

[informal translation from Dutch]

Amsterdam Court of Appeal

Date: 20 May 2016

**PETITION PURSUANT TO ARTICLE 7:907 OF THE DUTCH CIVIL CODE FOR A
BINDING DECLARATION IN RESPECT OF A COLLECTIVE SETTLEMENT
AGREEMENT**

in the matter of:

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1 INTRODUCTION

1. Ageas, VEB, Deminor and SICAF concluded an agreement on 14 March 2016 that seeks to put an end to disputes that have arisen in connection with the events which took place in 2007 and 2008 at the former Fortis (currently Ageas) (the "**Settlement Agreement**"). FortisEffect and the Foundation later also became parties to it.¹ Ageas, VEB, Deminor, SICAF, FortisEffect and the Foundation (the "**Petitioners**") request the Court of Appeal to declare the Settlement Agreement binding.
2. If the Court of Appeal grants this request, those natural persons and legal persons who were shareholders of Fortis during certain periods could expect to receive compensation of a maximum total amount of EUR 1,203,700,000 (in words; one billion, two hundred and three million and seven hundred thousand euros) (the "**Settlement Amount**") and there will be an end to the multitude of civil proceedings, which have already lasted many years and which, without settlement, are set to last for many years to come.
3. This petition is structured as follows. Chapters 2 and 3 set out the identity of the Petitioners and explain that the representative organisations are representative of the interests of those for whose benefit the Settlement Agreement, of which the binding declaration is being sought, has been entered into. Chapter 4 discusses the (international) jurisdiction and competence of the Court of Appeal in this matter. Chapters 5, 6 and 7 discuss the Settlement Agreement and the genesis, the contents and the manner of execution of the Settlement Agreement are addressed more specifically. Chapter 8 pays attention to the compensation to which the Settlement Agreement grants Fortis shareholders entitlement and the reasonableness of thereof. Lastly, chapter 9 discusses a number of procedural issues in connection with this petition.

¹ The (consolidated version of the) Settlement Agreement, and a translation thereof are submitted as **Annex 1** and **Annex 2**, respectively.

2 PETITIONERS

2.1 Ageas

4. Ageas is a company under Belgian law. Up until 30 April 2010, Ageas operated under the name of Fortis SA/NV. On 7 August 2012, Ageas merged with Ageas N.V., a company under Dutch law, which prior to 30 April 2010 operated under the name of Fortis N.V. Ageas was the remaining company and the Dutch Fortis N.V. was amalgamated into Ageas SA/NV in this legal merger. In respect of the events that occurred before 30 April 2010, Ageas is referred to hereinafter as "**Fortis**".
5. In 2007 and 2008, the former Fortis group performed both banking and insurance activities. The Fortis shares were listed on Euronext Amsterdam, Euronext Brussels and the Luxembourg Stock Exchange. At the present time, Ageas (together with its subsidiaries) carries out mainly insurance activities.

2.2 VEB

6. VEB was founded in 1924 and has its registered office in The Hague. By virtue of its objects clause, VEB represents the interests of security holders in the broadest sense of the word including the interests of persons who held shares in Fortis in 2007 and 2008. Its articles of association are submitted as **Annex 3**. VEB has over 43,000 members. On the date on which this petition was submitted, a minimum of 21,913 VEB members and a maximum of 15,910 non-VEB members had specifically joined the action against Ageas via the website of VEB.
7. Pursuant to its objective under its articles of association and in order to be able to exercise its representative rights at Ageas, VEB holds five Ageas shares.
8. VEB has in the past been involved in the formation of (and the negotiations regarding) various collective settlement agreements. VEB has played such role in settlements which have been declared

binding by the Court of Appeal, in particular the *Dexia* settlement² ("**Dexia**"), the *Shell* settlement³ ("**Shell**"), the *Vedior* settlement⁴ ("**Vedior**") and the *Converium* settlement⁵ ("**Converium**"). It has extensive experience with concluding settlements and in assessing them in terms of reasonableness. In respect of the events that occasioned the present petition, VEB has initiated proceedings under article 3:305a of the Dutch Civil Code ["DCC"] against Fortis (more about this to follow in chapter 5).

2.3 Deminor

9. Deminor is an organisation registered in Brussels, Belgium, which is involved in the field of shareholder activism, investor protection, the recovery of investment losses, and corporate governance for over 20 years. A copy of the articles of association of Deminor is submitted as **Annex 4**. Deminor provides advice and assistance to both private and institutional investors throughout the world with regard to the protection of their rights and the recovery of investment losses and it focusses particularly on investors in publicly quoted companies, listed companies with a limited "*free float*", and unlisted companies.
10. In order to be able to exercise its representative rights at Ageas, Deminor holds one Ageas share.
11. Deminor is (and has been) active in various collective actions, including with regard to (i) Royal Imtech, (ii) Parmalat, (iii) the Madoff Fraud, (iv) Lehman Brothers, (v) Banco Espirito Santo and (vi) Olympus.⁶ Deminor also has extensive experience reaching settlements and assessing their reasonableness. Deminor represents more than 30,000 private and 800 institutional clients throughout the entire world. Specifically for this case, Deminor represents and advises a large number of Eligible Shareholders⁷, of whom approximately 5,500 are acting under their own name in a legal action in Belgium.

² Court of Appeal Amsterdam 27 January 2007, JOR 2007, 71 (*Dexia*).

³ Court of Appeal Amsterdam 29 May 2009, LJN:BI5744, JOR 2009, 197 (*Shell*).

⁴ Court of Appeal Amsterdam 15 July 2009, LJN:BJ2691, JOR 2009, 325 (*Vedior*).

⁵ Court of Appeal Amsterdam 17 January 2012, JOR 2012, 51 (*Converium*).

⁶ <http://www.deminor.nl/drs/nl/dossiers>

⁷ For the definition of Eligible Shareholder, see paragraph 6.3.

2.4 SICAF

12. SICAF was founded on 5 October 2010. Pursuant to its articles of association, SICAF champions the interests of persons who held shares in Fortis during the period from 29 May 2007 through 14 October 2008 and who have sustained damage. This includes inter alia obtaining a declaratory judgment that Fortis and/or parties involved with Fortis acted in violation of the requirements under Dutch law in connection with properly and fully informing the market and the investing public and in obtaining and distributing a compensation to those persons whose interests are represented by SICAF for the damage they have sustained as a consequence of the fall in price of the securities. A copy of the articles of association of SICAF is submitted as **Annex 5**.
13. In connection with the dispute with Ageas, approximately 180 institutional investors, who together held approximately 180 million Fortis shares in 2007 and 2008, have registered with SICAF. SICAF has instituted 3:305a DCC proceedings against Fortis as well as a second action on behalf of the aforementioned institutional investors.

2.5 FortisEffect

14. FortisEffect was founded on 14 November 2008. FortisEffect is a foundation under Dutch law, representing the interests of investors in Fortis on the basis of article 3:305a DCC. This includes investigating and establishing the liability of persons who informed the investing public on behalf of Fortis. A copy of the articles of association of FortisEffect is submitted as **Annex 6**.
15. The representativeness specific to this case for each of VEB, Deminor, SICAF and FortisEffect will be dealt with below in more detail (see chapter 3).

2.6 The Foundation

16. The FORsettlement Foundation was founded on 1 April 2016 in accordance with Dutch law and has its registered office in Amsterdam. The Foundation champions the interests of present and former holders of Fortis shares who may have or actually have sustained damage as

a consequence of the events which took place in 2007 and 2008, as enshrined in its articles of association (**Annex 7**). In this context, the Foundation has also become party to the Settlement Agreement.

17. In accordance with article 4.2.1 of the Settlement Agreement, the Foundation will supervise the distribution of the compensation due to Eligible Shareholders⁸ under the Settlement Agreement. In order to perform this task, the Foundation will appoint an independent claims administrator (the "**Claims Administrator**"). Under the supervision of the Foundation, the Claims Administrator takes care of the calculation, determination and payment of the aforementioned compensations. The costs incurred by the Foundation and the Claims Administrator in connection with the aforementioned activities will be borne by Ageas.
18. The board of the Foundation is composed of seven directors. Ageas has appointed three directors and VEB, Deminor and SICAF have each appointed one director. These six directors have jointly appointed the seventh director, who also serves as independent chairman. During board meetings, the board decides by a majority of votes, provided that all directors are either present or represented. Board meetings are held at least once a year.
19. The supervision of the board is exercised by the Petitioners. A director can be dismissed by the party that appointed him. The chairman can be dismissed by the other directors with a qualified majority of at least two of the three directors appointed by Ageas, and two of the three directors appointed by VEB, Deminor and SICAF.

3 REPRESENTATIVENESS

20. Article 7:907(3), preamble and (f) DCC requires the foundations or associations making the request to be sufficiently representative with respect to the interests of those for whose benefit the settlement agreement has been concluded. The requirement of representativeness is further clarified in the Explanatory Memorandum

⁸ For the definition of Eligible Shareholder, see paragraph 6.3.

to the Dutch Act on the Collective Settlement of Mass Claims [*Wet collectieve afwikkeling massaschade*, or "WCAM"]:⁹

"The representativeness of an organisation can be inferred from various facts, and it is accordingly not advisable to deem any single fact or number of facts as definitive. It is therefore difficult to provide a well-defined specification of this requirement because this would detract from other facts which might also show that an organisation is representative. Different facts, whether or not in combination with each other, could after all be relevant. The representativeness of the organisation could for example be inferred from the other activities which the organisation has performed in order to promote the interests of the injured parties, or from the number of injured parties who are affiliated with or are members of the organisation, or from the question regarding the extent to which the injured parties themselves accept the organisation as being representative. The representativeness could also be inferred from the fact that in this matter of the loss-causing event or events, the organisation is not only acting as a discussion partner vis-à-vis the entity or entities responsible for the damage, but for example also vis-à-vis the government. Acting as a mouthpiece in the media could also be an important indicator."

21. On the basis of considerations of the Court of Appeal in previous WCAM proceedings, it is beyond dispute in the opinion of the Petitioners, that the requirement of representativeness has been satisfied.¹⁰ This also follows from the Explanatory Memorandum to the Dutch Act on the Collective Settlement of Mass Claims (Amendment) Act.¹¹

"In this regard it should also be noted that in this new wording, there is no requirement that every foundation or association must be sufficiently representative with regard to the interests of the entire group of persons for whose benefit the agreement has been concluded. It suffices that for each potentially distinguishable group of persons, (at least) one of the contracting foundations or associations is sufficiently representative with regard to their interests."

22. The representativeness requirement is satisfied if each of the stakeholder organisations is sufficiently representative with regard to the interests of a sufficiently sizeable group of persons for whose

⁹ NL House of Representatives, 2003-2004, 29414 no. 3, p. 15.

¹⁰ *Dexia*, par. 5.26; *Vedior*, par. 4.20; *Shell*, par. 6.22; *Converium*, par. 10.2; *DSB*, par. 6.2.3.

¹¹ NL House of Representatives, 2011-2012, 33126 no. 3, p. 16.

benefit the settlement agreement has been concluded. This is what the Court of Appeal ruled in *Dexia*:¹²

"It is not necessary that each of the four applicants should appear individually to be representative of the entire group of injured parties. It flows from the statutory rules that it is enough that the joint applicants are sufficiently representative with regard to the interests of the persons for whose benefit the WCAM agreement has been concluded, provided that each of them are sufficiently representative with regard to a sufficiently sizeable group of these persons."

23. In *Converium*, the Court of Appeal added that the law does not require that each applicant is sufficiently representative for a group of sufficient size.¹³
24. The Petitioners observe that the representativeness of VEB in relation to Dutch shareholders has already been accepted by the Court of Appeal in previous WCAM proceedings.¹⁴

3.1 Object clauses

25. The objects of VEB are:

"championing the interests of security holders in the broadest sense of the word. This entails among other things, fostering the awareness and study of finance and economy in order to increase knowledge about the management and investment of savings and other funds of the financial consumer."

26. The objects of Deminor are:

"advising, supporting and representing third parties with a view to achieving compensation or each other form of compensation for loss, in any way whatsoever, in the context of losses or each other form of loss which they suffered in with regard to investment instruments or with regard to other goods, of any nature whatsoever, in general, in the context of each other event which has caused damage."

27. The objects of SICAF are championing and representing the interests of persons and institutions who purchased securities from Fortis between 29 May 2007 up to and including 14 October 2008 and sustained damage as a consequence of the drop in value of these

¹² *Dexia*, par. 5.26.

¹³ *Converium*, par. 10.2.

¹⁴ *Dexia*, par. 5.26; *Shell*, par. 6.23; *Vedior*, par. 4.20; *Converium*, par. 10.3.

securities. In addition, SICAF has the following objectives under its articles of association:

- (a) establishing both in and out of court the factual course of events in connection with Fortis during the period from 29 May 2007 up to and including 14 October 2008;
- (b) obtaining a declaratory judgment that Fortis and/or parties involved at Fortis acted in violation of the requirements under Dutch law in connection with properly and fully informing the market and the investing public;
- (c) obtaining and distributing compensations to the persons whose interests are represented by SICAF for the damages they have sustained as a consequence of the fall in price of the securities; and
- (d) everything that is connected with the foregoing or which could be relevant in this regard, and all of these matters in the broadest sense of the word.

28. The objects of FortisEffect are:

- (a) championing the interests of shareholders, bondholders, option holders and other investors or holders of securities with either direct or indirect interests in the Fortis concern, including Fortis Groep, Fortis N.V., Fortis Bank Nederland N.V., the ABN AMRO - Bank N.V. and all affiliated companies, hereinafter to be referred to as: Fortis concern;
- (b) investigating and determining the liability of the Fortis concern, its advisers, directors and other parties who have, also on behalf of the Fortis concern, furnished information regarding the Fortis concern and have informed stakeholders within the meaning of subsection (1) under (a);
- (c) performing all further activities which are connected to the foregoing in the broadest sense or which may be conducive to this.

29. The objects of the Foundation are:

- (a) championing the interests of current and former holders of Fortis shares who may have or actually have sustained damage as a consequence of the events which took place in 2007 and 2008;
- (b) entering into a collective settlement agreement in order to end the disputes in connection with these events;
- (c) instituting proceedings by petition for declaring this collective settlement agreement binding under the WCAM;
- (d) calculating, laying down and paying the compensations which are due in accordance with this settlement agreement to current and former shareholders in the capital of Fortis;
- (e) providing security for the payment of amounts which will be distributed to the current and former holders of the aforesaid shares;
- (f) managing the monies of the settlement fund to be formed further to the Settlement Agreement (the "**Fund**"), to which the Foundation has become a party, and making distributions from the Fund in accordance with the provisions set out in the Settlement Agreement;
- (g) overseeing compliance with the Settlement Agreement; and
- (h) everything that is connected with the foregoing or that may be conducive to it.

3.2 Activities of the stakeholder organisations

30. VEB, SICAF, Deminor and FortisEffect have been the initiators in a number of legal proceedings against Ageas (see below in no. 54 et seq. and **Annex 8**). VEB, SICAF and FortisEffect have hereby explicitly opted for proceedings that will not only benefit those they represent, but also other Eligible Shareholders by means of collective actions pursuant to article 3:305a DCC and involvement in the inquiry proceedings. In Belgium it is not possible to bring a class action in a

comparable manner with the help of a representative organisation in which a ruling can be passed for all Eligible Shareholders that Fortis misrepresented the facts. This is only possible on the basis of individual claims of the Eligible Shareholders. This is the reason that a large number of investors who form the Deminor constituents, each have separately, but with one single summons, brought actions against Ageas before the commercial court in Brussels. Subsequently, another number of investors, who are also part of the Deminor constituents, has become claimant in these proceedings by means of a voluntary interpleader request, or another summons.

31. There can be no doubt that negotiating and concluding the Settlement Agreement, followed by the lodging of this petition, is an activity aimed at championing the interests of Eligible Shareholders.

3.3 Constituencies

32. VEB is the representative of individual shareholder interests in the Netherlands and currently has over 43,000 members. Members of the VEB are natural persons and legal persons who cannot be classified as professional investors under the Dutch Financial Services Act [*Wet op het financieel toezicht* - "Wft"] and who are not subject in any way to a licensing obligation (such as pension BVs and investment clubs). VEB pursues its objective by, among other things, acting for the benefit of its members to exercise the rights of the shares held by these members. In addition, 37,823 persons have joined the proceedings brought by the VEB against Ageas via the website. VEB has acted on the basis of article 3:305a DCC for the benefit of both members and non-members. The members of VEB consist of both natural persons and legal entities, including the institutional partners of VEB.
33. SICAF offers the persons whose interests it represents the possibility of entering into a participation agreement with SICAF and in this way of supporting SICAF by joining SICAF as participants. To date, 180 globally operating institutional investment organisations, which together hold approximately 180 million Fortis shares, have signed such agreement with SICAF. SICAF refers to its website for further background information: <http://www.investorclaimsagainstfortis.com>.

34. The Deminor constituency consists of individual and institutional investors who invested in Fortis shares and joined Deminor. Of these investors, approximately 5,000 individual and 500 institutional investors are claiming compensation for the alleged loss suffered by them in a legal action before the commercial court in Brussels.
35. FortisEffect represents the interests of all investors in the context of Fortis, on the basis of article 3:305a DCC. The constituency of FortisEffect consists of both natural persons and legal entities (and their representatives), and is primarily characterised as a retail investor originating from the Netherlands and Belgium. By year-end 2014, in any event 13,470 persons and entities had registered via the website www.fortiseffect.nl.

4 JURISDICTION AND COMPETENCE

4.1 Absolute and relative competence

36. The Amsterdam Court of Appeal has sole competence to take cognizance of this petition pursuant to article 1013(3) DCCP.

4.2 International jurisdiction

37. In *Shell and Converium*, the Court of Appeal found that it can derive international jurisdiction from the predecessor of the Brussels I Regulation (recast),¹⁵ the EVEX Convention¹⁶ and article 3 of the Dutch Code of Civil Procedure ["DCCP"] for declaring a Settlement Agreement binding formed in the context of the WCAM. The Petitioners concur with these findings. This has the following meaning for these proceedings.
38. The natural persons and legal persons for the benefit of whom the Settlement Agreement is entered into (the Eligible Shareholders¹⁷) are the "defendants" within the meaning of the Brussels I Regulation (recast) and the EVEX Convention.

¹⁵ Regulation (EU) no 1215/2012 of the European Parliament and of the Council on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast).

¹⁶ Convention of 21 December 2007 on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters.

¹⁷ For the definition of Eligible Shareholder, see paragraph 6.3.

(a) *Eligible Shareholders in the Netherlands*

39. With regard to the Eligible Shareholders who at the time this petition was submitted were domiciled or had their place of establishment in the Netherlands, the Court of Appeal can derive jurisdiction from article 4 (1) of the Brussels I Regulation (recast).¹⁸ This article determines that

"[...] persons domiciled in a Member State shall, whatever their nationality, be sued in the courts of that Member State."

(b) *Eligible Shareholders in a European Member State or EVEX Member State*

40. With regard to the Eligible Shareholders who at the time this petition was submitted had their domicile or place of establishment outside the Netherlands, in a state that is party to the Brussels I Regulation (recast) or the EVEX Convention, the Court of Appeal can derive international jurisdiction from article 8 preamble and (1) of the Brussels I Regulation (recast), or article 6 preamble and (1) of the EVEX Convention, respectively.¹⁹ These articles stipulate that a person who is domiciled in the territory of a Member State of the European Union or an EVEX Member State can also be sued:

"where he is one of a number of defendants, in the courts for the place where any one of them is domiciled, provided the claims are so closely connected that it is expedient to hear and determine them together to avoid the risk of irreconcilable judgments resulting from separate proceedings."

41. There is a "close connection" between the "claims"²⁰ of Ageas (including the present petition for a binding declaration) against the Eligible Shareholders, wherever they are domiciled or established, because the same body of facts forms the basis for these claims, which moreover only occurred in the Netherlands and Belgium.²¹ Moreover, all the claims are connected to the same Settlement

¹⁸ Cf. *Shell*, par. 5.18 and Court of Appeal Amsterdam 12 November 2010, NJ 2010, 683 (*Converium* interim decision) (hereinafter "**Converium Interim Decision**"), par. 2.10.

¹⁹ Cf. *Shell*, par. 5.19 and *Converium Interim Decision*, par. 2.11.

²⁰ Cf. *Shell*, par. 5.21.

²¹ Cf. *Shell*, par. 5.21.

Agreement, the purpose of which is to award Eligible Shareholders compensation for damage purportedly sustained by them and to settle the related claims against Ageas via an all-encompassing arrangement. In other words, there is a "set of claims".²² The Settlement Agreement is also subject to Netherlands law.

42. Furthermore, the Court of Appeal can also derive international jurisdiction with regard to the Eligible Shareholders residing or established in a European or EVEX Member State from article 7, preamble, and (1)(a) of the Brussels I Regulation (recast) and article 5, preamble, and (1)(a) of the EVEX Convention.²³ These articles stipulate that a person or legal entity domiciled in the European Union or an EVEX Member State, respectively, can also be sued:

"in matters relating to a contract, in the courts for the place of performance of the obligation in question."

43. The contractual obligation in the current case pertains to the obligation to provide to the Eligible Shareholders the compensations to which they are entitled under the Settlement Agreement. If the Settlement Agreement is declared binding, this obligation will be implemented in the Netherlands: the Foundation, a legal entity established in the Netherlands, will assess claim forms, determine the compensation and arrange for its distribution (by engaging the Claims Administrator appointed by it and acting on its behalf).²⁴

(c) Eligible Shareholders in other countries

44. With regard to Eligible Shareholders who, at the time this petition was submitted, were not domiciled or established in a country party to the Brussels I Regulation (recast) or the EVEX Convention, the Dutch courts have jurisdiction on the grounds of article 3, preamble, and (a) DCCP.²⁵ Four of the six Petitioners are Dutch legal entities and have their registered offices in this country.

²² Cf. *Converium Interim Decision*, par. 2.11.

²³ Cf. *Converium Interim Decision*, par. 2.8 – 2.9.

²⁴ See the object clause of the Foundation in article 2 of its articles of association (**Annex 7**), also attached as Schedule 3 to the Settlement Agreement). See also in particular the enumeration of its duties in article 4.2.1 and Schedule 1 to the Settlement Agreement (under Claims Administrator).

²⁵ Cf. *Shell*, par. 5.16 and *Converium Interim Decision*, par. 2.12.

5 BACKGROUND TO THE SETTLEMENT AGREEMENT

5.1 Introduction and prelude to the proceedings

45. In 2007, Fortis announced that it would be taking over ABN AMRO in a consortium with Royal Bank of Scotland and Banco Santander. For its share of ABN AMRO, Fortis would pay approximately EUR 24 billion. To finance its part of the takeover, Fortis held a rights issue of EUR 13.4 billion, which took place in September 2007 (the "**Rights Issue**"). A prospectus was published on 25 September 2007 in the context of the Rights Issue (the "**Prospectus**"). An integral part of this was a press release from 21 September 2007 (the "**Trading Update**").
46. The Prospectus and the Trading Update contain information, among other things on the exposure of Fortis to what are referred to as subprime mortgages, more in particular the extent of its subprime portfolio and the losses sustained thereupon.²⁶ On 8 November 2007 (before opening of business: "**o.o.b.**")²⁷, Fortis published its third quarter figures for 2007, which contained further information on its exposure to subprime. A debate has arisen in civil proceedings regarding the question of whether the information that was disclosed or withheld (including in the Prospectus and the Trading Update) does or does not imply unlawful conduct.
47. The takeover of ABN AMRO also had consequences for the solvency of Fortis. For this reason, simultaneously with the offering memorandum of 29 May 2007, Fortis announced various measures which it intended to take up to year-end 2009, the moment that ABN AMRO would be fully integrated, in order to strengthen its solvency (the "**Solvency Plan**").

²⁶ It was stated in the [Dutch version of the] Trading Update: *Although Fortis does not have any direct mortgage financing activities in the US, it does have some exposure to the US sub-prime mortgage market through its ownership of mortgage-backed securities, asset-backed securities and CDOs. Approximately 95% of these MBS and ABS portfolios are AAA and AA rated. The impact on Fortis's full-year 2007 results is expected to be non-material thanks to its diversified portfolio, dynamic portfolio management and the credit risk protection purchased in 2006. Even if the current subprime severity would deteriorate with a further 20%, the additional non-linear net profit impact is estimated at EUR 20 million.*

²⁷ "**o.o.b.**" and "**c.o.b.**" are hereinafter used to mean "opening of business" and "close of business", respectively" [Dutch translations].

48. In order to oversee the implementation of the Solvency Plan, Fortis periodically calculated both its current solvency and what is known as its look through solvency: the "hypothetical" solvency, which fully took into account the integration and consolidation of ABN AMRO and the planned solvency measures. Fortis also communicated to its investors the solvency figures that it calculated internally and the progress of the Solvency Plan. In this context, it communicated that it expected to achieve its solvency targets by year-end 2009 by means of the measures in the Solvency Plan as made known previously.
49. On 26 June 2008, Fortis announced measures to further strengthen its solvency by: (a) the decision not to pay any interim dividend and, for 2008, only to pay dividend in the form of shares, (b) to realise an immediate share issue in the form of an Accelerated Book-building Offer for an amount of EUR 1.5 billion, (c) communicating a capital relief and disinvestment programme of EUR 3.5 billion, and (d) announcing a proposed issue of non-diluted capital instruments of a maximum of EUR 2 billion. On the same date, it also announced that the business divisions that it was required by the European commission to sell in connection with the acquisition of ABN AMRO (jointly the "**EC Remedies**") would probably be sold at a loss and that there would also be an impact on the future solvency of Fortis. After the various announcements, the price of Fortis shares dropped by approximately 10% on opening of business.
50. After this, discussions arose in civil proceedings regarding the question of whether or not these measures, plans and intentions communicated on 26 June 2008 should have been communicated earlier, and whether the shareholders at that time suffered loss as a result.
51. In the second half of 2008, there was major unrest on the financial markets and many financial undertakings were shown to require state support. In the weekend of 27 and 28 September 2008, it also became apparent that Fortis needed state support. On Sunday 28 September 2008, the Belgium, Luxembourg and Dutch governments committed to make a capital injection of EUR 11.2 billion in exchange for a 49% participation in the banking activities of Fortis in the respective countries. The various governments announced this late in the

evening on 28 September 2008. Fortis notified the market, by means of a press release, on Monday morning 29 September 2008 (before the stock exchange opened) regarding this transaction and its consequences.

52. In the governments' view this transaction did not achieve the intended effect. It was announced on 3 October 2008 that the Dutch government was taking over all Dutch activities of Fortis for an amount of EUR 16.8 billion. The trade in Fortis shares was also suspended at that time. On 6 October 2008, Fortis announced that its Belgian banking activities would also be taken over, this time by the Belgian State (which subsequently transferred the main part of the activities to BNP Paribas).
53. In subsequent civil proceedings, discussion arose regarding the question of whether the communications by the company to investors in Fortis shares during the period between 28 September and 3 October 2008 were incorrect or incomplete and, as a consequence, loss was caused to shareholders at that time.

5.2 Proceedings in the Netherlands and Belgium

54. VEB initiated inquiry proceedings against Fortis on 13 October 2008, at which SICAF also appeared in the second phase as an interested party. In these proceedings, the Enterprise Chamber at the Amsterdam Court of Appeal ruled on 5 April 2012, on the basis of an extensive investigation report and the applicants' complaints, that mismanagement had taken place at Fortis, in particular in respect to disclosures by Fortis to the market at various points in time during the above-mentioned period of 2007 – 2008.²⁸ The inquiry proceedings subsequently formed the overture to a number of civil actions in the Netherlands, in addition to the action that had already been made pending in Belgium by the Deminor constituents on 13 January 2010. There were also administrative proceedings and criminal proceedings

²⁸ Enterprise Chamber 5 April 2012, ECLI:NL:GHAMS:2012:BW0991. The Netherlands Supreme Court dismissed the appeal against the decision on 6 December 2013. NL Supr. Ct. 6 December 2012 ECLI:NL:HR:2013:1586.

(in Belgium). An overview of this is contained in the 2015 annual report of Ageas, which is enclosed as an annex to this petition (**Annex 8**).

55. The accusations in the legal proceedings referred to above pertain essentially - and in main part - to three periods:

Period 1

21 September 2007 o.o.b. – 7 November 2007 c.o.b.

Period 1 relates to the alleged wrongful conduct by Fortis with regard to the information that it disclosed in September and October 2007 about its exposure to subprime (as explained above). Period 1 starts on the date of publication of the Trading Update (21 September 2007 o.o.b.) and hence on the date prior to publication of the third quarter figures on 8 November 2007 before trading (7 November 2007 c.o.b.).

Period 2

13 May 2008 o.o.b. – 25 June 2008 c.o.b.

Period 2 relates to the alleged wrongful action in respect to the communications policy and the disclosures by Fortis in May and June 2008 with regard to the EC Remedies, its solvency and its policy in that respect (as explained above). Period 2 starts on the date of publication of the first quarter figures (13 May 2008 o.o.b.) and ends on the date prior to publication of the press release on the accelerated implementation of the Solvency Plan on 26 June 2008 before trading (25 June 2008 c.o.b.).

Period 3

29 September 2008 o.o.b. – 3 October 2008 c.o.b.

Period 3 pertains to the alleged wrongful action regarding the disclosures of Fortis in the period of end of September to start of October 2008. Period 3 starts on the date of announcement of the participation of the Benelux governments in Fortis (29 September 2008 o.o.b.) and ends on the date on which it became known that the Netherlands banking activities of Fortis

were being taken over by the Dutch State. (3 October 2008 c.o.b.).

56. These three periods (hereinafter: "**Relevant Periods**") play a central role in the Settlement Agreement in determining the claim amount, in the sense that they form the core of the compensation arrangement (what is known as "**Settlement Distribution Plan**" and is discussed in greater detail below in chapter 6).
57. It should be noted – as discussed in greater detail in chapter 6 and chapter 8 below – that the compensation is not limited to Eligible Shareholders who purchased or held shares in these three periods; all Eligible Shareholders can in principle claim entitlement to a basic compensation and a supplementary compensation for the Fortis Shares that they held the period between 28 February 2007 c.o.b. and 14 October 2008 c.o.b.
58. The above does not in any way mean that it has been established with regard to the Relevant Periods that the communication of Fortis during these periods was incorrect or incomplete. In any case Ageas denies any legal liability on its part. None of the civil liability proceedings referred to above whatsoever have resulted in an irrevocable judgment. Most of the proceedings are still in the first instance or have been suspended or stayed awaiting settlement of procedural questions or judgment in other proceedings, such as the criminal proceedings in Belgium.
59. Also, the highest administrative court in the Netherlands, the Trade and Industry Appeals Tribunal, in the proceedings initiated by the AFM against Fortis, and the Commercial Court of Brussels, in proceedings initiated in first instance by Patripart N.V., a former Fortis shareholder, and its parent company Patrinvest SCA, have ruled that Fortis has no blame with regard to its communications regarding subprime in Period 1.²⁹

²⁹ Commercial Court Brussels, 1 February 2016, R.G. 2016/AR/490. See **Annex 8** with respect to this action, the Trade and Industry Appeals Tribunal proceedings and other proceedings.

5.3 Formation of the Settlement Agreement

60. The Settlement Agreement is the result of negotiations between Ageas on the one side and VEB, Deminor, SICAF and FortisEffect as representatives of the possibly disadvantaged shareholders of Fortis on the other. The negotiations that led to the Settlement Agreement started almost four years ago between Ageas on the one side and VEB and Deminor on the other side and were supervised in the final phase by mediators Stephen Greenberg and Yves Herinckx.³⁰
61. The negotiation process that resulted in the Settlement Agreement can be characterised as highly complex, both due to the legal and factual complexity of the claims and the number of organisations involved, and the variety of the former and current Fortis shareholders represented by them. The events upon which the Settlement Agreement is predicated cover a period of more than eighteen months (February 2007 - October 2008) including the Relevant Periods. This led to an extensive and complex set of issues, with regard to which the parties took different positions. Before the formation of the Settlement Agreement, it was necessary that each of the representative organisations would become party to the Settlement Agreement, because otherwise no settlement could be reached that would actually end all the proceedings in which Ageas is involved with regard to the events at Fortis in 2007 and 2008.
62. The positions taken on by the respective Petitioners varied greatly, particularly at the start of the settlement negotiations. All the Petitioners have had to abandon their original positions in order successfully to reach agreement in mutual consultation regarding the terms of the Settlement Agreement. Agreement was eventually reached in a way that does justice to the level of uncertainty regarding the outcome of any proceedings, their possible duration and costs, and the interests of all the parties involved and their constituencies in achieving settlement for the existing disputes regarding the events in 2007 and 2008, without the need for further complex, expensive and

³⁰ Stephen Greenberg is associated with the Pilgrim Mediation Group. For a further details on his background, see <http://pilgrimmediationgroup.com/stephen-m-greenberg/>. Yves Herinckx acts as an arbitrator, is a deputy judge at the Brussels Court of Appeal and is vice-president of the European Single Resolution Board's Appeal Panel. For a further details on his background, see <http://www.herinckx.be/>.

time-consuming legal proceedings with the possibly associated duration and costs. This also enables Ageas to focus fully again on the core of its activities and its future. This also provides certainty to the enterprise and its stakeholders. The importance of this is all the more pertinent given that Ageas, as a major insurance company, is part of the financial system (particularly the Belgian financial system).

6 CONTENT OF THE SETTLEMENT AGREEMENT

6.1 Introduction

63. This chapter describes the most important elements of the Settlement Agreement. The table below first presents an overview of the formal requirements set by article 7:907(2) DCC to the content of the Settlement Agreement, and also gives references to the articles of the Settlement Agreement and the paragraphs or numbers of this petition where these are set out and explained.

Requirement	Settlement Agreement	Petition
A description of the event or events to which the agreement pertains, article 7:907(2)(a) DCC	Recital C	Nos. 45 – 56 and 64
A description of the group or groups of persons on whose behalf the agreement has been concluded according to the nature and the seriousness of their damage, article 7:907(2)(b) DCC	Recital H; definitions "Active Claimant" and "Non-Active Claimant"	Par. 6.3
A description, as accurate as possible, of the number of persons belonging to this group or these groups, article 7:907(2)(c) DCC	Recital K	Par. 6.3
The compensation awarded to these persons, article 7:907(2)(d) DCC	Article 4.1.2 and Schedule 2 (Settlement Distribution Plan), par. 2, 3 and 4	No. 70
The conditions with which these persons must comply in order to be eligible for	Article 4.3; Schedule 2 (Settlement Distribution Plan), par. 1	Nos. 70, 83

Requirement	Settlement Agreement	Petition
this compensation, article 7:907(2)(e) DCC		
The manner in which the compensation is determined and can be obtained, article 7:907(2)(f) DCC	Article 4.1.2 and Schedule 2 (Settlement Distribution Plan), par. 1 - 7	No. 70
The names and addresses of the person to whom the written communication referred to in article 908(2) and (3) can be made, article 7:907(2)(f) DCC	The Claims Administrator will be appointed by the Foundation in the short term. After appointment, the name and address of the Claims Administrator will be recorded in (an addendum to) the Settlement Agreement	The name and address of the Claims Administrator will be made known as soon as possible after appointment

6.2 Events

64. The Settlement Agreement contains a description in accordance with article 7:907(1) DCC in conjunction with article 1013(1)(b) DCCP of the events to which the Settlement Agreement pertains, as described above in paragraph 5.1 (the "**Events**"). This description is included in Recital C of the Settlement Agreement and has already been explained above in nos. 45 - 53.

6.3 Eligible Shareholders

65. The Settlement Agreement applies to the so-called Eligible Shareholders. These are all those who held one or more shares in Fortis ("**Fortis Shares**"³¹) at some point in the period from 28 February 2007 c.o.b. up until 14 October 2008 c.o.b. This pertains to the entire period, starting with the run-up to the takeover of ABN AMRO in the spring of 2007, and ending at the end of the day that the trade in Fortis shares was resumed.

³¹ The Settlement Agreement contains a detailed description as to which shares this covers in Schedule 1.

66. The definition of Eligible Shareholder covers three categories of current or former shareholders:
- (i) Eligible Shareholders who, in short, have initiated proceedings against Ageas or who have joined an organisation in good time that has initiated a joint proceedings against Ageas ("**Active Claimants**"³²);
 - (ii) Eligible Shareholders who have not done this ("**Non-Active Claimants**"); and
 - (iii) Eligible Shareholders who have been excluded from any compensation under the Settlement Agreement ("**Excluded Persons**")³³. Excluded Persons are persons who are involved as defendants in one or more of the proceedings as described in **Annex 8** and vis-a-vis whom release will be granted pursuant to the Settlement Agreement. These also include the Underwriting Banks, on the understanding that it has been determined that the exclusion of compensation only applies to Fortis Shares that they held at their own expense and risk.
67. Whether an Eligible Shareholder qualifies as an Active Claimant, Non-Active Claimant or Excluded Person makes no difference to the question as to whether the Settlement Agreement is applicable: each person who qualifies as an Eligible Shareholder falls within the scope of the Settlement Agreement.
68. The exact number of persons who qualify as Eligible Shareholders is not quantifiable. The Petitioners estimate that in the three Relevant Periods (as described in no. 55) there are 50,000 to 70,000 Active Claimants and 100,000 to 150,000 Non-Active Claimants.
69. As Fortis was a publicly listed company, the Petitioners do not know all the names of Eligible Shareholders but do know a significant number of these. The Petitioners will do everything in their power to reach as many Eligible Shareholders as possible, both personally as well as via a publicity campaign. To this end, the Petitioners have

³² The Settlement Agreement contains a detailed definition of the Eligible Shareholders covered by the definition of Active Claimant in Schedule 1.

³³ Also see the definition of "Excluded Persons" in the Settlement Agreement.

drawn up a notification plan which is set out in more detail in paragraph 9.2.

6.4 Settlement Amount and Relevant Periods

70. The Settlement Agreement specifies the total amount of EUR 1,203,700,000 that is available for Eligible Shareholders. The Settlement Amount will be allocated and distributed in accordance with the Settlement Distribution Plan, which is appended as Schedule 2 to the Settlement Agreement, and is explained in more detail in paragraph 6.5 of this petition.
71. The majority of the compensations that are available for Eligible Shareholders are linked to the Relevant Periods, which have already been discussed above (see no. 55). The Settlement Agreement distinguishes between shares that were acquired by an Eligible Shareholder in one or more of the three Relevant Periods ("**Buyer Shares**") and those that were held by an Eligible Shareholder during one or more of these periods ("**Holder Shares**"). The preceding is laid down in article 3.1 of the Settlement Agreement. The background to this distinction between Buyer and Holder Shares is further clarified in nos. 97-101 of this petition.

6.5 Distribution Procedure and Settlement Distribution Plan

72. Assuming that the Settlement Agreement will be declared binding and will not be terminated (as explained in no. 82), the Settlement Amount will be divided on the basis of the claim forms submitted by the Eligible Shareholders ("**Claim Forms**"). The Petitioners will submit a draft Claim Form as soon as possible. All Eligible Shareholders, excepting the Excluded Persons, who submit a correct and complete Claim Form on time will receive compensation. The Claims Administrator, under the supervision of the Foundation, will oversee that this takes place in accordance with the Settlement Agreement.
73. The amount of the compensation will be determined in accordance with the Settlement Distribution Plan, which provides for compensations for Non-Active Claimants and Active Claimants. Non-Active Claimants and Active Claimants are eligible for compensation

for each Buyer Share and Holder Share (as explained in no. 71) that they hold. These compensations are set out in paragraphs 2.1 and 3.1 of the Settlement Distribution Plan.

74. Additionally, all Eligible Shareholders, excepting the Excluded Persons, are eligible for compensation calculated on the basis of the highest number of Fortis Shares that this Eligible Shareholder held at any time during the period from 28 February 2007 (c.o.b.) up to and including 14 October 2008 (c.o.b.). These compensations are set out in paragraphs 2.2 and 3.2 of the Settlement Distribution Plan. Finally, Active Claimants are eligible for an additional compensation per Buyer or Holder Share purchased or held during one or more of the Relevant Periods (paragraph 3.3 of the Settlement Distribution Plan). The reasonableness of these compensations is further clarified in paragraph 8.
75. The Settlement Distribution Plan provides that the portion of the Settlement Amount that is available for all Non-Active Claimants amounts to EUR 407,800,000 (in words: four hundred and seven million eight hundred thousand euros). The part of the Settlement Amount that is available for all Active Claimants jointly amounts to EUR 795,900,000 (in words: seven hundred ninety five million nine hundred thousand euros). To the extent that the total amount of the approved claims from Non-Active Claimants or Active Claimants might exceed the respective limits, the available compensation will be decreased per Fortis Share on a *pro rata* basis. The reasonableness of these restrictions are further clarified in paragraph 8.4.
76. If the total amount of all submitted and approved claims from Non-Active Claimants is lower than the amount that is available for Non-Active Claimants, then the compensations per Fortis Share for Non-Active Claimants, as specified in paragraph 2.1 of the Settlement Distribution Plan, will be increased by a maximum of fifteen percent per share. The same applies to the compensations that are made available for Active Claimants, as set out in paragraph 3.1 of the Settlement Distribution Plan.
77. If after such an increase there as yet remains a surplus of the available amount for Non-Active Claimants, this surplus, as specified in

paragraph 3.1 of the Settlement Distribution Plan, will be used to increase the compensations per share for the Active Claimants by a maximum of one hundred and fifteen percent of the amount as stated in the Settlement Agreement. The same applies to the available compensations for Active Claimants: a surplus (after the increase of a maximum of fifteen percent per share for Active Claimants) will be used to increase the compensations per share for Non-Active Claimants, as set out in paragraph 2.1 of the Settlement Distribution Plan, by a maximum of one hundred and fifteen percent of the amount as stated in the Settlement Agreement.

78. Paragraph 5 of the Settlement Distribution Plan stipulates that in the shortest possible time after the expiry of the opt-out period (the period within which Eligible Shareholders who do not wish to be bound to the Settlement Agreement must indicate this to the Claims Administrator; see paragraph 9.5), distributions will be made to all Eligible Shareholders who are entitled to a compensation. These distributions concern payments of the compensations determined by the Claims Administrator, albeit that these need to take into account the uncertainty regarding the final amount of all claims and the possibility of *pro rata* mark ups or mark downs, as explained at nos. 74-77. The payment of the remaining compensations to Eligible Shareholders will be distributed as quickly as is reasonably possible in accordance with the basic principles formulated in the Settlement Distribution Plan, after the Claims Administrator has been able to determine the amount of the final total sum claimed (paragraph 6 of the Settlement Distribution Plan).

79. After the amounts determined in accordance with the above have been distributed, paragraph 4.2.3 of the Settlement Distribution Plan finally stipulates that if, after 36 months after the binding declaration, the total amount claimed is lower than the Settlement Amount, this remainder will be paid back to Ageas in accordance with article 7:910(2) DCC.

6.6 End of a claim; lapse of rights; termination

80. Article 4.3.8 the Settlement Agreement stipulates that a right to compensation under the Settlement Agreement lapses 366 days after the binding declaration notice under article 1017(3) DCCP is sent and

published.³⁴ This provision must be interpreted such that the right of an Eligible Shareholder to compensation lapses if no claim in the matter has been submitted within 366 days of the date of the notice and publication of the binding declaration or, in the case of an Eligible Shareholder who did not become aware of the collectability of its compensation on the date of the binding declaration notice, 366 days after the Eligible Shareholder as yet took cognisance of this, this in accordance with article 7:907(6) DCC.

81. The Settlement Agreement stipulates that Eligible Shareholders who do not wish to be bound by the Settlement Agreement must notify the Claims Administrator to this effect in writing (known as the "**Opt-Out Notice**") within the time limit as determined by the Court of Appeal (also see paragraph 9.5). All Eligible Shareholders who do not send an Opt-Out Notice in good time will be bound by the Settlement Agreement and will thereby grant a full release in the meaning of article 5.1.2 of the Settlement Agreement. This clause provides that the purported right to damages with regard to the Events will lapse vis-à-vis Ageas, all enterprises affiliated or formerly affiliated with it, all previous and current directors, supervisory directors and other personnel who have worked or currently work at Ageas or an enterprise affiliated or formerly affiliated with it, all Underwriting Banks and all accountants, advisers, lawyers and insurers of the persons referred to above, and all their personnel, directors and supervisory directors.
82. Finally, the Settlement Agreement contains a termination clause within the meaning of article 7:908(4) DCC. If the Opt-Out Amount (i.e. the aggregate amount of compensation that persons who sent an Opt-Out Notice would have received if they had submitted a valid Claim Form on time) exceeds five percent of the Settlement Amount, Ageas is entitled to terminate the Settlement Agreement. Ageas must exercise this right within eight weeks of the end of the opt-out period.

³⁴ See Settlement Agreement, article 6.3.2.

7 EXECUTION OF THE SETTLEMENT AGREEMENT

7.1 Security

83. Within one month of the submission of this petition, Ageas will transfer or ensure the transfer of twenty percent of the Settlement Amount, as security for the compensations to Eligible Shareholders, to either an escrow account or the account of the Foundation. Ageas has also set aside a provision in the amount of the net impact of the settlement after the contribution of insurers.³⁵ Additionally, it holds an ample cash position, amounting to approximately EUR 2.5 billion on 13 May 2016. There is no reasonable doubt that Ageas will be able to pay the Settlement Amount accordingly.³⁶

7.2 Processing claims

84. Eligible Shareholders are to submit a Claim Form in good time to the Claims Administrator, who is independent from Ageas and the other Petitioners, in order to be eligible for a distribution, as described in no. 80. The Claim Form will be enclosed with the binding declaration notice. The binding declaration notice will be sent within two months after the binding declaration has been awarded irrevocably, unless the Court of Appeal decides otherwise.

85. Each claim submitted by means of a Claim Form will be assessed by the Claims Administrator. The Claims Administrator will, at the instruction of and under the supervision of the Foundation, ensure that the distribution for each Eligible Shareholder which submits a Claim Form will be determined in accordance with the Settlement Distribution Plan (article 4.3.5 of the Settlement Agreement). If an Eligible Shareholder were to disagree with this, the Settlement Agreement provides for a detailed disputes regulation, which is set out below.

7.3 Resolving disputes

86. The Settlement Agreement provides regulations for resolving disputes independently, as meant in article 7:907(3)(d) DCC. If an Eligible

³⁵ Ageas – Annual Report 2015, p.181 and 225 (**Annex9**).

³⁶ Ageas is a highly solvent undertaking. It is an audited company and makes use of credit ratings; also see <http://www.ageas.com/nl/investors/rating-obligaties>.

Shareholder does not agree with the decision of the Claims Administrator regarding his Claim Form, the Eligible Shareholder and the Claims Administrator can first attempt to resolve this dispute mutually within 20 business days, after which the Eligible Shareholder can put the dispute before a disputes committee (the "**Disputes Committee**") (article 4.3.6 of the Settlement Agreement).

87. The members of the Disputes Committee to be appointed will be entirely independent with regard to all parties involved. Petitioners will inform the Court of Appeal as soon as possible of the identity of the members, as soon as they have been appointed.

7.4 Costs related to the settlement

88. In principle, Petitioners will bear their own costs related to the preparation and execution of the Settlement Agreement. VEB, Deminor, SICAF and FortisEffect do receive a fixed compensation for this, which has been agreed between them and Ageas (see below no. 89). Ageas will bear the costs of the Foundation and the Claims Administrator. These include the costs for making all announcements and notifications required by law (such as the submission notice and the binding declaration notice) and the calculation and distribution of the compensations to Eligible Shareholders (article 4.6.2 of the Settlement Agreement).
89. The compensation to VEB, Deminor and FortisEffect is partly based on the costs of advice to, representation of and implementation of the settlement on behalf of the individual investors represented by the various organisations, and the size of the group of private shareholders represented by the various organisations. For VEB, this amount is set at EUR 25 million, for Deminor at EUR 10.5 million, FortisEffect will receive EUR 7 million. SICAF will receive an amount of EUR 2.5 million, in the context of procedural costs, the costs of legal representation in the proceedings conducted in the Netherlands and the mediation, and finally the costs of implementation of the Settlement Agreement.
90. The costs in the context of the execution of the Settlement Agreement, referred to in the previous two paragraphs, will be paid by Ageas on

top of the Settlement Amount and therefore do not reduce the Settlement Amount.

7.5 Information available for shareholders

91. Ageas launched a website on 14 March 2016 with information on the announced settlement (www.forsettlement.com). This website contains information on the settlement and the WCAM procedure, including in the form of frequently asked questions and answers (FAQs), a video with an explanation, and descriptions of the key terms in the Settlement Agreement. Interested parties can also ask questions and leave their contact details via an electronic form. The website is available in Dutch, French and English. The submission notice and the binding declaration notice, the Settlement Agreement and other information related to the settlement will also be placed on the website.

8 REASONABLENESS OF THE COMPENSATION

8.1 Introduction

92. On the basis of the Settlement Agreement the Eligible Shareholders, with the exception of the Excluded Persons, can claim a compensation. The Settlement Amount of EUR 1,203,700,000 has been made available for Eligible Shareholders. This Settlement Amount is the highest ever offered in Dutch history under the WCAM. It is also a particularly substantial amount in an international perspective: in the United States, this settlement would belong in the top 10 of the largest class action settlements entered into since 1995 in securities class actions in the context of alleged incorrect or incomplete disclosure to shareholders.³⁷
93. It must be stated first and foremost, in regard to assessing the reasonableness of the compensation, that it is the result of negotiations. At the start of these negotiations, all the parties took a

³⁷ See: Filings Database 'Securities Class Action Clearinghouse' van Stanford Law School, to be consulted via: <http://securities.stanford.edu/top-ten.html>. Given the Settlement Amount of, converted, USD 1,338,394,030, this settlement would rank eighth on this list in the United States (against exchange rate of 14 March 2016, the day on which the settlement was disclosed). This list has been kept since the introduction of the Private Securities Litigation Reform Act in the United States in 1995.

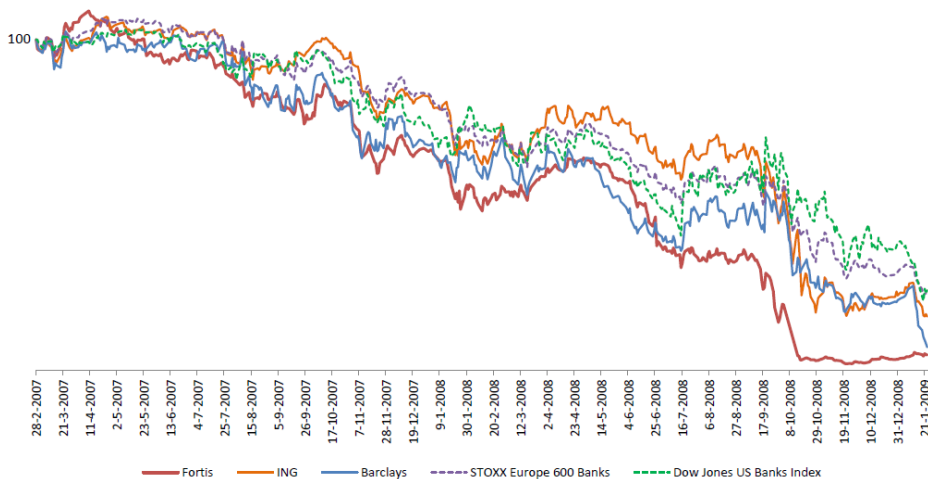
different position with regard to the various elements (in other words with regard to the unlawfulness or not of the communications of Fortis, the causal link and the quantum of the loss) which, inter alia, would have to be established for the liability claim to succeed (see no. 61 for this). With maintenance of their respective positions in the various actions, and without recognition of liability, the parties have made concessions in order to achieve a settlement, which is set down in the Settlement Agreement. The level of the compensation for each of the Eligible Shareholders agreed in the Settlement Agreement does justice, on the one hand, to the level of uncertainty experienced by the Petitioners regarding the outcome of any proceedings and, on the other, to the interests of all the parties involved in achieving a solution to the existing disputes regarding the events in 2007 and 2008, without the need for bringing further complex, expensive and time-consuming legal proceedings.

94. Ageas and all organisations that entered into the settlement are convinced that the settlement is reasonable and takes into account all relevant interests. Three of the representative organisations among the Petitioners have also conducted their legal action on the basis of article 3:305a DCC, and therefore partly in the collective interest of all shareholders. The settlement takes into account both those who actively supported the organisations and/or directly participated in court action and therefore made this result possible through these actions and those who did not affiliate themselves with the organisations in question and did not play any active role, but nonetheless enjoy wide benefits under the settlement.
95. The compensation offered in accordance with the settlement pertains to the accusations made against Fortis with regard to the Events (see chapter 5 above). Those events occurred in the context of the financial and economic crisis that developed in the course of 2007 and 2008. Due to the global crisis, the share prices of all banks around the world fell strongly in 2007 and 2008. Looking at the graph below, which, in addition to the share price of Fortis also shows the indices of the largest European and American banks and the share price of ING and Barclays, it is clear that the share price of Fortis developed in a

comparable manner to the prices of other globally operating banks, who all suffered a considerable general share price drop.

Evolution of Selected Index and Bank Share Prices

(Rebased: 28 February 2007 = 100; source: Bloomberg)



96. The discussion is therefore focusing on the question of whether specific price loss during specific periods can be attributed to alleged incorrect communication by Fortis, and to which extent. Extensive debate has already taken place between the parties in the Settlement Agreement in this respect in a number of proceedings. This debate focused on three periods in 2007 and 2008, which have already been described and explained above.
97. The petitioning representative organisations have taken the position that the entire share price loss during these periods must be eligible for compensation. Ageas has explicitly contested this position, and has further taken the position that if there is any eligibility for compensation, this can only be if and to the extent that there was a share purchase at a moment when price inflation obtained. The representative organisations have also taken the position that it is not only the acquirers of shares who should be eligible for compensation, but also the persons who held shares during a certain period. Ageas has contested this position on legal and economic grounds (but did not rule out that a degree of accommodation in the context of an overall settlement need not be unreasonable in circumstances). The Petitioners have made concessions (without abandoning their

respective positions) and have decided to reach a settlement in which both notions, price loss and price inflation, have played a role. While maintaining their respective positions in the current actions in the matter and in future actions, the Petitioners also made concessions in the context of determining the size of the Settlement Amount, and in consultation with Ageas have determined the reasonableness of the Settlement Amount on the basis of the price inflation.³⁸

98. In view of the specific structure of the compensations allocated to the Eligible Shareholders for the Relevant Periods in the context of the Settlement Agreement, the Petitioners – while maintaining their respective positions in the current actions in the matter and in future actions – also took price inflation into account in determining the settlement amount and in assessing its reasonableness. After all, the specific structure of the compensations in the Settlement Agreement is that an amount is allocated per Fortis share for the Relevant Periods. Using this price inflation method it is possible to calculate any loss per share for the three Relevant Periods. The amount calculated in this manner can then be compared with the compensations allocated on the grounds of the Settlement Agreement.
99. Following intensive negotiations, the result of this, as set down in the Settlement Agreement, is that an allocation is made both for shares which were allegedly acquired at an inflated price (Buyer Shares, as defined above in no. 71) and for shares that were held during such a period (Holder Shares as described above in no. 71). With this it has been taken into account that there obtains uncertainty in respect of the issue of a compensation for Holder Shares, given the lack of case law, both under Dutch and Belgian law and the absence of a prevailing doctrine. Taking into account this uncertainty, the allocation has been set at a lower amount than the compensation that would be allocated if the shares had been purchased during the period in question (which were then possibly subject to price inflation). The parties acknowledge that, in the latter case, if it were established that unlawful action had taken place, the legal position of the buying shareholders is stronger.

³⁸ Price inflation is a method by which investor loss can be approximated, as defined the report by Analysis Group mentioned below. The representative organisations wish to have it stated that there are alternative methods such as the relative loss method and the absolute loss method.

In assessing the acceptability of this, Ageas has also taken into account that – aside from the legal position with regard to the Holder Shares – it considers it important that the settlement will be able to count on the support of all Eligible Shareholders. In this light, it wishes to have stated that allocation of a compensation for Holder Shares also provides for (a) loyal shareholders being able to look forward to compensation, and (b) further increasing the attraction of the Settlement Agreement for Eligible Shareholders with Buyer Shares, because in addition to compensation for the Buyer Shares they will receive a compensation for any Holder Shares they may have - with regard to which as stated, there is still a great deal of uncertainty outside the context of the settlement- .

100. On the basis of the above, the parties have agreed that the release contained in the Settlement Agreement covers the entire period during which the events described in chapter 5 took place and in 2007 and 2008 (and covers the period from February 2007 up to and including October 2008). It has already been explained in nos. 55 – 56 that the specific accusations brought up in litigation focus primarily on the three Relevant Periods during which the allegedly incorrect or incomplete communications of Fortis may have resulted in the price of its shares being temporarily artificially high. Accordingly, the main part of the compensations are awarded to shareholders who purchased or held Fortis Shares in the three Relevant Periods.
101. The reasonableness of the compensation offered to Eligible Shareholders is explained below. An explanation is given in paragraph 8.2 of the key elements that determine the compensation to Eligible Shareholders and the legal and economic principles forming the basis for this. An explanation is given in paragraph 8.3 that the compensation per share is reasonable in view of the level of the purported price inflation and the existing uncertainty regarding the question of whether Eligible Shareholders would be awarded a claim to compensation in law and, if so, as to the amount of this compensation. An explanation is given in paragraph 8.4 that the total compensation under the Settlement Agreement is certainly reasonable in comparison with the amounts offered in similar settlements. Finally, a number of other aspects of the settlement will

be addressed that need to be taken into account in evaluation of the reasonableness of the settlement and the compensation offered (paragraphs 8.5 through 8.7).

8.2 Explanation of the key elements that determine the compensation to Eligible Shareholders

102. The core of the compensation and its reasonableness lies in the compensation offered per Fortis Share that an Eligible Shareholder purchased in one or more of the three Relevant Periods (known as a Buyer Share). The Eligible Shareholders receive compensation for a substantial part of their purported loss in respect of their Buyer Shares, as will be explained below.
103. As has been explained above already, Eligible Shareholders not only receive compensation for shares that they purchased during the Relevant Periods, but also compensation per Fortis share that they held during the Relevant Periods (known as a Holder Share). However, in view of the uncertainty regarding what should be applicable here, it is extremely difficult to establish a standard for this. For the sake of reasonableness and taking into account the uncertainty, it was decided during the negotiations to determine the allocation for this at 50% of the amounts allocated for Buyer Shares.
104. The table below shows what amounts Eligible Shareholders may in principle claim per Buyer Share or Holder Share for the three Relevant Periods and for the Active and Non-Active Claimants.

Period	Categories of Fortis Shares	Non-Active Claimants	Active Claimants
Period 1	Buyer 1 Share	EUR 0.38	EUR 0.56
	Holder 1 Share	EUR 0.19	EUR 0.28
Period 2	Buyer 2 Share	EUR 0.85	EUR 1.28
	Holder 2 Share	EUR 0.43	EUR 0.64
Period 3	Buyer 3 Share	EUR 0.25	EUR 0.38
	Holder 3 Share	EUR 0.13	EUR 0.19

These compensations may end up being up to 15% higher if the number of Eligible Shareholders, at any rate the number of Fortis Shares represented by them, is lower than currently expected (reference is made to nos. 75 – 77 of this petition). All of this must, of course, not exceed the maximum total amount of EUR 1,203,700,000 (see no. 70 above). As the total claim amount payable to all Eligible Shareholders has been capped, as is usual in WCAM settlements, this compensation could also end up being lower, although the Petitioners expect that likelihood to be limited, as explained below in paragraph 8.4. However, even if this compensation were to work out lower because of a larger number of respondents than anticipated, or that these represent a greater number of Fortis Shares, Eligible Shareholders will still receive compensation for a substantial part of the loss allegedly sustained, which, in the Petitioners' firm opinion, given all the facts and circumstances, must certainly be held to be reasonable.

105. In addition to the compensation described above that Eligible Shareholders can receive for each Fortis Share which they acquired (Buyer Shares) or held (Holder Shares) during the Relevant Periods, all Eligible Shareholders can in principle claim for a compensation for the highest number of Fortis Shares that they held at any time during the period between 28 February 2007 c.o.b. and 14 October 2008 c.o.b. and additionally Active Claimants may claim an additional compensation, which will mainly benefit the small shareholders (see

in this respect no. 74). These other compensations further argue in favour of the reasonableness of the settlement offered. These other compensations are discussed in greater detail in no. 129 et seq. The compensation per Buyer Share and per Holder Share during the three Relevant Periods is first addressed below.

On the compensations in the three Relevant Periods

106. It is explained in chapter 5 that the specific accusations brought up in actions and decisions in essence focus on three periods during which the communications of Fortis (or the lack thereof) may allegedly and possibly have resulted in its share price being temporarily artificially high (the Relevant Periods). It is explained in nos. 54 - 56 above that the Relevant Periods coincide with the core of the accusations made in civil actions against Ageas, and co-defendants. These periods, the possibly associated specific price loss and the level of any price inflation during these periods were determinative for the Settlement Distribution Plan (Schedule 2 to the Settlement Agreement), which gives a detailed presentation of the various compensations available to the various Eligible Shareholders.
107. In the three Relevant Periods, the position of the parties that acquired Fortis Shares in these periods (Buyer Shares) is taken as the point of departure"; see no. 71 above).
108. This principle takes into account that an investor can only suffer loss as a result of incorrect positive communications or the lack of negative communications if he purchases shares at an artificially high price (what is known as 'price inflation') and keeps them at the moment the information that led to the higher price becomes public and the price corrects itself.³⁹
109. A shareholder does not sustain loss to the same degree as a result of incorrect positive communication or the lack of negative communication by buying and selling shares in the period during which the price consistently remains artificially high. In such a case, while

³⁹ See the report 'by Analysis Group, chapter IV, mentioned below. Also see: B.J. de Jong, *Schade door misleiding op de effectenmarkt* (diss. Radboud Universiteit Nijmegen), Deventer: Kluwer 2010, p. 121-123.

this shareholder bought the shares at an artificially high price, he also sold them at an artificially high price.

110. The above also played a determining role in calculating the compensation in previous WCAM settlements pertaining to misleading communication. In both *Shell* and *Converium*, a compensation was only awarded to persons who purchased shares during the period in which there was an artificially high price and still held the shares at the end of this period.⁴⁰
111. As has already been specifically explained above, there is no legal certainty under Belgian and Dutch law whether it is possible to claim compensation for Holder Shares. Established case law that could serve as a guide is lacking both in the Netherlands and in Belgium. In light of this, VEB, Deminor, SICAF and FortisEffect have argued that holders of shares can suffer loss as a result of incorrect or incomplete communications. Ageas has contested this viewpoint in law (and has not abandoned this legal position). Although none of the Petitioners have abandoned their positions, the Petitioners have nevertheless been able to bridge their differences of opinion, expressly in the context of the settlement entered into, by agreeing a specific compensation for Holder Shares as set out above in no. 103.

Excluded Persons cannot claim compensation.

112. In supplement to no. 92, it is noted for the sake of completeness that Excluded Persons cannot claim a portion of the Settlement Amount. The main Excluded Persons are the Underwriting Banks and the (former) officers of Fortis who have been involved as defendants in the various actions (further see no. 66). In the case of the Underwriting Banks, it has been determined that exclusion of compensation only applies to Fortis Shares that they held at their own expense and risk. It is reasonable that the Excluded Persons do not receive any compensation. Despite them being (partly) subject to the same accusations as being made against Fortis, they are not contributing personally to the total Settlement Amount and they are being granted a release in accordance with the Settlement Agreement in connection

⁴⁰ See *Shell*, par. 6.11 and B.J. de Jong, *Schade door misleiding op de effectenmarkt* (diss. Radboud Universiteit Nijmegen), Deventer: Kluwer 2010, p. 337-338. See *Converium*, par. 5.2.1

with the events that occurred at Fortis in 2007 and 2008. It would not be reasonable if the Excluded Persons were nevertheless to share in the compensation allocated to the Eligible Shareholders. It is also the case that the current directors of Ageas, including the members of the executive committee, are not entitled to compensation.

8.3 The compensation for Eligible Shareholders is, in any event, in a reasonable proportion to any price inflation.

113. As has been explained above, when entering into the Settlement Agreement, the parties took into account both the price loss in a period and any price inflation, albeit to a modest extent. The calculation of any price inflation that allegedly occurred during the Relevant Periods as a result of the incorrect (positive) communications or late (negative) communications of Fortis requires an economic analysis. Ageas has always taken the position that – if there were any occasion for compensating loss – this compensation is to be determined on the basis of possible price inflation in the relevant period. As stated, the Petitioners - while maintaining their respective positions in the current actions in the matter and in future actions, in consultation with Ageas, and in view of the specific structure of the compensations allocated in accordance with the Settlement Agreement (see also no. 98 for this) - also took price inflation into account in determining the Settlement Amount and in assessing its reasonableness.

114. Ageas availed itself of calculations in the run-up to the negotiations. Ageas there also made use of a method for determining price inflation, which can be broken down into the following steps:

- (a) The point of departure is the price effect at the end of the trading days on which the information that possibly led to price inflation in the three periods in question was made public. These 'corrective days' are, for the three Relevant Periods, 8 November 2007, 26 June 2008 and 3 October 2008. The price drops on these three days amounted to, respectively, EUR 1.42 (Period 1), EUR 2.45 (Period 2) and EUR 0.08 (Period 3).
- (b) Corrections were subsequently applied to these amounts, because price effects can be caused partly by other information

that becomes public during these days. The amount of the negative price effect must be corrected for this. In addition to specific information becoming public that was not related to the correction of the allegedly incorrect information, general market development aspects must also be taken into account (volatility of the share, etc.). The size of these corrections is, by necessity, difficult to determine. After addition of interest, this results in an amount per share that could apply as an allocation for the shareholders in connection with the possible price inflation.

- (c) A claim for compensation in the context of alleged inflation is, of course, dependent among other things on the question of whether the action on which it is based is indeed unlawful. This requires an opinion from a legal perspective. This then primarily concerns the question as to the likelihood that liability is assumed for the actions in relation to which price inflation in the period in question has been calculated. In view of the course of the legal proceedings to date (as already stated previously in no. 59), the discount applied to the calculation of the allocation in Period 1 is clearly larger than in Period 2 and Period 3 (see paragraph 123 below).

115. Ageas has presented this methodology to the representative organisations in the context of the negotiations, to offer a benchmark for the discussion of the reasonableness of the compensation to be paid. It will be clear, however, that in terms of the corrections in step (b) and the legal issues referred to in (c), such as the probability that a civil court would enter a finding of liability, the representative organisations did not have the same vision as Ageas in terms of a number of elements regarding the levels of the stated corrections and prospects. According to Ageas this methodology should assume maximum amounts for price inflation (including interest) of EUR 1.13 for Period 1 and EUR 1.11 for Period 2. It is more difficult to make a calculation for Period 3 (for reasons which will be outlined below in no. 123) and Ageas initially assumed a price drop of EUR 0.10.

116. Against the background of the above, long and extensive negotiations took place between all the parties involved. The result of the

negotiations is the amounts allocated in the Settlement Agreement, an overview of which is provided in no. 103. These amounts are deemed certainly reasonable by all Petitioners.

117. In the context of this petition, and more particularly in the context of the core question of whether the Court of Appeal can also reach an opinion on reasonableness, and as further information for the Court of Appeal, Ageas has commissioned the Analysis Group, one of the largest economic advice firms in North America, which is specialised, among other things, in loss calculations in securities class actions, to calculate, as an independent expert, as precisely as possible the inflation of the price of Fortis in the three Relevant Periods in an independent study, in order to facilitate further assessment of the reasonableness. This study assumed the method as outlined above, on the understanding, however, that unlike in the approach of Ageas (price at the end of the day minus corrections), the Analysis Group did not assume the closing prices, but the price movement in the very short period of time after the relevant information, which allegedly led to price inflation, became public and by which the – alleged or otherwise – price inflation was thus corrected. The Analysis Group has set out its findings in a report, which is submitted as **Annex 10** to this petition.⁴¹
118. On the basis of various points of departure, the Analysis Group calculated the price inflation in the three Relevant Periods (exclusive and inclusive of interest). This has resulted in the following bandwidth per period:⁴²

⁴¹ For the record, it must again be noted that Ageas recognises no liability by entering into the Settlement Agreement, as the representative organisations have also not abandoned their positions outside this settlement. Where the calculation of inflation loss made by the Analysis Group presupposes liability so as to establish amounts, this also in no way implies a recognition of liability. For example, it is also possible that a price movement observed is the result of a negative communication which did not need to be made earlier.

⁴² Further see Table 6 in **Annex 10**.

Period	Calculated inflation (excluding interest)	Calculated inflation (including interest)	Compensation for Non-Active Buyers
Period 1	EUR 0.68 - 0.91	EUR 0.91 - 1.23	EUR 0.38
Period 2	EUR 0.64 - 0.95	EUR 0.83 - 1.24	EUR 0.85
Period 3	EUR 0.00 – EUR 0.23 or EUR 0.00 - 0.72	EUR 0.00 - EUR 0.29 or EUR 0.00 - 0.92	EUR 0.25

119. Irrespective of which point of departure is assumed, Non-Active Claimants receive an extremely reasonable compensation per Buyer Share. Although the Petitioners each reserve the right to bring up the results of this independent report for discussion in any subsequent proceedings if the current petition does not result in a binding declaration with regard to all Eligible Shareholders (or if the agreement is terminated as a result of opt-outs), the Petitioners do recognise that, in the context of this settlement, this independent report substantiates the argument that the proposed compensations must be deemed reasonable. This should also apply fully even if the number of Eligible Shareholders invoking the Settlement Agreement and the arrangement contained in it turns out to be higher than the current best estimate. After all, the Eligible Shareholders would then also still be compensated for a considerable part of the price inflation calculated by Analysis Group.

The compensation offered offers a reasonable balance between the risks of litigation and the advantages of a settlement

120. This settlement offers Eligible Shareholders the possibility to claim a reasonable compensation of the loss perceived by them, rightly or wrongly, without them having to pursue complex, expensive and time-consuming legal actions, the results of which are uncertain.

121. In order to be eligible in law for a compensation, an Eligible Shareholder would, in principle, have to prove all elements of his claim. To date, no irrevocable judgment has been passed regarding the civil liability of Ageas with regard to its communication in 2007 and 2008. Furthermore, an irrevocable judgment in the liability actions

could still be many years away. This is all the more the case in view of the interests that are central in the collective actions and the fundamental points of dispute addressed in them. It is to be expected that the collective actions will be pursued by both sides through to the highest instance. Furthermore, a number of actions in Belgium have been suspended until the criminal proceedings have been completed, and a long duration must be assumed, many times longer than the duration of the current proceedings, in view of the duration of earlier WCAM cases.

122. As a result of the uncertainty regarding the question of whether Eligible Shareholders would be able to claim a compensation in law, on the one hand and, if so, how high this compensation would be, and on the other the costs involved in such an action, it is reasonable to expect that part of the persons that might be eligible for damages would refrain from filing an individual claim. The Settlement Agreement offers all Eligible Shareholders the option of receiving a reasonable compensation, quickly and easily, which does justice to the uncertainty as to whether or not a claim for compensation will be awarded to the Eligible Shareholders in court.
123. Petitioners have in the context of the settlement, in determining the compensation per Buyer Share, taken into account, inter alia, the existing uncertainty regarding the question of whether Buyers of Fortis Shares would be able to claim compensation in law, and, if so, how high this compensation would be. They also took account of the fact that no irreversible civil law determination has been given in respect of any of the Relevant Periods. With regard to the reasonableness of the compensation offered to Eligible Shareholders – and the prospects - good and bad - that they will be able to receive compensation in law, let alone a higher compensation – the following can in any event be stated.
 - (a) In the context of the comprehensive arrangement as set down in the Settlement Agreement, Petitioners have taken account of the likelihood that the communication by Fortis in a particular Relevant Period might be qualified as misleading in court. In the context of the settlement with regard to Period 1, this likelihood was deemed lower than for Periods 2 and 3, in view

of the judgments of the Trade and Industry Appeals Tribunal and the Commercial Court of Brussels. For this already see no. 59 of this Petition. After all, both courts came to the conclusion that Fortis did not misleadingly inform the market during Period 1, nor was it required to provide additional information to the market, or provide it earlier, during this period.⁴³

- (b) With regard to Periods 2 and 3, account was also taken of the fact that there are not yet any irrevocable judgments on the civil law liability and Ageas has explicitly contested the alleged unlawfulness of specific acts and is contesting them in law, without ignoring the fact that statements were made during these periods that the representative organisations have been able to see as a strengthening of their positions. With regard to Period 3, another factor is that Ageas has emphatically argued that, in view of the situation which occurred during this period and the depth of the crisis that existed in this period, it cannot be blamed in civil law. The District Court of Amsterdam upheld these defences of Ageas (and of the State which was also summoned) and rejected all the claims of the claimants. And while the Court of Appeal did allow a claim against Ageas on appeal, the Court of Appeal did reject the claims against the State at the same time.⁴⁴ The parties involved have filed an appeal in cassation against this. Another aspect is that a great deal of uncertainty existed during this period about the level of any loss (assuming that it is ruled that liability exists). This uncertainty is further enhanced by the question as to the role of Fortis' communication in the morning of 29 September 2008 (this pertains to a press conference that was held at approximately 09:45-10:30 hours). The price of Fortis shares dropped during the press conference. Moreover, precisely during this period, the communication of the State (and the Minister of Finance) played a major role.

⁴³ Netherlands Trade and Industry Appeals Tribunal 14 February 2014, ECLI:NL:CBB:2014:52; Commercial Court 1 February 2015 R.G. A/12/07130.

⁴⁴ Amsterdam Court of Appeal 29 July 2014, ECLI:NL:GHAMS:2014:3005.

124. The above implies that the compensations allocated per Buyer Share in the Relevant Periods, in the opinion of the Petitioners, taking all circumstances into account, are extremely reasonable in proportion to the calculated potential price inflation on the one hand and, on the other, the uncertainty regarding the question of whether Eligible Shareholders would be entitled to compensation in law and, if so, how high this compensation might be. An explanation as already been given in this respect as to why the Petitioners are convinced that the allocation per Holder Share in the Relevant Periods is also extremely reasonable. The fact that the Settlement Agreement offers a solution in this case for this uncertainty contributes to the reasonableness of the allocation for Eligible Shareholders.

About the compensations to Active Claimants

125. It must be stated first and foremost that the compensation that is being offered to Non-Active Claimants is reasonable. This has been explained above. The fact that Active Claimants will receive a higher compensation per eligible Fortis Share does not affect this.

126. The fact that the Settlement Agreement contains compensations for both Non-Active Claimants and Active Claimants already shows that the Petitioners attach importance to the fact that the settlement will benefit all Eligible Shareholders. This does not go without saying: in the past, various settlements have been reached between representative organisations and companies regarding allegedly misleading communication that only benefited the shareholders who had joined these representative organisations.⁴⁵

127. In this case, the efforts of the Active Claimants and their representative organisations, in particular, resulted in the Settlement Agreement, which offers a reasonable compensation to all Eligible Shareholders on the one hand, and on the other does justice to the fact that the Active Claimants made this settlement possible. The latter is

⁴⁵ For example in the settlements of VEB in respect of Royal Imtech N.V. (<https://www.veb.net/artikel/05422/veb-bereikt-schikking-voor-particuliere-imtech-aandeelhouders>), KPNQwest B.V. (<https://www.veb.net/artikel/02581/veb-schikt-kpnqwest-zaak>) and the settlements of Deminor in respect of Royal Imtech N.V. (<https://www.mydeminor.com/content/documents/DRS%20Press%20Release%20-%20Imtech%20case%20-%2012%20May%202015.pdf>) and Parmalat (<http://www.deminor.com/drs/en/cases/settled-cases>).

important, partly because otherwise a situation is created in which investors get a free ride, without any effort, on the basis of the efforts of other investors, and thereby effectively benefit from "doing nothing". This kind of "free rider" situation is undesirable and is to be avoided.⁴⁶

128. Moreover, the Active Claimants and their representatives have had to incur costs for legal actions. This also involved the taking of a risk, because there was a possibility that no compensation might be awarded at all and, as a consequence, the representative organisations and the Deminor constituents would be ordered to pay procedural costs and/or incur costs to file appeal. It is also the case that VEB, SICAF, Deminor and FortisEffect, as the representatives of Active Claimants, also made efforts (time and money, etc.) in preparing and negotiating the Settlement Agreement, and had to finance these activities, in which the support by active claimants is again of major importance. Without a substantial number of claimants supporting the organisations, the Settlement Agreement would not have been achieved. The fact that, taking everything into consideration, Active Claimants have created a situation in which Ageas will pay compensation to all Eligible Shareholders justifies, in the context of a settlement, a higher compensation for them, in addition to the – already in itself reasonable – compensation which Non-Active Claimants have been awarded (see above).

Other compensations

129. In addition to the amounts per Buyer Share and Holder Share already explained above, additional compensations are being made in the context of the settlement.⁴⁷ The level of the other compensations for which an Eligible Shareholder can be eligible depends, among other things, on the number of Fortis Shares that an Eligible Shareholder held.

⁴⁶ The well-known 'free rider problem' can undermine the effectiveness of collective action and the objective of collective claim settlement of the WCAM. Actively conducting legal proceedings involves costs, and free riding does not; if this is not subject to a premium for the people who choose to 'pull the cart', the most rational choice is to take a free ride on the efforts of others, because in this way, the free rider has all the benefits, but none of the costs. As this applies equally to each individual victim, a situation could ultimately occur in which nobody is prepared to begin expensive proceedings, or at least not on behalf of the collective, so that no collective redress is possible.

⁴⁷ Recorded in articles 2.2, 3.2, and 3.3 of the Settlement Agreement.

130. The other compensations are capped at an amount per Eligible Shareholder, which is reached when an Eligible Shareholder had between 400 and 1100 Fortis Shares that are eligible for these other compensations (the exact number of shares differs for each additional compensation). If an Eligible Shareholder had more Fortis Shares that are eligible for these other compensations, he will not receive more than this maximum amount. These other compensations are thus primarily relevant for Eligible Shareholders with a limited number of shares.
131. The other compensations are therefore not directly linked to the loss that the Eligible Shareholders possibly suffered in the context of the Events, but are in addition to the in itself already reasonable compensation for this made available. These other compensations therefore rather increase the reasonableness of the settlement.

8.4 Explanation of the reasonableness of the total Settlement Amount

132. The Settlement Amount is significantly higher than the settlement amounts generally awarded in comparable settlements in the United States in the context of securities class actions. Such settlements provide good comparison material, because many settlements have already been reached in securities class actions in the United States, unlike in Europe. Moreover, the legislature has noted in parliamentary history that the WCAM procedure is inspired by the practice of class action settlements in the United States.⁴⁸
133. It is usual in settlements of this type and size that the settlement provides for a total amount that is available for persons who claim a compensation. In this case, it has been decided to divide this total amount between two groups of Eligible Shareholders who are distinct from one another: an initial total amount of EUR 795,900,000 is made available for Active Claimants, and for Non-Active Claimants an initial total amount of EUR 407,800,000.

⁴⁸ *Parliamentary Documents II 2003/04*, 29 414, no. 3, p. 12.

134. That, initially, a total amount is reserved that is higher for Active Claimants than for Non-Active Claimants is in part based on the expectation that relatively far larger numbers in the first group will claim a compensation. After all, the Active Claimants have already taken steps to claim compensation in law and for this reason it is to be expected that a large majority of this group will make the effort to claim a compensation under the settlement. It is a different situation with regard to the Non-Active Claimants. Experience has taught that an average of between 20 and 35 percent of the persons eligible for compensation actually claim this compensation (also see paragraph IV.B.2. of **Annex 10**). It must also be borne in mind in this respect that, in this case, the group that is expected relatively to turn out the most (Active Claimants) will not affect the available amount for the group that is expected to turn out to a much lesser extent (Non-Active Claimants). For example, if between 20 and 30% of Non-Active Claimants were to turn out, the turnout across the whole of the group would be much higher than the stated average, namely 38 to 46%.
135. Petitioners have taken account, in determining the total settlement amounts for the Active Claimants and the Non-Active Claimants, of the total compensation that Active Claimants and Non-Active Claimants, respectively, are expected to claim. This is dependent, among other things, on the number of Fortis Shares eligible for a compensation per Relevant Period and the expected percentage of shareholders among the Active Claimants and Non-Active Claimants which will claim a compensation.
136. Moreover, the Settlement Agreement provides that if the total amount initially reserved for the Active Claimants does not need fully to be used for paying the Active Claimants the agreed amount (possibly increased by at most 15%), the remainder will benefit the Non-Active Claimants, and vice versa. Only if after that a part of the total Settlement Amount remains, will this be returned to Ageas.
137. If the total of claimed compensations nonetheless ultimately exceeds the total Settlement Amount, the Settlement Agreement provides for the compensation per Fortis Share awarded to Active Claimants and Non-Active Claimants, respectively, to be reduced *pro rata*. However, in such case too, it remains standing in full that the total compensation

offered to Active Claimants and Non-Active Claimants is reasonable. This also applies to the compensation being paid to holders of Holder Shares.

138. In conclusion, on the basis of the above there obtains for both Active Claimants and Non-Active Claimants a settlement that all Petitioners believe is certainly to be qualified as reasonable.

8.5 Under the Settlement Agreement the full Settlement Amount will benefit the Eligible Shareholders.

139. The reasonableness of the settlement is underscored by the fact that under the Settlement Agreement the full Settlement Amount will in first instance go to benefit the Eligible Shareholders. The realisation and settlement of a settlement such as this one naturally involves high costs. These include, for example, the costs of the Foundation and the Claims Administrator, which play an important role in the realisation and settlement of the Settlement Agreement. Such costs are not deducted from the Settlement Amount under the Settlement Agreement, but are paid directly by Ageas. The lawyer costs of the parties involved in the formation of the Settlement Agreement will also not be deducted from the Settlement Amount by Ageas. This means that the Settlement Amount will in principle be paid in full to the Eligible Shareholders, in contrast with *Converium*, for example, in which the settlement agreement provided for the settlement amount to be reduced by 20 percent in the context of a fee to the principal counsel.⁴⁹ Naturally, this does not affect the individual arrangements that Eligible Shareholders have made with organisations which they have joined and advisers, such as lawyers, for work pertaining to the events that occurred in 2007 and 2008 at the former Fortis, and which have led to the acquisition of the compensation now negotiated.

8.6 Speed and ease of distribution process

140. If the Settlement Agreement is declared binding, Eligible Shareholders will be able to receive a compensation within a relatively short period – and in any event much earlier than would be the case if there were

⁴⁹ See *Converium*, par. 6.5.1 – 6.5.7.

no Settlement Agreement. The Settlement Agreement provides that Eligible Shareholders will receive a first portion of the compensation shortly after the opt-out period (see paragraph 9.5) has ended and the Claims Administrator has made an estimate of the compensations to be made, as already described in further detail in no. 78.

8.7 The Settlement Agreement is the result of negotiations and can count on broad support from representative organisations

141. It is explained in paragraph 5.3 that the Settlement Agreement was the result of negotiations between Ageas on the one side and VEB, Deminor and SICAF and FortisEffect as representatives of the possibly disadvantaged shareholders of Fortis on the other. The negotiation process has also been explained and it has been explained how complicated it was to arrive at the Settlement Agreement. As no irrevocable judgment has been entered in any of the actions by a civil court regarding the liability and loss suffered, the position of the shareholders of the former Fortis, on whose behalf negotiations took place, was dependent on (i) the prospects that the claim would succeed wholly or partly, in view of both the factual and legal merits of the various claims, and (ii) expectations regarding the level of any damages to be awarded if a claim were to succeed.
142. As stated, agreement was eventually reached in negotiations in a way that does justice to, on the one hand, the level of uncertainty experienced by Ageas and the representative organisations regarding the outcome of any proceedings and, on the other, the interests of all the parties involved in achieving a solution to the existing disputes regarding the Events, without the need for bringing further complex, expensive and time-consuming legal proceedings.⁵⁰
143. The Settlement Agreement is being supported by VEB, Deminor, SICAF and FortisEffect. As has been explained above in chapter 3 these organisations represent a large group of people who were shareholders of Fortis in 2007 and 2008.

⁵⁰ Cf. *Dexia*, par. 6.6.

144. The Petitioners have established that other parties have now made it known that they support the Settlement Agreement (see **Annex 11**).

8.8 Conclusion: the compensation offered to the Active Claimants and Non-Active Claimants is reasonable

145. As has been concluded in no. 124, the compensation allocated to Active and Non-Active Claimants per Buyer Share and Holder Share is in reasonable proportion to the alleged loss for Eligible Shareholders, taking into account, among other things, the price inflation discussed above and the likelihood that Eligible Shareholders will successfully be able to claim compensation in law.

146. The other 'set' compensations per Eligible Shareholder that are being offered are based on the wish to particularly offer the large group of small investors in the former Fortis a certain minimum compensation, at least, and go beyond the alleged loss that these Eligible Shareholders have suffered from an economic point of view. Accordingly, these compensations further enhance the reasonableness of the Settlement Agreement.

147. It has also been explained above that the total compensation offered to Eligible Shareholders is higher than the compensation that has been offered in comparable settlements. From this perspective too, all the Petitioners are convinced that it is to be concluded that the Settlement is certainly to be deemed reasonable.

9 PROCEDURAL ISSUES

9.1 Application for a case management conference and scheduling a date for the hearing

148. In accordance with article 2.2.2.6 of the Rules of Procedure for Proceedings by Petition in Courts of Appeal in Commercial and Insolvency Cases ("**Rules of Procedure**"), the Petitioners ask the Court of Appeal to schedule a case management conference prior to the substantive hearing on the petition to declare the Settlement Agreement binding. The Petitioners consider a case management conference desirable in order to be able to discuss several procedural issues with the Court of Appeal, including in any event the method of

giving notice to appear for the hearing (article 2.2.2.2 of the Rules of Procedure), for which they will make a proposal still to be submitted, and, as applicable, the notification of the binding declaration of the Settlement Agreement. The Petitioners also propose that a date be set during the case management conference for the substantive hearing to discuss the petition.

9.2 Submission notice and announcement of the hearing

149. The Settlement Agreement applies in principle to all Eligible Shareholders. The exact number of Eligible Shareholders is not known, given that virtually all Fortis Shares were handled via bank giro transfers and were not listed under the name of individual shareholders.
150. During the entire relevant period, Fortis only had a limited number of shareholders who held registered Fortis Shares. The Petitioners are aware of the names and address details of these shareholders. The other Fortis Shares were included in a giro securities transfer system. With respect to these latter shares Petitioners do not have the names and addresses of all the natural and legal persons who qualify as Eligible Shareholders. The name and address details of the Eligible Shareholders that are at the Petitioners' disposal will be submitted in advance of the case management conference.
151. The Petitioners request that the Court of Appeal treat the list with names and addresses of the Eligible Shareholders known to them as a 'file' in accordance with Article 2.2.2.1 of the Rules of Procedure within the meaning of article 1(c) of the Dutch Personal Data Protection Act so that the file is not included as part of the public case file.
152. The Eligible Shareholders known to the Petitioners will be summoned to appear at the hearing by means of a letter or e-mail, a draft version of which is submitted as **Annex 12**. The Petitioners request the Court of Appeal to approve this submission notice.
153. In addition, for the benefit of the unknown Eligible Shareholders and the legal entities meant in article 1014 DCCP, the Petitioners will make

an announcement of the hearing in various newspapers and press agencies. The Petitioners request the Court of Appeal to approve the draft of the announcement submitted as **Annex 13**.

154. In determining the newspapers in which the Petitioners intend to publish the announcement, Petitioners will take account of the geographical spread of the Eligible Shareholders known to the Petitioners.
155. Prior to any case management conference, the Petitioners will submit a more extensive plan on submission notices and communication which will, in any event, contain: (i) a more detailed proposal for the submission notice to the Eligible Shareholders known to the Petitioners, (ii) a list of the specific newspapers in which the Petitioners intend to publish the submission notice announcing the hearing, and (iii) the method by which the Petitioners – in addition to the formal submission notice for the hearing – intend to give publicity to the Settlement Agreement and the hearing of the petition to declare it binding. This communication and notices plan will be submitted together with the list of the Eligible Shareholders known to the Petitioners.

9.3 Consultation of the Petition and other documents pertaining to the case

156. The Petitioners propose that the Petition and other documents pertaining to the case, including in any event the Settlement Agreement and the Settlement Distribution Plan, be published on the website of the Foundation (www.forsettlement.com) and to make it possible to consult them through the websites of the various Petitioners (including by means of a link to the website of the Foundation).
157. The Petitioners assume, in addition to this, that it will be possible to submit written requests for the petition and other documents pertaining to the case from the registry of the commercial section of the Court of Appeal, in accordance with article 290(3) DCCP, and that they will be published on www.rechtspraak.nl.

9.4 Period for submitting a statement of defence

158. Pursuant to article 282(1) DCCP in conjunction with article 2.2.2.8 of the Rules of Procedure, defences can be submitted up to no later than six weeks before the date of the hearing, unless otherwise determined by the Court of Appeal.
159. The Petitioners do not know whether statements of defence will be submitted. If that is the case, the Petitioners will of course gladly respond to these. So as on the one side to safeguard that this can adequately be done and on the other side to avoid delaying the proceedings as much as possible, Petitioners request the Court of Appeal not to deviate from article 2.2.2.8 of the Rules of Procedure and thus direct that any statements of defence may be submitted up to no later than six weeks before the date of the hearing.
160. The Petitioners also request that the Court of Appeal direct that interested parties who wish to speak during the hearing, in person or represented by counsel, notify the Court of Appeal and the Petitioners to this effect no later than four weeks prior to the date of the hearing.
161. Additionally, the Petitioners wish to see the proceedings completed as soon as reasonably possible. This is deemed to be in the interest of all parties involved in the Settlement Agreement – in particular the Eligible Shareholders entitled to compensation – so that they can obtain certainty in the short term and the implementation of the agreements set out in the Settlement Agreement can be started as soon as possible as well as the distribution of the amounts provided for in the Settlement Agreement.

9.5 Opt-out period

162. If the Court of Appeal declares the Settlement Agreement binding, potential Eligible Shareholders will be entitled to give notice that they do not wish to be bound by the Settlement Agreement. The shareholders who do not wish to be bound by the Settlement Agreement must send an Opt-Out Notice in good time to the Claims Administrator at the address of the Claims Administrator, which will be announced as soon as possible.

163. The Petitioners request the Court of Appeal to set the period within which this notice must be made (known as the opt-out period) as referred to in 7:908(2) DCC, at three months (article 6.4.1 of the Settlement Agreement).

9.6 Meeting the requirements of the Rules of Procedure

164. This Petition contains the special details stipulated for a Petition such as this one set down in article 2.2.2 of the Rules of Procedure.

Requirement	Reference
Details of persons referred to in article 1013(1) preamble and (c) DCCP (<i>this appears to be a reference to 1013(5) DCCP</i>) (article 2.2.2.1 Rules of Procedure)	Nos. 149 up to and including 151
Proposal for the method of giving notice to appear for the hearing of the petition to declare binding (article 1013(5) DCCP and article 2.2.2.2 Rules of Procedure)	Nos. 149 up to and including 155; Annex 12 and 13
A description of the events which cause loss, compensation of which is the subject of the agreement (2.2.2.3(a) Rules of Procedure)	Nos. 45 up to and including 53
A list of the links between Ageas and the other insurance companies (article 2.2.2.3(b) Rules of Procedure)	Nos. 7 and 10
The method of supervising the work of the Foundation and the party which will be providing the compensation payments (article 2.2.2.3(c) Rules of Procedure)	Nos. 16 up to and including 19
The method of settling disputes in the context of performance of the Settlement Agreement (article 2.2.2.3(d) Rules of Procedure)	Nos. 86 up to and including 87
A list of the costs related to the formation and limitation of the Settlement Agreement and the way in which these costs are borne (article 2.2.2.3(e) Rules of Procedure).	Nos. 88 up to and including 90
A list of the way in which collateral is provided for the claims of the Eligible Shareholders Eligible Shareholders (article 2.2.2.3(f) Rules of Procedure)	No. 83
A list of the judgments in and proceedings before courts which pertain to the events or the loss to which the Settlement Agreement pertains (article 2.2.2.3(g) Rules of Procedure)	Nos. 54 up to and including 59 and Annex 8

A list of the administrative law and criminal law sanctions imposed in the context of the events or the loss to which the Settlement Agreement pertains (article 2.2.2.3(h) Rules of Procedure)	Annex 8
A description of other agreements for reimbursement of loss as a result of the events to which the Settlement Agreement pertains Settlement Agreement (article 2.2.2.3(i) Rules of Procedure)	No. 1
List of the dates on which attendance of the Petitioners and the other interested parties is not possible, and the period within which the Petitioners wish the hearing to take place (article 2.2.2.4(a) Rules of Procedure)	No. 148 and the separate letter to the Court of Appeal of the date of this petition.
An estimate of the number of persons who will attend the hearing (article 2.2.2.4(b) Rules of Procedure)	A separate letter to the Court of Appeal of the date of this petition.
An indication of the duration to be expected of the hearing (article 2.2.2.4(c) Rules of Procedure)	A separate letter to the Court of Appeal of the date of this petition.
A proposal on the way in which interested parties can take cognizance of the petition and other relevant documents (article 2.2.2.4(d) Rules of Procedure)	Nos. 156 up to and including 157
Translation of the Settlement Agreement (article 2.2.2.5 Rules of Procedure)	Annex 2
The desirability of a case management conference (article 2.2.2.6 Rules of Procedure)	No. 148 and the separate letter to the Court of Appeal of the date of this petition.

WHEREFORE:

Petitioners request the Court of Appeal:

- (a) To hold a case management conference and there by way of a decision in advance of the hearing:
 - (i) to direct that the draft submission notice and announcement (**Annexes 12 and 13**) satisfy the requirements set by article 1013(5) DCCP, and to the extent this is not the case, indicate the changes to be made in order to render these documents satisfactory;
 - (ii) to direct that the announcement is to be published in the newspapers as proposed by Petitioners in **Annex 14** (or newspapers other than those mentioned there, with a comparable range and geographical scope), or in other newspapers as to be indicated by the Court of Appeal;
 - (iii) to direct, after Petitioners have been able to express their points in a case management conference on this, that the hearing will take place on a date that offers Petitioners sufficient time to properly convene non-interested parties, which date may be deferred at the discretion of the Court of Appeal, and only to proceed to schedule and announce this after the Court of Appeal has approved and adopted the text of the notices;
 - (iv) to direct that statements of defence are to be served no less than six weeks in advance of the hearing, simultaneously submitting copies thereof to counsel for Petitioners; and
 - (v) to direct that interested parties who wish to advance a defence at the hearing pursuant to article 279(3) DCCP are to inform the Court of Appeal and counsel for Petitioners of this in writing no later than four weeks before the hearing;
- (b) by final decision, to declare the Settlement Agreement, and the annexes, including the Settlement Distribution Plan, integrally binding

upon all Eligible Shareholders (and their legal successors as meant in article 7:907(1) DCC); and

- (c) by final decision, to direct that the time limit within which an Eligible Shareholder is to notify the Claims Administrator in writing that he does not wish to be bound, ends on the last day of the third calendar month following on the calendar month in which the announcement, as meant in article 1017(3) DCCP is made, on the understanding that Eligible Shareholders who could not be aware of their loss at the time of the aforementioned announcement, can submit an Opt-Out Notice within six months after they have been informed in writing of the fact that they are eligible for compensation pursuant to the Settlement Agreement and the possibility to submit an Opt-Out Notice within the aforementioned time limit of six months, or to direct the time limit for this that the Court of Appeal deems appropriate in the fair administration of justice.

[signature page follows]

Amsterdam, 20 May 2016

Counsel for Ageas

Counsel for VEB

Counsel for Deminor

Counsel for SICAF

Counsel for FortisEffect

Counsel for Stichting FORSettlement

LIST OF ANNEXES

Annex 1	Settlement Agreement (consolidated) including annexes (original English text)
Annex 2	Settlement Agreement (consolidated) including annexes (Dutch translation) (*)
Annex 3	Copy of the VEB articles of association
Annex 4	Copy of the Deminor articles of association
Annex 5	Copy of the SICAF articles of association
Annex 6	Copy of the FortisEffect articles of association
Annex 7	Copy of the Stichting FORsettlement articles of association
Annex 8	Ageas – Annual Report 2015, p.209, 213 (overview of legal proceedings)
Annex 9	Ageas – Annual Report 2015, p.181, 225 (provisions)
Annex 10	Report by the Analysis Group
Annex 11	Ageas press release of 19 May 2016
Annex 12	Proposal for the submission notice letter
Annex 13	Proposal for the notification
Annex 14	Notices and communication plan for the announcement and summons to the hearing of the petition (*)

(*) These annexes to be supplied later.