

Legal Alert:

The WAMCA is a fact



Attention please: the 'Act on Redress of Mass Damages in a Collective Action' (WAMCA) is a fact! The WAMCA will enter into force on 1 January 2020. The new Act aims to make it possible for injured parties to claim damages in an American-style class action.

Currently, the Act on collective settlement of mass damages (WCAM) already provides injured parties with the possibility to have a settlement agreement pertaining to a mass claim declared binding by the Amsterdam Court of Appeal. In that case, the settlement agreement also applies to class members who were not involved in the conclusion of the settlement, unless they opt-out. A recent example is the settlement that has been reached between (the legal successor of) Fortis, its directors and supervisory directors and shareholders in June 2018.

If parties do not succeed in reaching a settlement agreement, or if the person held liable is unwilling to enter into settlement negotiations, S 3:305a DCC provides for the possibility of a class action to request the court for a declaratory decision that the defendant is liable. However, it is not possible to claim monetary damages. To claim monetary damages, injured parties must initiate their own individual action. The WAMCA aims to fill this gap.

The most important elements are:

- a single regime will be created for collective actions under S 3:305a DCC, irrespective of whether a claim for monetary damages is made or a declaratory decision is requested
- if several representative entities wish to bring a collective claim that addresses the same damage-causing event(s), the court will designate the most qualified organization to act as exclusive representative ('lead plaintiff') on behalf of all injured parties
- collective actions can be brought before all courts
- all collective actions must be listed in a central register
- collective actions addressing the same facts and events will be treated as one claim
- if (almost) at the same time competing collective actions are brought before different courts, referral will first have to take place in order to join the proceedings

- the damage of injured parties will not be assessed individually but will be categorized ('damage scheduling')
- within one month after the appointment of the lead representative or after the conclusion of a collective settlement agreement, injured parties can withdraw from the representation of collective interests and the binding force of the proceedings by opting-out
- the judgment of the court is binding on all injured parties who did not opt-out
- the admissibility requirements pertaining to governance, funding and representativeness of the representative entity will be more stringent

Questions? Please contact:



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