ISS SCAS
SECURITIES CLASS ACTION SERVICES



Securities Litigation in EMEA Comes of Age

Author: Donald Grunewald

December 2025

© 2025 WWW.ISS-SCAS.COM



Introduction

Institutional Shareholder Services Securities Class Action Services ("ISS SCAS") takes a look at securities and other investor-related litigation in a number of jurisdictions around the world. This year, we have released reports on the Top 100 securities settlements in the U.S., the Top 50 plaintiff law firms in North America, and the Top 25 securities settlements in Australia. Our subject today is another important region for securities litigation, EMEA (Europe, the Middle East, and Africa).

As in Australia, securities litigation in EMEA has burgeoned since 2010, the year that the US Supreme Court decided in *Morrison v. National Australia Bank Ltd.*, 561 U.S. 247 (2010) to substantially constrain the litigation of securities fraud cases involving foreign listed shares. As in the US, prominent settlements in EMEA involved securities fraud actions but also what might be called "deal" cases in the U.S. (typically litigated in state courts by shareholders alleging that a merger or corporate reclassification undervalued their shares). *Morrison* applies to U.S. federal law and not state law, so it is not surprising that these deal cases continue to be important in Europe.

Nonetheless, while the terms of class action securities settlements in North America (including the amounts) are public, securities settlements in EMEA are often confidential. In fact, the ability or even the requirement to make demands directly on companies before proceeding to litigation can mean that information about the cases themselves is largely unknown. As such, unlike many other jurisdictions, it is impossible to provide a true list of the largest settlements, as only a portion of settlements are not confidential. Accordingly, ISS SCAS elected to provide information on ten notable settlements in this report, rather than ranking publicly available settlements. We also reached out to various law firms, litigation funders, and experts who are active in the region for short comments about topics they believe are of interest to investors. Some of these agreed to provide such comments, and it is important to note that ISS SCAS received no consideration for including these comments.

Although EMEA is an important region, it is very different from North America or Australia beyond simply the confidentiality of settlements. Indeed, there are significant differences among many jurisdictions within the region, which encompasses dozens of countries with billions of people and a significant amount of the world's land area. And these jurisdictions are based on very different systems of laws and many different languages. For these reasons, it is critical for investors to understand many of the key differences not only between securities litigation in North America and EMEA but also among the jurisdictions. Such a comprehensive investigation is beyond the scope of this report. However, it is important to note many key characteristics common in EMEA and how these may differ from North America.

For starters, a true class action system does not exist for securities in many of these countries. Plaintiffs may join together in large groups, but they litigate on their own behalf. Active litigation is the rule rather than the exception in the region, a sharp contrast with North America, where virtually all investors passively await settlements and need only file claims after the fact (the global Steinhoff settlement is a notable exception).

There are a number of other generalities applicable to EMEA. First, if a securities fraud case involves a company with a U.S. listing, there is most likely going to be a parallel case in the U.S. Second, the most important jurisdictions are arguably the Netherlands, the U.K., and Germany in that order, purely from a standpoint of the number of cases and recoveries as well as the size of recoveries. Third, because claimants are engaging in litigation, opposed to participating in a post-settlement administrative process, it can take many more years for an investor to receive any recovery after filing a claim than in North America, and in many cases, investors may have to reveal their identities to defendants and even the public (opposed to North America where filings are largely confidential). Fifth, contingency fees to attorneys are not permitted in many jurisdictions (unlike in North America and, increasingly, Australia), so litigation funding is far more prevalent, at least overtly, in EMEA. Finally, the documentation and effort required to participate in cases in many jurisdictions in the region is far more onerous than in North America or Australia.

There are a number of other matters where there can be stark differences within EMEA. For example, the measure of damages may differ significantly by country, as well as the elements of a claim. In some jurisdictions, the risk from "loser pays" rules—where the losing side must pay the winning side's legal fees—can be so great that litigation funders commonly secure large after-the-event ("ATE") insurance policies in countries like the U.K. It is critical, therefore, for investors to be fully apprised of the risks and requirements of the particular jurisdiction from legal counsel in these cases before participating.

Most importantly, securities litigation is well established in North America, and changes are largely incremental or more technical. The law in Australia is increasingly becoming more settled and standardized. But many jurisdictions in EMEA are still grappling with fundamental questions such as whether passive investors (e.g., index funds) may have claims, whether a class action mechanism is available, and whether litigation funding should continue to be permitted. Some smaller countries have historically had few, if any, securities actions, and so securities cases against large companies are essentially novel. As such, we hope that commentary supplied by third parties with this report may help identify some pertinent issues or trends in the region.

Significantly, certain stats are available. ISS SCAS is aware of at least 49 proposed or pending securities actions involving 32 different factual patterns on 30 companies with a registration deadline falling between January 1, 2024, and December 31, 2025. These securities cases are in the following countries: Italy, Saudi Arabia, the Netherlands, the United Kingdom, Switzerland, Greece, Liechtenstein, Germany, and Austria. ISS SCAS is aware of five antitrust actions with similar deadlines.

In any event, more cases and recoveries are likely as time progresses. With the increasingly global economy, this large and economically vital region merits investors' attention to avenues for redress in securities matters.

Notable Settlements

1 Global Steinhoff Settlement (Netherlands and South Africa) €1.4 billion - 2022

Not only is this settlement the all-time largest non-confidential securities settlement outside the United States—worth approximately $1.6 billion at contemporary exchange rates— but the litigation was absolutely mammoth in scope, involving suits by eleven different investor groups in three different jurisdictions: South Africa, the Netherlands, and Germany. A global settlement was reached after years of complex, cross-border negotiations and litigation that ultimately required restructuring proceedings in both the Netherlands and South Africa. The settlement resolved allegations of widespread accounting fraud related to approximately €6 billion worth of balance sheet assets (as well as some contractual claims) at the South African integrated furniture and household goods retailer, Steinhoff International Holdings, Ltd. / N.V. ("Steinhoff"), that led to a 95% decline in Steinhoff's stock price and a €12.6 billion loss in market capitalization after December 2017 disclosures and the immediate resignation of Steinhoff's long-time CEO. Americans may be most familiar with one of Steinhoff's former subsidiaries, Mattress Firm (a large retailer of mattresses that was later sold). The relevant period in the case was March 2, 2009, through December 2, 2017, and the primary distribution was made in May 2023. This was one of the few cross-border settlements and the first from South Africa.

2 The Royal Bank of Scotland Group plc (United Kingdom) £800 million - 2016

This 2016 settlement was equivalent to just over $1 billion at contemporary exchange rates with the Royal Bank of Scotland Group plc ("RBS"), a large U.K.-based bank and financial services company. The allegations involved an April 2008 share rights issuance ("Rights"), designed to raise £12 billion for RBS. The Rights were issued at 200p per Right but were worth 65.7p per Right by the close of October 13, 2008, and 11.6p per Right at the close on January 19, 2009. It was alleged that during the Great Financial Crisis, RBS ceased to be able to fund itself in October 2008 and was effectively nationalized in January 2009 when RBS was forced to disclose billions of dollars in losses, including those related to subprime mortgage exposure. Investors alleged that RBS made various misleading statements about its deteriorating financial position in the prospectus issued in connection with the issuance of the Rights.

3 Ageas SA/NV / Fortis SA/NV (Netherlands) €1.31 billion - 2018

After years of litigation, the Court of Appeal in Amsterdam approved this $1.54 billion settlement at contemporary exchange rates relating to the collapse of Ageas SA/NV (f/k/a Fortis S.A./N.V.) ("Fortis"), a Dutch/Belgian bank and insurer. The case involved allegations related to the Great Financial Crisis, including Fortis' exposure to the U.S. subprime market in the period before its purchase of ABN Amro Bank ("ABN"). In 2007, Fortis bought ABN's private bank, Dutch retail operations, and asset manager for €24 billion. However, in September 2008, Fortis announced it was to sell the bulk of its ABN assets in exchange for a government bailout of €11.2 billion. Just days later, BNP Paribas S.A. announced the purchase of most of Fortis' Belgian and Luxembourg assets, while the Netherlands nationalized Fortis' Dutch assets in a €16.8 billion deal. The settlement covered all persons who held Fortis shares at any time between the close of business on February 28, 2007, and the close of business on October 14, 2008. Initial disbursement of the settlement occurred in 2019.

4 Postbank/Deutsche Bank (Germany) Confidential - 2024

The total settlement amount with Deutsche Bank AG ("Deutsche Bank") in this case is confidential, but it is believed to be significant because: 1) a large hedge fund, Elliott Investment Management ("Elliott"), was reported to be receiving nearly €200 million (approximately $222 million)[1], and 2) Deutsche Bank reported that this settlement involved more than 80 plaintiffs representing almost 60% of total claims in the litigation; the largest individual plaintiff representing about one third of all claims was part of this settlement (likely Elliott, and at minimum Elliott's amount); and that the settlement would consume about 45% of the €1.3 billion total litigation provisions taken for these litigations.[2] Thus, it is possible that this settlement represented nearly €600 million (or perhaps even more), and if so, would represent the largest securities settlement in Germany and the fourth largest outside of North America of all time. The case against Deutsche Bank involved its September 12, 2008, agreement to purchase Postbank AG ("Postbank"), which the German Supreme Court held may have been evidence that Deutsche Bank exerted de facto control of Postbank as early as 2008 or 2009. For this reason, it was alleged that Postbank shareholders who participated in a 2010 mandatory takeover offer of €25 per share should have received the fair market value prevailing earlier: €57.25. Significantly, the settling plaintiffs accepted a price of €31 per share.

5 Vivendi Universal SA (France) Likely over €66 million - 2024

The settlement amount in this French securities case is confidential. The case revolved around France-headquartered Vivendi Universal S.A.'s ("Vivendi") acquisition spree in 2000 and 2001 of media and communications businesses in the U.S. and abroad. A U.S. class action, initiated in 2002, alleged that Vivendi's debt load, which increased to fund these acquisitions, presented a severe liquidity issue for the company, while Vivendi represented otherwise. In August 2002, Vivendi disclosed a loss of approximately $12 billion for the first half of 2002 and that it would have to sell approximately $10 billion in assets to reduce its debt. The U.S. class action was one of the rare instances of a securities case going to trial and reaching a jury verdict in 2010, and only resulted in a first distribution of settlement money in 2017—over 15 years after filing. Crucially, a 2011 court decision[3] (in the wake of Morrison) limited the U.S. case to Vivendi's American Depository Receipts, thereby excluding claims on French-listed shares. The French action began after this ruling, advancing the claims of these excluded shareholders. The settlement is notable not only for taking 22 years to resolve (since the filing of the US case) but also because it is the first major securities settlement in France, potentially a harbinger for future cases in that country. Although the settlement amount is confidential, Vivendi reported in its 2024 Annual Report that it agreed to pay €66,605,700 (over $71 million) related to the June 28, 2024, settlement and that financial consequences from this settlement amount to €96 million ($102.7 million).[4] If this is accurate, then this is another reason for investors to pay attention to global cases, as it would compare somewhat favorably to recoveries in US litigation, which included a class settlement of $26.4 million and an SEC settlement of over $51.2 million.

6 Unilever NV (Netherlands) €300 million - 2007

At contemporary exchange rates, this settlement with the formerly Anglo-Dutch consumer products company, Unilever NV ("Unilever"), was equivalent to over $406 million. This case is notable as one of the largest securities settlements globally that pre-dated Morrison, but this makes sense in that it was not premised on securities fraud but rather the fair value of a transaction to shareholders. The case involved Unilever's 1999 issuance of preferred stock with a notional value of €6.53 per share, which was the value of a certain cash dividend, as an alternative to this cash dividend. In February 2005, Unilever converted these preferred shares to common stock at the notional value of €4.55 (with an additional €0.05 per share paid out later that year). Certain former preferred stockholders took action against the company, contending that they should have been converted at the original notional price. In 2007, the parties finalized a settlement whereby Unilever paid the preferred stockholders on record as of March 24, 2004, €1.54 per share (including interest).

7 Tesco plc (United Kingdom); £193 million - 2021

This 2021 settlement was equivalent to over $262 million at contemporary exchange rates and involved the U.K. supermarket chain Tesco plc ("Tesco"). On September 22, 2014, Tesco announced that it had overstated certain profit expectations by an estimated £250 million, caused principally by the accelerated recognition of commercial income and delayed accrual of costs. It was alleged that as a result of this announcement, Tesco's share price fell by more than 11% on September 22, 2014, and continued to fall as details of the accounting issues emerged. A U.S. securities class action for holders of Tesco ADRs resulted in a $12 million settlement in 2016. A 2017 settlement on the accounting issues with the U.K. Financial Conduct Authority provided an additional £85 million (over $106 million) for Tesco securities holders.

8 Shell plc (Netherlands), ~$389 million - 2009

Although this settlement with the global oil major currently known as Shell plc ("Shell")—and which at the time traded as two different stocks, the Royal Dutch Petroleum Co. and the Shell Transport and Trading Co., PLC—was in the Netherlands, it was denominated in dollars. A U.S. securities class action making similar factual allegations settled for ~$89.5 million. Investors alleged that between 1999 and 2004, Shell mispresented the value of its proven oil and gas reserves by more than $100 billion. Specifically, investors alleged that Shell had classified and reported certain reserves, including those off the west coast of Australia, as proven reserves when these allegedly did not meet S.E.C. or industry requirements for doing so. The Dutch settlement figure above includes interest earned but does not include a $120 million fine Shell agreed to pay to the U.S. S.E.C. (eventually paid out to investors in the U.S. and 56 other countries via a Fair Fund) and legal fees and expenses, which Shell paid separately.[5] This case is notable as a successful pre-Morrison securities fraud settlement.

9 Hypo Real Estate Holding AG (Germany), €190 million - 2022

This settlement, worth $204 million at contemporary exchange rates, with Hypo Real Estate Holding AG ("Hypo")–resolving claims pending since 2009–stands as one of the largest German securities settlements on record. The case stemmed from allegations that the commercial real estate lender falsely assured investors that it was not significantly impacted by the 2007-2008 global financial crisis. However, it was alleged that when the company announced a €390 million write-down on toxic assets for the fourth quarter of 2007, its stock price declined by more than a third. Due to continuing financial woes, the company would later receive a massive government bailout in October 2008, before approving a complete nationalization a year later. The case proceeded under the German Capital Markets Model Case Act with a model case for more than 100 institutional investors before the German Federal Court of Justice. In February 2021, the court released its decision, resolving all major substantive issues in the model case. Following the court's decision, the parties reached a settlement in 2022, more than 13 years after the case's inception.

10 Makhteshim Agan Industries Ltd. (Israel) $45 million - 2011

This case involved the sale of Makhteshim-Agan Industries Ltd. ("MA"), a pesticide company, by parent Koor Industries ("Koor") to China National Chemical Corp. It was alleged that Koor (which owned 47% of MA) acted in bad faith as a controlling shareholder, short-changing minority shareholders in the deal. Specifically, shareholders alleged that Koor sold 7% of the total company shares but also received a $960 million non-recourse loan backed by Koor's shares in the remaining 40% of MA that functioned effectively like a call option on MA shares, something other shareholders did not get. Although this case resembled a more prototypical Delaware "squeeze-out" case, it demonstrates the importance of securities litigation in Israel and for shares listed in Israel. Indeed, there have been a number of securities class action settlements in the U.S. that also included shareholders of Israeli-listed shares[6], but there have also been other large securities settlements in the country itself. For example, there was recently an over $22 million settlement in a securities class action against Bezeq, the Israel Telecommunication Corp. Ltd., in 2024.

Footnotes

[1] See Henning, Eyk; Gopinath, Swetha; and Arons, Steven. “Elliott Gets €200 Million Payday from Deutsche Bank Settlement.” Bloomberg, Aug. 22, 2024, available at: https://www.bloomberg.com/news/articles/2024-08-22/elliott-gets-200-million-payday-from-deutsche-bank-settlement.
[2] See Deutsche Bank August 21, 2024 press release available at: https://www.db.com/news/detail/20240821-deutsche-bank-reaches-settlements-with-a-large-share-of-the-plaintiffs-in-postbank-takeover-litigation-matter-media-release?language_id=1 and Calatayud, Adrià. “Deutsche Bank Shares Climb on Profit Boost from Postbank Settlement,” The Wall Street Journal, Aug. 22, 2024, available at: https://www.wsj.com/finance/deutsche-bank-reaches-deals-with-majority-of-postbank-plaintiffs-ddbd3b27?gaa_at=eafs&gaa_n=ASWzDAhs4pqCrKwAaCoTtQF6twJjkpzwquq0QQxczZvWO5gB0SYoIOEo35xJ&gaa_ts=68b6fc22&gaa_sig=wRQIZ3qZ2P0XvNvQu0gXPy-jl8fOaU1TZ5v0XIqabcoUk02_Mjso532heVqlOqNd-U51StDlN5CCO26ilJHUmQ%3D%3D
[3] In re Vivendi Universal, S.A. Sec. Litig., 765 F.Supp.2D 512 (S.D.N.Y. 2011).
[4] See at 329 and 234, available at https://www.vivendi.com/en/publication/annual-report-universal-registration-document-2024/
[5] Hence this settlement could be much larger depending on how it is all tallied.
[6] See SCAS’ white paper, Does a Recent Court Decision Spell the Effective End of Morrison (Aug. 2025), for examples



Key Issues in European Litigation: According to Practitioners in the Field

Summary

As noted in the prior section, SCAS reached out to a number of practitioners in litigation in EMEA about what they believed were some key trends investors should be aware of in the region. Four firms responded, and we should note that SCAS did not receive any promotional consideration for these responses. To summarize, there were a few common themes that should be applicable generally.

Grant & Eisenhofer noted that in many jurisdictions, defendants are using formalities as a means of attempting to scuttle some investor claims and thereby lower damages. SCAS has seen similar efforts and notes that it is critical for investors to understand the burden of formalities in a case at the outset and to work with experts (such as SCAS) that assist in an often byzantine process.

Fladgate/Walgate believes that securities litigation in the U.K. has matured to the point at which investors need to take a serious look at securities cases in that country, highlighting more structured disclosure rules and trial processes, a developed market for insurance to pay for any potential adverse costs, and a detailed court judgment on the quantum of damages in a securities case. However, Fladgate noted two seemingly opposite decisions on whether passive investors are able to prove reliance in securities cases. SCAS discussed these two decisions in an insight piece from April.

https://insights.issgovernance.com/posts/two-recent-decisions-on-reliance-leave-the-ability-of-passive-investors-to-make-claims-in-u-k-securities-cases-unsettled/

Similarly, **Fideres** highlighted reliance as a major issue in Europe, including also flagging the two recent decisions from the U.K. on the topic. Fideres noted that the U.K. currently has the highest bar in establishing reliance, whereas the Netherlands is quite similar to the U.S., where courts will presume that the prices of securities trading in efficient markets incorporate all statements made by a company and therefore reliance. Other jurisdictions in Europe are perhaps somewhere in between the Netherlands and the U.K., but laws in some of these countries are still relatively undeveloped.

Summary

Finally, **Martingale Risk** also highlighted how fragmented and complex the securities litigation environment is, just as Fideres notes great differences in reliance standards across the continent. Moreover, Martingale Risk also noted that certain bondholders in Europe have been subject to a number of burdensome measures related to the rescue of the banking system, including potential subordination of securities fraud claims, which could make the resolution of such claims even more complex for these investors.

Overall, they seem to agree that securities litigation in the region is more challenging in a number of ways than in North America for investors, but that gradual evolution in the law has made this an important place for securities litigation that investors ignore at their peril.

Grant & Eisenhofer

When asked about current trends and developments in EMEA, it cannot go unnoticed that formalities continue to play a significant role and, in some jurisdictions, require considerable time and effort to complete.

Defendants are generally well aware that they are at fault and often attempt to reduce their exposure (essentially by trying to "take out" some or all of the claimants) or even derail the litigation by placing excessive emphasis on formal matters. Some jurisdictions are receptive to this approach, such as Germany and Japan. Particularly Germany has not fully aligned with modern times, and there are German courts that grant defendants far too much leeway, allowing them to persistently argue over issues such as: whether the CEO is properly authorized, demanding to see the minutes and resolutions of the Supervisory Board approving the litigation, and even questioning the authority of board members by requesting the minutes of the general meeting appointing them.

Another tactic that defendants frequently use is to continuously challenge the so-called standing to sue: questioning the group structure of the asset manager, how each entity is statutorily organized, and the interrelations within the group. Here too, the aim appears to be to raise the threshold as high as possible; in our view, this amounts to nothing less than harassment. The persistent requests for (often publicly available) documents and the systematic questioning of every detail are time-consuming and, above all, frustrating. It remains remarkable that some judges are letting this happen to such an extent.

Much more could be said on these issues, but in any case, it is essential that claimants and their lawyers have this basic documentation in order so that as little time and frustration as possible is spent on trivialities.

About Grant & Eisenhofer

Grant & Eisenhofer is a renowned plaintiff's litigation firm that has recovered over $30 billion on behalf of its clients over the last 16 years and has an extensive practice in U.S. and global securities litigation, including representing large institutions from around the world.

Fladgate | Walgate Litigation Management

The Evolution of UK Securities Litigation: Why Institutional Investors Should Act Now

Over the past five years, the U.K. has transformed into a leading forum for securities litigation. What began as tentative steps around RBS and Tesco has matured into a repeatable, increasingly sophisticated pathway for institutional investors and public pension funds to pursue meaningful recoveries against issuers who mislead the market. For global investors, the choice is no longer whether such claims are viable – it is whether they can afford not to participate.

Sections 90 and 90A of the Financial Services and Markets Act 2000 (FSMA) are now tried and tested. Claimant law firms, litigation funders, and expert economists have built specialist practices around these provisions. Existing disclosure rules have made access to company documents more structured and efficient, while courts have long had the power to order phased trials – with the potential, in appropriate circumstances, to resolve liability first with quantum and reliance following later – offering clarity and efficiency to large and complex actions.

Key recent developments investors should note

The central doctrinal battleground has been s.90A reliance. In late 2024, the High Court (in the "dark pools" litigation against Barclays) struck out listed-securities claims that depended on "passive" investor theories, holding that active reliance must be shown and clarifying the "dishonest delay" gateway for omissions claims. That decision materially raised the pleading and evidence bar for some claimant cohorts.

But 2025 has not been one-way traffic. A subsequent High Court decision (in the Standard Chartered securities litigation) declined to impose a categorical restriction on passive investors proceeding under s.90A/Schedule 10A, re-opening questions about how certain investors (i.e., index tracking funds or mandate-driven purchasers) may meet reliance – fact-sensitively and at later stages.

Fladgate | Walgate Litigation Management

That decision now progresses to the Court of Appeal, which should result in "reliance certainty", both as to how to plead as well as to define the breadth of claimant participants.

Another 2025 milestone has been the first detailed quantum judgment in a s.90A case (in the Autonomy litigation). Whatever one's view on merits, that judgment puts structure around valuation, inflation, and confounding factor analysis in a U.K. securities context – sharpening expert approaches and settlement modelling. Investors now benefit from clearer valuation frameworks, and it also helps inform book-building, portfolio loss calculations, and trial budgets which in turn arguably strengthens settlement leverage.

Moreover, third-party funding and ATE insurance have professionalised UK securities claims, enabling earlier launch and tighter project management. As repeat claims move through the system, issuers and insurers increasingly see the commercial logic of settlement – often before trial. Institutional participation strengthens bargaining power and increases the likelihood of recovery.

About Fladgate | Walgate

Fladgate is a London based full-service law firm with a track record of acting for claimants in substantial commercial group and commercial proceedings. Fladgate's clients often have fast-moving, complex challenges and require a distinctive mix of smart, commercial and enterprising solutions.

Founded in 2025, Walgate Litigation Management is a wholly owned Fladgate entity that specialises in the identification and management of securities and consumer group actions. It was constituted to identify claims, secure funding for actions to be conducted by Fladgate and support the Dispute Resolution Department in managing those matters once successfully funded.

Martingale Risk

Bondholder Collective Actions in EMEA

Bondholder loss recovery has gained increasing prominence in Europe in the aftermath of successive banking crises and resolution interventions.

Under the EU's Bank Recovery and Resolution Directive (BRRD, Directive 2014/59/EU), subordinated debt instruments have been subject to burden-sharing measures in last years, including (i) forced conversions into equity, (ii) outright write-downs or (iii) a mixture of these two measures. While these tools are intended to safeguard financial stability and limit taxpayer exposure, they have repeatedly highlighted how (subordinated) bondholders can bear a disproportionate share of the cost of stabilizing distressed institutions. In some cases, losses have arisen from state-backed precautionary recapitalizations, while in others they resulted from market-driven resolutions where the intervention of a stronger institution was made possible only through the imposition of severe write-downs.

The European litigation environment adds further complexity. Unlike in the U.S.A., in the Euro Area there is not a unique and well-developed class action legal framework, and investors must navigate a patchwork of legal systems, procedural rules, and languages. This fragmentation has fostered the growth of specialized advisory practices and coordinated investor initiatives designed to optimize recovery opportunities across borders.

For institutional investors, two challenges stand out: identifying relevant cases across multiple jurisdictions and meeting procedural requirements within strict deadlines. Successful recovery often depends on combining legal coordination with financial expertise, particularly in cross-border settings where the stakes and complexities are highest.

About Martingale Risk

Martingale Risk is a global financial and legal advisory firm specializing in the recovery of investment losses through individual and collective actions. Over the past two decades, the firm has assisted investors in more than 2,000 proceedings, achieving a favorable outcome in 80% of cases. Today, Martingale Risk represents claims exceeding EUR 5 billion on behalf of investment banks, asset managers, pension funds, and other leading market participants.

Fideres

Reliance and the Fraud-on-the-Market Doctrine in Europe

Among the many requirements investor plaintiffs typically must fulfil for a successful securities claim is reliance – plaintiffs need to show they were aware of the defendants' alleged misrepresentations and actively factored them into their investment decision.

In Europe, where securities claims are still developing, clear legal guidance on reliance requirements is mostly lacking. While most European jurisdictions adopt some form of a presumption of reliance for prospectus claims, reliance requirements for non-prospectus claims vary greatly by jurisdiction.

Dutch courts have adopted a presumption of reliance explicitly close in spirit to the U.S.'s fraud-on-the-market doctrine. For example, in Shell,[1] the court found that Shell's publication of inaccurate information and subsequent corrective disclosures caused investor losses "due to the way in which those events influenced the price formation of the Shell share."[2] This allows plaintiffs to establish reliance by demonstrating that the stock traded in an efficient market. This market-based reliance approach has been adopted in several other cases since, notably Fortis[3] and Steinhoff.[4]

English courts have thus far explicitly rejected the fraud-on-the-market approach, asking plaintiffs to prove reliance individually. Moreover, significant ambiguity remains regarding plaintiffs' required evidence for reliance. For example, it is not yet settled whether plaintiffs need to demonstrate reliance on specific misrepresentations, the documents containing such misrepresentations, or the "gist" of such documents communicated through "conduit" sources such as agents and brokers.[5]

Reliance requirements for passive index-tracking funds are similarly ambiguous. Barclays[6] barred index funds from the claim altogether, arguing such funds do not review public disclosures and hence have no possibility of proving reliance. However, in Standard Chartered,[7] the court subsequently tentatively disagreed, allowing index funds to be included in the claim pending a full trial.[8]

Fideres

Reliance and the Fraud-on-the-Market Doctrine in Europe

In **Germany**, investors claiming 'out-of-pocket' damages under the Securities Trading Act (§ 97-98 WpHG) are not required to demonstrate individual reliance. Rather, by law inside information is price relevant if a reasonable investor would consider such information, and a company becomes liable for damages if it fails to disclose such information in a timely manner or misrepresents such information. However, investors claiming rescissionary damages under tort law (§ 826 BGB) must provide individual proof of reliance.

In **Italy**, courts presume reliance unless the alleged misrepresentation is 'entirely marginal.'[9] For claims involving rescissionary damages, defendants can rebut this presumption by demonstrating that plaintiffs would have made the investment even if they had known the true state of affairs, e.g. if plaintiffs continued purchasing shares after the corrective disclosure(s).[10]

In **Spain**, there is currently no settled case law on securities claims involving secondary market disclosures, but Spanish courts have explicitly referenced the fraud-on-the-market theory when establishing the presumption of reliance in prospectus claims.

In **France**, courts have assessed reliance by analysing individual investors' trading behaviour. For example, in the Eurodirect Marketing case,[11] the court presumed an investor relied on the alleged misrepresentation because the investor made more frequent share purchases in the period after the misrepresentation than before.

Reliance may present a significant hurdle for the success of securities claims, given the need to meet relevant evidentiary standards, and individualised proof may preclude class-based claims. In the U.S., this is resolved through the fraud-on-the-market doctrine. European countries range from adopting a market-based presumption of reliance similar to that in the U.S. (e.g. the Netherlands) to requiring individualised proof of reliance from each investor, thereby potentially excluding some types of investors entirely (e.g. the U.K.).

Fideres

Footnotes

[1] Shell Petroleum NV/Dexia Bank Nederland NV, Court of Appeal of Amsterdam, ECLI:NL:GHAMS:2009:BI5744
[2] ECLI:NL:GHAMS:2009:BI5744 at 6.2.
[3] See e.g., Stichting Investor Claims Against Fortis and other v. Ageas S.A./N.V., ECLI:NL:GHAMS:2018:2422.
[4] See e.g., Various Claimants v. Steinhoff International Holdings N.V., C/13/21/4-S.
[5] Allianz Funds Multi-Strategy Trust (on behalf of Allianz Best Styles Global Equity Fund) and Others v Barclays PLC, [2024] EWHC 2710 (Ch) at 109.
[6] Id.
[7] Various Claimants v Standard Chartered PLC, [2025] EWHC 698 (Ch).
[8] The Court of Appeal has granted Standard Chartered permission to appeal on this issue. The hearing is expected to take place in January 2026.

[9] Tessival s.p.a. v. Intesa Sanpaolo s.p.a, The Supreme Court of Cassation of Italy, section 1, 11/06/2010, no. 14056.
[10] See e.g, Passerini et al. v. Banca Italease s.p.a, Milan Court of Appeal, 15/01/2014, no. 118.
[11] Pfeiffer v. SA Eurodirect Marketing, The Supreme Court of Cassation of France (Commercial Chamber), 22/11/2005, No. 03-20600.

About Fideres
Fideres is a global economic consulting firm that provides economic analysis and expert testimony. Fideres assists law firms with the investigation of new cases and provides unbiased, conflict-free expert testimony and expert support throughout the proceedings