

GIBSON DUNN



Class Actions Update

September 9, 2025

## International Class Actions Update – September 2025

*This update highlights the recently enacted French Representative Action with its significant changes to the French class action regime. We also discuss the ramifications of a new climate change class action in the Netherlands for further climate litigation around the world and provide an update on third-party funding in the UK.*

### I. New French Rules on Representative Actions

In April 2025, France enacted a landmark law aligning its class action regime with the European Directive for Representative Actions. All class actions initiated from May 2, 2025 are subject to the new procedural rules. The reform significantly expands the scope of lawsuits that can be filed as representative actions in France:

- **Subject matter:** Claims resulting from any form of contractual breach or any tort arising from professional activities are permissible. This includes breaches committed by both public and private entities, even those managing public services. Claims are not limited to consumers. Companies and other legal entities can advance their claims, too, enabling business-to-business (B2B) class actions.
- **Relief:** Plaintiffs can seek all forms of relief, whether for compensation or injunctive measures to halt ongoing breaches.
- **Standing:** Going beyond the requirements of the underlying EU directive, the French regime does not limit standing to qualified consumer protection agencies. European trade unions, non-profit associations, and the public prosecutor can also file new actions.

- **Interim measures:** Judges are empowered to order urgent provisional measures to protect a future judgment.
- **No prior formal notice:** Previously, a qualified entity looking to file a class action in France needed to formally notify the respondent of its intent to sue. This requirement is now abolished. Under the EU Directive, however, qualified consumer protection agencies remain obliged to inform consumers that they intend to file a new class action.

Two further changes are particularly noteworthy as they currently set France apart from all other European jurisdictions:

- Plaintiffs can choose to bring their class action directly against the respondent's insurer, if a respondent is insured for the alleged liability and French courts have jurisdiction over the respondent's insurance company. When sued, the insurer may not pay the insurance sum to the respondent or anyone else until the plaintiffs have been compensated for the financial consequences of the underlying tort. This provision offers plaintiffs a shortcut to full compensation.
- Another significant new feature is the introduction of a civil fine in cases of deliberate misconduct. At the request of the public prosecutor a judge may issue a specially reasoned decision imposing the fine. The fine cannot be covered by insurance and, depending on the seriousness of the misconduct, may reach up to twice the annual profit gained for individuals and up to five times the annual profit for legal entities. It shall be paid into a fund dedicated to financing class actions. This is the first element in EU class actions that is comparable to punitive damages in the US. Like in the US, imposed civil fines might become subject to constitutional challenges.

## II. Netherlands Climate Change Class Action

The Dutch environmental NGO "*Milieudefensie*" has filed a class action against Dutch bank ING in Amsterdam, claiming breach of duty by ING by not aligning its lending portfolio with emission reduction standards. The new claim comes on the heels of the NGO's ongoing case against Shell in which the District Court of the Hague had initially ordered Shell to cut emissions by 45% by 2030. This decision was overturned in 2024 by the Appellate Court of the Hague and the case is currently pending before the Dutch Supreme Court.

In its class action against ING, *Milieudefensie* asks the court to order ING to stop financing new fossil fuel projects. The complaint likely draws on the decision by the Appellate Court of the Hague in the Shell case which stated that investments in new fossil fuel projects may be at odds with the general climate obligations of private actors under Dutch civil law. Based on this logic, *Milieudefensie* also announced a [new lawsuit against Shell](#) with the goal of stopping Shell's exploration of new oil and gas fields.

Because *Milieudefensie* is the Dutch branch of "*Friends of the Earth International*", a network of international grassroots environmental organizations, we expect that the legal arguments in the new complaint against ING will draw attention from environmental groups around the world and could spark similar climate litigation against other respondents in the future.

### III. UK Third-Party Funding Update

The UK's legal landscape for third-party funding in respect of class actions has remained under the spotlight recently as a result of the continued uncertainty following the Supreme Court's 2023 judgment in *PACCAR*, which held that litigation funding agreements which remunerated funders by reference to a share of the damages ultimately recovered were "damages-based agreements" and therefore unenforceable in opt-out class actions in the Competition Appeal Tribunal (the "CAT"):

- In April 2025, the Court of Appeal handed down its judgment in *Justin Gutmann v Apple Inc. & Ors* [2025] EWCA Civ 459 and confirmed that funding arrangements in opt-out class actions which allow for payments from any undistributed damages to funders, solicitors and counsel ahead of the class are permissible in principle. However, the judgment also makes clear that the CAT retains the ultimate discretion when determining the amount and order of any such payments.
- The Civil Justice Council's eagerly anticipated final report on its review of litigation funding was published on 2 June 2025. The report recommends that, amongst other things, legislation should be introduced as soon as possible to overturn the effect of the *PACCAR* judgment (on a retrospective and prospective basis). This has been welcomed by funders and class representatives.
- In July 2025, the Court of Appeal handed down its judgment in *Sony Interactive v Alex Neill* ([2025] EWCA Civ 841) and confirmed that litigation funding agreements that had been amended by a number of class representatives in ongoing class actions in the CAT to seek to side-step the impact of *PACCAR* were not damages-based agreements. As such, funding arrangements which calculate a funder's return by reference to multiples of the amounts borrowed are permissible for opt-out class actions even if a funder's level of recovery is ultimately capped by the level of damages recovered.
- Finally, in relation to the collective settlement order approved by the CAT in the Merricks class action (see our previous client alert [here](#)), the funder, Innsworth Capital Limited, is now seeking judicial review in relation to the distribution plan approved by the CAT due to its unhappiness with the low level of return that it was awarded (£68 million versus the contractually "agreed minimum floor" of a return of £179 million). The outcome could influence future funding practices and levels of investor confidence in UK class actions.

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