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IN THE SUPREME COURT OF THE STATE OF DELAWARE

MW GESTION, MW OPTIMUM, ALTIMEO PARTICIPATIONS, and CYRILLE PICHOT, Individually and On Behalf of All Others Similarly Situated,	)	No. 245, 2026
Plaintiffs-Below Appellants,	)	Court Below: Court of Chancery of the State of Delaware, C.A. No. 2025-0417-JTL
v.	)	
SINOVAC BIOTECH LTD., WEIDONG YIN, NAN WANG, SIMON ANDERSON, YUK LAM LO, KENNETH LEE, MENG MEI, SHAN FU, VIVO CAPITAL, LLC, VIVO CAPITAL VIII, LLC, VIVO CAPITAL FUND VIII, L.P., VIVO CAPITAL SURPLUS FUND VIII, L.P., VIVO CAPITAL IX, LLC, and VIVO CAPITAL FUND IX, L.P.,	)	
Defendants-Below, Appellees	)	

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NATURE OF PROCEEDINGS

This appeal arises from a final judgment of the Court of Chancery (Laster, V.C.) dismissing this action on two independent grounds. Plaintiffs-Appellants ("Plaintiffs") are four European institutional investors who ask a Delaware court to manage the internal affairs of Sinovac Biotech Ltd. ("Sinovac" or the "Company"), an Antigua corporation operated from Beijing. A1943. Their claims arise under Antigua law, out of events in Antigua and China, against Sinovac and six foreign directors and officers—Weidong Yin, Simon Anderson, Yuk Lam Lo, Meng Mei, Nan Wang and Shan Fu (the "Directors and Officers"),[1] none of whom has any connections to this forum—and against the funds that bought Sinovac stock in a 2018 private placement (the "Vivo Defendants" and together with Sinovac and the Directors and Officers, "Defendants"). A0161; A1940. Those same events have been litigated in Antigua for nearly a decade, through three levels of court, and the transaction underlying Plaintiffs' claims is now before two foreign tribunals. A0421; A0515; A1949. The Court of Chancery first dismissed the Individual Defendants for want of jurisdiction, then dismissed the action as a whole because Delaware is not the place to litigate this dispute. Both rulings were correct. The judgment should be affirmed.

[1] Yin, Anderson, Lo, Mei, and Wang are referred to as the Individual Defendants.

Plaintiffs plead no basis for jurisdiction over the Individual Defendants: no Delaware office, no Delaware business, and no personal act in this State as to any of them. A1339–41; A1940. Their primary theory is that the Individual Defendants "directed" Sinovac to file an earlier lawsuit against 1Globe here. A1339–41. As the Court of Chancery held, that filing "was the Company's act. It does not subject the individuals to jurisdiction." OB, Ex. A. Plaintiffs have no answer to the settled rule that a director cannot be haled into a Delaware court for directing the corporation to act. The same is true of Sinovac's dealings with the Vivo entities and of the Rights Agreement's Delaware choice-of-law clause, each of them is Sinovac's act rather than the Individual Defendants'. A0213. Plaintiffs' alternative conspiracy theory appears nowhere in the Complaint, and fails on every element of the *Istituto Bancario* test regardless.

The Court of Chancery's forum non conveniens ruling was also correct. The court applied the *Cryo-Maid* framework and the overwhelming-hardship standard—the very standard that Plaintiffs insist governs—and found it satisfied. OB, Ex. B at 42:6–9; 48:15–17. Plaintiffs do not, and cannot, dispute the findings that support it. All four plaintiffs are European; Sinovac is Antiguan with its principal offices in Beijing; and the lead Vivo entity, Vivo Capital LLC, is a California entity. The underlying events "didn't just take place not in Delaware; they took place not in the

United States," but "mainly . . . in Antigua" and "[t]o some degree, . . . in China." *Id.* at 43:15–19.

Above all, the case is saturated with unsettled questions of Antigua law. The court identified "a long list of difficult issues under foreign law that this Court would have to parse"—the limitations period, whether Delaware's inherently-unknowable-injury doctrine has any Antiguan counterpart, demand futility, whether the claims are direct or derivative, and the fate of a rights plan invalidated as statutorily unauthorized under a statute that produces the opposite result from Delaware's. *Id.* at 44:21–46:20. These are "issues where we don't really seem to have stable answers under Delaware law," and the court concluded "it would be a poor idea for me to try to proceed with Antigua law." *Id.* at 47:5–9. That factor "alone overwhelmingly favors dismissal." *Id.* at 47:10–11. Meanwhile, related proceedings addressing "issues similar to this case" have been underway in the High Court of Antigua "for several years," where a single-judge can resolve them. *Id.* at 48:2–12. And dismissal costs Plaintiffs nothing: the judgment is without prejudice to filing these claims elsewhere. OB, Ex. E ¶ 3.

Plaintiffs' response is to recast a passing remark about a hybrid framework as the court's holding and to attack findings the court never made. OB at 19–21. Neither effort can unsettle a discretionary ruling that is well-grounded in the record.

These rulings dispose of the claims against the Defendants. Each is independently sufficient, so Plaintiffs must overturn both. They cannot overcome either. This Court should affirm.

SUMMARY OF ARGUMENT

(1) Denied. The Court of Chancery correctly dismissed this action on forum non conveniens grounds, and its discretionary judgment is reviewed only for whether the findings are supported by the record and the product of an orderly and logical reasoning process. This action turns on novel and unsettled questions of Antigua corporate law that a Delaware court would have to resolve for a foreign corporation in which Delaware has no real interest—a factor the court found overwhelmingly favors dismissal alone. The parties, witnesses, and evidence are abroad and beyond Delaware's compulsory process, and proceedings related to the validity of the PIPE Transaction are already underway in both Antigua and Hong Kong—the predicate to Plaintiffs' own claims. The *Cryo-Maid* factors thus weigh heavily and decisively in favor of dismissal. The court applied the overwhelming-hardship standard—the very standard Plaintiffs insist governs—and found it satisfied. Plaintiffs cannot obtain reversal by relabeling a passing remark about *Gramercy*'s hybrid framework as the court's ruling. Regardless, because the court found the more demanding overwhelming-hardship standard was met, the result is the same under *Gramercy*'s lesser one. The dismissal was well within the court's discretion and should be affirmed.

(2) Denied. The Court of Chancery correctly dismissed the Individual Defendants for lack of personal jurisdiction. OB, Ex. A, Ex. D. The acts Plaintiffs

identify are Sinovac's, and a corporation's acts do not subject its directors and officers to jurisdiction in Delaware. The Complaint contains no jurisdictional allegations against the Individual Defendants—five foreign residents with no Delaware offices, no Delaware business, and no personal acts connecting them to this forum. As a result, no statutory basis for jurisdiction exists and the minimum contacts due process requires are absent. Plaintiffs' theories—that the Individual Defendants "directed" Sinovac's prior litigation against 1Globe in Delaware and adopted a Rights Agreement containing a Delaware choice-of-law provision—fail as a matter of settled law. Plaintiffs' attempt to recast those corporate acts as personal ones based on alleged self-interest finds no support in the case law. Their conspiracy jurisdiction theory fares no better. Plaintiffs never pleaded it in the Complaint and thus forfeited it, and it cannot be manufactured through briefing. In any event, it fails on every element of the *Istituto Bancario* test, including because the only Delaware act Plaintiffs identify is Sinovac's prior litigation, which was not taken in furtherance of any alleged conspiracy, nor can it substitute for the Individual Defendants' own minimum contacts.

COUNTER-STATEMENT OF FACTS

A. The Defendants

Sinovac is a biopharmaceutical company incorporated in Antigua and based in China, with operations almost exclusively in China focused on research, development, manufacturing and commercialization of vaccines. A0150. In 2020, Sinovac developed CoronaVac, a widely used COVID-19 vaccine, resulting in substantial growth in sales. A0151. That success has drawn repeated suits by stockholders. *Id.* Sinovac's common stock traded on NASDAQ until February 2019, when trading was suspended and has not, to date, resumed. A1393.

The Individual Defendants are five foreign officers and directors of Sinovac with no connection to Delaware. Simon Anderson is a Canadian citizen who resides in Canada. A1342–43; A0150–51; A0170. Weidong Yin, Meng Mei, Yuk Lam Lo, and Nan Wang are Chinese nationals who reside in China. A1940; *see* OB, Ex. D. None of the Individual Defendants has maintained an office in Delaware, transacted business in Delaware in their personal capacities, or consented to jurisdiction here. A0161–62.

The Vivo Defendants are investment funds and affiliated entities that purchased Sinovac common stock in the 2018 private placement described below. A1344–47. Vivo Capital, LLC, the lead investor, is a California limited liability company. *Id.*

Shan Fu was appointed to Sinovac's Board by Vivo Capital, LLC, as part of the 2018 private placement. A0361. He is a Chinese national who resides in China.[2]

B. The Challenged Corporate Transactions

In early 2016, in response to competing takeover proposals, Sinovac's Board of Directors (the "Board") adopted a rights plan (the "Rights Agreement") to guard against abusive or coercive tactics to gain control of the Company. A0151–52. The Rights Agreement was between Sinovac and Pacific Stock Transfer Company, and was publicly disclosed upon its enactment. A0151. No Individual Defendant was a party. A0213. Should a triggering event occur, the Board had sole discretion to implement an exchange under Section 27, which would allow it to exchange common stock for all or part of the then-outstanding rights. A0151–52. The validity of the Rights Agreement was the subject of litigation in Antigua, with the final decision being made by the Judicial Committee of the Privy Council ("Privy Council"), the second and final appellate court in Antigua, in January 2025 ("the Privy Council Decision"). A1302; A1987. It found that the Rights Agreement had not been validly adopted. A2005.

On July 2, 2018, Sinovac completed a private placement of its common stock to raise capital needed to sustain the Company's operations and vaccine initiatives

[2] Personal jurisdiction over Fu was not decided below and is not implicated by the questions presented.

(the "PIPE Transaction"). A0153. In that transaction, Sinovac sold common stock to two investment firms—Vivo Capital and Advantech Capital—raising $86.73 million in gross proceeds. A0153–54. The transaction was negotiated and executed outside Delaware and publicly disclosed at the time. A0153. Sinovac engaged a third-party financial advisor, Houlihan Lokey, Inc., which opined that the PIPE Transaction was fair to the Company from a financial point of view. *Id.*

Sinovac attempted once to implement an exchange under the Rights Agreement on February 22, 2019 (the "Exchange"). A0152–53. The Exchange was stayed by court order, pending the outcome of the litigation to the Privy Council. Following the Privy Council Decision, the Exchange was never effectuated. A0153. It was the announcement of the Exchange that precipitated the suspension of trading by NASDAQ in 2019. A1393. Each of these transactions—the adoption of the Rights Agreement, the PIPE Transaction, and the attempted Exchange—was a corporate act of Sinovac, approved and carried out outside Delaware, and contemporaneously disclosed in SEC filings. A0177–78.

C. The Contest For Control Of Sinovac And The 2018 AGM

The transactions described above were adopted against the backdrop of a protracted contest for control of Sinovac. In 2016, two groups made competing proposals to acquire the Company; one associated with Yin, and one led by Sinobioway, an investor in Sinovac's main operating subsidiary (the "Sinobioway

Group"). A0151; A1332; A1349. Separately, a significant stockholder in the Company, 1Globe Capital, LLC ("1Globe") had been accumulating stock, and by the end of 2017 1Globe, its principal, Chiang Li, and related parties together held nearly one-third of Sinovac's common stock and had joined a plan to replace four of the five incumbent directors—without making the disclosures required by federal securities laws. A0365–66. The Securities and Exchange Commission later found those omissions unlawful and entered a cease and desist order against 1Globe and Li. A0364; A0374.

At Sinovac's annual general meeting in Beijing on February 6, 2018 (the "AGM"), stockholders aligned with the Sinobioway Group joined with 1Globe to propose an alternative slate of directors from the floor, without advance notice. A1359; A0426. The incumbent Board, after consulting Antigua counsel, concluded that the unnoticed ballot was invalid, and on March 5, 2018, Sinovac announced that the incumbent directors had been re-elected by a majority of the votes validly cast. A1360–61.

D. Sinovac's Prior Delaware Litigation Against 1Globe

While disputes were brewing among the Company's stockholders, Sinovac—not the Individual Defendants—filed an action in the Court of Chancery in March 2018 against 1Globe, among others (the "Delaware Action"). A0155, A1038. Sinovac sought a declaration that their actions leading up to the AGM made them

"Acquiring Persons," causing a "Trigger Event" under the Rights Agreement. A1943; A0715–16. The Delaware Action was Sinovac's corporate decision to enforce its Rights Agreement against a stockholder that had, in its view, triggered it. The only relief it sought ran to the Company: a construction of Sinovac's Rights Agreement. A0715–16.

The Individual Defendants were not parties to the Delaware Action, which involved different parties, different claims, and different transactions than those at issue here. A0167; A1942–43. The lawsuit was brought to resolve a corporate governance dispute between Sinovac and 1Globe over the validity of the Rights Agreement, not to advance the personal interests of any Individual Defendant. A1943.

Although 1Globe filed a third-party complaint naming Yin as a defendant in the Delaware Action, Yin was never served and never appeared in that proceeding. A1945. Plaintiffs point to the issuance of a Hague Summons for service upon Yin as evidence of his connection to this State, OB at 41, but a Hague Summons is the mechanism for serving a defendant located abroad. Its issuance confirms that Yin had no presence in Delaware, did not consent to appearing as a defendant, and could not be served through ordinary means. A1945. Being named as a third-party defendant—without ever being served or appearing—establishes no contact with Delaware, as personal jurisdiction turns on a defendant's own purposeful contacts

with the forum, not contacts thrust upon him by others. *See Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 475 (1985). Plaintiffs also note that Sinovac's summary judgment brief in the Delaware Action described Yin's role as chairman of the AGM, but that describes conduct in Beijing, not Delaware. A1712–13. The Delaware Action was stayed on April 8, 2019, and ultimately dismissed on April 7, 2025 as moot. A0758–61; A1059–62.

E. Sinovac Litigation In Antigua (2018)

The same stockholder disputes that spawned the Delaware Action gave rise to years of parallel litigation in Antigua. On March 13, 2018, one week after Sinovac announced the results of the AGM, 1Globe initiated a lawsuit against Sinovac in Antigua, seeking to invalidate the Rights Agreement and obtain a declaration that its directors were duly elected at the AGM. A0169. Following a trial in December 2018, the Antigua High Court dismissed 1Globe's claims, declared the incumbent directors properly re-elected, and found the Rights Agreement validly adopted under Antigua law. A0155. The court found that 1Globe had engaged in a "*secret plan to take control of the Company*" that deprived stockholders of the opportunity to express their will on Company matters. *Id.*

1Globe appealed, but in 2021 the intermediate appellate court upheld the trial court's ruling in Sinovac's favor. A0156. 1Globe then appealed to the Privy Council which issued its decision in January 2025. A0156–57. The Privy Council reversed

the lower courts, holding that, although 1Globe had "ambushed" the Company, the absence of formal notice did not render the vote invalid, and that the Rights Agreement was invalid because it had not been adopted by a special resolution of stockholders. *Id.*

F. Disputes Involving Sinovac in Antigua and Hong Kong (2025)

There are disputes presently before the Antigua courts and an arbitration tribunal seated in Hong Kong that are related to the instant case, including:

(a) proceedings in Antigua in which the validity of the PIPE Transaction is challenged, seeking a declaration that the Securities Purchase Agreement ("PIPE SPA") governing the PIPE Transaction is invalid and the distribution of shares as part of the PIPE Transaction should be set aside (A1987);

(b) an arbitration seated in Hong Kong, pursuant to the arbitration clause of the PIPE SPA, in which the PIPE shareholders seek declarations that the PIPE SPA and the shares issued thereunder remain valid (A1986-87); and

(c) proceedings in Antigua concerning disputes arising from a Special Shareholders' Meeting held on July 8, 2025 and competing claims as to the composition of the Sinovac's board thereafter (A0733, A2005).

G. Prior Delaware Stockholder Litigation And The MW Gestion Dismissal

While the final Antigua appeal to the Privy Council in the 2018 Antigua litigation was pending, Plaintiff MW Gestion filed a class action lawsuit in the Court

of Chancery in 2023, challenging many of the same transactions at issue here—including the timing of the Exchange under the Rights Agreement. A0156. The Court of Chancery never reached the merits of MW Gestion's claims after dismissing them as barred by laches. A0157. MW Gestion appealed but voluntarily dismissed its appeal after the Privy Council issued its decision. A1483.

H. The Current Lawsuit

Three months after the Privy Council Decision, in April 2025, Plaintiffs re-filed the instant suit despite the lack of connection to Delaware. A0027. The Complaint recycles many of the allegations that MW Gestion had previously brought before the Court of Chancery in 2023 and that the court dismissed as untimely. A1328. Plaintiffs now join new but similarly situated co-plaintiffs, invoking the Privy Council Decision as a purported reset button on claims that accrued years earlier. *See id.*

The Court of Chancery dismissed Defendants Anderson, Yin, Mei, and Lo for lack of personal jurisdiction by order dated April 21, 2026, and dismissed Defendant Wang by stipulation on May 19, 2026. OB, Ex. A, Ex. D. The court dismissed the remainder of the action on forum non conveniens grounds on May 18, 2026 and entered final judgment on June 9, 2026. OB, Ex. B, Ex. E. This appeal followed.

ARGUMENT

I. THE COURT OF CHANCERY CORRECTLY DISMISSED THIS ACTION ON FORUM NON CONVENIENS GROUNDS

A. Question Presented

Whether the Court of Chancery acted within its discretion in dismissing this action on forum non conveniens grounds, where the dispute concerns the internal affairs of an Antigua corporation, turns on unsettled questions of Antigua law, foreign tribunals in Antigua and Hong Kong are already being asked to decide the validity of the transaction underlying Plaintiffs' claims, and the parties, witnesses, and evidence sit abroad with no meaningful connection to Delaware. This issue was preserved below. *See, e.g.*, A0168–73.

B. Scope Of Review

This Court reviews a trial court's dismissal on forum non conveniens grounds for abuse of discretion. *See Mar-Land Indus. Contractors, Inc. v. Caribbean Petroleum Ref., L.P.*, 777 A.2d 774, 777 (Del. 2001); *Aranda v. Philip Morris USA Inc.*, 183 A.3d 1245, 1249 (Del. 2018). The question is "whether the findings and conclusions of the [Court of Chancery] are supported by the record and are the product of an orderly and logical reasoning process." *GXP Cap., LLC v. Argonaut Mfg. Servs., Inc.*, 253 A.3d 93, 97–98 (Del. 2021) (citing *Martinez v. E.I. DuPont de Nemours & Co., Inc.*, 86 A.3d 1102, 1104 (Del. 2014)). "If they are, whether or not reasonable people could differ on the conclusions to be drawn from the record, this

Court must affirm." *Id*. at 98. Only the antecedent question whether the court applied the correct legal standard is reviewed de novo. *Id.*

C. Merits Of Argument

This dispute concerns the internal affairs of an Antigua corporation. A1342; A1995. It turns at least in part on Antigua law: Plaintiffs' lead claim is brought under the Antigua Business Corporations Act. A1419–20. It parallels disputes that have been litigated in Antigua for more than seven years and continue there today. A0377–78; A0421. Even Plaintiffs have no connection to Delaware. A1341–42. Because Plaintiffs are foreign entities suing over the affairs of a foreign corporation, their choice of a Delaware forum is entitled to "less deference." *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 256 (1981).

Plaintiffs contend that the Court of Chancery applied the wrong standard and, in the alternative, that it invoked the right standard without actually applying it. OB at 18–21. Neither is correct. The court identified and correctly stated the governing standard, and it applied that standard to each *Cryo-Maid* factor. On that record, the court acted well within its discretion in holding that this action is more appropriately resolved in Antigua. Even if the court had applied *Gramercy*'s hybrid framework, which the parallel foreign proceedings would have supported, dismissal would still follow because that framework asks less of defendants than the standard the court actually applied.

1. The Court Of Chancery Applied The More-Stringent Overwhelming-Hardship Standard And Did Not Abuse its Discretion In Finding It Satisfied

The Court of Chancery applied the overwhelming-hardship standard, which Plaintiffs insist governs, and found it satisfied. The court stated that it would "analyze the motion under the *Cryo-Maid* test and evaluate whether there's overwhelming hardship from litigating in Delaware," OB, Ex. B at 42:6–9, considered each factor in turn, *id.* at 42:24–48:15, and concluded that "there's overwhelming hardship on the defendants from litigating in Delaware," *id.* at 48:15–17; *see Gen. Foods Corp. v. Cryo-Maid, Inc.*, 198 A.2d 681 (Del. 1964).

The court correctly recognized that, although "[o]verwhelming hardship sounds like it would be a virtually impossible standard to meet, [] the Delaware Supreme Court has explained that that's not the case"—the standard "simply means that there has to be more than some hardship," and "there has to be real reason not to litigate in Delaware." OB, Ex. B at 41:4–9. That is a correct statement of the law, and Plaintiffs do not contend otherwise. *See, e.g., Martinez v. E.I. DuPont de Nemours & Co.*, 86 A.3d 1102, 1104–05 (Del. 2014), as revised (Mar. 4, 2014) ("[T]he overwhelming hardship standard is not intended to be preclusive."); *Hawkins v. Daniel*, 2021 WL 3732539, at *10 (Del. Ch. Aug. 24, 2021) ("Although linguistically extreme, the overwhelming hardship standard is not impossible to meet." (citing *Focus Fin. Partners, LLC v. Holsopple*, 250 A.3d 939, 953 (Del. Ch.

2020))); *see* OB at 18–21. A court that identifies the governing standard, states it correctly, and holds the movant to it has not misapplied it.

Plaintiffs lean on a single passing observation—the court's remark that, "[p]ersonally, I think this is a suitable case for the hybrid framework." OB at 19 (citing Ex. B at 41:23–24); OB at 21. But a passing remark is not a ruling. *See, e.g., Holden v. Gaico Inc.*, 2001 WL 34083881, at *4 (Del. Super. Ct. Sept. 20, 2001) ("The Defendants mischaracterize Judge Graves' general statements from the bench as 'rulings' when they clearly are not."). In any event, the court continued: "Nevertheless, I am going to analyze the motion under the *Cryo-Maid* test and evaluate whether there's overwhelming hardship from litigating in Delaware." OB, Ex. B at 42:6–9. Far from applying the hybrid framework, the court identified it, remarked that it might have been suitable, and applied the more stringent standard instead.

(a) The Court of Chancery Did Not Abuse Its Discretion In Finding That The Need To Apply Antigua Law Weighs Decisively In Favor of Dismissal

The Court of Chancery held that this action presents "cutting edge and difficult issues" of Antigua law—questions difficult to resolve, yet of little interest to Delaware—and that this factor "alone overwhelmingly favors dismissal." OB, Ex. B at 44:5–47:11. That holding did not rest on the abstract prospect that foreign law might apply. The court identified "a long list of difficult issues" it would have

to parse, including the applicable statute of limitations, whether Plaintiffs' claims are direct or derivative, whether the Rights Agreement was statutorily unauthorized, and the treatment of the follow-on transactions (which are themselves the subject of ongoing proceedings in Antigua and Hong Kong)—each requiring a Delaware court to predict how Antigua law resolves questions that are difficult even under its own. *Id.*; A1986.

That approach follows settled law. As the Court of Chancery correctly observed, "[c]hoice of law under *Cryo–Maid* operates as a proxy for Delaware's interests, and the analysis must address the degree to which Delaware has a particular interest in the subject matter of the case. It therefore includes considerations such as the nature and novelty of questions of law to be answered, the desirability of providing a Delaware forum, and the importance of overseeing the conduct of particular classes of actors and policing against particular types of wrongdoing." *Hamilton Partners, L.P. v. Englard*, 11 A.3d 1180, 1213 (Del. Ch. 2010) (discussed in Tr. at 44:15–19); *see also Gramercy Emerging Mkts. Fund v. Allied Irish Banks, P.LC.*, 173 A.3d 1033, 1043 (Del. 2017) (case should not proceed in Delaware where claims "involve important and unsettled issues of Bulgarian securities law").

This factor's weight here also rests on a principle of comity that Plaintiffs ignore. *See, e.g.*, *Martinez*, 86 A.3d at 1106–12 (concerns of comity are not to be regarded lightly). As the Court of Chancery explained, Delaware "asks other states

to give this court deference when this court or the Delaware Supreme Court is interpreting matters of Delaware law," and "[t]hat polite expectation or polite request for deference needs to go both ways." OB, Ex. B at 44:10–15. The concern is sharpest where, as here, the case "presents cutting edge and difficult issues of foreign law," the very circumstances in which "a Delaware court should think twice about whether to proceed." OB, Ex. B at 44:15–18; *see Hamilton Partners*, 11 A.3d at 1212 ("When a state court with little legitimate interest in a matter purports to speak on a subject of importance to a sister state, the reliability of state law is undermined and a counterproductive incentive is created for all state courts to afford less than ideal respect to each other."); *Gramercy*, 173 A.3d at 1043 (decision by Delaware court "could have serious, unintended consequences on the development of Bulgarian law").

Plaintiffs' responses do not withstand scrutiny.

First, Plaintiffs attempt to recast these questions as the routine application of foreign law that Delaware courts undertake, not a basis for dismissal. OB at 21–23. They cite a series of cases for that proposition but ignore the analysis this Court made controlling in *Martinez v. E.I. DuPont de Nemours & Co*. *See* 86 A.3d 1102 (Del. 2014). There, recognizing "tension among [its] prior *forum non conveniens* decisions," the Delaware Supreme Court concluded, under the heading "Prior Law Changed," that some of those decisions "gave inadequate weight to the discretionary

power of the trial courts to recognize the *Cryo-Maid* factor" of governing law. *Id.* at 1111–12. It refocused that factor on comity and interest: where "the plaintiff in the case is a citizen of a foreign state whose law is at issue, . . . and the case turns on unsettled issues of foreign law, a trial court may permissibly exercise its discretion under *Cryo–Maid* to weigh appropriately the defendant's interest in obtaining an authoritative ruling from the relevant foreign courts." *Id.* at 1110–11.

Measured against that standard, Plaintiffs' cited authorities prove nothing. Each was either decided before *Martinez*, involved some Delaware interest, or turned on settled or routine areas of foreign law.[3] *See Taylor v. LSI Logic Corp.*, 689 A.2d 1196, 1200 (Del. 1997) (pre-*Martinez*, Delaware-incorporated defendant); *Ison v. E.I. DuPont de Nemours & Co.*, 729 A.2d 832, 835, 837 (Del. 1999) (pre-*Martinez*, defendant's headquarters and witnesses in Delaware); *Berger v. Intelident Sols., Inc.*, 906 A.2d 134, 138 (Del. 2006) (pre-*Martinez*, Delaware-incorporated defendant); *Syngenta Crop Prot., LLC v. Travelers Cas. & Sur. Co.*, 2025 WL 4101073, at *4 (Del. Super. Ct. Dec. 17, 2025) (Delaware plaintiff); *Cont'l Auto. Sys., Inc. v. Nokia Corp.*, 2023 WL 1370523, at *2 (Del. Ch. Jan. 31, 2023)

[3] Plaintiffs also try to neutralize *Hamilton Partners*, arguing that the governing-law factor "militate[d] powerfully in favor of retaining jurisdiction." OB at 23-24. But they omit why. *Hamilton Partners* was a double-derivative action over the internal affairs of a Delaware subsidiary, and Delaware's interest in providing a forum for litigation over its own internal affairs is what favored jurisdiction. *Hamilton Partners*, 11 A.3d at 1213. The same principle favors dismissal here: the internal affairs at issue are those of an Antigua corporation.

(Delaware plaintiff, foreign selection clause choosing Delaware); *Everphone, Inc. v. Go Tech. Mgmt., LLC*, 2023 WL 7996560, at *6 (Del. Super. Ct. Nov. 17, 2023) (one breach of contract claim under Georgia law with other claims under Delaware law); *Cresa Glob. Inc. v. Chirisa Cap. Mgmt. (US) LLC*, 2025 WL 53168, at *4 (Del. Super. Ct. Jan. 9, 2025) (Delaware plaintiff). None confronted what the Court of Chancery faced here: Europe-based plaintiffs, foreign defendants, complex questions of Antigua law, and no Delaware interest. *See Gramercy*, 173 A.3d at 1043.[4]

Second, Plaintiffs fault the Court of Chancery for its concern over "the number of expert affidavits" it would receive on Antigua law, insisting that expert submissions are not grounds for dismissal. OB at 23. The cases they cite fail them twice over. The defendants there articulated no hardship beyond the cost of translation, foreign lawyers, and foreign law experts. *Candlewood Timber Grp.,*

[4] Plaintiffs also resist the Court of Chancery's reliance on *Gramercy*, arguing it involved "far greater connections" to the foreign forum because the investment "'took place' in Bulgaria." OB at 24-25. But that misreads *Gramercy*, which turned not on where the investment occurred but on the governing law and the risk of a Delaware court misapplying it. *Gramercy*, 173 A.3d at 1043-44. So too here: the claims arise from the purchase of shares in an Antigua company regulated by Antigua law, and would require the Court of Chancery to resolve unsettled Antigua questions, risking the same "serious, unintended consequences on the development of [Antigua] law" *Gramercy* warned of. *See id.* ("While it is obvious that the Plaintiffs desire to litigate this matter in an American forum, the fact is that the Plaintiffs bought stock in a Bulgarian company regulated by Bulgarian law, and are trying to vindicate a right under that law.").

LLC v. Pan Am. Energy, LLC, 859 A.2d 989, 1002 (Del. 2004) ("[t]he expense and inconvenience of translating pertinent legal precedent, of retaining foreign lawyers, and of producing foreign law experts to testify at trial" not of material weight); *Warburg, Pincus Ventures, L.P. v. Schrapper*, 774 A.2d 264, 271 (Del. 2001) (same). And *Martinez* expressly distinguished both decisions as not involving any open or unsettled areas of foreign law. *Martinez*, 86 A.3d at 1112 n.41. Here, by contrast, the court identified concrete, unsettled questions of Antigua law it would have to resolve against a backdrop of no Delaware interest in providing a forum where those questions are necessary and central to Plaintiffs' claims.

Finally, Plaintiffs insist that Antigua law is easy to apply, and that there is "not a great gulf between Antigua and Delaware law." OB at 26. They cite *Heng Ren* for support, but neither feature of that case is present here. The plaintiff there sued in its home forum of Massachusetts, which had a real interest in adjudicating its own resident's claim. *Heng Ren Invs. LP v. Sinovac Biotech Ltd.*, 542 F. Supp. 3d 59 (D. Mass. 2021). And the Antigua question there was a straightforward statutory prerequisite to suit, unlike the interlocking questions of Antigua law the Court of Chancery already identified. *Heng Ren Invs. LP v. Sinovac Biotech Ltd.*, 588 F. Supp. 3d 153, 158 (D. Mass. 2022).

Plaintiffs also point to the Privy Council Decision invalidating the Rights Agreement as proof that the hard questions under Antigua law are already settled.

OB at 25. It proves the opposite. That question was contested through seven years of litigation and three levels of Antigua courts before it was resolved, and the decision itself spurred multiple new pending proceedings, including three actions in Antigua and an arbitration in Hong Kong. A1069–73; A1949. The Privy Council resolved one question—whether the Rights Agreement was statutorily authorized. It did not resolve the questions the Court of Chancery identified as the difficult ones: the applicable limitations period, whether Antigua law recognizes any analogue to Delaware's inherently-unknowable-injury doctrine, demand futility, whether Plaintiffs' claims are direct or derivative, and the treatment of the follow-on transactions. OB, Ex. B at 44:21–46:20. Those questions remain open.

(b) The Court Of Chancery Did Not Abuse Its Discretion in Weighing The Location Of The Parties, Evidence, and Witnesses in Favor of Dismissal

The Court of Chancery correctly found that the parties, witnesses, and evidence sit in Antigua, China, and Europe with no meaningful presence in Delaware. OB, Ex. B at 42:13–43:22.

Plaintiffs' next argument rebuts a point the court never made. They marshal cases holding that a movant cannot show overwhelming hardship "based ***solely*** on the location of evidence." OB at 27 (quoting *Lee v. Choice Hotels Int'l*, 2006 WL 1148755, at *4 (Del. Super. Ct. Mar. 21, 2006)). But the court said the opposite: "if that factor was the only one, I wouldn't necessarily find it dispositive." OB, Ex. B

at 43:23–24. It treated location as one among many factors supporting dismissal, rather than a standalone basis.

The argument is stronger still when the right parties are in view. Appellees here include officers and directors of Sinovac who reside in Canada and in China. A1940; *see* OB, Ex. D. These are not the "generalized references to the garden-variety" transnational inconvenience that Plaintiffs' authorities *Warburg* and *Lee* found insufficient. OB at 28 (citing *Warburg*, 774 A.2d at 268–72 and *Lee*, 2006 WL 1148755, at *5). They are named individuals who possess evidence relevant to the claims against them and are likely witnesses at any trial. Yet none is subject to the compulsory process of a Delaware court. *See* A0171–72.

That is the concrete, particularized showing Plaintiffs say the record lacks. *See, e.g., Lisa, S.A. v. Mayorga*, 2009 WL 1846308, at *9 (Del. Ch. June 22, 2009) ("This court has no power to compel witnesses from Guatemala to appear in Delaware, or even to compel witnesses in Guatemala to submit themselves to be deposed."), *aff'd*, 993 A.2d 1042 (Del. 2010); *Barrera v. Monsanto Co.*, 2016 WL 4938876, at *6 (Del. Super. Ct. Sept. 13, 2016) ("Defendant correctly notes that [the Delaware] Court does not have the power to compel the testimony at trial of third-party witnesses who . . . are located in other states."); *Ward v. Tishman Hotel & Realty, L.P.*, 2010 WL 5313549, at *3 (Del. Super. Ct. Nov. 30, 2010) (Delaware court has no compulsory subpoena power over potential witnesses in Pennsylvania

and Puerto Rico); *Rudisill v. Sheraton Copenhagen Corp.*, 817 F. Supp. 443, 447 (D. Del. 1993) (dismissing where "[v]irtually all of the evidence necessary for the prosecution of this case is located in Copenhagen, Denmark"); *Hall v. Maritek Corp.*, 170 A.3d 149, 162 (Del. Super. Ct. 2017) (favoring dismissal when crucial witnesses reside in the Bahamas and Barbados), *aff'd*, 182 A.3d 113 (Del. 2018); *Gramercy*, 173 A.3d at 1043 (noting "burden securing [the witnesses'] testimony" where "a number of the witnesses necessary to the Defendants are in Europe, including in Bulgaria").

Plaintiffs also argue that the parties are too dispersed for compulsory process to favor any forum. OB at 27–28. That is not true of the Directors and Officers. They are officers and directors of an Antigua corporation, answerable in Antigua in that capacity, and most reside in China. Delaware, by contrast, can reach none of them, and so it offers no "substantial improvement as to the number of witnesses who would be subject to compulsory process." *Mt. Hawley Ins. Co. v. Jenny Craig, Inc.*, 668 A.2d 763, 769 (Del. Super. Ct. 1995).[5]

[5] Plaintiffs' own authority confirms this. *Ison* found the factor of compulsory process favored Delaware because "many" witnesses were located in Delaware. 729 A.2d at 843. None of the Directors and Officers resides in Delaware, and Plaintiffs have not demonstrated that any witnesses reside here.

(c) The Court Of Chancery Did Not Abuse Its Discretion In Finding Pending Foreign Actions Support Dismissal

The Court of Chancery found related proceedings pending in Antigua and credited the efficiencies of resolving these interlocking disputes there. OB, Ex. B at 47:24–48:12. Plaintiffs dispute that conclusion, but their argument rests on a misunderstanding of what this factor requires.

This factor is "the pendency or nonpendency of a *similar* action or actions in another jurisdiction." *Chemtura Corp. v. Certain Underwriters at Lloyd's*, 2015 WL 5340475, at *3 (Del. Super. Ct. Aug. 26, 2015) (citing *Cryo–Maid, Inc*., 198 A.2d at 684) (emphasis added). "Similar" does not equate to "identical." The standard requires only a "common nucleus of operative facts"—not identical parties or claims. *Kurtin v. KRE, LLC*, 2005 WL 1200188, at *4 (Del. Ch. May 16, 2005). Delaware courts have discretion to defer based on the pendency of another action "even though not between the same parties and even though the issues are not identical in all respects, where that other action will . . . greatly simplify the issues presented." *Hall*, 170 A.3d at 155.

The parallel foreign proceedings readily meet that standard. The same corporate governance disputes at issue here have been litigated in Antigua for years, and the validity of the PIPE Transaction—the predicate to Plaintiffs' claims—is now squarely before two foreign fora. In the Hong Kong arbitration, the PIPE stockholders seek declarations that the agreement and the stock issued thereunder

remain valid. A1949; A1951–52. In the Antigua actions, the post-Privy Council Decision Board seeks the opposite: declarations that the agreement was invalidly entered, that the PIPE stock was invalidly issued, and orders setting aside their allotment. A0545; A0579. Both proceedings necessarily determine the same foundational question: whether the PIPE Transaction and the stock issued pursuant to it are valid. *See Hall*, 170 A.3d at 167. "[H]earing this case in Delaware would result in this Court repeating many of the same steps that are being conducted . . . in the other litigation." *Banco Nominees Ltd. v. Iroquois Brands, Ltd.*, 748 F. Supp. 1070, 1078 (D. Del. 1990).

Plaintiffs' complaint that the foreign actions involve "different plaintiffs," OB at 29–30, ignores that the PIPE Transaction's validity is a predicate for all of their damages theories. If any of the foreign actions upholds the transaction, the whole foundation of Plaintiffs' claims collapses; if either invalidates it, that determination will substantially frame this dispute. Allowing the two fora already seized of that question to resolve it first is more efficient than relitigating it in a third forum with no interest in the transaction or the underlying dispute it has triggered. *Karmel v. Great Lakes Chem. Corp*., 1981 WL 15143, at *2 (Del. Ch. Dec. 4, 1981).

It also avoids the piecemeal litigation and risk of inconsistent judgments that parallel proceedings invite. *See, e.g., Hamilton Partners*, 11 A.3d at 1217 ("If a judge in one forum has invested actual, substantive effort in a case, a competing

forum should consider carefully whether one of its judges should make a similar case-specific investment."); *Brookstone Partners Acq. XVI, LLC v. Tanus*, 2012 WL 5868902, at *7 (Del. Ch. Nov. 20, 2012) (avoiding "piecemeal litigation" and "duplicative efforts," which would risk "inconsistent judgments" from the courts); *Focus Fin. Partners*, 250 A.3d at 954 (allowing two courts to "proceed in parallel risks wasting judicial and litigant resources, and doing so could produce conflicting results, particularly because [the defendant] is not present" in Delaware).

Plaintiffs' remaining objections miss the mark. They argue Antigua is the less efficient forum because its litigation may take many years. OB at 30–31. But the years the Antigua courts have devoted to these disputes counsel deference, not displacement: those courts have acquired substantial familiarity with the disputes, the parties, and the governing law—familiarity a Delaware court would have to develop anew. The foreign proceedings have also "moved much further ahead than" this case, having conducted hearings, issued rulings, and considered appeals. *Karmel*, 1981 WL 15143, at *2; A1069–73.

Plaintiffs also fault the Antigua proceedings for not yet producing finality. OB at 31–32. But the inquiry exists to avoid duplicative litigation in two forums, *Ison*, 729 A.2d at 845 ("courts are more likely to dismiss a cause of action based on FNC if other jurisdictions are hearing a similar case, because it would be a waste of judicial resources to prosecute the same action multiple times"), not to guarantee

that the alternative forum will finish first. Plaintiffs' argument also conflates the two sets of Antigua proceedings. Those commenced in 2018 reached finality in the Privy Council Decision. Those commenced in 2025 have not, but they have been the subject of substantial hearings and appeals. A1987. That Plaintiffs disagree with the Antigua courts' interim rulings is not a reason to move the dispute to Delaware.

In any event, this factor cannot carry the appeal. The court expressly noted that "the lack of an existing comparable action is not dispositive," OB, Ex. B at 47:24–48:2—a point Plaintiffs concede, OB at 29 ("The factor [is] . . . not dispositive"). The court's judgment about where these disputes are most sensibly resolved was well within its discretion.

(d) The Court of Chancery Did Not Abuse Its Discretion In Finding Other Factors Support Dismissal

Plaintiffs group their remaining arguments under the other *Cryo-Maid* factors. OB at 32–37. None has merit.

Public Interest Factors. Two of Plaintiffs' arguments concern public interest considerations. OB at 33, 36. Delaware law permits a trial court to weigh them, and neither aids Plaintiffs.

Plaintiffs contend that the Court of Chancery could not consider the burden this litigation would impose on it, relying on *In re Asbestos* for the proposition that the inquiry measures hardship to the defendants, "not whether the Court will suffer hardship." OB at 33. But Delaware law is clear that, although "[p]ublic interest

factors are not required under the *Cryo-Maid* analysis," they "may be analyzed under the 'other practical considerations' factor," and that the "trial court upholds discretion to weigh public interest in its analysis." *Hall*, 170 A.3d at 167 n.107. The same court in *In re Asbestos* went on to weigh those very factors. *In re Asbestos Litig.*, 929 A.2d 373, 389 (Del. Super. Ct. 2006) ("the Court concludes that these are 'proper' cases for application of the 'public interest' factors").[6]

Here, the Court of Chancery found that this case "is going to be a far heavier lift here for everyone concerned than it would be in Antigua," OB, Ex. B at 49:7–9, and that "the court can and should consider burdens on the judicial system," *id.* at 49:4–6. That is a textbook public-interest consideration supporting dismissal. *See Gulf Oil Corp. v. Gilbert*, 330 U.S. 501, 508–09 (1947) (listing public interest factors including administrative difficulties caused by court congestion which arise when cases are not litigated at their origins and the unfairness of imposing jury duty on people of a community with no real relation to the litigation, among others).

Plaintiffs' NASDAQ argument fares no better. As they frame it, this dispute concerns "the improper issuance and sale of shares of a company traded on the NASDAQ stock exchange, an American securities market," and there is accordingly a "strong public interest in making U.S. courts available" to resolve it. OB at 36

[6] *In re Asbestos Litig.* is also distinguishable because many of the defendants were incorporated in Delaware, giving Delaware a strong interest in providing a forum. 929 A.2d at 379. The same reason is absent here.

(quoting *Heng Ren*, 542 F. Supp. 3d at 69). At best, the interest Plaintiffs identify is a national one, but this factor asks about Delaware's. That a court in Massachusetts thought a NASDAQ listing warranted keeping American courts open to a Massachusetts investor says nothing about why *this* State should adjudicate the internal affairs of an Antigua corporation, under Antigua law, at the insistence of European funds.

Hardship to Defendants. Plaintiffs contend that litigating in Delaware imposes no hardship on the Defendants. OB at 32–36. The Court of Chancery found otherwise, and the record supports it. Requiring Defendants to litigate novel questions of Antigua law, with the parties and witnesses located abroad and beyond compulsory process, while two foreign tribunals decide the predicate question of the PIPE transaction's validity, is precisely the "real reason not to litigate in Delaware" that the standard requires. OB, Ex. B at 41:8–9; 48:15–20.

Plaintiffs argue that Sinovac faces no hardship because it litigated its 2018 *1Globe* action here, and the Vivo Defendants are Delaware entities. OB at 34–36. But the lead Vivo entity, Vivo Capital LLC, is a California entity, not a Delaware entity, as Plaintiffs themselves plead. A1344. Regardless, the litigation history of Sinovac or the Vivo Defendants, even if relevant, says nothing of the officers and directors residing in China and Canada, with no connection to Delaware, who would

be required to defend an Antigua company's internal affairs, under Antigua law, in a forum an ocean away.

Hardship to Plaintiffs. Finally, Plaintiffs ask this Court to weigh the hardship Plaintiffs would face in Antigua. Yet Plaintiffs' own brief states: "the appropriate inquiry under *Cryo–Maid* is whether the defendants have established that the application of foreign law will ***cause the defendants to suffer overwhelming hardship***." OB at 33 (emphasis added). By Plaintiffs' own words, their hardship is irrelevant. Even if it mattered, Plaintiffs are European entities for whom Antigua is no more distant than Delaware, A1341–42, and the judgment below is expressly without prejudice to their pursuing these claims elsewhere. OB, Ex. E ¶ 3.

* * *

Taken together, the *Cryo-Maid* factors weigh decisively in favor of dismissal—just as the Court of Chancery found after weighing each factor.[7]

2. Even If The Court Of Chancery Applied *Gramercy*'s Hybrid Framework, That Framework Was Available, And Dismissal Was Warranted

Even if the Court of Chancery applied *Gramercy*'s hybrid framework, the dismissal stands.

[7] The possibility of a view of the premises is not implicated in this stockholder dispute and is, at most, neutral.

As the Court of Chancery recognized, *Gramercy*'s neutral hybrid framework—which tilts in neither a plaintiff's nor defendant's favor—applies where the Delaware action "is later-filed and its predecessors are no longer pending" or where multiple representative actions were contemporaneously filed. *Gramercy*, 173 A.3d at 1044; *Lincoln Benefit Life Co. v. Wilmington Tr., N.A.*, 2019 WL 1307870, at *2 (Del. Super. Ct. Mar. 21, 2019); OB, Ex. B at 41:14–22.

That is the case here. 1Globe brought its Antigua action over these same governance disputes in March 2018, seven years before Plaintiffs filed here—resolved by the Privy Council's decision invalidating the Rights Agreement. A0377–78; A0421; A0545. This action is therefore later-filed, and its predecessor is no longer pending—precisely the circumstance the hybrid framework addresses.

Plaintiffs say the framework is unavailable because the only related action is the Antigua action filed a month after Plaintiffs filed here, to which Plaintiffs are not parties. OB at 19–20. That premise is wrong on both the facts and the law. It ignores the Antigua proceedings that preceded this action by seven years. And identical parties or identical issues are never required. *See supra* at I.C.1(c).

Plaintiffs also contend that Defendants fail under the hybrid framework. OB at 21. Not so. The neutral framework asks less of defendants than the overwhelming-hardship standard the Court of Chancery applied and found satisfied:

if the more demanding standard is satisfied, the less demanding one necessarily is. *Gramercy*, 173 A.3d at 1044.

The Court of Chancery did not abuse its discretion in dismissing this action on forum non conveniens grounds.

II. THE COURT OF CHANCERY CORRECTLY DISMISSED THE INDIVIDUAL DEFENDANTS FOR LACK OF PERSONAL JURISDICTION

A. Question Presented

Whether the Court of Chancery correctly dismissed the Individual Defendants for lack of personal jurisdiction where Plaintiffs pleaded no Delaware office, no Delaware business, and no personal act in this State as to any of the five foreign Individual Defendants. This issue was preserved below. *See, e.g.*, A0159–67.

B. Scope Of Review

This Court reviews "*de novo* a trial judge's decision to dismiss a defendant for lack of personal jurisdiction." *Chadwick v. Metro Corp.*, 856 A.2d 1066, 1068 (Del. 2004). Plaintiffs bear the burden of establishing a basis for jurisdiction over a nonresident defendant. *AeroGlobal Cap. Mgmt., LLC v. Cirrus Indus., Inc.*, 871 A.2d 428, 437–38 (Del. 2005).

C. Merits Of Argument

Plaintiffs pleaded no jurisdictional facts against the Individual Defendants. They alleged no Delaware office, no Delaware business, and no personal act in this State as to any of the five. A1339–41; A1940. Instead, Plaintiffs' argument rests upon acts of the corporation: that the Individual Defendants "directed" Sinovac to file its prior litigation against 1Globe in Delaware, and that they adopted—on behalf of Sinovac—a Rights Agreement containing a Delaware choice-of-law provision. Each fails for the same reason: a director or officer who authorizes a corporate act

does not submit to personal jurisdiction wherever the corporation acts. *See Ruggiero v. FuturaGene, plc*, 948 A.2d 1124, 1134 (Del. Ch. 2008). Plaintiffs' fallback theory—conspiracy jurisdiction—fares no better: it was never pleaded in the Complaint and fails on the merits regardless.

1. Corporate Authorization Does Not Create Personal Jurisdiction Over The Individual Defendants

Delaware's long-arm statute requires a plaintiff to establish a statutory basis for jurisdiction and that the exercise of jurisdiction comports with due process. *Matthew v. Fläkt Woods Grp. SA*, 56 A.3d 1023, 1027 (Del. 2012). Plaintiffs establish neither.

The Individual Defendants are foreign residents—Anderson resides in Canada; Yin, Mei, Lo and Wang reside in China. A1940; *see* OB, Ex. D. Plaintiffs allege no Delaware office, no Delaware business, and no personal acts in this State as to any of them. A1339–41. They allege no facts showing that any Individual Defendant transacted business in Delaware, committed a tort here, or purposefully availed him or herself of Delaware's laws. *Id.* These omissions are fatal. *Wescott v. Moon*, 2022 WL 10788238, at *2 (Del. Super. Ct. Oct. 18, 2022) ("[C]onclusory allegation[s] lacking any factual support" cannot "serve as a basis to subject the Individual Defendants to Delaware's jurisdiction.").

The jurisdictional theories advanced in the Complaint are acts of the corporation. Plaintiffs contend that the Individual Defendants "directed" Sinovac to

file its prior action against 1Globe in Delaware, that Sinovac dealt with the Vivo entities, and that the Individual Defendants adopted—on the Company's behalf—a Rights Agreement containing a Delaware choice-of-law provision. OB at 39–43. *Ruggiero* forecloses each.

In *Ruggiero*, directors of a foreign corporation signed a merger agreement on the corporation's behalf, and plaintiffs argued that act subjected them to personal jurisdiction in Delaware. 948 A.2d at 1134. The Court rejected that theory in unambiguous terms: "a corporate director or officer of a foreign corporation cannot be haled into a Delaware court for an act of the corporation simply because the officer or director has directed the corporation to take that act." *Id.* Directors "must be shown to have substantial contacts in Delaware or with a nexus to Delaware having a clear relationship to the cause of action." *Id.*

Before the Court of Chancery, Plaintiffs sought to distinguish *Ruggiero* on the ground that the Individual Defendants "acted for their own personal interests, to maintain their status as Board members and favor the Yin Group." A1941. That distinction is illusory. If alleged self-interest could override *Ruggiero*, the decision would be meaningless—every plaintiff could manufacture jurisdiction by characterizing a corporate act as self-interested. *See* A1941. Plaintiffs cite no authority permitting courts to disregard the corporate form for jurisdictional purposes based on motive alone, and *Ruggiero* expressly rejected that theory,

observing that premising jurisdiction on corporate acts "would be tantamount to an argument to pierce the corporate veil." 948 A.2d at 1134–35 (citation omitted). Tellingly, *Ruggiero* is the authority on which the Court of Chancery relied in dismissing the Individual Defendants, yet Plaintiffs do not cite it anywhere in their opening brief, let alone attempt to distinguish it.[8]

The prior litigation fails for the independent reason that it involved different parties, claims, and transactions. A1940–44. Sinovac alone brought that action, against 1Globe and others, seeking a declaration that they had triggered the Rights Agreement—a contract interpretation dispute. A1038; A1943. This action challenges different conduct: the Board's approval of the PIPE Transaction, dividend payments to the Yin Group, the attempted Exchange, and the trading halt. A1943. No Individual Defendant appeared in the prior litigation, and Plaintiffs' claims here would have arisen regardless of where Sinovac sued 1Globe in 2018.

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[8] Plaintiffs' remaining authorities for an "expansive view of what constitutes transacting business in Delaware" are readily distinguishable. OB at 42. In *Boulden*, the corporate executive made "repeated trips to Delaware for purposes of furthering the acquisition." *Boulden v. Albiorix, Inc.*, 2013 WL 396254, at *6 (Del. Ch. Jan. 31, 2013), *as revised* (Feb. 7, 2013). *Haisfield* is further afield still: it addressed whether a corporate entity's sale of a storage tank under a licensing agreement amounted to transacting business—conduct bearing no resemblance to anything alleged here. *Haisfield v. Cruver*, 1994 WL 497868, at *4 (Del. Ch. Aug. 25, 1994). And *Lake Treasure* confirms the Individual Defendants' position, not Plaintiffs'. It reaffirms that the jurisdictional act must have a "nexus" to the actionable conduct, the very nexus absent here. *Lake Treasure Holdings, Ltd. v. Foundry Hill GP LLC*, 2013 WL 6184066, at *4 (Del. Ch. Nov. 21, 2013).

Id. "Similar facts are not the same facts," and a prior Delaware action does not confer jurisdiction over subsequent disputes merely because they share some facts and overlapping subject matter. *Sprint Nextel Corp. v. iPCS, Inc.*, 2008 WL 2737409, at *7, *10 (Del. Ch. July 14, 2008).

Plaintiffs' passing reference to the Rights Agreement fares no better. OB at 43. Entering into that agreement was Sinovac's act, not any Individual Defendant's. A0213. And a choice-of-law provision, without more, "will not create a sufficient contact to support personal jurisdiction in the state whose law is chosen to govern the relationship." *In re USACafes, L.P. Litig.*, 600 A.2d 43, 51 (Del. Ch. 1991). As the Court of Chancery noted, the provision is "not a forum selection provision and would not bind the individuals in any event." OB, Ex. A at 2 (citing *Ruggiero*, 948 A.2d at 1134).

Because no statutory basis exists, the analysis ends there, and it would end the same way under the Constitution, because foreign residents who took no action in Delaware lack the minimum contacts that would make suit here consistent with "traditional notions of fair play and substantial justice." *Matthew*, 56 A.3d at 1027 (quoting *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945)).

2. Plaintiffs' Conspiracy Jurisdiction Theory Was Not Pleaded And Fails On The Merits

Plaintiffs argue in the alternative that the Court of Chancery has personal jurisdiction over the Individual Defendants under the conspiracy theory of

jurisdiction in *Istituto Bancario Italiano SpA v. Hunter Eng'g Co.*, 449 A.2d 210 (Del. 1982). OB at 43–45. That doctrine reaches a defendant who acts through a co-conspirator in the forum, imputing the co-conspirator's Delaware conduct to him. It fails at the threshold and on the merits.

At the threshold, conspiracy jurisdiction was never pleaded. A1945. The Complaint does not use the word "conspiracy," and it does not allege any Individual Defendant agreed with anyone to defraud Plaintiffs. *Id.* Plaintiffs raised the theory for the first time in their opposition to the Individual Defendants' Motion to Dismiss. *Id.* But a theory first advanced in a response brief is not a pleaded theory, and jurisdiction cannot be manufactured through briefing. *See Edwards v. GigAcquisitions2, LLC*, 2025 WL 2092832, at *12 (Del. Ch. July 25, 2025) (plaintiffs "cannot now amend their pleading through their briefing"), *aff'd*, 361 A.3d 31 (Del. 2026).

Even if pleaded, the theory fails at every *Istituto Bancario* element. *First*, Plaintiffs have not shown that a conspiracy to defraud existed. The closest they come is the assertion that the Individual Defendants acted to entrench the Yin Group's control—a shared motive, not an agreement to act unlawfully. A1945–46. *Second*, the only conspirators Plaintiffs identify are Sinovac and the fiduciaries who ran it, but a "corporation cannot conspire with itself," nor can it "be deemed to have conspired with its officers and agents for purposes of establishing jurisdiction under

the conspiracy theory." *LVI Grp. Invs., LLC v. NCM Grp. Hldgs., LLC*, 2017 WL 3912632, at *2 (Del. Ch. Sept. 7, 2017); A1946. *Third*, Plaintiffs identify no substantial act in Delaware in furtherance of the alleged conspiracy; the only Delaware act they point to is Sinovac's prior lawsuit, a corporate act that, as *Ruggiero* makes clear, cannot be attributed to the Individual Defendants personally—and Sinovac is not an outside co-conspirator whose conduct can be imputed to them. A1946–47. *Fourth*, the Complaint contains no allegation that any Individual Defendant knew of or directed a Delaware act as part of a conspiracy. A1947. *Fifth*, no Delaware effect was a direct and foreseeable consequence of the conduct alleged. The prior action sought only a declaration construing the Rights Agreement, with any relief running to the Company; the injuries Plaintiffs claim here flow from the PIPE Transaction, the attempted Exchange, and the trading halt, none of which followed from that suit. *Id.*

Plaintiffs' remaining assertion that Sinovac's "transacting with the Vivo Defendants" supplies the Delaware act, OB at 44, was never fairly presented to the Court of Chancery and is therefore waived. Del. Supr. Ct. R. 8; *Wilmington Tr. Co. v. Conner*, 415 A.2d 773, 781 (Del. 1980) ("[I]ssues not raised in the trial court shall not be heard on appeal."). The Complaint pleads no such theory: its jurisdictional allegations rest on Sinovac's prior lawsuit and the Rights Agreement's choice of law provision. A1339–41. Below, Plaintiffs did no more than mention the theory—a

clause in an introductory sentence, without argument or authority. A1512–14. A passing reference does not raise an argument in a way that signals that it must be considered and decided. *In re Oracle Corp. Derivative Litig.*, 339 A.3d 1, 18, 18 n.76 (Del. 2025); *In re Mobilactive Media, LLC*, 2013 WL 297950, at *12 n.152 (Del. Ch. Jan. 25, 2013) (argument made in a single sentence waived). It fails regardless: those too were corporate acts, and Plaintiffs never identify which transaction, when it occurred, or how it furthered the alleged conspiracy. That is precisely the kind of conclusory assertion Delaware courts reject. *See Crescent/Mach I Partners, L.P. v. Turner*, 846 A.2d 963, 976 (Del. Ch. 2000) ("Plaintiffs must assert specific factual evidence, not conclusory allegations.").

Plaintiffs' authorities confirm what is missing. OB at 43–45; A0685–86. In each, a defendant personally caused a Delaware filing that was a required step in, or the mechanism of, the challenged transaction. *Lake Treasure Hldgs., Ltd. v. Foundry Hill GP LLC*, 2013 WL 6184066 (Del. Ch. Nov. 21, 2013) (defendants caused UCC financing statement to be filed in Delaware); *Chandler v. Ciccoricco*, 2003 WL 21040185, at *8–10 (Del. Ch. May 5, 2003) (Certificate of Designation filed with Secretary of State was a "substantial act . . . in furtherance of the conspiracy" and conspirators included outside parties separate from the corporation); *In re Tilray, Inc. Reorganization Litig.*, 2021 WL 2199123, at *20 (Del. Ch. June 1, 2021) (founder personally signed and filed a charter amendment

on which the entire transaction was conditioned). Sinovac's suit against 1Globe was filed years before the transactions Plaintiffs challenge, was not a step in any of them, and Plaintiffs' claims would have arisen whether or not Sinovac sued in Delaware.

Matthew v. Fläkt Woods Grp. SA does not help Plaintiffs either. There, the alleged conspirators accomplished their scheme in part by dissolving a Delaware limited liability company, and the question was whether a foreign defendant knew or should have known it was conducting activity in Delaware. 56 A.3d 1023 (Del. 2012). Here, by contrast, no Delaware entity was used to further the alleged scheme—the only Delaware act Plaintiffs identify is Sinovac's prior lawsuit, which cannot be attributed to the Individual Defendants personally.

* * *

The Court of Chancery correctly dismissed the Individual Defendants for lack of personal jurisdiction.

CONCLUSION

The judgment should be affirmed.

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