

Mass Torts: Cases and Reflections

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Mass Torts in Europe: Cases and Reflections

Willem H. van Boom
Gerhard Wagner

With Contributions by

Jenny Boldon • Willem H. van Boom • Moritz
Brinkmann • Filippo Andrea Chiaves • Nadia
Coggiola • Melissa R. Ferrari • Michele Graziadei •
Christopher J.S. Hodges • Bernhard A. Koch •
Harald Koch • Otto Ernst Krasney • Hermes Marangos •
Claudio Perrella • Francesca Rolla • Thomas A. Roth •
Astrid Stadler • Philip Tansley • Andreas W. Tilp •
Gerhard Wagner

DE GRUYTER

European Centre of Tort and Insurance Law
Reichsratsstraße 17/2
A-1010 Vienna
Tel.: +43 1 4277 29650
Fax: +43 1 4277 29670
E-Mail: ectil@ectil.org

Institute for European Tort Law
Reichsratsstraße 17/2
A-1010 Vienna
Tel.: +43 1 4277 29651
Fax: +43 1 4277 29670
E-Mail: etl@oeaw.ac.at

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Preface

In recent years, the issue of mass tort litigation and the fair and efficient settlement and adjudication of mass torts have drawn increasing attention in academic discourse, legal practice and policy debates.

Undoubtedly, the quantity and quality of the extant literature on mass litigation and class actions is overwhelming. Within the European legal debate, however, the emphasis seems to be mostly on ‘massification’ in competition, consumer and securities law. This book adds to the existing literature by collecting a number of case studies mostly on tort cases and, by combining these with thematic chapters in which the challenges concerning mass torts are mapped, explores and analyses them from a European perspective. By implication, this book thus combines substantive law and procedural law aspects on the one hand, and issues concerning the practical operation of law and related mechanisms of behaviour modification and dispute settlement on the other. It does not follow the standard approach of analyses within the area of collective redress, namely the design of institutions that allow for aggregate litigation before the civil courts. Rather, it adopts a broader perspective that includes other, and perhaps unexpected, modes of settling mass disputes, namely mechanisms of Alternative Dispute Resolution, bankruptcy reorganisations, and even criminal trials. As a result of the studies in this volume, a broad range of options emerges from which the parties may choose their most-preferred dispute resolution mechanism. This raises the question whether the resultant competition between jurisdictions, and sometimes even between various branches within the same jurisdiction, is a good or a bad thing.

The setup of the book is briefly as follows. The introductory chapter sketches the contours of the issues of mass torts and related problems of substantive and procedural law. Then, the book follows two main threads. In the first section, case reports written by expert practitioners give an insight into the practical operation of the law in various cases of mass tort. These chapters cut through jurisdictions and vary from mass breast implant scandals to large-scale financial fraud. In the second section, we have brought together academic reflections on wider issues of mass torts. The two sections paint a varied picture of the many challenges posed by mass torts. A final chapter draws together the key insights from the case studies and the academic papers. In doing so, it tries to answer the question whether we can hope for a race to the top in the strive for efficient and adequate institutions of collective redress or whether we are witness to a race to the bottom.

As always, assembling an edited volume is a joint effort. Therefore, we owe thanks to the authors for their proficient contributions, to ECTIL staff members

Marlene Steininger and Reinhard Pesek for their much appreciated management of the editorial process, to Munich Reinsurance Company, in particular Ina Ebert, for supporting and promoting the project, and to professors Oliphant and Koziol for endorsing and hosting the project.

Willem van Boom & Gerhard Wagner