

International Investors Join Forces in Lawsuit Against Fortis Over Massive Misrepresentation Ahead of 2008 Bank Collapse

BY [MOE BEDARD](#) ON [JANUARY 10, 2011](#) IN [MORTGAGE NEWS DAILY](#) | [MORTGAGE RATE NEWS](#) - [LOANSAFE.ORG](#)

Action filed in Dutch civil court by special foundation backed by over 140 institutional investors and 2,000 individuals from U.S., Europe, Middle East and Australia; Stichting Foundation supported by leading U.S. securities law firms Grant & Eisenhofer and Barroway Topaz; suit marks 'new paradigm' for pursuing shareholder claims in Europe

AMSTERDAM (Source: Grant & Eisenhofer)— A specially formed foundation representing investors in the U.S., Europe, the Middle East and Australia has brought a unique shareholder fraud action in connection with the collapse of Belgium-based **financial** services company Fortis N.V. Currently known as Ageas NV/BV, Fortis, which had huge exposure to subprime **loans** in the U.S., was rescued by the Dutch, Luxembourg and Belgium governments in 2008 following its acquisition of Dutch **bank ABN Amro**. Valued at over euro 11 billion, the bailout was among the largest on record among European banks.



The foundation, officially known as Stichting Investor Claims Against Fortis, has filed suit in Utrecht Civil Court seeking declaratory judgment against Fortis for defrauding investors through a 2007 rights issue to acquire ABN Amro — the offering raised more than euro 13 billion, most of which was wiped out during the financial crisis. Although the investor group cannot recover damages under current European and American securities laws, Stichting's liability action allows shareholders to join the foundation and position themselves to bring damage claims under the Dutch legal system.

The foundation's action marks an important new avenue for pursuing international securities claims in the wake of last year's U.S. Supreme Court decision in *Morrison v. National Australia Bank*. The High Court's ruling precluded recovery for foreign investors who purchase securities in non-U.S. companies on foreign exchanges. In that so-called "foreign-cubed" case, the Court held that investors may only bring federal securities claims if the securities were purchased on a U.S. exchange or in a domestic transaction.

Formed this past June, the Fortis investor foundation is represented by **Dutch law** firm Janssen Broekhuysen Advocaten. Leading U.S. shareholder law firms **Grant & Eisenhofer P.A.** and Barroway Topaz Kessler Meltzer & Check, LLP are actively supporting the foundation, and may assist in pursuing damages claims against Fortis. To date, more than 140 institutional investors, including many of the largest pension funds in Europe, have signed up to join the foundation, along with more than 2,000 individual claimants. Shareholder losses are estimated in the tens of

billions of euros, with some investors losing up to 90% of the value of their Fortis holdings. Over a 12-month period from 2007-08, shareholder equity at Fortis fell from euro 33 billion to euro 6.8 billion.

“The foundation’s lawsuit is a hugely important development for Fortis investors around the world who suffered severe market losses from the bank’s repeated failures to disclose major subprime risk ahead of the financial crisis. More broadly, it represents a new paradigm for pursuing shareholder claims globally,” said Jay Eisenhofer, co-managing partner of Grant & Eisenhofer. “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.”

The foundation alleges that Fortis and its officers and directors, as well as lead underwriter Merrill Lynch UK Holdings, misled investors about the bank’s financial health from the fall of 2007 up to just three days prior the government bailout on Sept. 29, 2008. The foundation contends that Fortis, at the time the largest financial institution in the Netherlands and Belgium grossly misrepresented the value of its collateralized debt obligations and the extent to which its assets were held as subprime mortgage-backed securities. The lawsuit also accuses Fortis of downplaying risks associated with its ill-fated decision to acquire ABN Amro in a consortium with the Royal Bank of Scotland and Spain’s Banco Santander Central. The foundation seeks to represent investors who relied on information published by Fortis from May 29, 2007 through Oct. 14, 2008.

Alexander Reus, Director of the foundation, previously worked with Grant & Eisenhofer in negotiating the historic 2007 [Royal Dutch Shell](#) class action settlement in the Netherlands valued at more than USD \$450 million, stated that the lawsuit is “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.”

European regulators have previously determined that Fortis executives misled investors in numerous public disclosures during the September 2007 rights issue used to raise capital to fund the ABN Amro acquisition. A joint investigation by the Belgian [Banking, Finance and Insurance Commission](#) and by the Dutch Authority for the Financial Markets culminated in a finding against Fortis in February 2010, concluding that the company engaged in market manipulation by issuing incorrect and misleading statements during the 2007-08 period. In October, the Dutch AFM imposed euro 288,000 in fines on Fortis for various violations of the Dutch Securities Act – a record penalty against a Dutch bank.

The Dutch Enterprise Chamber in Amsterdam launched a separate 18-month inquiry into the management practices at Fortis. In June 2010, the Chamber published a report harshly criticizing the bank for its failure to communicate its financial problems to the market in a timely fashion. The Chamber is expected to enter a second phase of its investigation to determine potential sanctions.

Mr. Eisenhofer noted that a finding by the Dutch courts may enable international investors to obtain compensation for losses based on their reliance on Fortis’ misrepresentations. He added that among major EU countries, the Netherlands is generally the most favorable venue for investors to pursue securities claims against European issuers.

Barroway Topaz partner Stuart Berman called the foundation “a historic new vehicle to address shareholder rights in the European market. This litigation offers a valuable template for investor recoveries outside the U.S. We anticipate that there will be substantial damage claims in conjunction with the findings of liability on the part of Fortis.

The foundation can be visited at www.investorclaimsfors.com and additional participants are welcome to join.

Note: The Stichting Investor Claims Against Fortis (“Foundation”) is an “open” foundation pursuant to Article 3:305a of the **Dutch Civil Code**. The Foundation’s purpose includes: (1) protecting the rights of all Fortis investors in the establishment of proper corporate governance; (2) pursuing any wrongdoing during the Relevant Period on the part of Fortis, its management, auditors and other advisors; (3) establishing and determining whether there was any legal liability on the part of Fortis, its former management, auditors and advisors in connection with the demise of the company in October 2008; and, (4) obtaining compensation for all investors who suffered losses as a result of Fortis’ mismanagement and misrepresentations during the Relevant Period. For more information, visit: www.investorclaimsfors.com.

Grant & Eisenhofer P.A. represents institutional investors, both domestic and foreign, in securities class actions, corporate governance actions and derivative litigation. The firm has recovered approximately \$12.5 billion for shareholders in the last five years and was cited by **RiskMetrics** for securing the highest average investor recovery in securities class actions of any U.S. law firm in 2008. Grant & Eisenhofer has been named one of the country’s top plaintiffs’ law firms by The National Law Journal for the past five years. The firm also represents plaintiffs in antitrust and False Claims Act litigation. For more information, visit www.gelaw.com. Barroway Topaz Kessler Meltzer & Check, LLP represents institutional investors and shareholders internationally in securities class actions, corporate governance actions, as well as ERISA, consumer, antitrust and derivative litigation. The firm has recovered billions of dollars for clients in the last five years and has been named among the top firms for shareholder recovery by RiskMetrics Group every year since 2003. For more information, visit: www.btkmc.com

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