



Monday, October 20
4:30 pm-6:00 pm

310 Class Actions Outside the US: Is the Cancer Spreading?

Mark T. Aoki-Fordham
Director and Corporate Counsel
Starbucks Coffee Company

Martin Hopkins
Partner
Eversheds LLP

Jennifer M. Mone
Deputy General Counsel
NBTY, Inc.

Faculty Biographies

Mark Aoki-Fordham

Mark Aoki-Fordham is the director of corporate counsel for Starbucks Coffee Company in Seattle. He specializes in employment and industrial relations law and has vast experience handling all types of contentious and non-contentious employment work in both the public and private sectors.

Prior to joining Starbucks Coffee Company, Mr. Aoki-Fordham clerked for the Honorable William L. Dwyer, US District Court, in the Western District of Washington.

Mr. Aoki-Fordham received a BA with honors from the University of Washington and is a graduate of Columbia University School of Law.

Martin Hopkins

Martin Hopkins is a partner with Eversheds LLP in the firm's London office. Mr. Hopkins is an employment and labor lawyer by training who works as client partner for some of the firm's largest US based multinational clients. In this role he is challenged to build novel and value oriented delivery mechanisms. Some of those mechanisms have won industry wide awards: In 2006 Mr. Hopkins was identified by the Financial Times of London as one of the legal profession's leading innovators.

Jennifer Mone

Jennifer Mone is deputy general counsel for NBTY, Inc., a manufacturer, marketer and retailer of a broad line of nutritional supplements based in Ronkonkoma, NY. Ms. Mone's responsibilities include managing the company's domestic and international litigation, including class actions, and advising the company on compliance, policy and regulatory issues.

Prior to joining NBTY, Inc., Ms Mone worked in the litigation department at the New York office of Kirkpatrick & Lockhart (now K&L Gates). She has also served as judicial clerk to the Honorable Loretta A. Preska, US District Court, in the Southern District of New York.

Ms. Mone is a graduate of Fordham University School of Law.



INTERNATIONAL CLASS ACTIONS

CHINA AND JAPAN

Mark Aoki-Fordham



Terminology

- Class Actions
- Representative Actions
- Collective Action
- Multi-party Litigation



Note Regarding Civil Law Systems

- Japan: Litigation based on a civil code, rather than a common law system of case development and precedent
- China: Litigation based on a civil code derived from Japan's, but highly influenced by socialist legal concepts and, in the case of class actions, U.S. common law and class action principles



Japan: Bases for Class Actions

- Code of Civil Procedure
 - Joinder of Claims
 - Representative Actions
- Consumer Contract Act



Japan: Types of Class Actions

- Representative Litigation: The Civil Code allows for plaintiffs or defendants to pick a representative party if there is a commonality of interest.
- Consumer Contract Act allows for qualified consumer groups to bring collective actions for injunctive relief
- Joinder



Japan: Opt-in

- Under either a representative action or by joinder, each party must, in effect, opt-in by either filing a suit (in the case of joinder) or by agreeing to the selection of the representative (in the case of a representative action)



Japan: Attorney Fees

- Fees are in accordance with customary retainer (5-10% of value in dispute) with a “bonus” of an additional 5-10% for exceeding a damages target
- Generally, fee shifting not available, but lawyers fees may be calculated as part of damages awarded in tort cases



China: Bases for Class Actions

- Civil Procedure Law (1991)
 - Art. 54: Japanese influenced/representative actions
 - Art. 55: U.S. influenced/class actions
- Opinion on Several Issues Regarding the Implementation of the Civil Procedure Law of the People's Republic of China (1992 opinion of the Supreme People's Court)
- Supreme People's Court Notice on Relevant Issues Concerning Acceptance of Civil Tort Dispute Cases Caused by False Statements on the Securities Market (2002) and Several Provisions on Hearing Civil Compensation Cases Caused by False Statements on the Securities Market (2002)



China: Types of Class Actions

- Non-representative group litigation
- Representative group litigation with fixed number of litigants
- Representative group litigation without fixed number of litigants

*For an unofficial translation of the law and informative report on Israel Class Actions, see



China: Conditions to Class Action Litigation

- Numbers: Two or more claimants or defendants
- Claims: Claimants to have same interest and/or similarity of claims
- Efficiency: Class claims can be handled efficiently
- Consent: Plaintiffs consent to litigate within the class (except, arguably, in the case of “required joinder” and certain types of securities fraud actions)



China: Opt-in

- Representative litigation with a fixed number initiated by individuals filing suit
- Representative litigation without a fixed number:
 - Opt-in by initiating suit; or
 - Art. 55 provides for a notice procedure with the opportunity for potential class members to register with the court to join this type of representative class action



China: Notification/Publication Mechanisms and Requirements

- For Representative Class Actions without a fixed number of litigants, the court issues a notice to the general public after filing with an invitation to opt-in



China: Damages/Remedies

- Damages are determined by the court and allocated amongst the plaintiffs based on their individual claims.



China: Attorney Fees

- Attorney fees: Generally fixed or hourly, but within limits set by provincial governments. Contingency fees are not allowed in collective actions.
- Generally, no fee shifting



China, Japan and other Country Info

- For a more detailed analysis of the class action systems in China, Japan and other countries, visit the following link <http://www.law.stanford.edu/calendar/details/1066>, a resource that was very helpful in preparing this presentation.



Class actions outside the US
Is the cancer spreading to Europe ?

Martin Hopkins



Class actions outside the US
Is the cancer spreading to Europe ?

- Yes, although the prognosis is not yet resolved
- Awareness is greatly increased
- Legislative and regulatory environment is in flux
 - Partly through domestic legislation and partly through EC policy change
- Change is fractured and inconsistently paced
- The eventual resolution in Europe will inevitably look different to the US experience



Class actions outside the US

Is the cancer spreading to Europe ?

- Awareness has been heightened
 - Some recent ground breaking cases
 - Globalisation exposes everyone to the US experience



Class actions outside the US

Is the cancer spreading to Europe ?

- Legislative and regulatory environment is in flux
 - Various EC and domestic legislative initiatives
 - Local bar associations 'loosening up'
 - Increasing public awareness of the concept and appetite for it
 - Recognition at a public policy level that we need better 'access to justice' and funding models



Class actions outside the US

Is the cancer spreading to Europe ?

- Individual, country to country perspectives
 - France
 - Germany
 - Italy
 - Netherlands
 - UK



Class actions outside the US

Is the cancer spreading to Europe ?

- Eventual resolution ?
 - Will look different to the US
 - Consistency will be hard to achieve across Europe and forum shopping is inevitable
 - Will never embrace the feature of punitive damages



INTERNATIONAL CLASS ACTIONS

ISRAEL

Jennifer M. Mone



RECENT HEADLINES FROM ISRAEL

"Israel: Successful Class Action Suit Against Charges for SMS' to Kosher Phones"

"McDonald's Israel Hit with Class Action over Sodium"

"G.Willi-Food Reaches Settlement Agreement Regarding Class Action Lawsuits"

"Israel Lobby Group Files Class Action Against Cosmetic Players"

"Class Action Suit Filed Against Crocs Importer for Price Fixing"



View of NYSE Company based in Israel:*

- New Class Action Law and amendments to Consumer Protection Law-
 - Expand permissible claims
 - Reduce minimal requirements for class certification
 - Broaden and loosen class representative requirements
- As a result of new Class Action law, number of class action applications filed against Company has increased
- IT COULD HAPPEN TO YOU!

*Cellcom Israel Ltd. 20-F SEC filing March 2008.
<http://sec.edgar-online.com/2008/03/18/0000950103-08-000701/Section15.asp>



Israel Class Action Law 2006-Genesis

- Class actions existed before 2006
 - Within subject specific legislation such as the Consumer Protection Law, Banking, Anti-trust
 - Due to Israeli court's broad remedial discretion
- Courts, legislators, plaintiffs' bar called for a single unified class action law.*

*See Amichai Magen & Peretz Segal, The Globalization of Class Actions National Report: Israel, <http://www.law.stanford.edu/calendar/details/1066> ("Israel Report").



Israel Class Action Law 2006-Overview*

- Goal:
 - to set uniform rules in the matter of submitting and managing class actions

*For an unofficial translation of the law and informative report on Israel Class Actions, see <http://www.law.stanford.edu/calendar/details/1066>, and scroll down to Country: Israel.



Israel Class Action Law 2006-Overview (cont'd)

- Intended to promote:
 - Access to the courts, including to those who, as individuals, find such access difficult;
 - Compliance with the law and deterrence of violations;
 - Assistance to those harmed by violation of the law; and
 - Efficient, fair and exhaustive management of suits.



Israel Class Action Law 2006- Types of Actions

- Law delineates types of suits that may be brought as class action (but notes list may be expanded). Some types:
 - Consumer suit against supplier (e.g. consumer deception or product liability) (most common);
 - Claims against insurers or banks
 - Claims relating to stock ownership/transfer
 - Discrimination claims
 - Environmental claims against polluters



Israel Class Action Law 2006-Approval

- Plaintiff must seek court approval of claim as a class action
- Court must find four conditions exist to approve class action.



Israel Class Action Law 2006-Approval
(cont'd)

- Essential questions of fact or law common to class and a reasonable possibility of success
- Class action is efficient and fair way of solving dispute
- Reasonable basis to assume interest of all class members will be properly represented and managed
- Reasonable basis to assume interest of all class members will be honestly represented and managed, i.e. good faith



Israel Class Action Law 2006-Opt-Out

- Opt-out-like U.S.
 - If approved, all those part of group defined by court are presumed to agree to inclusion unless expressly request exclusion
 - Any settlement or decision binds all class members (i.e. those who have not expressly opted out)



COMPARISON OF
US v. ISRAEL PRE-REQUISITES

Israel pre-requisites	US pre-requisites
• Class action is efficient and fair way of solving dispute	• Numerous class members making joinder impracticable
• Essential, common questions of fact or law and a reasonable possibility of success	• Common questions of law or fact
• Interest of all class members will be properly represented and managed	• Rep's claims/defenses typical of class claims/defenses
• Interest of all class members will be represented and managed in good faith	• Rep will fairly and adequately protect class interests



Israel Class Action Law 2006-Notification

- Notification to class must occur when, e.g.:
 - Court approves class action/defines class
 - Request for settlement approval
 - Court approves a settlement
 - Dismissal of class action
 - Decisions regarding compensation and/or fees



Israel Class Action Law 2006-Publication

- Manner of publication is in court's broad discretion; may look at:
 - Expense and level of efficiency
 - Scope of monetary compensation at stake
 - Estimated number of class
 - Common in consumer class actions- publication in two daily newspapers



Israel Class Action Law 2006-Settlement

- Settlement-parties must request court approval.
 - Must be accompanied by attorney affidavits
 - May not expand upon original request for certification
 - May not provide for attorneys fees but may make a joint proposal to court



Israel Class Action Law 2006-Settlement (cont'd)

- Class Members and Attorney General, as well as any relevant public interest group receive notice of settlement request
 - US Class Action Fairness Act (“CAFA”) has similar notification to third parties
- Class Members may opt out of settlement



Israel Class Action Law 2006- Court Approval of Settlement

- Court may not approve unless:
 - Settlement is proper, fair and reasonable considering interest of class
 - If settlement request submitted before class has even been approved by court, court must also find that common, essential questions of fact or law exist and that settlement is efficient and fair method of dealing with dispute



Israel Class Action Law 2006- Court Approval of Settlement (cont'd)

- Court must obtain an opinion regarding the pros and cons of settlement from an outside expert in the relevant field (e.g. consumer rights or securities law)
 - Court has discretion to decide that this expert opinion is not required



Israel Class Action Law 2006- Court Approval of Settlement (cont'd)

- Court must issue a reasoned decision setting forth specific factors such as:
 - Expert opinion
 - Difference in compensation proposed and potential compensation if ruling in favor of class
 - Risks in continued maintenance of suit
- Court may approve subject to court imposed conditions—in interest of justice



Israel Class Action Law 2006- Damages/Remedies

- Punitive Damages allowed, but rare in Israel
- Coupon-only settlements are disfavored—same as US.



Israel Class Action Law 2006- Damages/Remedies (cont'd)

- Court may direct money to be paid directly to class members or to a fund
 - If fund, remainder either allocated to members pro rata or revert to public
 - In settlement, courts may allow virtual funds
- Courts must ensure class members are not overly burdened in proving eligibility
 - E.g. no original receipts required in consumer class actions



Israel Class Action Law 2006- Attorney Fees

- Attorney fee awards are much less than in US
 - Generally 7% to 15% of award to class
 - Recent class involving alleged consumer deception regarding an ingredient to which consumers were sensitive; attorney received award of \$43,000
- Lead Plaintiff generally gets less than attorney but more than nominal amount given in US



Israel Class Action Law 2006- Funding

- Law establishes a fund to finance class actions
 - To aid class plaintiffs in financing class action complaints/requests
 - Where claims hold a public and social importance
- Securities class actions still to be funded by Securities Authority
 - 34 claims partially funded from 1992-2006*
- No contingency fee arrangements in Israel

* See Israel Report, at 41.



Hit with International Class Action-What to Do?

- Find an in-country lawyer fast
 - Real past experience with class action litigation
 - Experience in representing US Companies in such situations
 - Able to quickly advise on jurisdictional/service issues
- Assess potential for negative press and appropriate response
- Frequent communication with attorney up front
 - If exposure warrants, meet in person with attorney along with any key witnesses.
 - Will help in managing from a distance and in understanding/keeping up with the pulse of the case



Best Practices-Preventative Measures

- Effective Ethics and Compliance Program
- Requires Continuous Risk Assessment
 - to discover and prevent risk of unlawful behavior
- Communicate Important Standards of Conduct
 - Where risk assessment shows standards are unclear or enforcement/suits have increased
 - Training, company publications
- May not prevent, but will demonstrate Company's commitment to ethical conduct