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Fortis Dutch Fraud Suit Could Enable Non-US Claims

By **Evan Weinberger**

Law360, New York (January 10, 2011) -- Investors on Monday demanded that Fortis NV be held liable for fraud regarding its purchase of ABN Amro Holding NV, possibly bringing billion-dollar damage claims against the company in Dutch courts and helping foreign litigants circumvent U.S. Supreme Court precedent.

A foundation of international investors, the Stichting Investor Claims Against Fortis, filed its declaratory judgment complaint in the Utrecht Civil Court. While the foundation can not bring damages claims against Fortis, now known as Ageas NV/BV following a massive 2008 bailout, it will be allowed to do so if the Dutch court rules in their favor in the declaratory judgment suit.

If successful, the foundation says its Dutch lawsuit could present a way around the Supreme Court's 2010 ruling in *Morrison v. National Australia Bank*, which put a stop to foreign plaintiffs suing foreign issuers of securities for violations of U.S. securities laws based on transactions in foreign countries — so-called foreign-cubed cases.

The foundation already includes 140 institutional investors and more than 2,000 individual claimants, including many of Europe's largest pension funds as well as investors from the United States, the Middle East and Europe, the group said in a statement.

According to the complaint, Fortis raised €13 billion (approximately \$16.8 billion) through a 2007 rights offering in order to fund its acquisition of Dutch commercial bank ABN Amro, in a consortium with Royal Bank of Scotland and Spain's Banco Santander Central. But Fortis did not warn investors of its gaping exposure to subprime loans in the U.S.

That exposure caused shareholder equity in Fortis to fall from €33 billion (approximately \$42.7 billion) to some €6.8 billion (nearly \$8.8 billion) over 12 months following the rights offering. According to the foundation, investors lost up to 90 percent of their investment in Fortis due to the fraud.

The foundation says that Fortis and its executives hid the extent of its subprime exposure and puffed up the company's financial health, until three days prior to a massive bailout of the company by the governments of Belgium, the Netherlands and Luxembourg on Sept. 29, 2008. The Fortis bailout totaled more than €11 billion (over \$14.2 billion).

The foundation is seeking to represent investors who pumped money into Fortis from May 29, 2007 through Oct. 14, 2008.

Alexander Reus, the foundation's director, called the lawsuit "the appropriate reaction to the fraud and misrepresentation perpetrated by Fortis on the investors who relied on the integrity of the market and the compliance of Fortis with its legal obligations."

According to Jay Eisenhofer, co-managing partner of Grant & Eisenhofer PA and an adviser to the foundation, the case could represent much more.

"The foundation's action in the Netherlands offers an innovative avenue to address securities fraud claims outside the U.S. following the restrictions imposed on international investors by the Supreme Court's decision in *Morrison v. NAB*. We believe this action could be a model for future investor claims outside the United States," he said.

Barroway Topaz Kessler Meltzer & Check LLP is also advising the foundation.

Several lawsuits against Fortis in the U.S. have already been dismissed.

A joint investigation by the Dutch Authority for the Financial Markets and the Belgian Banking, Finance and Insurance Commission found in February that Fortis engaged in market manipulation by issuing false and misleading statements prior to the ABN Amro rights offering. In October, Dutch authorities imposed a record fine of nearly \$750,000 on Fortis.

In a statement, Fortis said that it had not yet received the complaint. Kathleen Steel, Ageas's director of communications, said Fortis was appealing the Dutch fine and denied all of the regulator's allegations.

"We continue to defend our company and the interests and rights of our current shareholders," she said.

The foundation is represented by Janssen Broekhuysen Advocaten.

The case was filed in the Utrecht Civil Court. No other case information was immediately available.

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