Labaton Sucharow

The LIAISON

Labaton Sucharow

Contents and EXECUTIVE SUMMARY

EXECUTIVE SUMMARY

Labaton Sucharow is pleased to present *The Liaison: 2023 Mid-Year Report*. The Firm has been a pioneer in protecting clients' interests in non-U.S. litigation. With more than 20 years of experience abroad and deep relationships with law firms around the world, Labaton Sucharow has a unique perspective on investment-related issues and recovery opportunities outside the United States.

Featured in this edition:

- Trends in litigation filings over the past five years;
- Changes to litigation funding in England;
- Opportunities for ESG impact through derivative actions;
- Analysis of the pace of litigation in German securities actions;
- Summary of recently announced actions; and
- Pending non-U.S. securities actions.

We would be happy to provide more comprehensive assessments and recommendations with regard to any of the topics discussed or highlighted in *The Liaison*.

With Best Regards,

Labaton Sucharow LLP

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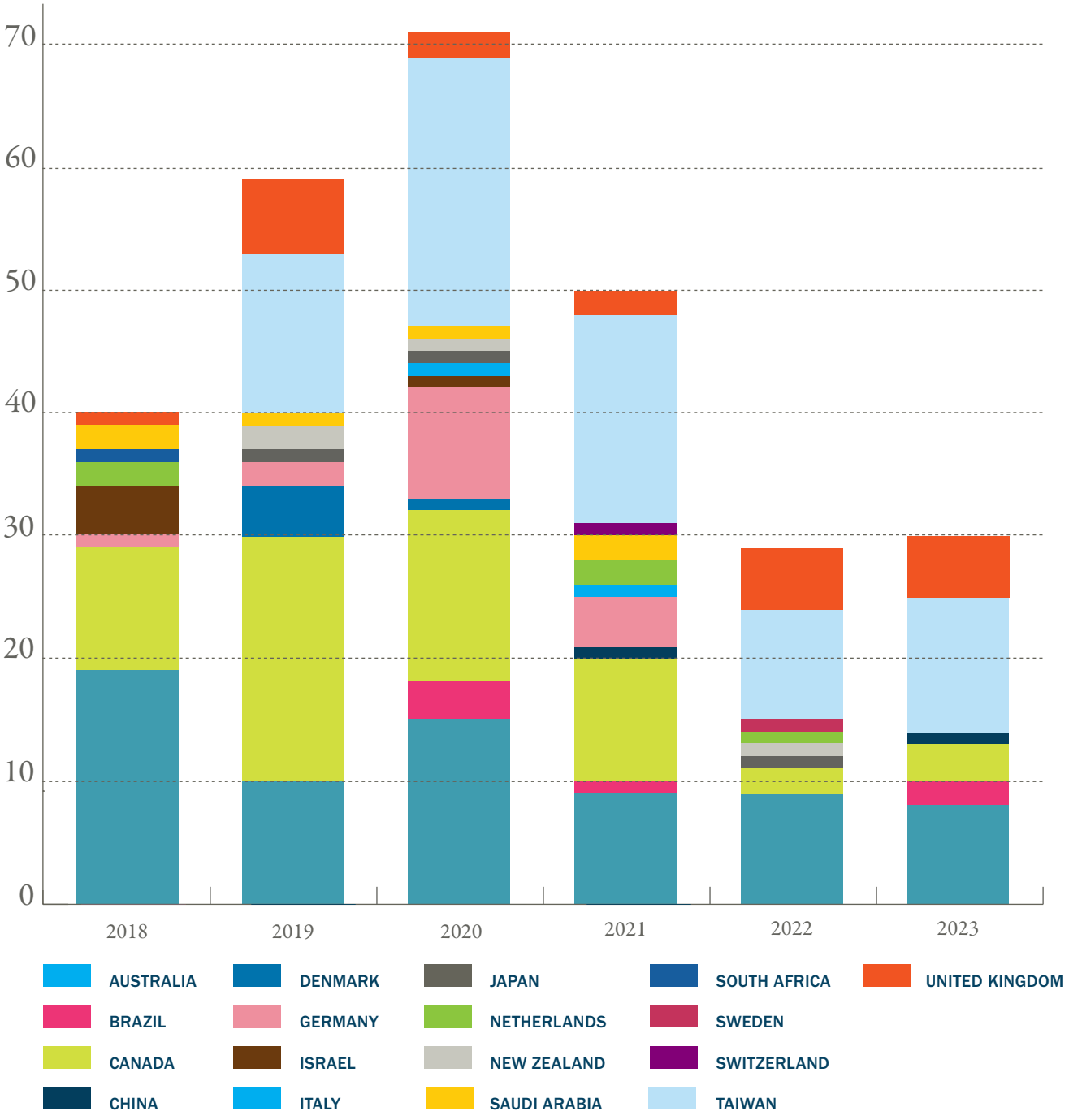

*Accurate as of August 10, 2023.

DID THE UK SUPREME COURT JUST THROW A MONKEY WRENCH INTO INVESTOR GROUP ACTIONS IN ENGLAND?

There have been numerous investor group actions filed in the United Kingdom in recent years – from *RBS* to *Tesco* to *Glencore* and *Petrofac*, among many others. All of these actions have been organized and funded either by a third-party litigation funder or by English counsel. Investors in these actions will have signed either a litigation funding agreement ("LFA") or a damages-based agreement ("DBA") in order to join. In July 2023, the UK's Supreme Court issued a decision (in *PACCAR*) that has thrown a monkey wrench into how these agreements are used. While the English legal and funding communities continue to absorb the potential impact of this decision, it seems the likely beneficiaries could be investors in UK actions, while the third parties that fund them will feel the burden of it.

LFA VERSUS DBA: WHAT'S THE DIFFERENCE?

Third-party funders organize most UK-based investor actions, register investors who wish to join, hire the litigation counsel, and finance all related costs, including paying counsel's hourly rates. In exchange for their efforts, funders receive a percentage of any recovery investors get back. Current cases being financed by litigation funders include *Barclays, G4S, Serco*, and *Standard Chartered*. Investors joining a UK action financed by a third-party funder generally execute an LFA, which sets out the responsibilities of the funder to advance the costs of litigation and its obligation to protect the investor against any adverse costs risk, among other things. An LFA also typically contains a priorities provision stating that the funder will be paid first, off the top of any recovery for the investor group.

More recently, a number of UK-based actions have been funded directly by counsel, rather than external litigation funders (*e.g., Glencore* and *Petrofac*). These counsel-organized actions are a bit more like the U.S. model, where counsel itself organizes, finances, and litigates an action on behalf of the entire group without significant external funding. Investors joining these actions would generally execute a DBA that, like an LFA, obligates counsel to litigate an action on a contingent basis in exchange for a portion of any recovery.

DBAs are governed by s58AA of the Courts and Legal Services Act 1990 ("CLSA") and are heavily regulated by the Damages Based Agreement Regulations 2013 ("DBA Regulations"). LFAs are not. In practice, this means DBAs provide *additional* protections for investors not required in an LFA – primarily with respect to recoveries. For example, the DBA Regulations cap the funding entity's fees at a maximum of 50%, inclusive of all counsel fees (for both solicitors and barristers) as well as VAT. (However, court fees, expert fees, and after-the-event ("ATE") premiums can be excluded from the 50% cap.) Moreover, any costs recovered from a defendant must be credited against the DBA fee. Not only do these regulations benefit investors but DBAs also do not permit the inclusion of priorities provisions, which allow a funder to deduct its entire fee before anything is paid to claimants – a common provision in LFAs.

THE DECISION THAT ALARMED FUNDERS

On July 26, 2023, the UK Supreme Court issued a landmark decision in *PACCAR*, where a 4:1 majority held that LFAs should actually be considered DBAs under the applicable statute (the CLSA) – meaning that LFAs must meet the same regulatory conditions as DBAs. The majority drew this conclusion by finding that the practice of litigation funding fell within the definition of "claims management services." The dissenting justice, Lady Rose, who sided with the lower courts, concluded that LFAs are not DBAs because third-party funders play a more limited role in UK actions, by primarily providing capital.

The *PACCAR* decision held that LFAs must now meet the more investor-friendly regulatory requirements of DBAs. Yet, many do not, particularly as they are not drafted to mandate that a funder's recovery is capped at 50%. Moreover, an LFA's non-compliance with the DBA Regulations may not be readily apparent.

For example, an LFA might state that the funder's fee is a maximum of 25%, but this may be exclusive of big-ticket litigation costs, such as counsel fees. When these and other costs are added in, investors could be getting far less than 50%, particularly in a protracted litigation where there has been ample time to rack up significant expenses. Similarly, the DBA Regulations prohibit a funder from taking any percentage of costs recovered from a defendant and require a funder to credit any recovered costs against its fee. For example, if a court ordered a defendant to pay £100 million in damages and £15 million in costs, the DBA Regulations would only permit a funder to recover its percentage (say, 25%) from the £100 million and nothing from the £15 million in recovered costs. The DBA Regulations would also require that the £15 million in recovered costs be credited against the overall fee, reducing the funder's fee of £25 million to £10 million (25% of £100 million minus £15 million). Many LFAs currently permit these arrangements. But in a post-*PACCAR* world, where LFAs must comply with the DBA Regulations, such provisions are now likely void. Another common practice in LFAs is to base a funder's fee on a specific percentage or a multiple of its cash outlay, whichever is greater. In an action that settles for a relatively low amount, for example, it is possible that the funder's multiple of the cash outlay could turn out to be far more than 50% of what is recovered from the defendant. This would also violate the DBA Regulations.

Further, as previously noted, many LFAs have priorities provisions allowing a funder to deduct its entire fee before anything is paid to claimants. This practice is prohibited in DBAs. Finally, many LFAs permit counsel to receive a portion of the recovery as a success fee, rather than being paid directly by the funder as a case expense. This also violates the DBA Regulations.

FUTURE IMPACT

Now that LFAs must comply with the DBA Regulations, what happens to those LFAs that do not? The general consensus seems to be that the LFA would be unenforceable, meaning an investor's obligation to pay the funder on a contingent basis would be eliminated. Because these funders will obviously want to be paid pending any successful outcome, they will likely now scramble to amend their existing LFAs to bring them into compliance. For many of these, the necessary amendments will be fairly straightforward.

But funders may be incentivized to find some way of amending their LFAs so that they are not considered DBAs, and thus do not need to satisfy the DBA Regulations. For example, because funders will have sacrificed their capital for several years, they will generally want to be paid first out of any recovery. In a case with a small recovery, this could mean a funder is made whole while investors get little or nothing. To accomplish this, funders may attempt to resolve the *PACCAR* issue by simply amending their LFAs to state that their recoveries are based only on a multiple of their investment. The assumption here is that this arrangement would not be considered a DBA and thus would not be subject to its regulations. This assumption will likely be tested in various actions and may ultimately prove illusory.

[1] *R (on the application of PACCAR Inc and others) v Competition Appeal Tribunal and Others* [2023] UKSC 28.

Where a funder seeks to amend an LFA to bring it into compliance with the DBA regulations, claimants will be better served by working with the funder to accomplish this, rather than trying to use the *PACCAR* decision as an easy exit vehicle or to demand lower fees. First, bringing an existing LFA into compliance only benefits claimants, as the DBA Regulations require a more claimant-friendly fee distribution structure. Second, if a claimant simply refused to sign an amended LFA, a funder could refuse to continue funding the action, which may create an adverse costs risk. ATE insurance policies are secured to protect claimants against this risk. Yet, some ATE policies require that there be an enforceable underlying LFA in place. If an LFA is deemed unenforceable because it doesn't comply with the DBA Regulations, there is a risk that the ATE policy will become void. Third, the venue in most LFAs is set in England, meaning any dispute must be resolved under English law. Thus, investors domiciled outside the UK could be at a disadvantage in any legal fight regarding an LFA.

Most commentary about the *PACCAR* decision has been somewhat speculative, as its full implications are not yet known. What does seem clear is that funders will need to work with claimants to amend some of the existing LFAs to bring them into compliance with the DBA Regulations. Because of the labyrinth of legal issues that could arise from any disputes, claimants will likely be incentivized to work with funders to accomplish this. There may also be new legislation in the UK to clarify the issue, particularly as litigation funding is considered to be in the public interest in order to provide access to justice. Indeed, on August 31, the UK's Department for Business and Trade released a statement saying it was "looking at all available options to bring clarity to all interested parties." Watch this space.

ARE U.S. DERIVATIVE ACTIONS AN ESG OPTION FOR INSTITUTIONAL INVESTORS?

Over the years, U.S. and overseas institutional investors have been drawn to investor actions in order to recover monies they lost due to corporate fraud. But shareholders can also use litigation to pursue non-monetary remedies – *e.g.,* environmental, social, and governance ("ESG") reforms. One of the most common tools for this has been through U.S. shareholder derivative actions, which are initiated by shareholders to assert claims on behalf of a company against management. Any remedial measures achieved through the litigation benefit the company directly and its shareholders derivatively. Over the years, these actions have produced notable reforms – challenging excessive executive compensation, improper interested-party transactions, misused corporate assets (including the use of corporate jets), and breaches of fiduciary duties related to violations of the Foreign Corrupt Practices Act ("FCPA") and Drug Enforcement Administration ("DEA") policies. Thus far, however, derivative action remedies have been heavy on the "G" in the ESG acronym, with some focus on the "S" and almost none on the "E." Is that likely to change?

THE DELAWARE PUNCH

Most derivative actions are launched in Delaware, where the lion's share of U.S. companies is headquartered. Therefore, the legal infrastructure and the local judiciary are well-suited to handle these matters. Many Delaware actions start when a shareholder plaintiff, through its counsel, sends a books and records demand under Section 220 of the Delaware General Corporation Law. This is a letter request generally seeking a broad set of relevant documents. Normally, a company will agree to produce board or board committee level minutes and related materials. Internal communications, such as emails, can also be obtained in certain circumstances, although that is a higher bar to satisfy and companies normally resist producing such documents. If there is an impasse with the company, the requesting party can file a complaint in Delaware Chancery Court and litigate the production of the requested information. Once the books and records demand is delivered, a company has five business days to respond, although the process of actually getting the documents usually takes several months. Once produced, these documents may then be used to bring a derivative action. Importantly, not every Section 220 books and records demand results in sufficient evidence to launch a litigation.

WHAT CAN BE ACCOMPLISHED THROUGH DERIVATIVE ACTIONS?

Investors interested in ESG reforms have long used U.S. derivative actions to accomplish various objectives. For example, in the *Archer Daniels Midland Co. Derivative Litigation*, substantial social and governance reforms were achieved, including the strengthening of board independence, the creation of corporate governance and regulatory oversight committees, altering board membership to include gender and racial diversity, and funding board governance training to avoid future violations. In *Shore v. Ukropina* (*Pacific Enterprises, Inc.*), governance changes included the partial reorganization of the company's structure, including the implementation of new guidelines on future diversification programs and the reinstatement of the company's dividend. *In re Abbott Laboratories, Inc. Derivative Litigation* involved the implementation of protocols to ensure the board of directors was constantly aware of the company's compliance with FDA regulations. In *In re Versum Materials, Inc. Stockholder Litigation*, Labaton Sucharow was able to secure emergency injunctive relief on behalf of investors, causing the company to terminate a proposed merger and to abandon its adoption of a highly restrictive "poison pill" that was designed to block a superior offer. In 2022, Labaton Sucharow spearheaded a class action that challenged a $14 billion share exchange transaction at Dell Technologies, alleging that this transaction caused the controlling stockholders to breach their fiduciary duties and expropriate billions of dollars in value. A historic $1 billion cash settlement was secured, the largest shareholder settlement ever in any U.S. state court and the 17th largest shareholder settlement of all time.

Derivative proceedings have also become an important tool in implementing workplace reforms. For example, Labaton Sucharow initiated a Section 220 demand on behalf of 21st Century Fox, Inc. and its subsidiary Fox News Network LLC

(collectively, "Fox"). This arose out of the numerous and widely-reported sexual harassment scandals at Fox News. Internal records obtained through the Section 220 demand supported claims that Fox directors and officers breached their fiduciary duties in connection with numerous instances of sexual harassment on the part of senior Fox employees. Following nearly a year of discovery and complex settlement negotiations, a significant $90 million settlement was reached with Fox that included an ambitious and historic corporate governance program to address harassment, discrimination, and other workplace misconduct. Similarly, in *In re Pinterest Shareholder Derivative Litigation,* the company's senior management was alleged to have engaged in, or was aware of, discrimination and retaliation against those who spoke up and challenged Pinterest's established white, male leadership, which impacted the company's goodwill and reputation with its critical user base. As part of the settlement, $50 million was set aside to fund workplace reforms to protect employees from workplace discrimination and to promote diversity, equity, and inclusion. Specifically, the settlement released former employees from the non-disclosure agreements they had previously signed, enabling them to speak freely about the discrimination they suffered, and it authorized an audit committee to oversee the various reforms. The company was also required to conduct external biannual pay equity audits to review promotions and compensation that were irrespective of race and gender.

Derivative actions have successfully pursued both the social and governance prongs of ESG, but incorporating the environmental prong has been a different matter. Using the power of litigation to force a company to reduce its carbon emissions or clean up a polluted water source can pose a far more difficult and expensive proposition than changing a board's composition, halting a questionable merger, or promoting gender and race equality. Likewise, the notable social reforms thus far have focused more on employment discrimination than, say, on mandating that a company pay a living wage to all its employees. But there is nothing structurally that precludes other outcomes, and the decision of which ESG issues to pursue is often in the hands of the institutional shareholder who leads the action.

STEPPING UP

Institutional investors play a significant role in derivative actions, as long-term investors have an incentive to ensure a company is well-run and profitable. Thus, if legitimate allegations exist, a major shareholder may wish to step forward to protect the interests of the company and, by extension, its own investment – although any investor who still holds a company's shares, including those domiciled overseas, is permitted to participate as a plaintiff.

A significant motivator for some institutions in choosing to lead derivative actions has been to promote or implement some form of ESG reforms. Unlike acting as a lead plaintiff in a U.S. class action, a plaintiff in a derivative action is not a fiduciary for other investors, and the time demands are notably less. But an investor will want to approach leading a derivative case with certain objectives in mind. For example, how engaged does it

want to be in the process? An institutional shareholder wanting a very limited role may prefer to just give general guidance to counsel on what ESG reforms it wishes to pursue but otherwise remain passive during the course of the proceeding. Others may wish to be more proactive, which might mean reviewing pleadings and regularly communicating with counsel to actively participate in setting the desired ESG objectives or even participating in settlement negotiations.

Some institutional shareholders may want their role and the results they achieve to be publicly known. However, not every resolution of a derivative action is public. In some circumstances, a Section 220 books and records demand may result in sufficient evidence to launch a litigation but the target company may prefer to negotiate a resolution in private, before an action is brought. One such recent action involved structural reforms to a company's ability to grant golden parachutes.

Similar to when an institution acts as a lead plaintiff in a U.S. class action, institutions leading derivative actions send a signal to corporate boards that they intend to take ESG reforms seriously. This signal is particularly strong if an institution has led a derivative action on more than one occasion. Moreover, small or medium-sized institutions that wish to be periodically active in pursuing governance options are sometimes frustrated that their loss levels may not enable them to be selected to lead U.S. class actions. For these investors, the derivative route may be a more satisfying way to achieve their goals, as eligibility is based on current shareholdings rather than loss size. For non-U.S. institutions, this may be particularly true as an overseas investor will often not rack up the same level of losses in a U.S. company as its American counterparts. For these funds, a derivative action may provide an easier route to engagement.

THERE . . . BUT NOT FULLY

Some institutions that invest in U.S. stocks, whether they are based in the U.S. or overseas, tend to view activism in terms of the lead plaintiff role in a class action. Nevertheless, investors with ESG objectives can look to derivative actions to further some of these goals. Thus far, governance has been the main ESG focus, with some notable social reforms achieved as well. Importantly, environmental policies have not yet played a role, nor have social objectives involving workers' rights. Although there are no structural impediments for using derivative proceedings to accomplish a broader range of ESG goals, there are practical limitations that have prevented this. As the ESG agendas of more institutional investors evolve, this may change.

WHY DO SOME GERMAN INVESTOR ACTIONS TAKE SO LONG?

For more than twenty years, investors have been joining large-scale group actions in Germany. At least eleven have been launched in that period, against companies like Volkswagen, Bayer, Porsche, Deutsche Telekom, and Daimler. Germany has the benefit of a formal legal structure for how group investor claims are litigated (the so-called "model case proceedings") and a top-notch legal community to draw from. Even so, investor actions brought under the German Capital Markets Model Case Act (the "KapMuG") have been notoriously slow to resolve, with most of those filed still pending. Indeed, of the at least eleven launched since 2003, only three have settled, and several have been ongoing for six years or more. That leads investors to wonder why the group actions they join in the United Kingdom or the Netherlands often move much quicker and why the pace of the German actions they join lags.

A STREAMLINED WAY OF AVOIDING LITIGATION CHAOS

In most European jurisdictions, investor actions are handled on a strictly group action basis, where each claimant is a separate litigant, and its claims are prosecuted in parallel with many other investors. This is true in Germany as well, under the KapMuG, but with a twist. The KapMuG was enacted in 2005 as a way of creating a modified form of collective redress – not as a class action device *per se* but a legal mechanism where a German court can manage potentially thousands of claims more efficiently. The KapMuG was a response by the German government to the chaos that ensued in 2002, when more than 16,000 shareholders, represented by nearly 800 different counsel, sought to sue Deutsche Telekom individually before the same judge. It was designed to avoid clogging a court's docket and to streamline large "opt-in" investor actions. The claims brought pursuant to the KapMuG parallel those in a U.S. shareholder class action – *i.e.*, when an investor seeks damages after it has suffered losses as a result of a public company's false or misleading statements or omissions. It is the device being used to prosecute claims against Volkswagen, Daimler, and other companies. Unlike a U.S. class action, each investor must file its own claim, as it would in the UK, the Netherlands, Denmark, and elsewhere. Yet, unlike other European jurisdictions, once the claims are filed, the relevant German court will appoint a lead or "model" plaintiff from among the filing group, and the parallel cases are stayed while the model case proceeds. This enables the court to rule on questions of law and fact common to all claimants, and those decisions are then binding on all the stayed matters.

Importantly, investors that are not selected as the model plaintiff are not forced to completely sit on the sidelines, nor must they remain silent. Indeed, the investor groups that are not selected are still entitled to attend hearings and participate in the action alongside the model plaintiff. Once common issues have been decided, each plaintiff must still prove individual issues, such as loss causation and damages. If the model plaintiff and defendants enter into a settlement, all plaintiffs in the other actions will be bound unless they opt out. If 30 % or more of all plaintiffs opt out, the settlement will not be binding at all. It is possible to bring a shareholder proceeding outside the KapMuG, but it will also be stayed pending the outcome of the main proceeding.

IS IT WORKING?

The KapMuG was never intended to be a long-term solution and was originally slated to expire in 2010. However, it has been extended at least through 2023. Johannes Fechner, a German lawyer and a member of Germany's Social Democratic Party, opined to the German federal parliament on September 18, 2020, that the KapMuG "has proven to be too ineffective, too lengthy, too cumbersome and too complex." While it clearly has virtues, it has also acted to significantly delay the resolution of investor actions. The *Deutsche Postbank* action, for example, was initiated in 2017 and, six years later, remains ongoing. The Volkswagen action has been pending since 2016. Although now settled, the *Hypo Real Estate* action was launched in 2003 and took thirteen years to conclude. Indeed, the vast number of KapMuG investor actions brought in Germany remain ongoing.

In contrast, other types of litigation in Germany that operate outside the KapMuG regime, such as antitrust matters, proceed and resolve much faster. Even other investor actions that do not meet the requisite criteria to invoke the Capital Markets Model Case Act tend to move along at a faster pace. The *HSH Nordbank AG* case, for example, was resolved within a year of filing.

There are several reasons KapMuG cases move at a slower pace. First, there tend to be many more participants than in other types of German litigations. Even though the model or lead plaintiff is the designated party on the front side of the v., other claimants are still permitted to file briefs and participate in hearings and in other aspects of a case. Moreover, there can be multiple defendants (in *Volkswagen*, Porsche was added as a second defendant). Multiple parties, each with their own interests, can mean the judge overseeing a matter may have to review and incorporate various other submissions throughout an action. Second, in KapMuG cases, courts are often required to adjudicate issues not only applicable to the model plaintiff but to all other claimants who filed parallel actions. The nature of these issues, along with the application of any adjudication to a large number of claimants, has invariably made German judges more cautious and perhaps more plodding in issuing rulings, which has been a source of delay. Third, KapMuG cases have frequently involved national icons, such as Volkswagen, Porsche, Bayer, and Deutsche Telekom. Because these cases are often brought in the region where the companies are headquartered, the perceived impact on these communities cannot help but impact the speed with which a judge deliberates. The *Volkswagen* case, for example, was brought in Braunschweig, Germany, near where the company is located. A judge overseeing such an action would be understandably more deliberate, and perhaps cautious, in nearly every aspect of the case, knowing that a ruling against a local giant could have broad local impact. Fourth, because KapMuG cases tend to be larger, and with many more claimants, potential damages – and the amount a defendant would have to pay to settle – are often much higher. This incentivizes them to defend more aggressively and for longer than they may otherwise. Fifth, because of the size and nature of many KapMuG cases, there is a higher likelihood of an appeal from the court of first instance.

The English law system provides a useful contrast to the KapMuG. Two of the first large-scale investor group actions in the UK were against RBS and Tesco. In both cases, there was considerable retail and institutional investor participation, sufficient to create the same kind of *Deutsche Telekom* court docket chaos that prompted the enactment of the KapMuG in the first place. Unlike Germany, however, the English courts already had wide case management powers. This critical difference has enabled them to, for example, appoint a lead solicitor firm from multiple competing groups, to avoid a corral of counsel slowing the litigation, and to take other measures to help ensure the efficient progress of a case. English procedural law also permits either party to request a Group Litigation Order ("GLO"). This provides a register on which all the claims that fall under the GLO are recorded and enables all common issues to be decided pursuant to it and bind all investors whose

claims are part of it. Importantly, an English court's power to institute a GLO, or to appoint a lead solicitor, is discretionary. In the *Tesco* action, for example, the court determined it could effectively manage the case without a GLO. This type of flexibility is one of the things the KapMuG seems to lack.

WHERE IS IT GOING?

The KapMuG was created out of the chaos of the *Deutsche Telekom* action to help alleviate the burden on the German judiciary arising from an onslaught of retail investor lawsuits. English courts have not suffered the same chaos in cases like *RBS* or *Tesco* because of the broad powers given to judges there to manage their dockets. This suggests there are other ways of managing large-scale group actions, which begs the question whether the German government perhaps overreacted to the *Deutsche Telekom* action – and whether actions against Volkswagen and Bayer, for example, would have exhibited the same logistical issues for courts to address. Perhaps recognizing there could be unintended consequences, the German government inserted a sunset provision into the KapMuG, that has been extended several times, including to 2023. At the moment, there does not seem to be a strong movement to undertake an extensive review of its effectiveness, nor the political will to enact something more effective to replace it. The memory of the logistical mess created in the wake of all the *Deutsche Telekom* filings will likely keep the KapMuG moving along – if not so briskly – for the foreseeable future.

KINGSPAN GROUP PLC

TICKER: KGP or KGP.L (LON) and KRX or KSP.I (Euronext Dublin)

ISIN: IE0004927939

RELEVANT PERIOD: June 15, 2017 to February 5, 2021

PROPOSED ACTION TYPE: Opt-in Group Action

STATUS: Not Filed Yet

An action is being organized against Irish building materials company Kingspan Group plc ("Kingspan") in England and Wales over its alleged misleading statements regarding the company's fire safety permits for certain building insulation products, which were used in the refurbishment of Grenfell Tower, a high-rise council building located in London. Specifically, Kingspan is alleged to have made misrepresentations regarding its commitment to strong corporate governance and high ethical standards and dishonestly delaying publishing that material information to the market.

In June 2017, a high-rise fire broke out in the Grenfell Tower, resulting in 72 deaths and multiple injuries. Kingspan and its subsidiaries produced the Kooltherm Rainscreen Board ("K15") insulation that was used to fit the Grenfell Tower and claimed that its product met fire safety requirements for use on buildings over 18 meters high in England and Wales. A public inquiry (the "Grenfell Inquiry") initially concluded that flammable cladding placed on the tower block during refurbishment led to the rapid spread of the fire. In the following years, the Grenfell Inquiry heard evidence concerning ethical and governance breaches at Kingspan's subsidiary (Kingspan Insulation Limited) regarding the safety and marketing of K15. For example, on November 23, 2020, Kingspan Technical Project Manager Ivor Meredith disclosed that it was "common knowledge" that the K15 insulation product had been approved on the basis of a 2005 test fire test report for an older, different version of the product. Kingspan Global Technical Support Manager Andrew Pack gave evidence the following month stating that, in November 2016, Kingspan technical staff had acknowledged internally that the company was selling its K15 foam insulation product as less flammable than it really was. The final report from the Grenfell Inquiry is expected to be released in 2024. Following revelations of the inquiry into the fire, Kingspan's share price fell by over 30% from November 5, 2020, to February 8, 2021, and wiped over £4 billion in market capitalization, damaging investors.

Labaton Sucharow would be happy to discuss with you the specifics of the investigation into Kingspan Group plc and investors' options for recovery abroad.

DOWNER EDI LIMITED

TICKER: DOW

ISIN: AU000000DOW2 (ASX)

RELEVANT PERIOD: February 7, 2019 to March 3, 2023

PROPOSED ACTION TYPE: Class Action

STATUS: Filed

Five shareholder class actions are being organized in Australia against integrated services provided Downer EDI Limited ("Downer") over its alleged breach of continuous disclosure obligations as a result of the company's announcements in December 2022 and February 2023 that it would not achieve its FY23 profit guidance and that it had overstated its earnings in earlier financial years.

Despite previously reaffirming its initial guidance that it expected to achieve underlying NPATA growth of 10% to 20% in FY23, Downer revealed on December 8, 2022, that it now expected to achieve underlying NPATA of between $210 million and $230 million, equated to growth of between approximately -7% and 2% compared to FY22. Downer also disclosed that it had identified accounting irregularities involving historical misreporting of revenue and work in progress on a maintenance contract in its Australian Utilities business with the result that it had overstated its earnings in FY20, FY21, and FY22. This misreporting resulted in a significant historical overstatement of Downer's pre-tax earnings. Then, in February 2023, following an internal investigation, Downer once again downgraded its underlying NPATA guidance and provided additional information regarding the accounting irregularities. Following the announcements, Downer's share price fell significantly, damaging investors.

Labaton Sucharow would be happy to discuss with you the specifics of the investigation into Downer EDI Limited and investors' options for recovery abroad.

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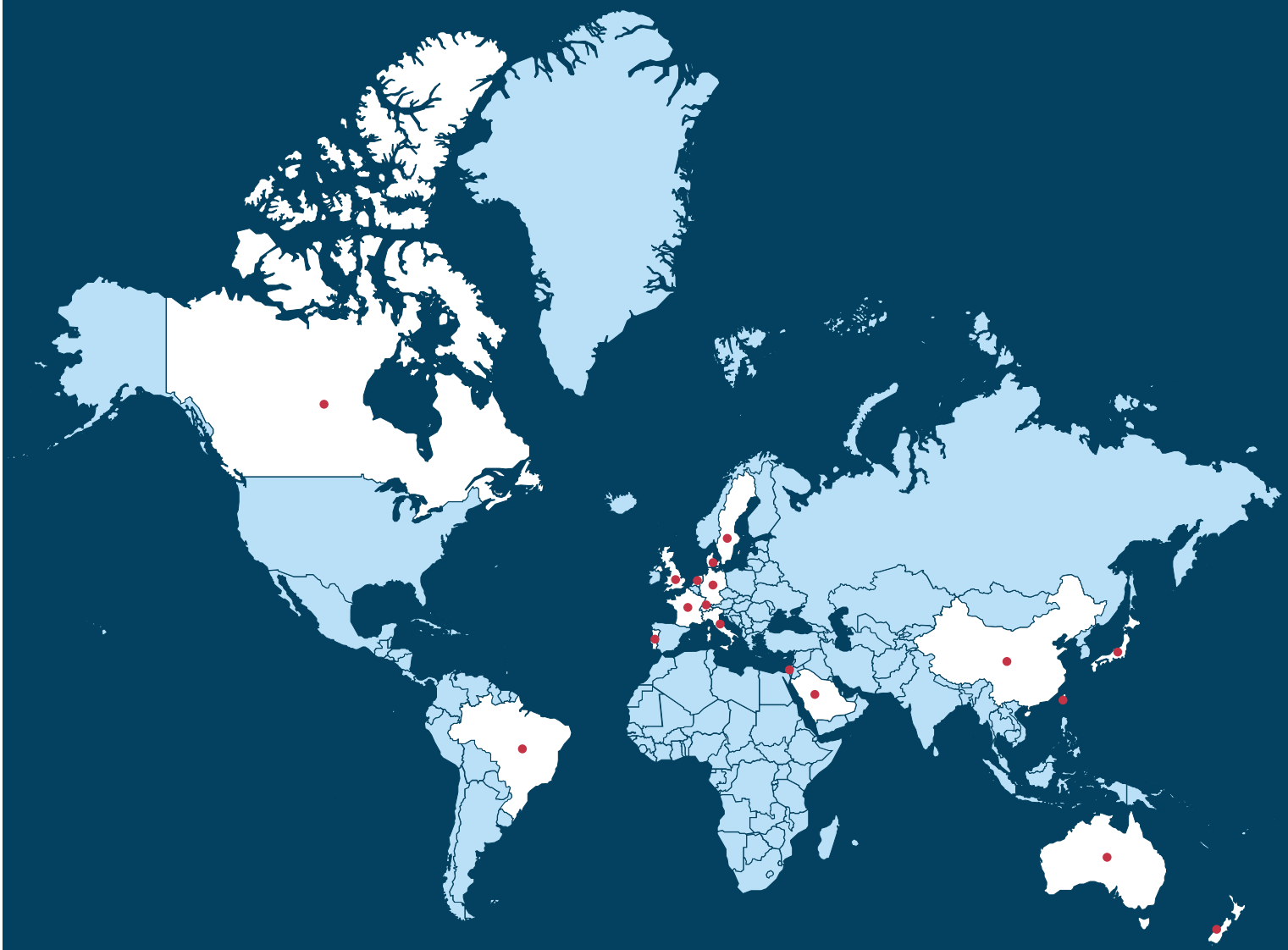
Global LITIGATION SNAPSHOT



SECURITIES ACTIONS ARE PENDING IN THE FOLLOWING NON-U.S. JURISDICTIONS:

- AUSTRALIA
- BRAZIL
- CANADA
- CHINA
- DENMARK
- FRANCE
- GERMANY
- ISRAEL
- ITALY
- JAPAN
- NETHERLANDS
- NEW ZEALAND
- PORTUGAL
- SAUDI ARABIA
- SWEDEN
- SWITZERLAND
- TAIWAN
- UNITED KINGDOM

CONTACT US

LABATON SUCHAROW'S NON-U.S. SECURITIES LITIGATION PRACTICE IS DEDICATED TO ANALYZING POTENTIAL CLAIMS IN INTERNATIONAL JURISDICTIONS AND OFFERING ADVICE ON THE RISKS AND BENEFITS OF PROCEEDING WITH LITIGATION IN NON-U.S. FORUMS.

OUR LAWYERS ARE AVAILABLE TO ADDRESS ANY QUESTIONS YOU MAY HAVE REGARDING NON-U.S. SECURITIES LITIGATION. PLEASE CONTACT THE LABATON SUCHAROW LAWYER WITH WHOM YOU USUALLY WORK OR A MEMBER OF OUR NON-U.S. LITIGATION TEAM.

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THANK YOU