



Republic of the Philippines  
Department of Finance  
**INSURANCE COMMISSION**  
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## **PRESS RELEASE**

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### **IC COMMISSIONER: PUBLIC POLICY PREVENTS EXEMPLARY DAMAGES FROM BEING INSURABLE**

In addressing an issue of first impression, Insurance Commissioner Dennis B. Funa recently issued a legal opinion dated 12 July 2017 stating that coverage for exemplary damages in a Directors and Officers Liability Insurance is not allowed under Philippine laws regardless whether the same is adjudged as civil, criminal or administrative in nature.

The issuance of the said legal opinion stemmed from the request of FPG Insurance Co., Inc. for confirmation that punitive, aggravated or multiplied damages, fines, and penalties (collectively referred herein as “exemplary or punitive damages”) are insurable provided that the same will not be adjudged as criminal in nature.

In resolving the issue of whether or not damages, fine or penalties which are exemplary or punitive in nature are insurable or not, the Insurance Commission resorted to the examination of applicable laws and decisions promulgated by the Supreme Court.

According to Commissioner Funa, “While the Insurance Code does not provide any provision which specifically deals with the question on the insurability of damages, fines or penalties which are exemplary or punitive in nature, this issue can and was resolved based on the provisions of the New Civil Code.”

While the New Civil Code guarantees the freedom of contracting parties to stipulate on the terms and conditions of a contract, it declares a contract whose cause, object or purpose is contrary to law, morals, good customs, public order or public policy as inexistent and void from the very beginning.

Commissioner Funa explained that the purpose of the imposition of exemplary or punitive damages is to serve as a deterrent to future and subsequent parties from the commission of a similar offense.

“Thus, in the absence of any law or judicial precedent which provides otherwise, it is the opinion of the Commission that exemplary or punitive damages, fines or penalties, 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,” he added.

The position of the Insurance Commission is supported by the decision in *Northwestern National Casualty Co., vs. McNulty*, a case decided in the United States, wherein the US Court denied an insurance claim of punitive damages. According to the US Court, the clear purpose of a punitive damages award is to punish and deter, thus, this objective mandates that damages rest ultimately as well as nominally on the party actually responsible for the wrong.

In the said case, the US Court reasoned “if a person were to shift the burden to an insurance company, punitive damages would serve no useful purpose.” The US Court further explained that allowing coverage, more realistically, would place the burden of the punitive levy not on the insurer, but on the insurance public as a whole, since the punitive amount would be passed along to insureds in larger premiums. However, this result should not occur, because, in effect, society would be punishing itself for wrong committed by the insured.

Henceforth, the Insurance Commission will disapprove a policy provision in a Directors and Officers Liability Insurance which includes indemnification for exemplary or punitive damages, fines, or penalties.

According to Commissioner Funa, “While we recognize the freedom of the parties to stipulate on the terms and agreements of their contract as guaranteed under the provisions of the New Civil Code, this is outweighed by public policy justification. Thus, until such time that a statute is enacted specifically permitting an insurer to assume the obligation for punitive damages or the Supreme Court issues a ruling permitting the same, the Commission will disapprove a policy provision in a Directors and Officer Liability Insurance which includes indemnification for exemplary damages, fine or penalties.”

Under Circular Letter No. 2017-13 dated 07 March 2017, any person may request for the IC’s legal opinion on questions which pertain to or relate to the interpretation and applications of laws, rules and regulations on insurance, pre-need and health maintenance organizations.



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