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## CONSUMER PROTECTION CASES: THAILAND'S PUNITIVE DAMAGE REGIME

In today's world of fast-moving consumer goods and services, disputes between consumers and business operators are commonplace. Consumer protection and product liability laws—which increase access to the courts, streamline the adjudication of claims, and increase damage recovery options for injured consumers—drive more and more disputes into the Thai courts.

Historically, plaintiffs were limited to recovering only actual damages, which seek to compensate victims for loss or harm. With the passage of the Product Liability Act B.E. 2551 (2008) (described in further detail below) and the Consumer Case Procedure Act B.E. 2551 (2008), Thai courts were, for the first time, empowered to grant punitive damages to injured persons. Punitive damages are “exemplary” and seek to punish the actor and deter similar conduct.

### Actual and Punitive Damages

Whether based on theories of contract or tort, consumers are entitled to file lawsuits seeking damages from business operators. Upon proof, such damages may include refund of payment, orders for strict performance of contract terms, payment for remedial work, or orders for full or partial compensation of losses. Such “actual damages” are deemed compensatory and must arise proximately from the breach and/or wrongdoing of the defendant.

Consumer protection legislation brought about a fundamental shift in Thailand's damages landscape in allowing an injured consumer to claim and receive punitive damages. Specifically, in cases brought under the Consumer Case Procedure Act, the court may, in its own discretion, award

punitive damages to compensate the consumer in excess of the consumer's proven injuries, but not more than two times actual damages. If the actual damages do not exceed THB 50,000, the court has the power to award punitive damages of up to five times the amount of actual damages.

Under the Consumer Case Procedure Act, the injured party has the burden of proving, to the satisfaction of the court, the defendant's liability and the injured party's quantum of damages. Adequate proof of the underlying behavior of the business operator must substantiate a discretionary order of punitive damages. Consequently, the injured consumer is obligated to present evidence proving that the business operator should be subject to an award of punitive damages, in addition to an order for actual damages. Such offer of proof must go beyond merely showing that the business operator breached the contract or acted with negligence. It must, as a matter of law, establish that the business operator acted with malicious intent, gross negligence, or breached a professional or public trust. If the evidence supports such a determination, then it is likely that the court will exercise its discretion and assess punitive damages.

### Current Consumer Protection Cases

Although consumer protection laws were originally passed to protect all consumers, regardless of socioeconomic background, such laws are increasingly deployed to resolve disputes relating to property and luxury goods. In a recent case for breach of a condominium sales agreement, the court determined that the project owner (the defendant) breached the agreement and was liable for actual damages caused to the buyer (the plaintiff). The court then evaluated the conduct of the defendant and concluded that in deliberately selling the same condominium to a third party in lieu of rectifying defects in the property for the plaintiff, the defendant acted with deliberate intent to harm the plaintiff. As such, the court deemed it expedient to award punitive damages in excess of actual damages for the specific purpose of punishing the defendant for its inappropriate actions.

Consumers have filed numerous lawsuits in the relatively short period of time since the passage of legislation allowing for punitive damages. From early trends, it is expected that the courts will continue to award punitive damages where the actions of defendants warrant punishment. 🍷

## DAMAGES UNDER THE PRODUCT LIABILITY ACT

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In February 2008, Thailand joined a growing list of countries with specific product liability legislation with the passage of the Product Liability Act (PL Act). The PL Act, which came into effect in February 2009, imposes strict liability on business operators involved in the manufacturing and sales of a defective product that causes harm to an individual. The following types of damages are recoverable under the PL Act.

**Compensatory Damages.** Compensatory damages are available in Thailand for both contractual and tortious injury and are aimed at restoring the injured party to the state that he or she would have been in had the injury not occurred.

Claims for monetary damages have traditionally resulted only in recovery of actual and foreseeable damages, such as medical expenses, loss of wages, provable loss of profits, and out-of-pocket loss. With the passage of the PL Act, however, plaintiffs can now claim compensation

for mental damages, whether suffered by the party directly injured by the defective product or by those indirectly damaged, such as surviving family members.

Damages for pain and suffering are theoretically available under Civil and Commercial Code Section 438. Although there has been a recent trend in the courts toward allowing occasional recovery for pain and suffering, generally, such awards are far less frequent than in most Western jurisdictions and are left to the discretion of the individual court.

**Punitive Damages.** Plaintiffs filing claims under the PL Act have the right to seek punitive damages. Plaintiffs must prove that the behavior of the defendant was egregious, such as knowingly supplying a dangerously defective product or otherwise acting in a grossly negligent or criminal manner. Such evidence is normally proffered during trial. The court, in its sole discretion, may award punitive damages, provided the award does not exceed the statutory maximum of two times the amount of actual damages.

**Liquidated Damages.** Liquidated damages provisions in contracts are enforceable under Thai law, although the courts have the discretion to reduce unconscionably high or unreasonable damage provisions. Courts may also look to whether the liquidated damages provision is contrary to the public order and good morals of Thailand in determining enforceability.