

The introduction of Class Actions in Belgium

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Consequences for the banking sector



**B a n k
Nederland**

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- **A personal view, only as just “an expert – or victim - by experience”**
- **After 27 years in private practice as attorney at law (including negotiations and settlements as trustee in the Fokker bankruptcies)**
- **1) The Dutch Dexia case, which includes failure as well as successful settlements, with still some problems to be solved**
- **2) The DSB bankruptcy case, since October 2009 on its way**
- **3) Some “lessons to be learned”, “to make it work”**

Dexia (Netherlands) (1)

- **New name for “old” Bank Labouchere**
- **Since 1997: 391.000 clients with in total 713.000 share-lease contracts**
- **Basic idea : Buying shares with loans; value of the securities used as collateral, hope and pray that value goes up**
- **First (AEGON) years “pay out” of more than € 1,6 billion profits to clients**
- **Severe fall of the stockmarket in late 2001 : value of stock often lower than (remaining) loan, so many clients had to pay the difference (the residual debt, the “under-water” position) to Dexia**

- **Clients: all possible legal actions to prevent Dexia from collecting loans: false or misleading information, breach of duty of care, no spousal consent, tort, Consumer Credit Act, but also media, politics, pressure groups etc.**
- **Beginning of 2003 : introduction of the “Dexia Offer”**
- **Spring 2004: mediation by governmental committee headed by Oosting, the former Dutch Ombudsman**
- **August 2004: appointment of CL (chief legal) Officer and decision that Dexia would leave the Netherlands in due course**

Dexia (Netherlands) (3)

- **February 2005: Settlement with AEGON about the purchase of Labouchere, followed by:**
- **Duisenberg Mediation by two large foundations, the Dutch Stockholders Association, the Consumers' Association and Dexia Netherlands**
- **Summer 2005: Duisenberg Arrangement: discounts of 10%, 66,6% or 100% of the residual debts, total value of appr. € 1 billion**
- **Part of the deal: using the (new) "Law on Collective Settlements of Mass-Damage" (WCAM) to end as many (potential) conflicts as possible**

•WCAM: Characteristics of this new law (1)

- **Effective since August 1, 2005 (because of DES-daughters)**
- **Amsterdam Court of Appeal can grant “declaration of binding force” to an agreement to settle “damages” between a company “under attack” and representative interest group(s)**
- **The company is entitled to request postponement of all current and new (individual and group) court cases, after starting the filing of the petition to the Court of Appeal till the decision of that Court**
- **Individuals and other (competing) representative interest groups can file writs of defence**

- **Criteria to grant “binding force”:** not only legal position, but also efficiency and fairness of the solution, based on the agreement, to everyone involved
 - **After positive decision of Court of Appeal:** Opt-out period of at least 3 months (to be decided by Court of Appeal) after date of decision. People who don’t “opt-out” are legally bound to the agreement
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- **So Dexia and the four special interest groups filed their petition in November 2005, succeeding to obtain “binding force” as per February 1st 2007, the start of an “opt-out period” of 6 months**

DEXIA GEDUPEERDEN



Ik heb al mijn geld terug!

Ik ben Koos van Gemert. Ik heb een hoop geld verloren bij Dexia. Ik heb NEE gezegd tegen de Duisenberg-regeling omdat ik niets terugkreeg. Van de rechter kreeg ik mijn geld wél terug. Met rente.

Wilt u ook uw geld terug van Dexia?

Kijk op www.leaseproces.nl of bel 0800-2005 voor de gratis brochure en het complete verhaal van Koos van Gemert
(Maandag-vrijdag 9-21 uur. Zaterdag 9-17 uur)

Leaseproces.nl

Wij procederen op basis no cure no pay tegen Dexia, Aegon, Spaarbeleg, Fortis, Ohra, Defam, Levob, DSB en andere banken. Reeds meer dan 40.000 mensen legden hun dossier aan ons voor.

8 april landelijke informatiedag Jaarbeurs Utrecht

Kom ook en neem uw dossier mee. Toegang gratis. Info: 0800-2005
www.platformaandelenlease.nl • www.leaseproces.nl.

“After the opt-out period” : current position

- **Originally approximately 23.000 opt-out statements**
- **Still 1.500 courtcases, but is has been more than triple**
- **Decision of the Dutch Supreme Court of March 28th, 2008 : Dexia lost the important spousal consent issue, resulting in € 32 million addition provisions**
- **However, without Dexia Offer and Duisenberg Arrangement**
- **Decision of the Dutch Supreme Court of June 5th, 2010 : the duty of care issues for the better part in line with the Duisenberg Arrangement, followed by decisions of the Amsterdam Court of Appeal with practical guidelines in december 2009**

Bankruptcy of DSB Bank N.V. (1) :

- **Retail bank, balance sheet of over € 7 billion**
- **Indirect only one owner/shareholder : Dirk Scheringa**
- **Main income : provisions and commissions of policies**
- **Many complaints by customers, also about cost loading**
- **Management for a long time in complete denial**
- **Electronic “run on the bank” because of Pieter Lakeman**
- **“Haircut” by Dutch Central Bank (DNB), that applied for “emergency procedure”**
- **At first denied by the court, but leaks in media, next day the request of DNB was granted**
- **Bankrupt one week later, on October 19th, 2009**

Bankruptcy of DSB Bank N.V. (2) :

- **Now appr. 8.000 complaints and credit-risk cases**
- **The loan portfolio is due to that and due to the market impossible to sell (for a reasonable price)**
- **Complicated products, a variety of sales techniques, different personal situations, often also insurance aspects, "too hard for courts"**
- **Besides that : the problems of bankruptcy procedures**
- **Need for negotiations, now with three special interest groups (including Lakeman) and the four largest associations of "legal aid" insurance companies**
- **A overall settlement seems the only way, preferably sanctioned by the Amsterdam Court of Appeal (WCAM)**
- **But is the WCAM suitable for bankruptcy?**

“Lessons to be learned", “to make it work”

- **A good team of company managers and outside advisors is essential; no persons with a “history” on the team in critical cases (but maintain “memory” in the back-office)**
- **“Facts are 99% of the law”**
- **Alleged legal “truth” is relative; politics, media, pressure, threats can be of great(er) importance**
- **A settlement must be fair, otherwise**
- **Act fast ; the Dexia Offer was “too late, too little”, which can be said of Scheringa’s last attempts as well**
- **“One war at a time”**
- **Mediation: no external lawyers present, but keep them at hand for the finetuning and for advice, and inform them about all facts involving the threat**
- **Judges have hearts and budgets too**
- **Discourage other lawyers and – even worse – business-men to start “an industry” at the expence of your client**
- **“An nice carrot” : a system of effective, enforceable collective settlements, with “opt out” : improvement of the Dutch legislation is on its way**

