

GROWING PAINS ASIDE, ACT IMPROVES CONSUMER RIGHTS

The Consumer Case Procedure Act (CCPA), which took effect on Aug 23, 2008, intends to provide better protection for consumers who historically have had little power to enforce their rights in the courts. Previously, a dispute would proceed in the courts under the Civil Procedure Code (CPC), which placed a greater burden on a consumer to prove liability of a business operator. Consumer disputes can now be tried under the CCPA, which provides consumers with enhanced rights, while simplifying their burdens in consumer protection claims.

There has been much talk about the CCPA's fast-track provisions, which seek to expedite consumer claims trials. However, due to staffing and developmental needs, cases have not progressed as quickly as intended. For example, if there are questions as to whether a consumer case is properly filed under the CCPA, then a petition objecting to the filing is sent to the Court of Appeals for consideration before the case can proceed to trial. This can result in a significant procedural delay, which is precisely what happened to plaintiffs filing CCPA claims arising out of the New Year's Eve fire at Santika pub.

Further, court procedures and scheduling have not yet been streamlined effectively and instead mirror standard civil claims brought under the CPC. As courts become familiar with the CCPA and as staffing improves, we expect processing of claims to improve.

Despite the procedural growing pains, the CCPA has enhanced consumer rights in several important ways:

- ◆ There is no court filing fee, provided the claim is made in good faith.
- ◆ Consumers can file a claim orally and do not need to have a written agreement

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to claim damages, provided a deposit or partial or full payment has been made.

◆ Consumers can file a claim even if there is no evidence in writing signed by the liable party. Furthermore, even if provisions of law require that a contract be completed in a given format, consumers have the right to seek court enforcement of an improperly executed contract if they have placed a deposit or made partial payment.

◆ In cases where the law normally provides that a contract must be in writing, consumers have the right to nonetheless prove the existence of a non-written contract. This can be accomplished by presenting supporting documents or witnesses if the business operator has issued a notice, advertisement, warranty, or has acted in a way to make consumers understand that at the time of making the contract the business operator agreed to provide goods or services in exchange for the consumer entering into the contract. This right to prove a valid contract includes situations in which the business operator agreed to grant rights and benefits to the consumer in addition to those concluded in the initial contract.

◆ A final judgment against the same business operator regarding the same facts and circumstances as a subsequent consumer claim may be introduced as evidence of liability of the business operator in the subsequent consumer

claim filed under the CCPA.

◆ Consumers have the right to receive a new product if a consumer claims a good is defective, provided the court believes the defect existed at the time of delivery and such defect cannot be returned to a normal usable condition or, even if the product was amended and used for consumption, it could have caused hazard to the body, health or hygiene of the consumer.

◆ The court has the right to award punitive damages of up to two times actual damages, or up to five times actual damages in cases where these do not exceed 50,000 baht. Punitive damages are made at the discretion of the court if it believes that the business operator intended to make or was grossly negligent in causing damages to the consumer.

◆ Consumers have the right to call partners, shareholders and persons with the power to control the operations of the juristic person or the receiver of property from the juristic person to be named as co-defendants in CCPA claims. Such right is limited to situations in which such juristic entity has been established or has operated its business dishonestly or has committed fraudulent acts against the consumer or has removed the property of the juristic person and the assets of the juristic person are insufficient for repayment of debts.

◆ An injured party now has three years from the date he or she became aware of the injury or of the business operator responsible, but no greater than 10 years from discovery of injury.

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