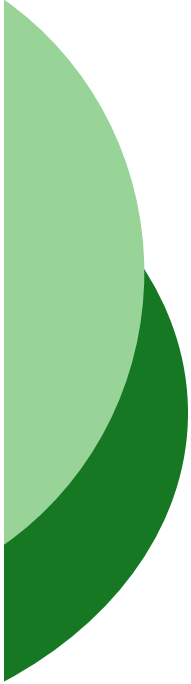




MILBERG LLP

International Institutional
Investors and
U.S. Securities Class Actions:
A Growing Trend

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**Speech by SEC Staff:
Remarks before the American Bar Association
Section of Business Law, General Counsel Forum**

by

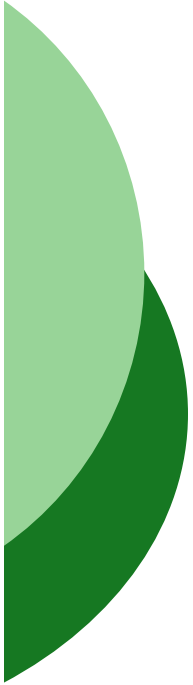
Giovanni P. Prezioso

*General Counsel
U.S. Securities and Exchange Commission*

Washington, D.C.
June 3, 2004

“. . . private securities litigation has always formed a major - and essential - component of the enforcement of the federal securities laws.¹ The Commission has long advocated private rights of action precisely because they supplement its own enforcement program in deterring misconduct. Further, as this audience well knows, the stakes in private securities litigation can be very great indeed - hundreds of millions, and sometimes billions, of dollars.”

¹The Supreme Court has stated that certain private rights of action under the securities laws are a "necessary supplement to Commission action." *J. I. Case Co. v. Borak*, 377 U.S. 426, 432 (1964).



Foreign Fund Trends and Statistics



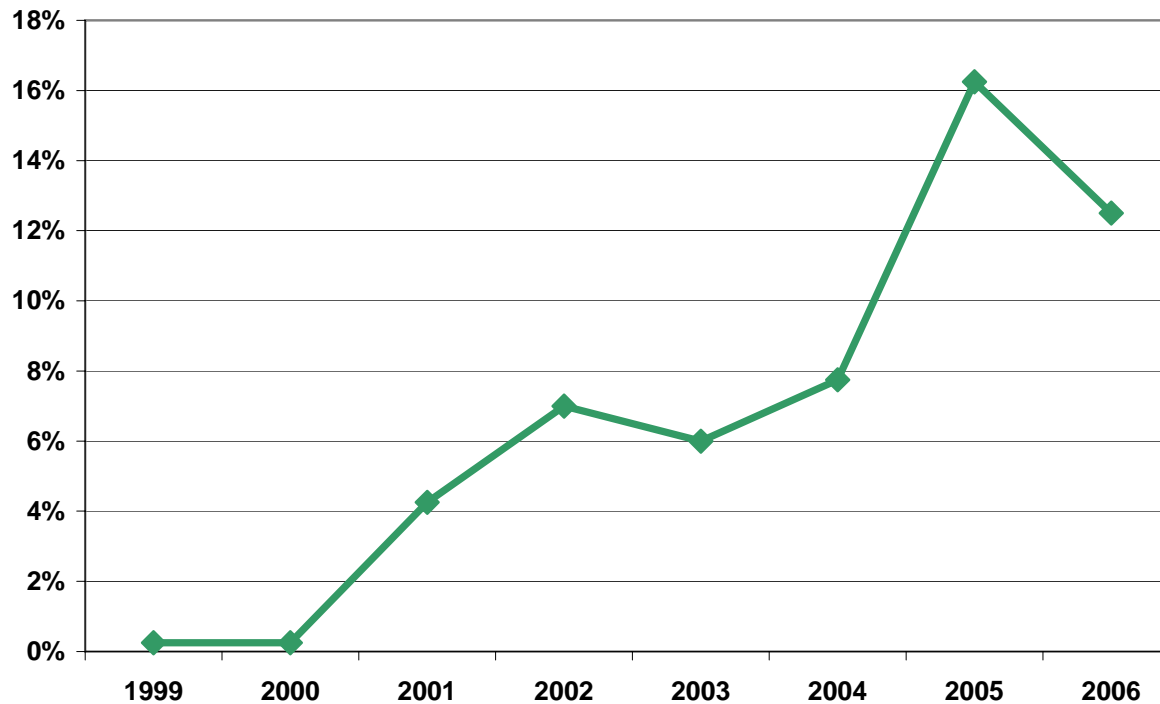
Gaining Traction Since 2002

- In re Royal Ahold N.V. Sec. & ERISA Litig. (D. Md. 2003)
 - Union Asset Management Holding AG (“Union”) and the General Retirement System of Detroit (“Detroit General”) jointly moved for Lead Plaintiff
 - Rejected Union as Lead Plaintiff
 - “In light of . . . the possible absence of subject matter jurisdiction over Union's claims and the possibility that foreign courts will not enforce a decision in favor of Royal Ahold against foreign plaintiffs in the class -- the court finds that Union/Detroit General's status as presumptive lead plaintiff is rebutted.”

Foreign Movants: A Growing Trend

(1999 through 2006)

- International Lead Plaintiff Movants as % of Total U.S. Securities Class Action Filings
 - Upward trend expected for 2008 and beyond



Source: ISS Research (May 2007)



Growing Geographic Distribution

- 182 instances of international institutional investors moving for lead plaintiff status (1996 through March 31, 2007)
 - 98 different cases
 - 17 different countries
 - Top 5 Countries: Germany, Canada, Israel, Austria and Italy
 - 23 different law firms represented the international institutional investors
- Included public pension funds, asset managers, mutual funds, union pension plans, and hedge funds



International Movants by Country

(1996 through March 31, 2007)

Country	No. of Movants	Percentage of Total
Germany	50	27.5%
Canada	39	21.4%
Israel	18	9.9%
Austria	13	7.1%
Italy	13	7.1%
Netherlands	7	3.8%
Sweden	7	3.8%
Belgium	6	3.3%
France	6	3.3%
Mexico	5	2.7%
United Kingdom	5	2.7%
Luxembourg	4	2.2%
Denmark	3	1.6%
Ireland	3	1.6%
Bermuda	1	0.5%
Greece	1	0.5%
Switzerland	1	0.5%
Total	182	100.0%

Source: ISS Research (May 2007)



2007: Foreign Companies Lawsuits

- 26 of 172 securities lawsuits involved companies domiciled outside the United States
 - Based in 12 different countries
 - China (7); Switzerland (3); Bermuda (2); Canada (2); France (2); Hong Kong (2); Israel (2); United Kingdom (2); Germany (1); South Korea (1); Sweden (1); and Taiwan (1)
 - 21 of the 26 foreign-domiciled companies were sued in the U.S. District Court of the Southern District of New York
 - *See, e.g., In re GPC Biotech AG Sec. Litig.*, No. 07-CV-7016 (S.D.N.Y. Jan. 1, 2008) (order for consolidation and lead plaintiff)



GPC Biotech AG

- Appointed Luxembourg-based investment company Axxion S.A. Luxembourg as Lead Plaintiff
 - Purchased its shares on the German exchange
- Defendant is GPC Biotech AG, a biotechnology company based in Munich, Germany
 - Company's shares trade on NASDAQ and Deutsche Bourse
- Axxion appointed even though it is an "f-cubed claimant"
 - Foreign claimant suing a foreign company whose shares were purchased on a foreign exchange
 - Court relied on *Nortel Networks* and other cases for support
 - Court did not view subject matter jurisdiction issues as unique to Axxion because the class included substantial foreign investors



Why the Increased Attention?

- Cross-border transactions
- Globalization of the securities marketplace
- Outreach by U.S.-based securities class action firms
- Education and marketing efforts of U.S.-based securities litigators
 - Presentations at forums like this one
- Growing relationships between U.S. class actions firms and international institutional investors



Defendant Company Headquarters

- Foreign lead plaintiff candidates are not limited to filing in:
 - Cases involving companies headquartered in the same home country as the investor, or
 - Non-U.S. companies in general
- Examples
 - *In re General Motors Corp. Sec. Litig.* (S.D.N.Y. 2006)
 - Defendant: General Motors headquartered in Detroit, Michigan
 - Lead Plaintiff: Deka Investment GmbH, and Deka International S.A. (Luxembourg)
 - *In re Dell Inc., Sec. Litig.* (W.D. Tex. 2007)
 - Defendant: Dell headquartered in Round Rock, Texas
 - Lead Plaintiff: Union Asset Management (Germany)
 - Five foreign institutional investors moved for Lead Plaintiff



Subject Matter Jurisdiction Hurdle

- Court may find that it lacks subject matter jurisdiction
- *In re Rhodia, S.A. Sec. Litig.*, 1:05-CV-5389 (S.D.N.Y. Sep. 26, 2007) (order)
 - Two overseas investment funds sued a foreign company whose shares trade on a foreign exchange but whose ADRs trade on the NYSE
- *In re Royal Dutch/Shell Transp. Sec. Litig.*, No. 04-374 (JWB), slip op. (D.N.J. June 30, 2004)
 - Excluded “Non-U.S. Purchasers” from the class
 - But, subject matter jurisdiction may be found under the “conduct” test or the “effects” test
- *In re Vivendi Universal, S.A. Sec. Litig.*, No. 02-5571 (S.D.N.Y. Mar. 22, 2007)
 - Certified class included investors from France, the United Kingdom, and Netherlands
 - Significant portion of the fraud occurred **in** the United States
 - Laws in those countries were sufficiently alike
 - Excluded investors from Germany and Austria
 - U.S. class action judgment or settlement may not be recognized in the home country and defendants could face duplicate litigation



Beyond U.S. Borders

- Legislative movements in Europe and South Asia
 - U.K. Companies Act (U.K., 2006): Expands derivative suits
 - Capital Markets Sample Proceeding Act (Germany, 2005): While the Act does not permit class actions, determinations of fact by higher courts are universally applicable if ten or more cases share the operative facts
 - India: Plans to codify class actions
 - South Korean Securities-Related Class Action Act: Now operative
- Africa: First reported securities class action (Nigerian subsidiary of Cadbury Schweppes Plc)
- The Netherlands-based settlement of non-U.S. investor claims: Royal Dutch Shell
- Heightened U.S. regulatory enforcement by the SEC has expanded globally
 - SEC considering opening an office in London or Brussels, and/or Asia
 - In 2006, the SEC made 561 requests to foreign authorities for enforcement assistance and responded to 353 inquiries from abroad
 - In 2006, the SEC pursued at least 20 enforcement actions involving significant foreign interests



The Goodyear Tire & Rubber Co.

- Austrian institutional investor movant
 - Largest financial interest of all movants
- Opposed by U.S.-based fund
- Austrian fund appointed lead plaintiff
 - Vast resources
 - Committed to obtaining the best possible recovery
 - Representatives available in person to the Court
 - Even though located almost 4,500 miles from the Court, the Alaskan fund is located more than 4,000 miles away



DaimlerChrysler

- Initially prosecuted on behalf of worldwide class
- Court excluded international investors
 - Precluded from claiming settlement proceeds
 - Due to international investors' failure to actively participate in the action
- Milberg filed new class action in May 2004 on behalf of foreign investors
 - Austrian funds represented by Milberg appointed as lead plaintiff



All Shapes and Sizes

- Foreign lead plaintiff movants have appeared in the majority of the major securities class actions
 - *e.g.*, GlaxoSmithKline PLC (S.D.N.Y.)
- Foreign lead plaintiff movants have appeared in less publicized actions
 - *e.g.*, Chicago Bridge & Iron (S.D.N.Y.)
- Foreign lead plaintiff movants have appeared even with relatively small losses
 - *e.g.*, Rhodia SA (D.N.J.)



GlaxoSmithKline LP Movants

No. 07 CV 5574 (S.D.N.Y. 2007)

Movant Group	Reported Losses
THE INSTITUTIONAL INVESTOR GROUP	
Deka Investment GmbH	\$6,100,000.00
Metzler Investment GmbH	\$7,200,000.00
Internationale Kapitalanlagegesellschaft mbH	\$4,700,000.00
INDEXCHANGE Investment AG	\$10,800,000.00
Subtotal	\$29,123,811.00
AVON PENSION FUND, Administered by Bath & North East Somerset Council and NORTH YORKSHIRE COUNTY COUNCIL, Administrating Authority for the North Yorkshire Pension Fund	
AVON PENSION FUND, Administered by Bath & North East Somerset Council*	\$2,694,247.65
NORTH YORKSHIRE COUNTY COUNCIL, Administrating Authority for the North Yorkshire Pension Fund	\$2,628, 078.71
Subtotal	\$5,322,326.35
THE CITY OF TALLAHASSEE PENSION PLAN	
THE CITY OF TALLAHASSEE PENSION PLAN	\$104,990.00



Chicago Bridge & Iron LP Movants

No. 06 CV 1283 (S.D.N.Y. 2006)

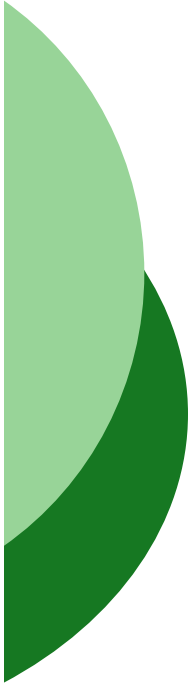
Movant Group	Reported Losses
Metzler & Fortis (Milberg LLP Clients)	
Metzler Investment GmbH	\$871,919.82
Fortis Investment Management N.V./S.A.	\$1,613,226.75
Subtotal	\$2,485,146.57
Penn Capital Mgmt. Co.	
Penn Capital Mgmt. Co.	\$525,906.95
New Orleans Employees' Ret. Sys.	
New Orleans Employees' Ret. Sys.	\$136,940.07
Workers Pension Group	
Iron Workers of Western Penn. Pension Plan	\$47,183.22
Constr. Indus. & Laborers Joint Pension Trust	\$55,919.61
Subtotal	\$103,102.83



Rhodia LP Movants

No. 05-CV-1890 (D.N.J.) / No. 05-CV-5389 (S.D.N.Y. 2005)

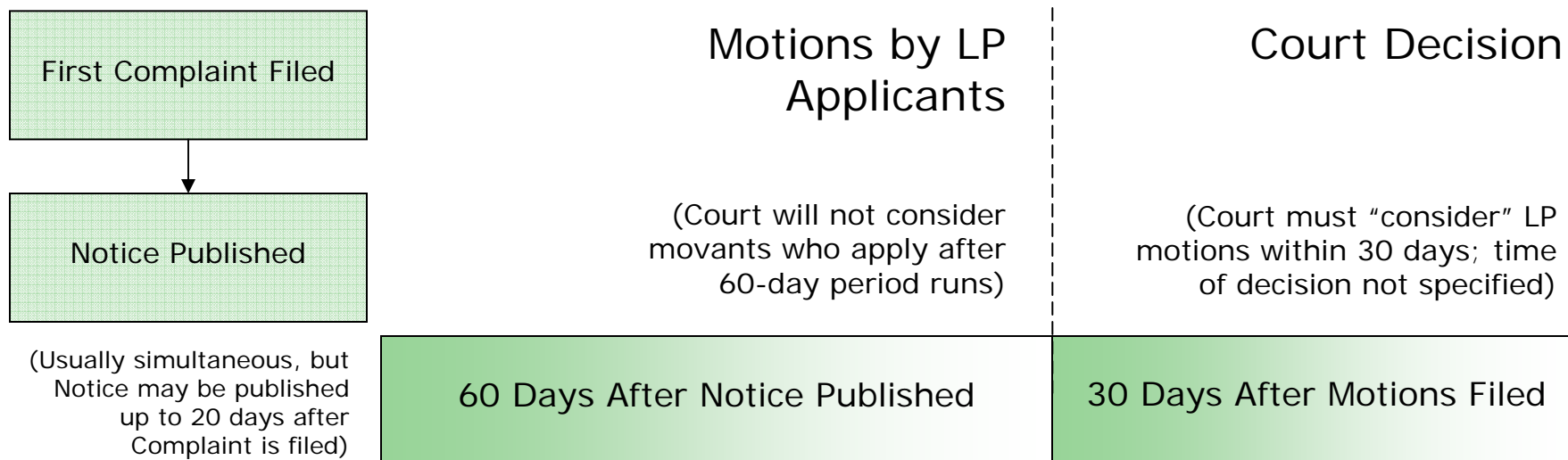
Movant Group	Reported Losses
OPAM and Activest (Milberg LLP Clients)	
Oppenheim Pramerica Asset Management S.A.R.L.	\$476,774.05
Activest Investmentgesellschaft mbH	\$63,558.80
Subtotal	\$540,332.85
The Rhodia Lead Plaintiff Group	
Deka Investment GmbH	\$63,433.75
Jean-Michel Nehme	\$2,748.00
Bob Erickson	\$1,304.80
Subtotal	\$67,486.55



The Lead Plaintiff Process

Lead Plaintiff Appointment

- Congress sought to encourage institutional investors to serve as Lead Plaintiff
- Appoint member(s) of the purported plaintiff class determined to be most capable of adequately representing the interests of the class members
- Presumption that most adequate lead plaintiff is person(s) that has the largest financial interest in the relief sought and otherwise satisfies FRCP 23





Attractiveness of U.S. Lawsuits

- Ability to sue on behalf of other similarly situated persons is largely unique to the United States
- Availability of contingency fee arrangements
- Absence of “loser pays” fee-shifting rules
- Confidentiality
- Scheduling Orders, which move the litigation
- Right to expansive discovery
- Well-developed system for certifying class actions
- Potential for a large jury verdict



Lead Plaintiff Benefits

- Supervise the litigation
- Represent the rights of absent class members
- Select Lead Counsel
- Devise Legal Strategies with Lead Counsel
- Become a Class Representative
- Possible reimbursement for time and expenses spent on the litigation



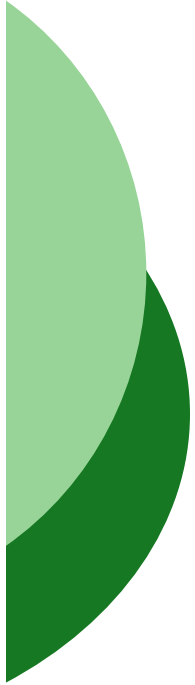
Lead Plaintiff Incentives

- Increased awareness that they may pursue claims in U.S. federal courts flowing from corporate fraud
- Failure to submit claim forms in a timely fashion
 - 30-70% of institutional investors fail to file claim forms in cases where they have losses
 - Extraordinary percentage in light of \$6.9 billion in securities class action settlements finalized in 2007
- Unaware that certain actions were filed until after the LP deadline
- Creates great incentive for more formalized process to research, analyze, and track securities class actions
- Increased attention to the filing process may lead to more active involvement by international institutional investors



Foreign Participation Contributions

- Maximize shareholders' returns
 - Nortel Networks Cases
- Help achieve important corporate governance changes
- Increase credibility of cases
- Steer class definition to include Eurobond purchasers and/or shares purchased on foreign exchanges
- Increased participation by foreign investors in U.S.-based securities class actions may drive legal reforms in their own countries
- Structure settlements to include international institutional investors
 - *In re The Goodyear Tire & Rubber Co. Sec. Litig.* (N.D. Ohio 2004)
 - *In re DaimlerChrysler Foreign Investors Sec. Litig.* (D. Del. 2004)



Thank You

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