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DOES A RECENT COURT DECISION SPELL THE EFFECTIVE END OF *MORRISON*?

SCAS' ANALYSIS OF A RECENT DECISION IN A SECURITIES CLASS ACTION AGAINST BARCLAYS

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Global securities litigation surged after a seminal U.S. Supreme Court decision in 2010 limited the adjudication of claims involving foreign-listed securities. While litigation involving U.S.-listed securities has nonetheless continued to grow, litigation of foreign-listed shares has shifted overseas. However, efforts have been made to bring claims on foreign listed securities again in the U.S. A recent decision of a federal court in a putative securities class action regarding supplemental jurisdiction of shareholder claims under U.K. law is both a prime and timely example of these efforts and may be an important harbinger of further such efforts in the future. This decision and related efforts are important matters for institutional investors of global securities, as the evolution of the law could have material impacts on their recoveries and strategies in the securities litigation space.

In 2010, the U.S. Supreme Court handed down its opinion in *Morrison v. National Australia Bank Ltd.,* 561 U.S. 247 (2010), deciding that Section 10(b) of the Securities Exchange Act ("Exchange Act") did not provide a cause of action to foreign plaintiffs suing foreign defendants for misconduct in connection with securities traded on foreign exchanges. The decision had the effect of shifting many such securities cases to jurisdictions outside the United States, leading to a significant development of securities litigation abroad. ISS SCAS currently tracks securities class or group actions in over 20 countries, and there have been many large securities settlements outside the U.S. since 2010, such as the $1.6 billion settlement involving Steinhoff International Holdings NV.

Nonetheless, many large companies headquartered overseas sponsor the trading of American Depository Receipts ("ADRs") or American Depository Shares "ADSs" in addition to listings in their home and potentially other countries. *Morrison* had no real impact on claims made on ADRs or ADSs, as these are listed in the U.S. Similarly, the decision did not bar shareholders from outside the U.S. from participating in settlements involving U.S.-listed securities. Indeed, institutional investors from around the globe routinely participate in these settlements, and such participation is purely an administrative process that entails the filing of certain transaction records after the announcement of a settlement. Furthermore, many global investors have even taken active roles in U.S. cases by seeking and obtaining an appointment as lead plaintiff, leaving the case of the entire class in their hands. These investors have largely served admirably and helped to obtain sizeable recoveries for investors. Nonetheless, securities litigation outside of the U.S., as noted, has continued to gain in importance since *Morrison*, as aggrieved shareholders seek to have their claims heard in at least one forum.

In parallel, however, plaintiffs and law firms in the United States have made efforts to effectively reshore some of these claims and actions. The key tactic is to bring jurisdictionally valid claims on U.S.-listed securities and then ask the U.S. court to grant supplemental jurisdiction over claims under foreign law over foreign-listed securities. U.S. courts—both state and federal—are used to applying the law of other jurisdictions.

For example, federal courts must apply state laws in diversity suits (where the parties are from different states), and state courts may often apply federal laws or the laws of other states. Similarly, U.S. courts can apply laws of other countries (sometimes contracts specify the law to apply). There is an entire subject area called “choice of law”, and it should come as no surprise that courts have begun to grapple with this in the context of securities cases.

For example, one noted U.S. plaintiff’s firm successfully represented nearly three dozen institutional investors in a direct action against BP plc, asserting claims under US law for ADSs but also UK law for UK-listed shares.[1] Indeed, plaintiffs in direct actions historically could bring a variety of state law claims in addition to federal claims. However, this same firm (along with another prominent plaintiff’s firm) was able to make claims in a securities class action that ultimately resulted in a $97 million settlement involving Perrigo plc shares listed on the Tel Aviv Stock Exchange (“TASE”), in addition to various U.S.-listed securities.[2] U.S. courts have allowed claims to proceed for TASE-listed shares in a variety of other cases, such as those against Teva Pharmaceuticals Industries Ltd.[3] and Ormat Technologies, Inc.[4] Although one critical point to bear in mind for cases involving TASE securities is that courts in Israel will suspend parallel actions until the U.S. class action is resolved.

A recent decision by a federal court in a putative securities class action involving U.K. listed shares is another example of these efforts and could presage similar decisions in the future. Plaintiffs Teamsters Local 237 Additional Security Benefit Fund and Teamsters Local 237 Supplemental Fund for Housing Authority Employees and Firemen’s Retirement System of St. Louis (together “Plaintiffs”) are pursuing a putative class action against Barclays PLC (“Barclays”), James Staley, and Nigel Higgins (collectively “Defendants”) in the U.S. District Court for the Central District of California (*“Barclays”*).[5] Plaintiffs made claims on behalf of a class of purchasers of Barclays ADRs traded on the New York Stock Exchange as well as of Barclays ordinary shares traded on the London Stock Exchange (“LSE Shares”).

Plaintiffs made their claims regarding the LSE Shares under U.K. law, specifically, Section 90A of the Financial Services and Markets Act ("S. 90A"), while making claims under the Exchange Act with respect to the ADRs. Notably, among other things, Barclays moved to dismiss the S. 90A claims on the basis that the court should decline to exercise supplemental jurisdiction over these claims and, in the alternative, under f*orum non conveniens* a doctrine of transferring cases to courts or jurisdictions that can more suitably or conveniently hear such cases.

On July 10, 2025, Judge Maame Ewusi-Mensah Frimpong issued an opinion (amending an order issued on June 24, 2025)[1] largely denying Defendants' motions to dismiss but granting Barclays' motion to dismiss with respect to the S. 90A claims, with leave for Plaintiffs to amend. Despite dismissing the S. 90A claims, the court nonetheless found that: 1) it had original jurisdiction over the S. 90A claims and therefore did not have the discretion to decline jurisdiction, and 2) Barclays had failed to meet its burden to justify using *forum non conveniens* to dismiss the S. 90A claims. Instead, the court dismissed the S. 90A claims because Plaintiffs' factual allegations were insufficient to plead a S. 90 A claim for dishonest delay.

Defendants have moved the court to reconsider the opinion, and alternatively allow an interlocutory appeal on the parts of the case the court allowed to proceed.[2] It is unclear what will happen in this case and how events might impact the S. 90A claims (e.g., will the court grant reconsideration or will Plaintiffs amend?). What matters is that the court decided it had the power to hear the S. 90A claims, and that had Plaintiffs made more adequate allegations, the S. 90A claims might have progressed further along in the case.

Significantly, there are many potential implications for this decision in *Barclays* and perhaps even more questions posed.

First, the U.S. courts have signaled that they are comfortable applying the securities laws of Israel and the U.K. Like the U.S., the U.K. is a common law jurisdiction, and Israel can be considered a common law system or somewhat similar. Which other jurisdictions' securities laws will U.S. courts be willing to entertain? Presumably, other common law jurisdictions are more likely candidates, but would the U.S. courts apply, say, German securities law?

[1] See BP - Notable Case — Pomerantz LLP.
[2]See Roofer's Pension Fund v. Joseph C. Papa, et al., No. 1:16-cv-02805-RMB-LDW (D.N.J.), ECF No. 438-1, Ex. A at 30656 and ECF No. 449.
[3] Halman Aldubi Provident and Pension Funds Ltd. v Teva Pharmaceuticals Industries Ltd., et al., No. 20-cv-4660-KSM (E.D. Pa.) ECF No. 116 (Nov. 3, 2023).
[4] Mac Costas v. Ormat Technologies, Inc., et al., No. 3:18-cv-00271-RCJ-WGC (D. Nev.), ECF No. 104 (Jan. 21, 2021).
[5] Captioned, Stephen Merritt v. Barclays PLC, et al., No. 2:23-cv-09217-MEMF-KS (C.D. Cal.).

Second, U.S. courts have applied foreign securities law where there have also been valid claims involving U.S.-listed shares, but could plaintiffs successfully undertake cases solely under foreign law only on foreign securities in the U.S.? Somewhat relatedly, the New York Court of Appeals (state court) decided that two shareholder derivative cases against non-US companies (one of which, notably, was Barclays) under foreign laws could not proceed in New York, potentially reversing a recent trend of such cases being filed in New York state.[1] Thus, this process is not moving inexorably in one direction.

If the U.S. courts applied the laws of more countries and/or allowed claims solely on foreign securities, this might well have the effect of many more securities suits reshoring to the U.S. because the U.S. presents several procedural advantages to plaintiffs compared to many other countries such as: 1) the ability for investors to passively participate in class actions and not undertake litigation, 2) contingency fees for attorneys, allowing these attorneys to self-fund cases, 3) no risk of adverse costs upon losing and therefore no need to secure after-the-event insurance, 4) confidentiality to claimants, and 5) a much shorter case timeline, especially from the claims deadline. It would also potentially benefit defendants in resolving claims in one jurisdiction, as opposed to multiple, lowering legal defense costs and resolving matters more expeditiously than in some jurisdictions.

Third, class actions under U.K. securities law (and potentially other countries' law) might present challenges at class certification if passive investors are found not to have valid claims and/or plaintiffs must present significant evidence of reliance, because then defendants might be able to claim that individualized issues predominate.

Fourth, given that a U.S. case will not stay actions in the U.K. (as in Israel), investors who participate in actions in the U.K. need to be aware that if a settlement is obtained in the U.S. in a case involving U.K. listed shares, an investor might be ineligible to participate in such settlement and also achieve a settlement in the U.K. for those same shares in a case with related allegations. Indeed, an investor might at some point have to choose between excluding itself from a U.S. settlement or not participating in or withdrawing from a U.K. case (with potential withdrawal penalties). This, therefore, might add to the calculus of deciding whether to enter into a UK case, as recoveries could, for many reasons, be higher in one jurisdiction than the other.

[6]Id., ECF No. 93.
[7] Id., ECF No. 92.
[8] Ezrasons, Inc. v. Sir Nigel Rudd, et al., 2025 N.Y. Slip. Op. 03008 (N.Y. Ct. App. May 20, 2025); and Rebecca R. Haussman v. Werner Baumann, et al., 2025 N.Y. Slip op. 03009 (N.Y. Ct. App. May 20, 2025).

SCAS reached out to John Evans, Head of Dispute Resolution at Fladgate LLP, based in London, who has considered the *Barclays* decision. He commented:

"Whilst I can see the immediate reaction to the court seizing jurisdiction in relation to the s90A FSMA aspect of the claim is that it opens the prospect for UK-based securities actions being brought in the US under its more developed and claimant-friendly model, I anticipate some headwinds in that regard. Not only will there need to be anchor proceedings in respect of US securities for the same target defendant, but also the Court will need to apply the standards which the English courts impose in relation to reliance and investor engagement, both of which are far removed from the traditional 'passive participation' which is so attractive to the investor community. It seems to us, therefore, that if a claim is being brought against a defendant in respect of a UK security, it will remain attractive to have that claim resolved by the court which is more familiar with the application of the relevant statutory regime which will have to be applied for a claim to be successful, rather than it being conducted as an adjunct to a claim in a foreign proceeding."

In any event, time will tell whether *Barclays* is another case in an emerging trend of litigating claims over foreign listed shares in the U.S., or whether this will turn out to be a little-remembered trivia topic. But it is nonetheless something for investors to pay attention to.

