



**THE INTRODUCTION
OF CLASS ACTIONS
IN BELGIUM**



**MEDIATION AND COLLECTIVE
REDRESS :
A MEDIATOR'S ACTION PLAN
IN 20 QUESTIONS**

Willem MEUWISSEN

1. Who are the clients ?

(Art. 9 Collective Redress Bill)

- The claimants : Non-profit organisations e.g. trade unions, consumer organisations, SME professional organisations
- The respondents : Corporations, sellers of consumer goods, employers, manufacturers and distributors of raw materials, semi finished and finished products, liability insurers

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2. Where to find a mediator ?

Mediators accredited by the Belgian Federal Mediation Commission

<http://www.juridat.be/bemiddeling/>

Accreditation :

- Training
- Permanent education
- Professional standards

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2. Where to find a mediator ?

Belgium	:	<u>BBMC</u>	<u>VOBA</u>	<u>CEPINA</u>
France	:	<u>CMAP</u>		
Netherland	:	<u>NMI</u>	<u>ACB</u>	
Great-Britain	:	<u>CEDR</u>	<u>CIArb</u>	<u>LCIA</u> <u>LMAA</u>
Germany	:	<u>BMWA</u>		
International	:	<u>ICC</u>	<u>CPR</u>	<u>AAA</u> <u>AIA</u>

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3. Do(es) the claimant(s) comply with art. 9 CRB ?

- Corporate purpose : relates to a least 1 of the indemnity issues (e.g. loss of wages, of consumer value, of profit or excess of costs)
- Representative : public reputation / rather many members
- Competent : adequate organisation for administering the Class Action (Art. 19 §1 CRB : refusal of Court approval)
- Are other claimants prone to enter the Class Action Arena ? (Court Approval trouble ahead !)

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4. Are all respondents present or properly represented ?

- Isn't there also a "class" of respondents to be considered ?
- What is necessary to get those to the table ?
- What if they refuse ?

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5. Are the insurers of claimants and/or respondents present or represented in the mediation?

- Insurers of claimants ?
- Insurers of respondents !

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6. One mediator or a co-mediation ?

- Many parties present → more than one set of eyes and ears and brains required
- Complicated matter : technically complicated, more than one legal system ...

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7. Are parties properly represented ?

- Negotiation teams : who is entitled to sign ?
- Feed back to rank and file how ?
- Mediation “of the second table” between respondents and their insurers ? When, where and how ?
- Agent/principal issues between parties and their counsel ?
- How are counsel remunerated ?

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8. Law applicable to the mediation ?

- In Belgium : Belgian law
- Belgium 2005 Mediation Act fully complies with EU Directive 2008/52/EC on certain aspects of mediation in civil and commercial matters (OJ L136 24/5 2008, pag. 3)

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9. What is a Mediation “Protocol” ?

- Contract for the performance of mediation services by mediator to parties.
- Contract between parties to negotiate in good faith.
(Difference civil law / common law !)

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10. How is the mediator being paid ?

- Fees and expenses stipulated in detail in the Mediation Protocol.
- On a time spent basis only.
- An equal part for each party save other stipulations in settlement.
- Who is to be considered as a party ?

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11. Is this a mass claim in the sense of art. 2 and 3 CRB ?

- Individual damage
- Great number of victims
- Same cause

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12. How to define the class ?

- Who is a Class Member ?
- How many Class Members may be expected ?
- What if Judge refuses approval for inadequate class definition ?

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13. Opt in or Opt out ?

- Principle : opt out
- What makes “opt in” advisable ?

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14. Liability contended ?

- Art. 24 CRB : without prejudice
- Party experts ?
e.g. technical issues, financial issues
- Independant experts' opinions ?
- Have the court decide on legal issues ?

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15. Split liability ?

- Among respondents
 - Among insurers
- Mediation of the second, third, fourth etc. table !

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16. Valuation of damages ?

- Expert opinion ?
e.g. computation of Cartel Damages
- Over all damages or individualised damages ?
- Where will class members opt out ?
- Court approval \approx Fairness hearing

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17. Settlement of damages

- By Claimant ?
- Control by Respondent ?
- Control by Insurer ?
- Control by Expert ?
- Control by Court ?

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18. Guarantees offered by the respondent ?

- Fund
- Bank guarantee

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19. How settlement will be published ?

- Media ?
- Costs ?
- Sanction : Court approval refused

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20. Review in case of new damages after court approval ?

- Redefinition of the class
- New valuation of the damage

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**THANK YOU
VERY MUCH
FOR YOUR ATTENTION**

Questions : attorneys@meuwissen-co.be