

# International Comparative Legal Guides



## Class & Group Actions 2020

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

**12<sup>th</sup> Edition**

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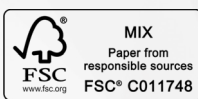
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## Class & Group Actions 2020

12<sup>th</sup> Edition

**Contributing Editors:**

**Ian Dodds-Smith, Dr. Adela Williams  
& Tom Fox, Arnold & Porter**

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## Expert Chapters

- 1** **EU Developments in Relation to Collective Redress**  
Dr. Adela Williams & Tom Fox, Arnold & Porter
- 6** **International Class Action Settlements in the Netherlands**  
Jan de Bie Leuveling Tjeenk & Dennis Horeman, De Brauw Blackstone Westbroek N.V.
- 14** **Defining and Measuring Damages in “No-Injury” Class Actions**  
Robin Cantor, Peggy Daley & Jeffrey Klenk, Berkeley Research Group, LLC
- 19** **Mind the Gap: Closing the ‘Coverage Gap’ in UK Securities Litigation**  
Andrew Hill, Fox Williams LLP
- 24** **Class Actions in France: A Unique Scheme that Requires a Tailored Defence Strategy**  
Sylvie Gallage-Alwis & Thomas Rouhette, Signature Litigation

## Q&A Chapters

- 29** **Australia**  
Clayton Utz: Colin Loveday & Andrew Morrison
- 37** **Belgium**  
Linklaters LLP: Xavier Taton & Gert-Jan Hendrix
- 47** **Brazil**  
Machado Meyer Sendacz e Opice Advogados: Eduardo Perazza de Medeiros & Ariana Júlia de Almeida Anfe
- 54** **Canada**  
Blake, Cassels & Graydon LLP: Jill Lawrie & Daniel Szirmak
- 61** **China**  
Fangda Partners: Frank Li & Rebecca Lu
- 68** **Denmark**  
NJORD Law Firm: Thomas Ryhl  
IMF Litigation Funding Services Limited: Alistair Croft
- 75** **England & Wales**  
Arnold & Porter: Dr. Adela Williams & Tom Fox
- 86** **France**  
Morgan, Lewis & Bockius UK LLP: Alexandre Bailly & Xavier Haranger
- 95** **Germany**  
Clifford Chance: Burkhard Schneider
- 105** **Hong Kong**  
Deacons: Paul Kwan & Michelle Li
- 113** **India**  
J. Sagar Associates (JSA): Ananya Kumar & Pragya Chauhan
- 119** **Israel**  
Levitan, Sharon & Co.: Peggy Sharon, Tammy Greenberg & Em-Lee Polakiewicz
- 126** **Italy**  
Portolano Cavallo: Micael Montinari & Filippo Frigerio
- 133** **Korea**  
Hannuri: Joo-young Kim & Jeong Seo
- 140** **Netherlands**  
De Brauw Blackstone Westbroek N.V.: Jan de Bie Leuveling Tjeenk & Dennis Horeman
- 147** **New Zealand**  
Russell McVeagh: Chris Curran & Polly Pope
- 154** **Poland**  
Kubas Kos Gałkowski: Agnieszka Trzaska
- 162** **Portugal**  
Campos Ferreira, Sá Carneiro & Associados: João Maria Pimentel & Ana Sofia Rendeiro
- 168** **Singapore**  
Morgan Lewis Stamford LLC: Daniel Chia & Jeanette Wong
- 177** **Switzerland**  
Eversheds Sutherland Ltd.: Peter Haas
- 184** **USA**  
Norton Rose Fulbright: Daniel M. McClure & Matthew A. Dekovich

# Poland

Kubas Kos Gałkowski



Agnieszka Trzaska

## 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 Poland we have a special procedure for handling a series or group of related claims; namely, group proceedings, which may be deemed the “Polish version” of the American class action, obviously adapted to the continental legal tradition.

Group proceedings have been functioning in Poland for 10 years and were introduced by the Act of 17 December 2009 on the Pursuit of Claims in Group Proceedings (Journal of Laws 2010.7.44 of 18 January 2010, hereinafter: “**UDRPG**” or “**the Act**”). The UDRPG was amended, after being in force for seven years, by the Act of 7 April 2017 Amending Certain Acts in Order to Facilitate the Recovery of Claims (Journal of Laws 2017.933 of 12 May 2017, hereinafter: “**Amendment No. 1**”), which entered into force on 1 June 2017. The second, minor, amendment to the UDRPG has been introduced by virtue of the Act of 4 July 2019 amending the Code of Civil Procedure and some other acts (Journal of Laws 2019.1469 of 6 August 2019, hereinafter: “**Amendment No. 2**”); this amendment will enter into force on 7 November 2019.

In principle, the UDRPG is of a purely procedural nature – it does not introduce any changes to the substantive legal basis of claims or to the principles of defendant’s liability.

Systemically, group proceedings are a parallel/optional (in relation to the traditional bilateral proceedings) mode of pursuing individual claims, which must meet certain requirements. Article 1 of the UDRPG, defining group proceedings, specifies that these are judicial proceedings in civil cases, in which claims of one kind, and based on the same or a similar factual basis, are pursued by at least 10 individuals.

Anything related to group proceedings but not regulated by the UDRPG is governed by the provisions of the Polish Code of Civil Procedure (hereinafter: “**CCP**”).

Group proceedings are based on the principle of representation, which means that during the proceedings it is the group representative who acts in his/her own name but on behalf of all group members. Particular group members are, as a rule, passive in the course of the proceedings.

Polish group proceedings are divided into specific phases (stages) that are characteristic only of these mechanisms for pursuing claims.

The preliminary stage is certification – at this stage the court decides whether the preconditions (requirements) for examination of a specific case under group proceedings are met. If the preconditions are met, the court renders its decision on examining the case in group proceedings; if the assessment is negative, the court rejects an action.

The second stage of group proceedings is the shaping of a group’s composition. It begins with the publication of an announcement of

the commencement of group proceedings, and concludes with the court’s decision on the composition of the group.

The third stage is the examination of the case. The court assesses the claims filed within the group proceedings in terms of their legitimacy by conducting single evidentiary proceedings for all the pursued claims.

The fourth stage is the enforcement proceedings.

### 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.

The UDRPG is an example of the so-called sectoral approach, which means that group proceedings are not admissible in every civil case (which qualifies for civil court proceedings), but only in certain categories of cases (the catalogue of these cases was extended by Amendment No. 1).

Group proceedings are therefore admissible in case of a claim:

- for liability for damages caused by a dangerous product;
- for tort liability (and thus also competition law infringements where the unlawful practice is classified as a tort);
- for liability for the non-performance or improper performance of a contractual obligation;
- for unjust enrichment; or
- in respect of a consumer protection claim, among others.

Prior to Amendment No. 1, group proceedings were admissible in cases concerning claims for consumer protection, liability for damage caused by dangerous products and prohibited acts (torts), with the exception of claims for protection of personal rights.

In group proceedings, as a rule, claims resulting from infringement of personal rights may not be asserted. This exclusion does not apply to the possibility of pursuing claims in group proceedings resulting from bodily injury or ill-health, including claims by the closest family members of the aggrieved party deceased as a result of bodily injury or ill-health. However, for this category of claims, pecuniary redress in group proceedings is limited to claims establishing liability of the defendant.

### 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?

The procedure under the UDRPG provides for the management of claims by means of a class action. Polish group proceedings are



constructed as a mechanism for the collective pursuit of individual claims of particular group members.

The judgment rendered in group proceedings is binding for all members of the group (those who expressly joined the group) regardless of whether it is favourable for the group or not.

If the statement of claims is limited to establishment of liability of the defendant, the judgment made in group proceedings constitutes a “prelude” – an introduction to subsequent cases for payment of specific amounts to particular group members. In such cases, the court will not re-examine the premises of the defendant’s liability, which has already been determined in the group proceedings; but will only check the amount of the claim of a group member related to the liability which was already established.

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

Polish group proceedings are conducted according to an “opt-in” model. Each member of the group should expressly indicate their will to participate in group proceedings by submitting their declaration on joining the group.

A person interested in participating in group proceedings as a group member must submit a declaration, on joining the group, to the group representative (before filing a statement of claim – if it is a person belonging to the group initiating the proceedings – or in the second phase of the proceedings). A declaration of membership in a group may not be made directly to the court without the participation of the group representative.

The UDRPG identifies the following obligatory components of a declaration on joining a group: determining the request by an entitled person; identification of circumstances which justify the request, as well as circumstances justifying membership in the group; and presentation of evidence.

It is worth noting here that group proceedings in the “opt-out” model are currently being considered for introduction into the Polish legal system – but only within a certain scope.

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

Yes, one of the requirements of group proceedings’ admissibility is that the proceedings should involve claims from at least 10 individuals.

#### 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?

The UDRPG requires that the claims of all group members be homogenous and based on the same or a similar factual basis. The premise of homogeneity of claims means that the group representative must apply to the court to grant each group member the same form of legal protection. In other words, all group members must claim the same (i.e. they must file claims of the same type, e.g. the claim for awarding specified amounts of money). Another precondition, common factual basis of the claims, means that the claims pursued by all group members in group proceedings should be based on the same (i.e. identical) or similar (equal) factual grounds. This requirement will be met if the claims made by group members arise from a single event (e.g. a tort) or are based on similar events (e.g. they result from similar contracts concluded with the same entrepreneur).

In case of pursuit of pecuniary claims in group proceedings (e.g. monetary claims for damages), an additional precondition is required, which is standardisation of all members’ claims. The standardised amount of the claims means that the group members

– as an entire group or within subgroups of at least two persons – must pursue payment of a standardised sum of money.

Initially, the UDRPG required a unification of the amount of claims to be carried out, taking common circumstances into account. Following Amendment No. 1, unifying the amount by equalising the amount of claims is sufficient.

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

Article 4 of the UDRPG provides for the so-called “representation principle”. The group representative has the sole power to bring forth a group action. The representative may be one of the members of the group, or a district (municipal) consumer ombudsman in cases concerning the protection of consumer rights (regardless of the territorial scope of action).

The UDRPG does not grant legitimacy to non-governmental organisations to initiate group proceedings (an organisation may act as a representative only if it is a group member).

The representative of the group shall conduct the proceedings in his/her own name but on behalf of all group members. Members of the group shall not be a party to the collective proceedings.

The Act requires mandatory representation of the group representative by a professional (an attorney or legal counsel).

#### 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?

After a positive certification (see question 1.1), the second phase of the procedure begins with the court ordering the publication of a notice of initiation of the proceedings.

The ordering of such a notice is compulsory in principle, although the UDRPG (Article 11(4)) allows it to be dispensed with if it appears from the circumstances of the case that all members of the group have made a declaration to join the group before the end of the first phase of the proceedings. The UDRPG sets out five mandatory elements of the notice:

- an indication of the court before which group proceedings are pending;
- an indication of the parties to the proceedings along with their subject matter (what the case is about);
- information about the possibility of joining the group, together with the deadline for submission of a declaration on joining the group;
- information about the binding effect of the judgment on the group members; and
- the rules for remuneration to the group representative’s legal counsel.

As regards the form of dissemination of the notice on the initiation of proceedings, from Amendment No. 1 onwards, the UDRPG indicates that this should take place in the most appropriate manner for a given case, so that it is possible to inform all potentially interested parties about the proceedings.

The notice may be placed on the website for the Public Information Bulletin of the competent court, on websites of parties or their proxies, or in the national or local press.

The time limit within which the persons concerned must submit their declaration of joining the group is specified by the court in the decision, but the UDRPG stipulates that it may not be less than one month or more than three months.

In practice, the advertisement is most often published in press, including online editions of selected titles.

The form of notice is usually proposed by a plaintiff who, in the statement of claims, motions for a court order of publication of the notice in a specific manner; the decision itself as to the notice on initiating group proceedings is not subject to appeal by way of complaint.

**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?**

During the first eight years of functioning of group proceedings, according to statistics provided by the Polish Ministry of Justice (<https://isws.ms.gov.pl/pl/baza-statystyczna/opracowania-wieloletnie/>), courts received a total of 265 group actions, which gives an average of 29 cases per year; however, in the earlier part of this period the trend was higher. The year 2014 was record-breaking with 41 group actions, but in subsequent years there was a decrease in the number of cases: in 2017 there were only 17 new cases; and in 2018, there were only 23.

Group proceedings before Polish courts relate to various areas of civil law in a broad sense. An important group of cases is being brought by groups of consumers (including the so-called *frankowicze* – franc debtors who concluded mortgage loan agreements denominated in, or indexed to, the Swiss franc) against banks. At least 11 group proceedings are consumer cases against insurance companies, in connection with insurance agreements – the so-called *polisolokaty* (savings insurance policies). Quite a large number of proceedings are cases in which claims resulting from tort liability, or claims against developers, are being asserted.

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

All remedies available in every civil case (both monetary compensation and/or injunctive/declaratory relief) are also available in group proceedings. There are no exclusions in this regard. In addition, the UDRPG introduces the possibility to submit a specific declaratory action for establishment of defendant's liability.

**1.11 Are there any limitations in your jurisdiction on global/cross-border class or group actions, including any limitation on the ability of international claimants to participate in such actions?**

Issues related to global/trans-border group proceedings are not regulated in the UDRPG and there are no restrictions on the participation of foreign entities as members of a group in Polish group proceedings.

A member of a group may be any person entitled to a claim covered by the group proceedings, i.e. based on the identical or same factual basis.

## 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?**

At the moment, there is no institution of representative actions under Polish law, i.e. proceedings initiated by a specific authorised entity, which is aimed at protecting the collective interest of a specific group of persons.

The protection of collective consumer interests has been entrusted to the President of the Office of Competition and Consumer Protection.

Consumer organisations (or, more broadly, non-governmental organisations) are not entitled to initiate proceedings on behalf of a specific group of people or in their interest.

Pursuant to the provisions of the CCP, non-governmental organisations may only bring forth individual actions for the benefit of a given individual (with his/her written consent) in a certain category of cases within the scope of their statutory activity; namely, cases concerning the following:

- maintenance;
- environmental protection;
- consumer protection;
- protection of industrial property rights; or
- protection of equality and non-discrimination through unjustified direct or indirect differentiation of citizens' rights and obligations.

An analogous right is vested in a labour inspector in cases concerning the determination of the existence of an employment relationship, as well as a *powiat* (city) ombudsman for consumer rights.

**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?**

In Poland, representative actions are unavailable.

**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?**

In Poland, representative actions are unavailable.

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

In Poland, representative actions are unavailable.

## 3 Court Procedures

**3.1 Is the trial by a judge or a jury?**

There is no jury in the Polish judicial system, as there is in a common law system. Civil cases are resolved by judges. Cases pending in the course of group proceedings fall within the jurisdiction of regional courts, and are heard by a three-person judicial panel.

**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?**

Cases heard in group proceedings have been transferred, under the UDRPG, to the material jurisdiction of regional courts as first instance courts (Article 3, section 1 of the UDRPG). There are 45 of them in total in Poland; these are not specialised courts, in the sense that they were not established for the purpose of dealing with group cases only, but their jurisdiction includes cases recognised by the legislator as being of a specialist nature for various reasons (e.g. with regard to the jury, social importance or value of the subject matter of the dispute).

**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?**

When issuing a decision on the consideration of a case in a group proceeding (i.e. when certifying a case), the court determines what claims it considers to be recognisable in given proceedings.

As already explained above, the decision on the notice of initiation sets out which claims are covered by the collective proceedings and a deadline by which the persons having such claims may submit (to the representative) a declaration of joining the group. This time limit is between one and three months.

**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?**

Group proceedings are not an example of a collective test or model case mechanism. Which issues are considered in group proceedings depends on the subject matter of the proceedings and the claims covered by the group action; relatively often, in group proceedings, the claim is limited to determining (establishing) the defendant's liability; in such a structured claim, the court does not have to examine all prerequisites for liability.

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

No other case management procedures shall be used in the context of group proceedings.

**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?**

The UDRPG contains no specific regulations on expert evidence. The provisions governing the issues related to expert evidence contained in the CCP are also applicable to group proceedings.

The court may appoint an expert (or an academic or scientific/research institution) to report (orally or in writing) in cases that require special expertise. The role of an expert is to

provide explanations on specialised topics in the case, and expert evidence should not, in principle, be used to establish facts meaningful to the case.

Parties may obtain an expert report (and they frequently do so in practice), but such a private expert report is not considered to be expert evidence and does not have the evidentiary value of an expert report ordered by the court. Its only function is to supplement a party's argumentation.

**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?**

Under Polish procedural provisions, there are no pre-trial depositions of factual or expert witnesses; also, witness statements or expert reports are not exchanged prior to the trial. During civil proceedings, in accordance with the principles of directness of the trial, witness evidence is admitted and heard by the court. In exceptional cases, the court may hear a witness prior to initiating the proceedings by the so-called securing of evidence. It sometimes happens that expert reports drafted on the initiative of the parties are exchanged between them prior to the trial; in particular, where the parties conduct settlement negotiations.

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

The institution of discovery is not known to Polish procedural law. There is no obligation to disclose documentary evidence before court proceedings are commenced.

As a rule, each party decides on its own what evidence to disclose and present to the court in connection with the case. A certain "surrogate" of this institution is a regulation that enables the court to obligate one of the parties to the proceedings or a third entity to present a specific document in their possession, provided that such a document constitutes evidence of a fact of substantial significance for the resolution of the case. This institution is used by the court only at the request of one party, not *ex officio*, in the course of the proceedings.

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

The time of the proceedings depends on a series of different factors, including the number of cases to be recognised by a competent court. Unfortunately, one might still say that group proceedings last too long.

**3.10 What appeal options are available?**

In group proceedings, the available appeal remedies are the same as in all civil proceedings, i.e. an appeal as a means to contest decisions as to the merits of the case and a complaint used for challenging a procedural decision. The UDRPG provides that parties are able to file complaints against the court decision on examining the case in group proceedings, or a decision rejecting the statement of claims, and the decision on the composition of the group. The complaint must be filed within seven days of the date of service of the decision with substantiation.

Parties are entitled to appeal a judgment in the first instance, in accordance with the general rules (found in the CCP), which shall be filed within 14 days of the judgment with substantiation being served. The UDRPG regulates the exceptional suspension of the deadline for filing an appeal against a judgment made in group

proceedings, if a request is made to replace the group representative after the judgment is rendered. In such a case, the deadline for an appeal may not end earlier than after two weeks from the moment the court decision concerning the replacement of the group representative becomes final.

In group proceedings, an extraordinary appellate remedy is available against the final judgment of the court of second instance as to the merits of the case (provided that the value of the subject of the dispute exceeds PLN 50,000.00) and against a decision of the court of appeals dismissing the complaint against the decision to reject the statement of claims (in general terms, the CCP, in the form of a cassation complaint to the Supreme Court). The cassation complaint is a highly formalised remedy which may be based only on the grounds enumerated in the CCP.

## 4 Time Limits

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

Procedural law does not impose time limits for initiating court proceedings. The institution of limitation periods in Polish law is related to substantive law. The provisions of substantive law determine the deadline after which, in the event of inaction of the entitled party, specific claims expire (strict time limits) or lose their ability to be enforced (limitation periods).

### 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 the absence of specific provisions governing a specific institution (e.g. a sales contract), the current general limitation period for pecuniary claims is six years; three years for claims for periodic benefits and business-related claims. In 2018, the statute of limitations was amended by introducing a change, *inter alia*, in the scope of calculating the end of the statute of limitations – in accordance with the newly introduced principle, the statute of limitations applies to the last day of a calendar year. This rule does not apply to limitation periods shorter than two years.

The Civil Code provides that it is not the age as such, but the absence of a statutory representative of a person with limited legal capacity (e.g. a minor or completely incapacitated person), that results in suspension of the limitation period for such person.

The limitation period for claims for compensation under tort liability is specifically regulated. A claim of this sort lapses, in principle, after three years of the date on which the injured party established the damage and the identity of the perpetrator. However, this period may not be longer than 10 years as of the date of the event giving rise to the damage. The limitation period for claims of a minor person to repair personal damage may lapse only after two years of the person reaching their full age.

As far as the effects of the statute of limitations on property claims are concerned, they differ from the amendment to the Civil Code of 2018 depending on whether the creditor's claim is against the consumer or not.

In the case of claims other than those by a trader against consumers, the statute of limitations on pecuniary claims has the effect that, after its expiry, the debtor may refrain from satisfying the statute of limitations, unless he/she waives the use of the objection to the statute of limitations. The statute of limitations therefore deprives the claim of the features of contestability.

With the exception of consumer claims, the court is not required to consider the consequences of lapses of limitation periods *ex officio*, but only when such a defence (objection) is raised by the opposite party. However, the court may consider the raising of such a defence as an abuse of law, in which case the court will decide on the merits of the claim as if the limitation period had not terminated.

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

The Civil Code extends the limitation periods for claims for compensation, if the damage arises from a crime. In such a case, they shall lapse after 20 years as of the date of the crime, regardless of when the affected person established the existence of damages and identified the person required to repair the same.

## 5 Remedies

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

The issues related to the scope of damages subject to indemnification are governed by the provisions of the CCP. They contain no specific definition of damage; but damages are widely considered to be an involuntary prejudice to the legally protected property/interests of the affected party. The repair of damages involves loss suffered by the affected party and the lost profits. Special rules refer to the repair of damages to a person covering both property loss and non-property harm, manifesting itself in a negative mental experience of the affected party caused by bodily injury or damage to one's health. In addition, the affected party is entitled to a claim for payment of a specific sum of money due to the non-property harm suffered (pecuniary satisfaction).

However, in group proceedings, pursuing a claim for pecuniary satisfaction is inadmissible (due to the exclusion of claims for the protection of personal rights from the objective scope of the Act, with the exception of claims resulting from bodily injury or disorderly conduct, including claims due to an immediate family member of a victim who died as a result of bodily injury or disorderly conduct). Pursuing other indicated property claims related to personal loss (e.g. for the reimbursement of treatment costs or a disability allowance) under this procedure is excessively difficult due to their individualised nature.

### 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?

Polish law imposes no general rule in this regard. If such costs are held to be the normal consequence of the event that brings about the damage (being in a causality relationship with the tort), they are recoverable.

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

Punitive damages are not recoverable. Under Polish law, compensation cannot exceed the size of the damages which were actually suffered.



**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?**

There is no such maximum limit.

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

The amount of damages suffered is determined by the claimant (based on their own or an expert's calculations) and has to be evidenced during the proceeding on general terms. In practice, a motion to admit expert evidence is frequently filed in this respect.

If claims for compensation (or other pecuniary claims) are pursued, the Act requires the group representative to define the amount of claims pursued by each member of the group in the statement of claims, and also to indicate rules for standardisation of the amount of claims pursued by the group members. Furthermore, the Act requires the court, in a judgment in such cases, to specify the exact amount to which each group or subgroup member is entitled. Consequently, the court does not award a global amount for the entire group, but links a specific amount of money to a specific member of the group/subgroup.

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

A settlement (in court) in the course of group proceedings, as well as other dispositions of the claimant (representative) – such as the withdrawal of claims or waiver, or limitation of the claim – first require the consent of more than half of the group members. In addition, the court may find settlement as inadmissible, if the circumstances of the case indicate that the act in question is contrary to the law or accepted principles of morality, leads to circumvention of the law or grossly violates the interest of the group members.

If the parties to a dispute conclude a court settlement (and the court does not find it inadmissible), the court validates the settlement (by issuing a writ of execution or *in camera*).

## 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 group proceedings, a general rule of continental law applies – the "loser pays" rule. The losing party bears the cost of the proceedings and is required to reimburse the opponent for the same. Under the Act (as well as under the CCP), there is a rule of a fixed costs of the proceedings, as opposed to the costs actually incurred by the parties (see question 6.4).

**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 group representative is the sole claimant and he/she is formally required to bear the costs of the proceedings.

The Act does not regulate the rules of redistribution of costs related to group proceedings (including costs of legal services) or any allocation to common costs and the costs attributable to each individual claim inside the group. These issues are left to be arranged between the group members.

In practice, the representative enters into an agreement with the group members governing their mutual rights and obligations related to the group proceedings, including the rules for sharing of litigation costs. One frequently used rule is the allocation of costs of proceedings between all group members in proportion to the value of claims pursued by each of them.

**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?**

The Act does not regulate these issues.

**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?**

The CCP's provisions define the costs of proceedings not as the costs actually incurred by a party, but as the costs necessary for the reasonable pursuance of rights or reasonable defence. These costs also include fees paid to the legal counsel, but may not be more than six times a specific minimum rate.

A court decides on the cost of proceedings in a decision concluding the case in a given instance.

## 7 Funding

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

Neither the UDRPG nor the CCP refer to the issue of third-party funding of claims in the proceedings. Moreover, for group proceedings, the UDRPG specifically excludes the option for both parties to demand a release from court costs or the court-appointed legal counsel.

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

See question 7.1.

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

The Act is the first piece of procedural legislation in Poland to allow for a contingency fee to the legal counsel of the group representative. However, the fee agreed by the parties may not be more than 20% of the amount awarded to the claimant.

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

Neither the Act nor the CCP refer to the issue of third-party funding of claims in the proceedings.

## 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.**

Issues relating to the admissibility of consumers to assign their claims to a consumer organisation or other body are not specifically regulated. The admissibility of such an assignment would be subject to the general rules – Article 509(1)(b) and (c) of the Civil Code. The Civil Code provides for the principle of the assignment of a claim – a creditor may transfer a claim to a third party without the consent of the debtor, unless this would be contrary to a law, a contractual reservation or the nature of the obligation.

**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.**

These issues are not regulated by Polish law.

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

Criminal proceedings may be used as a means of pursuing damages caused by a crime, but only by each individual affected party, as opposed to the group (in a collective form).

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

In a group action, parties may use mediation; according to the Act, the court may refer the parties to mediation at any stage of the case.

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

No such schemes are available.

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

Under mediation, if the parties resolve a dispute between them, a settlement is made. A settlement concluded before a mediator, following the court's approval, has the legal effect of a settlement entered before a court.

## 9 Other Matters

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

The Act does not introduce any specific regulations in this regard. Residents from other jurisdictions may bring their claims to a Polish court (if such court has jurisdiction in the case). There are no specific rules to restrict "forum shopping".

**9.2 Are there any changes in the law proposed to promote class/group actions in your jurisdiction?**

The most recent changes have been introduced by virtue of Amendment No. 2, established along with the most significant change to the Code of Civil Procedure since 2002. These alterations concern the course of the proceedings and are aimed at making them more effective; however, they have no influence on the general shape of the institution.

The vital change is the one which adjusts the content and form of courts' decisions/judgments to group proceedings which include the participation of many group members. The newly introduced Article 21 section 2a UDRPG makes it possible for a court to include the data of all group members, together with the adjudicated amounts, in an attachment to a judgment. In such a case, a judgment should refer to the list, while the list itself is not read (made public); the same change avoids the necessity of reading aloud, for example, thousands of names of group members. For the last couple of years, apart from the present class action model, the introduction of an opt-out mode for proceedings has been considered (although such proposals have not yet advanced beyond the ministerial level).



**Agnieszka Trzaska**, attorney at law, is a partner at Kubas Kos Gałkowski. She specialises in civil substantive and procedural law. She represents clients in court proceedings, including group proceedings, and provides consultancy services to commercial entities in the scope of the widely understood civil, commercial and companies law. She has extensive experience in complicated civil cases, in which problems in the scope of private international law and international commercial arbitration occur; as well as in business matters, including disputes between company shareholders.

She is always focused on implementing an effective procedural strategy, tailored to a given dispute and client. She is a specialist in the field of group proceedings. She is currently heading the team conducting group proceedings on behalf of flood victims from Sandomierz and Plock against the State Treasury and other relevant entities. Agnieszka is a co-editor of the portal on class actions: [www.ClassAction.pl](http://www.ClassAction.pl).

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Kubas Kos Gałkowski is a law firm with a well-established position confirmed by rankings. It specialises in court and arbitration proceedings, real estate law, banking and finance, companies law and trade law, bankruptcy law and enterprise restructuring, as well as energy law. Kubas Kos Gałkowski was materially involved in the process of implementing the possibility of pursuing claims in group proceedings into the Polish legal system, modelled after the American class action, from the very beginning of the legislative process of the Act of 17 December 2009 on Pursuing Claims in Group Proceedings. Kubas Kos Gałkowski is the editor of the [ClassAction.pl](http://ClassAction.pl) portal which explains the mechanisms of pursuing claims in group proceedings in Poland and globally. It also provides definitions of key terms while presenting the latest case law, bibliography and our analyses and commentaries concerning class actions.

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