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Independent Study Title : Legal Problems Relative to Liability Exemption of the Insurer Under Civil and Commercial Code Section 879 First Paragraph

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Academic Year : 2012

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ABSTRACT

At present, paragraph one of Section 879 of the Civil and Commercial Code prescribes the clause of liability exemption of the insurer so as to protect the insurer from the fact that the insured or the beneficiary cause the loss “in bad faith” or “by gross negligence”. This clause has problems which may cause injustice to both the insurer and the insured. Therefore, this Independent Study aims to study the problems in respect of the clause of such liability exemption mentioned above so as to find out the problem-solving guidelines for the case of stipulation of the clause of liability exemption; namely, the problem of “bad faith” construction which shall be strictly conducted and the problem of the clause of liability exemption in the event of the “gross negligence.”

According to the study, the word “bad faith” is not clearly defined but there are certain jurists giving its meaning. In conclusion, it means the act committed by deception, fraud, and malice, irrespective of whether such act is committed or instigated by the offender, for the purpose of causing loss to obtain the compensation. Hence, according to the fact, if it appears that the insured or the beneficiary do not act in bad faith but willfully act in order to cause loss as occurring by other reasons; for instance, hot blood, the insured or the beneficiary shall be deemed to have not acted in bad faith; as a result, the insurer is unable to cite the clause of liability exemption in this case. This construction shall cause injustice to the insurer. For the clause of liability exemption in the case of the “gross negligence,” upon consideration of the objective of taking out the insurance, it is to lessen the injury burden which may occur in the

future and which may also be caused by the gross negligence. In consequence, the fact that the law prescribes that the insurer is released from absolute liability can cause injustice to the insured or the beneficiary.

According to the aforementioned reasons, it is expedient to amend the provisions of paragraph one of Section 879 of the Civil and Commercial Code to be clear, to cover, and to maximize justice to both the insured and the insurer by amending the word “bad faith” to be “willfulness” and amend the provisions in respect of “gross negligence” to cause the insurer to continue to be liable for indemnification as usual but the insurer is entitled to reduce the compensation in proportion to the severity that the insured or the beneficiary also take part in causing loss.

