The Settlement of Mass Claims: A Hot Topic in The Netherlands

By Karen Jelsma and Manon Cordewener, Amsterdam

Introduction

The settlement of mass claims receives a lot of attention in The Netherlands. Although Dutch law does not provide for a U.S.-style class action procedure, it does provide for a system based on a collective settlement on an opt-out basis. The rules governing the collective settlement procedure can be found in the Dutch Act on Collective Settlement of Mass Damage Claims (*Wet Collectieve Afwikkeling Massaschade*, hereinafter, the "WCAM").[1]

The WCAM came into force on 27 July 2005. Based on the case law available, the collective settlement procedure contained in the WCAM has proven to be very successful—not only in cases where injured parties residing in The Netherlands are involved, but also in cases where certain of the injured parties are residing abroad. Although the WCAM has already proven successful, the Dutch Parliament is currently working on a number of modifications to the law. By widening the applicability of the WCAM and by introducing various measures—for example, the possibility of the involvement of a judge at a very early stage of the collective settlement procedure—the Dutch Parliament is attempting to increase the willingness of parties to reach collective settlement and increase the use of the collective settlement procedure as a general measure to settle mass damage claims.

This article first presents an overview of the options for settlement of mass damage claims before enactment of the WCAM. Then an overview is given of the WCAM, as well as an explanation of matters in which the WCAM has been used successfully. The importance of the WCAM in the international context will be discussed. Finally, we address the contemplated modifications to the WCAM and compare the WCAM to class action systems in other jurisdictions.

Alternative Methods of Handling Group Actions

Before the WCAM came into force on 27 July 2005, mass damage claims could be settled only on the basis of one of the following (legal) proceedings:

(1) A collective action brought by a foundation *(stichting)* or association (*vereniging)*, whose statutory goal is to represent (groups of) injured parties having similar damage claims and a similar interest in holding a third party liable for damages suffered by the group (article 3:305a paragraph 1 DCC). The collective action could and still can be used to obtain a declaratory judgment against a responsible party. The disadvantage under 3:305a DCC, however, is that these proceedings cannot be used by the foundation or association to claim damages from the third party (article 3:305a paragraph 3 DCC). The Dutch legislature decided to exclude the possibility of claiming (monetary) damages in a collective action primarily because it was of the opinion that damage claims would be less suitable for a collective action given all of the different individual circumstances of the injured parties involved.[2]

(2) An action brought by a legal entity to which claims of individual injured parties have been assigned and for which a power of attorney has been granted. Such legal entity could be the foundation or association referred to under (1) above, so it is thereby possible to combine the declaratory judgment obtained on the basis of a collective action in (1) with a claim for damages for individual parties. The disadvantage of this, however, is that for each and every individual injured party, an assignment document or a power of attorney must be prepared and validly signed which, in practice, can be burdensome.

(3) A so-called test case (*proefproces*) initiated by one or two injured parties against the party responsible for the damages. Test cases have been initiated in the past (and are still initiated), although there is no specific legal provision governing them. A test case claim is usually based on the general rules of either wrongful act or product liability and is usually brought by a limited number of injured persons, while a consumer organization might coordinate the action and pay related costs.

All these options, however, share the significant common disadvantage that the mass damages claims cannot be settled in a way that will bind all injured parties. Thus, a new collective settlement proceeding, the WCAM, was introduced in The Netherlands.

The System of the WCAM

The WCAM provides a mechanism for collective redress in mass damages on the basis of a settlement agreement concluded between, on the one hand, one or more foundations or associations representing the interests of a group of injured parties who suffered damages and, on the other hand, the party or parties allegedly causing the damages.[3] Once all parties involved have reached a collective settlement agreement, they may submit a joint application to the Amsterdam Court of Appeal

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(the "Court"), requesting the Court to declare the collective settlement binding on *all* injured parties falling within the scope of the settlement agreement. Pursuant to article 1013 DCCP, the Court has the sole jurisdiction to declare such a collective settlement binding.

If the Court indeed declares the collective settlement binding on all injured parties, the settlement agreement will bind *all* injured parties falling within the scope of the settlement agreement, whether known or unknown and whether residing in The Netherlands or abroad. Those injured parties who do not want to be bound by the settlement agreement have the option to *opt out*, but they must do so within a limited period of time. This period of time is set by the Court but should be at least three months following the day of the judgment in which the collective settlement is declared binding.[4] Those individuals, who have chosen to *opt out* of the settlement agreement will no longer be bound by the collective settlement and will therefore maintain their right to initiate individual legal proceedings against the third party.[5]

In order to decide whether or not the collective settlement can be declared binding, the Court has to determine whether the settlement meets the statutory requirements and whether the interests of the injured parties are sufficiently protected. In this respect, the Court should determine, among other things, whether the statutory goal of the foundation or association requesting the Court to declare the settlement agreement binding on all injured parties, is to represent the interests of the injured persons[6] and whether the amount of the compensation to be paid to the injured parties is reasonable (thereby taking into account the extent of the damage, the ease and speed with which the compensation may be obtained and the possible causes of the damage).[7]

As a part of the process, the Court will set a hearing at which the represented injured parties will be heard. In addition, the injured parties will be given the opportunity to file a statement. An important issue in this respect is that under the WCAM, interested persons (i.e., the persons for whose benefit the settlement agreement is concluded) have to be notified of the fact that a settlement agreement has been reached and that proceedings have been initiated in relation to the binding declaration of the settlement agreement in order to enable them to submit a statement and attend the hearing. The notification will also play an important role at the time the Court has declared the collective settlement agreement binding, as the interested persons need to decide whether or not they wish to opt out.[8]

If all requirements contained in the WCAM have been met and the Court is of the opinion that the interests of the injured parties are sufficiently protected, it will declare the settlement agreement binding upon all injured parties falling within the scope of the collective settlement agreement.

Cases Settled Under the WCAM

Since its introduction, the WCAM has been used in the following cases:

The *DES* case.

This case was the immediate reason that the WCAM was initially introduced. This was a pharmaceutical product liability case concerning damages allegedly suffered by women ("DES daughters") whose mothers had taken the pharmaceutical product DES during pregnancy. On 1 June 2006, the Court declared binding the DES settlement agreement between DES Centre (the organization protecting the interests of DES daughters) and the pharmaceutical companies that had marketed DES. On the basis of the settlement agreement, compensation has been granted to all DES daughters who suffered personal injury as a result of DES.

The *Dexia* case.

This concerned financial damages suffered by individuals as a result of allegedly misleading information provided by Dexia Bank regarding certain of its financial products. On 25 January 2007, the Court declared binding the settlement agreement between the Lease Loss Foundation, the Eegalease Foundation, the Dutch Consumers' Association and the Dutch Equity Holders' Association, on the one hand, and Dexia Bank, on the other hand.

The *Vie d'Or* case.

This case concerned financial damages allegedly suffered by the policy holders of life insurer Vie d'Or as a result of the company's insolvency. On 29 April 2009, the Court declared the Vie d'Or settlement agreement binding.

The *Shell* case.

This case concerned financial damages allegedly suffered by Shell shareholders as a result of misleading information by Shell in relation to certain of its oil and gas reserves in 2004. On 29 May 2009, the Court declared binding the non-U.S. Shell Settlement Agreement between Shell Petroleum N.V. and Shell Transport and Trading Company Limited, on the one hand, and the Dutch Equity Holders' Association, the Shell Reserves Compensation Foundation[9] and two Dutch pension funds, on the other hand. By declaring this Shell settlement agreement binding on all non-U.S. shareholders, the Court for the first time declared a collective settlement agreement binding on injured parties residing outside the Netherlands, thereby having a direct influence in many other jurisdictions.

The *Vedior* case.

This concerned financial damages allegedly suffered by shareholders of Vedior as a result of the sudden decrease of the share price on the morning of 30 November 2007. On 15 July 2009, the Court declared the Vedior settlement agreement binding.

The *Converium* case.

This related to financial damages suffered by shareholders of the Swiss company Converium allegedly as a result of the inflation of the Converium share price caused by false statements made by Converium in relation to its financial condition. On 9 July 2010, Converium (currently known as SCOR Holding AG) and its parent company, Zürich Financial Services LTD ("ZFS"), on the one hand, and the Stichting Converium Securities Compensation Foundation[10] and the Dutch Equity Holders, on the other hand, submitted a joint request to declare the Converium settlement agreement binding. On 12 November 2010, the Court rendered a (provisional) decision about its international jurisdiction in cases based on the WCAM. This decision is discussed in more detail below. The Court has not yet declared the Converium settlement binding.

Jurisdiction of the Court in International Collective Settlements

Based on the cases settled under the WCAM so far, as listed above, and particularly in relation to the *Shell* and *Converium* cases, various private international law issues have been raised in both Dutch literature as well as in Dutch practice. One of the most important issues in this respect is the question of whether or not the Court may assume jurisdiction in those cases in which either the injured parties or the third party allegedly causing the damages are residing abroad (the so-called "international collective settlement agreements").[11]

The first case in which the Court assumed jurisdiction in this regard was *Shell*. In that case, however, there was a strong connection with the Netherlands, because one of the allegedly liable parties (Shell Petroleum N.V.) and many of the injured parties (shareholders) were located or resided in The Netherlands.

After the *Shell* decision, the question was whether the Court would also assume jurisdiction in international mass damage claims with minimal connections to the Netherlands. The answer was provisionally provided by the Court in *Converium*. In that case, none of the allegedly liable parties was located in the Netherlands, while only a limited number of injured parties resided there. The Court nevertheless determined to assume jurisdiction. Similar to the *Shell* case, the Court reasoned as follows:

(1) The case must be considered as a *"civil and commercial matter"* pursuant to article 1 paragraph 1 of the Brussels I Regulation and the Lugano Convention. Therefore, the provisions of the Brussels I Regulation and Lugano Convention should be examined in order to determine whether or not the Court would indeed have jurisdiction to declare the *Converium* settlement agreement binding.

(2) In case the *Converium* settlement agreement would be declared binding in a final decision of the Court, it would impose an obligation on Converium and ZFS to pay damages into the bank account of Stichting Converium Securities Compensation Foundation (located in the Netherlands) which foundation would then pay the damag-

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es to the relevant injured parties. Because the payment obligations of Converium and ZFS would have to take place in the Netherlands, the Court found it had jurisdiction on the basis of article 5 paragraph 1 of the Brussels I Regulation and Lugano Convention.

(3) With respect to *shareholders residing in the Netherlands*, the Dutch courts have jurisdiction on the basis of article 2 paragraph 1 of the Brussels I Regulation and the Lugano Convention. The Court considered that if the settlement agreement would be declared binding, it would then bind all injured parties falling within the scope of the settlement. As a consequence, such injured parties will no longer be able to initiate separate legal proceedings against Converium and ZFS in order to claim a higher amount of damages and/or compensation, provided, of course, that such injured parties do not opt-out.

(4) With respect to *shareholders residing outside The Netherlands, but within an EU Member State or a Lugano Convention Member State* (i.e., Norway, Switzerland and Iceland), the Court has jurisdiction on the basis of article 6 paragraph 1 of the Brussels I Regulation and Lugano Convention. The Court ruled that the claims of these injured parties were *"so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings."* As the Court had already assumed jurisdiction over the shareholders residing in the Netherlands, article 6 paragraph 1 made it possible to assume jurisdiction in the combined case as well.

(5) The Court could also assume jurisdiction with respect to *injured parties (i.e., shareholders) neither residing in the Netherlands, nor in any other EU or Lugano Convention Member State*. Pursuant to article 3 of the DCCP, the Court has jurisdiction over cases in which one or more of the petitioners resides in The Netherlands. Since both the Stichting Converium Securities Compensation Foundation and the Dutch Equity Holders' Association resided in The Netherlands, the provisions of article 3 were therefore satisfied.

As indicated above, the decision of the Court in *Converium* is not yet final. Based on article 6 of the European Convention on Human Rights and the general principle of hearing both sides of the argument (*hoor en wederhoor*), the Court was of the opinion that it was not yet in a position to render a final decision because not all of the injured parties had been notified that the Court had been requested to render the collective settlement agreement binding. The injured parties involved (or their respective representatives) were therefore given the opportunity to submit a statement on 22 August 2011. A hearing will be held on 3 and 4 October 2011 in which all parties involved will he heard.

Based on the decision of the Court in *Shell* and the provisional decision in *Converium*, it is expected that the number of WCAM cases with international elements will increase in The Netherlands. This is even more likely since the decision of the U.S. case *Morrison v. National Australia Bank Ltd.,* 130 S. Ct. 2869 (2010)), in which the United States Supreme Court decided not to assume jurisdiction over claims initiated by foreign investors against a foreign company in relation to shares purchased at a foreign securities exchange (the "foreign-cubed" claims). The Supreme Court ruled that the principal anti-fraud provisions of U.S. securities laws do not have extraterritorial effect and therefore apply only to transactions in securities that take place in the U.S. or transactions in securities listed on a U.S. securities exchange.

Another notable judgment is the decision of the District Court of Amsterdam dated 23 June 2010 where the District Court ruled that the U.S. collective settlement agreement in *In re: Royal Ahold N.V Securities & ERISA Litigation*, 461 F. Supp 2d 383 (D. Md. 2006)—declared binding by the U.S. Court on 16 June 2006—should be recognized in The Netherlands. The main reason the Amsterdam District Court recognized the U.S. collective settlement agreement was that U.S. proceedings for a binding declaration of a collective settlement are very similar to the collective settlement proceedings contained in the WCAM. The effect of this decision is that the Ahold shareholders, residing in The Netherlands, who did not opt out of the U.S. collective settlement agreement, were bound by the *Ahold* collective settlement agreement and thus unable to initiate legal proceedings in The Netherlands.

Improvements to the WCAM

Based on the experiences with the WCAM so far, the collective settlement procedure has proven to be a success. One evaluation of the WCAM—performed at the request of the Dutch government—determined that the act is an efficient and effective method of settling collective mass claims and that it has a broad scope.[12]

Despite this, the evaluation found that supplementary measures are still required in order to increase the willingness of parties to enter into negotiation and actually achieve a collective settlement. A legislative proposal is currently under consideration with the goal of improving the WCAM. Another legislative proposal is being considered to introduce a separate legal proceeding, enabling the district courts or the court of appeal to request preliminary rulings directly from the Dutch Supreme Court (de *Hoge Raad)* with regard to collective mass claims.[13]

The proposed modifications to the WCAM include:

(a) Notification of foreign injured parties

As indicated above, the notification of possible injured persons plays an important role in the

WCAM. The notification is of relevance in two stages of the collective settlement procedure: at the time a settlement agreement has been reached and has been submitted to the Court in order to declare such settlement agreement binding on all injured persons (covered by the settlement agreement); and at the time the settlement agreement has been declared binding by the Court.

The WCAM provides that the notification in both stages shall be effected by ordinary mail, *unless* otherwise provided by the Court.[14] In the *Dexia* case the Court allowed the notification by ordinary mail, even for those injured parties residing abroad. In the *Vie d'Or* and *Vedior* cases, however, the Court—with respect to injured parties residing abroad—referred in more general terms to the relevant international treaties and conventions on the service of documents. In *Shell*, the Court went even further and gave strict instructions on how to notify the injured parties residing abroad by ordering the petitioners to follow the procedures on the service of documents referred to in Service Regulation 2007, the Hague Service Convention and similar instruments.[15]

Given the case law, it is now being suggested that the notification provisions in the WCAM be amended so that the Court must order petitioners to follow a specific notification procedure (based on available international treaties and/or conventions on the service of documents) when notifying the injured persons residing abroad. By amending the WCAM this way, the Dutch Parliament would seek to ensure that all injured parties residing abroad are always notified of the existence of a potential collective settlement agreement and its binding effect in accordance with applicable international provisions. During the first phase of the notification procedure—when a collective settlement agreement has been reached and is being submitted to the Court to obtain a binding order—the Court would most likely be granted the right to stay the collective settlement proceedings if it is of the opinion that the injured persons residing abroad have not been adequately notified.

(b) The representation of the foundation or association

The current WCAM does not specify at what point in time the foundation or association representing the group of injured parties is sufficiently representative. According to the Explanatory Memorandum to the WCAM, this can be derived from several factual circumstances, and it would not be advisable to deem any of these circumstances decisive.

The Explanatory Memorandum to the new legislative proposal indicates that the WCAM does not sufficiently take into account that a collective settlement agreement can be concluded between more than one foundation or association. Because of this, it is now being suggested that in case more than one foundation or association will be a party to the collective settlement agreement, not every such individual foundation or association must meet the requirement of being sufficiently representative. Pursuant to the legislative proposal, it would be sufficient that for every possible group of injured parties, at least one of the contracting foundations or associations sufficiently represents the interests of such group (article 7:709 paragraph 1 and 3 DCC).

(c) Suspension of proceedings already pending

The legislative proposal further provides for amendments in relation to the suspension of individual proceedings. Under the current WCAM, pending individual proceedings may be suspended at the request of the party responsible for the damages. Pursuant to the legislative proposal, this would be changed in such a way that all pending individual proceedings will be suspended by operation of law as soon as the collective settlement proceeding is initiated (article 1015 paragraph 1 DCCP).

The proposal also includes an amendment relating to the recommencement of the individual proceedings in case an injured party has opted-out of the collective settlement agreement. Where the WCAM currently provides that the suspended proceedings will be recommenced as soon as the injured party has opted out, under the legislative proposal the recommencement of the individual proceedings would not take place before the opt-out period has lapsed. This change is designed to prevent final judgments in individual proceedings from being rendered while the opt-out period has not yet lapsed. This has proven to be a serious issue under the WCAM because any positive result in such individual proceedings often triggers other injured parties to opt-out as well, which also may have a negative impact on the outcome of the collective settlement agreement.[16]

(d) Pre-trial appearances

To increase the number of cases in which a collective settlement agreement can be achieved, one proposal enables parties involved in mass damage cases to ask a judge at a very early stage for assistance in the negotiation of the collective settlement agreement. During such pre-trial appearances—as they are called—the judge may assist in identifying the main disputes between the parties and encourage them to reach a collective settlement agreement or to seek the assistance of a mediator.[17]

(e) Preliminary rulings procedure

Another legislative proposal has been submitted to the Dutch Parliament that would introduce a separate legal proceeding, enabling lower courts to request preliminary rulings from the Dutch Supreme Court (*de Hoge*

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Raad) relating to collective mass claims. It is expected that the introduction of a preliminary ruling procedure would also have an important effect on the WCAM cases.[18] The underlying premise is that if parties know where they stand in mass damage cases, they might find it easier to commence negotiations—and possibly reach a settlement—at an early stage.[19]

Comparative Analysis of Collective Mass Claims in Other Jurisdictions

Although the Dutch system is unique, other jurisdictions have systems with aspects resembling the WCAM. Below is a comparative discussion of the U.S. class action rule under the Federal Rules of Civil Procedure, the Swedish Group Proceedings Act and the German Capital Markets Model Case Act.

The U.S. Damages Class Action

The U.S. class action procedure came into effect in 1966 with the introduction of Rule 23 of the Federal Rules of Civil Procedure. Like the WCAM, the U.S. class action system has an opt-out procedure.

Of course, a substantial difference between these systems is that it is impossible under Dutch law to claim monetary damages in a class action procedure. Such a claim is explicitly excluded in article 3:305a paragraph 3 DCC. The WCAM has not changed this, as the WCAM "only" provides for a collective *settlement* (instead of a class action).

In addition, the U.S. class action process enables an individual person—as a "lead plaintiff"—to claim monetary damages for the entire group of injured parties (the "class"), providing of course that the interests of the members of the class are similar and the lead plaintiff will be suitable to represent the class. Under the collective settlement procedure contained in the WCAM, however, it is the foundation or association that must act on behalf of the class.[20] Foundations and associations representing the injured parties do not conclude the settlement agreement in order to bind themselves. The collective settlement agreement is obviously concluded to bind the group of injured parties they represent.[21]

The Swedish Group Proceedings Act (*Lag om grupprättegĺgung*)

The Swedish *Lag om grupprättegĺgung* entered into force on 1 January 2003. With this act, Sweden became the first European country to have a system truly comparable to the American class action system. The Swedish act provides for three types of group actions:

- individual group actions (i.e. class actions);
- public group actions (an authority designated by the Swedish government may initiate group actions); and
- organization actions restricted to consumer law and environmental law.

Similar to the U.S. class action system, any individual injured party who has a potential claim in the class action lawsuit will be entitled to initiate class action proceedings under the system of the *Lag om grupprättegĺgung*. Before a Swedish court decides whether or not the putative class action will be permitted to go forward, it must first decide whether the case is indeed appropriate for a class resolution. The court should determine whether the class action is more effective and efficient than the many individual legal proceedings that might be initiated; whether the class action has more benefits than the already available procedural options; and, of course, whether the group's representative is indeed suitable to represent the group.

A further similarity with the U.S. system is that the group's representative is entitled to enter into settlements with the alleged liable party or parties, and this settlement will be binding upon the members of the class only after a decision of approval of the court.

Contrary to the system in the U.S. and The Netherlands, however, the Swedish Act does not have an *opt-out* procedure, but instead

requires individuals to *opt-in*.[22] Only the individual persons who have notified the court that they would like to join the action will be included in a judgment or court settlement arising from the class action lawsuit.[23]

The German Capital Markets Model Case Act (the *Kapitalanleger-Musterverfahrensgesetz*)

The German *Kapitalanleger-Musterverfahrensgesetz* ("KapMug") entered into force on 1 November 2005. The KapMug differs from the American and Swedish collective actions and the WCAM in various respects.

In the first place, the KapMug applies only to group actions in the securities litigation context. It is especially designed for certain disputes under the German Capital Markets Law.[24] The KapMug allows both the injured investor as well as the alleged liable party to submit a request to the court of first instance in order to set up a "model case procedure" so that cases related to the same matter may be handled together. The purpose of the model case procedure is to determine facts or points of dispute that also play a role, or could play a role, in other cases.[25] When the request for the model case procedure has been filed with the court in first instance, it will be published in a public register of claims (the "*Klageregister nach dem Kapitalanleger-Musterverfahrensgesetz*") to enable other parties with similar cases to file identical requests concerning the model case procedure.[26] At least nine further identical requests must be filed within a period of four months in order for the court of first instance (i.e., the court where the first request was filed) to refer the model case procedure to the Higher Regional Court (the "*Oberlandesgericht*"). Subsequently, the Higher Regional Court will decide who will be the "lead plaintiff" in the model case procedure. The lead plaintiff will be designated by the Higher Regional Court on equitable grounds, taking into account the amount the lead plaintiff has claimed and suitability to represent the group. This means that it is irrelevant in Germany who the first person is to file the request for the model case procedure, which is designed to prevent "a race to the courthouse."[27]

Once the model case procedure is pending at the Higher Regional Court, all other cases concerning that model case procedure will be stayed.[28] Next to the lead plaintiff, the other claimants will be designated by the Higher Regional Court as interested parties to the model case procedure. When the Higher Regional Court renders its decision, the individual proceedings will continue. The KapMug stipulates that the decision in the model case procedure will be binding for any court that must give a decision in the individual proceedings. This means that, similar to the Swedish Group Proceedings Act, the procedure under the KapMug must be considered as an *opt-in* procedure. It is available only to parties willing to initiate proceedings themselves, be it those of pending proceedings, or those joining later.[29]

The KapMug was introduced for a trial period only. It was initially due to expire on 31 October 2010. The German legislature, however, decided to extend the KapMug for two years to gain time for reforms. The KapMug will now expire on 31 October 2012. Recent statements by the German Federal Government indicate that the KapMug will be extended not only in time, but also in scope to include other mass civil damages.[30]

Conclusion

The Netherlands is the only European country where a collective settlement of mass claims can be declared binding on the basis of an opt-out system. Considering the available case law, the collective settlement procedure contained in the WCAM has proven to be very successful, not only in cases where Dutch injured parties are involved but also in cases involving foreign injured parties. With the provisional decision of the Amsterdam Court of Appeal in the *Converium* case, it is expected that the number of collective settlement procedures with international elements will increase in The Netherlands. This is even more likely since the decision of the U.S. Supreme Court in *Morrison v. National Australia Bank Ltd.* and the decision of the District Court of Amsterdam of 23 June 2010 in which the court recognized the U.S. settlement agreement in the *Ahold* case. Despite (or perhaps because of) this initial success, additional improvements to the WCAM are currently being proposed in order to enlarge the applicability of the WCAM and make it more attractive for parties to come to a settlement. The public consultation with regard to the legislative proposal to improve the WCAM was closed on 15 April 2011, and the Minister of Justice will now incorporate the comments before submitting a definitive proposal to the Dutch Parliament.


K. Jelsma

Karen Jelsma *is an associate in the Amsterdam litigation practice of Hogan Lovells. Her practice focuses on product liability, mass tort litigation and commercial litigation. She also provides advice on issues such as product safety and product recalls, including the notification of product recalls to the Dutch authorities.*


M. Cordewener

Manon Cordewener *is a counsel in the Amsterdam litigation practice of Hogan Lovells. Her practice focuses on bankruptcy litigation, corporate litigation and commercial litigation.*

Endnotes:

1 The codification of this act is found in article 7:907 *et seq* of the Dutch Civil Code (DCC)

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and article 1013 *et seq* of the Dutch Code on Civil Proceedings (DCCP).

2 Letter of the Minister of Justice to the President of the House of Representatives of the States General dated 23 Oct. 2008 [hereinafter Letter of the Minister of Justice], and *Kamerstukken II* 2003/04, 29414, nr. 4.

3 Art. 7:907 para. 1 DCC.

4 *Id.* para. 2.

5 H. van Lith, The Dutch Collective Settlements Act and Private International Law (Aspecten van Internationaal Privaatrecht in de WCAM*)* 17 The Hague: WODC (2010) and *Kamerstukken II* 2010/2011, 27879, nr. 35.

6 Art. 7:907 para. 3 under (f) DCC.

7 *Id.* under (b) DCC.

8 H. van Lith, *supra* note 5, at 17-18.

9 The Shell Reserves Compensation Foundation is specifically established for the purpose of representing the interests of non-U.S. shareholders.

10 The Stichting Converium Securities Compensation Foundation is specifically established for the purpose of representing the interests of non-U.S. shareholders.

11 H. van Lith, *supra* note 5, at 19.

12 Letter of the Minister of Justice at 6.

13 B.J. de Jong, *Herziening van de WCAM en het collectief actierecht*, Ondernemingsrecht *2011/60*.

14 Art. 1013 para. 5 and art. 1017 para. 3 DCCP.

15 H. van Lith, *supra* note 5, at 70-72.

16 Letter of the Minister of Justice at 8.

17 *Id.* at 7.

18 The Netherlands Government Gazette nr. 2341 of 10 Feb. 2011.

19 Hirsch Ballin, Minister of Justice, Address at the Congress on Access to Justice in European Mass Dispute, at Tilburg University (3 Oct. 2008).

20 N. Frenk, *De afwikkeling van massaschade*, Nederlands Tijdschrift voor Burgerlijk Recht 89-94 (1993).

21 H. van Lith, *supra* note 5, at 18.

22 H.B. Krans, *Een nieuwe aanpak van massaschade*, Nederlands Tijdschrift voor Burgerlijk Recht 2-13 (2005).

23 *Kamerstukken II* 2003/04, 29414, nr. 7, p. 16-17.

24 Ina Brock & Stefan Rekitt, The International Comparative Legal Guide to: Class and Group Actions 93 (2011).

25 M.J. Kroeze, *Ontwikkelingen in het buitenland. Een Duitse collectieve actie voor beleggers*, Ondernemingsrecht 492-94 (2005).

26 §1 *Abschnitt* 1 KapMug.

27 T.M.J. Möllers & Weichert, *Das Kapitalanleger-Musterverfahrensgesetz*, Neue Juristische Wochenschrift 2737-741 (2005).

28 §3 KapMug.

29 Brock & Rekitt, *supra* note 26.

30 *Id.* at 98.