THE INTRODUCTION OF CLASS ACTIONS IN BELGIUM
MEDIATION AND COLLECTIVE REDRESS: A MEDIATOR’S ACTION PLAN IN 20 QUESTIONS

Willem MEUWISSEN
1. Who are the clients?

(Art. 9 Collective Redress Bill)

- The claimants: Non-profit organisations e.g. trade unions, consumer organisations, SME professional organisations
- The respondents: Corporations, sellers of consumer goods, employers, manufacturers and distributors of raw materials, semi finished and finished products, liability insurers
2. Where to find a mediator?

Mediators accredited by the Belgian Federal Mediation Commission

http://www.juridat.be/bemiddeling/

Accreditation:
- Training
- Permanent education
- Professional standards

© 2011 - Willem MEUWISSEN
## 2. Where to find a mediator?

<table>
<thead>
<tr>
<th>Location</th>
<th>Mediators</th>
</tr>
</thead>
<tbody>
<tr>
<td>Belgium</td>
<td>BBMC, VOBA, CEPINA</td>
</tr>
<tr>
<td>France</td>
<td>CMAP</td>
</tr>
<tr>
<td>Netherland</td>
<td>NMI, ACB</td>
</tr>
<tr>
<td>Great-Britain</td>
<td>CEDR, CIArb, LCIA, LMAA</td>
</tr>
<tr>
<td>Germany</td>
<td>BMWA</td>
</tr>
<tr>
<td>International</td>
<td>ICC, CPR, AAA, AIA</td>
</tr>
</tbody>
</table>

© 2011 - Willem MEUWISSEN
3. Do(es) the claimant(s) comply with art. 9 CRB?

- Corporate purpose: relates to at least 1 of the indemnity issues (e.g. loss of wages, of consumer value, of profit or excess of costs)

- Representative: public reputation / rather many members

- Competent: adequate organisation for administrating the Class Action (Art. 19 §1 CRB: refusal of Court approval)

- Are other claimants prone to enter the Class Action Arena? (Court Approval trouble ahead!)

© 2011 - Willem MEUWISSEN
4. Are all respondents present or properly represented?

- Isn’t there also a “class” of respondents to be considered?
- What is necessary to get those to the table?
- What if they refuse?
5. Are the insurers of claimants and/or respondents present or represented in the mediation?

- Insurers of claimants?
- Insurers of respondents!
6. One mediator or a co-mediation?

- Many parties present → more than one set of eyes and ears and brains required

- Complicated matter: technically complicated, more than one legal system ...
7. Are parties properly represented?

- Negotiation teams: who is entitled to sign?
- Feed back to rank and file how?
- Mediation “of the second table” between respondents and their insurers? When, where and how?
- Agent/principal issues between parties and their counsel?
- How are counsel remunerated?

© 2011 - Willem MEUWISSEN
8. Law applicable to the mediation?

- In Belgium: Belgian law
9. What is a Mediation “Protocol”? 

- Contract for the performance of mediation services by mediator to parties.
- Contract between parties to negotiate in good faith. (Difference civil law / common law !)
10. How is the mediator being paid?

- Fees and expenses stipulated in detail in the Mediation Protocol.
- On a time spent basis only.
- An equal part for each party save other stipulations in settlement.
- Who is to be considered as a party?
11. Is this a mass claim in the sense of art. 2 and 3 CRB?

- Individual damage
- Great number of victims
- Same cause
12. How to define the class?

- Who is a Class Member?
- How many Class Members may be expected?
- What if Judge refuses approval for inadequate class definition?
13. Opt in or Opt out?

- Principle: opt out
- What makes “opt in” advisable?
14. Liability contended?

- Art. 24 CRB: without prejudice
- Party experts? 
  e.g. technical issues, financial issues
- Independant experts’ opinions?
- Have the court decide on legal issues?
15. Split liability?

- Among respondents
- Among insurers
  → Mediation of the second, third, fourth etc. table!
16. Valuation of damages?

- Expert opinion?
  e.g. computation of Cartel Damages
- Overall damages or individualised damages?
- Where will class members opt out?
- Court approval ≈ Fairness hearing
17. Settlement of damages

- By Claimant?
- Control by Respondent?
- Control by Insurer?
- Control by Expert?
- Control by Court?
18. Guarantees offered by the respondent?

- Fund
- Bank guarantee
19. How settlement will be published?

- Media?
- Costs?
- Sanction: Court approval refused
20. Review in case of new damages after court approval?

- Redefinition of the class
- New valuation of the damage
THANK YOU
VERY MUCH
FOR YOUR ATTENTION

Questions : attorneys@meuwissen-co.be