

Converium/SCOR Securities Litigation: In Precedent-Setting Move, Dutch Court Declares International Collective Settlements Binding

January 30, 2012

On January 17, 2012, the Amsterdam Court of Appeals (the "Amsterdam Court") granted final approval to two international collective settlements (the "Settlements") in the *Converium/SCOR Securities Litigation* pursuant to the Dutch Collective Settlement Act. The Settlements provide an aggregate recovery of \$58.4 million to a class of European and other non-U.S. investors who were excluded from participating in the U.S. securities class action against the Swiss reinsurer Converium Holding AG and Zurich Financial Services.

The decision is significant for investors around the globe. These non-U.S. investors - who previously brought U.S. federal claims and were excluded from the U.S. action because they were not U.S. residents and because they purchased their shares on the Swiss Stock Exchange (the "SWX") - now have access to \$58.4 million in settlement monies. Moreover, the Amsterdam Court's decision confirmed that the Dutch Collective Settlement Act is available to a broad range of securities plaintiffs and corporate defendants-inside and outside the Netherlands-and that the Amsterdam Court is a pragmatic and investor-friendly forum.

In approving the Settlements, the Amsterdam Court endorsed its earlier provisional ruling that it had jurisdiction to declare the Settlements binding even though the alleged wrongdoing took place outside the Netherlands, and none of the alleged liable parties - and only a limited number of the potential claimants - were based in the Netherlands.

The *Converium* action was commenced in the U.S. District Court for the Southern District of New York (the "New York Court") on behalf of all investors who purchased Converium common stock on the SWX and American Depository Shares ("ADS") on the New York Stock Exchange. In March 2008, however, the New York Court certified a class of exclusively U.S. investors and investors who purchased ADS on the New York Stock Exchange. The New York Court excluded all non-U.S. purchasers who bought shares on the SWX because the court found that these investors did not have sufficient contacts with the U.S. to pursue their claims under the U.S. federal securities laws. This prompted counsel to the Converium investors to create a dual track. U.S. plaintiffs proceeded with the case in the New York Court and ultimately achieved an \$84.6 million settlement that was approved by the New York Court. Despite the adverse ruling of the New York Court, the non-U.S. plaintiffs were able to negotiate the separate \$58.4 million recovery, which was submitted for approval to the Amsterdam Court. Accordingly, but for the \$58.4 million Settlements, which the Amsterdam Court has now approved, non-U.S. investors who purchased Converium shares on the SWX would not have recovered any of their losses.

The U.S. Supreme Court's 2010 decision in *Morrison v. National Australia Bank* further underscores the significance of the Amsterdam Court's ruling. Specifically, in *Morrison*, the Supreme Court restricted the rights of all investors - both within the U.S. and around the world - to bring claims under the U.S. federal securities laws for shares not purchased on a U.S. exchange. The Amsterdam Court's decision shows that it understands the legitimate need for a forum in which investors can recover damages resulting from securities fraud, and is willing to meet that need. Accordingly, by approving the *Converium* Settlements, the Amsterdam Court has not only protected the rights of thousands of non-U.S. shareholders that otherwise would have been precluded from recovering any of their

significant losses, but also takes an important step towards finding a European solution for investors in situations where they may no longer be protected by private enforcement efforts in U.S. courts.

Bernstein Litowitz Berger & Grossmann LLP ("Bernstein Litowitz") acted as Co-Lead Counsel for Plaintiffs in this historic securities action. For more information, please contact Jerry Silk (jerry@blbglaw.com) or Jeroen van Kwawegen (jeroen@blbglaw.com).