

INVESTOR LOSSES

A Comparative Legal Analysis
of Causation and Assessment of
Damages in Investor Litigation

Elke VANDENDRIESSCHE



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Intersentia Ltd
Sheraton House | Castle Park
Cambridge | CB3 0AX | United Kingdom
Tel.: +44 1223 370 170 | Email: mail@intersentia.co.uk

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ABBREVIATIONS

AA	Ars Aequi
AG	Die Aktiengesellschaft
AG	Amtsgericht (Germany)
AJP/PJA	Aktuelle juristische Praxis/Pratique Juridique Actuelle
AktG	Aktiengesetz (German Stock Corporation Act)
Ala. L. R.	Alabama Law Review
Alb. L. Rev.	Albany Law Review
ALJB – Bull. Droit & Banque	Association Luxembourgeoise des Juristes de Droit Bancaire – Bulletin Droit & Banque
ALR	Ankara Law Review
Am. Crim. L. Rev.	American Criminal Law Review
Am. Econ. Rev.	American Economic Review
Am. J. Comp. L.	American Journal of Comparative Law
Am. L. & Econ. Rev.	American Law and Economics Review
Am. L. Rev.	American Law Review
Am. U. L. Rev.	American University Law Review
Ann. Rev. Banking & Fin. L.	Annual Review of Banking & Financial Law
Ariz. L. Rev.	Arizona Law Review
Ariz. St. L. J.	Arizona State Law Journal
Arr. Cass.	Arresten van het Hof van Cassatie
AV&S	Aansprakelijkheid, Verzekering & Schade
Bank. Fin. R.	Bank en Financieel Recht
Banque et Droit	Revue Banque et Droit
Baylor L. Rev.	Baylor Law Review
Bb	Bedrijfsjuridische Berichten
BB	Betriebsberater
BCC	Belgian Civil Code
B. C. L. Rev.	Boston College Law Review
Berkeley Bus. L.J.	Berkeley Business Law Journal
BGB	Bürgerliches Gesetzbuch (German Civil Code)
BGH	Bundesgerichtshof (German Supreme Court)
BGHZ	Entscheidungen des Bundesgerichtshofs in Zivilsachen

B.J.I.B.& F.L.	Butterworths Journal of International Banking & Financial Law
BKR	Zeitschrift für Bank- und Kapitalmarktrecht
Brook. J. Corp. Fin. & Com. L.	Brooklyn Journal of Corporate, Financial, & Commercial Law
Brook. J. Int'l L.	Brooklyn Journal of International Law
Brook. L. Rev.	Brooklyn Law Review
BS	Belgisch Staatsblad (Belgian official journal)
B.U. L. Rev.	Boston University Law Review
Bull. Ass.	Bulletin des assurances
Bull. Joly Bourse	Bulletin Joly Bourse
Bull. Joly Soc.	Bulletin Joly Sociétés
Bus. L. Int'l	Business Law International
Bus. Law.	Business Lawyer
B.Y.U. L. Rev.	Brigham Young University Law Review
CA	Cour d'Appel (appellate court in France)
Cal. L. Rev.	California Law Review
Cambridge L.J.	Cambridge Law Journal
Can. Bus. L. J.	Canadian Business Law Journal
Cardozo L. Rev.	Cardozo Law Review
Cass.	Hof van Cassatie/Cour de Cassation (Belgian and French Supreme Court)
CDR	Commercial Dispute Resolution
CEBS	Committee of European Banking Supervisors
CEIOPS	Committee of European Insurance and Occupational Pensions Supervisors
CESR	Committee of European Securities Regulators
CJEU	Court of Justice of the European Union
C.J.Q.	Civil Justice Quarterly
CMLJ	Capital Markets Law Journal
CMLRev	Common Market Law Review
Colum. Bus. L. Rev.	Columbia Business Law Review
Colum. J. Eur. L.	Columbia Journal of European Law
Colum. J. Eur. L.F.	Columbia Journal of European Law Online
Colum. L. Rev.	Columbia Law Review
Cornell Int'l L.J.	Cornell International Law Journal
Cornell L. Rev.	Cornell Law Review
DAOR	Le droit des affaires/Ondernemingsrecht
DB	Der Betrieb
DCC	Dutch Civil Code
DCCR	Droit de la Consommation – Consumentenrecht
Del. Journ. Corp. L.	Delaware Journal of Corporate Law

Denv. U. L. Rev.	Denver University Law Review
DePaul Bus. & Com. L.J.	DePaul Business and Commercial Law Journal
D&O	Directors and officers
D&O insurance	Directors and officers insurance
Duke L. J.	Duke Law Journal
EBA	European Banking Authority
EBLR	European Business Law Review
EBOR	European Business Organization Law Review
ECFI	European Court of First Instance
Edin. L. R.	Edinburgh Law Review
EIOPA	European Insurance and Occupational Pensions Authority
EJRR	European Journal of Risk Regulation
ELJ	European Law Journal
ELR	European Law Review
ELSA Malta L. Rev.	ELSA Malta Law Review
Emory L. J.	Emory Law Journal
Entrepreneurial Bus. L.J.	Entrepreneurial Business Law Journal
ERCL	European Review of Contract Law
ERPL	European Review of Private Law
ESMA	European Securities and Markets Authority
EU	European Union
Eur. Company & Fin. L. Rev.	European Company and Financial Law Review
Euredia	Euredia: revue européenne de droit bancaire & financier
EuZW	Europäische Zeitschrift für Wirtschaftsrecht
FCC	French Civil Code
Fla. L. Rev.	Florida Law Review
Fordham L. Rev.	Fordham Law Review
FSMA (Belgium)	Financial Services and Market Authority (national supervisor)
FSMA 2000 (UK)	Financial Services and Market Act
Ga. L. Rev.	Georgia Law Review
Geo. L.J.	Georgetown Law Journal
Geo. Wash. L. Rev.	George Washington Law Review
GesKR	Zeitschrift für Gesellschafts- und Kapitalmarktrecht
GLJ	German Law Journal
Griffith L. Rev.	Griffith Law Review
Harv. Int'l L.J.	Harvard International Law Journal
Harv. L. Rev.	Harvard Law Review
HAVE/REAS	HAVE/REAS

HBLR	Harvard Business Law Review
HGB	Handelsgesetzbuch (German Commercial Code)
ICLQ	International and Comparative Law Quarterly
IER	International Economic Review
IFLR	International Financial Law Review
IJE & P	International Journal of Evidence & Proof
Ind. L.J.	Indiana Law Journal
Int'l Rev L & Econ	International Review of Law and Economics
Iowa L. Rev.	Iowa Law Review
J. Accounting Res.	Journal of Accounting Research
JAЕ	Journal of Accounting and Economics
JBL	Journal of Business Law
J.B.L.	Juristische Blätter
J. Bus.	Journal of Business
J. Bus. & Sec. L.	Journal of Business & Securities Law
JCLS	Journal of Corporate Law Studies
J. Corp. L.	Journal of Corporation Law
JCP	Journal of Consumer Policy
JCP II	La Semaine Judiciaire II
JCP-E	La Semaine Juridique Entreprise et Affaires
JCP-G	La Semaine Juridique – Edition générale
JEL	Journal of Economic Literature
J. Empirical Legal Stud.	Journal of Empirical Legal Studies
JEP	Journal of Economic Perspectives
JETL	Journal of European Tort Law
JFC	Journal of Financial Crime
JFE	Journal of Financial Economics
JFRC	Journal of Financial Regulation and Compliance
JIBFL	Journal of International Banking and Financial Law
JIBLR	Journal of International Banking Law and Regulation
JITE	Journal of Institutional and Theoretical Economics
J. L. & Econ.	Journal of Law and Economics
J.L. Econ. & Org.	Journal of Law, Economics & Organization
JLE	Journal of Legal Economics
J. Legal Stud.	Journal of Legal Studies
JLMB	Revue de jurisprudence de Liège, Mons et Bruxelles

JOR	Jurisprudentie Onderneming en Recht
Journ. Fin.	Journal of Finance
JPIL	Journal of Personal Injury Law
J. Polit. Econ.	Journal of Political Economy
J Priv Int'l L	Journal of Private International Law
JT	Journal des Tribunaux
J. Transnat'l L. & Pol'y	Journal of Transnational law & Policy
Jura Falc.	Jura Falconis
JuS	Juristische Schulung
Kh.	Rechtbank van Koophandel (Commercial Court, Belgium)
Law and Contemp. Probs.	Law and Contemporary Problems
Legal Issues of Econ. Integration	Legal Issues of Economic Integration
Lewis & Clark L. Rev.	Lewis & Clark Law Review
LFMR	Law and Financial Markets Review
LG	Landesgericht (Germany)
Loy. L.A. L. Rev.	Loyola of Los Angeles Law Review
Loy. U. Chi. L.J.	Loyola University Chicago Law Journal
LQR	Law Quarterly Review
LS	Legal Studies
Macquarie L.J.	Macquarie Law Journal
Md. L. Rev.	Maryland Law Review
Mich. L. Rev.	Michigan Law Review
MJ	Maastricht Journal of European and Comparative Law
MLR	Modern Law Review
Mon LR	Monash University Law Review
MvV	Maandblad voor Vermogensrecht
N.C. J. Int'l L. & Com. Reg.	North Carolina Journal of International Law and Commercial Regulation
NIPR	Nederlands Internationaal Privaatrecht
NJ	Nederlands Juristenblad
NJW	Nieuw Juridisch Weekblad
N.J.W.	Neue juristische Wochenschrift
NTBR	Nederlands Tijdschrift voor Burgerlijk Recht
NV	De Naamlooze Vennootschap
Nw. U. L. Rev.	Northwestern University Law Review
NY Law Journal	New York Law Journal
N.Y.U. J. Int'l L. & Pol.	New York University Journal of International Law and Politics
N.Y.U. J. L. & Bus.	New York University Journal of Law & Business

N.Y.U. L. Rev.	New York University Law Review
NZG	Neue Zeitschrift für Gesellschaftsrecht
ÖBA	Zeitschrift für das gesamte Bank- und Börsenwesen
O&F	Onderneming & Financiering
OGH	Der Oberste Gerichtshof (Austrian Supreme Court)
OJ	Official Journal of the European Union
Okla. L. Rev.	Oklahoma Law Review
OLG	Oberlandesgericht (Germany)
Ondernemingsrecht	Ondernemingsrecht
Osgoode Hall L.J.	Osgoode Hall Law Journal
Oxford J. Legal Studies	Oxford Journal of Legal Studies
PA	Petites Affiches
Pas.	Pasicrisie België
P&B/RDJP	Proces & Bewijs/Revue de droit judiciaire et de la preuve
Penn St. L. Rev.	Penn State Law Review
Pepp. L. Rev.	Pepperdine Law Review
PIABA	Public Investors Arbitration Bar Association Bar Journal
P.N.	Tottel's Journal of Professional Negligence
PRIP	Packaged Retail Investment Product
QJE	Quarterly Journal of Economics
RabelsZ	Rabels Zeitschrift für ausländisches und internationales Privatrecht
RABG	Rechtspraak Antwerpen Brussel Gent
Rb	Rechtbank van eerste aanleg (Court of First Instance)
R.C.J.B.	Revue critique de jurisprudence belge
RD bancaire et bourse	Revue de droit bancaire et de la bourse
RD banc. fin.	Revue de droit bancaire et financier
R.D.D.	Revue Régionale de Droit
Rec. Dalloz	Recueil Dalloz
Rev. accounting studies	Review of accounting studies
Rev.dr. pén.	Revue de droit pénal et de criminologie
Rev. sociétés	Revue des sociétés
RF	Rechtspraak Financieel Recht
RFS	Review of Financial Studies
RGAR	Revue générale des assurances et des responsabilités
RGDA	Revue générale du droit des assurances

R.I.W.	Recht der internationalen Wirtschaft
RJEP	Revue juridique d'économie publique
r.o.	rechtsoverweging (consideration in Dutch court decisions)
RTD Fin.	Revue trimestrielle de droit financier
RvdW	Rechtspraak van de Week
RW	Rechtskundig Weekblad
S. Cal. L. Rev.	Southern California Law Review
Seton Hall L. Rev.	Seton Hall Law Review
SJ	Semaine Judiciaire
SJ II	Semaine Judiciaire II
SJLS	Singapore Journal of legal studies
SJZ/RSJ	Schweizerische Juristenzeitung
Stan. J.L. Bus. & Fin.	Stanford Journal of Law, Business & Finance
Stan. L. Rev.	Stanford Law Review
STB	Staatsblad van het Koninkrijk der Nederlanden (Dutch official journal)
St. John's L. Rev.	St. John's Law Review
Sup. Ct. Econ. Rev.	Supreme Court Economic Review
SZW/RSDA	Schweizerische Zeitschrift für Wirtschafts- und Finanzmarktrecht
TBBR	Tijdschrift voor Belgisch Burgerlijk Recht
TBH	Tijdschrift voor Belgisch Handelsrecht
T. comm.	Tribunal commercial (Commercial court, France)
T. corr.	Tribunal correctionnel (France)
Temp. Int'l & Comp. L.J.	Temple International and Comparative Law Journal
Tex. Int'l L.J.	Texas International Law Journal
TFR	Tijdschrift Financieel Recht
T.F.R.	Tijdschrift voor Financieel Recht
THRHR	Journal of Contemporary Roman-Dutch Law
TPR	Tijdschrift voor Privaat Recht
TRV	Tijdschrift voor Rechtspersoon en Vennootschap
Tul. L. Rev.	Tulane Law Review
TvC	Tijdschrift voor Consumentenrecht en handelspraktijken
TvI	Tijdschrift voor Insolventierecht
TVOB	Tijdschrift voor vennootschapsrecht, rechtspersonenrecht en ondernemingsbestuur
T.Verz.	Tijdschrift voor Verzekeringen

TVVS	Maandblad voor ondernemingsrecht en rechtspersonen
U. Chi. L. Rev.	University of Chicago Law Review
U. Cin. L. Rev.	University of Cincinnati Law Review
UCLA L. Rev.	UCLA Law Review
U. Ill. L. Rev.	University of Illinois Law Review
U. Miami L. Rev.	University of Miami Law Review
U. Pa. J. Bus. L.	University of Pennsylvania Journal of Business Law
U. Pa. L. Rev.	University of Pennsylvania Law Review
U. Pitt. L. Rev.	University of Pittsburgh Law Review
Utah L. Rev.	Utah Law Review
Va. J. Int'l L.	Virginia Journal of International Law
Va. L. Rev.	Virginia Law Review
Vand. L. Rev.	Vanderbilt Law Review
V&F	Vennootschapsrecht en Fiscaliteit
Vill. L. Rev.	Villanova Law Review
V&O	Vennootschap en Onderneming
Vt. L. Rev.	Vermont Law Review
Wake Forest L. Rev.	Wake Forest Law Review
Wash. & Lee L. Rev.	Washington and Lee Law Review
Wash. U. L.Q.	Washington University Law Quarterly
Wis. L. Rev.	Wisconsin Law Review
with ann. by	with annotation by
WM	Wertpapier-Mitteilungen
Wm. & Mary L. Rev.	William and Mary Law Review
WPNR	Weekblad voor Privaatrecht, Notariaat en Registratie
Yale J. on Reg.	Yale Journal on Regulation
Yale L.J.	Yale Law Journal
Yale Rev.	Yale Review
ZBB	Zeitschrift für Bankrecht und Bankwirtschaft
ZGR	Zeitschrift für Unternehmens- und Gesellschaftsrecht
ZHR	Zeitschrift für das gesamte Handels- und Wirtschaftsrecht
ZIP	Zeitschrift für Wirtschaftsrecht
ZZPInt.	Zeitschrift für Zivilprozess International

TABLE OF EU LEGISLATION

- Consolidated version of the Treaty on the European Union (2012) OJ C326/13 (referred to as the “TEU”);
- Consolidated version of the Treaty on the Functioning of the European Union (2012) OJ C326/01 (referred to as the “TFEU”);
- Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, signed at Lisbon, 13 December 2007, OJ C306/01 (referred to as the “Treaty of Lisbon”).
- Directive 2003/6/EC of the European Parliament and of the Council of 28 January 2003 on insider dealing and market manipulation (market abuse), OJ L96/16 (repealed) (referred to as the “Market Abuse Directive I”);
- Directive 2003/71/EC of The European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC, OJ L345/64, (as amended) (referred to as the “Prospectus Directive”);
- Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonization of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC, OJ L390/38 (as amended) (referred to as the “Transparency Directive”);
- Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC, OJ L145/1 (repealed) (referred to as “MiFID I”);
- Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities, OJ L302/32 (as amended by UCITS V) (referred to as “UCITS”);
- Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) 1095/2010, OJ L174/1 (referred to as “AIFMD”);

- Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU (recast), OJ L173/349 (referred to as “**MiFID II**”);
- Directive 2014/57/EU of the European Parliament and of the Council of 16 April 2014 on criminal sanctions for market abuse (market abuse directive) OJ L173/149 (referred to as the “**CSMAD**”);
- Directive 2014/91/EU of the European Parliament and of the Council of 23 July 2014 amending Directive 2009/65/EC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) as regards depositary functions, remuneration policies and sanctions, OJ L 257/186 (referred to as “**UCITS V**”);
- Council Directive 93/22/EEC of 10 May 1993 on Investment Services in the Securities Field, OJ L197/58, (referred to as the “**ISD**”);
- Regulation (EC) No 1060/2009 of the European Parliament and the Council of 16 September 2009 on credit rating agencies, OJ L302/1 (as amended) (referred to as the “**CRA Regulation**”);
- Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories, OJ L201/1 (referred to as “**EMIR**”);
- Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse (market abuse regulation) and repealing Directive 2003/6/EC of the European Parliament and of the Council and Commission Directives 2003/124/EC, 2003/125/EC and 2004/72/EC, OJ L173/1 (referred to as the “**Market Abuse Regulation**”);
- Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012, OJ L173/84 (referred to as “**MiFIR**”).
- Regulation (EU) No 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products, OJ L352/1 (referred to as “**PRIIPS**”).