

NCC and Collective actions



Who are we?

The Netherlands Commercial Court (3 chambers: the NCC District Court, the NCC Court in Summary Proceedings and the NCC Court of Appeal) is a part of the Dutch Judiciary. Ranked among the most efficient, reliable and transparent worldwide, the NCC is based in Amsterdam - a prime location for business, and a gateway to Europe, with a long history of justice and global business. The NCC uses Dutch procedure, which is highly regarded for its pragmatic approach and efficient operation. Proceedings are in English. Judgments are in English. eNCC, an electronic communication system, is a web portal with secure access through the NCC site (www.ncc.gov.nl), allowing Dutch counsel to initiate an action, check the status and scheduled next steps, and submit and download documents. This gives the NCC the tools to communicate effectively and provide swift and firm guidance throughout the process.

NCC can also play a role in collective actions. This fact sheet provides more information on this subject.

Collective actions in the Netherlands

- Three ways to initiate a collective action in the ordinary courts
 - a) a foundation/association focusing on similar interests issues a single initiating document
 - typically to establish liability
 - not for money damages, but new legislation (see below) allows money damages
 - court fees charged to the foundation/association range from € 700 to € 8,600*
 - b) individual claimants issue a single initiating document
 - liability or monetary damages
 - court fees charged to each claimant ranging from € 400 to € 2,400*, but multiple claimants presenting the same arguments by the same lawyer only pay once
 - cases may be separated and dealt with individually

- c) litigation vehicles initiate the proceedings
 - liability or money damages
 - individual claimants assign their claims to the vehicle
 - court fees charged to the litigation vehicle range from € 700 to € 8,600*

Introduction of a comprehensive system for collective actions

On 1 January 2020 legislation entered into force in the Netherlands introducing a comprehensive system for dealing with collective actions, including multiple collective actions against the same defendant. The new legislation only applies to events that occurred on or after 15 November 2016. See our website for an English translation of this legislation.

What are the conditions for initiating a collective action?

- the claimant is a foundation or association focusing on similar interests. It must represent a substantial group of injured individuals and claims, be financially sound, have expertise in litigating collective actions and fulfil certain requirements regarding governance,
- the foundation or association has made sufficient efforts to reach a settlement with the defendant,
- the claim has a firm connection to the Netherlands, due to the residence of the majority of the persons involved, the domicile of (one of) the defendant(s) or the place where the harmful event occurred,
- a collective action is the most efficient way to resolve the dispute, because of the similarity in the issues of fact or law, the number of people harmed, and the financial stakes.

What does the procedure look like?

- the claimant submits its initiating document to the court, and enters the collective action claim into a special register,
- the case is stayed for a period of 3 months to allow other claimants to join the action,
- the defendant submits its defence, on the merits or only the admissibility of the claim/claimants,
- the court rules on jurisdiction, applicable law and the admissibility of the claim/claimants,

- if there is more than one claimant: the court designates one of them as “Exclusive Representative” (ER); from that time on the ER is in charge of the litigation on the claimants’ side,
- next, the court sets a time limit to negotiate a settlement. If a settlement or agreement is reached, it must be submitted to the court for approval; if not, both parties must submit to the court their proposal for a collective compensation scheme,
- the court gives a judgment on the disposition of the claims and which party must bear the costs of the proceedings.

Is the outcome of these proceedings binding on anyone harmed by the same event?

A collective settlement, agreement or judgment resulting from these proceedings – once the judgment is no longer subject to ordinary remedies – is binding on all persons whose interests are involved in the action, provided they reside in the Netherlands and have not opted out. Persons living outside of the Netherlands are not bound by the judgment, except where they opted in or if the court so determines.

How can NCC get involved?

- Collective actions
 - a) the ordinary Amsterdam courts have jurisdiction under a Convention or Regulation, such as
 - a party’s domicile
 - the place where the harmful event occurred
 - a choice-of-court clause

- b) special NCC requirements
 - civil or commercial matter within the autonomy of the parties and not subject to special jurisdiction
 - international dispute
 - express agreement for the proceedings to be in English before the NCC

- Collective settlement agreements
 - a) an in-court settlement before the NCC can be declared universally binding
 - b) out-of-court settlements: application to the NCC Court of Appeal for a declaration that the settlement is universally binding
 - c) special NCC requirements above apply
 - d) enforceable under Conventions and EU Regulations.

Costs

NCC charges low, upfront, fixed court fees, ranging from € 15,000 to € 20,000* per party. Absent agreement, the unsuccessful party is typically responsible for lawyers’ fees that are assessed on the basis of fixed rates ranging from € 1,000 - € 12,000 for each act of process.

Need to know more?

If you have any questions, please contact us at NCC@rechtspraak.nl. Or visit our website www.ncc.gov.nl. You can also follow us on Twitter (@NethComCourt) and/or LinkedIn.

* Court fees are subject to annual indexation.
For the current fees see the court’s website.

NCC@rechtspraak.nl
www.ncc.gov.nl

Our courthouse address is:
Palace of Justice
IJdok 20
1013 MM
Amsterdam
The Netherlands