Report on Dutch Collective Settlements Act

The Dutch Collective Settlements Act in the International Arena

At the request of the Research and Documentation Centre of the Dutch Ministry of Justice, researchers at Erasmus School of Law (Erasmus University Rotterdam) have carried out exhaustive research on the private international law aspects of the Dutch Collective Settlements Act. The research was conducted and the Final Report was written by Hélène van Lith, supervised by Filip De Ly and Xandra Kramer, and assisted by Steven Stuij.

The Dutch Collective Settlements Act entered into force on 27 July 2005 to provide for collective redress in mass damage cases. In essence, the Act provides for collective redress on the basis of a settlement agreement concluded between one or more foundations representing a group of affected persons to whom damage was allegedly caused and one or more allegedly liable parties.

The Report analyses aspects of private international law when a collective settlement is concluded for the benefit of foreign interested parties under the Dutch Collective Settlements Act. The principal object of the Research was to assess the suitability of existing private international law instruments at the national, European and international levels for the application of the Dutch Collective Settlements Act in transnational mass damage cases.

The internationally famous *Shell Settlement* and more recently the *Converium Settlement* are examples of the important role The Netherlands could play in the collective redress of mass claims and makes the Dutch Collective Settlement Act an attractive alternative to American and Canadian class actions and class settlements. The Dutch Act received a lot of attention because, like the American and Canadian systems, but unlike most other European collective redress systems, the Act works on an 'opt out' basis. If the Court declares the collective settlement binding, it binds all persons covered by its terms, except for those who have indicated that they do not wish to be bound by the agreement.

The research was conducted by analyzing literature and through a series of interviews with professionals directly involved with the WCAM collective

settlements. It also includes several comparative observations in relation to jurisdictions such as the U.S. and Canada that are familiar with collective actions with opt-out mechanisms.

The Report concludes that, especially with respect to international jurisdiction and cross border recognition, there is a 'mismatch' between the European rules (Brussels I Regulation) and the Dutch Collective Settlements Act. Further clarifications of the European rules are needed and new legislation at the European level specifically dealing with collective redress may be advisable. Recommendations are also made with respect to the worldwide notification of unknown interested foreign parties, as well as the representation of foreign interested parties and issues of applicable law.

The Report is available on the website of the Research and Documentation Centre of the Dutch Ministry of Justice and can be downloaded here (see "Bijlagen").

A commercial edition will appear with Maklu Publishers and will be updated with the latest ruling of the Amsterdam Court of 12 November 2010 concerning the *Converium Settlement.*

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