# ACE Progress Report℠:

## *International Developments in Executive Liability*

Carol A.N. Zacharias

*Countries around the world have enacted laws that impose duties on directors and officers while, at the same time, allowing greater legal redress.*

# Important International Developments in Executive Liability

*CAROL A.N. ZACHARIAS, SENIOR VICE PRESIDENT AND DEPUTY GENERAL COUNSEL, NORTH AMERICA, ACE GROUP*

In the past decade, countries around the globe enacted laws imposing a burgeoning array of corporate disclosure, fiduciary duty, accounting, and transparency requirements. Failure to comply with this ever-growing panoply of obligations can lead to liability. As a result, corporate governance has become an increasingly important concern worldwide.

## Growing Corporate Governance Strictures

Examples of the growing strictures placed on companies and directors include the following.

- Under a 2003 law, Ireland now requires directors annually to certify compliance with laws, auditor relationships, and accounting practices and makes them subject to a new accounting and audit regulator. Directors are personally liable for breaches and may be subject to criminal penalties.[1] Experts have heralded the new law as "the most significant Irish company law initiative of the last ten years."[2]
- In 2007, Columbia issued a new corporation governance code, which public companies must either conform to or explain why not in an annual corporate governance report. Even institutional investors must review and evaluate corporate

governance in the companies they invest in and provide that information to investors.[3]

- The United Kingdom's Companies Act 2006 creates a new statutory scheme with seven duties of directors and gives shareholders the right to file derivative cases.[4] The new law expressly permits a shareholder to file a direct action against a director for breach of duty or even negligence.[5]

- Mexican laws passed in 2001 and 2005 mandate board size and require 25 percent to be independent, while permitting groups of shareholders — owning at least 15 percent of the company — to sue directors for breaches of their duties. Companies are required to use independent auditors and must create corporate governance committees. Companies are also required to disclose to shareholders when they ignore advice of independent directors, while regulators must disclose when they are investigating a company. Companies, additionally, must inform regulators and the stock exchange of the extent to which they are in compliance with a nonmandatory Code of Best Corporate Practices.[6]

- In China, the New Company Law, effective on January 1, 2006, imposes on company management the fiduciary duties of diligence and loyalty. In addition, controlling shareholders are now subject to liability — in sharp contrast to a prior law, which gave them immunity from civil liability. Shareholders may bring direct actions, collective actions, and derivative actions against directors for damages they cause to the company by violations of law, regulations, company articles, or the performance of their duties. The reforms eliminate the obligation of a plaintiff to post a deposit to file the case, and they eliminate a previous requirement that the losing party must pay both the losing and winning party's attorney fees.[7]

- Japan promulgated the Financial Instruments and Exchange Law in June of 2006, effective for publicly traded companies for fiscal year 2008, setting out accounting and transparency requirements comparable to those found in America's Public Company Accounting Reform and Investor Protection Act of 2002, also known as the Sarbanes-Oxley Act.[8]

- Australia passed the Corporate Law Economic Reform Program (Audit Reform and Corporate Disclosure) Bill 2003, known as CLERP 9, effective in 2004. CLERP 9 requires that the chief executive and chief financial officer of listed companies certify financial reports, gives shareholders a vote on company remuneration policies, requires audit partner rotation every five years, and gives company employees limited immunity and whistleblower protection if they report suspected breaches of the law to regulators.[9]

- In India, new laws effective in 2005 impose corporate governance reforms, such as requiring the appointment of a board of directors and an audit committee, clarifying the duties of the board and its directors, and setting forth provisions regarding the audit committee, financial controls, and financial reporting.[10]

- Ontario, Canada, passed the Keeping the Promise for a Strong Economy Act of 2002, known as Bill 198.[11] The bill became effective in 2003 and made many changes to existing securities laws. Many provisions are designed to improve both the accuracy and reliability of corporate disclosures, similar to provisions found in the United States' Sarbanes-Oxley Act. For that reason, the bill is popularly known as "C-SOX," that is, Canadian Sarbanes-Oxley.

- Italy's 2005 Savings Law increased the penalties for false accounting, heightened protections for minority shareholders, and imposed rules to minimize conflicts of interests between companies and their banking partners.[12] One expert commentator has noted that the extent of these corporate governance reforms in Italy "radically reforms the models of corporate governance available to Italian joint-stock companies."[13]

- Two prominent organizations in the United Arab Emirates — the Dubai Financial Market and the Hawkamah Institute for Corporate Governance — have signed a memorandum of understanding, in which they each agree to promote certain corporate governance practices with all listed companies. They are seeking greater disclosures and financial transparency, as well as corporate

**Shareholder Associations**

**Austria** — Interessenverband fuer Anleger – IVA
**Australia** — Australian Shareholders' Association – ASA
**Belgium** — Vlaamse Federatie van Beleggingsclubs en Beleggers –VFB
**Belgium** — Association des Investisseurs Actifs INVESTA
**Bulgaria** — Investors' Association – Bulgaria
**Cameroon** — l'Organisation de Défense des Actionnaires Minoritaires du Cameroun
**Cyprus** — Cyprus Association of Stock Market Investors
**Czech Republic** — Ochranné Sduzni Malych Akcionaru – OSMA
**Denmark** — Dansk Aktionærforening – DAF
**Finland** — Osakesäästäjien keskusliitto ry
**France** — Association Nationnale des Actionnaires de France
**France** — Association pour la Défense des Actionnaires Minoritaires – ADAM
**France** — Fédération Française des Clubs d'Investissement (FFCI)
**Germany** — Deutsche Schutzvereinigung für Wertpapierbesitz e.V. (DSW)
**Germany** — Vereiningung Institutionelle Privatanleger – VIP
**Greece** — Association des Actionnaires à la Bourse d'Athènes
**Iceland** — Icelandic Shareholders Association
**Italy** — Assorisparmio
**Lebanon** — Avocat a la cour au bureau de Beyrouth
**Lithuania** — Lithuanian Shareholders Association
**Luxemburg** — INVESTAS
**Macedonia** — Zdruzenie za zashtita na akcionerite 'Akcioner 2001'
**Malta** — Malta & Gozo Shareholders Association – MAGOSA
**Montenegro** — Association of Minority Shareholders of Montenegro
**Netherlands** — Vereniging van Effectenbezitters? – VEB
**Netherlands** — Eumedion
**Norway** — Aksjonærforeningen i Norge
**Poland** — Stowarzyszenie Inwestorów Indywidualnych – SII
**Portugal** — ATM | Associação de Investidores e Analistas Técnicos do Mercado de Capitais
**Romania** — Asociatia Actionarilor din Romania
**Singapore** — Securities Investors Association of Singapore – SIAS
**Slovenia** — VZMD – PanSlovenian Shareholders' Association
**Spain** — Asociación para la Defensa del Accionista – ADA
**Spain** — Asociación de Usuarios de Bancos, Cajas y Seguros – ADICAE
**Spain** — Asociación Española de Accionistas Minoritarios de Empresas Cotizadas – AEMEC
**Sweden** — Sveriges Aktiesparares Riksf?rbund – SARF
**Turkey** — Turkish Shareholders Association – BORYAD
**United Kingdom** — United Kingdom Shareholders Association – UKSA

---

*Sources:* http://www.vebbev.nl/es/members.php; http: //www.minoritarios.org; http://www.anaf-invest.com/; http://www.eumedion.nl/; http://www.sias.org.sg/; http://www.dsw-info.de/; http://www.uksa.org.uk/; http://www.vip-cg.com/; http://www.veb.net; http://www.vebbev.nl/es/members.php.

governance training for directors and managers of listed companies.[14]

The demand for accountability is now greater than before, further compounding the risks created by all the new legal requirements. Shareholders have formed shareholder rights groups in countries around the globe to protect shareholder interests if they feel those have not been served. As one French shareholder activist candidly declared, "A corporation is in business for its shareholders. It's not a cooperative; it's not a kibbutz," and, the activist added, "New laws cannot change things; the shareholders have to do it themselves. They are a minority in power, not in numbers."[15]

*In recent years, some form of multiple-plaintiff actions has been created in many countries.*

## Increasing Access to Legal Redress

Historically, the litigation environment outside the United States has not been hospitable to plaintiffs seeking to file cases, in spite of laws imposing duties and obligations. Other countries have generally not permitted class actions, contingency fees, or punitive damages.[16] Jury trials may not be permitted (e.g., in Taiwan and China) — or are permitted only in criminal cases and serve only to advise judges who will ultimately render the case decision (e.g., in Japan).[17] Moreover, many countries require that the losing party pay the prevailing party's attorney fees (e.g., in China).[18] As a result, litigation outside the United States has been a significant financial investment for plaintiffs who are already confronting many obstacles in filing and maintaining a case. But these procedural impediments have begun to decline in recent years.

### Class Actions

Many countries outside the United States have opposed class action lawsuits as the "American litigation disease" that benefits plaintiffs' counsel more than the class members.[19] This disparaging view has been pervasive. Hence, class actions were scarce in Europe as recently as five years ago.[20]

Nevertheless, in recent years, some form of multiple-plaintiff actions has been created in many countries — they are variously called group actions, collective actions, or representative actions. Whatever the nomenclature, these types of actions aggregate plaintiffs who share common issues into one case, whereby they can more efficiently pursue litigation.

European countries permitting some form of collective action include: Denmark, Finland, Germany, Italy, Netherlands, Norway, France, Austria, Hungary, Portugal, Spain, Sweden, and the United Kingdom.[21] In Latin America, collective actions are permitted in Argentina, Brazil, Chile, and Columbia.[22] Collective litigation is also permitted in China, South Korea, Taiwan, Singapore, Australia, and New Zealand.[23]

### Increased Frequency and Severity Around the World

Plaintiffs have capitalized on these changes. One study of securities suits filed in Europe since 2005 found that 29 out of 32 large securities suits were collective actions — almost all.[24] Not only has frequency become more of an issue, but severity has, as well. The study found that the average securities suit in Europe since 2005 settled for €117 million, or $155 million (USD). This increasing frequency and severity can be seen in collective or group action cases filed against Deutsche Telekom in Germany and Seidel in France, among others.[25] Europe is not alone in the rising severity of its lawsuits. One of the largest class actions in Australia's history, *Dorajay Party Ltd. v. Aristocrat Leisure Limited*, settled for $136 million in 2008.[26] This settlement followed a $97 million (USD) settlement in yet another securities class action case, *King v. GIO*.[27]

### Varied Collective Action Rules

Collective action rules vary from country to country and are typically more restrictive than in the United States. In Europe, most countries require that plaintiffs be part of an association, which must bring the collective action on behalf of its members.[28] In some countries, class members must affirmatively elect to join the class (opt in), whereas, under U.S. Rule 23, all similarly situated parties are deemed included in the case, unless they choose to opt out.[29] Moreover, collective actions may be permitted only for certain type of actions. In Argentina, new collective actions are permitted only if the group shares indivisible interests, such as the protection of wildlife.[30] In Spain, collective actions were conceived to give litigation power to consumers and were later extended to associations of consumers, who incorporated for the very express purpose of litigating.[31] In Chile, these actions can be brought only by the government or groups of 50 consumers.[32] In Brazil, individuals cannot bring collective actions. Instead, they can be brought only by the government, a foundation, or an association formed at least one year prior to the case filing.[33] In Taiwan, group litigation is permitted only under the Consumer Protection Law and the Investor Protection Act.[34]

The absence of a local class action mechanism is not necessarily fatal to the enforcement of a settlement of such an action in another country. When investors filed major securities class actions in the United States against Royal Dutch Shell companies and directors, European investors opted out of the case. [35] They reached a settlement agreement and proposed a classwide European securities holder settlement to a Dutch Court of Appeals, even though no local lawsuit was ever filed and pending before the court.[36] The court recognized the settlement under a 2005 law: the Collective Settlement of Mass Damages Claim Act (CSMDA).[37] As a result, the impact of class actions may be felt across borders.

**Contingency Fees**

Contingency fees can be up to one-third of the recovery in a U.S. class action.[38] Other countries have not embraced contingency fees, but some countries have passed laws or regulations attempting to ease the plaintiff's financial burden of litigation.

"Conditional fee arrangements" in England and Wales permit a "success fee," which is a maximum of twice the actual attorney fees. "Risk arrangements" may be made in Sweden, which consist of attorney fees that reflect the value of the dispute. The court must approve the fees, and in practice, the value is not characterized as a percentage of the award.[39] In Argentina, plaintiffs' attorney fees are waived entirely under consumer protection laws in collective actions brought by agencies or the government.[40]

In Australia, there are two funding mechanisms for plaintiffs. Several states allow "conditional fee arrangements," by which the class representative's lawyers underwrite the class action litigation costs and are reimbursed if and when they reach a successful outcome. A second source of funding is from "litigation funders." Litigation funding companies pay for plaintiffs' attorney fees and costs and recover on their investment by taking a portion of any settlement or judgment.[41] In 2008 alone, litigation funders agreed to fund Australian class actions against Opes Prime, ANZ Bank, Octaviar, Pan Pharmaceuticals, ABC Learning, Centro, and other companies.[42] Like contingency fees in America, the funding mechanism has created a growing industry of class actions.[43]

*Punitive damages are not permitted under the legal systems in most countries. Civil fines may approximate the same result as punitive damages.*

One observer notes, "Boardrooms are now on notice that it is not just the regulators who are scrutinizing their company announcements, financial statements and share price movements. Litigation funders are constantly on the lookout for their next class action."[44]

**Punitive Damages**

Punitive damages are not permitted under the legal systems in most countries. For example, in Brazil, consumer protection activists have lobbied for a punitive damage statute without success.[45] However, in some countries, civil fines may approximate the same result as punitive damages. In Argentina, civil fines may be awarded in both contractual and noncontractual disputes — at the discretion of the judge — and are subject to maximum amounts, making them similar to punitive damages.[46]

## Indemnification Uncertainty

The imposition of increasing duties on company directors, along with the growing ease of accessing legal redress for breaches of those duties, create a more threatening liability environment than ever before. Whether, and to what extent, directors can be indemnified by their companies is unclear, making the threat of personal liability exposure even more significant.

According to a leading insurance broker, out of 121 countries surveyed prior to June 2008, only 5 percent permit indemnification similar to that permitted in the United States.[47] Fifty-six percent of these countries do not address indemnification, and 7 percent do not permit it. Thirty-five percent of these countries permit only limited indemnification or merely exempt directors from certain liabilities. As such, a director cannot be assured of being indemnified for his or her executive acts. This possibility is a grave one, when considered in the context of increasing duties, the increasing access of plaintiffs to the court systems, and number of cases.

*Litigation against directors of companies in countries outside the United States is growing in both frequency and severity.*

### Litigation Certainty

Litigation against directors of companies in countries outside the United States is growing in both frequency and severity. However, the type of litigation and the recoveries are strikingly different from those in the United States due to differences in legal structures, as discussed earlier.

#### Plaintiffs

Securities actions have increased around the globe in response to the growing access to the courts and damages. China's 2006 New Company Law provided shareholders greater rights to sue, and new cases have resulted. For example, shareholders — represented by an array of 22 law firms in 12 provinces — filed an action against Guangdong Kelon Electrical Holdings complaining of executive mismanagement and threatened to file derivative lawsuits.[48] Japan formerly accepted only 500 new attorneys to the bar each year, believing that a "litigious Japanese society will destroy Japanese civilization."[49] However, changes in corporate governance; the institution of a jury system, albeit only in criminal cases; layoffs; frustration with management; and the economic downturn have all challenged Japan's historical preference for consensus and its traditional distaste for litigation. So, litigation has increased, and in fact, shareholder cases over failed mergers have been broadcast live on television, with "everyone, regardless of their age group, talking about these cases." Meanwhile, advertisements placed in trains and buses describe the procedure for bringing lawsuits.[50] And, perhaps indicative of a comparable change in Europe, minority shareholders have filed actions in Italy, France, Switzerland, and other European countries.

A leading broker's survey of directors' and officers' liability claims against companies organized outside the United States found that, in the first six months of 2008, 95 percent of these suits were brought by regulators and criminal prosecutors. Only 5 percent were brought by civil litigants, such as shareholders.[51] Hence, regulators and prosecutors are more of a threat to directors outside the United States than are securities holders.

#### Defendants

A reinsurer's study of global settlements and judgments against non-U.S. companies — from the middle of 2003 through July 2005 — found that most were brought against the financial sector (31.9 percent), the technology sector (23.5 percent), and the retailing/food/household/garden sector (10.2 percent). Construction/engineering and real estate companies, meanwhile, received only 7.8 percent of claims or potential claims.[52] But the study ended in July of 2005; more recent economic problems have undoubtedly increased the percentage of claims in the financial sector, as well as in the construction/engineering and real estate sectors.

#### Jurisdiction

One report suggests that litigation is filed against directors and officers most frequently in Canada, Australia, England, and Hong Kong, as well as in Russia, Italy, China, India, and Malaysia.[53] Some of these countries have been discussed previously as allowing an increasing ease of access to the court system, which may be one factor driving the choice of jurisdiction.

#### Severity

Companies organized under the laws of countries other than the United States are no longer insulated from liability. The reinsurer's study of case settlements and judgments previously mentioned included claims against non-U.S. companies in the local home countries of these companies, as well as in the United States. The study found that $561,996,000 (USD) had been paid in judgments or settlements.[54]

## Insurance and Risk Management Considerations

Executive liability exposures will vary, depending on what country the executive operates in. Insurance protection for whatever liability exists is important. Here are some risk management considerations in connection with insurance.

- Does a parent company have subsidiaries in another country that are organized under the local laws, thus bringing the subsidiaries under the jurisdiction of the local insurance laws?
- Does the parent company want insurance protection for its local companies?
- Do those countries permit local companies and their directors and officers to be covered under an insurance policy bought in another country — for example, in the parent company's home country?
- If a local policy is required, what insurer can provide local policies in the desired local countries?
- Is local coverage provided by a local affiliate of the parent company's insurer or another insurance company with whom the parent company insurer has a business relationship?
- What underwriting information is needed regarding each local country?
- How long will it take to obtain a local policy?
- How much will the local policy cost?
- Where is the claims operation for the local insurer and policy, and how will it handle local directors' and officers' claims?

## Endnotes

1. The Companies (Auditing and Accounting) Act of 2003.
2. Kehoe, John, "Directors Facing New Strictures," *Sunday Business Post* (January 18, 2004), available at http://archives.tcm.ie/businesspost/2004/01/18/story622376443.asp.
3. Blume, Daniel, and Felipe Alonso, "Institutional Investors and Corporate Governance in Latin America: Challenges, Promising Practices and Recommendations," 2007 Meeting of the Latin American Corporate Governance Roundtable (October 2007), available at www.oecd.org/dataoecd/17/4/39963408.pdf.
4. Vaughn, John D., and Stuart Borrie, "Legal Update — Corporate Law Changes in the United Kingdom," *The Metropolitan Corporate Counsel* (May 2007), available at www.klgates.com/files/Publication/ba1ca539-Ofd3…/MMC_0507.pdf.
5. Sykes, Christopher, and Peijun Xia, "Companies Act 2006: Directors' Duties," *Credit Management* (March 1, 2008), available at http://findarticles.com/p/articles/mi_qa5308/is_200803/ai_n25138910/?tag=content;col1.
6. "Mexico Finance: Corporate Governance," Industry Briefing & Forecasts, *Economist Intelligence Unit* (April 26, 2006).
7. "Corporate Governance Under the New Company Law (Part 2): Shareholders Lawsuits and Enforcement," China Law & Practice, *Euromoney* 20, no. 4 (May 2006), 2006 WLNR 11359399.
8. Aritake, Toshio, "Why J-SOX Is Not Sarbanes-Oxley," *Directorship* (December 1, 2006), 2006 WLNR 24901511.
9. "Corporate Governance in Australia, 2003/2005 Main Report," Country Finance Australia, *Economist Intelligence Unit*, (December 31, 2002).
10. The new law is known as Clause 49. "SOX vs. JSOX vs. Bill 198 vs. CLERP 9: Global SOX Version Around the World," Sarbanes-OxleyFocus.com, available at http://www.sarbanesoxleyfocus.com/sox-vs-jsox-vs-bill-198-vs-clerp-9-global-sox-version-around-the-world/.
11. JSOX can be found at the Japanese Financial Service Agency website at www.fsa.go.jp/en/policy/fiel. For a review of the Canadian provisions, see Henderson, Barbara J., "Canadian Investor Confidence Rules in Review," *McMillan Binch Mendelsohn Corporate Finance Bulletin* (June 2005), available at http://www.martindale.com/securities-law/article_McMillan-LLP_166356.htm.
12. "Italy Finance: Financing Environment, Industry Briefing & Forecasts," *Economist Intelligence Unit* (June 18, 2007).
13. Emanuele, Filippo, and Massimo La Torre, "Italy Introduces

New Corporate Governance Rules," *International Financial Law Review* 22, no. 10 (October 9, 2003), available at http://www.iflr.com/Article/2026791/Italy.html.

14. "Dubai Financial Market and Hawkamah Sign MoU to Promote Good Corporate Governance Among DFM-Listed Firms," Hawkamah press release (September 3, 2009), available at http://www.hawkamah.org/news_and_publications/news/2009/61.html.
15. Tagliabue, John, "Compliments of U.S. Investors; New Activism Shakes Up Europe's Markets," *The New York Times* (originally printed April 25, 1998, reprinted December 8, 2009), available at http://www.nytimes.com/1998/04/25/business/compliments-of-us-investors-new-activism-shakes-europe-s-markets.html.
16. Rubin, Gary A., "Collective Litigation in Europe: Policy Considerations from the U.S. Class Action Experience," *Legal Backgrounder*, Washington Legal Foundation (January 18, 2008), available at www.wlf.org/upload/1-18-08rubin.pdf.
17. Shen, Kuan-Ling, and Alex, Yueh-Ping Yang, "Multi-Party Proceedings in Taiwan: Representative and Group Actions," The Globalization of Class Actions Conference (December 2008), available at www.law.stanford.edu/.../globalclassaction/PDF/Taiwan_National_Report.pdf; Murase, Satoru, "The Birth of a Plaintiffs' Bar: Are the Japanese Becoming More Like Us?" *New York Law Journal* 238 (June 16, 2008); "Corporate Governance Under the New Company Law (Part 2): Shareholders Lawsuits and Enforcement," China Law & Practice, *Euromoney* 20, no. 4 (May 2006), 2006 WLNR 11359399.
18. Rubin, Gary A., "Collective Litigation in Europe: Policy Considerations from the U.S. Class Action Experience," id.; "Corporate Governance Under the New Company Law (Part 2): Shareholders Lawsuits and Enforcement," ibid.
19. Rubin, Gary A., "Collective Litigation in Europe: Policy Considerations from the U.S. Class Action Experience," ibid.; Issacharoff, Samuel, and Geoffrey P. Miller, "Will Aggregate Litigation Come to Europe?" NYU Law and Economics Research Paper No. 08-46 (November 6, 2008), available at Social Science Research Network (SSRN), http://ssrn.com/abstract=1296843.
20. Geier, Peter, "Europe Tests Waters on Class Action Suits," *American Lawyer* 117, no. 236 (December 8, 2006).
21. Clark, John J., Jr., and Keara M. Gordon, "Global Realm of Securities Class Actions," *New York Law Journal* (May 19, 2008), link at http://www.dandodiary.com/2008/05/articles/securities-litigation/securities-lawsuits-a-global-phenomenon/; Choong, Yeow-Choy, and Sujata Balan, "Class Actions in Malaysia: An Update on the Country Report," The Globalization of Class Actions: Oxford Symposium (December 2008), available at www.law.stanford.edu/.../globalclassaction/.../Malaysia_Class_Actions_Update_on_the_Country_Report.pdf; Rubin, Gary A., "Collective Litigation in Europe: Policy Considerations from the U.S. Class Action Experience," id.
22. Gomez, Manuel A. "Class Actions, Group Litigation and Other Aggregative Procedures in Latin America: A General Overview," The Globalization of Class Actions: Oxford Symposium (December 2008), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1280940##; Gomez, Manuel A. "Recent Developments of Collective Litigation in Latin America," The Globalization of Class Actions Mini-Conference (December 2008), available at www.law.stanford.edu/.../Latin_America_Recent%20Developments.pdf; IBA Pro Bono & Access to Justice Committee, "Class Actions: Are They an Effective Tool for Access to Justice?" Class Action Session, IBA Buenos Aires Annual Meeting (October 16, 2008), available at www.ibanet.org/Document/Default.aspx?DocumentUid...A485....
23. "Corporate Governance Under the New Company Law (Part 2): Shareholders Lawsuits and Enforcement," id.; Shen, Kuan-Ling, and Alex, Yueh-Ping Yang, id.; The Singapore Rules of Court, 2006 Revised Edition, Order 15, rule 12(1); Clark, John J., Jr., and Keara M. Gordon, id.; Choong, Yeow-Choy, and Sujata Balan, id.
24. Advisen, "European D&O Insurance Market to Benefit From Governance and Legal Reforms" (November 2009), available at www.advisen.com.
25. Rubin, Gary A., "Collective Litigation in Europe: Policy Considerations from the U.S. Class Action Experience," id.
26. Keel, Peter, Norman Lucas, and Douglas Bishop, "Top 10 Developments in Commercial Litigation in 2008," *Clayton Utz Litigation and Resolution Insights* (December 19, 2008), available at http://www.claytonutz.com/publications/newsletters/litigation_and_dispute_resolution_insights/20081219/top_10_developments_in_commercial_litigation_in_2008.page; Legg, Michael, "Australia's Largest Shareholder Class Action Payout – Aristocrat Shareholder Class Action Settles," www.mondaq.com (September 22, 2008).
27. Legg, Michael, ibid.
28. Geier, Peter, id.; Magnier, Veronique, "Class Actions, Group Litigation & Other Forms of Collective Litigation: Protocol for National Reporters" (December 2007), available at http://www.law.stanford.edu/library/globalclassaction/PDF/France_National_Report.pdf.
29. Clark, Jr., John J., and Keara M. Gordon, id. In a rare "opt out" approach beyond the United States borders, Argentin-

ean law provides that a collective action settlement order may permit members to opt out. See Gomez, Manuel A., "Recent Developments of Collective Litigation in Latin America," id.
30. IBA Pro Bono & Access to Justice Committee, id.
31. Ibid.
32. Ibid.
33. Ibid.
34. Shen, Kuan-Ling, and Alex, Yueh-Ping Yang, id.
35. "Securities Litigation Landmark," *International Financial Law Review* (May 1, 2007), available at http://www.iflr.com/Article/1977192/Securities-litigation-landmark.html.
36. Ibid.
37. Van Boom, Willem H., "Collective Settlement of Mass Claims in the Netherlands" (August 18, 2009), available at SSRN: http://ssrn.com/abstract=1456819.
38. Rubin, Gary A., "Collective Litigation in Europe: Policy Considerations from the U.S. Class Action Experience," id.
39. Ibid.
40. Gomez, Manuel A., "Recent Developments of Collective Litigation in Latin America," id.
41. Morabito, Vince, "Group Litigation in Australia: Important Developments from December 2007 to November 2008," The Globalization of Class Actions Conference (December 2008), available at www.law.stanford.edu/library/.../PDF/Australia_Group_Litigtion_2008.pdf.
42. Keel, Peter, Norman Lucas, and Douglas Bishop, id.; Thomson Legal & Regulatory, "Foreign Funders Worry Insurers," *CoverNote* 1590 (June 19, 2008).
43. Thomson Legal & Regulatory, ibid.
44. Keel, Peter, Norman Lucas, and Douglas Bishop, id.
45. Gomez, Manuel A., "Recent Developments of Collective Litigation in Latin America," id.
46. Ibid.
47. Fahey, Jennifer, and Lee Lindsay, "D&O Claims Around the World," *International Executive Liability Advisor* 2 (Summer 2008).
48. "Corporate Governance Under the New Company Law (Part 2): Shareholders Lawsuits and Enforcement," id.
49. Murase, Satoru, id.
50. Ibid.
51. Fahey, Jennifer, and Lee Lindsay, id.
52. Gen Re, "The New Spotlight on Directors' & Officers' in the EU," *Loss & Litigation Report* (November 2005): 4, available at www.genre.com/sharedfile/pdf/LLR_DO_EU3-en.pdf.
53. Fahey, Jennifer, and Lee Lindsay, id.
54. Gen Re, "The New Spotlight on Directors' & Officers' in the EU," *Loss & Litigation Report* (November 2005): 1, available at www.genre.com/sharedfile/pdf/LLR_DO_EU3-en.pdf.

---

Carol Zacharias is senior vice president and deputy general counsel to North America, ACE Group. Zacharias received her master's degree in corporate law from New York University School of Law and her law degree from the New England School of Law. She has served as chairman of the American Bar Association Business Law Section's Business Insurance Committee and is currently vice chairman of the Professional, Officers' and Directors Liability Law Committee of the Tort and Insurance Practice Section. She is also co-chair of the insurance subcommittee of the American Bar Association and the American Corporate Counsel Association. Zacharias has been published in a securities law textbook and a variety of periodicals. She is a frequent speaker and has taught liability at New York's College of Insurance.

ACE USA is the U.S.-based retail operating division of the ACE Group. ACE USA, through its underwriting and service companies, provides insurance products and services throughout the United States. Additional information about ACE USA and its products and services can be found at www.aceusa.com. The ACE Group provides insurance and reinsurance for a diverse group of clients around the world.