Class actions have risen substantially around the globe

The number of major class actions being brought not only in the United States, but around the globe, has risen steadily in recent years. Once thought of as only a U.S. phenomenon, class actions are now becoming commonplace elsewhere, in particular in Europe.

Allen & Overy has seen a significant number of class actions claims arising from alleged mis-selling in the financial services sector, shareholder unrest over corporate acquisitions in the boom times, and antitrust follow-on damages cases. Legislative reform has taken place in many European countries, and is now being progressed at EU Commission level.
1. THE U.S.

A significant issue in U.S. securities class actions has been the so-called “F-cubed” cases around foreign investors bringing claims in the U.S. even where they purchased securities from a non-U.S. issuer on a non-U.S. exchange. We successfully litigated this issue in the Parmalat case, where the court granted our motion to dismiss claims of non-U.S. residents. This issue also came up in the 2010 Supreme Court case of *Morrison v NAB*.

More generally, the U.S. plaintiff bar is extending its hunting grounds to Europe, inviting pension funds and others to support their actions, with the law firm acting for the plaintiffs which stand to incur the biggest loss (commonly institutional investors) usually winning the lead counsel role and the accompanying opportunity for ample contingency fees.

2. THE NETHERLANDS

The Netherlands is developing into an important forum for (international) collective settlement of mass claims. The 2005 Dutch Act on the Collective Settlement of Mass Claims (*Wet collectieve afwikkeling massaschade, WCAM*) provides for U.S. style class settlements. In May 2009 the Amsterdam Court of Appeal declared the Shell oil reserves settlement binding for all non-U.S. shareholders, underlining the

EU COMMISSION

In February 2011, the EU launched a further consultation on collective redress, focused primarily on damages in antitrust cases, and effective redress in consumer cases. The consultation seeks views on a wide range of options as to how a consistent approach to effective enforcement of consumer rights across the EU should be introduced. This follows Green and White Papers on consumer collective redress and antitrust damages over the past five years, none of which resulted in a directive or other legislation.
potential of the Netherlands as an alternative forum for class settlements. In November 2010, the court also declared an international collective settlement binding in a F-cubed case, where the majority of the parties involved resided outside The Netherlands.

3 ENGLAND AND WALES

In England and Wales, the introduction of both opt-out and opt-in basis class actions was proposed in the Finance Bill 2010. Whilst the concept of some form of collective redress was supported by some banks, the details of the proposals were strongly opposed. In the May 2010 General Election, this proposal was dropped. Proposals from the Scottish Assembly to introduce class actions there, as well as EU Commission proposals to introduce an EU wide collective redress mechanism, may force the Government to reopen this issue.

4 ITALY

Italy introduced a mechanism for class actions in January 2010, which has proved popular with many cases already commenced. The Italian courts have adopted a form of the U.S. “fraud on the market” theory, which enables investors to bring claims even where they cannot show that they specifically relied on false or misleading statements, when investing.

5 BELGIUM

Belgium has so far resisted introduction of a separate legal system for class actions. Several draft bills are currently circulating simultaneously which seek to grant this legal status, but legislative progress is slow. However, the current legislative void does not reflect economic reality. Class actions in some form or another have become an increasing feature of high profile litigations in Belgium, particularly for financial institutions. The current economic climate has also shown that Belgium is not escaping the impact of increasing shareholder activism and misselling claims, including the related class actions.

6 FRANCE

The French government and the courts illustrate one of the most difficult issues in class actions – the recognition of a U.S. class action, established on an opt-out basis. A frequent international jurisdiction issue for Allen & Overy is the extent to which such a U.S. class action will bind a European claimant, who often could achieve substantially greater damages by taking independent action in Europe than by participating in the U.S. class action. In France an opt-out class action is contrary to public policy, and so unenforceable. Commentators believe the same result would prevail if the issue came before the courts of a number of other European jurisdictions, although for example in England and The Netherlands, this public policy issue does not arise.

7 HONG KONG

In Hong Kong the Law Reform Commission has recently completed a consultation period geared towards the introduction of a class action regime there. Results are still awaited.

8 POLAND

Class actions, ie, the Act on Pursuing Claims in Group Proceedings, were introduced to Polish law in 2010.

9 GERMANY

In 2005, Germany introduced a class action experiment with the temporary Capital Markets Model Case Proceedings Act. It is limited to certain capital markets disputes and allows only certain issues arising in many proceedings to be dealt with in one model case as the model case proceedings are not fully-fledged proceedings. Parties to disputes have made use of this law in fewer cases than had been anticipated, and proceedings are taking much longer than anticipated. The act was to be evaluated in 2010 but the period of its application has been extended until 2012.

An overview of European class actions is given in the chapter written by Allen & Overy for the Lexis Nexis publication *Litigating Securities Class Actions*. 
We offer our clients a significant and competitive advantage in this area through our global footprint – we have experience in virtually every significant jurisdiction in handling and resolving class actions. Experience shows that this global footprint can be very effective for our clients as the risk of class actions spreads across Europe.

Our team consists of litigation, securities, competition and other experts from across our global practice. Patricia M Hynes based in New York is a leader of the class action bar, and offers a unique insight into U.S. class action cases.

In the Parmalat litigation, an integrated team of our lawyers in London, Milan and New York worked together to produce excellent results for our client.
Representative experience:

United States

Lehman Bros

Representation of the former chairman and chief executive officer of Lehman Brothers Holdings on an array of intersecting proceedings arising out of the investment bank’s bankruptcy filing, including his congressional testimony, criminal and regulatory investigations, and securities and ERISA class actions.

American Home Mortgage Investment Corporation (AHM)

Representation of the outside directors of AHM in federal securities class actions arising out of AHM’s August 2007 bankruptcy filing. AHM was the tenth largest originator of residential mortgage loans in the U.S. and many of its mortgages were packaged by financial institutions as part of securitisations. We are also representing AHM in regulatory investigations relating to the subprime mortgage crisis.

Parmalat

Representation of four Credit Suisse entities named as defendants in a consolidated federal securities class action arising out of the collapse of the Italian milk and dairy producer, Parmalat Finanziaria, SpA. Plaintiffs brought this action on behalf of a putative worldwide class of purchasers of Parmalat securities, alleging claims of securities fraud and controlling person liability arising out of a purported four year scheme among Parmalat’s senior management, its banks and professional advisers to conceal the company’s deteriorating financing condition.

Suprema Specialties

Representation of a former officer of a food products company in both civil litigations and criminal investigations that have resulted from the demise of Suprema Specialties, Inc. In the civil litigation, we succeeded in convincing the class action plaintiffs that our client was improperly named and obtained a stipulation of dismissal as against him. Despite the fact that a number of the company’s former employees pled guilty to various criminal charges, no charges were filed against our client.

Marsh & McLennan

Representation of the former Chairman and CEO of Marsh & McLennan in the defence of complex class actions alleging securities fraud, ERISA and derivative claims. These cases were filed following a high profile investigation by the New York Attorney General into alleged kickbacks and bid-rigging within the insurance industry. The litigation challenges long-standing practices involving hundreds of millions of dollars and engages our securities, corporate and antitrust litigation expertise.
WorldCom

Representation of 12 directors of WorldCom, a long-distance telephone company that collapsed in 2002 amid revelations of accounting fraud, in the WorldCom securities litigation in the United States District Court for the Southern District of New York. We also represented former members of the WorldCom board of directors in the federal securities class action claim against the former board members and a number of investment banks, as well as more than 30 individual shareholder actions around the nation.

Britain American Tobacco

Representation in a class action brought by the main Italian consumer association and three smokers. The claimants sought compensation for both economic and non-economic damages which smokers have allegedly suffered and would still suffer due to the addiction caused by cigarettes.

AEGON

Representation in a large number of individual court cases as well as several class actions brought by purchasers of securities lease products and against collective consumer claims in relation to its insurance products.

Vie d’Or

Under the WCAM, the Amsterdam Court in April 2009 declared binding for the policyholders of bankrupt life insurer Vie d’Or a settlement agreement with Vie d’Or’s auditors and supervisory authorities. In this settlement and the preceding landmark litigation we acted as lead counsel for the bankruptcy trustees and the policyholders of Vie d’Or.

Fortis

Representation of the State of The Netherlands in the mass tort litigation brought by various groups of investors in both The Netherlands and Belgium in relation to the rescue take-over by the Dutch State of the entire Dutch banking and insurance business of Fortis.

Delta Lloyd N.V.

Which as first financial institution in the Netherlands in September 2008 settled a class action brought by purchasers of combined mortgage/life insurance products. After the Delta Lloyd settlement, several large financial institutions concluded similar settlements.

HBOS

In proceedings brought by the Office of Fair Trading against it, six other banks and one building society, in relation to the fairness and lawfulness of unarranged overdraft charges.

A major German bank

Representation in about 250 individual prospectus liability claims with a total of approximately 400 plaintiffs, including the representation of the client in the model case proceeding (hapMuG).

KBC-Ancora

Representation in one of the first class actions in Belgium.

A major bank

Representation in relation to its distribution of financial products to retail clients in Belgium.
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GLOBAL PRESENCE

Allen & Overy is an international legal practice with approximately 4,750 staff, including some 480 partners, working in 39 offices worldwide. Allen & Overy LLP or an affiliated undertaking has an office in each of:

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