

CLASS ACTIONS IN CHILE

A THESIS
SUBMITTED TO THE
STANFORD PROGRAM IN INTERNATIONAL LEGAL STUDIES
AT STANFORD LAW SCHOOL,
STANFORD UNIVERSITY
IN PARTIAL FULFILLMENT OF THE REQUIREMENTS
FOR THE DEGREE OF
MASTER OF THE SCIENCE OF LAW

Advised under the faculty supervision of
Professor Deborah Hensler,
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studies

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June 2011

Abstract

“Class Actions in Chile” is a descriptive study of how class actions have worked in Chile under the procedure established in 2004. The objective of the study is to provide the first comprehensive empirical description of the consumer class action procedure in the country. The aim of the paper is twofold: the first part analyzes the class action procedure and how the rejection of the entrepreneurial activity of plaintiffs’ attorneys, explicit on the congressional debate, is reflected in the current litigation of class action cases. The second part of the paper contains two case studies of class action cases that show the complex social drama behind the class actions litigation.

Regarding the first part, the aggregated data of Chilean class actions show that the consumer agency, the consumer associations and the representative groups’ cases, which are the only entities authorized to file class actions, show special features reflecting that Chilean plaintiffs are not investing in the litigation. This picture is consistent with a procedure that sets unclear incentives to fund and litigate the cases, and that sets too little disadvantages for defendants to litigate them. This lack of incentives, not clearly perceived by the first plaintiffs, is leaving Chilean class actions with unsophisticated plaintiffs’ attorneys and a resource-constrained consumer agency as the only real agents for their implementation.

The second part of this work shows that Chilean class actions present a complex scenario, where many actors have played their roles in the litigation in some unexpected ways. In particular, the cases show that agencies are not favoring plaintiffs in their cases, and that the judiciary, presented with the alternative of agencies enforcement, is reluctant to allow the pursuit of public goals, if they also imply private gains.

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