

# Law and Legal Process of the Product Liability Act in Thailand<sup>1</sup>

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## Abstract

The author views that there are many actors that played a role in the legislative process of Thailand's Product Liability Act B.E. 2551 (2008) (the "**Thai Product Liability Act**" or the "Act"), none of which predominates over the others. Similarly, there are many actors involved in the development of this legislation leading to the author to conclude that the law and the legal process involved in the enactment of the Thai Product Liability Act are considered to be democratic and transparent. As a result, foreign product liability laws can, to a large extent, be tailored to suit the Thai legal system. The practical importance is that the Act has enabled persons who are injured by unsafe products to claim for more adequate and fairer compensation. This is evidenced by the fact that manufacturers have shown to be more inclined to negotiate and mediate with injured persons ever since the Act has come into force.

Thailand started its economic development post World War II and followed western industrialized countries in the drawing up of its national economic and social development plan under the recommendations of the World Bank. In 1960, Thailand's industrialized goods were basic industrial goods that comprised only 1-2 percent of the country's gross domestic product (GDP). Import-substitution industrialization occurred in the 1960s and the 1970s and Thailand seriously began its export-push industrialization in 1981 under the government led by General Prem Tinsulanonda which followed the model adopted by Japan, South Korea and Taiwan. In 1992, a joint meeting of the World Bank and the International Monetary Fund was held in Thailand.

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At such meeting, Thailand became one of the eight countries (namely, Japan, South Korea, Taiwan, Hong Kong, Singapore, Malaysia, Thailand and Indonesia) that were considered to be the economic miracles as the income of the majority of the Thai population was above the poverty line as a result of the adoption of industrialization and market economy by the country.

Apart from the tourism industry, Thailand also increased its export of labor-intensive products such as clothing, shoes and processed agricultural products from 1981 onwards. Hence, it may be correct to say that Thailand had become an emerging economy in the 1990s and its economic system had become a mass market economy involving mass production and mass consumption which was similar to what was witnessed in western industrialized countries in the 1950s and the 1960s. It can be said that the export of goods to foreign markets has led to the necessity for the enactment of the Thai Product Liability Act as can be illustrated by the two cases witnessed by the author.

The first case was a case of the largest canned tuna manufacturer in Thailand who received a request from Mitsubishi Shoji, a large Japanese trading house within the Mitsubishi conglomerate, to purchase product liability insurance with coverage extending to injury that consumers in Japan may suffer from consuming canned tuna manufactured in Thailand. The request seemed to be a sensible request given that Japanese importers of defective goods that cause damage to consumers in Japan will be subject to liability under Japanese product liability law. This case prompted the Thai authorities to consider the other side of the coin by enacting similar product liability law that would protect consumers in Thailand in a similar manner.

The second case was in 2000, at the time the author took up the role of an advisor to the Federation of Thai Industries (the "FTI"). The Chairman of the FTI consulted the author of the fact that Australian importers of pickup trucks communicated their desire to see an improvement in the quality and safety standards of Thai pickup trucks and that they would be willing to import and to pay higher premium for the pickup trucks if Thailand were to enact a product liability law. This is because the enactment of such law in Thailand would reduce the legal liability of

the Australian importers under the Australian product liability law.

In summary, Thailand's economic development over the course of more than 40 years to become a newly industrialized country resulted in the country adopting a mass production and mass consumption system at the end of the 1990s. This led to the need for product liability law (as was the case of the United States in the 1944, the European Economic Community (the "EEC") and Japan in the 1970s) as a supplement to the law of torts and the law of sales contract such that consumers of unreasonably dangerous products may receive adequate and fair compensation.

### **I. Actors and Legislative Process of the Product Liability Act**

Around 1999, the Thai Industrial Standards Institute of the Ministry of Industry – a government agency responsible for the determination of both compulsory and voluntary industrial product standards including canned food – was the government agency that introduced a draft product liability law. A law professor from Chulalongkorn University Law Faculty also sat on the drafting committee as a member.<sup>2</sup> The draft law was transferred to be under the responsibility of the Office of Consumer Protection Board (the "OCPB") of the Prime Minister's Office whose drafting of the law was based on a research funded by the Office of the National Research Council of Thailand.<sup>3</sup> The Cabinet led by Prime Minister Chuan Leekpai approved this draft Thai Product Liability Act B.E. ... in principle at a cabinet meeting on 4 July 2000 as proposed by the OCPB.<sup>4</sup> As is the case with any other acts, the draft law must be submitted to the Office of the Council of State for its review after it has been approved in principle by the cabinet. In this respect, the Secretariat of the Cabinet issued a letter dated 10 July 2000 to the Office of the Council of State confirming that the draft Thai Product Liability Act B.E. ... was approved in principle by the Cabinet on 4 July 2000 as proposed by the OCPB and requesting the Office of the Council of State to review the draft and to take into account observations of the Ministry of Commerce, the Ministry of Justice and the Secretariat of the Cabinet.<sup>5</sup>

The draft law was reviewed by the Office of the Council of State (Special Committee), taking into account facts presented by representatives from the OCPB, the Ministry of Agriculture and Cooperatives (Department of Fisheries, Department

of Livestock Development, Department of Agriculture and National Bureau of Agricultural Commodity and Food Standards), the Ministry of Commerce (Department of Internal Trade and Department of Trade Negotiations), Ministry of Industry (Thai Industrial Standards Institute), the Food and Drug Administration, the Court of Justice and the FTI.<sup>6</sup> It is interesting to note that the Chairman of the Special Committee, who was the former president of the Supreme Court, played a very significant role in the review and the revision of the draft law that was proposed by the OCPB. Another very important actor was the FTI which presented the draft law to its members for their opinions. Such FTI meeting was organized at a large hotel with experts (legal scholars, executives of FTI member companies and members of the FTI board of legal affairs) exchanging their opinions on product liability law which was followed by hearing of FTI members' opinions and suggestions. Despite the fact that there was a change of government on several occasions during the period from 2000 to 2005, the FTI had organized similar seminars over the same period on at least five occasions with at least 200 top- and mid-level executives from its members attending each seminar paying approximately Baht 1,000 per seat. This clearly shows that the Thai business sector paid a lot of attention to this draft product liability law. In addition, representatives from multinational automobile corporations were also invited to provide their opinions and to distribute their opinion papers to seminar attendees.

The many changes of government in Thailand prevented the conclusion of the draft Thai Product Liability Act. Eventually in 2007, during the government of Prime Minister General Surayuth Julanont, the draft law was tabled before the National Legislative Assembly which approved the draft in principle on 12 September 2007. Subsequently, on 20 September 2007, the National Legislative Assembly resolved to approve the legislation and the announcement was made in the Government Gazette on 20 February 2008 with the law coming into effect one year after such announcement.<sup>7</sup> It is interesting to note that the Thai Product Liability Act could be passed relatively quickly as this government was not a democratically elected government and the FTI had been blocking the enactment of this Act in the past during 2000 - 2007.

## II. Unique Provisions of the Thai Product Liability Act

In the drafting of the Thai Product Liability Act, the Office of the Council of State (Special Committee) revised the OCPB's original draft by adopting the EEC Product Liability Directive of 1985 as a model law<sup>8</sup> and by referring to Japan's Product Liability Act of 1994 and the United States' The Restatement (Second) of Torts of 1965. The Office of the Council of State (Special Committee) also tailored the draft law to better suit the Thai legal system and economy.

The author set out below special aspects of the Thai Product Liability Act which are worth mentioning given their significant difference to product liability law of the three aforementioned western industrialized countries (i.e. the EEC, Japan and the United States).

- (a) The definition of product which includes "agricultural products not arising through natural processes". While the author agrees that the rationale behind the definition is to protect consumers, the author feels that such broad definition may run counter to the public policy and other relevant laws.

Firstly, the definition is in conflict with the policy to promote micro and small enterprises pursuant to the Small and Medium Enterprises Act B.E. 2542 (1999) whose public policy behind its enactment is to promote small and medium enterprises (SME). Micro and small enterprises would be adversely affected from the imposition of strict liability under the law and the broad definition given the fact that approximately 98 percent of all enterprises in Thailand are medium, small and micro enterprises, many of which engage in sale and production of agricultural and processed agricultural products as Thailand is a predominantly agricultural country. An example of enterprises that would be adversely affected from the broad definition is OTOP enterprises (OTOP stands for "One Tambon One Product" which is a rural area development project which Thailand followed Japan's "Ipson Ippin" project) since the majority of these small enterprises use agricultural products such as juices, dried fruits, meat

products, weaved mat, local costumes etc as their product inputs. The author feels that liability under tort law with respect to such small OTOP enterprises would be a more appropriate remedy in the Thai context.

Secondly, the definition is in conflict with the public policy of law relating to the control of the use of insecticide and the law relating to the control of food safety. The rationale behind the definition is to punish farmers who overuse insecticide and harvest their crops prematurely before the toxicity clears up. Both the insecticide control law and food safety control law are aimed to act as preventive regulations that should play a role before unsafe products enter into the market. In contrast, the product liability law is a remedial regulation that plays a role after the unsafe products enter into the market and cause damage to consumers. Thus, it would be more appropriate to revise the relevant provisions and the implementation of insecticide and food safety control laws in order to tackle the problem of contaminated fruits and vegetables.

- (b) The definition of “product” is not set in stone as Section 4 empowers the Prime Minister to issue ministerial regulation exempting certain products from the purview of the Thai Product Liability Act.

The author anticipated that the first category of products that would be subject to the exemption would be products with unavoidable defect such as rabies vaccine, polio vaccine and medication for certain diseases. However, it seems that the first ministerial regulation to be issued pursuant to Section 4 will exempt agricultural products that originate in Thailand and that are not produced in a factory pursuant to the factory law.<sup>9</sup> The author agrees with this approach as this will exclude micro enterprises that engage in the manufacturing of processed agricultural products from the Thai Product Liability Act. However, a ministerial regulation exempting products with unavoidable defect should also be issued in the future.

- (c) The burden of proof of an injured person under the product liability law

of the United States, the EEC and Japan is the same i.e. while the injured person does not have to prove that the manufacturer was negligent in producing the unsafe product, the injured person has to prove that the product in question was defective and unreasonably dangerous. This means that the injured person has to prove that the product caused or may have caused danger as it was unreasonably dangerous as a result of manufacturing defect, design defect or warning defect. On the contrary, an injured person in Thailand does not have to prove in any way that the product was unreasonably dangerous. Instead, the injured person would have to prove only that he/she was injured by the product although the product was used or stored in the usual manner. This burden of proof provision of the Thai Product Liability Act is material as it is significantly different from what is provided under the product liability law of the aforementioned western industrialized countries.

The FTI has been protesting against this low standard of proof from the beginning. It invited product liability experts from Japanese and Australian multinational corporations to give both written and verbal opinions that injured persons in their jurisdictions carry the burden of proof that the product in question is defective and unreasonably dangerous. However, the Office of the Council of State (Special Committee) insisted that in the context of the Thai civil procedures such burden of proof should lie with the manufacturers as they are in a better position to access all relevant product information.

The author tends to agree with the Office of the Council of State (Special Committee). Section 84 of the Thai Civil Procedures Act imposes the duty to satisfy the burden of proof on the party that makes an allegation of a particular fact. In practice, it is usually almost impossible for an injured person to satisfy this burden of proof as he/she would need to prove that the product is defective and unreasonably dangerous as alleged. The discovery process as used in the United States is almost irrelevant in the Thai civil procedures in practice as a result of Section 84. Hence, instead

of revamping the Thai Civil Procedures Act, the burden of proof was shifted to the manufacturers (as defendants) in order to solve this problem. The solution avoids what would have been considerable changes to the civil procedure system and has also proved to be practically effective.

- (d) Jurisdictions that adopt the code system such as Germany and Japan believe that criminal offenders should be sanctioned with criminal liability and civil law offenders should be sanctioned with civil liability such as being required to pay compensation. Hence, punitive damages are not recognized under Japanese law as evidenced by five Japanese court decisions, all of which insisted that punitive damages conflict with peace and good order of the people.<sup>10</sup>

Although the Thai legal system is also a code system, Section 11(2) of the Thai Product Liability Act empowers the court to determine the amount of punitive damages that is not more than twice the amount of actual damage suffered by the injured person. This is similar to the EEC Product Liability Directive of 1985 which accepts the use of punitive damages but gives the freedom to EEC members to determine their own ceiling amounts. The author agrees with the Office of the Council of State (Special Committee) in its application of punitive damages to the Thai Product Liability Act as such approach fits well with the Thai legal system i.e. such application is only with respect to a special law and does not extend to the general tort liability and liability for breach of contract as is the case of common law jurisdictions and the Thai Product Liability Act limits the amount of punitive damages to not more than twice the amount of actual damages.

While the FTI did not agree with the application of punitive damages to the Thai Product Liability Act, it accepted punitive damages for two reasons: (1) the punitive damages issue is less significant as compared to the burden of proof issue, and (2) there is a ceiling amount of not more than twice the amount of actual damages.

- (e) Section 7 of the Thai Product Liability Act states that entrepreneurs



shall not be liable for damages arising from an unsafe product if it can be determined that: (1) the product was not unsafe, (2) the injured party had knowledge that the product was unsafe (assumption of risks), or (3) the injured party misused the product.

The FTI proposed in writing to the Office of the Council of State (Special Committee) to include two additional defenses to Section 7 being (1) state of the art defense, and (2) compliance with the official mandatory standard. The Office of the Council of State (Special Committee) rejected such additions seeing them as unnecessary.

The author agrees that the state of the art defense should not be added to Section 7 as only very large conglomerates would be able to rely on such defense and that would go against the rationale behind the law which aims to capture these large conglomerates in particular and to impose strict liability on them. The author, however, feels that the compliance with the official mandatory standard should be added to Section 7 as official mandatory standards are usually the ceiling standards which the majority of enterprises in Thailand must achieve in order for their products to be certified. As these enterprises must invest large capital in their human resources and machinery, it would be fair to exempt products that have satisfied the certification requirements from the Thai Product Liability Act.

### **III. Legal Process after the Enactment of the Thai Product Liability Act**

After the National Legislative Assembly approved the draft law and the announcement was made in the Government Gazette on 20 February 2008, the law came into effect one year after the announcement was made i.e. on 20 February 2009.<sup>11</sup>

Ever since the announcement of the law in the Government Gazette was made, the Thai private sector especially members of the FTI and members of the Thai Chamber of Commerce has been very watchful of the Thai Product Liability Act. At the same time, other actors involved in the law also contributed to the shaping of

the Act. The following actors and activities are considered by the author to be of importance to the development of product liability law in Thailand.

- (a) **The FTI.** The FTI plays a significant role as the majority of its members consists of large enterprises that have access to policy makers such the Public and Private Partnership Joint Committee. The FTI also organized a large seminar shortly after the Act was published in the Government Gazette to alert its members that the Act was coming into force. The turn up rate at the seminar was impressive with almost 600 executives from FTI members attending.

Within the FTI itself, the automobile group and the food and beverage group have prepared countermeasures in response to the law. The automobile group has set up a claim center similar to a complaint center of Japanese automobile companies. The food and beverage group organized seminars inviting experts on the Thai Product Liability Act to give talks to its member companies.

The FTI aims to closely monitor the enforcement of the Act such that it can act swiftly to lobby policy makers for appropriate changes to the Act in the event that the Act materially and negatively impacts the business sector.

- (b) **Private organizations involved in consumer protection.** A few private organizations involved in consumer protection activities were very active during the government of General Surayuth Julanont, during which time two important consumer protection laws were enacted namely the Consumer Case Procedure Act B.E. 2551 (2008) and the Thai Product Liability Act. The result of this is that all cases relating to the Thai Product Liability Act are deemed to be consumer cases under the Consumer Case Procedure Act, and the court must therefore follow the procedures set out in the Consumer Case Procedure Act. For example, a plaintiff bringing a claim under the Consumer Case Procedure Act does not have to hire his/her own lawyer as a court officer will be assigned to assist him/her. The

plaintiff also does not have to bear the cost of litigation. In addition, the court process must complete within three months.

These private organizations have also been pushing for a legislation that will allow an establishment of a consumer court. However, they have not succeeded on this point.

An important role of private organizations today is acting as a complaint center to receive complaints from consumers who are injured by unsafe products e.g. a vehicle whose seatbelt ripped apart or whose airbag failed to deploy during a traffic accident or UHT milk that got spoiled etc. Some private organizations take a more proactive role by taking injured consumers to meet directly with the OCPB.

Furthermore, certain private organizations also have their own legal department that is ready to take a case to court on behalf of an injured consumer. Some organizations do issue quarterly journals relating to consumer protection in various aspects including a list of unsafe products.

Among the many private consumer protection organizations, the author's personal view is that the Foundation for Consumer is the most active organization today. This is especially so given that its journals and brochures that relate to unsafe products have prompted many manufacturers to quickly negotiate and mediate with injured consumers in fear of their reputation being tarnished.

- (c) **The OCPB.** The OCPB is a government agency that is directly responsible for the protection of consumers including receiving complaints, mediating and bringing a case to court on behalf of consumers. The OCPB has its own website that distributes information relating to consumer protection including details of certain unsafe products. An outstanding function of the OCPB is that its knowledgeable officers provide mediation service to the parties in dispute. As the officers have the status of public officers, there is a sense of official authority which is felt and respected by

entrepreneurs. However, there is also a disadvantage of the organization being bureaucratic i.e. there are complicated procedures, insufficient staffing, consumers usually have difficulty accessing the OCPB and have to wait for a long time for an operator to answer the OCPB's hotline to receive their complaints. Nonetheless, the OCPB still plays a very important role. It is an actor that must always be in the picture in the shaping of the development of the Thai Product Liability Act.

- (d) **The Court of Justice.** The Consumer Case Procedure Act and the Thai Product Liability Act give the most predominant role to the Court of Justice in relation to cases relating to the Thai Product Liability Act. The laws introduce a new public service position i.e. a case officer whose primary responsibility is to provide support to judges hearing consumer protection cases. The government allocates as many as 800 job vacancies for this position but it seems that this position has not attracted much interest from new law graduates due to its low pay. Furthermore, some law graduates who wish to become judges or prosecutors only take up this position as a temporary path before they sit for judge and/or prosecutor examinations. At present (April 2011), 200 job applicants who passed certain tests to become a case officer have already been recruited for the position. These new recruits will then undergo a training that lasts for two to three months.

As for judges, various tools as described below are made available to judges so they are well prepared for cases involving consumer protection.

- Explanation of the Thai Product Liability Act has been prepared by a judge who was trained in the United States and made available to judges in general. The book is for Thai judges to use as a guideline in adjudicating a consumer protection case. The author finds this book to be highly accurate<sup>12</sup>.
- A procedural guideline for consumer protection cases is available for lower court and appeal court judges.

- A seminar on consumer protection cases and material issues relating to the Thai Product Liability Act was held on 20 July 2009 and was attended by approximately 200 appeal court judges.
- (e) **Scholars.** After the Thai Product Liability Act came into force, university scholars and senior lawyers of the OCPB have written text books relating to comparative consumer protection laws and explanation of the Thai Product Liability Act.<sup>13</sup> These books have and will continue to play a role in the interpretation of and the shaping of the development of the Thai Product Liability Act.

These books have been largely welcomed by the private sector as evidenced by the fast sellout of the books. The books were sold out within approximately one year which is relatively quickly given Thailand's small market for academic books. This clearly reflects that private sector is vigilant of the strict liability under the Act.

- (f) **The General Insurance Association.** The General Insurance Association consists of more than 80 members that are insurance companies. It introduced a property insurance policy that relates specifically to unsafe products and which has been approved by the Office of Insurance Commission. It is the view of the author that property insurance policies play an important part in determining the direction of the development of the Thai Product Liability Act.

#### IV. Empirical Examples

After the law came into force on 20 February 2009, there have been important cases that relate directly to the Thai Product Liability Act. These cases are summarized below.

- (a) *A case involving a torn seat belt during a traffic accident.* Miss A, a 29 year-old company employee, bought a brand new Japanese mini-compact car that was assembled in Thailand. Not long after the purchase, Miss A drove her new car and had a head-on collision which she was seriously injured.

She was admitted to a hospital and had to wear a splint on her foot and a neck supporting device. Miss A lodged a complaint to the Secretary-General of the OCPB alleging that the seat belt that she was wearing at the time of the accident ripped apart and thereby causing her injury. The automobile company argued that it was impossible for the seat belt to be torn as the yarns that were used in weaving the seat belt were produced by DuPont and therefore were of the best quality. While the Secretary-General of the OCPB at that time announced that the OCPB would bring the claim to court such that it would be the first precedent case that is litigated under the Thai Product Liability Act, the case was not actually submitted to the court for decision. The author suspects that the parties reached a settlement out of court because the automobile company was concerned that its reputation would be damaged by the litigation and that it would lose its market share to competitors.

- (b) *A case involving an airbag that did not deploy during a traffic accident.* A wife and a husband bought a new compact car for around Baht 1.5 million. The couple regularly drove the new car up north of Thailand to look after their longan farm. Due to the natural landscape of the north of Thailand, the roads that the couple had to take are narrow and winding. One day, the car had a head-on collision with a passing car and the car fell off the road. Fortunately the couple had their seatbelts fastened, so they survived the collision but they were nonetheless seriously injured. After they were released from the hospital, they sold the crumpled car for about Baht 100,000 as the car was too damaged to worth repairing. The couple lodged the complaint to the Japanese automobile company which assembled the car in Thailand. The manufacturer argued that because of the winding road, the passing car collided with the car in question at an angle and as such the airbag was not activated. The manufacturer denied that the car was unreasonably dangerous. The couple then submitted the matter to the Foundation for Consumers. Again, it is likely that the dispute will be successfully mediated as automobile companies are usually sensitive

to possible reputation damage and loss of market share as a result of litigation.

- (c) *A case of spoiled UHT milk.* Mrs. C went to Modern Trade Mall and bought some UHT milk cartons. When she reached home, she gave one carton to her child who tasted the milk and complained that it was spoiled. Mrs. C checked the UHT milk cartons and found them to be indeed spoiled. She took them back to the mall which inspected the cartons and also found that the milk was spoiled as claimed. The mall and the manufacturer admitted the responsibility and agreed to pay her Baht 10,000 (Baht 5,000 each). The author thinks that the mall and the manufacturer were pressured to promptly settle the case because they realized that it was highly likely that Mrs. C would have won the case should the case come to court as she has a very low burden of proof under the Thai Product Liability Act i.e. Mrs. C merely had to prove that the product was used in the ordinary manner and that the plaintiff was injured. On the other hand, the manufacturer had a lot to lose given the highly competitive environment of the UHT milk market in Thailand. A court case would rapidly lead to a loss of market share. The reason behind the decision of the mall and the manufacturer to share the responsibility equally was probably because they both knew that they would be deemed to be jointly liable under the Thai Product Liability Act. As the apportioning of liability between the two parties could be difficult (apportioning the fault between the two parties by proving that it was the fault of the mall in the storage of the UHT milk cartons as against the fault of the manufacturer in the production of the UHT milk cartons), apportioning the liability equally would seem to be the simplest solution.
- (d) *A case of an explosion of a soda bottle.* Soda is a popular mixer in Thailand as Thai men like to drink whiskey soda. Mr. A bought soda bottles to consume at home. A soda bottle exploded causing injury to Mr. A's hand. He then brought the soda bottle to the soda manufacturing company to lodge a complaint. The legal department of the company was assigned to negotiate with Mr. A to settle the case. A swift solution was concluded

with the company paying a certain amount of compensation to Mr. A. The author suspects that Mr. A was not aware of his rights under the Thai Product Liability Act and was led to believe by the manufacturer that he would have lost the case anyway if a claim is brought to the court since the manufacturer claimed that it was not negligent in the manufacturing of the soda bottle as it employed latest technology and followed a very strict quality control procedure. The manufacturer also did not want to lose its market share to competitors or to have its reputation damaged by a court case, hence settlement was reached rather quickly.

- (e) *A case involving a cut caused by a brain boost drink bottle.* Miss B, a student in a secondary school, was preparing for an entrance examination. Her parents bought her an expensive brain boost drink. One day when Miss B was trying to open a bottle, the bottle broke and cut her hand. Miss B's parents contacted a lawyer who brought Miss B, her parents and the broken bottle to the manufacturing company to lodge a complaint. Miss B's lawyer warned the legal department of the manufacturer that the company would likely lose if Miss B brings the case to court given the low standard of proof of an injured person in product liability cases. The legal department reported the matter to the company executives who decided that it would be in the best interest of the company to quickly settle the case even if it was still unclear whether the bottle broke by accident or whether it was an intentional act of Miss B. In the end, the parties reached a settlement with the company paying compensation to Miss B. Although the amount of compensation was reasonably high, the author thinks that the company made the right decision as it could stand to lose more than what it paid given the high possibility of losing the court case.
- (f) *A case of a dead house lizard found in a yogurt drink.* Mr. E is a newspaper journalist who works in a southern province (note that a newspaper journalist is normally considered by public officers and business owners in rural provinces to be influential). Mr. E bought a yogurt drink from a local shop, inserted a straw into the beverage package but he could not



draw the liquid up the straw. He and his journalist friend then brought the drink to a police station, cut open the top of the package only to find a dead house lizard lying at the bottom of the drink carton. Mr. E's friend took a photo of the dead gecko and Mr. E asked the police to put these facts in the police report as evidence. The news of the dead gecko in the yogurt drink was spreaded through various media. A lawyer of the manufacturer filed a police report that Mr. E made false evidence and defamed the manufacturer as it was impossible for the gecko to survive the heat in the company's yogurt drink packaging room. The manufacturer further accused Mr. E of having approached the company and demanded a very large sum of money, which the company could not agree to pay. The manufacturer filed a criminal case against Mr. E on grounds of making false evidence purporting to threaten the manufacturer for money and defamation. The provincial court dismissed the case. Mr. E later brought the criminal case to the provincial court. The case is now pending decision of the provincial court.

## **Conclusion and Analysis**

The author is of the view that the law making process of the Thai Product Liability Act is analogous to a tug-of-war game that is played by various important actors. As the process itself is reasonably democratic and transparent, the Act has turned out to be appropriate in the context of the Thai economic and social development and the Thai legal system, although it is fair to say that the Act slightly tends to favor consumers more than manufacturers.

Similarly, the legal process after the enactment of the Thai Product Liability Act is also analogous to a tug-of-war game that is played by various actors that is involved in the judicial process and the Thai economy. The preliminary analysis of the author is that the coming into effect of the Act has clearly incentivized manufacturers to negotiate and mediate with injured consumers and as such injured consumers have a better chance to receive more adequate and fairer compensation. The author, however, is reluctant to conclude that the law has gone so far as to

provide a platform to consumers, in extreme cases, to make false evidence in bad faith to threaten manufacturers for compensation. As such, it will be interesting to continue to closely observe the development of the Thai Product Liability Act.

## Notes

- 1 Whereas the Office of the State Council's official translation of the legislation is "The Liability for Unsafe Product Act B.E. 2551 (2008)", such legislation is referred to in this paper as "The Thai Product Liability Act".
- 2 Susom Supanit, *Development of Consumer Protection Law* (in Thai), Chulalongkorn University Press 2011, p 67.
- 3 Manit Wongseri, Wanchai Boonbumrung, Pinai Nanakorn, Somsak Nawatrakulpisut, Ing-orn Jintanalerd, *Complete Research Report : Product Liability*, 2000, total 183 pages.
- 4 Teerawat Chantarasomboon, *Explanation and Material Concepts of the Thai Product Liability Act B.E. 2551 (2008)* (in Thai), Nititham, 2009 at p 3.
- 5 Materials for consideration in relation to the draft Thai Product Liability Act B.E. ... (in Thai), prepared by the Law Office of the Secretariat of the Senate in its capacity as the Secretariat of the National Legislative Assembly, September 2007, p 37 (the "Materials for Consideration").
- 6 Ibid, p 14.
- 7 Teerawat Chantarasomboon, op cit (n 5), p 4.
- 8 Materials for Consideration, op cit (n 6).
- 9 Teerawat Chantarasomboon, op cit (n 5), p 68.
- 10 Yukihiko Asami, *The Product Liability Law in Japan* as part of the seminar materials on Law on Consumer Protection : Japan and Thailand, organized by the Faculty of Law Thammasat University and the Institute of Developing Economies (IDE-JETRO), 1999, p 68. The court decisions are as follows:
  - Tokyo Court, 1044 Hanrei Jiho 19 (1 February 1982)
  - Tokyo High Court, 1271 Hanrei Jiho 3 (11 March 1988)
  - Tokyo Court, 1231 Hanrei Jiho 3 (18 May 18 1982)
  - Tokyo High Court, 1514 Hanrei Jiho 85 (13 September 1994)
  - Tokyo Court, 1498 Hanrei Jiho 10 (27 May 1994)
- 11 Teerawat Chantarasomboon, op cit (n 5), p 4.
- 12 Pongdech Vanichkittikool, Chief Justice of the Office of the President of the Supreme Court, *Explanation of the Thai Product Liability Act B.E. 2551 (2008)* (in Thai), 2009, total 66 pages.
- 13 Such scholarly textbooks in chronological order are as follows:
  - Sakda Thanitcul, *Explanation and Various Court Decisions : Product Liability Laws* (in Thai), Winyuchon, first edition published on 1 July 2009, total 180 pages, second edition (with revisions) published in September 2010, total 240 pages.
  - Teerawat Chantarasomboon, *Explanation and Material : Concepts of the Thai Product Liability Act B.E. 2551 (2008)* (in Thai), Nititham, 2009, total 232 pages.
  - Manit Jumpa, *Explanation of Product Liability Law* (in Thai), Chulalongkorn University press, 2011, total 497 pages.