is the process of duplicating real user accounts and using their profiles to author fake, positive reviews, in violation of Amazon's policies.[76] The amended complaint further alleges that, on May 6, 2021, a news report uncovered a widescale fake review scheme affecting 200,000 people.[77] In response, Amazon suspended the accounts of 600 Chinese brands, including significant Tuya customers.[78]

The plaintiffs allege that a "material percentage" of Tuya's customers were engaged in fake review practices and Tuya failed to disclose the "fake review scheme" in its registration statement, despite the risks the scheme posed to Tuya's sales and prospects.[79] Specifically, plaintiffs allege that Tuya's failure to disclose the fake review scheme rendered the following five categories of statements in its registration statement false and misleading:

- "Statements touting Tuya's deep relationships with its customers";
- "Statements discussing Tuya's ability to gain new customers and increase adoption of its products and services";
- "Statements attributing Tuya's success to reasons other than its customers' fake-review practices";
- "Statements touting Tuya's sales and marketing efforts"; and
- "Purported risk warnings describing potential risks of receiving negative reviews of its products and not receiving sufficiently positive reviews of its products."[80]

The court rejected Tuya's argument that it had no obligation to disclose the fake review scheme. The court reasoned that Section 11 of the Securities Act "does not have a requirement that the omitted fact be known, or

68 *BProtocol*, ECF No. 68 at 5.
69 *Id.* at 15.
70 *Id.* at 5, *see also BProtocol*, ECF No. 72.
71 *See BProtocol*, ECF No. 77 at 3.
72 *Id.* at 4.
73 *See Lian v. Tuya Inc.*, 22-cv-6792, ECF No. 122 at 32 (S.D.N.Y.).
74 *Id.* at 2-3.
75 *Id.* at 2-4.
76 *Id.* at 3.
77 *Id.* at 4.
78 *Id.*
79 *Id.* at 4-6.
80 *Id.* at 6 (citing *Tuya*, ECF No. 56 at ¶¶ 125-127, 129, 138, 140, 142, 144, 146-147, 149, 151, 153).

should have been known, by [the] issuers."[81] Rather, the court held that "what is required is that the omitted fact be knowable."[82] Because the fake review scheme was at least knowable to the news outlet prior to Tuya's IPO, it was also knowable to Tuya, the court held.[83]

The court also rejected Tuya's argument that the plaintiffs failed to state a Section 11 claim because Tuya's registration statement "included ample warnings to investors" regarding risks posed by losses of Tuya's customers and negative publicity.[84] The plaintiffs responded that the risk disclosures highlighted by Tuya were generic and inadequate.[85] The court agreed, holding that Tuya's risk disclosures could not "inoculate" it from Section 11 liability because they did not "pertain to the specific risk that was realized."[86] Thus, the court denied Tuya's motion to dismiss the plaintiffs' Section 11 claims. The court, however, granted Tuya's motion to dismiss the plaintiffs' Section 15 claims against certain alleged control persons and two claims alleging violations of SEC regulations (Item 303 and Item 105, both concerning disclosure obligations in registration statements).[87] Following the court's opinion and order on Tuya's motion to dismiss, plaintiffs filed a motion for judgment on the pleadings on their Section 11 claims.[88] That motion remains pending.

A court in the District of Arizona also granted in part and denied in part a motion to dismiss a securities class action against a non-U.S. issuer in *Laborers District Council Construction Industry Pension Fund v. Sea Limited*. Defendant Sea Limited ("Sea") is an international consumer internet company, organized under the laws of the Cayman Islands and headquartered in Singapore.[89] Sea provides entertainment and e-commerce services through its respective business lines, Garena and Shopee.[90] Garena is Sea's digital entertainment platform.[91] It primarily licenses, publishes, and develops mobile and PC online video games, including, *League of Legends*.[92] Shopee is Sea's e-commerce platform and the largest e-commerce platform in Southeast Asia.[93]

The plaintiffs alleged that Sea made false and misleading statements regarding Garena and Shoppe which artificially inflated the price of Sea's shares.[94] Specifically, the plaintiffs allege that:

- Sea falsely claimed in November 2022 that, although Garena would soon lose its publishing rights to its most popular game, *League of Legends*, this loss would have "no impact" on Garena's business and that contributions from the game were "immaterial"; and
- Sea made materially false and misleading statements with respect to Shopee's anticipated long-term growth by failing to disclose that Shopee's gross merchandise value ("GMV") and sales were repeatedly trending downward.[95]

The court closely analyzed specific statements concerning both Garena and Shopee and concluded that the plaintiffs had identified several actionable misstatements or omissions.

For example, Sea represented in its Form 20-F that it was "not aware of any trends" that were reasonably likely to have a material adverse effect on Sea's net revenues, income or profitability, but, at the time Sea made that representation, the plaintiffs allege that Sea knew Shopee had already suffered a deceleration in GMV with Shopee's

81 *Id.* at 21.
82 *Id.*
83 *Id.* at 23.
84 *Id.* at 26.
85 *Id.* at 27.
86 *Id.* (quoting *Banerjee v. Zhangmen Educ., Inc.*, No. 21-cv-9634, 2023 WL 2711279 at *8 (S.D.N.Y. Mar. 30, 2023)).
87 *Id.* at 32.
88 *Tuya*, ECF No. 136.
89 *Lab. Dist. Council Constr. Indus. Pension Fund v. Sea Ltd.*, No. 23-cv-1455, ECF No. 55 at 2 (D. Ariz.).
90 *Id.*
91 *Id.*
92 *Id.*
93 *Id.*
94 *Id.* at 3.
95 *Id.* at 3-4.

smallest ever quarter-to-quarter GMV increase in the third quarter of 2022, and that Shopee's GMV declined further in the fourth quarter of 2022 and the first quarter of 2023.[96] Based on those allegations, the court held that Sea's representation misled investors.[97] The court also found that the plaintiffs had adequately alleged scienter with respect to both the Garena and Shopee representations because it would be "absurd" for Sea and the individual defendants, who were among the highest-ranked executives, to not be aware of both the effects of Garena's loss of the *League of Legends* license and the trending decline in Shopee's profitability.[98] Although the plaintiffs substantially defeated Sea's motion to dismiss, the plaintiffs filed a motion for partial reconsideration of the court's narrow dismissal of their claims on August 21, 2024.[99] That motion for reconsideration remains pending.

These decisions granting dismissal only in part demonstrate the need to make full and complete risk disclosures and accurate financial projections, as well as the importance of maintaining adequate internal controls.

One Decision Denied a Motion to Dismiss in its Entirety

In *Continental General Insurance Company, et al. v. Mallinckrodt, PLC*, the District of New Jersey denied in its entirety a motion to dismiss the plaintiffs' amended complaint.[100] In the original complaint, the plaintiffs named Mallinckrodt, PLC ("Mallinckrodt"), a life sciences company incorporated and headquartered in Ireland, as a defendant, alongside two of its executives and the chair of its board of directors.[101] The claims against Mallinckrodt, however, were stayed and administratively terminated in the fall of 2023, after Mallinckrodt filed for bankruptcy in the District of Delaware.[102] Thus, in December 2023, the plaintiffs filed an amended complaint only against the individual defendants.

The amended complaint alleges that, on October 12, 2020, Mallinckrodt filed for bankruptcy for the first time, "citing to potential liabilities from litigation, a dispute with the Centers for Medicaid and Medicare Services, and opioid litigation arising from the opioid epidemic as a manufacturer of generic opioid products."[103] A bankruptcy plan was created, through which Mallinckrodt would emerge from bankruptcy but pay the money it owed from the opioid settlement in a series of nine installments.[104] Mallinckrodt emerged from bankruptcy in June 2022, having paid some of the settlement installments.[105] Over the next several fiscal quarters, the plaintiffs allege that Mallinckrodt repeatedly reassured investors that the company was "able to meet its projections and obligations," despite negative financial trends and declining sales.[106] In early June 2023, "the Wall Street Journal published an article titled 'Mallinckrodt Explores Repeat Bankruptcy as $200 Million Opioid Payment Comes Due.'"[107] On that news, Mallinckrodt's share price fell dramatically, and Mallinckrodt ultimately filed a second petition for Chapter 11 bankruptcy.[108]

The plaintiffs cite a "litany" of alleged material misrepresentations, in which the defendants stated they were confident that "Mallinckrodt had the ability to create value for shareholders," that it would fulfill the first bankruptcy plan, that it had sufficient liquidity to remain solvent, and that its bankruptcy concerns were in the past.[109] The individual defendants moved to dismiss the amended complaint, asserting that the plaintiffs only alleged that they should have been "more pessimistic" about Mallinckrodt's business prospects, that the plaintiffs failed to plead a strong inference of scienter, and that the alleged misrepresentations were protected by the Private Securities Litigation Reform Act's ("PLSRA") safe harbor for forward-looking statements.[110] The court rejected each of these arguments.

96 *Id.* at 21.
97 *Id.* at 23.
98 *Id.* at 26, 29.
99 *Sea Ltd.*, ECF No. 58.
100 *Cont'l Gen. Ins. Co. v. Mallinckrodt, PLC*, No. 23-cv-3662, ECF No. 27 (D.N.J.).
101 *Id.* at 2 n.1, 2.
102 *Id.* at 2 n.1.
103 *Id.* at 3.
104 *Id.*
105 *Id.*
106 *Id.*
107 *Id.*
108 *Id.* at 3-4.
109 *Id.* at 4-5.
110 *Id.* at 11-12.

First, the court held that each of the alleged misrepresentations was material because "a reasonable investor would want to know the truth about a company's financial projections and stability, and whether a subsequent bankruptcy is on the horizon given that the Company recently emerged from bankruptcy."[111] Indeed, the court noted, "if there is a time to be honest to investors, it is right after filing for bankruptcy."[112]

Second, the court held that the plaintiffs had sufficiently alleged a strong inference of scienter because, according to the amended complaint, at essentially the same time that the defendants were expressing confidence as to Mallinckrodt's financial prospects, the company was insolvent comparing its value to the face amount of its debt and settlement obligations.[113]

Third, the court held that the alleged misrepresentations were not subject to the PLSRA's safe harbor because, contrary to the defendants' position, the statements cited in the amended complaint appeared "to be more than mere opinions, beliefs, or future projections of the company."[114] The court reasoned that, "[t]o a reasonable investor, the statements in the Amended Complaint create an illusion that the Company was thriving, when indeed, it was not."[115] The court also denied the defendants' motion to dismiss with respect to the plaintiffs' Section 20(a) claims because, given that the court found that plaintiffs had sufficiently pled a primary violation, they had sufficiently pled Section 20(a) liability, too.[116]

After denying Defendants' motion to dismiss, the court entered a scheduling order, setting a fact discovery deadline of October 31, 2025. The *Mallinckrodt* case clearly demonstrates the importance of clear and complete disclosures, especially in periods of potential insolvency.

111 *Id.* at 16.
112 *Id.*
113 *Id.* at 20.
114 *Id.* at 22.
115 *Id.*
116 *Id.* at 22-23.

Conclusion

Although the overall number of securities class actions increased slightly in 2024, the proportion of cases against non-U.S. issuers remained relatively unchanged. The filings make clear that a company does not need to be based in the U.S. to face potential securities class action liability in U.S. federal courts. Accordingly, it is imperative that non-U.S. issuers take steps to mitigate their risks not only in their home jurisdictions but also in the U.S.

Non-U.S. issuers should be particularly cognizant when making disclosures or statements to:

- Ensure accurate growth and financial projections;
- Speak truthfully and disclose both positive and negative results;
- Ensure that a disclosure regimen and processes are well-documented and consistently followed;
- Work with counsel to ensure that a disclosure plan is adopted that covers disclosures made in press releases, SEC filings and by executives; and
- Understand that companies are not immune to issues that may cut across all industries.

Non-U.S. issuers should work with the company's insurers and hire experienced counsel who specialize in and defend securities class action litigation on a full-time basis. Finally, to the extent that a non-U.S. issuer finds itself the subject of a securities class action lawsuit, the bases upon which courts have granted or denied motions to dismiss similar cases in the past can be instructive.

Key Contacts

Joni S. Jacobsen
Partner | New York
+1 212 698 3680
joni.jacobsen@dechert.com

Angela M. Liu
Partner | New York
+1 212 698 3678
angela.liu@dechert.com

Sonia A. Brunstad
Associate | Boston
+1 617 654 8628
sonia.brunstad@dechert.com

Julia M. Fitzgerald
Associate | Philadelphia
+1 215 994 2402
julia.fitzgerald@dechert.com

Christopher J. Merken
Associate | Philadelphia
+1 215 994 2380
christopher.merken@dechert.com

dechert.com

03.17.25-R