

CLASS AND AGGREGATE LITIGATION IN EUROPE AND NORTH AMERICA

“In the U.S., VW owners get cash. In Europe, they get plastic tubes.” This statement summarizes the lack of efficient enforcement of consumer law in Europe.

Fourteen years after the inaugural Class Actions in Europe and North America event, and eight years after the Volkswagen litigation, the Center on Civil Justice will host a follow-up event, bringing expert lawyers, academics, judges, and more back to Villa La Pietra in Florence, Italy, for a two-day conference on class and aggregate litigation in Europe and North America.

On the first day, we will look at the state of play of mass litigation in the United States and Europe. Presentations will look at the perils for class actions in the US and what we can learn from the VW litigation in both jurisdictions.

On the second day, the key findings of the Third Restatement of Consumer Law will be presented. We will look at the new EU Directive on Representative Actions for the protection of the collective interests of consumers and the potential it provides for EU Member States to create an efficient enforcement system and what hurdles have to be overcome in order to do so. Finally, we will examine the effect of third-party funding on both sides of the Atlantic and the challenges of adequate funding of class actions.

The conference will provide a unique opportunity to reflect in depth on the development of class actions in the US and Europe over the course of the decade, enabling participants—leading academics, practitioners, and judges from both jurisdictions—to engage in an open exchange of ideas and to discuss the lessons to be drawn from previous litigation and legislative endeavors. The goal of the conference is also to provide guidance for EU Member States, which must implement the Directive on Representative Actions by the end of the year.

HOST ORGANIZATION	CO-HOST	PLATINUM SPONSOR	BRONZE SPONSOR
 	  	 	  

Additional support from the European Law Institute



THE CENTER ON CIVIL JUSTICE at New York University School of Law is an academic research institute dedicated to the study of the civil litigation system in the United States, as well as the prospects for that system in the future. When formed in 2012, the center set out to fill a void in scholarly and policy analysis addressing the nation’s civil justice system. Since its beginning, the center has benefitted from the unmatched expertise of NYU School of Law in the fields of procedure and complex litigation to better understand and improve the experience of those litigating disputes in state and federal courts.

The center works to provide an institutional framework for the review of the operation of the legal system, under the oversight of leading scholars, practitioners, and judges. As an institution of scholarship, the center examines questions about the jurisdictional reach of legal systems, the financing of litigation, and the cost effectiveness of litigation for those whose disputes land them in court. Because we have examined these topics within the protected environs of academic independence, we have heard divergent views on these topics.

The center operates on the same principles as the other successful centers at NYU. We seek to provide a fertile environment for novel scholarly inquiry. Toward that end, the center has conducted front-line research and organized academic conferences drawing on both law professors and practitioners, including judges, and provided a forum for the discussion and debate of proposed civil justice reforms. The director for the center, Beverly Martin, works closely with our resident faculty directors, Professors Samuel Issacharoff, Arthur Miller, and Geoffrey Miller and Dean Troy McKenzie. In addition, the center has an advisory board made up of judges together with leading practicing lawyers, with a balance of practitioners from the plaintiffs’ and defense bar. Sheila Birnbaum serves as the chair of the Board of Advisors.

Our federal courts now have operated under the Federal Rules of Civil Procedure for more than 80 years. The rules were intended to cut through the technical forms of action from the common law period, but the rules have failed to bring about the hoped-for “just, speedy, and inexpensive” resolution of disputes. Our legal system continues to search for means to efficiently resolve large numbers of related claims, while respecting the inherited presumption of individual party autonomy. Judges are increasingly called on to more aggressively intervene to limit disputes, requiring them to step into the role of initial screeners of factual plausibility of claims, or of the sufficiency of the evidence, in ways that strain a system organized around the premise of the civil jury as the trier of fact. Many, and in some court systems most, litigants face their court proceedings without counsel. Trials are increasingly rare.

We continue to observe that for too many Americans, the formal processes for resolving legal disputes are simply unaffordable. And even for those who are well-resourced enough to finance litigation, the costs can be extraordinary and unjustified. Efforts to channel litigation into private forums may be beneficial for some but may deny access to justice for others.

Our commitment to the study and improvement of the civil justice system continues. Our current work explores how courts can better address the resolution of economic disputes, personal disputes, and matters of societal governance. We examine how civil justice can be delivered in a timely manner in the United States. We are mindful of the cost of litigation and engage with experts in exploring how to provide a forum in which people can afford to resolve disputes. We are also mindful of the broader impacts our civil justice system has on the US economy, our nation’s competitiveness, our governance, the functioning of our society, and the geopolitical position of the United States. But this broader view does not divert our mindfulness of the human beings whose tax dollars pay for our civil justice system and rely on it to resolve the disputes in their lives.

The Center on Civil Justice continues its robust and uninhibited examination of these questions through academic inquiry, in the tradition of NYU School of Law.



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July 8–9, 2022
NYU La Pietra





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FRIDAY, JULY 8

9:30 A.M. **PANEL 1** COLLECTIVE REDRESS AND ACCESS TO JUSTICE: WHERE ARE WE NOW?

MODERATOR Arthur Miller
Professor, NYU School of Law

Professor Arthur Miller will set the scene for this event with an overview about recent developments in class action litigation in the US, the lack thereof in most European countries, and the hurdles people face with regard to access to justice.

11:30 A.M. **PANEL 2** WHAT'S UP IN AMERICA?

MODERATOR Troy McKenzie
Dean, NYU School of Law
Cecelia Goetz Professor of Law, NYU School of Law

PARTICIPANTS Hon. J. Michelle Childs
US District Judge, District of South Carolina

Myriam Gilles
Paul R. Verkuil Chair in Public Law, Cardozo School of Law

Maria Glover
Professor of Law, Georgetown University Law Center

During this panel, we will hear in more detail from academics, judges, and practitioners about recent developments in the US and the direction ahead.

1:00 P.M. LUNCH

3:00 P.M. VILLA TOUR

5:30 P.M. **PANEL 3** THE BIG CASES: VW AND OPIOIDS

MODERATOR Sam Issacharoff
Bonnie and Richard Reiss Professor of Constitutional Law, NYU School of Law

PARTICIPANTS Elizabeth Cabraser
Partner, Lieff Cabraser Heimann & Bernstein, LLP

Hayden Coleman
Partner, Dechert LLP

Anthony Maton
Global Co-Chair, Hausfeld LLP

Hon. Anthony J. Scirica
Senior US Circuit Judge, Court of Appeals for the Third Circuit

This panel will reflect on the VW and opioid MDLs—two of the biggest cases in recent history—and will analyze what distinguishes these cases from others in which claimants were awarded less damages. The VW case is of special interest, given that the same facts were established globally, but the outcome for defendants varies dramatically by geography. We will hear from experts serving on both sides of the “v,” as well as judges.

7:30 P.M. DINNER Limonaia in La Pietra

SATURDAY, JULY 9

9:30 A.M. **PANEL 4** ALI PRESENTS: RESTATEMENT OF THE LAW OF CONSUMER CONTRACTS

MODERATOR Steven O. Weise
Partner, Proskauer Rose LLP

PARTICIPANTS Omri Ben-Shahar
Leo and Eileen Herzel Professor of Law, University of Chicago Law School

Alon Klement
Professor of Law, Tel Aviv University

This panel will represent the third restatement of the law of consumer contracts and compare its findings with the legislative landscape of consumer contracts in Europe.

Hon. Paul J. Watford
US Circuit Judge, Court of Appeals for the Ninth Circuit

Martina van Wijngaarden
Partner, Freshfields Bruckhaus Deringer LLP

Florencia Marotta-Wurgler
Boxer Family Professor of Law, NYU School of Law

11:30 A.M. **PANEL 5** YET ANOTHER EUROPEAN DIRECTIVE: A NEW TURN IN EUROPE?

MODERATOR Susanne Augenhöfer
Professor of Law, University of Innsbruck, Senior Research Fellow, Yale Law School, and Fellow, Center on Civil Justice at NYU School of Law

PARTICIPANTS Remo Caponi
Judge, Italian Supreme Court (Corte di Cassazione)

Beate Gsell
Professor of Law, Ludwig-Maximilians University Munich and Judge, Munich Higher Regional Court (OLG München)

Hans-Wolfgang Micklitz
Professor of Law, Robert Schuman Centre for Advanced Studies, European University Institute

Ursula Pacht
Deputy Director General, BEUC

Ioana Pătrașcu
Legal Officer, Directorate-General Justice and Consumers, European Commission

In this panel, we will learn about the recently passed Directive on Representative Actions, which for the first time will require legislators within the EU to introduce a system that allows qualified entities to sue for compensation on behalf of consumers. We will look at the potential, as well as the shortcomings, of the directive.

1:00 P.M. LUNCH

3:00 P.M. **PANEL 6** THIRD-PARTY LITIGATION FUNDING

MODERATOR Brian T. Fitzpatrick
Milton R. Underwood Chair in Free Enterprise, Vanderbilt Law School

PARTICIPANTS Dina Komor
Senior Investment Manager, Legal Counsel, Omni Bridgeway

Rachael Mulheron
Professor of Tort Law and Civil Justice and Honorary Queen's Counsel, Queen Mary University of London School of Law

Ianika Tzankova
Full Professor of Global Dispute Resolution and Mass Claims, Tilburg Law School and Partner, Birkway

Sam Wathen
Partner, Melodeon Capital Partners LP

Anthony Sebok
Professor of Law, Cardozo School of Law

This panel will look at the possibilities and potential dangers of third-party litigation funding on both sides of the Atlantic, will analyze why it is more popular in some countries than in others, and will discuss the report that was presented by a member of the European Parliament in 2022 which aims at the prohibition of this finance model.

7:30 P.M. DINNER Teatro del Sale