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The Intervention of Third Parties Co-Owners of Collective and Diffuse Actions

La intervención de terceros cotitulares de la acción de interés colectivo y difuso

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Abstract

This research seeks to reflect on the intervention of third parties who are co-owners of the collective or diffuse action in the field of consumption and to establish according to procedural dogmatics what is the way in which they should appear in a pending process. To this end, the active legitimation of the subjects who can exercise actions of collective and diffuse interest in the field of consumption is analysed, the traditional forms of third-party intervention that case law has applied to the third party co-owner of these actions are objected, it is postulated that the correct figure is that of the co-litigant adhesive third party and the main characteristics of this type of intervention are indicated.

Keywords: *Active legitimation in actions of collective or diffuse interest; Co-holders of collective or diffuse action; Third-party intervention; Co-litigant adhesive third party.*

Resumen

La investigación busca reflexionar sobre la intervención de terceros cotitulares de la acción colectiva o difusa en el ámbito del consumo y establecer según la dogmática procesal cómo deben comparecer en un proceso pendiente. Para ello, se analiza la legitimación activa de los sujetos que pueden ejercer acciones de interés colectivo y difuso en el ámbito del consumo, se objetan las formas tradicionales de intervención de terceros que la jurisprudencia ha aplicado al tercero cotitular de estas acciones, se postula que la figura correcta es la del tercero adhesivo litisconsorcial y se señalan las principales características de ese tipo de intervención.

Palabras claves: *Legitimación activa en acciones de interés colectivo o difuso; cotitulares de la acción colectiva y difusa; intervención de terceros; tercero adhesivo litisconsorcial.*

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I. INTRODUCTION

Consumption law in Chile has undergone constant evolution, as is evident upon analysing the diverse amendments introduced to Law No. 19,496, published in the Official Gazette of March 7th, 1997. The transformation is particularly clear in the various procedures now regulated by the law for protecting consumer rights, in particular the one set up for protecting collective or diffuse interests (art. 51 *et seq.* LPDC).

This development is also evident in determining who has the capacity to be a party and who is granted active legitimation to initiate such a procedure. In fact, the original version of the LPDC did not provide for special procedures for protecting collective or diffuse interests, but instead a specific procedure for each consumer to file a claim for violation of their rights before the Local Police Court, ensuring ordinary and individual legitimation for each consumer to protect their interests. The milestone that led to the change, allowing for the protection of supra-individual interests, was Law No. 19,955, published on July 14th, 2004, which recognizes the procedural capacity of various subjects to be parties and at the same time grants them active legitimation to exercise the actions of collective or diffuse interest.

The broadening of the capacity and legitimation to exercise this type of action is, certainly, one of the most notable progress and transformations of Consumption Law in Chile. Nevertheless, the new regulation has also caused procedural problems that stem from the broadening of legitimation, the possibility that some of the subjects with active legal standing who did not originally exercise the collective and diffuse action could later intervene during the pending judicial procedure, and the quality of such intervention; which all has repercussions on the legal status applicable to the intervening party and on the procedural rights that can be exercised in the judicial process. This paper will attempt to outline these problems and directly propose a change in procedural dogmatics on third-party intervention in court.

To analyse the arising problems, we will first consider the concept of legitimation, then we will address the legitimation of the subjects dealt with in article 51 No. 1 LPDC and, later, we will deal with the intervention of third parties co-holders of the action of collective or diffuse interest in a pending process, we will describe its main characteristics and explain why it is inappropriate to apply the classic forms of third-party intervention regulated in the Civil Procedure Code

II. ON LEGITIMATION IN GENERAL

Legitimation is a classic topic of Procedural Law, and its study has always been complex. It is a procedural institution, present in all legal disputes, regardless of the subject or legal nature of the dispute. The Civil Procedure Code, which came into force on March 1st, 1903, did not include rules to regulate this institution, a gap that has been filled by doctrine[1] and case law.[2]

[1] The most modern studies on legitimation, see ROMERO (2014a), pp. 89-122. In Consumption Law, see AGUIRREZABAL (2019), pp. 40-85; CORTEZ (2014), pp. 93-112; MENESES (2017), pp. 327-380; RÍOS (2019), pp. 169-203. In other areas, see ARANCIBIA (2021), pp. 53-81; BERTELSEN (1998), pp. 139-174; BORDALÍ (2019), pp. 15-147; CORDÓN (1998), pp. 357-385; HUNTER (2023), pp. 403 *et seq.*; BERMÚDEZ (2015), pp. 158 *et seq.*

[2] Case law has developed the concept of legitimation and its classification. Among many, see CORTE SUPREMA (2022b); CORTE SUPREMA (2022a).

The meaning of legitimation is complex because it is still debated in legal doctrine[3] and all kinds of things have been said about it, ranging from it being a pointless question[4] to it being an institution with real legal utility.[5] Moreover, case law, to explain legitimation, continues to allude to the classic distinction between *legitimatio ad causam* and *legitimatio ad processum*,[6] nomenclatures that today should not be used because they bear no relation to the current concept of legitimation.[7]

In addition to its notion, there is also discussion about the procedural treatment assigned to the allegation of lack of legitimation, with differences of opinion about whether it is a prerequisite or condition for obtaining a favourable sentence (condition of the action) or whether it constitutes a genuine procedural requisite.[8]

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[3] So much so that new research on legitimation has even appeared: JUAN (2014), pp. 25-418, who points out that "...underestimating the issue of legitimation is tantamount to relegating one of the essential elements of promoting the global movement in favor of access to justice" (*ibid.* p. 20).

[4] NIEVA (2009), p. 37.

[5] On this discussion see MONTERO (1994), pp. 37-44.

[6] On the use of this nomenclature and its meaning, see CORTE SUPREMA (2012), ruling where the Supreme Court stated that: "On this matter, it should be pointed out that *legitimatio ad causam* (or procedural legitimation)—which the claimant's defense is based on— is nothing more than the capacity to act as a party in a specific process. This Court has spoken at length about these concepts in previous rulings, stating that: 'For a party to act and appear effectively in a specific proceeding, it is not enough to have the general aptitude of capacity or *legitimatio ad processum*; it is also necessary a more precise status that refers specifically to the individual proceeding in question. This is called *legitimatio ad causam* or procedural legitimation and affects the process not in its common dimension, but in its individual and specific aspects. Procedural legitimation is the special consideration that the law has, within each process, for people in a certain relationship with the litigious object, which requires that these people be listed as parties in the process in order for the procedural claim to be examined on its merits. Procedural capacity alone is not enough to formulate a claim and to oppose it in a trial, but a more precise and specific condition referring to the specific dispute itself is necessary. *Legitimatio ad causam*, then, is the legal consideration, for a particular process, of the persons who are in a certain relationship with the object of the litigation and by virtue of which it is required, in order for the substantive claim to be examined, that these persons appear as such in the process' (Supreme Court, Case 5651-2005, July 9th, 2007)". In a similar sense CORTE SUPREMA (2017b); CORTE SUPREMA (2017a).

[7] On this subject MONTERO (2014), p. 76, explains that "In our legal tradition the word *legitimatio* was used to mean something quite different to the current meaning of legitimation. Indeed, it referred to: 1.°) *Legitimatio personae*, which referred to the *legitima persona standi in iudicio*, *i.e.*, what today is known as capacity to be a party and procedural capacity, and which is currently legally resolved in arts. 6 and 7 LEC. 2.°) *Legitimatio ad processum*, an expression that referred to the cases of legal representation of individuals and necessary representation of legal entities (...). 3.°) *Legitimatio ad causam*, referring to the case of someone appearing in court claiming that the right claimed comes from having been transmitted by inheritance or by any other means. All these meanings of the word *legitimatio* do not correspond to what is understood today by legitimation, although doctrine and case law have tried to equate the old *legitimatio ad processum* with capacity and *legitimatio ad causam* with legitimation. NIEVA (2009), p. 29, also criticizes the concept.

[8] The majoritarian legal doctrine recognizes that the lack of legitimation must be alleged through a peremptory or substantive exception. In this sense, see ROMERO (2014a), p. 90; CORTEZ (2014), p.

The problem is relevant because in some legislations, especially in Latin America, the lack of legitimation has been allowed to be challenged at an early stage of the proceedings through so-called "preliminary defences". This is the case, for example, with Article 347.3 of the Civil Procedure Code of the Argentine Nation,[9] Article 133.1 No. 9 of the General Code of Procedure of Uruguay[10] and Article 337 XI of the Civil Procedure Code of Brazil[11] as well as Article 123 No. 9 of the Model Civil Procedure Code for Ibero-America.[12]

On the contrary, Chilean case law has understood that legitimation constitutes a substantive issue and that its control cannot be carried out through a procedural or dilatory defence.[13]

Regarding legitimation, DE LA OLIVA argues that it is a "quality of a legal subject consisting of being—within a given legal situation—in the position that legally justifies the recognition in their favour of a claim that they are exercising (active legitimation) or the requirement, precisely with respect to them, of the content of a claim (passive legitimation)".[14] CORDÓN explains that legitimation "always refers to a certain relationship of the subject with the substantial legal situation deduced in court, which most often takes the form of their entitlement".[15]

In the words of LIEBMAN, "legitimation is the (active and passive) entitlement to the action. The problem of legitimation consists of identifying the person to whom the interest to file an action (and, therefore, the action itself) corresponds and the person against whom it is directed".[16] "Legitimation, as a requirement for action, is a condition of the substantive ruling

168; LIEBMAN (1980), pp. 66 and 117; SATTA (1971), p. 86. Also see the classic work on legitimation by MONTERO (1994), *passim*. Only FIGUEROA & MORGADO (2013), p. 60, have argued that the lack of legitimation could be opposed as a dilatory defense by virtue of the provisions of No. 6 of article 303 CPC. Nevertheless, these authors recognize that case law has held that the exception of lack of legitimation is peremptory or substantive.

[9] Article 347.- Only the following exceptions shall be admitted as preliminary: 3. Lack of legitimation to act on the part of the plaintiff or the defendant, when it is evident, notwithstanding, if the latter circumstance fails to arise, that the judge considers it in the final decision.

[10] Article 133. Preliminary objections. 133.1 The defendant may raise the following preliminary defenses: 9) Lack of legitimation or interest when it is clear from the terms of the lawsuit itself, as well as the manifest inadmissibility of the latter.

[11] Art. 337. It is up to the defendant, before discussing the merits, to allege: XI – the absence of legitimacy or procedural interest.

[12] Art. 123. (Preliminary defenses). The defendant may raise as preliminary defenses: 9) lack of standing or interest, when it clearly arises from the terms of the claim.

[13] See CORTE SUPREMA (2022a), recital 6th; CORTE SUPREMA (2022b), recital 7th; CORTE SUPREMA (1996), recital 1st; CORTE DE APELACIONES DE SANTIAGO (1983), recital 5th; CORTE DE APELACIONES DE SANTIAGO (1992), recital 7th. In CORTE SUPREMA (2010), the Supreme Court asserts that "Active legitimation—implying nothing more than the capacity to be a party to a specific process and obtain a sentence favorable to one's claim—relates to a *question of substance, constituting a prerequisite for all action, differing from dilatory exceptions, which have as their object the correction of the procedure without affecting the substance of the action taken*..." (emphasis added).

[14] *Cfr.* DE LA OLIVA & FERNÁNDEZ (1992), p. 439.

[15] CORDÓN (2007), p. 117.

[16] LIEBMAN (1980), p. 116.

on the claim; it indicates, for each process, the fair parties, the legitimate parties, *i.e.*, the persons who should be involved so that the judge can rule on a particular matter".[17]

For us, legitimation is related to the entitlement to the situation in dispute, which enables the parties to request a ruling on the merits, that is, to rule on the request for judicial protection formulated in the process. If there is no legitimation, whether active or passive, then a basic element will be lacking in order to access favourable judicial protection.

In most cases, is not the law which determines who are the subjects with legal standing, but rather it is a problem that must be analysed in each specific case, giving content to the generic clauses used by the legislator to define the subjects with legal standing.

As CARNELUTTI explains, referring to article 81 of the *Codice di Procedura Civile*:

> "...'except in the cases expressly provided for by law, no one may claim in their own name a right belonging to another in legal proceedings'. A first interpretation of this rule suggests that the right to bring a claim in court does not belong to just anyone, but only to the right holder who asserts the claim. Nevertheless, this result must not be exact insofar as it is not necessary to have a right in order to assert it. Otherwise, only those who are right could file an action. The ownership of the right being asserted cannot, therefore, be considered necessary to legitimize the claim. To this end, it is not necessary to *have* a right, but it is enough *to possibly have one*. The claim is intended precisely to decide whether the possibility corresponds to the existence of protection".[18]

For this reason, it is the plaintiff who must affirm to be the holder of the right or legal interest he is claiming and determining that right or interest will be the object of the judicial procedure in particular. This is what Italian doctrine calls the principle of the standard correlation or coincidence between the person with legal standing to bring the claim and the right holder being asserted. Indeed, it is normal for a subject to affirm entitlement of a right or own interest (ordinary legitimation), which does not prevent the law in some cases from allowing the plaintiff to affirm a or third-party right or interest as if his own (extraordinary legitimation).

Then, during the judicial procedure, the assertion of the entitlement of the legal relationship or claimed interest must be proven. At the beginning of the process the plaintiff will assert the entitlement of the right or interest and then, during the procedural *iter*, he or she must prove, that this assertion is real.

To determine legitimation in each specific case, legitimizing situations must be considered. As ROMERO explains, there are some legitimizing situations that allow a subject to claim to be the holder of a right or legitimate interest that in a judicial procedure and to argue against the defendant. As the author explains, these legitimizing situations are the sources of the obligations mentioned in articles 1437 and 2314 of the Civil Code (contract, quasi-contract, delict, quasi-delict and the law); a certain *status* that a person may have, such as the actions of filiation that a father can exercise to have paternity recognized, or the status of spouse that allows one to bring divorce proceedings, or the nationality of a person for the purposes of exercising certain rights or legal actions; subjective right as a power or faculty that allows one to claim something against another person; the optional right with the object of requesting a

[17] LIEBMAN (1980), p. 117.
[18] CARNELUTTI (1959), p. 466.

change or modification of an existing legal situation; and the legally relevant interest, whether it has an individual, collective, or diffuse dimension.[19]

In short, the legitimizing situations[20] are multiple and must be proven in the process. When rendering the final decision, the judge must verify compliance with this requirement, which involves proving the position asserted by the plaintiff as creditor, debtor, owner, possessor, mere holder, lessee, usufructuary, consumer, shareholder, spouse, child, buyer, seller, injured party, etc.

III. ON THE LEGITIMATION TO BRING ACTIONS OF COLLECTIVE AND DIFFUSE INTEREST IN THE FIELD OF CONSUMER LAW

The traditional procedural institutions developed especially from an individualistic perspective of the judicial procedure undergo a number of reformulations when faced with a judicial procedure where collective and diffuse interests are at stake. In fact, active legitimation has certain particularities when dealing with actions of collective or diffuse interest because article 51 LPDC grants it to SERNAC, to a Consumer association constituted at least six months prior to filing the action, and which has the proper authorization from its board to do so, and to a group of consumers with a common interest affected, numbering no less than 50 individuals, duly identified.

In some of these cases—subjects with active legal standing—it can be seen that the traditional concept of legitimation developed by legal doctrine, which consists of the entitlement to a right or an interest, has been reformulated so that subjects other than the right or interest holder can act in the judicial procedure as a just party.[21]

3.1 The Legitimation of SERNAC

A more detailed analysis of each subject with active legal standing allows us to verify certain differences in relation to the type of legitimation that each subject holds.

SERNAC is a public service that aims to ensure compliance with the LPDC, granting certain powers and responsibilities, among which it is undoubtedly true to say that it is authorized to intervene in judicial proceedings. In fact, the LPDC empowers SERNAC, among other things, both to denounce and become a party to proceedings in which the general

[19] ROMERO (2014a), pp. 92-99.

[20] About this concept and its clasification, see JUAN (2014), pp. 152-189.

[21] As BARONA (2008), p. 1117, explains, there has been a "break between the concepts of subjective right and action, one considered as private law, reflecting the material object, the material legal relationship in dispute, which is alleged, understood to have been infringed and for which recourse is made to the process, and the other, detaching from substantive law, embedded in autonomous procedural law, and considering it as the right of action in the sense of going to the courts of the State, in order to set jurisdictional activity in motion is becoming more complex to maintain that only the subjective right holder who has been violated is the one who can go to the court exercising the right of action, and situations are beginning to arise in which, in an extraordinary way, those who are not holders of the material legal relationship have the possibility, when the legal system allows it, of going to the State's courts, requesting the appropriate jurisdictional protection".

interests of consumers are affected (art. 58 letter g) LPDC)[22] and to bring actions of collective and diffuse interest (art. 51 LPDC).

The concept of subjective right and interest—understood from an individual perspective—does not allow for the protection of a series of relevant legal situations, particularly those involving subjective rights and supra-individual interests. This is the case in the field of Consumption Law, where SERNAC has the power to file a lawsuit in order to safeguard these supra-individual interests. In these cases, the law confers SERNAC active legitimation and allows it to assert as its own a subjective right or legitimate interest of others (those of consumers eventually affected), producing a procedural substitution, with such legitimation being classified as extraordinary.

It is an extraordinary legitimation[23] because it is the State, through this public service and by virtue of the law, that assumes the interests of consumers as its own, regardless of the fact that SERNAC is not the holder of the substantive law relationship. In this way, there is a clear distinction between subjective rights or interests and the right to take action; a distinction which in turn allows us to differentiate between the material legal relationship—which is disputed and alleged to have been infringed—and, on the other hand, the procedural legal relationship and the autonomy of the procedural action from substantive law. In fact, in these cases the SERNAC is not the holder of the material legal relationship but the legal system, in particular article 51 LPDC, authorizes it to go to the competent courts imploring the relevant jurisdictional protection for the benefit of the consumers affected.[24]

3.2 The legitimation of Consumer Associations

Consumer Associations are also authorized by the legal system to bring actions of collective and diffuse interest. To exercise this type of protection, they must meet certain requirements, namely: i) it must be formed at least six months prior to the filing of the action and, ii) it must have the proper authorization from its board of directors.

The discussion about the kind of legitimation depends on several issues, namely: how the consumer association acts in the judicial procedure according to the law—representing some or all of its members, for the benefit of consumers belonging to a group, in the interest of the association itself, in the interest of its members, in the general interest of consumers—and also

[22] On this type of interest see FERNÁNDEZ (2023), pp. 101-152; CARRASCO (2021), pp. 3-32; DE LA MAZA & OJEDA (2017), pp. 105-140; ISLER (2013), pp. 1148-1150; POBLETE (2003), p. 283; MOMBERG (2011), pp. 235-244.

[23] This is also stated by ROMERO (2023), p. 21. BORDALÍ (2013), p. 82, states that SERNAC holds extraordinary legitimation. The aforementioned author states that "the general rule, then, is to recognize ordinary legitimation. Exceptions to this rule are cases of extraordinary legitimation. Examples of extraordinary legitimation are those held by the Municipalities and the Council for the Defense of the State for the claim of reparation of damaged environment included in Law No. 19.300 of 1994 on General Baselines of the Environment; that held by the National Consumer Service, consumer associations and a group of consumers in the procedure for the protection of collective and diffuse consumer interests..."

[24] In this regard see BARONA (2008), p. 1117.

on the evolution of the norm.[25] The criteria[26] and which of them prevails or if several or all of them converge serve to affirm the type of legitimation held by the association, which may be cases of an ordinary, extraordinary[27], representative[28] or collective[29] legitimation.

In our opinion, the law is unclear in regulating this matter because when the consumer association takes action it does not distinguish the type of interest that it could safeguard (individual, collective or diffuse, art. 8 letter e] LPDC) and, furthermore, it is unclear when regulating whether the association is acting on behalf of its members or not. In fact, the law does not distinguish the type of interest the association is acting on behalf of, which may pertain to its own or someone else's, individual, collective or diffuse interest, or in the interest of one or more of its members.

On the other hand, Article 5 LPDC states that "Consumer association is understood to be an organization formed by individuals or legal entities, regardless of any economic, commercial or political interests, whose goal is to protect, inform and educate consumers and to *represent and defend the rights of its members and of consumers who so request,* regardless of any other interests".[30] Then, Article 8, letter d) LPDC states that one of its duties is to "represent its members and exercise the actions referred to in this law in defence of those consumers that grant it the respective mandate"; and the same article, in letter e), sets forth that it must "represent both individual interest, as well as collective and diffuse interest of consumers before jurisdictional or administrative authorities, exercising the appropriate actions and motions. This activity includes individual representation of consumers in cases brought before the courts to determine compensation for damages". The situation is more confusing if we consider that article 8 letter h) allows consumer associations to carry out, "... at the request of a consumer, individual mediations".

Finally, article 51 LPDC grants consumer associations capacity and legitimation to exercise actions of collective or diffuse interest provided that they are incorporated at least six months prior to the filing of the action, and that they have the proper authorization from their board of directors to do so.

Based on the above, doubts remain as to how the consumer association acts. It could be acting in its own interest, in the interest of one or more of its members or in the interest of the collective or diffuse interest, an issue that the legislator does not regulate, differentiate or distinguish and, furthermore, confuses two different legal concepts such as legitimation and representation.[31]

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[25] Before the amendment of Law No. 21,081, the law required the authorization of the assembly. The aforementioned law modified the regulation and simplified the requirement, now requiring only the authorization of the board of directors. On this matter, for a complete analysis of the case law, see AGUIRREZABAL (2019), pp. 55-69.

[26] SAMANES (2019), p. 83; ACOSTA (1995), p. 131.

[27] BORDALÍ (2013), p. 82.

[28] ROMERO (2023), p. 21. We consider that this is also the opinion of AGUIRREZABAL (2019), pp. 60-61, because the emphasis is on adequate representativeness and its control.

[29] On this denomination see AGUIRREZABAL (2019), pp. 42 *et seq.*

[30] Emphasis added.

[31] In this sense see AGUIRREZABAL (2019), pp. 61-69; AGUIRREZABAL (2010), pp. 175-196; MENESES (2017), pp. 355-358.

Sticking too closely to the wording of articles 5 and 8 LPDC could lead to conclude that it is a case of representation (art. 5 letter d) or even of extraordinary legitimation by substitution (although the norm alludes to representation). However, the conclusion changes if the association acts in defence of the collective and diffuse interests because then, we believe that its legitimation will be extraordinary by representation, exercising a right belonging to someone else, in its own name, but in the interest of consumers. These interests must also be in line with the purpose stated in its bylaws, notwithstanding that for protecting consumers there must be adequate representation which, in current legislation, results in the authorization of the board of directors. If the association acts in its own interest, its legitimation will be ordinary because it holds the material legal relationship whose breach it is denouncing. The importance of this distinction affects the procedural requirement of adequate procedure, which will depend on the nature of the action brought, and the effects that the final and binding decision will have.

However, despite the poor regulation, consumer associations do have standing to bring actions of collective and diffuse interest, provided they meet the requirements of a certain length of time since their incorporation and the authorization of the board of directors. Furthermore, at the case law level, their actions have also been limited within the scope of the object declared in their statutes.[32] Thus, case law does not grant standing to these entities simply because they are consumer associations; they must meet certain requirements to act in a specific case as well.

3.3 The legitimation of the group of consumers affected in the same interest

The group of consumers, composed of a certain number of subjects, is also entitled to exercise actions of collective or diffuse interest. In our opinion, Article 51 No. 1, letter c) refers to two issues: on the one hand, the law grants the capacity to be an active party to the group of consumers, but not any group, but only groups made up of at least 50 consumers[33] and, on the other hand, the law grants legitimation to that group to exercise actions of collective and diffuse interest.

The type of legitimation in these cases is also debatable, especially because the solutions can be diverse depending on whether the holder of the interest involved is the group or

[32] In the case CORTE SUPREMA (2007), the Supreme Court stated: "Whereas 7: As can be seen, the law applicable to a consumer association such as the appellant expressly requires it to state its objectives or purposes, and, in compliance thereby, Anadeus stated in Article 3 of its Bylaws that its objective is to protect, inform, and educate consumers and to represent and defend the rights of its members and of consumers who so request, independently of any other interest; it then added that, as a consumer association for Social Security, it will promote the defense of the right to health, and therefore its purpose is the unrestricted defense of the individual or collective rights of health users by disseminating the provisions of consumer law and its complementary regulations, information, guidance, and education for consumers to access social security, quality preventive and curative medicine, as well as access to exercise passive rights (social security) that allow for retirement and benefits for disability, accidents, and temporary work disability, etc. (...). Whereas 8: By virtue of the foregoing reasons, in deciding that the plaintiff Anadeus does not have legal standing to bring a claim against the defendant VTR Banda Ancha S.A., on the grounds that it acted outside the scope of its purpose, the judges hearing the case did not commit the legal violations alleged in the appeal, which is sufficient grounds to dismiss the appeal".

[33] This shows that the ability to be a party is separate from substantive law and isn't linked to the idea of legal personality because the group of consumers doesn't have legal personality.

corresponds to each of the subjects that make up the group (homogeneous individual interests) and who decide to act collectively, constituting a group, precisely in order to be entitled to exercise a collective or diffuse interest action in Consumer Law.

In our opinion, this is an ordinary legitimation because each subject in the group has an interest as a consumer and does not invoke the right of others but their own. Furthermore, we consider that the fact that the group as such could be reduced due to some event or circumstance that causes it to lose that status (art. 53 B, paragraph 5° LPDC) supports the above.

IV. THE SPECIAL SITUATION OF CO-EXISTING CO-HOLDERS OF COLLECTIVE AND DIFFUSE ACTION

Although for various reasons the type of legitimation of each subject entitled to exercise the action of collective or diffuse interest in Consumer Law is debatable, it is clear that once this action is exercised by one of these subjects with legal standing, the remaining active co-holders or co-subjects with legal standing who did not appear as claimants may appear in the pending judicial process. This entails a special type of third-party intervention in the trial.

Indeed, in all these cases the law recognizes the existence of various active subjects with legal standing who can individually bring the action concerned, and do not need to act together or in unity. So, the legal system authorizes each of the subjects named in article 51 No. 1 LPDC to bring a collective or diffuse interest action, so it is a case of individual legitimation, ruling out joint legitimation. This is because it is not necessary for the active party to appear from the outset as made up of all those subjects who can bring the action, but rather indistinctly only by one of them.

The subjects with legal standing who did not initiate the lawsuit may intervene in the pending judicial procedure (art. 51 No. 3 LPDC), resulting in a special type of third-party intervention with the following characteristics:

4.1 It is a hypothesis of plural legitimation that can be exercised individually

The subjects with active legal standing to exercise the action of collective and diffuse interest in consumption law have a plural or concurrent legitimation that can be exercised individually. It is plural or concurrent because the action may be brought by any of these subjects (SERNAC, consumer associations, the group of consumers) and it is individual because the valid exercise of the action does not require joint action with the other co-subjects with active legal standing.

Thus, we consider that it is not a case of joint legitimation because in these cases all the active subjects must act jointly, all of them bringing the action or, if there is a plurality of defendants, the action must necessarily be brought against all of them.

4.2 The intervention of the third party does not generate a necessary litis consortium

In accordance with current legislation, it is possible for the collective and diffuse interest action to be brought by all the subjects with legal standing mentioned in article 51, No. 1 letter c) LPDC. Thus, the claim of collective or diffuse interest could be brought jointly by SERNAC, one or more consumer associations and a group of 50 or more consumers.

Nevertheless, this situation has never arisen in judicial practice. Usually, these actions are brought individually by any of the co-holders or subjects with active legal standing, in which case the others may subsequently intervene voluntarily in the pending judicial procedure.

In our opinion, the collective and diffuse action does not constitute a hypothesis of necessary *litis consortium*. To explain this, it should be mentioned that *litis consortium* can be classified in different ways. In the case we are analysing, we are mainly interested in the classification according to the necessity of several subjects in the process, distinguishing between necessary and voluntary *litis consortium*.[34]

Necessary *litis consortium* is defined as that process requiring the intervention from the outset of all the co-litigant and occurs in cases where the claim can only be validly brought by or against several people.[35]

On the other hand, "the basic characteristic common to all cases of voluntary *litis consortium* is that the outcome of the process and the content of the ruling may be different from each of the co-litigants; this is because each of them has independent procedural legitimacy".[36] So, the simple or optional *litis consortium* "... involves a combination of claims, different, at least subjectively, in a single process due to the connection between both",[37] but this consolidation of cases or claims is not necessary, so it is quite possible for the lawsuit to be divided and for each of the *litis consortium* to present their case separately from the others.

In accordance with the above, in the event that the subjects with legal standing as claimants mentioned in article 51, No. 3 letter c) LPDC decide to act jointly, filing a claim, we will be faced with a *litis consortium*, but not a necessary one because it is enough for just one of them to act by filing the claim for it to act validly, without the need for everyone to act jointly or jointly and severally. In other words, in the hypothesis we are dealing with, we would only be dealing with a hypothesis of necessary *litis consortium* in the event that the law requires all subjects with active legal standing to act jointly (proper necessary *litis consortium*) or that, due to substantive law reasons, the action brought cannot be brought by anyone other than several subjects (improper necessary *litis consortium*), situations that in no case are configured.

By the way, the remaining subjects with legal standing as claimants, who are also co-owners of the collective and diffuse action and who do not appear in the claim, may subsequently intervene in the pending judicial procedure, generating a quasi-necessary *litis consortium*.

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[34] An explanation of *litis consortium* can be found in ROMERO (2000); SERRA (1971), pp. 573-601; CHIOVENDA (1925), pp. 600-629; GONZÁLEZ VELASCO (1982), pp. 633-674; FAIRÉN (1955b), pp. 125-164; DÁVILA (1997), *passim*; CORTÉS (1976), pp. 369-422.

[35] This is how it is understood by ROMERO (1998), pp. 387-422; FAIRÉN (1955b), p. 137; cfr. CHIOVENDA (1925), pp. 605-606; GOZAÍNI & ZURITA (2011), pp. 141-142.

[36] ARAZI (1995), p. 122. In this sense, LORCA (2000), p. 173, points out that "purely practical considerations—above all of procedural economy—are at the root of the voluntary *litis consortium*, which is voluntarily accessible, undoubtedly an apparently simple and calm situation in which each consort maintains its own autonomy".

[37] SERRA (1971), p. 575.

4.3 Co-litigant adhesive intervention is linked to the quasi-necessary litis consortium

The quasi-necessary *litis consortium* has not been addressed by our doctrine or by case law. Foreign doctrine has paid greater attention and affirms that the quasi-necessary *litis consortium* is that case where the active or passive legitimation corresponds to several subjects but not jointly. Thus, the legal system does not require that all subjects with active legal standing jointly request legal protection nor that all subjects with passive legal standing are necessarily sued. It is a judicial procedure involving a single claim, the judge must resolve it in a single ruling that will have effects for all.[38] In other words, it is a hypothesis where the action of a single active legitimated party affects the other subjects with legal standing or co-holders of the action in question.[39]

In these cases, for the procedural relationship to be valid, it is necessary for the claim for legal protection to be brought by one of the subjects with active legal standing or that it be directed against some of the subjects with passive legal standing, the sentence being enforceable against all of them.

In the event that all subjects with active legal standing decide to claim jointly, we will be faced with an active quasi-necessary *litis consortium*.[40] And if some of the subjects with legal standing as claimants or defendants do not appear as original parties to the process, they may intervene therein, through the figure of the co-litigant adhesive third party.

In other words, "the co-litigant intervention takes place when whoever could have been a voluntary or quasi-necessary co-litigant at the initial moment of the process, did not become one due to various circumstances. This subject could have filed a claim or could have been sued; he or she could, in short, have been an original party. This person, holder of the same legal relationship that is the object of the process initiated by another or others, can subsequently request to intervene if he or she becomes aware of the pending trial".[41]

4.4 The action initially brought by a subject with active legal standing also belongs to the others, i.e. all subjects with active legal standing are co-holders of the action of collective or diffuse interest

In addition to being a case of plural or concurrent legitimation that can be exercised individually, all these subjects are holders of this single action, which is why once one of the co-subjects with legal standing exercises it, the others cannot exercise it in a new process. In other words, the action belongs to all the active co-subjects with legal standing and, for that reason, article 51, No. 3 LPDC admits that the subjects with legal standing that did not exercise it can become a party in said judicial procedure and article 53, paragraph 3° LPDC prevents those who did not initially exercise these actions from initiating a new judicial process based on the same facts.

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[38] PILLADO (2014), pp. 119-120. Also see MONTERO (2016), p. 273; FAIRÉN (1955b), pp. 143-145; FERRER (2000), p. 33.

[39] ROMERO & DÍAZ (2010), p. 324. As explained by LORCA (2000), p. 181, explains, "the distinction between necessary and quasi-necessary *litis consortium* lies in the fact that, while in the former the action of all the co-litigants is mandatory, in the latter there is no such mandatory action".

[40] On the quasi-necessary *litis consortium* see DÁVILA (1997), pp. 29-32; ORTELLS (2004), p. 175; MONTERO (1972), p. 165.

[41] OROMÍ (2007), p. 19.

Indeed, Article 51 No. 3 LPDC states that once the aforementioned lawsuit has been initiated, any subject with active legitimation may become a party to it. Likewise, any consumer who considers him or herself affected may appear for the sole purpose of reserving his or her rights. And on the other hand, article 53, paragraph 3 LPDC states that "[f]rom the publication of the notice referred to in the first paragraph, no person may initiate another lawsuit against the defendant based on the same facts, notwithstanding what is stated in the following paragraph and the provisions of article 54 C regarding the reservation of rights".[42]

From the cited and transcribed rules it is clear that this is a case in which all the subjects with active legal standing are co-holders of the collective and diffuse action, that it is a single claim, of the same right[43] that must be resolved in a single judicial process and that the final decision will have effects on both the claimant and the other co-holders of the action, regardless of whether or not they intervened in the judicial process.

4.5 The duty to consolidate the cases when there are parallel processes confirms that the action is unique and that the subjects with active legal standing are co-holders of the action.

The joint entitlement to a collective and diffuse action among the various subjects with active legal standing is also proven by the fact that if the various subjects with legal standing have individually exercised collective and diffuse action, giving rise to parallel proceedings, the law compels the court to order the consolidation of cases. In fact, article 51 No. 9 LPDC provides that actions whose admissibility is pending shall be consolidated in accordance with the general rules. For these purposes, SERNAC shall inform the judge of the fact that the admissibility of another claim for the same facts is pending.[44]

The consolidation of cases will thus be applicable when there are parallel lawsuits in which actions of collective or diffuse interest have certainly been exercised and provided that there is objective identity of the actions. For this reason, the law emphasizes that these parallel claims whose admissibility is pending must be based on the same facts.

We agree with the doctrine[45] that this is not a case of supervening consolidation of actions because in that case the court would have to rule on each of the actions brought in the various proceedings. The consolidation of cases of Article 51 No. 9 LPDC is intended for the event that various lawsuits are brought by different co-holders of the action of collective or diffuse interest based on the same facts (objective connection), to brought all of them together in one court for it to rule on that action of collective or diffuse interest in a single procedure,

[42] This situation is confirmed by Article 54 H, paragraph 4 LPDC which, when referring to the collective voluntary procedure, states that "once the procedure has been initiated, neither the Service nor those who are subjects with legal standing for this purpose in accordance with this law may exercise actions to protect the collective or diffuse interest of consumers with respect to the same facts while the procedure is in progress". On this subject, see MOMBERG & MORALES (2022), pp. 52-58.

[43] ROMERO (2014b), p. 199.

[44] The law is unclear as to whether the consolidation of cases will be admissible if there is only an identity of cause of action or if the identity refers to both the cause of action and the petitum because the rule refers to the pending declaration of admissibility of another claim for the same facts.

[45] AGUIRREZABAL (2019), p. 107.

issuing a single decision[46] that affects all the co-holders with active legal standing,[47] notwithstanding the subjective extension of effects arising from the final decision.

In other words, declaring the consolidation of cases does not generate an accumulation of actions, but rather it is a procedural mechanism that aims for a single court to judge that single action that has been brought in various judicial processes up to that moment, thus avoiding, on the one hand, contradictory decisions and, on the other, a sued supplier being sanctioned twice based on the same infractions, violating the *non bis in idem* principle.[48]

4.6 The classic types of third-party intervention regulated in the Civil Procedure Code are insufficient to explain the intervention of the third party co-holder of the action

If the subjects with active legal standing who do not appear as a claimant decide to intervene in the pending judicial process, they may do so as intervenor third party, for which they should in principle use one of the forms of third-party intervention regulated in our legal system.

As is known, third-party intervention is regulated in articles 22 and 23 CPC, recognizing the intervention as auxiliary, main or exclusionary, and independent. These classic forms of third-party intervention, whose regulation and validity date back more than 120 years,[49] are insufficient to explain the intervention of a third-party who turns out to be a co-holder of the collective and diffuse action in consumer law. Let us first analyse the characteristics of these classic forms of intervention and then describe the drawbacks that arise.

a) Auxiliary third party

The auxiliary third party, also called adhesive third party (simply-adhesive), is explained as a voluntary way of appearing in a judicial process already initiated by those subjects who do not have the status of a direct party in order to collaborate with one of the active or passive parties of the judicial process[50] or who has a convergent interest with one of the parties.[51] The third party has a legitimate interest in the outcome of the lawsuit but is does not hold the material legal relationship subject to the process.[52]

They have also been defined as "... persons who, although not direct parties to the trial, intervene in it because they have a current interest in its results, which they defend by putting

[46] That is the purpose of the consolidation of cases. In this sense see BESSER & HIDALGO (2018), p. 409; GASCÓN (2019), p. 186.

[47] In this sense BUJOSA (2023), p. 55, explains that "it is reasonable to avoid the concurrence of various collective processes with respect to the same claim, whoever the legitimate parties may have been - given that there is a quasi-necessary joinder of parties: it is not necessary for all subjects with legal standing to act, but whether they do so or not they will be affected by the sentence-."

[48] SOTO & DURÁN (2019), pp. 256-260; ISLER (2015), pp. 91-103.

[49] On this regulation see TORO & ECHEVERRÍA (1902), pp. 98-99. Except for the intervention of the independent third party that was introduced by Law No. 3390, of July 15, 1918. See CASARINO (2014), p. 32.

[50] ROMERO (2014b), p. 193.

[51] ONFRAY (2021), p. 150. Similarly MONTERO (1972), p. 33; DE LA OLIVA & DÍEZ- PICAZO (2001), p. 188.

[52] PÉREZ (2011), p. 315.

forward claims that are consistent and in harmony with those of one of the direct parties".[53] This is a subject that has its own legal interest in a conflict that is not its own but in such conditions that the defence of its own interest leads it to defend in the litigation the interest of others.[54] The interest that motivates a third party must be current and must be based on a right, not a mere expectation (art. 22 CPC).

The legal status applicable to this form of intervention has been studied by the legal doctrine,[55] stating that the third party can intervene at any time during the process and is authorized to execute all the procedural acts that correspond to the parties, to present evidence, to lodge recursive mechanisms, and to formulate incidents. The limitation is that they must abide by everything done in the trial prior to their intervention.[56]

An important question relates to the intervention of these third parties in procedural acts that involve the disposition of the object of the process, such as all those unilateral or bilateral self-compositional forms of conflict resolution such as withdrawal of the claim, acquiescence, conciliation, settlement, transaction, etc. Indeed, in such cases, as the third party holds no legal relationship between the parties, it has no right to participate in the execution of these procedural acts, *i.e.*, it cannot dispose of the object of the process. Thus, if the initial parties to the pending process reach an agreement and settle or the process is terminated through another jurisdictional equivalent, the auxiliary third party has no right to interfere in those procedural acts because it does not hold the legal relationship between the parties.[57] For this reason case law has stated that the auxiliary third party acts subordinated to the party to which he or she is contributing.[58]

In this regard, the Supreme Court has stated that: "A person who intervenes in the process looking after its legitimate interests, but subordinated to one of the main parties, is called auxiliary third party. The intervenor helps the main party in an instrumental way, adhering to its claims and without being able to act autonomously towards it. In the same sense, it can be pointed out that this is the name given to a third party who, as the holder of a related or dependent right regarding the claims made in the process, participates therein with the aim of collaborating in the procedural management of one of the parties. This is a simply-adhesive intervention by a third party who has no autonomous character in the process, since his legitimation to take part in said process is subordinate or dependent on the party with whom he cooperates or collaborates. Hence, his procedural situation depends on the behaviour of the main litigant, since he is authorized to carry out all kinds of procedural acts as long as they are compatible or do not harm the latter's interest".[59]

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[53] RODRÍGUEZ & RODRÍGUEZ (2021), p. 82. Similarly NÚÑEZ & PÉREZ (2013), p. 362; STOEHREL (2020), p. 18; CASARINO (2014), p. 30; ORELLANA (2019), pp. 50-51.

[54] COUTURE (2010), p. 170. In this sense BERNAL (2011), pp. 299-300.

[55] ROMERO (2014b), pp. 193 *et seq.*

[56] This characteristic has been repeated in various sentences. In this regard, with a quote from case law, see CORTE SUPREMA (2024b). This sentence is also interesting because it expressly states that the tercero coadyuvante cannot alter the cause of action of the plaintiff to which it contributes.

[57] ROMERO (2014b), p. 197; GONZÁLEZ VIDAL (2012), p. 58; MONTERO (1972), p. 235.

[58] CORTE SUPREMA (2024a); CORTE SUPREMA (2014); CORTE SUPREMA (2018a); CORTE SUPREMA (2017c), CORTE SUPREMA (2019a).

[59] CORTE SUPREMA (2019c). Similarly, CORTE SUPREMA (2021).

b) *Main or exclusionary third party*

This is the type of intervention made when the third party intends to claim rights that are incompatible with those disputed by the parties in a pending process.[60] In some countries, such as Spain, the legal system pays no attention to this type of intervention because it is understood that this is resolved by other institutions such as the consolidation of cases, meaning that if the third party claims rights that are incompatible with those alleged by the original parties, they must bring the relevant actions in a separate process, which must be added to the pending process. Nevertheless, our legal system allows for this voluntary intervention in article 22 CPC.[61]

The legal status of the main or exclusionary third party is different to that of the auxiliary third party because the former exercises a claim for legal protection against both parties to the pending process, claiming an individual right, incompatible with the one debated by the parties.[62] In this way, the third party exercises an action against both parties to the pending process,[63] which must be duly substantiated and resolved by the judge hearing the dispute. Once the intervention of this third party has been admitted, a supervening accumulation of cases arises because the judge must resolve both the action brought by the claimant against the defendant and the action brought by the third-party against the parties to the pending process that he/she is intervening in.

Once the third-party's intervention has been accepted, he/she may perform all the procedural acts corresponding to the parties and shall have the right to intervene in the acts of disposition of the process because, as said before, he/she exercises an action against the parties of the pending process.

c) Independent third party

The law is not clear on the intervention of the independent third party, as Article 23, paragraph 3 CPC states that "if the third party's interest is independent of that of the two parties in the trial, the provisions of the previous article shall be observed".

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[60] The incompatibility of the claim made by the third party in relation to the controversy between the parties is what characterizes this form of third-party intervention. In this sense, they explain it: RODRÍGUEZ & RODRÍGUEZ (2021), pp. 47, 82, 85, 225; CONTRERAS & DELGADO (2018), pp. 141-142; ROMERO (2014b), pp. 200-202; NÚÑEZ & PÉREZ (2013), p. 362; DELGADO & HUNTER (2024), p. 74; STOEHREL (2020), p. 20; ORELLANA (2019), pp. 50-51; CASARINO (2014), p. 30. Case law has defined exclusive third parties as "those who attend the trial claiming rights contrary to those of the main parties. Their interests are incompatible with those of the parties". On the various types of voluntary intervention by third parties, see CORTE SUPREMA (2024a).

[61] CONTRERAS & DELGADO (2018), pp. 141-142; ROMERO (2014b), pp. 200-202; NÚÑEZ & PÉREZ (2013), p. 362; DELGADO & HUNTER (2024), p. 74; STOEHREL (2020), p. 20; ORELLANA (2019), pp. 50-51; CASARINO (2014), p. 30.

[62] This is also explained by ANABALÓN (2023), p. 156; ALSINA (1963), p. 592; PALACIO (1971), p. 231; GONZÁLEZ (1991), p. 17; FENOCHIETTO & ARAZI (1983), pp. 373-374; ALVARADO (2015), p. 106; FAIRÉN (1955a), p. 175; SIGÜENZA (2021), p. 43; ROSEMBERG (1955), p. 219; PARRA (1986), p. 95.

[63] Regarding the number of actions exercised, SIGÜENZA explains that "it would involve, at least, three different actions: that which the plaintiff directed in his day against the defendant; that which the third party would direct against the plaintiff; and that which the third party would in turn direct against the defendant. On the subject, see SIGÜENZA (2021), p. 44. Similarly GONZÁLEZ PILLADO (2006), p. 148.

Case law has stated that "independent third parties are those with an interest that is autonomous from that of the parties. That is to say, their claim is not accessory to that of the parties".[64]

The doctrine defines it as one that holds "... an interest of its own, independent of that of the parties";[65] "as a claim distinct from that argued in the case by the two parties, related to the matter in dispute, but which does not weaken or disregard the interest corresponding to the claimant and the defendant";[66] as an exceptional form of voluntary intervention, which will take place when the third party seeks a negative declaration with the aim of not being affected by a legal relationship between the parties to the pending process. In short, the intervention of the independent third party seeks a negative declaration, to stop the effects of a judicial decision that affects their rights or legitimate interests.[67]

The legal status applicable to this type of voluntary intervention is similar to that explained for the main or exclusionary third party, since Article 23(3) CPC states that "the provisions of the previous article shall be observed".[68]

4.7 The intervention of the co-litigant adhesive third party: a concept that deserves recognition and allows to explain the intervention of subjects who are co-holders of the collective and diffuse action in a pending judicial process

The intervention of the co-litigant adhesive third party can be justified in two scenarios. The first consists of constituting a mechanism that allows the intervention during a pending process, of a necessary *litis consortium*, active or passive party that has been relegated, with the purpose of correcting the defective constitution of the dispute and therefore avoid the ineffectiveness of the final decision. The second hypothesis—the case we are interested in—consists of allowing the intervention in a pending process of subjects who are co-holders of the right or material legal relationship discussed in the judicial process between the original parties.

The above should not lead to confuse the integration of the dispute with the intervention of the third party.[69] In fact, in the first hypothesis we are dealing with a proper or improper necessary *litis consortium* which, by virtue of the joint legitimation held by the various subjects of the material legal relationship, all of them must appear as a claimant or defendant party. Thus, it is a material legal relationship that belongs to all the subjects who must necessarily appear as parties and the dispute will be resolved by the competent court in a single sentence that affects all the co-litigants involved as parties in the procedural relationship. If one of the subjects that must necessarily participate in the legal procedural relationship does not

[64] CORTE SUPREMA (2024a). Likewise, CORTE SUPREMA (2019b).
[65] STOHEREL (2020), p. 19. Similarly RODRÍGUEZ & RODRÍGUEZ (2021), p. 241; NÚÑEZ & PÉREZ (2013), p. 362; ONFRAY (2021), p. 151, ORELLANA (2019), pp. 50-51; CASARINO (2014), p. 32; CONTRERAS & DELGADO (2018), p. 144.
[66] ANABALÓN (2023), p. 157. DELGADO & HUNTER (2024), p. 73, highlight the autonomous interest of the third party with respect to the parties.
[67] ROMERO (2014b), pp. 202-204.
[68] Also affirmed by RODRÍGUEZ & RODRÍGUEZ (2021), pp. 241-242.
[69] The differences are explained by MONTERO (1972), pp. 40-41. In the same vein, LÓPEZ-FRAGOSO (1990), p. 28.

appear as an active or passive party, the co-litigant adhesive intervention may be a useful mechanism for integrating the dispute.

On the other hand, the second hypothesis seeks to enable a third party who is a co-holder of the action brought to participate in an already-initiated legal proceeding, be it for various reasons, including making allegations if this is still appropriate according to the progress of the proceedings, providing evidence, monitoring the management of the original claimant, expressing disagreement with the court's decision by lodging recursive mechanisms, and participating in the disposal of the case. In other words, in this hypothesis the active or passive legitimation belongs to several subjects but not jointly, so that any of them can initiate a process and the remaining co-holders or co-subjects with legal standing may intervene later, affirming such quality,[70] and the final decision on the merits will directly affect all of them.

This situation is characterized by the fact that the intervening third party could have been a claimant or defendant because it is a co-holder of the material legal relationship, but it was not, because the legal system does not require all co-holders to act jointly. In this scenario we consider that the subjects with active legal standing mentioned in Article 51 LPDC are, since all of them can bring the collective and diffuse action (quasi-necessary *litis consortium*), and those who did not initially exercise it, can subsequently intervene in the pending process (co-litigant adhesive third party).

In the field of Consumer Law, the prerogatives of the co-litigant adhesive third party once it is admitted, as co-holder of the legal relationship in question, should be broad—in principle—that is to say, the third party can carry out all the procedural acts that correspond to the claimant because the latter could have also appear as claimant. This is because the third party, once admitted, becomes a party to the judicial process, having only to accept everything done prior to its intervention.

This special form of intervention has been recognized by national doctrine. Some consider it to be different from the classic forms of intervention[71] and others associate it with the intervention of the independent third party.[72]

In our opinion, in Consumer Law, the co-litigant adhesive third party is not an auxiliary third party. In fact, the auxiliary third party is not the holder of the legal relationship in dispute between the original parties, and his/her interest in intervening derives from a legal relationship connected to the one in dispute, potentially affected by the final decision. His/her interest in intervening will be indirect. The auxiliary third party could never appear as an active or passive party in the process because it is not co-holder of the action or of the duty imputed to the defendant in the claim. Furthermore, in certain procedural actions such as acts of disposition of the process and recursive mechanisms, its procedural action is subordinated to that of the party to which it contributes.

On the other hand, the co-litigant adhesive third party is a co-holder of the material legal relationship and for that very reason their interest in intervening is direct, so the final decision will affect them directly whether or not the co-holder of the action taken intervenes in

[70] ROMERO (2014b), pp. 198-199, GONZÁLEZ VIDAL (2012), p. 64; OROMÍ (2007), p. 19; GONZÁLEZ PILLADO (2006), p. 116; PILLADO (2014), p. 32; SIGÜENZA (2021), p. 61.
[71] ROMERO (2014b), pp. 198-199; GONZÁLEZ VIDAL (2012), pp. 55-68.
[72] CONTRERAS & DELGADO (2018), p. 144.

the process,[73] and their procedural action, once admitted, is never subordinate to the active or passive party. Furthermore, the co-litigant adhesive third party could have appeared as original claimant or defendant (in which case generating a quasi-necessary active *litis consortium*) and did not because the law does not necessarily require their intervention.[74]

The co-litigant third-party defendant also differs clearly from the main or exclusionary third party. In fact, the main third party brings an action claiming rights that are incompatible with those of the parties, attributing to himself the object of the process;[75] on the other hand, the co-litigant adhesive third party is a co-holder of the substantial legal relationship and has standing to sue, so the rights he claims will be compatible with those invoked by the original claimant with whom he is a co-holder of the material legal relationship that is the object of the process.

Furthermore, the intervention of a main or exclusionary third party means a subjective and objective extension of the process, and the judge must rule on this object that is incompatible with that disputed between the original parties, generating a hypothesis of supervening accumulation of actions. On the other hand, the intervention of the co-litigant adhesive third party does not generate a supervening consolidation of actions because the action has already been brought by the claimant and the third party is co-holder of that same action.

Finally, the co-litigant adhesive third party is different to the intervention of the independent third party because the former has no own interest independent of the claimant, nor does it exercise a claim different to that of the original claimant, nor does it seek a negative declaration with the aim that a legal relationship between the parties of the pending process does not affect them. Rather, what legitimizes the co-litigant third party to intervene is that, as a co-holder of the material legal relationship, it has an identical interest to the original claimant and wants to participate in the process to assert its rights, so it does not exercise a claim for protection that is different, autonomous or distinct from that initiated by the original claimant.

Nevertheless, in the legal reality of the forum it is clear that the figure of the co-litigant adhesive third party is not used because legal practitioners are unaware of it and because a legalistic legal culture prevails in Chile,[76] which should not be an obstacle to recognizing this special form of third-party intervention.[77] Despite the fact that this type of intervention is not expressly regulated in our procedural law, we consider that it could be applied, especially if it

[73] PILLADO (2014), p. 34.

[74] In the sense explained IMBROGNO & SAYANOVICH (2011), p. 325. Similarly see LATA (2011), pp. 33-34.

[75] The incompatible nature of the main intervention has been explained by FAIRÉN (1955a), pp. 175 *et seq.*

[76] The intervention of the co-litigant adhesive third party is also recognized in foreign law, as is the case, for example, in legal systems such as the German (paragraph 69 ZPO), the Italian (art. 105 CPC) and the Spaniard (art. 13 LEC). GONZÁLEZ PILLADO (2006), pp. 36-57 and 115 *et seq.*; ROMERO (2009), pp. 176-183.

[77] It should be remembered that there are a series of procedural institutions that have been defined and characterized by doctrine and case law. This is the case, among others, with legitimation, the parties, procedural capacity, the rules governing evidence, settlement, *litis consortium*, *lis pendens*, etc.

can be shown that its theoretical and, especially, practical elaboration is useful for protecting the interests of certain third parties.

The ignorance of the co-litigant adhesive third party's intervention is evident because in most of the cases in which the collective and diffuse action recognized in the LPDC is exercised by one of the subjects with active legal standing (it is common for these actions to be brought by SERNAC[78]) the co-subjects with legal standing (usually a consumer association) subsequently wish to intervene in the pending process and have done so mostly as auxiliary third parties[79] and to a lesser extent as independent third parties.[80] It has also happened that the co-holder third party intervenes and the court simply "takes note of the appearance".[81]

The above is a legally worrying situation because these forms of intervention in court are inapplicable when the person who wishes to intervene is a co-holder of these actions and

[78] Although in some cases two subjects with active legal standing have appeared, generating a joint action from the beginning of the process. This was the case in SERNAC & CONADECUS (2016).

[79] In CORTE DE APELACIONES DE SANTIAGO (2021), the Court of Appeals of Santiago heard the appeals filed by the claimant and defendant opposing the resolution that accepted the intervention of Odecu as independent third party. The Court of Appeals determined that the claims of the adhesive third party and the purpose pursued by the consumer association are not incompatible nor independent of SERNAC, so its intervention can only take the form of a auxiliary third party.
In the same sense, in CORTE SUPREMA (2018b), the Supreme Court stated: "That from the transcribed regulations it can be concluded that third-party intervention in this special procedure is limited to those actions not incompatible with the legitimate collective interest on which the claim is based, preventing those who become parties after the start of the process from raising petitions that conflict with or oppose the supra-individual interest that is asserted through this special action and limiting third-party actions solely to those through which an attempt is made to assert claims that are in harmony with those exercised by the direct or original claimant. The above is ratified by the provisions of Article 51(7), which empowers the judge to order subjects with active legal standing to appoint a common attorney if he or she considers that the actions of the lawyers are hindering the regular progress of the trial. However, this does not imply in any case that the individual claims of the consumers affected do not find judicial protection when action is taken through the supra-individual protection procedure regulated by Act No. 19.496, since it has provided for the possibility of enervating the *erga omnes* effect of the sentence through the figure of reservation of rights that allows the affected consumer to initiate, once the ruling issued in defense of the collective or diffuse interest has been executed, an individual litigation procedure".
Similarly, in 14° JUZGADO CIVIL DE SANTIAGO (2021), ACUS (Consumer Association and Users of the South) and ANADEUS (National Association for the Defense of Consumer Rights and Social Security Users) were also admitted as zuxiliary third party.

[80] This was the case, for example, with ODECU's intervention in the trial CORTE DE APELACIONES DE SANTIAGO (2022) where it requested authorization to intervene as an independent third party, which was rejected, as was the request for reconsideration through the resolution of January 12th, 2021, on the grounds that "the arguments used by the intervener to advene to the present trial are not framed in the capacity of independent third party, otherwise incompatible with the nature of the lawsuit...".

[81] This problem occurred, for example, in the judicial proceedings before the 27th Civil Court of Santiago, in 27° JUZGADO CIVIL DE SANTIAGO (2020). The same happened before the same court: 27° JUZGADO CIVIL DE SANTIAGO (2021).

also because the protection of consumer rights depends on the legal status applicable to the third party.[82]

Consequently, it is imperative to recognize this form of third-party intervention in order to properly protect consumer rights.

4.8 The intervention of the co-holder third-party leads to a subjective extension of the process

As a result of the intervention of the co-litigant adhesive third party, a subjective extension of the process is caused,[83] leaving the actions brought by the original claimant unchanged in principle.[84] In fact, once the collective o diffuse action is exercised by one of the subjects with legal standing, the remaining co-holders may intervene in the pending judicial procedure, and we consider that this intervention will not mean an objective extension of the process, since the moment to file actions and the type of legal protection requested in each specific case will be determined in the claim.

In terms of timing, the intervention of the co-holder third party will usually only occur once the publications referred to in Article 53 LPDC have been made, *i.e.* once the motion for reconsideration on the admissibility of the claim has been dismissed, if no motion was filed when the claim was contested. Therefore, if the co-litigant adhesive intervention were accepted in our consumer legal system, it could not have as its object—in principle—to modify the cause of action or the object of the action brought by the original claimant, since the litigation would already be underway.

What does happen once third-party intervention is allowed is a subjective expansion of the process because a co-holder of the substantial legal relationship is included as an active party, who can carry out and participate in all the procedural acts that the original claimant could perform, generating a derivative or successive *litis consortium*.[85]

4.9 The law prevents the co-holders of the collective or diffuse action, if they act in the judicial procedure, from hindering the progress of the trial: the appointment of a common attorney

Once the procedure has been initiated at the request of any of these subjects with legal standing, the other active subjects who have not appeared may intervene therein (art. 51 No. 3 LPDC). In this way, the active party can be made up of several subjects, which can lead to contradictory procedural actions or actions that hinder the regular progress of the trial, in which case the law empowers the Judge to require all the subjects that make up the active party of the trial to appoint a common attorney.

In general terms, the common attorney is a "representation ordered by the law that binds the various subjects acting in the same direction, if they are pursuing the same actions, to

[82] In CORTE SUPREMA (2018b) a lawyer representing a group of people was simply considered a "party" without being assigned the status of coadjutor third-party, independent or exclusive, which at least leaves doubts about their procedural rights.

[83] GONZÁLEZ PILLADO (2006), p. 118; PILLADO (2014), p. 34.

[84] In other legal systems such as the Spanish one, it is debatable whether this figure allows for an objective extension of the process. On doctrinal positions, see OROMÍ (2007), pp. 57 *et seq.*

[85] On this denomination see ROMERO (1998), p. 387.

act jointly, constituting a single agent. The same rule applies to defendants when there are two or more and they oppose identical exceptions or defences (art. 19 CPC)".[86]

It is up to the parties to appoint the common attorney, within a period of ten days, to agree that one of the lawyers representing any of the subjects with legal standing appearing on the active side shall represent them all. In the event that the parties are unable to jointly appoint the common attorney, the law states that the appointment will be made by the Judge, who must choose one of the lawyers of the subjects listed as active parties.

The appointment of a common attorney established by the LPDC has certain particularities that differentiate it from the common attorney regulated in the CPC. Indeed, comparing article 51 No. 7 LPDC with article 12 CPC, both allow the Judge to request that the parties jointly appoint a common attorney. The difference lies in the fact that the aforementioned Article 12 allows the co-litigants to appoint any person who meets the legal requirements to represent another in court, whereas Article 51 No. 7 only allows the representative of one of the subjects with legal standing to be appointed as common attorney.

Another difference arises in the event that the parties fail to designate or fail to reach agreement on the person who will represent them in court, in which case Article 51 No. 7 states that the judge will appoint the common attorney, choosing from among the attorneys representing the various active subjects with legal standing; on the other hand, article 13 of the CPC states that the appointment will fall to a public attorney or to one of the parties that has appeared.

4.10. Some case law problems generated by the lack of recognition of co-litigant adhesive third party in the field of consumer law

The unsuitability of the type or class of third-party intervention to those who are co-holders of the collective o diffuse action and the legal status that has been applied has in many cases meant a flagrant violation of procedural rights.

a) Limitations have been placed on the possibility that a third party co-holder of the collective and diffuse action can challenge a settlement agreement

Thus, in *Itaú Corpbanca S.A. vs. Twenty-Fourth Civil Court of Santiago*,[87] the defendant challenged [*falso recurso de hecho*] the decision of the first instance court that allowed an appeal [*recurso de apelación*] of the decision approving the settlement reached by SERNAC and the defendant. The third party Odecu did not agree with the terms of the agreement and appealed against the decision approving the agreement. The Court of Appeals of Santiago accepted the challenge and ruled the appeal inadmissible on the grounds that it was contrary to the claimant's interests.

Subsequently, and in the same sense, the Supreme Court ruled in *Servicio Nacional del Consumer con Aguas Araucanía S.A.*[88] After the conviction on appeal, the claimant and the defendant reached an agreement to end the litigation, which was approved by the court, an agreement that the "auxiliary third party", *i.e.*, the Consumer Association and Usuarios del Sur, did not participate in. Nevertheless, the "auxiliary third party" appealed on cassation, because

[86] ROMERO (2014b), p. 229.
[87] CORTE DE APELACIONES DE SANTIAGO (2020b).
[88] CORTE SUPREMA (2023).

the conciliatory agreement would have granted compensation for fewer days of downtime than there were in practice. As *obiter dicta*, the ruling states that the third party cannot "raise petitions that conflict with or clash with the supra-individual interest asserted through this special action and limiting the claims solely to those whereby an attempt is made to assert claims consistent with those exercised by the direct or original claimant", and therefore the appeal is dismissed.

This limitation is truly surprising because the co-litigant adhesive third party must have the same rights as the original parties as holder of the litigious legal relationship. Consequently, it is perfectly possible that the intervening party may in due course oppose a conciliatory agreement or the celebration of other jurisdictional equivalents.

b) Limitations have been set on the third-party co-holder's ability to file appeals against rulings that affect the claimant and that have not been appealed by the latter.

This situation arose in *Organización de Consumidores de Chile vs. Metrogas S.A.*,[89] Odecu, the adhesive third party, appealed against the resolution that summoned the claimant's legal representative to answer interrogatories and that was not appealed by the latter. The decision dismissed the appeal, stating that the decision did not cause harm to the adhesive third party.

The limitation set out seems wrong to us because the co-holder third party of the collective or diffuse action may file recursive mechanisms regardless of what its co-litigants does, provided that there is injury, otherwise the right to appeal and the bilateral nature of the hearing would be breached, affecting due legal process.

c) Limitations on the co-holder third party to provide evidence in the second instance

In *Palmabouvret vs. Concesionaria Costaneranorte S.A.*[90] the first instance ruling dismissed the claim of a group of consumers. The sentence was appealed only by the claimants, and the auxiliary third party, Odecu, did not join it. However, the adhesive third party attempted to provide documentary evidence in the second instance. The Court of Appeals ruled that if the adhesive third party does not challenge the sentence, it must be understood that it agrees with the lower court's ruling, and consequently, it could only provide evidence for confirming that ruling and not for overturning it.

This situation does not bear analysis because if the third party is a co-holder of the legal situation being litigated, it is obvious that they can provide evidence in the second instance, even if the challenge mechanism was not brought by them, but by the co-subject with active legal standing. What happened constitutes a flagrant violation of the right to evidence that every litigant has during the second instance, with the limitations of producing certain means of evidence that the legal system sets out in article 207 CPC.

[89] CORTE DE APELACIONES DE SANTIAGO (2023b).
[90] CORTE DE APELACIONES DE SANTIAGO (2020a).

d) There is no particular analysis of active legitimation in the specific case of the intervening co-holder third party

This happened in *SERNAC vs. Inmobiliaria Familiar S.A.*[91] where the claimant appealed against the decision that had a consumer association (Organización de Consumidores y Usuarios del Libertador O'Higgins) as an auxiliary third party, arguing that this consumer association did not clarify what its interest was in the lawsuit, which consumers it represented nor which products or services founded its claim. The ruling of the Court of Appeals of Rancagua dismissed the appeal, simply arguing that the subject with active legal standing of the consumer association is sufficient grounds to accept them as an auxiliary third party.

e) Limitations on the opportunity for third party co-holder intervention

There has also been discussion as to whether the twenty-day period established in art. 53, paragraph 4 LPDC is for adhering to the claim or only for reserving rights.

In *SERNAC vs. ABCDIN Corredores de Seguros Limitada (LTE)*,[92] the Court of Appeals of Santiago, determined that the period is only for opt-out, and consequently, the third party can join at any stage of the process.

However, this same issue was discussed in *Agrecu vs. Latam Airlines Group S.A.*,[93] even though the consumer association Conadecus requested opt-out outside the 20-day period and to be considered an exclusionary third party. Conadecus argued that the period of art. 53, paragraph 4 LPDC applies only to individual consumers, and not to consumer associations, because the latter always have legal standing under art. 51 LPDC. The court ruled, contrary to what it had previously stated in SERNAC vs. ABCDIN Corredores de Seguros Limitada (LTE), that the 20-day period is a general period intended to organize the process, such that third parties (adhesive or non-adhesive) must exercise its rights within the preclusive period of 20 days.

f) By way of conclusion on the problems of third-party intervention of co-holders of collective or diffuse action

In our opinion, the most striking aspect of the review of case law set out above is that it is undisputed in the court rulings that the third party co-holder of the collective and diffuse action must demonstrate interests coinciding with those of the claimant (which is why he or she is generally referred to as auxiliary) and that on this basis the third party's right to appeal is limited when the original claimant does not challenge the ruling. This could be said of an auxiliary third party but not of a third party co-holder of the collective and diffuse action.

It also seems to be agreed that the original claimant, and not the intervenor third party, has control of the process.[94] This interpretation could be based on the aim of organizing the process so that there are no divergent interests that hinder the normal course of the proceedings, but it is worth considering that the intervening co-litigant third party is a co-holder of the action; could have been a claimant because it is an active co-legitimated party, has the

[91] CORTE DE APELACIONES DE RANCAGUA (2018).
[92] CORTE DE APELACIONES DE SANTIAGO (2022).
[93] CORTE DE APELACIONES DE SANTIAGO (2023a).
[94] The big problem with consumer associations is their relationship with SERNAC. This is said by VARGAS (2019), pp. 363 *et seq.*

same rights as the original claimant, is inserted in the same position as the claimant, and it is not an auxiliary third party, who only collaborates, cooperates or helps. To diminish the position of the co-litigant third party regarding the original claimant (that is the hypothesis we have dealt with in relation to Consumer Law) constitutes an error that shows a lack of knowledge of what constitutes a third party co-holder of the collective or diffuse action.

The situations described also raise more questions. Indeed, if the third party must align with the claimant's intention and the claimant has control of the trial, then why is there a third party in the first place if, at the end of the day, the claimant has control of the process? Wouldn't the claimant's intervention alone be enough? What is the point of allowing co-holders of the action to become parties to the judicial procedure? Is it not possible for the adhesive third party to express different interests, even partial ones? On the other hand, if at the end of the day the procedural burdens fall more heavily on the claimant, how can the costs of the adhesive third party be justified if their procedural activity is quite limited? This is another justification that needs to be explored. For now, if the conclusions of the courts were correct—something we deny—the intervention of the third party would be reduced in practice to providing evidence.

As can be seen, the intervention of the third party co-holder in proceedings involving actions of collective and diffuse interest deserves a more thorough and reflective study. We consider that the figure of the co-litigant adhesive third party is the most appropriate one by virtue of procedural dogmatics and in the absence of detailed regulation on third-party intervention in this type of procedure.

V. CONCLUSIONS

1. The LPDC provides that co-subjects with active legal standing who have not initiated the procedure involving actions of collective or diffuse interest may become parties to a pending judicial process but does not regulate the legal nature by which these subjects may request to intervene during the pending process.

2. The rules contained in the CPC apply on a supplementary basis to procedures involving actions of collective or diffuse interest and that body of law only recognizes three types of third-party intervention that are not applicable to third parties who are co-owners of the collective or diffuse action.

3. Case law has accepted that third parties co-owners of the collective and diffuse action can intervene as auxiliary third parties, main third parties, and independent third parties, forms of intervention that are not applicable to this special type of third-party intervention, generating various procedural problems and unduly limiting the rights that the co-owner of the collective and diffuse action can exercise.

4. The third party that is a co-holder of the action of collective or diffuse interest is not an auxiliary third party because it is a co-holder of the material legal relationship and therefore its interest in intervening is direct and the final decision will affect it directly whether or not the co-holder of the action taken intervenes in the process. Furthermore, the third party co-holder of the action of collective or diffuse interest, is in no way subordinate to the active or passive party, once its intervention has been admitted.

5. The third party who is co-holder of the action of collective or diffuse interest is not a main or exclusionary third party because the latter exercises an action claiming rights

incompatible with those of the parties and thus appropriating the object of the process; on the other hand, the co-litigant adhesive third party is a co-holder of the substantial legal relationship and has standing to bring an action, so the rights it claims will be compatible with those claimed by the original claimant with whom it is a co-holder of the material legal relationship, which is the subject of the proceedings.

6. The third party who is a co-holder of the action of collective or diffuse interest is also not an independent third party because he has no interest of his own, independent of the claimant, nor does he pursue a claim different to that of the original claimant, nor does he seek a negative declaration with the object that a legal relationship between the parties of the pending trial does not affect him. On the contrary, the third party co-holder of the action has an identical interest to that of the original claimant. He seeks to participate in the process to assert his rights, and therefore does not assert a different, autonomous or distinct claim for protection from that brought by the original claimant.

7. It is imperative that both doctrine and case law directly recognize the intervention of third parties co-holders of the action of collective and diffuse interest, which is called co-litigant adhesive intervention, explained by procedural dogmatics and recognized in foreign legislations.

8. Co-litigant adhesive intervention has certain particularities, its own legal status, which explains how a third party of this nature can intervene in a legal process that has already begun and what rights they can exercise once their intervention has been admitted.

BIBLIOGRAPHY

ACOSTA, José (1995). *Tutela procesal de los consumidores*, J.M. Bosch.

AGUIRREZABAL, Maite (2010). "El control de la representatividad adecuada de las asociaciones de consumidores en el ejercicio de las acciones colectivas", in *Revista de Derecho* (Valdivia), Vol. 23, No. 2, pp. 175-196.

AGUIRREZABAL, Maite (2019). *Defensa de los consumidores y acceso a la justicia*, Thomson Reuters.

ALSINA, Hugo, (1963). *Tratado teórico práctico de Derecho Procesal*, Tomo I, Ediar.

ALVARADO, Adolfo (2015). *Las partes procesales y los terceros intervinientes*, Astrea.

ANABALÓN, Carlos (2023). *Tratado práctico de derecho procesal civil*, El Jurista.

ARANCIBIA, Jaime (2021). "La legitimación activa en procesos correctivos y sancionatorios de libre competencia", en *Revista de Derecho* (Pontificia Universidad Católica de Valparaíso), No. 56, pp. 53-81. DOI: http://dx.doi.org/10.4151/s0718-6851202100 56-1324.

ARAZI, Roland (1995). *Derecho procesal civil y comercial*, Tomo I, Astrea.

BARONA, Silvia (2008). *Competencia desleal. Tutela jurisdiccional (especialmente proceso civil) y extrajurisdiccional. Doctrina Legislación y jurisprudencia: Sujetos, Actividades previas, Medidas Cautelares y Proceso Civil*, Tomo II, Tirant lo Blanch.

BERMÚDEZ, Jorge (2015). "La legitimación activa en el contencioso ambiental", in FERRADA, Juan Carlos & BERMÚDEZ, Jorge (coord.), *La nueva justicia ambiental*, Legal Publishing, pp. 155-180.

BERNAL, Karina (2011). "Intervención de terceros", in GOZAÍNI, Osvaldo A. (dir.), *Intervención de terceros y tercerías*, Rubinzal Culzoni, pp. 275-311.

BERTELSEN, Raúl (1998). "El recurso de protección y el derecho a vivir en un medio ambiente libre de contaminación. Examen de quince años de jurisprudencia", in *Revista Chilena de Derecho*, Vol. 25, No. 1, pp. 139-174.

BESSER, Günter & HIDALGO, Carlos (2018). "Séptima parte: Los incidentes. III. La acumulación de autos", in CORTEZ, Gonzalo & PALOMO, Diego (dirs.), *Proceso civil. Normas comunes a todo procedimiento e incidentes*, Thomson Reuters, pp. 409-418.

BORDALÍ, Andrés (2013). "Primera parte. Cuestiones preliminares", in BORDALÍ SALAMANCA, Andrés; CORTEZ, Gonzalo & PALOMO, Diego (dirs.), *Proceso civil. El juicio ordinario de mayor cuantía*, Abeledo Perrot / Legal Publishing Chile / Thompson Reuters, pp. 3-113.

BORDALÍ, Andrés (2019). *Litigación ambiental*, Thomson Reuters.

BUJOSA, Lorenzo (2023). *Procesos colectivos*, Palestra.

CARNELUTTI, Francesco (1959). *Instituciones del Proceso Civil*, Tomo I, trad. Santiago Sentís Melendo of italian 5th ed., EJEA.

CARRASCO, Jaime (2021). "La vigencia de las denuncias por interés general de los consumidores, después de reforma de la Ley N° 21.081", in BARRIENTOS, Francisca & DEL VILLAR, Lucas (dirs.), *Interés general, las negociaciones extrajudiciales y juicios colectivos en el derecho del consumo*, Thomson Reuters, pp. 3-32.

CASARINO, Mario (2014). *Manual de Derecho Procesal (Derecho Procesal Civil)*, Tomo III, Editorial Jurídica de Chile.

CHIOVENDA, José (1925). *Principios de derecho procesal civil* (trad. José Casais y Santaló of italian 3rd ed., Reus).

CONTRERAS , Cristián & DELGADO, Jordi (2018). "Tercera Parte: Régimen de las partes y terceros en el proceso", in CORTEZ, Gonzalo & PALOMO, Diego (dirs.), *Proceso civil. Normas comunes a todo procedimiento e incidentes*, Thomson Reuters, pp. 109-168.

CORDÓN, Faustino (2007). "La legitimación activa del comunero para actuar en juicio en interés de la comunidad: Ley 372, III del Fuero nuevo de Navarra", in *Revista Jurídica de Navarra,* No. 44, pp. 117-130.

CORDÓN, Faustino (1998). "Sobre la legitimación en derecho procesal", in *Revista Chilena de Derecho*, Vol. 25, No. 2, pp. 357-385.

CORTÉS, Valentín (1976). "El litisconsorcio necesario y la jurisprudencia del tribunal supremo", in *Revista de Derecho Procesal Iberoamericana*, No. 2-3, pp. 389-422.

CORTEZ, Gonzalo (2014). "Segunda parte: La fase de discusión", in BORDALÍ, Andrés; CORTEZ, Gonzalo & PALOMO, Diego (dirs.), *Proceso civil. El juicio ordinario de mayor cuantía, procedimiento sumario y tutela cautelar*, Thomson Reuters, 2nd ed., pp. 119-205.

COUTURE, Eduardo J. (2010). *Estudios de derecho procesal civil. El juez, las partes y el proceso*, Vol. 3, Tomo 4, Thomson Reuters / Puntolex.

DÁVILA, María E. (1997). *Litisconsorcio necesario. Concepto y tratamiento procesal*, Bosch.

DE LA MAZA, Iñigo & OJEDA, Hugo (2017). "El interés general de los consumidores y su tutela en las decisiones de los tribunales superiores de justicia", in *Revista de Derecho* (Universidad de Concepción), Vol. 85, No. 242, pp. 105-140. DOI: http://dx.doi.org/10.4067/S0718-591X2017000200105.

DE LA OLIVA, Andrés & FERNÁNDEZ, Miguel Ángel (1992). *Derecho procesal civil*, Tomo I, Centro de Estudios Ramón Areces S.A.

DE LA OLIVA, Andrés & DÍEZ- PICAZO, Ignacio (2001). *Derecho procesal civil. El proceso de declaración*, Centro de Estudios Ramón Areces S.A.

DELGADO, Jordi & HUNTER, Iván (2024). *Manual de proceso civil ordinario*, Tirant lo Blanch.

FAIRÉN, Víctor (1955a). "Notas sobre la intervención principal en el proceso civil", in *Estudios de Derecho Procesal*, Editorial Revista de Derecho Privado, pp. 175-219.

FAIRÉN, Víctor (1955b). "Sobre el litisconsorcio en el proceso civil", in *Estudios de derecho procesal*, Editorial Revista de Derecho Privado, pp. 125-164.

FENOCHIETTO, Carlos & ARAZI, Roland (1983). *Código Procesal Civil y Comercial*, Tomo I, Astrea.

FERNÁNDEZ, Felipe (2023). "El interés comprometido en la declaración de cláusulas abusivas como justificante de la acción por el interés general", in *Revista Chilena de Derecho Privado*, No. 40, pp. 101-152. DOI: http://dx.doi.org/10.32995/s0718-80722023667.

FERRER, Eduardo (2000). "Panorámica actual de la doctrina procesal", in *Revista de Derecho y Jurisprudencia*, t. XCVII, No. 1, pp. 25-46.

FIGUEROA, Juan A. & MORGADO, Erika (2013). *Procedimientos civiles e incidentes*, Thomson Reuters.

GASCÓN, Fernando (2019). *Acumulación de acciones y de procesos civiles, (Colección 20 años LEC 2000)*, La Ley / Wolters Kluwer.

GONZÁLEZ, Carlos A. (1991). *Estudios de Derecho Procesal*, Ad-Hoc.

GONZÁLEZ, Esther (2006). *La intervención voluntaria de terceros en el proceso civil*, Tirant Lo Blanch.

GONZÁLEZ, Julián Pedro (1982). "En el llamado litisconsorcio voluntario no hay litisconsorcio", in *Revista de Derecho Procesal Iberoamericana,* No. 4, pp. 633-674.

GONZÁLEZ VIDAL, Alberto (2012). "La necesidad de incorporar la intervención adhesiva litisconsorcial", in AGUIRREZABAL, Maite (ed.), *Justicia Civil. Perspectivas para una reforma en la legislación chilena*, Cuadernos de Extensión Jurídica (Universidad de los Andes), No. 23, pp. 55-68.

GOZAÍNI, Osvaldo & ZURITA, Sebastián (2011). "El litisconsorcio voluntario", in GOZAÍNI, Osvaldo A. (dir.), *Intervención de terceros y tercerías*, Rubinzal Culzoni, pp. 137-155.

HUNTER, Iván (2023). *Tutela judicial y administrativa del medio ambiente*, Der.

IMBROGNO, Paula M. & SAYANOVICH, Pablo A. (2011). "La intervención voluntaria litisconsorcial o coadyuvante", in GOZAÍNI, Osvaldo A. (dir.), *Intervención de terceros y tercerías*, Rubinzal Culzoni, pp. 323-332.

ISLER, Erika (2015). "Ius puniendi estatal y concurso de sanciones en la Ley 19.496", en *Revista Ius Publicum*, No. 35, pp. 91-103.

ISLER, Erika (2013). "Artículo 58. Funciones Servicio Nacional del Consumidor", in DE LA MAZA, Iñigo & PIZARRO, Carlos (dirs.), *La protección de los derechos de los consumidores*, Thomson Reuters, pp. 1125-1157.

JUAN, Ricardo (2014). *La legitimación en el proceso civil. Los titulares del derecho de acción: fundamentos y reglas*, Aranzadi.

LATA, María G. (2011). "Régimen procesal de la intervención del tercero adhesivo o litisconsorcial", in GOZAÍNI, Osvaldo A. (dir.), *Intervención de terceros y tercerías*, Rubinzal Culzoni, pp. 333-347.

LIEBMAN, Enrico (1980). *Manual de derecho procesal civil*, trad. Santiago Sentís Melendo of italian ed., EJEA.

LÓPEZ-FRAGOSO, Tomás (1990). *La intervención de terceros a instancia de parte en el proceso civil español*, Marcial Pons.

LORCA, Antonio M. (2000). "Artículo 12", in LORCA, Antonio M. (dir.), *Comentarios a la nueva Ley de Enjuiciamiento Civil*, Tomo I, Lex Nova, pp. 170-181.

MENESES, Claudio (2017). *Estudios sobre el proceso civil chileno*, Prolibros.

MOMBERG, Rodrigo (2011). "La autonomía de la acción en interés general de los consumidores del artículo 58 letra g) de la Ley Nº 19.496 sobre protección de los derechos de los consumidores (LPC) (Corte Suprema)", in *Revista de Derecho (Valdivia)*, Vol. XXIV, No. 2, pp. 235-244.

MOMBERG, Rodrigo & MORALES, María E. (2022). *Procedimientos voluntarios colectivos en el derecho del consumo chileno*, Tirant lo Blanch.

MONTERO, Juan (1994). *La legitimación en el proceso civil*, Civitas.

MONTERO, Juan (2014). *Derecho jurisdiccional II. Proceso civil*, Tirant Lo Blanch.

MONTERO, Juan (2016). *El proceso civil. Los procesos ordinarios de declaración y ejecución*, Tirant Lo Blanch, 2nd ed.

MONTERO, Juan (1972). *La intervención adhesiva adhesiva simple. Contribución al estudio de la pluralidad de partes en el proceso civil*, Editorial Hispano-Europea.

NIEVA, Jordi (2009). "Imprecisiones privatistas de la ciencia jurisdiccional", in NIEVA, Jordi, *Jurisdicción y proceso*, Marcial Pons, pp. 13-47.

NUÑEZ, Raúl & PÉREZ, Álvaro (2013). *Manual de derecho procesal civil. Parte general*, Legal Publishing / Thomson Reuters.

ONFRAY, Arturo F. (2021). *Derecho Procesal Civil. Parte segunda: Actos jurídicos procesales*, Tomo II, Tirant lo Blanch.

ORELLANA, Fernando (2019). *Manual de Derecho Procesal: Procedimientos civiles ordinarios y especiales*, Tomo II, Librotecnia.

OROMÍ, Susana (2007). *Intervención voluntaria de terceros en el proceso civil. Facultades procesales del interviniente*, Marcial Pons.

ORTELLS, Manuel (2004). *Derecho Procesal Civil*, Thomson Aranzadi.

PALACIO, Lino E. (1971). *Derecho procesal civil*. Tomo III, Abeledo-Perrot.

PARRA, Jairo (1986). *La intervención de terceros en el proceso civil*, Depalma.

PÉREZ, Andrea M. (2011). "La intervención adhesiva simple", in GOZAÍNI, Osvaldo A. (dir.), *Intervención de terceros y tercerías*, Rubinzal Culzoni, pp. 313-321.

PILLADO, Esther (2014). *La intervención de terceros en los procesos civiles especiales*, Tirant Lo Blanch.

POBLETE, Orlando (2003). "Las acciones por intereses colectivos y difusos. Algunas consideraciones básicas", in *Revista de Derecho* (Universidad Finis Terrae), Year VII, No. 7, pp. 283-293.

RÍOS, Luis P. (2019). "Proceso colectivo de consumo. Principales normas y procedimiento en el ordenamiento jurídico chileno", in *Pensando el derecho procesal*, El Jurista, pp. 169-203.

RODRÍGUEZ, Sergio & RODRÍGUEZ, Patricia (2021). *Tratado de las Tercerías*, Tomo I, Ediciones Jurídicas El Jurista.

ROMERO, Alejandro (1998). "El litisconsorcio necesario en el derecho procesal chileno. Doctrina y jurisprudencia", in *Revista Chilena de Derecho*, Vol. 25, No. 2, pp. 387-422.

ROMERO, Alejandro (2000). *La acumulación inicial de acciones*, Conosur.

ROMERO, Alejandro (2009). "El concepto de parte y de interviniente en la reforma al proceso civil", in *Actualidad Jurídica*, Year X, No. 20, pp. 163-193.

ROMERO, Alejandro (2014a). *Curso de derecho procesal civil: La acción y la protección de los derechos*, Tomo I, Thomson Reuters, 2nd ed.

ROMERO, Alejandro (2014b), *Curso de derecho procesal civil: Los presupuestos procesales del órgano jurisdiccional y de las partes*, Tomo II, Thomson Reuters, 2nd ed.

ROMERO, Alejandro (2023). *Cuestiones procesales civiles 2*, Tirant Lo Blanch.

ROMERO, Alejandro & DÍAZ, José I. (2010). "La acción de responsabilidad civil del art. 133 bis de la Ley de Sociedades Anónimas", in TAVOLARI, Raúl (dir.), *Doctrinas esenciales (Derecho Comercial)*, Editorial Jurídica de Chile, pp. 309-332.

ROSEMBERG, Leo (1955). *Derecho Procesal Civil*, Tomo II, trad. Ángela Romera Vera, EJEA.

SAMANES, Carmen (2019). *Las partes en el proceso civil*, La Ley / Wolters Kluwer.

SATTA, Salvatore (1971). *Manual de derecho procesal civil*, Tomo I, trad. Santiago Sentís Melendo & Fernando de la Rua, EJEA.

SERNAC & CONADECUS AC (2016). "Demanda colectiva restitutoria, reparatoria e indemnizatoria", escrito de demanda ante 12º Juzgado Civil de Santiago, 26 de mayo, Rol C-13.368-2016, Folio 411601.

SERRA, Manuel (1971). "Concepto y regulación positiva del litisconsorcio", in *Revista de Derecho Procesal Iberoamericana*, No. 2-3, pp. 573-601.

SIGÜENZA, Julio (2021). *La intervención de terceros en el proceso civil español*, Thomson Reuters/Aranzadi.

SOTO, Pablo & DURÁN, Carolina (2019). "El ámbito infraccional en el Derecho del consumo: práctica jurisdiccional y modificaciones introducidas por la Ley Nº 21.081", in CONTARDO, Juan I.; FERNÁNDEZ, Felipe & FUENTES, Claudio (coords.), *Litigación en materia de consumidores. Dogmática y práctica en la reforma de fortalecimiento al Sernac*, Thomson Reuters, pp. 241-284.

STOEHREL, Carlos A. (2020). *De las disposiciones comunes a todo procedimiento y de los incidentes*, Editorial Jurídica de Chile.

TORO, David & ECHEVERÍA, Aníbal (1902). *Código de Procedimiento Civil anotado*, Imprenta Litografía y Encuadernación Barcelona.

VARGAS, Juan E. (2019). "El rol de las Asociaciones de Consumidores en la litigación de casos de consumo en Chile", in CONTARDO, Juan I.; FUENTES, Claudio & FERNÁNDEZ, Felipe (dirs.), *Litigación en materia de consumidores. Dogmática y práctica en la reforma de fortalecimiento al Sernac*, Thomson Reuters, pp. 353-370.

CASE-LAW

10º JUZGADO CIVIL DE SANTIAGO (2017), March 3rd, Rol C-29.214-2015, motion for reconsideration and subsidiary appeal, Corporación Nacional de Consumidores v. CMPC Tissue S.A. & Papeles Industriales Ltda.

14° JUZGADO CIVIL DE SANTIAGO (2021), April 22nd, Rol C-11.252-2020, motion for reconsideration, SERNAC v. VTR Comunicaciones SpA.

27° JUZGADO CIVIL DE SANTIAGO (2021), Rol C-11.773-2020, rules petition, SERNAC v. Abakos.

27° JUZGADO CIVIL DE SANTIAGO (2020), January 24th, Rol C-29.050-2019, rules petition, SERNAC v. Correos de Chile.

30° JUZGADO CIVIL DE SANTIAGO (2021), January 12th, Rol C-5.957-2020, motion for reconsideration, SERNAC v. ABCDIN Corredores de Seguros Ltda.

CORTE DE APELACIONES DE RANCAGUA (2018), September 28th, Rol 1.180-2018, motion for appeal, SERNAC v. Inmobiliaria Familiar S.A.

CORTE DE APELACIONES DE SANTIAGO (2023a), August 8th, Rol 14.213-2020, motion for appeal, Agrecu v. Latam Airlines Group S.A.

CORTE DE APELACIONES DE SANTIAGO (2023b), June 8th, Rol 8.152-2023, admissibility of motion for appeal, Organización de Consumidores de Chile v. Metrogas S.A.

CORTE DE APELACIONES DE SANTIAGO (2022), January 14th, Rol 11.492-2021, motion for appeal, SERNAC v. ABCDIN Corredores de Seguros Ltda. (LTE).

CORTE DE APELACIONES DE SANTIAGO (2021), March 9th, Rol 13.892-2020, motion for appeal, SERNAC v. American Airlines Inc., Agencia en Chile (LTE).

CORTE DE APELACIONES DE SANTIAGO (2020a), November 16th, Rol 1.519-2020, motion for appeal, Palmaroubet v. Sociedad Concesionaria Costanera Norte.

CORTE DE APELACIONES DE SANTIAGO (2020b), January 10th, Rol 15.030-2019, motion for appeal, SERNAC v. Itaú-Corpbanca.

CORTE DE APELACIONES DE SANTIAGO (1992), May 4th, motion for appeal, Asociación de canalistas v. Dirección General de Aguas, *RDJ.*, t. LXXXIX, sec. 2ª, pp. 65–68.

CORTE DE APELACIONES DE SANTIAGO (1983), May 6th, motion for appeal, Muñoz v. Rada, *RDJ.*, t. LXXX. sec. 2ª, pp. 40–42.

CORTE SUPREMA DE CHILE (2024a), January 9th, Rol 189.882-2023, inadmissibility of motion for *in procedendo* and *in iudicando* cassation, Asociación indígena regantes y agricultores chunchuri poniente v. Ministerio del Medio Ambiente.

CORTE SUPREMA DE CHILE (2024b), January 2nd, Rol 10.412-2023, motion for *in procedendo* cassation, Carmaq SpA v. Vásquez.

CORTE SUPREMA DE CHILE (2023), June 27th, Rol 56.393-2021, motion for *in procedendo* cassation, SERNAC v. Aguas Araucaria S.A.

CORTE SUPREMA DE CHILE (2022a), August 31st, Rol 99.556-2020, motion for precedent unification, Fajardo v. Ministerio de Desarrollo Social.

CORTE SUPREMA DE CHILE (2022b), June 28th, Rol 17.441-2021, motion for *in procedendo* and *in iudicando* cassation, Valdés *et al.* v. Ilustre Municipalidad de Colbún.

CORTE SUPREMA DE CHILE (2021), August 9th, Rol 17.116-2021, inadmissibility of motion for cassation, Colbún v. Dirección General de Aguas.

CORTE SUPREMA DE CHILE (2019a), December 17th, Rol 24.870-2018, motion for *in procedendo* and *in iudicando* cassation, SQM Chile S.A. v. Superintendencia del Medio Ambiente.

CORTE SUPREMA DE CHILE (2019b), September 26th, Rol 12.907-2018, motion for *in iudicando* cassation, Andes Iron SpA v. Servicio de Evaluación Ambiental.

CORTE SUPREMA DE CHILE (2019c), August 14th, Rol 13.330-2019, admissibility of motion for *in procedendo* and *in iudicando* cassation, Rendic Hermanos S.A. v. Fisco de Chile.

CORTE SUPREMA DE CHILE (2018a), October 9th, Rol 8.197-2018, motion for *in iudicando* cassation, Ilustre Municipalidad de Zapallar *et al.* v. Director ejecutivo del Servicio de Evaluación Ambiental.

CORTE SUPREMA DE CHILE (2018b), May 17th, Rol 44.484-2017, motion for *in iudicando* cassation, Corporación Nacional de Consumidores con CMPC Tissue S.A. & Papeles Industriales Ltda.

CORTE SUPREMA DE CHILE (2017a), October 30th, Rol 1.756-2017, motion for *in iudicando* cassation, Fuentes v. Fisco de Chile *et al.*

CORTE SUPREMA DE CHILE (2017b), September 21st, Rol 11.596-2017, motion for *in iudicando* cassation, Reyes v. Servicio de Registro Civil e Identificación.

CORTE SUPREMA DE CHILE (2017c), February 7th, Rol 49.685-2016, motion for cassation withdrawal, Inmobiliaria Mall Viña del Mar S.A. v. alcaldesa y director de obras de la Ilustre Municipalidad de Viña del Mar.

CORTE SUPREMA DE CHILE (2014), December 30th, Rol 11.600-2014, *ex officio* cassation, Cruz *et al.* v. Superintendencia del Medio Ambiente.

CORTE SUPREMA DE CHILE (2012), May 16th, Rol 9.996-2011, motion for *in iudicando* cassation, Gálvez v. Romani.

CORTE SUPREMA DE CHILE (2010), January 5th, Rol 2.033-2010, motion for *in procedendo* and *in iudicando* cassation, Estación de servicios Pedro de Valdivia norte Ltda. v. Ministerio de Obras Públicas, Dirección General de Obras Públicas & Sociedad Concesionaria Costanera Norte.

CORTE SUPREMA DE CHILE (2007), December 17th, Rol 3.542-2006, motion for *in iudicando* cassation, Asociación de Comunicadores Anadeu A.C. v. VTR Telefonía S.A.

CORTE SUPREMA DE CHILE (1996), October 2nd, motion for *in procedendo* cassation, Subiabre v. Cárcamo, *RDJ.*, t. XCIII, N° 3, sec. 1ª, pp. 132–134.