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\$1 bln U.K. RBS deal highlights globalization of securities litigation

(Reuters) - On Monday, the Royal Bank of Scotland announced an £800 million (about \$1 billion) settlement with three of the five investor groups that claimed the bank misrepresented its financial footing in a 2008 securities offering. The settlement ranks among the 20 largest recoveries ever obtained in securities fraud litigation by shareholders - and proves that group claims by investors are increasingly a global phenomenon.

Since the U.S. Supreme Court's 2010 ruling in *Morrison v. National Australia Bank*, common shareholders in foreign-listed companies can no longer bring securities fraud claims in U.S. courts. (As you know, investors in U.S.-listed American Depository Shares can still sue in U.S. class actions.) But Europe has given non-U.S. shareholders some options. Two big shareholder cases have settled under the Netherlands' collective settlement law - a \$381 million settlement with Royal Dutch Shell in 2007 and a \$1.3 billion deal with Fortis earlier this year. Germany's so-called KapMuG model allows for "model plaintiff" litigation, in which one representative shareholder goes to court to establish the defendant's liability. So far, KapMuG cases have moved excruciatingly slowly in German courts, though many Volkswagen investors have chosen to pursue their securities claims through the German system.

In the U.K., shareholders can band together through "group litigation orders." The vehicle, in which courts authorize investors to pursue fraud claims via opt-in groups, has been on the books for more than a decade, but the RBS settlement is the first time U.K. shareholders have used group litigation to obtain a mega-settlement, according to Robert Patton, an associate director at NERA Economic Consulting who specializes in international securities litigation. More than 10,000 opted in to the case against RBS.

Patton pointed out in an email that by NERA's count, only 13 U.S. securities class actions have settled for more than \$1 billion, the approximate size of the RBS deal. The RBS settlement, in other words, singlehandedly puts the U.K.'s investor litigation system in the big leagues, with other big cases pending against Lloyds Banking Group and Tesco.

The case may also test the limitations of the opt-in model for defendants. RBS reached agreement with investor groups represented by Quinn Emanuel Urquhart & Sullivan, Stewarts Law and Mishcon de Reya. But two other groups, represented by Signature Litigation and Leon Kaye, have not resolved their claims. The Signature group, which operates under the name RBS Shareholders Action Group, has had a rather tumultuous history, including several changes in counsel. It nevertheless comprises about 23 percent of the total claim against RBS, which is facing a trial date in March 2017. The RBS Shareholder Action Group is the only investor coalition pursuing a case against individual RBS directors.

Litigation funding arrangements in the litigation against RBS have been more opaque than those in suits against Volkswagen, in which major institutional funders have announced their partnerships with large U.S. and European law firms. Funders and insurers have reportedly backed RBS shareholder groups, which would otherwise be exposed to paying RBS's considerable litigation costs under the U.K.'s loser-pays system. But the funders' identities are not public.

(Reporting by Alison Frankel)

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