



ICLG

The International Comparative Legal Guide to:

Class & Group Actions 2015

7th Edition

A practical cross-border insight into class and group actions work

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Puerto Rico



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1 Class/Group Actions

1.1 Do you have a specific procedure for handling a series or group of related claims? If so, please outline this.

Yes; in Puerto Rico (“PR”) there are specific procedures for class actions, mass tort cases, multidistrict litigation (“MDL”) and collective actions.

Class actions are representative suits on behalf of persons similarly situated. In PR, class actions can be filed in the Courts of First Instance (“Local courts”) or the U.S. District Court for the District of PR (“Federal Court”). Class actions in Local courts are governed by Rule 20 of the PR Rules of Civil Procedure (“PRRCP”), while in Federal Court by Rule 23 of the Federal Rules of Civil Procedure (“FRCP”). Once the class action complaint is filed, the putative class has to be certified by the court. PRRCP 20.3 and FRCP 23(c)(1)(A) require courts to decide class certification “at an early practicable time.” In Local courts, PRRCP 20.1 and 20.2, and in Federal Court, FRCP 23(a) and (b), set forth the criteria plaintiffs must meet to certify a case as a class action. PRRCP 20.1 and FRCP 23(a) require plaintiffs to establish four elements: (i) the class is so numerous that joinder of all members is impracticable (“numerosity”); (ii) there are questions of law or fact common to the class (“commonality”); (iii) the claims or defenses of the representative parties are typical of the claims or defenses of the class (“typicality”); and (iv) the representative parties will fairly and adequately protect the interests of the class (“adequacy of representation”). Plaintiffs must also meet the requirements of PRRCP 20.2 or one of FRCP 23(b)’s subsections. Class certification may require discovery in order to determine its size and if the putative class meets the standard for class certification. PRRCP 20.2(c) and FRCP 23(b)(3) require proof that a class action would be superior to other methods of fairly and efficiently adjudicating the case (“superiority”), and that common questions of law or fact predominate over individual issues (“predominance”). If a class is certified, PRRCP 20.3 and FRCP 23(c) prescribe that the court must issue an order defining the class, identifying class claims, and approving class representatives and counsel. FRCP 23(g) indicates the factors the court must consider in making that appointment. PRRCP 20.3(b) and FRCP 23(c) also prescribe the content of the notice the court must direct to class members after the class is certified, explaining the nature of the action and the class member’s right to opt-out. PRRCP 20.3(c) and FRCP 23(c)(3) provide that, once a class is certified, class members are bound by any judgment unless they opt-out. PRRCP 20.4 and FRCP 23(d)

describe the court’s authority to issue orders controlling the course of proceedings. PRRCP 20.5 and FRCP 23(e) specify the terms under which a class action may be settled, dismissed, or compromised.

Mass tort litigation emerges when an event or series of related events injure a large number of persons and/or damage their property. These cases are often characterized by a combination of issues; some may provide for group litigation and others require individualized presentation. Because these factors vary from case to case, generalized rules to handle mass tort cases are difficult to formulate. The central question is whether the group of claims calls for special management. PR substantive law usually governs mass tort cases.

Furthermore, group claims involving MDL can be transferred and consolidated. When civil actions involving one or more common questions of fact are pending in different districts, such actions may be transferred to any district for coordinated or consolidated pretrial proceedings. 28 U.S.C. § 1407. If a case is not settled or dismissed in the MDL Master Case, it is remanded to the original district court for trial. MDL is governed by the Judicial Panel of MDL. 28 U.S.C. § 1407.

Group claims can also be aggregated into collective actions. The most common of these actions are brought under the Fair Labor Standards Act, which mimic class actions under PRRCP 20.2(c) and FRCP 23(b)(3), and have an opt-in procedure. 29 U.S.C. § 216(b).

1.2 Do these rules apply to all areas of law or to certain sectors only e.g. competition law, security/financial services? Please outline any rules relating to specific areas of law.

Yes; the PRRCP and FRCP apply to all areas of law. Particular statutory framework and specific case management procedures apply to antitrust, securities, employment discrimination, intellectual property, Comprehensive Environmental Response, Compensation and Liability Act (“CERCLA”) and Racketeer Influenced and Corrupt Organizations Act (“RICO”) litigation. Moreover, Act 118 of June 25, 1971, PR Laws Ann. Tit. 32, § 3341 (“Act 118”), recognizes the right to consumers of goods and services and/or the Commonwealth of PR, through its agencies, dependencies and instrumentalities in their capacity of *parens patriae*, to file a class action on behalf of said consumers for compensatory damages and/or injunctive relief; but the requirements of PRRCP 20 must still be satisfied.

1.3 Does the procedure provide for the management of claims by means of class action (where the determination of one claim leads to the determination of the class), or by means of a group action where related claims are managed together, but the decision in one claim does not automatically create a binding precedent for the others in the group, or by some other process?

In Local courts, adjudication of claims of a class certified under PRRCP 20.2(a) or 20.2(b) has a binding effect on class members; whereas, the adjudication of claims of a class certified under PRRCP 20.2(c) binds class members who did not opt-out. In Federal Court, adjudication of claims of a class certified under FRCP 23(b)(1) or 23(b)(2) has a binding effect on class members; while the adjudication of claims of a class certified under FRCP 23(b)(3) binds class members who did not opt-out. In the context of mass tort cases and/or MDL, related claims are managed together, but the decision in one claim does not automatically bind others in the group. However, determinations by the MDL Master Case have legal and practical consequences on coordinated or consolidated cases.

1.4 Is the procedure ‘opt-in’ or ‘opt-out’?

The right to opt-out of a class action exists where provided by statute, or where otherwise required by law. In Local courts, the procedure is opt-in when the class is certified under PRRCP 20.2(a) or 20.2(b); whereas, if the class is certified under PRRCP 20.2(c), members will be given notice of the action and opportunity to opt-out. In Federal Court, the procedure is opt-in when the class is certified under FRCP 23(b)(1) or 23(b)(2); while, if the class is certified as a FRCP 23(b)(3), members will receive notice of the action and opportunity to opt-out.

1.5 Is there a minimum threshold/number of claims that can be managed under the procedure?

No. To the extent the action satisfies the requirements of PRRCP and/or the FRCP, multiple claims may be joined in the pleading.

1.6 How similar must the claims be? For example, in what circumstances will a class action be certified or a group litigation order made?

Putative class plaintiffs must satisfy the four-prong test for certification: numerosity; commonality; typicality; and adequacy of representation. The numerosity requirement is generally satisfied when the class is so numerous or that joinder of all members is impracticable. Commonality requires common questions to be resolved for most of the class members. This is satisfied when a question of law and fact linking members may be solved in an identical manner, even if the individual class members are not identically situated, and where there are similarities in the theories and remedies. The commonality threshold is met when there is at least one issue whose resolution will affect a significant number of class members. Typicality is satisfied where the claims or defenses of the representative plaintiffs are typical of the claims or defenses of the class. Adequacy of representation requires the representative plaintiffs to fairly and adequately protect the interests of the class.

1.7 Who can bring the class/group proceedings e.g. individuals, group(s) and/or representative bodies?

Class actions can be filed by associations, representative bodies or individuals. A member of the putative class who has standing to sue and meets the requirements of typicality and adequacy may serve as class representative.

1.8 Where a class/group action is initiated/approved by the court must potential claimants be informed of the action? If so, how are they notified? Is advertising of the class/group action permitted or required? Are there any restrictions on such advertising?

In Local courts, notice is only required when the class is certified under PRRCP 20.2(c), since class members have a right to opt-out. In Federal Court, certification under FRCP 23(b)(3) mandates notice and opt-out rights for all class members, whereas in a class action brought under FRCP 23(b)(1) or FRCP 23(b)(2) individual notice is not mandatory. The notice method must be the best practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort. PRRCP 20.3(b) and FRCP 23(c)(2)(B). In Local courts, attorneys must comply with Canons 34 and 36 of the Canons of Professional Ethics, which stringently regulate publicity and advertisement by attorneys. In Federal Court, attorneys must conform to the Model Rules of Professional Conduct of the American Bar Association (“ABA”), particularly Rule 7.3, which allows advertising during the pre-certification stages of the proceedings.

1.9 How many group/class actions are commonly brought each year and in what areas of law, e.g. have group/class action procedures been used in the fields of: Product liability; Securities/financial services/shareholder claims; Competition; Consumer fraud; Mass tort claims, e.g. disaster litigation; Environmental; Intellectual property; or Employment law?

Unfortunately, such statistics are not readily available. Class and group actions are brought in practically all areas of law, including: negligence claims; nuisance claims; negligent entrustment claims; consumer protection-related claims, including those involving defective products; trespass claims; antitrust violations; securities violations; environmental claims; breach of contract claims; toxic and mass torts; failure to provide sufficient warnings; and insurance.

1.10 What remedies are available where such claims are brought e.g. monetary compensation and/or injunctive/declaratory relief?

Monetary, injunctive and/or declaratory reliefs are available. The remedies requested will influence class certification. In Local courts, class actions certified under PRRCP 20.2(a)(1) seek declaratory and/or injunctive relief, but no monetary compensation; PRRCP 20.2(a)(2) usually seek monetary compensation; PRRCP 20.2(b) usually seek declaratory and/or injunctive relief, and ordinarily do not involve monetary compensation; and under PRRCP 20.2(c) mostly seek monetary compensation. In Federal Court, class actions under FRCP 23(b)(1) usually seek monetary compensation; FRCP 23(b)(2) usually seek declaratory and/or injunctive relief, and ordinarily do not involve monetary compensation; and under FRCP 23(b)(3) mostly seek monetary compensation.

2 Actions by Representative Bodies

2.1 Do you have a procedure permitting collective actions by representative bodies e.g. consumer organisations or interest groups?

Yes; please see the response to question 1.2 and the discussion on Act 118.

2.2 Who is permitted to bring such claims e.g. public authorities, state-appointed ombudsmen or consumer associations? Must the organisation be approved by the state?

Representative bodies, including associations and the Commonwealth of PR, through its agencies, dependencies and instrumentalities in their capacity of *parens patriae*, can file class actions as long as they meet the requirements of standing, typicality and adequacy in order to serve as class representatives. These organizations are typically approved by the State.

2.3 In what circumstances may representative actions be brought? Is the procedure only available in respect of certain areas of law, e.g. consumer disputes?

Please see the responses to questions 1.2 and 2.2.

2.4 What remedies are available where such claims are brought, e.g. injunctive/declaratory relief and/or monetary compensation?

Associations commonly seek declaratory and/or injunctive relief, while the government ordinarily seeks injunctive and/or monetary compensation.

3 Court Procedures

3.1 Is the trial by a judge or a jury?

Class cases in Local courts are tried before a judge. In Federal Court, the right to a jury trial depends on the nature of the claims. *Medina v. Triple-S Vida, Inc.*, 832 F. Supp. 2d 117, 199 (D.P.R. 2011). The Seventh Amendment of the U.S. Constitution provides for a jury trial when the plaintiff demands legal remedies. *Id.* Conversely, a “jury trial would be unsuitable where the nature of the claim being requested is strictly equitable in nature.” *Id.* The Seventh Amendment right to jury trial does not apply to actions against the U.S. Government, unless the government consents. *Lehman v. Nakshian*, 453 U.S. 156, 160 (1981). Class actions can also be tried before an arbitrator, but only when the parties expressly included class actions in the arbitration clause of a contract.

3.2 How are the proceedings managed e.g. are they dealt with by specialist courts/judges? Is a specialist judge appointed to manage the procedural aspects and/or hear the case?

In Local courts, proceedings are managed by a judge. However, in complex cases parties may request the appointment of a special master to manage the proceedings. In Federal Court, class actions are presided by a district judge, who may designate a magistrate judge to conduct, with the consent of the parties, any and all proceedings in a jury or nonjury civil matter. *L. Cv. R. 73* (D.P.R. 2014).

3.3 How is the group or class of claims defined e.g. by certification of a class? Can the court impose a ‘cut-off’ date by which claimants must join the litigation?

In class actions, a putative class must be certified by the court for the case to proceed as a class action. A determination whether to

certify a class must be made “at an early practicable time.” PRRCP 20.3 and FRCP 23(c)(1)(A). The certification order must identify the class, claims, issues, and defenses, and identify class representatives and counsel. The notice must be directed to all class members certified under PRRCP 20.2(c) or FRCP 23(b)(3), stating, among other things, that the court will exclude from the class any member who opts-out and indicating when and how members may elect to be excluded. PRRCP 20.3(b) and FRCP 23(c)(2)(B).

3.4 Do the courts commonly select ‘test’ or ‘model’ cases and try all issues of law and fact in those cases, or do they determine generic or preliminary issues of law or fact, or are both approaches available? If the court can order preliminary issues do such issues relate only to matters of law or can they relate to issues of fact as well, and if there is trial by jury, by whom are preliminary issues decided?

The “test” or “model” approach in class actions does not apply because it consists of only one case, where the result is binding to all class members. Early in the case, courts can preliminarily make rulings of law and facts addressing jurisdiction and class certification issues. In mass tort cases and MDL, courts endorse “test cases” or “bellwether trials” to determine the nature and strength of the claims, whether they can be fairly developed or litigated on a group basis and what range of values the cases may have if resolution is attempted on a group basis. In bench cases, issues of law and fact are decided by the court, whereas in jury cases, issues of law are decided by the court and issues of fact are adjudicated by the jury.

3.5 Are any other case management procedures typically used in the context of class/group litigation?

Courts issue appropriate orders in dealing with class actions including: dividing classes into subclasses; issuing case management orders; prescribing measures to prevent complications; requiring notice; protecting class members; imposing conditions on representative parties or intervenors; requiring amendment of pleadings to eliminate allegations about representation of absent persons; and dealing with other procedural matters. PRRCP 20.3 and 20.4; FRCP 23(c)(3)(5) and 23(d)(1). Similar orders are issued in mass tort cases and MDL. The liability and damages phase may also be bifurcated.

3.6 Does the court appoint experts to assist it in considering technical issues and, if not, may the parties present expert evidence? Are there any restrictions on the nature or extent of that evidence?

Courts rarely appoint experts in class and group actions. Experts are usually retained by parties to assist with technical issues. The use of expert witnesses and presentation of opinion testimony is subject to the applicable rules of evidence.

3.7 Are factual or expert witnesses required to present themselves for pre-trial deposition and are witness statements/expert reports exchanged prior to trial?

Yes. Parties are required to make fact and expert witness disclosures, including written statements and expert reports. PRRCP 37.1; FRCP 26(a)(1)(A)(i) and 26(a)(2)(A)-(B). Opposing parties may take depositions of fact and expert witnesses.

3.8 What obligations to disclose documentary evidence arise either before court proceedings are commenced or as part of the pre-trial procedures?

Discovery obligations arise as part of the pre-trial proceedings. In Local courts, discovery is governed by PRRCP 23-27; and in Federal Court by FRCP 26-37. Documents, electronically stored information, and tangible things that might be used to support claims or defenses will have to be produced, as well as any other evidence requested by opposing parties.

3.9 How long does it normally take to get to trial?

It is well-settled that “[v]ery few class actions go to trial.” *In re PolyMedica Corp. Securities Litigation*, 432 F.3d 1, 17 n. 20 (1st Cir. 2005)(certified class actions settle 90% of the time). Class actions that do not settle take years to get to trial. Some factors to consider are the number of parties, the complexity of issues, the length of time the court takes to decide pre-trial issues, appeals, etc.

3.10 What appeal options are available?

Appellate review for cases initiated in the Local courts can be sought within 30 days after the entry of an order, resolution or judgment. PRRCP 52. Appellate review can be sought for abuse of discretion of the trial court’s decision regarding the class certification or decertification, assessment of the pleadings or evidentiary rulings. In Federal Court, parties may appeal a district court’s decision granting or denying class certification through an interlocutory appeal, meaning that a petition for permission to appeal must be filed with the Circuit clerk within 14 days after the order is entered. FCPR 23(f). In both Local and Federal Court, judgments can be appealed within 30 days after date of entry of judgment.

4 Time Limits

4.1 Are there any time limits on bringing or issuing court proceedings?

Yes; claims are subject to the applicable statutes of limitations, or repose.

4.2 If so, please explain what these are. Does the age or condition of the claimant affect the calculation of any time limits and does the court have discretion to disapply time limits?

In Local court, time limits will depend on the nature of plaintiffs’ claims, which are governed by the applicable statutes of limitations. In Federal Court, time limits will depend on how the court acquired subject matter jurisdiction over the case. If the action is brought under federal question jurisdiction, 28 U.S.C. § 1331, the statutes of limitations are governed by the Constitution, laws, or treaties of the United States under which the plaintiff is seeking relief. In the absence of a federal statute of limitations, courts have applied the analogous state statute to the federal cause of action. *Fernández v. Chardón*, 681 F.2d 425 (1st Cir. 1982). In actions brought under diversity jurisdiction, 28 U.S.C. § 1332, statutes of limitations are governed by PR law. *Vargas-Ruiz v. Golden Arch Development, Inc.*, 283 F. Supp. 2d 450 (D.P.R. 2003). In tort cases under PR law, the statute of limitations is tolled in the case of minors or disabled persons, while their minority of age or disability lasts. *Cintrón-*

Rivera v. Borders Groups, Inc., 555 F. Supp. 2d 273 (D.P.R. 2006). Neither Local nor the Federal Court has discretion to waive or disapply the time limits.

4.3 To what extent, if at all, do issues of concealment or fraud affect the running of any time limit?

Concealment or fraud tolls the limitations period. When the limitations period is tolled due to fraudulent concealment of facts, tolling ceases when those facts are, or should have been, discovered by the plaintiff. *Credit Suisse Securities (USA) LLC v. Simmonds*, --- U.S. ---, 132 S. Ct. 1414, 1420 (2012).

5 Remedies

5.1 What types of damage are recoverable e.g. bodily injury, mental damage, damage to property, economic loss?

All types of damages are recoverable. In class actions, however, individual issues of fact and damages are potential complications when addressing the question of predominance, and create hurdles to class certification. *Amchem Products, Inc. v. Windsor*, 521 U.S. 591, 594 (1997).

5.2 Can damages be recovered in respect of the cost of medical monitoring (e.g. covering the cost of investigations or tests) in circumstances where a product has not yet malfunctioned and caused injury, but it may do so in future?

The PR Supreme Court has not addressed this issue. However, in the absence of product malfunction and related injury, costs of medical monitoring are generally not recoverable. The U.S. Supreme Court has indicated that case law from other states authorizing recovery for medical monitoring for asymptomatic plaintiffs do not endorse lump-sum recovery of medical monitoring costs, but have instead suggested, or imposed, special limitations on that remedy. *Metro-North Commuter R. Co. v. Buckley*, 521 U.S. 424, 440-441 (1997).

5.3 Are punitive damages recoverable? If so, are there any restrictions?

In Local courts, punitive damages are prohibited. In Federal Court, punitive damages are authorized by statute and recoverable in certain type of claims. The types of class actions under FRCP 23(b)(1), 23(b)(2), and 23(b)(3), constitute an important factor in analyzing whether punitive damages are appropriate.

5.4 Is there a maximum limit on the damages recoverable from one defendant, e.g. for a series of claims arising from one product/incident or accident?

No. However, certain local and federal statutes, like the Truth in Lending Act, may explicitly limit the maximum potential recovery. 15 U.S.C. § 1640(a)(1)(B). Class actions under FRCP 23(b)(1)(B) are advised when numerous claimants seek relief from a “limited fund.”

5.5 How are damages quantified? Are they divided amongst the members of the class/group and, if so, on what basis?

Quantification depends on the nature of the class action claims, and the damages proven at trial. If the case settles, the court-approved agreement will set forth the guidelines for distribution of payments

and/or coupons, proof of claims, release, etc. Courts have discretion when distributing class action funds. If there are residual funds after payments have been made to class members, courts have applied the *cy pres* doctrine (*fluid recovery*); where unclaimed funds are distributed in a way that best compensates the class members, while promoting the public policy that inspired the legitimate objectives of the class. *In re San Juan Dupont Plaza Hotel Fire Litigation*, 687 F. Supp. 2d 1 (D.P.R. 2010); Act 110 of June 7, 1973, PR Laws Ann. Tit. 23, § 1017.

5.6 Do special rules apply to the settlement of claims/proceedings e.g. is court approval required?

Yes; court approval is required and special rules apply to settlement proceedings and notification of class settlement. PRRCP 20.5 and FRCP 23(e).

6 Costs

6.1 Can the successful party recover: (a) court fees or other incidental expenses; and/or (b) their own legal costs of bringing the proceedings, from the losing party? Does the 'loser pays' rule apply?

In Local courts, the judge may not award fees to a prevailing party unless a statute explicitly includes fee-shifting provisions. In the absence of statutory fee-shifting provisions, courts have authority to award attorney's fees against a party who has acted with temerity. In cases brought under Act 118, the order or judgment shall impose, among other things, a reasonable amount not less than 25% for attorney's fees, plus legal interest from the moment the damage was caused and costs of the proceedings. In Federal Court, the "American" approach to require each party to bear their own attorney's fees does not apply to class actions. Instead, FRCP 23(h) governs the award of attorneys' fees in class actions. The basis and the source of said fees depend on the nature of claims and the judgment or settlement obtained.

6.2 How are the costs of litigation shared amongst the members of the group/class? How are the costs common to all claims involved in the action ('common costs') and the costs attributable to each individual claim ('individual costs') allocated?

The class representative is responsible for litigation costs. However, expenses are ordinarily advanced by the attorneys and reimbursed from any recovery.

6.3 What are the costs consequences, if any, where a member of the group/class discontinues their claim before the conclusion of the group/class action?

Please see response to question 6.2. PRRCP 25.5 and FRCP 23(e) provide that before certification of a class, a claim can be voluntarily dismissed without prejudicing putative class members. However, after certification of a class, a claim may be voluntarily dismissed only with the court's approval.

6.4 Do the courts manage the costs incurred by the parties e.g. by limiting the amount of costs recoverable or by imposing a 'cap' on costs? Are costs assessed by the court during and/or at the end of the proceedings?

No. However, if a statute or special provision provides for costs to be assessed, this will only occur at the conclusion of the proceedings. PRRCP 44 and FRPC 54(d) govern the taxation of costs.

7 Funding

7.1 Is public funding, e.g. legal aid, available?

Public funding is generally not available.

7.2 If so, are there any restrictions on the availability of public funding?

This is not applicable in PR.

7.3 Is funding allowed through conditional or contingency fees and, if so, on what conditions?

Parties may agree in writing on contingency or conditional fees. Contingent fees are not at odds with ethics, provided that the client chooses such type of agreement and the consequences are explained. *López de Victoria v. Rodríguez*, 113 D.P.R. 265 (1928). In civil cases, contingent fees are permitted as long as the following requisites are met: (i) they are beneficial to the client; (ii) the client prefers them after having been duly warned of the consequences; and (iii) are not overly burdensome.

7.4 Is third party funding of claims permitted and, if so, on what basis may funding be provided?

Under PR law, third party funding raises ethical issues and potential violation of common law doctrines such as "maintenance" or interference in the legal proceedings, and "champerty." However, attorneys are free to provide services *pro bono*.

8 Other Mechanisms

8.1 Can consumers' claims be assigned to a consumer association or representative body and brought by that body? If so, please outline the procedure.

Yes; please see responses to questions 1.1 and 2.2.

8.2 Can consumers' claims be brought by a professional commercial claimant which purchases the rights to individual claims in return for a share of the proceeds of the action? If so, please outline the procedure.

No, they cannot.

8.3 Can criminal proceedings be used as a means of pursuing civil damages claims on behalf of a group or class?

No. However, a putative class plaintiff, who suffered injuries arising of a criminal conduct, can pursue a class action for compensatory damages, subject to the procedural and statutory requirements under PR and federal law.

8.4 Are alternative methods of dispute resolution available e.g. can the matter be referred to an Ombudsperson? Is mediation or arbitration available?

Yes; alternative dispute resolution methods, such as mediation and arbitration, are available, but are not referred to an Ombudsperson. Contractual provisions that require arbitration of disputes are enforceable under the Federal Arbitration Act (“FAA”), 9 U.S.C. § 2 (arbitration agreements are “valid, irrevocable, and enforceable” except in circumstances where standard contract law would create exception). *American Express Co. v. Italian Colors Restaurant*, --- U.S. ---, 133 S. Ct. 2304 (2013). Arbitration of class action must be expressly agreed in the arbitration clause of the contract. Moreover, an arbitration provision precluding class arbitration or class litigation is enforceable, notwithstanding state law to the contrary. *AT&T Mobility LLC v. Concepción*, --- U.S. ---, 131 S. Ct. 1740 (2011). As a result, FAA pre-empts state laws that make specific categories of claims non-arbitrable. *Id.* (FAA overrides state law nullifying arbitration clause that contains waiver of class actions).

8.5 Are statutory compensation schemes available, e.g. for small claims?

Yes; specific statutory framework, including Act 118, provide for damages such as compensation, attorneys’ fees, punitive damages, interests, costs, etc.

8.6 What remedies are available where such alternative mechanisms are pursued, e.g. injunctive/declaratory relief and/or monetary compensation?

All remedies are available, unless the parties agree otherwise.

9 Other Matters

9.1 Can claims be brought by residents from other jurisdictions? Are there rules to restrict ‘forum shopping’?

Yes; as long as they comply with personal jurisdiction and venue rules. The Class Action Fairness Act of 2005 (“CAFA”), was enacted in part to address problems related to “forum shopping” and abuses of the system. Specifically, CAFA amended the diversity jurisdiction requirements under 28 U.S.C. § 1332 to allow class suits in cases with incomplete diversity where the amount in controversy, altogether, exceeds \$5,000,000.00 and the class is made up of over 100 members. 28 U.S.C. § 1332(d)(2). Additionally, the Securities Litigation Uniform Standards Act (“SLUSA”) prohibits state-law class actions that allege fraud in connection with the purchase or sale of securities traded on national exchanges. Therefore, all “covered class actions” filed in State Court are removable to Federal Court.

9.2 Are there any changes in the law proposed to promote class/group actions in Puerto Rico?

No, there have been no changes in PR law.

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