From skepticism to settlements: how global class actions are delivering for investors

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For institutional investors, the idea of recovering losses through securities litigation outside the United States has long carried a sense of uncertainty. The United States, with its robust class action system and the opportunity for investors to sit on the sidelines of litigation while still benefitting from recoveries, make the United States the most active jurisdiction relied upon by investors to compensate for corporate and accounting irregularities as well as misstatements. For decades, with billions in recoveries available to investors every year, there was no need for investors to seek recovery outside of the United States.

That changed in 2010, when the decision by the U.S. Supreme Court in *Morrison v. National Australia Bank* changed the landscape and limited U.S. jurisdiction to securities traded domestically. Investors were suddenly forced to seek compensation in securities not traded in the U.S. in those jurisdictions where those shares were traded. Initially, concerns about procedural hurdles, weak enforcement, protracted timelines, and uncertain recoveries have often led many to assume that non-U.S. class actions are more trouble than they are worth.

That perception has been changing fast. Over the past few years, legal reforms, high-profile case resolutions, and more investor activism have created a landscape in which recoveries in Europe, Asia, and elsewhere are not only possible, but increasingly practical and material. This article charts that evolution, illustrates real success stories, and offers insights for investors who should no longer treat non-U.S. litigation as optional. In fact, there are currently over fifty ongoing litigations in jurisdictions outside of the United States.

The Global Shift: Legal Reform, Collective Redress, and Investor Pressure

Europe's Growing Toolkit

A key driver is the strengthening of legal mechanisms in Europe to allow collective actions, model cases, or representative actions to proceed efficiently. Germany's recent reform of the Kapitalanleger-Musterverfahrensgesetz (KapMuG) is a prime example. The revised KapMuG, which came into force in mid-2024, removes the law's fixed expiry date, expands its scope, and introduces more flexible standards for determining when model proceedings may proceed. It also improves access to evidence, reduces burdens for plaintiffs in bringing cases, and refines how statute-of-limitations issues are handled.

The Netherlands, through the Collective Settlement of Mass Damages Act (WCAM and now WAMCA), created an efficient and effective framework for collective redress in the Netherlands: foundations or associations with legal capacity may bring actions on behalf of groups, but only if they are "sufficiently representative," meaning they must demonstrate both a meaningful connection to the affected group and that their structure safeguards the group's interests. Under WAMCA, courts assess the standing of claim vehicles early, before hearing the merits of the case. Courts may also establish collective settlements of damages and issue rulings binding on those who do not opt out. Since its enactment in 2020, 75 collective claims were filed under WAMCA and 24 resolved, showing steady growth even as issues remain—especially practical delays and ambiguity around standing requirements and representation. Outside of the WAMCA, investors continue to have the ability to bring collective claims by means of a private action. This alternative to the burdens of the WAMCA provides an additional avenue to exert pressure on companies without having to file a representative action and can often lead to increased efficiency and expediency in obtaining results.

These reforms reflect a fundamental shift: where once non-U.S. collective redress was seen as legal theory, it has now become a practical tool. With more efficient courts and more robust procedural rules, Europe is increasingly able to deliver meaningful outcomes to harmed investors. We will also need to continue to monitor developments in the collective redress initiatives, which currently exclude securities actions, but may provide further guidance as they are deployed throughout Europe. It is also important to note that other countries in Europe have seen a fair number of securities litigations filed in recent years, including Sweden, Denmark, Spain, Italy, to mention a few. One example in Sweden is the potential litigation against Swedbank, based on financial harm to shareholders caused by the public revelations of its involvement in the money laundering scandal, which triggered a significant drop in the bank's stock price. It follows shareholder litigation against Ericsson, where revelations of corruption and alleged payments to ISIS in Iraq between 2019 and 2022 led to a more than 30% decline in the company's share price. Together, these cases underscore that even in smaller European markets, collective actions are gaining traction and providing investors with meaningful avenues for redress.

Asia and Beyond: Rising Momentum

While Europe is perhaps furthest in establishing legal frameworks conducive to collective actions, Asia too is witnessing increased activity. There is a growing regulatory and investor pressure in jurisdictions like Japan and elsewhere, pushing for greater transparency, more rigorous disclosure obligations, and stronger enforcement.

Furthermore, countries such as Australia have had several notable shareholder class actions and substantial recoveries in the past decade. The registration mechanism allows investors to participate in shareholder actions without having to actively participate in litigation, while still obtaining recoveries. These developments are opening pathways for investors to pursue claims in markets outside their home jurisdiction.

From Theory to Practice: Successes That Prove the Case

It is one thing to reform laws: it is another to see real recoveries.

Besides Australia, the Netherlands is without a doubt one of the most active and efficient jurisdictions to resolve securities cases.

Starting with the Royal Dutch Shell case in 2007 which resulted in a USD 381 million (EUR 326 million) recovery, to the groundbreaking Ageas/Fortis EUR 1.3 billion settlement, to the EUR 1.4 billion Steinhoff settlement.

Another example that highlights the capacity for European collective redress is the case of Hypo Real Estate Holding GmbH in Germany. In 2022, more than one hundred plaintiffs reached a settlement totaling EUR 190 million. This case showed that, with the right legal framework and investor coordination, Germany's collective action tools can deliver meaningful financial recoveries to harmed shareholders. More recently, investors have reached a settlement with Deutsche Bank relating to its takeover of Postbank in 2010.

Even in less active jurisdictions, investors last year reached a settlement with Vivendi SE in France. The case, which started in the pre-*Morrison* era in the U.S., was then filed in France, and took over 22 years to obtain a resolution. The United Kingdom has also seen large resolutions for investors including the GBP 800 million (EUR 916 million) settlement with Royal Bank of Scotland in 2016.

In Asia, the groundbreaking Olympus settlement for JPY 11 billion (EUR 62 million) in 2015 opened the door for other successful case resolutions in Japan.

As many of these litigations are private, they often lead to confidential settlements. While investors and defendants often value the privacy, this means investors often underestimate the scale of recoveries outside the U.S. simply because not all figures are public.

Why These Changes Matter to Institutional Investors

With global capital markets so interconnected, exposures to risk are equally global. Misstatements, fraud, or omission by issuers domiciled or listed outside the U.S. can still cause losses. Having access to effective redress outside U.S. courts means investors have more ways to recover those losses.

Institutional investors have a duty to pursue recoveries where legal recourse exists. Ignoring non-U.S. litigation opportunities may mean leaving value on the table. Stewardship demands diligence in monitoring global cases, engaging with claims-filing, and assessing jurisdictional options. Additionally, many investors find that these cases are a way to send a strong corporate governance message to the companies they invest in and encourage them to make significant changes.

Recent settlements in Europe demonstrate that non-U.S. recoveries can scale into the billions. Even when cases take longer, the material outcome can be large enough to warrant the investment of time, resources, and legal expertise.

Overcoming Barriers: What Investors Should Know

Despite the progress, non-U.S. class actions still face significant challenges. Institutional investors considering these opportunities should be equipped to address jurisdictional and procedural differences and evidence-gathering hurdles. Investors should be prepared to provide evidence of their transaction data (usually as verified by a custodian or other independent third party) as well as information on the existence of the entities who own the securities. However, even ownership can be a complex puzzle to solve, with some jurisdictions like Japan considering the custodian/trustees to be the rightful claimants in cases. Furthermore, even within those parameters of evidence, there are distinct formalities and legalizations that differ by jurisdiction including the notarization and apostilling of documents. Defendants will take every opportunity to delay and frustrate investors into relenting, but persistence and diligence are key in obtaining positive results.

Litigation outside the United States can be slow, and uncertain but institutional investors need systems for monitoring global litigation and determining a framework to determine the relevance of cases. Given the length and cost of these cases, investors also need to properly assess who they are partnering with, particularly when it comes to litigation funders who play an essential role in providing investors with a cost- and risk-free solution to participate in these cases for their funds and clients. However, if funders are unable to accurately assess the risk of adverse costs across their litigation portfolio, it may impact their ability to protect investors against these costs, and those costs could theoretically trickle down to investors.

Patience is key. As jurisdictions continue to develop mechanisms to resolve securities-based mass claims, investors must be aware that cases will take longer to resolve than a U.S. class action. This also means that the funders whom investors chose must also be financially capable of funding litigation through adversity and delays, until a positive resolution can be obtained.

The Road Ahead: Building on Momentum

What can investors reasonably expect over the coming years, and how can they position themselves? More jurisdictions will adopt or refine collective redress regimes. EU-wide directives such as the Representative Actions Directive are helping to harmonize standards across member states. Additionally, increased litigation funding will help investors share or hedge costs and risks in non-U.S. actions, although investors must assess the financial ability of those funders to back cases and any adverse costs that may arise.

Investors will have to develop internal guidelines and sophisticated monitoring tools to help them identify and assess non-U.S. litigation risks and opportunities earlier. Understanding that not every case is a good fit is key, and investors must evaluate their financial exposure as well as risks (cost and publicity), and the merits of the case, before deciding to join a case.

As more cases settle, investors and their clients will be expecting asset managers to have a proactive solution to monitor and participate in these cases to ensure their funds are being safeguarded against fraud and misrepresentations. Sitting on the sidelines will no longer be enough.

Conclusion

The narrative around securities class actions has shifted. The U.S. will remain the most active jurisdiction for investors. While, skepticism was once the prevailing posture among institutional investors regarding non-U.S. litigation, legal reforms like Germany's KapMuG 2.0, high-profile European and global recoveries, and growing procedural access have shown that settlements are not only possible—they are real, material, and increasingly frequent.

For institutional investors, the calculus has changed. Participation in global litigation is no longer a speculative exercise—it is now a fundamental component of fiduciary duty. Recoveries are real and substantial. Investment managers may face questions from their investors about whether they have fulfilled their fiduciary obligations if they remain on the sidelines and fail to properly protect their assets.

The opportunity is global, and the gains will continue to outweigh the risks for those prepared.

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