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Class Actions

Global Class Action Litigation: Causes, Effects, And What's Next

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**A commentary
reprinted from the
December 19, 2025 issue of
Mealey's Litigation Report:
Class Actions**



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Commentary

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Since a landmark U.S. Supreme Court decision in 2010 that effectively ended the litigation of securities class actions for companies traded on an exchange outside the United States, there has been a rise in similar such actions filed outside the United States. But a broader trend in class and mass action filings outside the U.S., and conditions more broadly, are an instructive trend worth observing that may impact securities filings abroad. Even recently, since 2021, hundreds of securities class or group actions have been filed outside the United States, mostly in Europe, Australia, and parts of the Asia-Pacific region.¹ This has occurred alongside a broader change in patterns for various types of class and mass actions globally, driven by new collective-redress frameworks, more active institutional investors, and a maturing litigation-funding market. This article examines some of the main causal forces driving the more-recent growth in class and mass actions generally outside the U.S., why institutional investors may be increasingly litigating outside the U.S., and assesses how two structural developments—the spread of opt-out collective-action mechanisms and the expansion of third-party litigation funding—are reshaping the class action landscape globally.

As more suits are filed in jurisdictions that previously saw few class or group actions, including securities actions, aggregate global settlement values should rise,

and more cross-border and regulatory enforcement activity increases, non-U.S. securities litigation will likely come into a more robust form, sooner rather than later.

Growing With Age

Since 2021, many jurisdictions in Europe, the United Kingdom, Australia and elsewhere have seen meaningful increases in a wide array of class and mass action filings. Europe recorded an all-time high in class action filings generally in 2023 and opt-out claims—historically uncommon in Europe—outnumbered opt-in claims in that year for the first time.² This includes all types of class actions, including competition, product liability, consumer cases, and others.

The recent proliferation of class and mass action litigation does not have a singular cause but rather is a confluence of factors, including recent changes to statutory procedural frameworks for collective actions and the injection of third-party funds to finance collective litigation.

Legislative Procedural Alterations

As would be expected, legislative advancements that promote collective actions by removing procedural hurdles may make litigating varieties of class and mass actions outside the U.S. more attractive. Between 2020 and 2024, several EU countries (the Netherlands, Belgium and Germany among them) undertook efforts to try and modernize collective redress statutory frameworks.³ Combined with the EU's recent Directive on Representative Actions (intended to facilitate collective redress for mass consumer claims), these statutory advancements are an effort to remove procedural obstacles to filing representative actions and produced

both higher filing volumes and larger aggregate claimed values.⁴ At the same time, Australia's class action docket continues to expand, due in part to legislation passed in 2022 that sought to open the country's Supreme Court as an additional venue for plaintiffs.⁵

In 2022, New Zealand's Law Commission recommended statutory reform of class actions and litigation funding⁶ and Singapore's Monetary Authority signaled that providing investors with more options to recover from securities fraud would be a priority for that government moving forward.⁷ And in 2024, the first securities class action settlement under China's new opt-out regime was announced: a Special Representative Action attained a 280-million-yuan (\$39.5 million USD) settlement in the *Essence Information Technology* case.⁸

It is too early to tell if these cases signal the start of a trend, but it is worth watching.

Increasing Use of Litigation Funding in Collective Actions

Further supporting the ability of legislative reform to spawn change are two consequential structural developments worth monitoring: the diffusion of opt-out collective actions and the growth of third-party litigation funds, or litigation funding.

Opt-Out v. Opt-In

Traditionally, many non-U.S. class actions operated on an opt-in basis, meaning that individuals were not automatically included in a class despite their eligibility but instead had to affirmatively take steps to join the class. On the other hand, the opt-out mechanism, a staple familiar to U.S. class actions, alleviates that collective action problem by automatically including class members unless they choose to opt out. This expands potential recoveries, reduces transaction costs for claim aggregation, and increases leverage in settlement negotiations, among other things. Opt-out claims are reportedly growing in Europe.⁹ In markets where opt-out regimes are permitted or courts are receptive to broad aggregation, plaintiffs can bring larger cases with more ease and less cost.¹⁰

Third-Party Litigation Funding

Litigation funding outside the U.S. supposedly promotes bringing larger cases and more cases by

shifting risk—primarily in the form of upfront costs and what can become sizeable expenses over time—from plaintiffs' counsel to third-party funders, who later get a piece of the pie should the suit be successful. Proponents say that it promotes access to justice, especially regarding cases in the public interest and consumer cases; Critics emphasize concerns of excessive litigation, windfalls for funders, and ruinous cost exposures to defendant businesses.¹¹ Litigation funding has not been widely utilized throughout the EU but it has the potential to grow, and has caught the eye of the EU Parliament, who acted to initiate a robust conversation about use of litigation funding in 2022.¹² While the overall impact of litigation funding remains unknown, the EU's regulatory reaction demonstrates that it enables claims and invites counter-measures that will shape its future impact for years to come.

Together, opt-out regimes and litigation funding may lead to growth in non-U.S. securities litigation filings, since arguably, opt-out opportunities increase class size and recovery potential; funders place capital behind cases that would otherwise be uneconomic; and counsel assemble cross-border portfolios of claims. That combination could materially increase the supply of large, well-capitalized non-U.S. investor claims moving forward. But we do not have the data yet to draw conclusions.

Looking Forward to the Role of Non-U.S. Securities Litigation

These larger class and mass action trends may very well lead to securities litigation continuing to function as a supplement to U.S. actions. There is real potential for such suits to fill gaps pertaining to international enforceability problems and local problems for international investors.

At the same time, litigation funding might attract more regulatory attention in the coming years. In a similar vein, legislatures across the world may further shift the legal landscape as they continue to grapple with crafting procedural rules and regulations concerning the future of collective redress actions in their own countries. All things considered, it is safe to make at least one definitive conclusion—the international securities litigation environment will continue to evolve and is worth watching.

Endnotes

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MEALEY'S LITIGATION REPORT: CLASS ACTIONS

edited by Bajeerah LaCava

The Report is produced twice monthly by



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ISSN 1535-234X

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