

Volkswagen and the Emergence of D&O Litigation Involving Non-US Companies

Today's Moderator



Jim Blinn

EVP & Global Product Manager,
Information & Analytics division
Advisen Ltd.

About Advisen

Advisen generates, integrates, analyses and communicates unbiased, real-time insights for the global community of commercial insurance professionals. As a single source solution, Advisen helps the insurance industry to more productively drive mission-critical decisions about pricing, loss experience, underwriting, marketing, transacting or purchasing commercial insurance.

www.advisenltd.com

Are you tweeting?! @Advisen



Volkswagen and the Emergence of D&O Litigation Involving Non-US Companies

www.advisenltd.com

- Copy of these **slides**
- **Recording** of today's webinar
- **D&O Loss Insight** (Advisen's MSCAd large loss database)
- **Front Page News – Executive Risk News Byte:**
<http://www.advisenltd.com/insurance-news/front-page-news/#execbyte>

Linked in® D&O Commercial Insurance Group – 8,161 Members

THE D&O DIARY <http://www.dandodiary.com>

Facts at a glance

- 6.5 billion euros (\$7.3B) loss provision
- 11 million vehicles affected worldwide
 - 500,000 in the US
 - 2.8 million in Germany
 - 1.2 million in the UK
- Volkswagen stock price lost more than 30% in value since news of the scandal broke

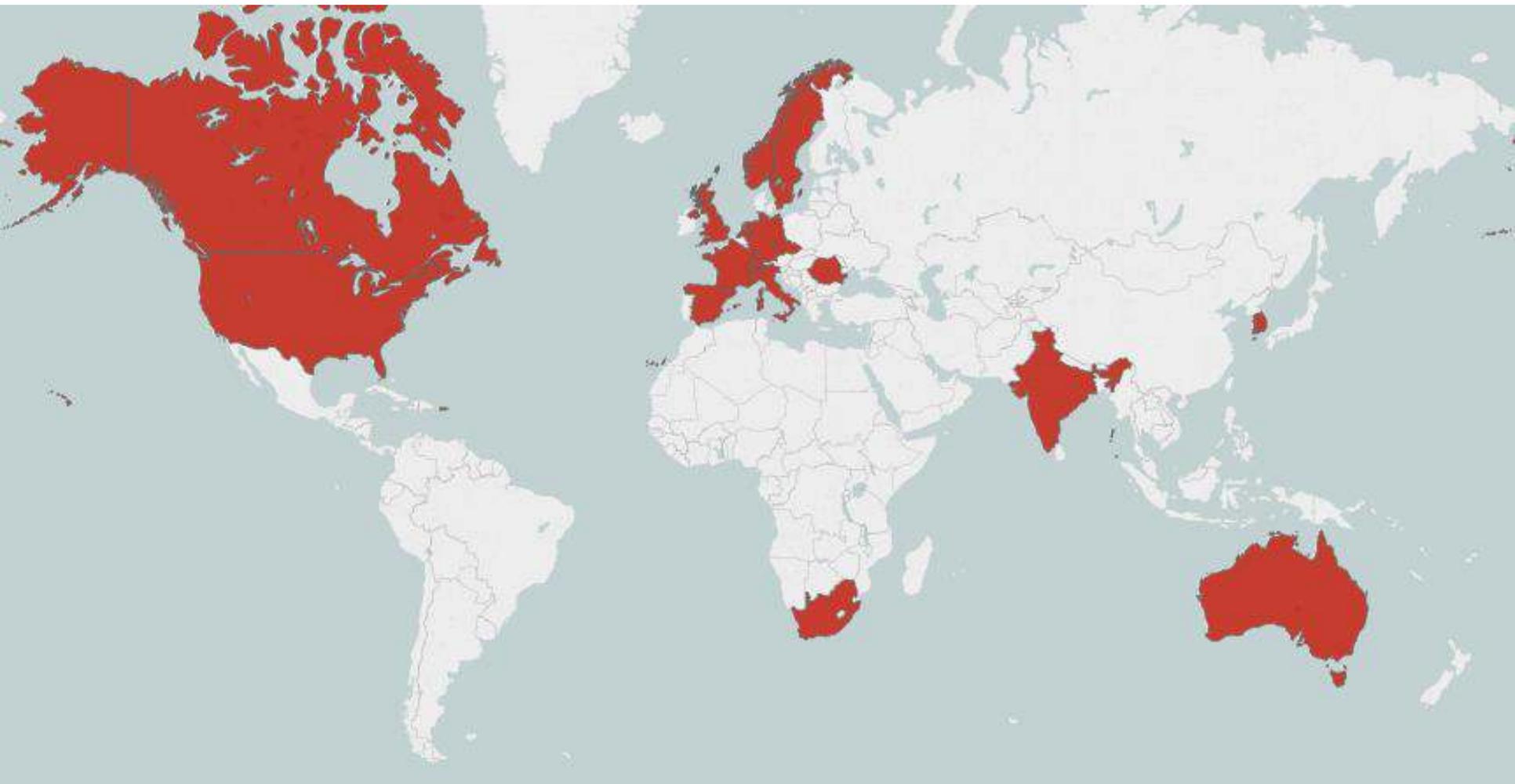
Timeline

- 18 September 2015
 - EPA issues a Notice of Violation alleging that almost 500,000 vehicles sold between 2009 and 2015 had emissions-compliance “defeat devices” installed
- 20 September 2015
 - Volkswagen admits deception and issues public apology
- 21 September 2015
 - Stocks fall 20% after announcement

Timeline

- 22 September 2015
 - Stocks fall a further 17%; Volkswagen to spend \$7.3B to cover costs of scandal
- 23 September 2015
 - CEO Winterkorn resigns
- 29 September 2015
 - Volkswagen announces plans to refit up to 11M affected vehicles
- 30 September 2015
 - Stocks have fallen more than 37% since scandal broke

Government Actions

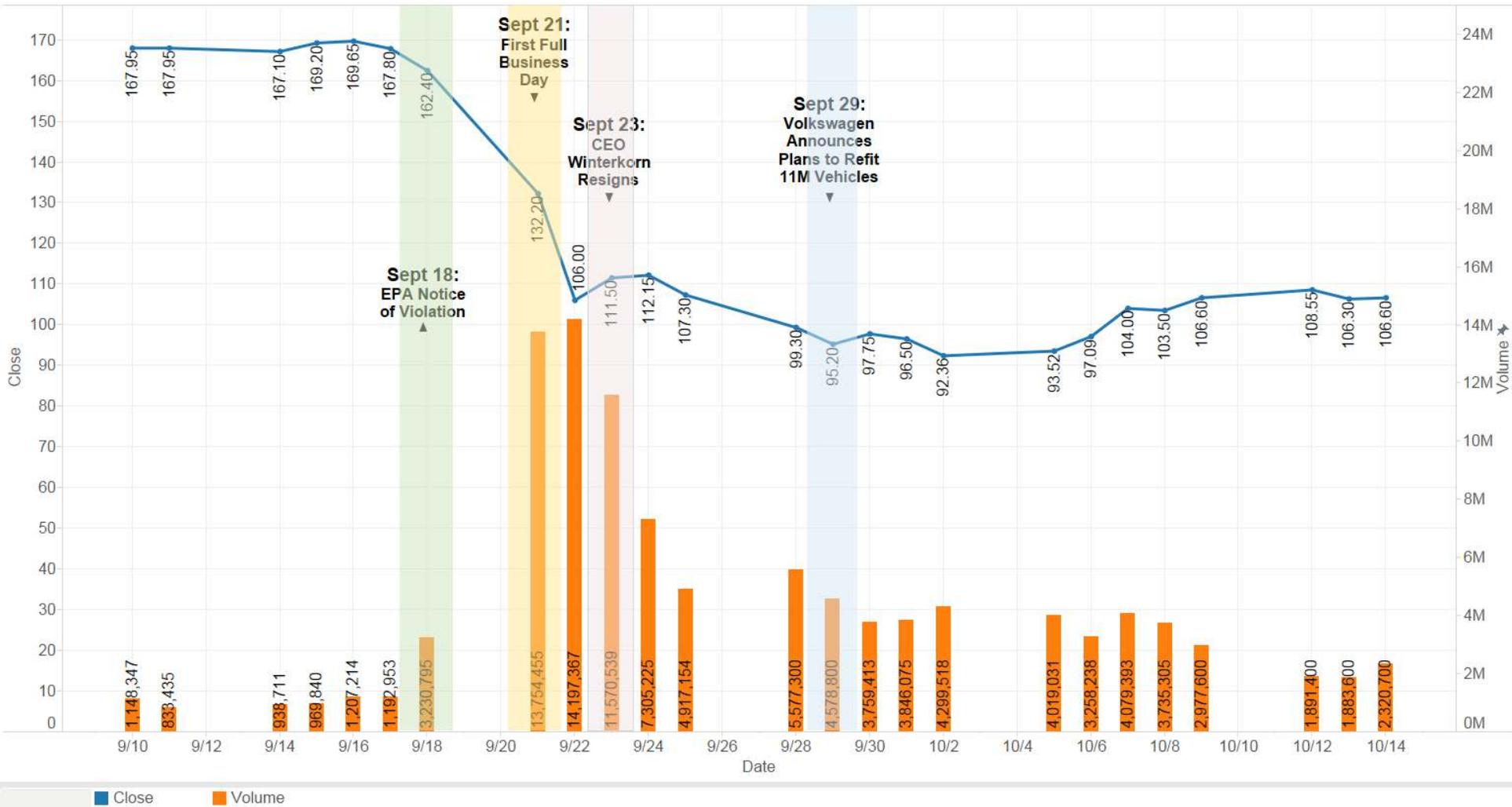


Government Actions

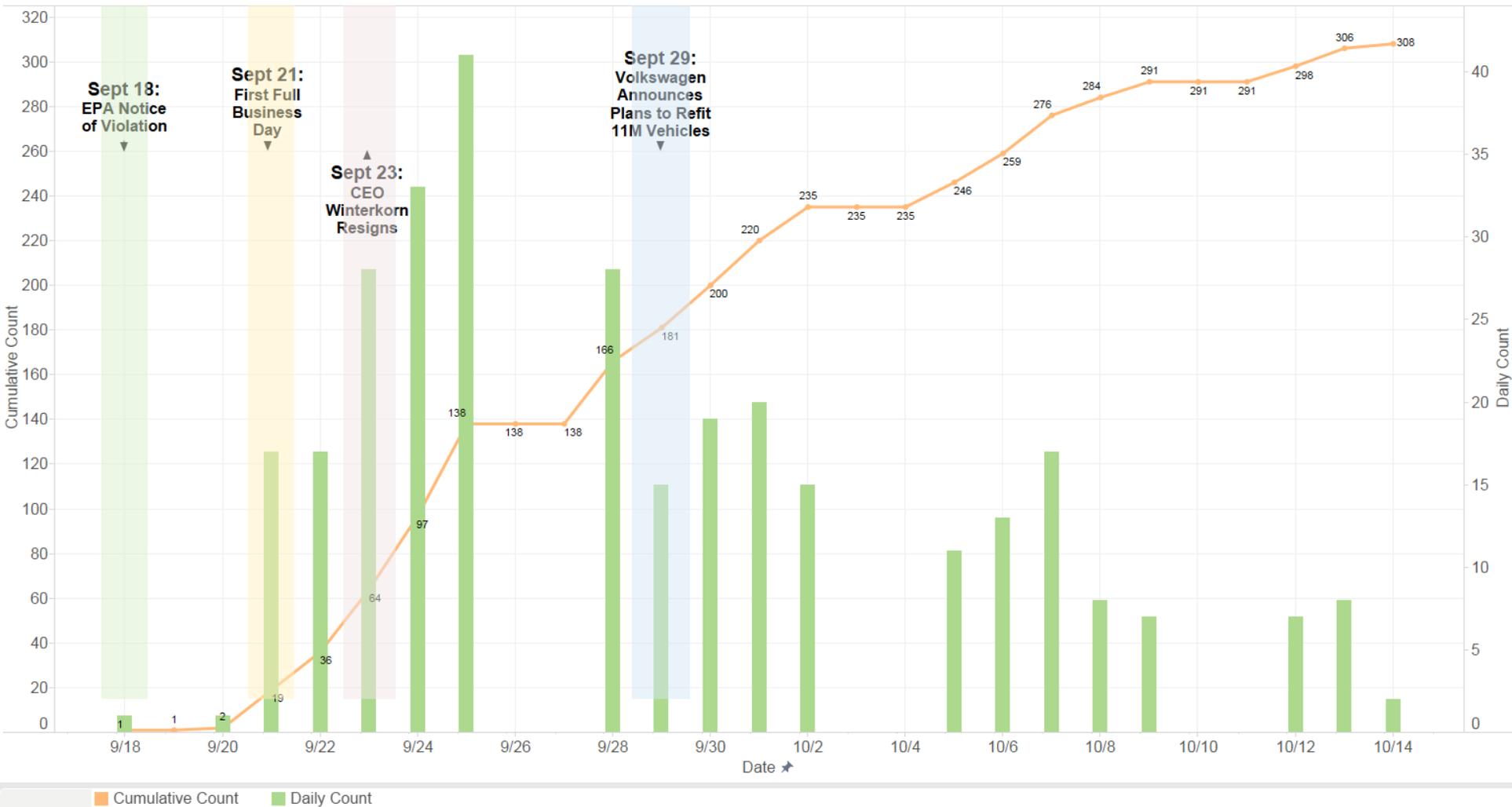
Countries Involved:

- USA
- Canada
- United Kingdom
- France
- Italy
- Germany
- Spain
- Netherland
- Czech Republic
- Romania
- India
- South Africa
- South Korea
- Sweden
- Switzerland

Stock Performance



Federal Lawsuits Filed over Time



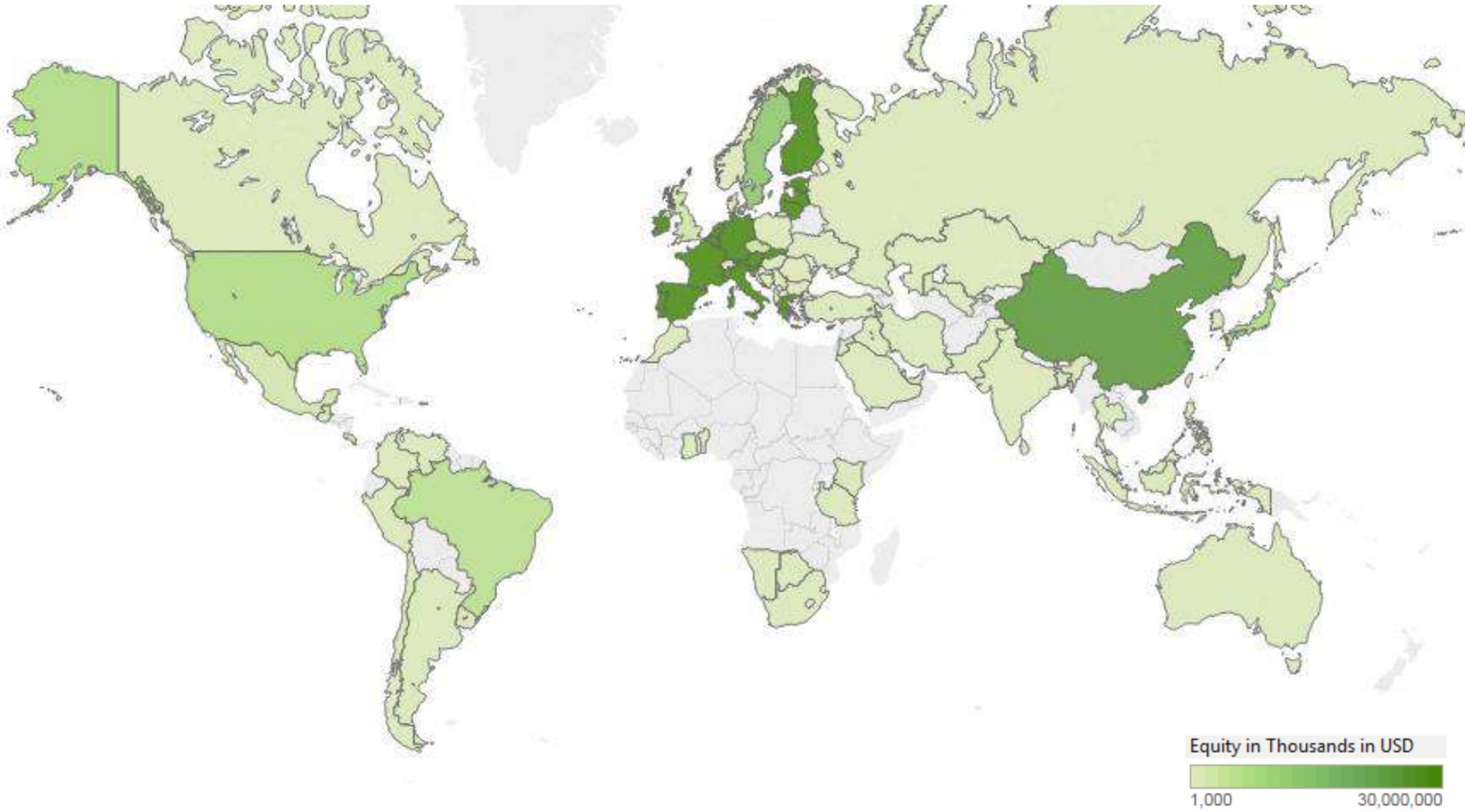
Largest D&O Settlements

*Global Non-US Companies

Company	Headquarters	Value	Year
Tyco International	Ireland	\$2.98 billion	2007
Nortel	Canada	\$2.63 billion	2007
Royal Dutch Shell	Netherlands	\$577 million	2009
BP p.l.c.	United Kingdom	\$525 million	2012
RBS Holdings N.V.	Netherlands	\$503 million	2012
UBS AG	Switzerland	\$380 million	2009
BC Capital Group SA	Panama	\$358 million	2014
Royal Bank of Scotland	Scotland	\$275 million	2014

Global Shareholdings

* as of 12/31/2014



Global Shares

Common Shares (DEU, CHE, GBR and LUX)

Outstanding Shares: 295.1M

Market Cap: \$44.8B (as of 10/12/2015)

Institutional Holders	Shares
Porsche Automobil Holding SE	149,696,681
Land Niedersachsen	59,028,299
Qatar Investment Authority	50,149,012
Statens Pensjonsfond Utland	5,897,338
Norges Bank Investment Management	5,897,338

Preferred Shares (DEU, CHE, GBR and LUX)

Outstanding Shares: 180.6M

Market Cap: \$22.4B (as of 10/12/2015)

Institutional Holders	Shares
Porsche Automobil Holding SE	149,696,681
Qatar Holding, L.L.C.	23,140,173
Northern Cross LLC	3,567,081
Capital World Investors	3,561,012
American Funds EuroPacific Growth Fund	3,485,046
The Vanguard Group, Inc.	2,996,081
Fidelity Worldwide Investment (UK) Ltd.	2,828,380
Franklin Mutual Advisers, LLC	2,753,093
BlackRock Asset Management Deutschland	2,715,149
Capital Research Global Investors	2,599,528

US ADR Shares

ADR Common Shares

Institutional and Mutual Fund Holders	Shares
Parametric Portfolio Associates LLC	357,897
Todd Asset Management LLC	205,382
Main Street Research LLC	179,922
Teachers Retirement System	169,800
Vigilant Capital Management LLC	157,620
Gratry & Co. LLC	94,769
Weatherly Asset Management LP	81,986
Philadelphia International Advisors LP	80,694
PNC Investments LLC	45,054
Bexil Advisers LLC	35,000

ADR Preferred Shares

Institutional and Mutual Fund Holders	Shares
Goldman Sachs Asset Management LP	410,315
Parametric Portfolio Associates LLC	214,361
Scout Investments, Inc.	193,478
World Asset Management, Inc.	143,549
Columbia Management Investment	84,086
Goldman Sachs Large Cap Value Fund	52,405
Goldman Sachs VIT - Large Cap Value Fund	43,034
Madrona Funds LLC	22,090
JNL/Goldman Sachs US Equity Flex Fund	3,600
AdvisorShares Madrona International ETF	3,600

Today's Panelists



Kimberly Cole
Partner
Kobre & Kim LLP



Albert Knigge
Partner
Houthoff Buruma

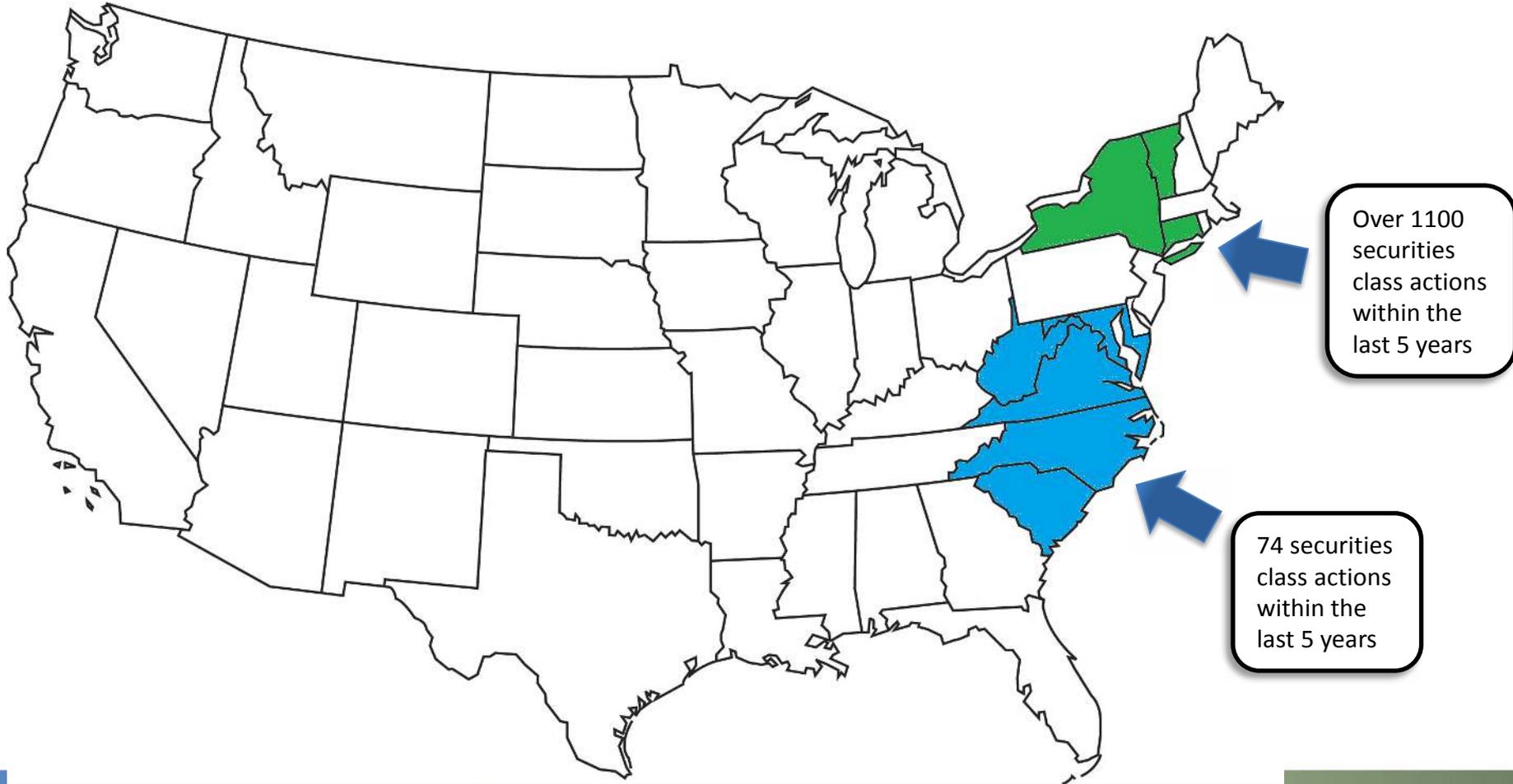


Kevin LaCroix
EVP, RT ProExec,
a division of RT Specialty, and
author of the D&O Diary



Alexander Reus
Managing Partner
DRRT

U.S. Securities Class Action Litigations within the Last Five Years



Collective redress in the Netherlands

- Claim(s) filed by a 'claim vehicle' (special purpose *stichting* or association) in accordance with its objects and
 - acting in its own name on behalf of others people's interest that are appropriate to bundle;
or
 - acting in its own name with respect to claims that have been assigned to the 'claim vehicle'.
- No class, no class certification, no lead plaintiff.
- No court supervision.
- No monetary damages or compensation, although a draft bill will likely be issued soon to enable monetary claims too.
- Declaratory or injunctive relief, only binding between plaintiff and defendant.
 - **Significance:**
 - Possible stepping stone to Class Settlement.

Class settlements in the Netherlands – Introduction

- The Dutch Act on Collective Settlement of Mass Damages (the "Dutch Act") became effective on July 27, 2005.
- The Dutch Act is intended to facilitate the class settlement of claims for "mass damages" and permits the parties to a class settlement agreement to request that the Amsterdam Court of Appeals (the "Amsterdam Court") to declare the class settlement binding upon a class or classes of persons. It provides for a court approved class settlement on an opt-out basis that should be recognized throughout Europe.
- To date, the Dutch Act has been applied in eight cases.
- Under the Dutch Act, four phases can be distinguished:
 - Conclusion of settlement agreement
 - Proceedings before the Amsterdam Court
 - Opt-Out Period for Beneficiaries
 - Payment to Beneficiaries

Class Settlements in the Netherlands – International cases

- In two cases (Shell (2009) and Converium (2012)), the Dutch Act has been applied to a settlement in which the vast majority of potential plaintiffs / beneficiaries was based outside of the Netherlands.
 - The Shell case concerned a settlement with respect to certain misrepresentations by Shell of its oil and gas reserves. The settlement was reached for the benefit of all shareholders – other than U.S. shareholders – who purchased their shares on any stock exchange – other than NYSE – between April 8, 1999 and March 18, 2004.
 - The settlement was reached while a securities class action was pending in the U.S.
 - The Converium case concerned the Swiss reinsurer Converium, which had shares listed on the Swiss Stock Exchange and ADRs traded on NYSE. Converium's share price declined after it announced substantial increases in its loss reserves, leading to a class action in the U.S.
 - The settlement that was reached in the U.S. excluded non-U.S. shareholders. Potential claims of non-U.S. shareholders were settled in the Netherlands in a parallel settlement through the involvement of a Dutch foundation.
- **Significance:**
 1. Dutch court assumed jurisdiction, even though the claims were not brought under Dutch law, the alleged wrongdoing took place outside the Netherlands, and none of the potentially liable parties and only a limited number of the potential claimants are domiciled in the Netherlands.
 2. Court agreed to the much lower compensation for non-U.S. plaintiffs due to lack of remedies for non-U.S. Plaintiffs outside US:
 - 12,000 non-U.S. plaintiffs were entitled to USD 58,400,000
 - few thousand U.S. plaintiffs were entitled to USD 84,600,000
 3. Court agreed to reasonableness of 20% fee for principal counsel.

Thank you to our Panelists



Kimberly Cole
Partner
Kobre & Kim LLP



Albert Knigge
Partner
Houthoff Buruma



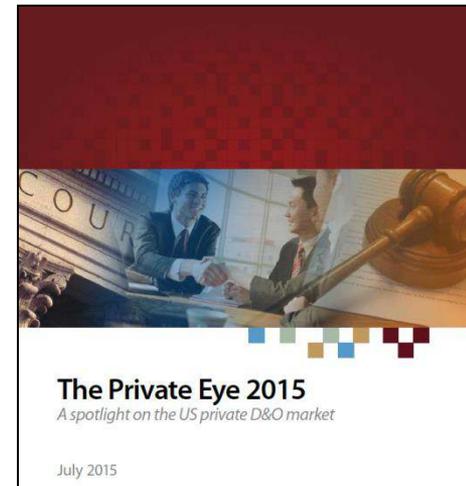
Kevin LaCroix
EVP, RT ProExec,
a division of RT Specialty, and
author of the D&O Diary



Alexander Reus
Managing Partner
DRRT

2015 Private Eye: A Spotlight on the US Private D&O Market

- *What is the size of the private D&O market in the US?*
- *Who are the leading private D&O carriers?*
- *What are the buying patterns?*
- *What are the emerging issues that keep private company directors up at night?*
- *What does an underwriter look for in a good D&O risk?*



<http://www.advisenltd.com/2015/07/15/2015-private-eye-a-spotlight-on-the-us-private-do-market/>

Loss Insight StrataScope - D&O for Insurers

D&O StrataScope provides multi-dimensional information for underwriters and actuarial leaders to make informed decisions about underwriting and pricing D&O risk for public companies.

D&O StrataScope intersects Advisen's industry-leading D&O case data with time series company data to provide insight into current historical D&O case data.

<http://www.advisenltd.com/analytics/loss-insight/stratascope/public-company-d-o/>

Executive Risk Awards



12 awards open for voting now!

- Industry Person of the Year - USA D&O
- Industry Person of the Year - USA EPLI
- Industry Person of the Year - Europe
- Industry Legend of the Year
- Best Claims Handling Team of the Year
- Best Executive Risk Insurer Team - Public Company D&O
- Best Executive Risk Insurer Team - Private Company D&O
- Best Executive Risk Insurer Team - Employment Practices
- Best Executive Risk Broking Team – Wholesale Broker
- Best Executive Risk Broking Team – Retail Broker
- Best Counsel of the Year - Insurance Carrier Counsel
- Best Counsel of the Year - Policyholder Counsel

Request your ballot now by emailing: Awards@advisen.com

Contact Us

Advisen Ltd.

1430 Broadway

8th Floor

New York, NY 10018

www.advisenltd.com

Phone: +1.212.897.4800

advisenevents@advisen.com