ISSN: 2688-9323

The Practical Dilemma and Perfect Path of Special Representative Litigation under the Background of New Securities Law

Yaqi Zhu

School of Anhui University of Finance and Economics Law School, Bengbu 233000, China

Abstract

In March 2020, the Securities Law of the People's Republic of China (hereinafter referred to as the new Securities Law) formally established the special representative litigation system, which is responsible for cracking down on irregularities in the securities market and rectifying and purifying the order of securities market transactions; It is of great significance to strengthen the punishment of civil liability in securities disputes and safeguard the legitimate rights and interests of investors. Since its establishment, due to the lack of judicial practice experience, there are fuzzy standards for the identification of disclosure date, and the scope of litigation right holders is difficult to determine. The limited size and funds of the insured institution will undermine the quality of litigation; The supervision mechanism is not sound, and the power of special representatives is easy to abuse; The incentive mechanism is not complete, the main driving force of the parties is insufficient and so on. In this paper, the system reflection and rule construction are carried out, and it is suggested that the insurance institution should intervene in advance and expand the "pre-trial review content" to improve the procedure of determining the scope of the right holder. Expand the scale of insurance institutions and expand sources of capital income; Improve the litigation supervision system, strengthen the disclosure of punishment; Optimize the litigation incentive mechanism to stimulate the enthusiasm of all parties. Through strengthening and correcting the special representative litigation rules, it can be better applied in judicial practice, truly become a tool for investors to protect their rights, and become a panacea for resolving securities group disputes.

Keywords

Special Representative Action; Securities Group Disputes; Preprogram; Incentive Mechanism.

1. Introduction

Since the establishment of the special representative litigation system in Article 95, paragraph 3, of the new Securities Law, the CSRC and the Supreme People's Court have successively issued judicial interpretations and normative documents, stipulating the selection of cases, initiation procedures, and rights and responsibilities of the special representative litigation, providing an effective basis for its flexible application in judicial practice. Moreover, it breaks the academic circle's doubts about the special representative litigation system to a certain extent, and makes the scholars' research perspective return to the Chinese version of class action from the German group litigation and the American class action. Although scholars have systematically studied and discussed issues such as the incentive mechanism, initiation procedures, determination of the scope of rights holders, and means of accountability in representative litigation, there are still many unresolved issues to be discussed, especially in judicial practice, where there is usually a large space for legal rules to be implemented in the initial stage of transformation. Therefore, to give full play to the institutional value of special representative litigation, we need to review and improve it based on social practice and existing rules.

ISSN: 2688-9323

2. The Question Raised

On November 12, 2021, the first instance of Kangmei Pharmaceutical's lawsuit fell, and the Guangzhou Intermediate People's Court ordered Kangmei Pharmaceutical to compensate a total of 2.459 billion yuan to more than 50,000 investors; The responsible person and the responsible institution shall be jointly and severally liable for compensation. Public opinion was in uproar after the verdict. On the one hand, as the first application of the special representative litigation system in our country's judicial practice, this case has obtained jaw-dropping litigation results. On the other hand, this case is the civil compensation case for false statements involving the largest number of people and the largest target amount in judicial practice, and the severe punishment reflected in the court judgment has made listed companies shudder and the majority of investors applaud. At the same time, it has set off the "resignation tide" of independent directors, and the registered accounting industry is also in danger.

So in the ordinary representative litigation system has been formed and applied for many years under the Chinese litigation system, special representative litigation has what value. First of all, throughout the securities market and investor structure, securities trading violations occurred frequently. The investors in our country are also natural subjects, and the investment ability of small and medium-sized investors is weak, and they are vulnerable to illegal activities in the securities market. However, when protecting the rights, the amount of compensation paid by individual claims is small, and the motivation of litigation is insufficient. Class action investors are scattered and difficult to unite. For example, in the Kangmei Pharmaceutical case, the 352 investors who are eligible for the subject are located in 27 provinces, autonomous regions and municipalities. Therefore, in the face of small and high incidence of illegal infringement, investors are often reluctant to Sue, unable to Sue, listed companies are more reckless based on this, ignoring the legitimate rights and interests of small and medium-sized investors. By virtue of its rule innovation, special representative litigation is solving the dilemma of small and medium-sized investors in individual litigation and class litigation.

Secondly, the detailed litigation mechanism of securities disputes, the independent support of ordinary representative litigation has been unable to meet the practical needs of solving securities disputes, and the special representative litigation provides an efficient right relief path for investors. There is no need for pre-payment and the litigation cost is low. Follow the rule of "express withdrawal, implied accession" to protect the right holder group to the maximum extent; Simplify the litigation procedure of investors and increase the illegal cost of listed companies. Moreover, the representative power is exercised by a specialized investor protection agency, and the professional level is obviously higher than that of ordinary investors, which has more advantages than disadvantages for the success or failure of litigation and the maintenance of investors' rights and interests.

The Kangmei Pharmaceutical case lasted only one year from December 2020, when investors first filed a lawsuit, to December 2021, when the judgment ended the execution of compensation. Investors were able to win the case and enforce the damages without having to dive into the cumbersome litigation process. In fact, the special representative lawsuit has reversed the disadvantage of investors who have been difficult to protect their rights for a long time, chasing blame, and suffering after being "cut leeks". To the greatest extent, the scope of investor protection is guaranteed, and the costs and difficulties of investors filing lawsuits and pursuing responsibility are reduced. At the same time, it reduces the repeated trials of similar cases, reduces the burden of judicial litigation, and improves the effective utilization of judicial resources; Moreover, it plays a powerful role of punishment and warning to illegal counterfeiters in the capital market, and effectively promotes the development of the securities market towards a standardized and orderly direction.

ISSN: 2688-9323

3. Legislative Evolution of Special Representative Action in Securities Disputes in China

The complexity of securities disputes makes them different from ordinary civil disputes, and the process of establishing the settlement mechanism is longer. The legislative evolution of China's special representative litigation rules is divided into three stages: the virtual establishment of representative litigation, the trial exploration of special representative litigation and the establishment and development of special representative litigation.

The first stage is the fictitious stage of representative litigation. In order to solve the collective disputes of securities effectively, the Civil Procedure Law issued in 1991 established the representative litigation system, but it has been ignored in practice for a long time because of the lack of detailed rules. In 2001, the Supreme People's Court issued the Notice on the Temporary Rejection of Civil Compensation Cases Involving Securities, stating that the court would temporarily reject civil compensation cases involving securities due to lack of handling capacity. The court's evasive attitude makes the securities dispute cases overstocked for a long time, and the development process of representative litigation stagnates. The reason is that there were shortcomings in the legal regulation at that time, and the government's mandatory administrative intervention in the securities market could not escape the blame. Long-term mandatory intervention led to the situation of "strong administration and weak justice" in the control and relief of the securities market. Of course, the judicial dispute resolution mechanism could not play its utility value.

The second stage is the trial and exploration stage of special representative litigation. In 2003, the Supreme People's Court issued Several Provisions on the Trial of Civil Compensation Cases caused by false statements in the Securities Market, stating that the trial of civil compensation cases involving false statements was resumed, and investors have since had the right to choose to file a joint lawsuit or a separate lawsuit. However, the regulation is only open to civil compensation cases caused by false statements, and civil infringement cases caused by other violations are not covered. At the same time, due to the current litigation system is not perfect enough, in order to avoid the judicial trial is difficult to deal with the situation of securities civil dispute cases, the judicial organ has avoided the class action. However, this stage continued to explore and try the special representative litigation rules in general.

The third stage is the establishment and development stage of special representative litigation. The Opinions on Certain Specific Issues in the Current Commercial Trial Work issued in 2015 cancelled the pre-processing procedure for securities disputes, marking the official opening of a new exploration of special representative litigation rules in China. The new "Securities Law" issued in 2019 formally established the special representative litigation system, added the investor rights and interests protection part and supplemented its institutional provisions, such as citing the withdrawal system of securities groups in the United States, systematically distinguishing ordinary representative litigation and special representative litigation. In the judicial interpretation issued in July 2020, the Supreme People's Court further detailed the litigation procedures, participation mechanisms, and rights and responsibilities of the special representative. The Provisions of the Supreme People's Court on Hearing Cases of Tort Compensation for False Statements in the Securities Market (hereinafter referred to as the "Provisions"), which took effect on January 22, 2022, explicitly abolished the pre-procedure for people's courts to accept cases of false statements in the securities market. It stipulates that the people's court shall not rule that the false statement is not accepted on the grounds that the administrative punishment of the supervisory department or the effective criminal judgment of the people's court is not accepted, and the much-criticized pre-procedure is completely abandoned. So far, China's characteristic securities group litigation system, that is, special representative litigation system, has begun to take shape.

ISSN: 2688-9323

4. The Practical Dilemma of Special Representative Litigation in Securities Disputes in China

4.1. The Identification Standard of Disclosure Date is Fuzzy, and the Scope of Litigation Right Holder is Difficult to Determine

The Provisions point out that the date of implementation of false statements refers to the date on which the information disclosure obligor makes a false statement or occurs a false statement; The date on which the false statement is disclosed refers to the date on which the false statement is publicly disclosed and known to the securities market for the first time on newspapers, radio stations, television stations or the websites of regulatory authorities, trading venues, major portal websites, and industry-renowned we-media with national influence. The right holder shall be an investor who has carried out the corresponding trading behavior after the date of implementation of the false statement, the disclosure date or the correction date, that is, bought the relevant securities in the inducement false statement, or sold the relevant securities in the inducement false statement. Therefore, the court's determination of the implementation date and disclosure date of the false statement is very key to determining the scope of the right holder, and has a great impact on the realization of self-protection of investors and the protection of rights and interests of securities companies, and often becomes the focus of disputes in court trials.

In the civil case of first instance of liability dispute over securities misrepresentation involving Huang Liqiong and Kangmei Pharmaceutical Limited Company. (hereinafter referred to as the Huang Liqiong case), the Guangzhou Intermediate People's Court of Guangdong Province found that on the date when Kangmei Pharmaceutical disclosed the 2016 Annual Report with false records and major omissions on the websites of Shanghai Stock Exchange, Juchao News Network and the newspapers designated by the China Securities Regulatory Commission, That is, April 20, 2018 is the date of the misrepresentation; A number of media reports questioned the existence of financial fraud in Kangmei Pharmaceutical on October 16, 2018 as the day of false statements disclosure. Since the implementation date has been clearly recorded by the CSRC, there is no dispute, but the court's determination of the disclosure date has triggered more discussion. The law requires that disclosure should meet the requirements of universality, then how to assess the industry reputation of we-media? How to determine the national impact of media Revelations? In the era of rapid changes of Internet information, network news updates quickly and the quality is uneven, requiring shareholders to grab the authentic and reliable reports of authoritative exposure institutions on securities companies in the complex news flash, which is difficult to implement. The "Regulations" do not strictly and clearly classify and list "media with national influence", which gives the court room for discretion in determining the media disclosure day, and the judgment result is easy to be questioned.

If in the civil case of first instance of Liu Chao and Kangmei Pharmaceutical Limited Company. 's liability dispute over securities false statements (hereinafter referred to as the Liu Chao case), which is also the case of the Intermediate People's Court of Guangzhou, Guangdong Province, the disclosure date is determined to be May 17, 2019. The reason is that although the company's violations were revealed by the media on October 16, 2018, the 2018 Annual Report disclosed on April 30, 2019 still involves a large number of false statements, so it is not appropriate to identify October 16, 2018 as the date of disclosure of false statements in this case. On May 17, 2019, the China Securities Regulatory Commission (CSRC), as the national securities industry regulatory agency, held a press conference to announce that it had preliminarily identified that the financial reports disclosed by Kangmei Pharmaceutical from 2016 to 2018 were significantly false, and that the information was consistent with the facts identified in the final Administrative Punishment Decision. Therefore, the date of disclosure of false statements in this case should be the date on which the CSRC announced the preliminary investigation results.

ISSN: 2688-9323

Then, how to explain the same court's different determination of the disclosure date of the same securities misrepresentation case? If the false statement implemented by the information disclosure obligor is in a continuous state, the date on which it is publicly disclosed for the first time and known to the securities market is the date of disclosure. Where an information disclosure obligor makes multiple independent false statements, the people's court shall determine the disclosure date respectively to make a judgment, so how to determine the "mutual independence" of the false statements is not explained in detail in the Provisions or other laws.

4.2. The Insured Institution is Limited in Volume and the Lack of Funds Damages the Quality of Litigation

Under the reform of the "registration system" in the securities market, the number of securities disputes has only increased. Currently, the investor protection institutions with relatively mature operation are only insurance fund companies, investment service centers and securities mediation centers. According to the regulations, the two can act as the main body of special representative litigation, but in practice, litigation is initiated in the mode of division of labor and cooperation. The investment service center is usually responsible for accepting the entrustment of investors and participating in the special representative litigation as the subject of litigation. The insurance fund company is behind the scenes engaged in data analysis, loss calculation, help distribution and so on. The operation mode of division of labor and cooperation can indeed form complementary advantages to a certain extent, but it will inevitably cost manpower and material resources in the link and reduce the efficiency of litigation. Therefore, even if the insurance institution has set strict criteria for case selection, and the pre-litigation procedures have been limited to a certain extent, it is still difficult to deal with a large number of securities dispute cases, and the number of cases that can be handled is only "nine cows and one cent". Due to the limited volume of insurance institutions, a large number of securities disputes cannot be resolved, and even if some lawsuits can be filed, it is difficult to ensure the quality of litigation.

In addition, the Investment Services Centre and the Insurance Fund Company are financed mainly by financial allocations, which are used not only for the performance of their functions but also for the payment of salary allowances to their staff. Insurance institutions also have many functions, including investor education, shareholding exercise, dispute mediation and rights protection services, etc., which require a lot of funds to exercise for a long time. Article 39 of the Provisions of the Supreme People's Court on Several Issues concerning Representative Litigation in Securities Disputes, which came into effect on July 31, 2020, states that special representative litigation cases do not pay case acceptance fees in advance. Where a plaintiff who has lost a lawsuit or has lost a lawsuit in part applies for reducing or waiving the payment of litigation fees, the people's court shall, in accordance with the provisions of the Measures for the Payment of Litigation Costs, decide whether to grant permission based on the plaintiff's economic status and the circumstances of the trial of the case. It can be seen that the insured institution has the nature of public interest, and only charges the necessary expenses to carry out the case in the special representative litigation, and the litigation costs can also be waived according to the circumstances. This provision can indeed reduce the cost of investors' rights protection, but it is easy to lead to insurance institutions in practice due to lack of financial support, it is difficult to fully perform the responsibility of obtaining evidence, hiring experts and so on. Thus, the quality of litigation is affected and the legislative goal of protecting the legitimate rights and interests of investors cannot be achieved. The staff of insurance institutions and public interest lawyers can not rely on the abstract "public interest" as an incentive for a long time, and insurance institutions actively exercise their rights and fully perform their duties must also rely on sufficient financial support.

ISSN: 2688-9323

4.3. The Supervision Mechanism is not Sound, and the Power of Special Representatives is Easy to Abuse

Insurance institutions lack of internal motivation to act actively, and lack of strict assessment and supervision mechanism, which leads to abuse of special representative power or inactivity in the process of litigation. There are three internal reasons why it is prone to abuse of special representative power: First, the Measures for the Administration of Securities Investor Protection Fund stipulate that the board of directors of the insured fund company has three functions of decision-making, execution and supervision, and acts as both an athlete and a judge to conduct self-resolution, self-execution and self-supervision, which is difficult to achieve the fairness and transparency of supervision and cannot guarantee the quality of supervision. It is easy to breed moral hazard such as abuse of funds for relationship compensation or insider trading. Second, the selection criteria are vague. In the selection criteria, the delineation of "the case is typically significant, has bad social impact, and has exemplary significance" and "the defendant has a certain ability to pay" is not clear enough. As the sole representative of the special representative litigation, the insured institution will represent the plaintiff to attend the court hearing, modify or abandon the litigation claims or acknowledge the litigation claims of the other party, file or abandon appeals, reach mediation with the defendant, apply for execution, etc. The litigation status is high and the autonomy is large. Third, insurance institutions and public interest lawyers and investors are not a community of interests, and there is basically no direct interest between insurance institutions and public interest lawyers and the outcome of the litigation, so the former may appear in the litigation in the negative exercise of rights, lazy performance of the situation.

The external reason why insurance institutions are prone to abuse the power of special representation lies in the absence of supervision mechanism. There are two reasons: First, there is still a lack of normative guidance or mandatory regulations to strengthen the communication and coordination between insurance institutions and investors, and it is difficult to realize the external supervision of insurance institutions by investors. In the process of litigation, insurance institutions have varying degrees of lag in the progress of the case trial, the disclosure of information, and the docking of opinions with investors, and the channels for investors to understand the case information are basically limited to the official website of China Investment and Investment Services Center. If investors are not aware of information updates in a timely manner and look up the latest announcements, they may miss important feedback and decision-making opportunities. Lack of real-time and effective channels for investors to understand, it is difficult to achieve strong external supervision of insurance institutions. Second, the current lack of rigid restrictive provisions and punitive mechanisms for the passive performance of duties and abuse of power by insurance institutions, and the lack of strict external supervision mechanisms will easily lead to the imbalance of power and responsibility. For example, the new "Securities Law" in order to supervise the securities market, greatly increased the punishment for securities violations, not only increased the "legal responsibility" chapter, but also increased the penalty multiple, the penalty ceiling, strict market entry rules, and overall increased the illegal cost. However, insurance institutions lack similar supervision and special provisions to regulate their exercise of power and perform their duties, and the external supervision and punishment mechanism is still in a state of absence.

4.4. The Litigation Incentive Mechanism is not Complete, and the Driving Force of the Parties is Insufficient

The incentive mechanism of special representative litigation is not perfect, resulting in insufficient driving force of the main body, which is mainly reflected in the insurance institutions, investors and agent lawyers. First of all, from the perspective of insured institutions, as public welfare organizations, insured institutions do not have the right to

ISSN: 2688-9323

distribute compensation, and their funds mainly come from government grants or industry co-financing. The amount of litigation objects has no impact on their economic benefits, and the quality of litigation results has no impact on their operation and management, so insured institutions lack of driving force. It is difficult to maintain the enthusiasm for investors to actively exercise their rights and fulfill their duties for a long time. Secondly, from the perspective of lawyers, under the public interest lawyer system, the lawyers entrusted by the investment service center only receive the necessary fees for the representation of securities disputes, and there is no other compensation. However, securities litigation is not a simple civil litigation case, it has the characteristics of large amount of target and high difficulty of trial, and the game with it is the high-level lawyer team hired by the listed company with high remuneration. Lawyers usually need to invest a lot of time and energy, and when the pay is not proportional to the benefit for a long time, it will lead to a lack of motivation for public interest lawyers to perform their duties negatively. From the perspective of social lawyers, if social lawyers persuade their clients to join the ordinary representative litigation, it means that their previous work may face zero results. Because after the ordinary representative litigation enters the special representative litigation, the investment service center will replace the social lawyer as the new litigation representative. As a result, social lawyers are often reluctant to persuade clients to join ordinary representative proceedings. Some scholars have found that the nine investors who withdrew in the Kangmei Pharmaceutical case listened to the advice of social lawyers, and expressly withdrew the special representative lawsuit by its social lawyers. Finally, from the perspective of individual investors, small and medium-sized investors with large amounts of individual claims will not be high, but the litigation cycle is long, the litigation is difficult, and it will take a certain amount of time and energy to initiate litigation, and they will give up safeguarding their legitimate rights and interests because they think that the gain is not worth the loss.

5. China's Securities Disputes Special Representative Litigation to Improve the Path

5.1. Improve the Procedure for Determining the Scope of Litigation Rights

5.1.1. Insurance Institutions Intervene in Advance

In representative litigation, the court's determination of the date of implementation, the date of disclosure, and the determination of the scope of the right holder basically follow the "adjudication-announcement" mode. In the Kangmei Pharmaceutical case, the Guangzhou Intermediate People's Court directly ruled the key period date of the implementation of the false statement and the disclosure date after reviewing the basic facts of the case, and issued a notice of rights registration, thus determining the scope of the right holder in the case. "Adjudication-announcement" model does have the advantage of efficiently determining the right holder, but it also emptying the function of the announcement to urge the potential right holder to exercise the right of action, resulting in investors excluded from the scope of the right holder, unable to put forward their own claims and objections in the litigation stage. In this regard, it is suggested to promote insurance institutions to intervene in litigation in advance, participate in the determination of the scope of rights holders, and voice the potential rights holders who cannot be debated. When a case starts an ordinary representative lawsuit, the people's court shall issue a notice to the insured institution, inform it of the progress of the case, and ask it for its opinion on the relevant facts determined by the scope of the right holder. If there is any objection, the court can put forward a claim on the relevant facts, and the court should also conduct a new round of review and absorb the opinions of all parties in a scientific and prudent manner before making a ruling. The Regulation on Securities Representative Litigation also affirms the practice that the insurance institution can be the object of

ISSN: 2688-9323

investigation and inquiry when the court examines the relevant facts determined by the scope of the right holder.

5.1.2. Expansion of Pre-trial Review

Not all substantive issues must be heard before they can be decided. Under the reform trend of streamlining, it is suggested to organically combine pre-trial investigation with pre-trial review, create a review space for basic facts or important disputes on the basis of pre-trial procedures, expand the content of pre-trial review of the special representative's litigation cases, and concentrate the review efforts. This approach is not intended to raise the threshold for special Representative litigation, but to create a review space for the court to determine the scope of rights holders. If the hearing procedure is set up in the pre-trial review, when the court reviews the important facts or the critical period of the case, the original defendant can provide relevant evidence and listen to the cross-examination debate between the two sides, and the court's decision on the entity dispute made accordingly should have judicial effect, and it can be directly cited in the formal trial. This approach can not only improve the accuracy of the determination of the scope of the special representative's litigation rights to a certain extent, avoid the omissions brought by a single review procedure, reduce the judicial litigation burden brought by invalid litigation, but also help to protect the litigation rights and interests of all investors, and build a more perfect review system for the determination of the scope of rights holders.

5.2. Expand the Scale of Investor Protection Subjects and Expand Sources of Capital Income

5.2.1. Expand the Scale of Insurance Institutions

In addition to the innovative function of special representative litigation, the insured institution also has traditional functions such as shareholding exercise and dispute mediation. The exercise of these functions puts forward higher requirements and tests on the working ability of the insured institution. In terms of energy, the two insurance institutions, investment service center and insurance fund company, cannot meet the litigation needs of the securities market. To solve this problem, it is suggested to expand the scale of insurance institutions. There are mainly two ways: First, insurance institutions take the initiative to absorb high-level talents, expand the size of the team, so as to improve the number of cases to undertake and improve the quality of case agents. Second, establish and promote new insurance institutions, delegate representative litigation functions to more securities institutions or social legal organizations, and equip them with strict rating standards to guide the standardized and orderly development of emerging insurance institutions.

5.2.2. Add the Subject of Dispute Resolution Responsibility

Court hearings are not the only way to resolve securities disputes, and mediation also has the ability to resolve disputes. According to the Notice of the China Securities Regulatory Commission and the Supreme People's Court on the Pilot Work of the Diversified Resolution Mechanism for Securities and Futures Disputes in some parts of the Country, the diversified resolution mechanism is applicable to tort liability disputes, and eight units, including investment service centers, insurance fund companies, and securities mediation centers, have presided over the preliminary compensation and other procedures of mediation as pilots, which can be connected with judicial proceedings. The new "Securities Law" has also added the relevant provisions of the advance compensation system. Expanding the way of securities dispute resolution can not only share the volume of litigation, but also broaden the scope of the main body of dispute resolution, so that the main body of responsibility for investor protection can be enriched.

ISSN: 2688-9323

5.2.3. Expand the Source of Fund Income of Insured Institutions

When the number of securities litigation cases is only increasing, insurance institutions gradually show a state of "willing but insufficient". Limited funds and insufficient investment in human and material resources will fundamentally affect the quality of litigation. In this regard, it is suggested to expand the sources of fund income of insured institutions in many ways, such as adding the right of compensation distribution, so that insured institutions can obtain a certain proportion of the distribution of litigation compensation as operating funds; Establish a special fund for representative litigation, and withdraw part of the amount of compensation received as a special fund; When the investor protection fund is insufficient, it is permitted to borrow from domestic banks and financial institutions in the form of guaranteeing future dues; It is allowed to accept public welfare donations from various social subjects; Set up representative commendation bonuses. These measures can not only solve the fund problem of insurance institutions, but also play an effective incentive role for many parties.

5.3. Improve the Litigation Supervision System and Strengthen the Disclosure of Punishment

5.3.1. Set up Investor Representatives to Participate in the Trial

Special representative litigation has not yet formed a strict supervision system, the exercise of special representative power lacks external supervision, and the maintenance of investors' interests lacks regulatory constraints. Therefore, it is difficult to guarantee whether the special representative litigation can achieve the purpose of establishment and truly protect the rights and interests of investors. To improve the litigation supervision system, it is necessary to actively build an effective supervision mechanism between the special representative and the investor, "interests are the best supervisor", and let interests supervise the exercise of the special representative power. In other words, as a disinterested person who exercises the right of special representation on behalf of investors, it is very important whether the insured institution can do its best to fight for the rights and interests of investors during the court proceedings. In order to supervise the court performance of the insured institution, an "investor representative" composed of investors with different degrees of damage can be set up to participate in the court hearing together with the insured institution, so that the investor representative can obtain the court information in the first time, consult the opinions of various investor groups, participate in real-time supervision and put forward suggestions in time. It is worth noting that the investor representative should include both investors and investment institutions with a large amount of damage, and small and medium-sized investors with a small amount of damage but a large number of scattered investors, so as to prevent the situation that individual groups sacrifice the rights and interests of other groups for their own interests, and try to take into account the interests of each investor group to achieve the maximum maintenance of the overall interests.

5.3.2. Improve the Relevant Provisions of the Settlement Procedure

In judicial practice, reconciliation is one of the more common ways to settle securities disputes because it can reduce the costs of the parties, improve the efficiency of the court and the parties, and enhance the harmony of the society. The scientific design of the settlement procedure is closely related to the rights and interests of investors, which has a great impact on safeguarding the rights and interests of investors and realizing the goal of establishing the special representative litigation system, and should be paid special attention to. In view of the application of the conciliation procedure in the litigation of the special representative, it is suggested to make supplementary provisions on the conciliation procedure and improve its rules and systems. If the announcement procedure and announcement period are established, the settlement conditions and mediation content will be publicized within a certain period of time before reaching a settlement, giving investors sufficient time to consider, and fully

ISSN: 2688-9323

listening to investors' opinions before making the next decision. Let investors hold the "kite line" of litigation rights, insurance institutions can have maximum freedom only under the premise of abiding by the "flying" rules.

5.3.3. Improve the Level of Information Disclosure and Strengthen Punishment

Information symmetry is the key and basic link of investor protection. In the special representative litigation, the insurance institution acts on behalf of the litigation right. Only by obtaining comprehensive, accurate and effective information in time can the investor make a scientific and rational decision on the litigation process. To this end, it is necessary to continuously strengthen the level of information disclosure in the special representative litigation, and the insurance institution, as the litigation subject of the special representative litigation, should do a good job of information disclosure in the whole litigation process. In addition to informing investors of litigation progress and major matters according to regulations, it is also necessary to strengthen communication with investors, do a good job of "uploading and issuing" media, reflect investors' voices and demands into the litigation, so that the various matters and news of the litigation are sent to investors, and ensure that communication channels are smooth, information disclosure is timely, and supervision by investors is accepted. At the same time, the external supervision of insurance institutions by social organizations should be strengthened, such as the addition of special supervisory bodies to replace the internal supervision of insurance fund companies by the board of directors, so as to form a comprehensive supervision mechanism of multiple subjects. In addition, it is necessary to set up strict punishment and supervision measures, increase the cost of abuse of power or illegal costs of insurance institutions, and strengthen external supervision.

5.4. Optimize the Litigation Incentive Mechanism to Stimulate the Enthusiasm of All Parties

5.4.1. Improve the Incentive Mechanism of Investor Protection Institutions

To solve the problems of incomplete litigation incentive mechanism and insufficient driving force in insurance institutions, it is suggested to optimize the incentive mechanism at multiple levels. In terms of the external incentive mechanism, expand the income sources of the exercise of the right of the insured institution in multiple ways, establish the work salary system of the insured institution, and allow the insured institution to collect a certain work remuneration in addition to the necessary symbolic fees in the process of special representative litigation; Give the insurance institution the right to distribute the compensation and allow the withdrawal of a certain proportion of the compensation for self-motivation; Insurance institutions are allowed to accept donations from various social parties, while enjoying certain control rights; The insured institution adopts the flexible budget system, so that the number of litigation cases and the trial results of the insured institution are directly related to the budget income of the insured institution in the next year, and the motivation for filing lawsuits and law enforcement output are strengthened. In terms of the internal incentive mechanism, an effective evaluation and promotion system can be set up for the internal personnel of the insurance institution, so that the number of lawsuits handled by members, the amount of compensation, the amount of settlement, etc., can be closely linked with the remuneration of members, and the enthusiasm of members to work and the enthusiasm to perform responsibilities can be increased.

5.4.2. Optimize the Litigation Incentive Mechanism for Lawyers

At present, most insurance institutions hire social public interest lawyers to participate in litigation, and securities litigation is characterized by heavy workload and high difficulty coefficient. If special representative litigation is only piloted in a short period of time, social public interest lawyers can be entrusted to carry out the litigation. However, if insurance institutions want to effectively exert the value of special representative litigation system, The

ISSN: 2688-9323

lawyer should be given the litigation compensation that is equal to his pay, and the lawyer should be mobilized to actively strive for the litigation results that are most beneficial to investors. In addition, a supervision mechanism has been established to strengthen supervision over the selection of lawyers, participation in litigation and the payment of related expenses during the litigation process. Introduce market mechanism in time, allow risk agents, give victory fees, and improve the enthusiasm of lawyers.

5.4.3. Improve the Incentive Mechanism for Investors to Protect their Rights

Based on the provisions of the pre-procedure of special representative action in China, it is necessary for some or even most investors to take active actions to have the opportunity to start special representative action. Small and medium-sized investors hesitate because of the cost problem. In order to mobilize the enthusiasm of investors to file lawsuits, we must solve the cost problem of investors in litigation, such as asking the defendant to bear the lawyer's fee in litigation request; It is a more effective incentive measure to deduct the litigation costs uniformly before distributing the successful damages, so that investors can share the litigation costs and reduce personal costs.

6. Conclusion

The Kangmei Pharmaceutical case, as the first case of special representative litigation, has strongly activated the special representative litigation system, which lets us see the guiding power of law for social life and the standardization of social subjects. The existence of special representative litigation makes investors no longer have no recourse, lawbreakers can no longer be arrogant, and securities economic activities will be strongly regulated and restricted. It is believed that with the joint efforts of all parties, the special representative litigation rules and representative litigation system will be comprehensively improved, and the format of the securities market will also take on a new look. Our research focus will also focus on the establishment of a Chinese-style representative litigation system, and gradually strengthen China's legal theory and legal norms in theoretical research and judicial practice.

Acknowledgments

Anhui University of Finance and Economics Postgraduate Research and Innovation Fund Project " Research on the improvement of special representative litigation rules under the background of the new Securities Law "(Project Approval Number: ACYC2022214).

References

[1] Liu Jing, Cui Yuanzhen: A study on the civil liability of CPA under the Special Representative Litigation system -- A case study of Kangmei Pharmaceutical, Finance and Accounting Bulletin, Vol.919(2022) No.11, p.131-135.

[2] Fan Weiguo: From supporting prosecution to public interest litigation: The dilemma and way out of investor rights protection under the implementation of the new "Securities Law" , Journal of Financial Law, (2020) No.2, p.143-153.

[3] Zhang Wusheng: Mode selection and system reconstruction of securities group litigation in China, China Law School, Vol.196(2017) No.2, p.276-302.

[4] Leng Jing: Inspiration from Kang Mei: Institutional breakthrough and unresolved issues in the first case of Securities Group Litigation, Chinese Law Review, Vol.43(2022) No.1, p.78-92.

[5] Liu Zhewei: Review and prospect of the procedure of determining the scope of rights holder in securities representative litigation -- starting from Kangmei Pharmaceutical, China Law Review, Vol.43(2022) No.1, p.106-116.

ISSN: 2688-9323

[6] Mao Liqi: On the functional positioning of Chinese securities class action, Journal of Nanjing University, Vol.59(2022) No.1, p.146-156.

[7] Liao Fuchao: Legislative evolution and thinking of representative action System in securities disputes in China, Northern Finance, Vol.499(2022) No.1, p.52-59.

[8] Xing Yuanheng: The realistic dilemma and promotion path of China's special representative system, Journal of Fujian Financial Management Institute, Vol.163(2021) No.2, p.30-35.

[9] Xiao Wei: The Role of Investor protection agencies in Securities class Actions, Securities Law Review, (2020) No.0, p.229-240.

[10] Gu Chengbo, Lin Ke: Research on securities representative litigation system, China Price, Vol.382 (2021) No.2, p.85-88.

[11] Shen Wei, Lin Dashan: Special Representative litigation system from the perspective of incentives and constraints: Based on the New Securities Law, Securities Court of Law, Vol.31(2021) No.31, p.360-387.

[12] Du Fang. Legal Thoughts on the improvement of Special Representative litigation System in Securities disputes, Journal of Beijing Vocational College of Political Science and Law, Vol.113(2021) No.1, p.83-94.