



Republic of the Philippines  
Department of Finance  
**INSURANCE COMMISSION**  
1071 United Nations Avenue  
Manila



Legal Opinion (L.O.) No.	LO-2017-05
Date:	July 12, 2017

**MR. RAMON YAP DIMACALI**  
*President and CEO*  
**FPG INSURANCE CO., INC.**  
6F Zuellig Building  
Makati Avenue corner Paseo de Roxas,  
Makati City

ATTENTION : **ATTY. ISAGANI N. ACOSTA**  
Vice-President

SUBJECT : **Insurability of Exemplary Damages**  
**(Re: Directors and Officers Liability**  
**Insurance Coverage)**

**Dear Mr. Dimacali:**

This is with reference to your letter dated 08 September 2016 requesting for this Commission's confirmation that punitive, exemplary, aggravated or multiplied damages, fines, and penalties are insurable provided that the same will not be adjudged as criminal in nature.

This inquiry is in connection with the definition of the term "loss" as provided under your Directors and Officers Liability Insurance approved by this Commission on 21 May 2012 which provides:

"Loss means the amount which an Insured becomes legally obligated to pay on account of any cover Claim including, but not limited to:

xxx    xxx    xxx

(h) punitive, exemplary, aggravated or multiplied damages or civil fines or penalties **unless the Company is legally prohibited**

**from paying such damages or fines or penalties in the jurisdiction in which the Claim is determined;**

xxx xxx xxx. " (Emphasis ours)

In your letter, you opined that punitive, exemplary, aggravated or multiplied damages, fines and penalties are insurable provided that it will not be adjudged as criminal in nature by a regulatory, quasi-judicial and judicial body.

Taking into consideration the above-quoted provision of your Directors and Officers Liability Insurance, the issue at hand is whether or not punitive, exemplary, aggravated or multiplied damages, fines and penalties are insurable under the laws of the Philippines.

As will be discussed below, punitive, exemplary, aggravated or multiplied damages, fines and penalties have the same definition and shall be collectively referred to herein as "exemplary damages".

Under Article 2229 of the Civil Code of the Philippines, exemplary or corrective damages are imposed, **by way of example or correction for the public good**, in addition to the moral, temperate, liquidated or compensatory damages.

The standards applied in awarding exemplary damages is laid down by law and jurisprudence.

In criminal offenses, criminal exemplary damages may be imposed when the crime was committed with one or more aggravating circumstances. Such damages are separate and distinct from fines and shall be paid to the offended party (Article 2230, Civil Code). In quasi-delicts, exemplary damages may be granted if the defendant acted with gross negligence (Article 2231, Civil Code). In contracts and quasi-contracts, the court may award exemplary damages if the defendant acted in a wanton, fraudulent, reckless, oppressive, or malevolent manner (Article 2232, Civil Code).

**In Arco Pulp and Paper Co., Inc., and Candida A. Santos vs. Dan T. Lim, G.R. No. 206806, 25 June 2014**, the Supreme Court cited the case of **Tankeh v. Development Bank of the Philippines, G.R. No. 171428, November 11, 2013** as to the purpose of exemplary damages, to wit:

"In *Tankeh v. Development Bank of the Philippines*,<sup>1</sup> we stated that:

The purpose of exemplary damages is **to serve as a deterrent to future and subsequent parties from the commission of a similar offense**. The case of *People v. Ranteciting* *People v. Dalisay* held that:

Also known as 'punitive' or 'vindictive' damages, exemplary or corrective damages are **intended to serve as a deterrent to serious**

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<sup>1</sup> G.R. No. 171428, November 11, 2013

**wrong doings, and as a vindication of undue sufferings and wanton invasion of the rights of an injured or a punishment for those guilty of outrageous conduct.** These terms are generally, but not always, used interchangeably. In common law, there is preference in the use of exemplary damages when the award is to account for injury to feelings and for the sense of indignity and humiliation suffered by a person as a result of an injury that has been maliciously and wantonly inflicted, the theory being that there should be compensation for the hurt caused by the highly reprehensible conduct of the defendant—associated with such circumstances as wilfulness, wantonness, malice, gross negligence or recklessness, oppression, insult or fraud or gross fraud—that intensifies the injury. The terms punitive or vindictive damages are often used to refer to those species of damages that may be awarded against a person to punish him for his outrageous conduct. In either case, these damages are intended in good measure to deter the wrongdoer and others like him from similar conduct in the future. (Emphasis supplied; citations omitted)”

The Insurance Code, as amended by R.A. 10607, provides no provision which specifically deals with the question on the insurability of punitive, exemplary, aggravated or multiplied damages, fines and penalties. Thus, resort to the provision of the Civil Code on contracts is necessary.

Article 1409 of the Civil Code of the Philippines enumerates the contracts which are inexistent and void from the beginning, to wit:

“Art. 1409. The following contracts are inexistent and void from the beginning:

- (1) Those whose cause, object or purpose is contrary to law, morals, good customs, public order or public policy;**
- (2) Those which are absolutely simulated or fictitious;
- (3) Those whose cause or object did not exist at the time of the transaction;
- (4) Those whose object is outside the commerce of men;
- (5) Those which contemplate an impossible service;
- (6) Those where the intention of the parties relative to the principal object of the contract cannot be ascertained;
- (7) Those expressly prohibited or declared void by law.

**These contracts cannot be ratified. Neither can the right to set up the defense of illegality be waived.”** (Emphasis ours)

In the case of **Avon Cosmetics, Inc. vs. Luna**, G.R. No. 153674, December 20, 2006, the Supreme Court defined “public policy” as:

“Public Policy in the words of the eminent Spanish jurist, Don Jose Maria Manresa, in his commentaries of the *Codigo Civil*, public policy (*orden pblico*):

[R]epresents in the law of persons **the public, social and legal interest, that which is permanent and essential of the institutions, that which, even if favoring an individual in whom the right lies, cannot be left to his own will.** It is an idea which, in cases of the waiver of any right, is manifested with clearness and force.

As applied to agreements, Quintus Mucius Scaevola, another distinguished civilist gives the term public policy a more defined meaning:

Agreements in violation of *orden pblico* must be considered as **those which conflict with law, whether properly, strictly and wholly a public law (*derecho*) or whether a law of the person, but law which in certain respects affects the interest of society.**

Plainly put, public policy is that principle of the law which holds that **no subject or citizen can lawfully do that which has a tendency to be injurious to the public or against the public good.** As applied to contracts, in the absence of express legislation or constitutional prohibition, a court, **in order to declare a contract void as against public policy, must find that the contract as to the consideration or thing to be done, has a tendency to injure the public, is against the public good, or contravenes some established interests of society, or is inconsistent with sound policy and good morals, or tends clearly to undermine the security of individual rights, whether of personal liability or of private property.**" (Emphasis ours)

Based on the foregoing, and in the absence of any precedents or legislation on this matter, it is the opinion of this Commission that **exemplary damages, regardless of the nature of the proceedings where the same is awarded, are not insurable under Philippine laws on the ground that the same is against public policy.**

An insurance which provides cover for exemplary damages which may be adjudged against a policyholder undermines the deterrent value of exemplary damages. Public policy justification outweighs the freedom of parties to contractually agree upon the terms of the insurance coverage.

In the United States of America, the judicial approach towards the insurability of punitive damages has been tremendously influenced by Judge Wisdom's opinion in **Northwestern National Casualty Co. vs. McNulty**,<sup>2</sup> denying insurance coverage. According to Judge Wisdom, the clear purpose of a punitive damages award is to punish and deter. This objective mandates that "damages rest ultimately as well as nominally on the party actually responsible for the wrong." The Court further reasoned that "if that person were to shift the burden to an insurance company, punitive

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<sup>2</sup> 307 F.2d 432 (5<sup>th</sup> Cir. 1962)

damages would serve no useful purpose". The court explained that allowing coverage, more realistically, would place the burden of the punitive levy not on the insurer, but on the insured public as a whole, since the punitive amount would be passed along to insureds in larger premiums. But this result should not occur, stated the court, because, in effect, society would be punishing itself for wrong committed by the insured.<sup>3</sup>

It shall be understood that the foregoing opinion is rendered based solely on the facts disclosed in the query and relevant solely to the particular issue raised therein and shall not be used in the nature of a standing rule binding upon the courts, or upon the Commission in other cases of similar or dissimilar circumstances. If upon investigation, it will be disclosed that the facts relied upon are different, this opinion shall be rendered null and void.

A handwritten signature in black ink, appearing to be 'Dennis B. Funa', written over a circular stamp.

**DENNIS B. FUNA**  
Insurance Commissioner

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<sup>3</sup> Priest, George L., "Insurability and Punitive Damages" (1989). Faculty Scholarship Series. Paper 614.