POLARIS CORPORATE SOLUTIONS GmbH

EUROPEAN D&O LITIGATION TRENDS





EU D&O TRENDS

- European companies more exposed than ever to regulatory scrutiny and litigation
- European culture growing more litigious
- Difficult and rapidly evolving global economic and social environment driving demand for coverage





DEMAND DRIVERS

- Shareholder actions
- Regulatory enforcement
- Heavily increased transparency & accountability
- Increased company suits against Ds & Os
- Criminal proceedings
- Bankruptcy / insolvency claims
- Data protection violations (CYBER)





EU D&O MILESTONE CASES



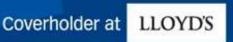






- DT shareholder litigation case triggered new class
 / collective action law in Germany
- Investors purchased shares from 1999 to 2000 when the company floated on stock exchange through an IPO
- The performance of shares was poor

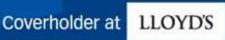




- This triggered the filling of:
 - 2,500 individual lawsuits against DT
 - by 754 law firms
 - On behalf of 14,447 investors

 Lawsuits alleged the listing prospectus contained mis-statements about the value of DT's real estate





Two main problems came about:

- District Court unable to deal with the volume of filings
- The decisive factual question, the value of the real estate, is a highly complex one which needs to be determined by an expert, the cost of which amounted to €17m: but German law lacked a mechanism to share costs



- As a result a new Capital Act came in force in Nov 2005 to enable multiple plaintiffs to have common questions of fact or law decided in one court proceeding
- The decision would be binding on all parties
- Case was settled for USD 120m through a combination of company and insurance funds



ROYAL DUTCH SHELL

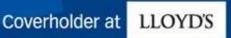
- 2007 Dutch court ruling is likely to materially impact European law
- A settlement between Royal Dutch Shell and groups representing individuals and institutional holders in 9 European countries
 - Amongst others investors from UK, Germany, Netherlands, Sweden
- "Global settlements" do not exist as US judgments are not binding in Europe



ROYAL DUTCH SHELL

- Original litigation source: US investors in New Jersey
- Investors allegations: miss-statements of proven oil & gas reserves
- Damages sought: cash flows were overstated which resulted in restatement of accounts

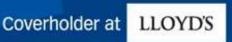




ROYAL DUTCH SHELL

- Settlement achieved under changes in Dutch law:
 The Collective Act which allows Representative actions (class actions).
- European Settlement: agreed at US\$ 450m + lawyers fees
- Dutch Court of Appeal: is reviewing the settlement & approval is pending
- US settlement: US\$ 89.508.000







Source: The Growth of Collective Redress in the EU, U-S- CHAMBER, Institute for Legal Reform, March 2017





- Majority of EU Member States now have some form of claimants combining their claims
- All EU Member States to report on collective redress by July 2017
- EU Commission to evaluate if further action is required
- Member States' systems have been developing organically and at a fast pace





- Systems preventing litigation abuse:
 - Implementing Stringent Class Certification
 Standards
 - Preserving the Loser Pays Principle
 - Favoring Opt-In Over Opt-Out Mechanisms
 - Promoting Strict Standing Requirements

Source: The Growth of Collective Redress in the EU, U-S- CHAMBER, Institute for Legal Reform, March 2017





- Systems preventing litigation abuse:
 - Mandating Closure for Defendants
 - Restricting Contingency Fees and Regulating TPLF for Collective Actions
 - Banning Punitive Damages
 - Curbing Jurisdictional Overreach/ Forum
 Shopping

Source: The Growth of Collective Redress in the EU, U-S- CHAMBER, Institute for Legal Reform, March 2017





Law: came in force on 19th July 2010 – The Act on Pursuing Claims in Group Proceedings (Journal of Laws 2010 No. 7, item 44

Procedure: "Opt-in"; "Opt-out" currently under consideration





Article 1 of the Act, defining group proceedings, specifies that it is a judicial proceeding in civil cases in which claims of one kind and based on the same or a similar factual basis are pursued by at least 10 individuals. Anything related to group proceedings but not regulated by the Act is governed by the provisions of the Polish Code of Civil Procedure (hereinafter referred to as: the "CCP").





Who can bring claims:

The group representative has the sole power to bring a group action. The **representative** may be one of the members of the group or a district (municipal) consumer ombudsman in cases concerning the protection of consumer rights. The Act requires mandatory representation of the group representative by a professional (an attorney or legal counsel).



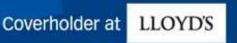
Minimum threshold for bringing claims: at least 10 individuals

Judge or jury: panel of judges with no jury involved

Third party funding: Neither the Act nor the CCP

refer to the issue of third party funding of claims in the proceedings.





- Frequency: around 60 class actions brought since Act enforcement
- Commercial Defendants: banks, insurers, commercial companies
- More to come: websites (groupaction.com, sue-him.pl, suethegovernment.pl,...), law firms (contingency fees allowed up to 20%)
- Loser pays principle

Source: Dr. Magdalena Tulibacka, Class Actions in Poland: two years of tries, successes and failures of the Class Action Act





KEY COVERAGE ASPECTS





INDEMNIFICATION

- PRESUMPTIVE INDEMNIFICATION
- EUROPEAN RESTRICTIONS / LEGAL
 APPLICABILITY
- COMPANY'S DISCRETION





COSTS ADVANCEMENT

- INDEMNITY VS PAYING ON BEHALF OF POLICY
- LEGAL AND "OTHER PROFESSIONAL FEES"





INSOLVENCY

- INSOLVENCY LIQUIDATOR CONTROLLING
 THE POLICY
- DIRECT CREDITOR CLAIMS





ALLOCATION

- FAIR AND PROPER
- COVERED VS UNCOVERED MATTERS





Q&A





