

COLLECTIVE LEGAL ACTIONS IN HOLLAND

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Dutch law presently contains two separate provisions that are relevant to this subject:

1. Article 3:305a of the Civil Code (CC) provides that a legal entity (association or foundation) can sue on behalf of people whose interests it statutorily supports.
2. Article 7:907 CC states that a foundation or association, on behalf of people whose interests it statutorily supports, can request that the Court provide a general binding character to an agreement regarding compensation for damages.

The second provision dates from August 1, 2005; the first came into effect as early as July 1, 1994.

The collective legal action as mentioned in article 3:305a CC is strictly limited, since the law explicitly states that it is not permitted to seek payment of a monetary amount in such an action. The reason for this is that in the lawmaking process, a decision on the level of damages in a particular case was considered to be a decision on individual merits that could not be done in a collective case. Therefore, it does not provide victims of a mass tort situation a full remedy.

This rule has, however, played a role in legal action that has been taken in a mass tort case in Holland. In 1999, a severe outbreak of Legionnaire's Disease caused injury and death to a large number of Dutch people after a visit to a flower exhibition that included a consumers' fair where whirlpools were displayed. It was established that the whirlpools on display were the source of the contamination.

The Dutch consumer organization Consumentenbond decided to file a lawsuit in the interest of the victims of the Legionnaire outbreak. The lawsuit was directed against the two owners of the whirlpools on display, the organization of the event, and the Dutch government (for failure to provide rules and information regarding the risks involved). In this procedure by the Consumentenbond, the limitations and possibilities for a Dutch case of mass tort were tested. The case was first decided by the District Court in 2002 and later in 2007 on appeal. In both instances, it was decided that a legal entity like the Consumentenbond can seek a declaratory verdict against liable parties on behalf of unnamed victims, establishing the wrongdoing itself but without getting a monetary verdict. This collective remedy can provide some benefit for victims, since the

wrongdoing itself can be established through a collective proceeding, but afterwards the victims still face the burden of going after individual compensation.

The provision of article 7:907 CC was introduced at the time the Dutch victims of DES (diethylstilbestrol) had negotiated a group settlement with its manufacturers who were found liable for damages of Dutch victims by decision of the Dutch Supreme Court on October 9, 1992. Hoge Raad der Nederlanden [HR] [Supreme Court of the Netherlands], 9 October 1992, NJ 535 (Neth.).

It was important for the settling parties that the manufacturers, who provided a sum of money on behalf of all victims, would not be facing further lawsuits by victims who were not satisfied by the (very modest) settlement amounts.

The legal entity representing the interests of victims can request the Court to decide that an agreement on compensation of damages is binding for all victims involved. The procedure includes the possibility to file written arguments and a hearing by the Court. The Court decides after having decided on a number of aspects, among which are whether the legal entity is sufficiently representing the victims involved and whether the level of damages is reasonable.

It is stated in the law that rights of victims who have opted-out explicitly within three months are not affected by the ruling.

Based on this law, the Court of Appeal in Amsterdam decided on June 1, 2006, Gerechtshof [Hof.] 1 June 2006, NJ 461 (Neth.), that the settlement agreement on behalf of Dutch victims regarding DES is binding for all victims involved.

It is not unlikely that Holland, like other members of the European Union, will face the consequences of European initiatives in the future. Within the European Union, collective redress for consumers regarding damages as a result of breach of EC antitrust rules is under discussion. This idea is not confined to EC antitrust infringement claims. It has also been proposed to extend the initiative to enable consumers to jointly pursue European-wide claims against companies that provided faulty goods or services.

Ultimately this might lead to the possibility of European-wide class actions for consumer damages as a result of defective products. European businesses have already expressed fear regarding the arrival of U.S.-type class actions in this respect.