Chapter 2

International Class Action Settlements in the Netherlands since Converium

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Introduction

1 Since the US Supreme Court’s decision in *Morrison v National Australian Bank* [see Endnote 1], the international relevance of Dutch law on class action settlements has increased. Indeed, now that “foreign cubed class actions” have become a problem in the United States [see Endnote 2], the Netherlands may become a serious alternative for the certification of class action settlements involving non-US investors in non-US securities listed on a non-US stock exchange.

2 Dutch law does not provide for an “American style” class action, but it does provide for an opt out mechanism that facilitates the implementation of collective settlements in a fashion somewhat similar to US class action settlements. This mechanism is rooted in the Act on the Collective Settlement of Mass Claims, known in the Netherlands as the “WCAM”.

3 Dutch law as it relates to international class action settlements had several important developments in recent years. In its decision of 29 May 2009, the Amsterdam Court of Appeal (the “Court”) declared the international settlement in the “Shell Reserves” case binding under the WCAM. Although the ruling was the first of its kind to truly reflect an international application of the WCAM, one of the two Shell entities settling the matter was Dutch (the other was a UK entity).

4 In its interim decision of 12 November 2010 and its final decision of 17 January 2012, the Court assumed jurisdiction and declared an international collective settlement binding in a case where none of the two potentially liable parties was Dutch (they are both Swiss), and where only a limited number of the potential claimants were domiciled in the Netherlands. [See Endnote 3.]

5 In this article, we first outline the system of the WCAM. Subsequently, we discuss different issues within the framework as set up by the WCAM and the Court’s accompanying case law. The various issues include: jurisdiction; notification; representativity; reasonableness; and international recognition.

The System of the WCAM

6 The WCAM entered into force on 27 July 2005. Basically, it provides parties to a settlement agreement with the possibility of jointly requesting the Court to declare the settlement agreement binding. The agreement must be concluded between one or more potentially liable parties, and one or more foundations or associations representing one or more groups of persons for whose benefit the settlement agreement was concluded (the “interested persons”). If the Court does declare the settlement agreement binding, the agreement then binds all persons covered by its terms, unless such person decides to opt out in writing within a certain time period after the binding declaration. The opt out period is determined by the Court, but is at least three months.

7 Before deciding on the binding declaration, the Court will test, among other things, the representativity of the foundation(s) and association(s) representing the interested persons, as well as the reasonableness of the settlement.

8 Notification of the interested persons is crucial both at the litigation stage, where the aim is to obtain a binding declaration, as well as after the binding declaration has been issued. The binding effect of a settlement agreement is only regarded as acceptable if the interested persons have been properly notified at both stages, and thus have had an opportunity to object and to opt out. [See Endnote 4.]

9 Currently, an amendment to the WCAM is pending. Its inclusion would result mostly in technical improvements. However, an important proposed change would be that the WCAM may also be applied to settlements reached in bankruptcy situations.

Thus far, the Court has rendered six final decisions within the framework of the WCAM, namely in DES (regarding personal injury allegedly caused by a harmful drug), in *Dexia* (regarding financial loss allegedly caused by certain retail investment products), in *Vie d’Or* (regarding financial loss allegedly suffered by life insurance policy holders as a consequence of the bankruptcy of a life insurance company), in *Vedior* (regarding financial loss allegedly suffered by shareholders as a consequence of late disclosure of takeover discussions), in *Shell* and in *Converium* (see below). In each of these cases, the Court declared the settlement agreements binding. It further found the settlements reasonable and affirmed the standing of the foundations and associations representing the persons in the suit.

10 Both *Shell* and *Converium* are cases with substantial international scope. Both cases concern financial loss suffered by shareholders allegedly caused by misleading statements by the company in a certain period. In *Shell*, one of the Shell entities involved was Dutch and the other was British. The majority of the shareholders who bought or sold Shell shares during the relevant period – these were the persons for whose benefit the settlement agreement was concluded – were not residing in the Netherlands. In *Converium*, both entities involved – Converium and Zürich Financial Services – were Swiss. Also here, only a minority of the shareholders who bought or sold shares during the relevant period were residents of the Netherlands.
Jurisdiction in International Settlements

11 From an international perspective, one of the most important issues in both Shell and Converium is the question of whether the Court had jurisdiction. This matter is, in principle, governed by Council Regulation (EC) No. 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters of 22 December 2000 (the Brussels I Regulation) and the Lugano Convention [see Endnote 5], depending on whether it can be said that the person “to be sued” is domiciled in a Member State of the EU, or in Norway, Switzerland or Iceland (the “Lugano” countries).

12 The Brussels I Regulation and the Lugano Convention are substantively applicable if the litigation concerns a “civil or commercial matter”. In both Shell and Converium, the Court ruled that the WCAM procedure is a “civil and commercial matter” as referred to in article 1 of the Brussels I Regulation and the Lugano Convention. Apart from that, it ruled that for the purpose of the application of these international instruments, the shareholders are to be regarded as the persons “to be sued” as referred to in article 2 section 1 of the Brussels I Regulation and the Lugano Convention. On that basis, the Court first assumed jurisdiction with regard to the shareholders domiciled in the Netherlands. Consequently, the Court assumed jurisdiction with regard to the shareholders domiciled outside the Netherlands, but within the EU, Switzerland, Iceland or Norway, as their potential claims vis-à-vis Shell were “so closely connected” to the claims of the shareholders domiciled in the Netherlands that it was “expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings” (see article 6 section 1 of the Brussels I Regulation and the Lugano Convention).

13 Finally, the Court assumed jurisdiction with regard to the shareholders who were not domiciled in the Netherlands, nor in any other EU Member State, Switzerland, Iceland or Norway. The basis for this decision was the fact that five out of six petitioners in Shell and two out of four petitioners in Converium were domiciled in the Netherlands. This ground for jurisdiction was based on article 3 of the Dutch Code of Civil Procedure (“DCCP”), which provides that, in this type of proceeding [see Endnote 6], Dutch courts have jurisdiction if at least one of the parties requesting the binding declaration, or one of the defendants, is domiciled in the Netherlands. One may ask whether the Court may not be regarded as an inappropriate forum, if the case is substantively hardly connected to the Netherlands. During the legislative process resulting in article 3 DCCP, the Minister of Justice stated that if the formal criteria of this provision were met, the provision would not provide for the possibility of the Dutch courts declining jurisdiction on the basis of the “forum non conveniens” doctrine. [See Endnote 7.]

14 The decision that the parties for whose benefit the settlement agreement has been concluded are actually the persons “to be sued” as per article 2 of the Brussels I Regulation and the Lugano Convention appears to be the right one. Indeed, these persons are the ones that may be bound by the binding declaration. They need to be notified of the request for the binding declaration so that they may file objections to the request. This implies that they are the potential defendants in the litigation. However, this approach has been discussed in critical fashion in a report commissioned by the Dutch Ministry of Justice. [See Endnote 8.]

15 The decision by the Court on international jurisdiction in Converium implies that even if the case is substantively not connected to the Netherlands, but a minority of the parties “to be sued” (i.e. the shareholders or, in a product liability case, the alleged victims of a defective product) are domiciled in the Netherlands and one of the parties to the settlement agreement is a Dutch entity (like, for example, a Dutch Stichting (foundation) representing the interests of the alleged victims), the Court will assume jurisdiction.

16 It should be noted that the Court in Converium also held as a separate and autonomous ground for jurisdiction that the settlement agreement to be declared binding has to be executed in the Netherlands. As a consequence, the Court also assumed jurisdiction on the basis of article 5 sub 1 of the Brussels I Regulation and the Lugano Convention.

Notification in International Settlements

17 Notification of the persons for whose benefit the settlement agreement is concluded is crucial, both at the stage of the litigation aimed at obtaining a binding declaration, as well as after the binding declaration has been issued. The WCAM provides for direct notification of interested persons known to the petitioners, as well as for public notification, through announcements in newspapers, of interested persons whose identities are unknown to the petitioners. Insofar as foreign unknown interested persons are concerned, the Court may order announcements in relevant foreign newspapers, as is demonstrated in Shell and in Converium. [See Endnote 9.]

18 Direct international notification, insofar as EU-domiciled persons are concerned, is, since 13 November 2008, governed by Council Regulation (EC) No. 1393/2007 of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (the “Notification Regulation 2008”). [See Endnote 10.] Although the Notification Regulation 2008 takes as a starting point that service of documents will be effected through the intermediary of central authorities appointed by each Member State, it provides in article 14 that each Member State will be free to effect service of judicial documents directly by postal services on persons residing in another Member State by registered letter with acknowledgment of receipt or an equivalent.

19 If interested persons reside outside of the EU, notification must be effected pursuant to applicable treaties, most notably the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil and Commercial Matters (the “Service Convention”). The Service Convention takes as a starting point that service of documents will be effected through the intermediary of central authorities. Depending on the country involved, certain formalities must be fulfilled. Normally, the central authority of the State receiving a request for service will require a translation of the notification in the language of the receiving State. Under Dutch law, a failure to prove that all requirements under the Service Convention have been met may result in the Court refusing to render a default judgment against the defendant. It may also result in the Court requiring that the notification process be repeated.

20 The WCAM provides that notification, both at the stage of litigation and after the binding declaration, may take place by regular mail. The Court may provide otherwise at the stage of litigation. In Dexia, grounds 5.2 through 5.4, the Court allowed for all persons, in the Netherlands and abroad, to be notified by regular mail only. It held that insofar as the procedural safeguards of these persons were violated because they were not notified in accordance with the Notification Regulation 2000, the Service Convention and similar instruments, such persons may invoke that circumstance if Dexia were to enforce the binding declaration against them and that, on the other hand, these persons may invoke the binding declaration themselves, in which case they are bound by it. This
liberal approach by the Court has been criticised by some legal scholars on the basis that it violated applicable international law (such as the Notification Regulation 2000).

21 In Shell and Converium, the Court took a more stringent approach, requiring the petitioners to follow the Notification Regulation 2000 and the Notification Regulation 2008, the Service Convention and similar instruments. [See Endnote 11.] The reason may be that Shell and Converium are much more international in scope than Dexia. In Dexia, basically all interested persons, being contractual counterparties of Dexia, were known and the large majority were domiciled in the Netherlands. In Shell and Converium, the majority of the shareholders were not known, as they were holding bearer shares or were holding shares through nominee accounts. Moreover, the majority of the known shareholders were not domiciled in the Netherlands, but in the UK and Switzerland. In particular in Shell, the notification process was an extensive task: more than 110,000 notices in 22 different languages were sent out to shareholders located in 105 different countries. In addition, a notice was published in 44 different newspapers worldwide. In Converium, the notification process was similar to the one in Shell, sending out more than 12,000 notices and publishing a notice in 21 different newspapers worldwide. In addition, the notice was placed on five different websites and circulated through two different newswires. In both cases the Court scrutinised whether this notification process had been carried out in accordance with all applicable national and international rules and decided that it had passed the test. In Converium, the Court ruled that the notification of the binding declaration could take place by regular mail or by e-mail, except for the shareholders residing in Switzerland, for which the Service Convention had to be followed.

Representativeness in International Settlements

22 The requirement of representativeness of the parties representing the interested persons has not been specified in the WCAM. The Explanatory Memorandum to the WCAM states that representativeness can be derived from several factual circumstances and that it is not advisable to deem any one circumstance decisive. The following circumstances are mentioned as potentially relevant: the other activities of the representative on behalf of the persons involved, the number of persons involved, the acceptance of the representative by these persons, and the extent to which the representative has actually acted on behalf of the persons involved and has presented itself as representative in the media. [See Endnote 12.]

23 In Dexia, the Court applied these criteria meticulously. It looked at the statutory objects of the foundations and associations involved, the number of participants or members, the activities of these foundations and associations apart from filing the WCAM request, such as their websites, their mailings to interested persons, their activities in the media, and their earlier activities in the field of litigation in connection with the issues that were covered by the settlement agreement. In DES, the Court applied the same standards, albeit in a less elaborate manner.

24 Insofar as international considerations are concerned, the Dutch government, when introducing WCAM to parliament, initially appeared to believe that settlements for the benefit of non-Dutch persons were inappropriate for a binding declaration as a matter of principle, on the ground that a Dutch foundation or association can “normally” not be expected to be representative for a group of foreign claimants. [See Endnote 13.] However, the government seems to have retreated from the position that foreign interested parties cannot benefit from a binding declaration. [See Endnote 14.] Indeed, its recent activities, such as the commissioning of a report on the private international law aspects of the WCAM and the paragraph on aspects of private international law in the Explanatory Memorandum to the proposed amendments to the WCAM, show the government is fully aware of the international significance of the WCAM [see Endnote 8].

25 For international cases, it is particularly relevant that the Court in Dexia held that it is not required that each petitioner is representative for all persons involved. The Court held that it is sufficient if the joint petitioners are sufficiently representative regarding the interests of the persons for whose benefit the settlement agreement was concluded, provided that each of them is sufficiently representative for a sufficiently large group of these persons (see Dexia, ground 5.26).

26 In Shell, a Dutch foundation was created which had as its sole purpose to represent the interests of all non-US shareholders affected by the alleged misrepresentations by Shell. This foundation sought and obtained the support of participants and supporters, such as shareholder organisations in relevant other countries and institutional investors. In the WCAM petition, all interested persons were represented by this foundation (backed up, so to speak, by its participants and supporters) and the Dutch Shareholders’ Association (the “VEB”). The Court accepted these two parties as being representative. The text of the decision suggests that the Court very much looked at the articles of association of the foundation and the VEB and abstained from scrutinising the actual activities of these entities. In Converium, the shareholders were represented in a similar manner as in Shell, and the Court also accepted the Dutch foundation and the VEB as being representative. In both cases, the Court repeated the Dexia ruling, in that it is not required that each petitioner be representative for all persons involved (see Shell, ground 6.3). A similar formula was employed in Vedior (grounds 4.20 and 4.21).

Reasonableness in International Settlements

27 The WCAM provides that the Court will reject the binding declaration if the compensation awarded in the settlement agreement is not reasonable, having regard, among other things, to the extent of the damage, the ease and speed with which the compensation can be obtained and the possible causes of the damage. In Converium, the Court ruled that all circumstances are relevant, including those circumstances which occurred after the determination of the amount of compensation or after the conclusion of the settlement (final decision, ground 6.2).

28 “Reasonableness” of the settlement has many aspects. The first aspect discussed here is the reasonableness of the criterion by which it is determined whether a person is included in the group of interested persons. Will the Court test whether the circle of persons covered by the settlement agreement is reasonably drawn? In DES (ground 5.19), the Court held that it will only test whether it is “incomprehensible” that a certain group of potentially eligible persons was excluded from the settlement agreement at all (in that case, the group of haemophilia patients). This test implies that the Court will not easily decide that a certain group was wrongly included in or excluded from the settlement. Obviously, if a group is excluded from the settlement, the binding declaration will not diminish their rights in any shape or form, that is: the binding declaration cannot be invoked against them and they still have standing in court, without the need to issue an opt out statement in time.
29 Please note that the type of exclusion described in the preceding paragraph is different from the situation where a certain group is included in the settlement, in the sense that it is covered by the description of interested persons potentially eligible for compensation, but is not awarded anything. In that case, the binding declaration can be invoked against this group and these persons need to opt out in order to still have standing in court. In such a case, the Court will fully test whether such limitation is reasonable instead of just testing whether it is not “incomprehensible”.

30 The concept of “reasonableness” also refers to the amount of compensation awarded in the settlement agreement. It is an implied starting point of the WCAM that settlement agreements may differentiate between different groups of eligible parties on the basis of the expected strength of their claim in court. [See Endnote 15.] In addition, the Court in Dexia held that a settlement agreement is the outcome of negotiations in which all parties have made concessions. The extent to which they have made concessions will not only reflect the legal strength of the parties’ positions (as perceived by them), but also each party’s perceived interest in having the matter resolved out of court. As a consequence, a settlement will normally not result in full compensation of the losses as originally presented by the claiming parties. The Court held that this in itself does not make a settlement unreasonable (ground 6.6). The Court also held in DES that the absence of a hardship clause in the settlement agreement did not make it unreasonable in the specific circumstances of that case.

31 In Shell (grounds 6.15-6.17), the Court held on multiple grounds that the compensation granted was not unreasonable. It referred to the broad support the agreement had met both from institutional investors and from shareholders’ associations. It also referred to two US scholars’ favourable opinions filed by the petitioners, which indicated that the settlement was somewhat better for the shareholders than the average of other settlements in comparable cases. It also referred to the fact that the alleged misleading statements had not given rise to litigation outside the US, which suggests that it is uncertain that an award in a non-US court can be obtained that is better than the compensation awarded in the settlement, also taking into account the litigation costs involved. [See Endnote 16.]

32 In Shell, no question arose about unequal treatment of shareholders in different jurisdictions, as the shareholders were actually treated equally in all jurisdictions. [See Endnote 17.] However, one can imagine international cases in which the settlement agreement differentiates between parties residing in different countries, on the basis that their claims have a different value under the laws that apply in each of their cases. For example: is it reasonable to grant higher compensation to claimants in France than to claimants in Germany, because the law applicable to the claims of the French claimants provides a stronger position to them than the law applicable to the claims of the German claimants provides to these claimants? This would mean that the Court will have to test the “reasonableness” of the settlement partly by having regard to several foreign laws.

33 In our view, this would not be a problem. The WCAM allows that the strength of the claim in court is taken into account in determining the amount of compensation (see the Shell decision and the Dexia decision quoted above). There does not seem to be a good reason not to apply that principle in international cases. Applying foreign law is something Dutch courts do regularly on the basis of the Rome I Regulation (and its predecessor the 1980 Rome Convention), the Rome II Regulation and other international instruments. In practice, the application of foreign law may sometimes be problematic because the courts often rely on information about foreign law as provided by the parties. Such information is not always comprehensive. In WCAM cases, however, it is to be expected that the parties will be able to provide sound information about foreign law to the Court, as such cases will be prepared, in view of their complexity, with above-average thoroughness. Moreover, in case the law in question is the law of a party to the European Convention on Information on Foreign Law, the Court may use that Convention to obtain information.

34 In Converium, just as in Shell, the settlement only regarded non-US shareholders. The Court found that the proposed non-US settlement amount was considerably lower than the US settlement amount. However, it held that despite this difference the settlement amount was not unreasonable. The Court ruled that the difference between the US and non-US settlement amount was justified, given the fact that the legal position of the non-US shareholders differed from the legal position of the non-US shareholders. According to the Court, the non-US shareholders were excluded from the US settlement, and it would be very difficult for them to get compensation outside the US, whereas it was improbable that they would get compensation in the US. Also, the non-US shareholders could opt out and start individual proceedings (final decision, grounds 6.4.1 through 6.4.5).

35 In Converium, the Court also ruled that the proposed total settlement amount was not unreasonable, despite the considerable lawyers’ fee of 20%. The Court found that, considering that most preparatory work had been done by US lawyers, in judging what is a reasonable fee, US standards of what is common and reasonable should be taken into account. The Court found that it was sufficiently established that according to such standards, the fee was not unreasonable (final decision, grounds 6.5.1 through 6.5.7).

International Recognition and Enforceability of a WCAM Decision Abroad

36 Whether the WCAM procedure will prove to be helpful in declaring international settlements binding will in the long run also depend on whether foreign courts recognise and enforce a binding declaration by the Court. The criteria on the basis of which foreign courts will decide on recognition and enforcement of a foreign court decision will differ from country to country. However, insofar as the foreign court is a court of an EU Member State, a solid argument can be made that the decision to declare a settlement binding is a ‘judgment’ as referred to in article 32 Brussels I Regulation. Such judgment must be recognised by the courts of other Member States, unless one of the grounds to refuse recognition in article 34 and article 35 apply. However, these grounds are rather narrow. A ground for refusal that may be relevant in these cases is that no proper service of the defendant took place (article 34 section 2). The court that must decide on recognition may not review the binding declaration of the Court as to its substance (article 36), unless it is manifestly contrary to public policy in the Member State in which recognition is sought (article 34 section 1 Brussels I Regulation).

37 In Shell, the Court implies that its decision should normally be recognised by the courts in other Member States of the EU. It does so particularly in ground 5.23, where it discusses the position of a UK shareholder vis-à-vis the UK Shell entity after the binding declaration.

38 In a recent publication in a Dutch law journal, a German legal scholar, professor Halfmeier, argues that because of substantial participation by the courts, the WCAM declarations are
to be treated as “judgments” in the sense of the Brussels I Regulation and are thus objects of recognition in all EU Member States. He further argues that the opt out system inherent in the WCAM procedure does not violate the German public order, but is compatible with the fair trial principles under the German Constitution as well as under the European Rights Convention. He considers the WCAM therefore an attractive model for the future reform of collective proceedings on the European level. [See Endnote 18.]

39 As previously stated, in countries outside the EU the criteria for recognition will differ from country to country, although it is likely that foreign courts will test the grounds for jurisdiction of the Court, the fairness of the WCAM procedure (including whether proper notice is given to the interested parties), and whether public policy in their own jurisdiction is at stake. Other contributions in this book may shed more specific light on these types of issues. [See Endnote 19.]

### Conclusion

40 The WCAM, in force since 2005, provides an opt out mechanism that facilitates the implementation of collective settlements. *Shell* is a landmark decision on the international application of WCAM, as it assumed jurisdiction with regard to all interested parties, irrespective of their domicile. The interim (and provisional) decision in *Converium* takes the matter a step further, by not requiring that any of the potentially liable entities is seated in the Netherlands. However, also in *Converium*, some connection with the Netherlands appears to be required, namely one or more interested persons should be domiciled in the Netherlands and one or more petitioners should be Dutch entities. In large international cases, since there will often be one or more interested persons with domicile in the Netherlands, this requirement will often be met. The requirement that one or more petitioners should be Dutch will be met if the foundation or association representing the interested persons is a Dutch entity. Such a foundation or association may be an entity created for the occasion, provided it can meet the representativity test.

### Sources

Explanatory Memorandum (Memorie van Toelichting) to WCAM, Parliamentary Proceedings II 2003-2004, 29 414, no. 3.
Explanatory Memorandum (Memorie van Toelichting) to the amendments to the WCAM, Parliamentary Proceedings II 2011-2012, 33 126, no. 3.
Amsterdam Court of Appeal 1 June 2006, NJ 2006, 461 (DES).
Amsterdam Court of Appeal 29 April 2009, JOR 2009, 196 (Vie d’Or).
Amsterdam Court of Appeal 29 May 2009, JOR 2009, 197 (Shell).
Amsterdam Court of Appeal 15 July 2009, JIN 2009, 620 (Vedior).
Amsterdam District Court 23 June 2010, JOR 2010, 225 (Ahold).

### Endnotes

1 No. 08/1191 (US June 24, 2010).
2 At least for the time being. The US Congress may decide to amend the relevant statutes.
3 See Amsterdam Court of Appeal 17 January 2012, JOR 2012, 51 (Converium) rendering final its interim decision of 2 November 2010, JOR 2011, 46 (Converium). De Brauw Blackstone Westbroek represented Zürich Financial Services Ltd., one of the parties in this matter. De Brauw Blackstone Westbroek also represented parties in other published cases discussed in this article (such as Shell in *Shell*). However, this contribution is based solely on the public record.
4 Explanatory Memorandum (Memorie van Toelichting) to WCAM, p. 4.
5 The Lugano Convention is also called the Parallel Convention, as it creates a regime of international jurisdiction and enforcement between the EU countries and Norway, Switzerland and Iceland, that is quite similar to the regime between the EU countries based on the Brussels I Regulation.
6 The type of proceeding to have a settlement agreement declared binding, is a *verzoekschriftprocedure*, that is: proceedings initiated by a petition to the court rather than by a writ served on the opposing party.
8 Hélène van Lith, The Dutch Collective Settlements Act and Private International Law, Erasmus School of Law 2010, p. 39. Van Lith has published an updated version of this report under the same title, published by Makki, Apeldoorn, 2011. The reference in this endnote is to be found in that updated version on p. 45. Explanatory Memorandum to the amendments to the WCAM, p. 2.
9 See the minutes of the court session in Shell of 12 July 2007 and the minutes of the court session in *Converium* of 24 August 2010, both published on the website of the Court.
10 Until 13 November 2008, Council Regulation (EC) No. 1348/2000 of 29 May 2000 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (the “Notification Regulation 2000”) was applicable. The Notification Regulation 2000 was applied in *Shell*.
11 See the minutes of the court session in *Shell* of 12 July 2007, published on the website of the Court.
12 Explanatory Memorandum, p. 15.
13 Explanatory Memorandum, p. 16.
15 Explanatory Memorandum, p. 12.
16 It should be noted that a few parties jointly objected to the reasonableness of the settlement in the Court. However, that objection referred to one rather technical aspect of the settlement agreement and not to the reasonableness of the settlement as a whole. The objection was refuted by the Court. It is not discussed here.
17 As the *Shell* settlement is in USD, differences may be caused by exchange rate differences. The Court found that this was not unreasonable, as the USD is internationally accepted and the shareholders were residing in several different jurisdictions.
18 See A. Halfmeijer, Recognition of a WCAM settlement in Germany, NIPR 2012, p. 176.
A. Halfmeijer, Recognition of a WCAM settlement in Germany, NIPR 2012, p. 176.
Chr. F. Kroes, comment to Dexia decision, Jurisprudentie Burgerlijk Procesrecht 2007/39.
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- Representing a Dutch financial institution before the Netherlands Supreme Court in a mass litigation dispute.
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