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European Institutions Take Leading Roles in U.S. Securities Litigation

By Kristin Meister

The financial crisis of the past few years is a sharp reminder that nations around the world are financially interconnected despite being separated by oceans and time zones. Unfortunately, this reminder has come in the painful form of the worldwide consequences of American financial fraud that directly impacted U.S. and foreign investors alike. In response, recent years have seen an increase in foreign (particularly, European) investors who have successfully requested to be appointed as lead plaintiffs in securities class actions across the United States. Indeed, European investors are now some of the most active and important protectors of shareholder rights.

Courts in the United States understand that with today's global economy, non-U.S. based investors, who increasingly hold sizeable amounts of U.S. securities, can appropriately serve as adequate lead plaintiffs and are encouraged to seek leadership positions. This is especially true given the Private Securities Litigation Reform Act ("PSLRA") provisions setting out the criteria for class representatives, which consider lead plaintiff applicants appropriate when they have "the largest financial interest in the relief sought by the class" irrespective of their country of origin. Increasingly, European institutional investors are found to have suffered the largest loss, even of a largely U.S.-based class, and are therefore

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appointed lead plaintiff. Indeed, it is now commonplace for U.S. courts to certify class actions and appoint European lead plaintiffs as class representatives to prosecute the lawsuits on behalf of members of a class which includes both American and non-American investors.

Since 2010, there have been at least 23 cases in which a movant originating from a European country was appointed lead or co-lead plaintiff in a class action securities litigation in the United States. These institutional plaintiffs, including pension funds, insurance companies, and asset managers, mostly came from The Netherlands, the United Kingdom, and Scandinavia. For example, in just the last couple of years, Stichting Philips Pensioenfond, a public pension fund based in The Netherlands, was appointed lead plaintiff in *Jones, et al v. Pfizer, Inc.* in the federal district court for the Southern District of New York; Stichting Pensioenfond Zorg en Welzijn, represented by PGGM Vermogensbeheer B.V., was appointed co-lead plaintiff in *In re Bank of America Securities Litigation* in the federal district court for the Southern District of New York; the Mineworkers' Pension Scheme from the United Kingdom was appointed lead plaintiff by the federal district court for the District of Arizona in *In re Apollo Group, Inc. Securities Litigation*; and the federal district court for the District of New Jersey appointed Swedish pension

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administrator Sjunde AP-Fonden (AP7) lead plaintiff in *Monde, et al v. Johnson & Johnson*.

The importance of these proactive and engaged European institutional investors for protecting shareholder interests cannot be overstated. Having sophisticated investors take ownership and serve as lead plaintiff is of crucial importance to the litigation and the ultimate recovery.

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