Second Study Commission

Civil Law and Procedure

2016 Questionnaire

59th Annual Meeting of IAJ – Mexico City (Mexico)

CLASS ACTIONS

In Barcelona (Spain), we decided that in 2016, our Second Study Commission will focus on class proceedings. We have limited the questionnaire to five questions and we expect to receive short but concise answers.

1. Do you have class proceedings in your jurisdiction? If so, what is the nature of those class proceedings?

Yes. In the United States of America, class actions are authorized by Federal Rule of Civil Procedure 23. Rule 23 requires that any class action meet four mandatory requirements and also fall into one of four categories of permissible class suits.

The four mandatory requirements are the following:

1. Numerosity: that there are a sufficiently large number of members of the class such that proceeding in individual litigation would be impracticable.

2. Commonality: that the claims or defenses of the class members share common issues of law and fact. Otherwise, the class action would not be more efficient.
Typicality: that the claims or defenses of the class representative is typical of the class members. This ensures that the class representative has his or her interests aligned with the rest of the class.

Adequacy: that the class representatives and class attorneys will fairly and adequately protect the interests of the class.

In addition, the type of action must fall into one of the four categories prescribed in Rule 23(b):

1. A class where there is a risk of inconsistent or varying adjudications.

2. “Limited fund” Class: where there is a risk that individual litigation could prevent other parties from vindicating their legal rights, often when a defendant will not be able to satisfy all of the potential judgments against it.

3. “Civil Rights” or “Injunctive” Class: where injunctive relief or declaratory relief is sought and the outcome will necessarily affect the class as a whole.

4. “Damages” Class: where the class seeks money damages with common questions of law or fact that predominate and the class action is the most efficient way to adjudicate the claims. This is often the mechanism for negative value suits, or suits that have too low of an expected recovery to be litigated on an individual basis.

2. What are the advantages or disadvantages to class action proceedings in your jurisdiction?

Advantages:

- Judicial Efficiency: allows multiple similar claims to be heard together, which prevents clogging the court system.
Deterrence: deters harmful behavior that might not be deterred by individual litigation alone.

Disadvantages:

- Due Process Concerns: with absent class members, there are individuals who are bound by the judgment

- Risk of Massive Judgments: with the fear of massive settlements, very few class actions actually go to trial. Many believe that the potential for a massive judgment is too powerful of an incentive for companies to settle, yielding windfalls for attorneys while the injured individuals receive little compensation.

3. Is there an access to justice component to class action proceedings in your jurisdiction?

Yes, the purpose of class actions in the United States is to cure externalities inherent in the default individual litigation model. One of those externalities is that there are some cases, known as negative value suits,

4. How is case management achieved in class proceedings in your jurisdiction?

Federal Rule of Civil Procedure 23 contains the requirements for class certification and the procedural protections that are required for a class suit. The party seeking class certification must show that the requirements of Rule 23 are met, and the court makes the decision of whether to certify or not certify the class. If the class is certified, the procedural protections of Rule 23 attach. Absent class members are protected by:

- Notice: the court must direct “appropriate notice” to class members. If the class seeks damages, notice must be given to all class members who can be “identified through reasonable efforts.” For damages suits, the notice must include the opportunity to opt out of the lawsuit.

- Adequate Representation: as part of certification, the court ensures the class representatives and their attorneys can fairly
represent the absent class members. The court itself appoints class counsel.

- Approval of Settlement: the court must approve any potential settlement in order to ensure it is fair to absent class members.

- Setting Attorneys’ Fees: the court determines reasonable attorneys’ fees.

5. If you do not have class action proceedings, how are the cases involving a large quantity of victims or involving a group of individuals with a collective interest dealt with?

N/A
Deuxième commission d’étude

Droit civil et procédure civile

Questionnaire 2016

59e Réunion annuelle de l’UIM – Mexico City (Mexico)

LES RECOURS COLLECTIFS

À Barcelone (Espagne), nous avons décidé qu’en 2016, notre deuxième commission d’étude se concentrera sur les recours collectifs. Nous avons limité le questionnaire à cinq questions et nous nous attendons à recevoir des réponses courtes, mais concises.

1. Votre droit national admet-il des recours collectifs? Dans l’affirmative, quelle est la nature de ces recours collectifs ?

2. Quels sont les avantages ou les inconvénients de la procédure de recours collectif dans votre juridiction ?

3. Existe-t-il une composante d’accès à la justice relative à la procédure de recours collectifs dans votre juridiction ?

4. Comment les recours collectifs sont-ils gérés dans votre juridiction?

5. Si votre droit national ne permet pas les recours collectifs, comment sont traités les litiges concernant un grand nombre de victimes ou impliquant un groupe de personnes ayant un intérêt collectif ?