

Thesis Title : Problem of Jurisdiction over Class Action Litigation

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Degree : Master of Laws

Academic Year : 2006

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ABSTRACT

According to the Thai's Class Action Bill, the law clearly gives Courts of First Instance, except Kwaeng Courts, the jurisdiction over class action litigations. Hence, we can conclude that Thai's courts have the general jurisdictions over class action cases as similar to the state courts in the U.S., i.e. territorial jurisdictions rather than the special jurisdictions as specified to the federal courts. The general jurisdiction is usually based on territorial concepts (*in personam*) or subject matter so as to provide convenient access to justice for both litigants, as opposed to the special jurisdiction which is limited access but provides the efficiency rendered by specialized judges such as the Central Tax Court and the Central Bankruptcy Court.

The characteristic of class action, however, is a more complex litigation than normal proceedings and needs pro-active judges to provide adequate judicial involvement more than that in normal litigations; as a result, this Thesis chiefly emphasizes on studying the core concepts of legal proceedings in class action cases, the changing role of judges, and the comparison of the judicial appointment systems between Thailand and the U.S., including the previous experience from the problems of using general jurisdiction in the U.S.. All in all, those are the methodology for gathering data to analyze whether only the general jurisdiction is in deed appropriate to provide fair and efficient protection for class members or not.

The results from this study have demonstrated that the Class Action Bill in Thailand, which basically derived from the U.S. model procedure (Fed. Rule 23) is distinctly complicated with tons of procedural performances adding massively pro-active role for the judges in various ways. For all reasons, the expertise of the judges both in skills and experience is 'A must' for the class action litigations in order to control the litigations effectively and offer sufficient protection for all parties, particularly unidentified class members. Most importantly, the study explicitly has proved that even in the U.S., which presumably is the origin of class action's procedure, has had amended the rules in 2005 (The Class Action Fairness Act of 2005) to remarkably expand the Federal courts' jurisdiction due to the failure of litigations in state courts which applied judicial procedures inconsistently and allowed class counsels to independently run the show, with inadequate judicial involvement. To avoid that problem, the U.S. Congress has tried to shift the primary class action forum from state courts to federal courts. Additionally, from the judicial appointment basis, Thai Courts of First Instance have unequal skilled and competent judges, i.e. newly-recruited judges or 'novices' will be appointed to the Provincial Courts of First Instances other than in Bangkok. This greatly differs from the U.S. system which has equally standardized and experienced judges appointed to various courts. Thus, I strongly recommend using the special jurisdiction for class action litigations rather than the general jurisdiction as the Class Action Bill, according to significant factors, namely the sophisticated procedure, role of judges and the judicial appointment in our country.