The Civil Procedure Code (CPC) provides remedies for legal persons and natural persons who have suffered damages due to wrongfully-issued interim injunctions. This article covers the claims for damages resulting from such injunctive measures which are allowed in proceedings intended to secure future or existing claims.

Article 403(1) CPC contains an exhaustive list of the cases in which the beneficiary of an interim injunction securing a claim may be liable. These are the cases in which the claimant failed to serve a claim to secure a future payment before the court that would hear the case on its merits within the prescribed time limits and also the cases in which the claim was served within the time limits but it was not granted. The remedy for the person who suffered damage is applicable also in the cases in which the proceedings are dropped or in which the injunctive measure is repealed by a higher-standing court. The option to claim damages due to wrongfully-issued interim injunctions is also not ruled out in the cases in which the court proceedings are discontinued due to the existence of an arbitration clause in the contract between the parties.

The conditions for damages to be awarded include the existence of an injunctive measure, the existence of any of the cases referred to in Article 403(1) CPC, and the existence of damage sustained as a result of the injunction to secure a claim.

The subject-matter of the claim covers any direct and immediate damage caused by the collateral provided for in the injunction. The general rules of tort law apply in accordance with the Obligations and Contracts Act (OCA).

The damages due to wrongfully-issued interim injunctions can be either pecuniary (losses, foregone benefits) or non-pecuniary. There should be direct causation between the damage and hence the reduction of the assets of the person who suffered the damage, on the one hand, and the awarded injunctive measures, on the other hand. The claimant for damages should prove the actual suffering of the damage and its amount with complete evidence provided by the claimant in the course of the proceedings. Where it is established that there is contributory causation on part of the person who suffered the damage, the liability will be reduced in the light of the tort liability pursuant to the OCA.

With a view to reducing the risk of an unjustified claim, it is common practice of courts to rule

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on the contribution of a guarantee to the court's account when a collateral is awarded. The main function of the guarantee is to cover possible direct and immediate damages due to wrongfully-issued interim injunctions that the defendant would probably suffer.

When the claimant pays the guarantee in the amount established by the court and requests its reimbursement subsequently, the explicit objection given in writing by the defendant against the release of the guarantee is a procedural precondition for claiming damages. The objection should contain an explicit statement on the intention to claim damages due to wrongfully-issued interim injunctions. The claimant for damages is given a further one-month period to file the case in court.

Since the defendant's assets are affected wrongfully, the guarantee paid by the claimant in the opening of proceedings to secure a claim serves to cover the claim for damages. In case the amount of damages exceeds the value of the guarantee, the affected person may request a collateral for a future or existing claim to cover the difference.

Depending on the type of injunctive measure, pecuniary damage may take the form of devaluation of seized or distrained movable property, foregone benefits from lost sales, etc. It is possible for an injunctive measure to prevent the receipt of debt repayment to the defendant by a third party. By claiming damages, the claimant may request the full value of the receivable and also foregone benefits which consist of the statutory interest rate on the distrained receivable during the term of the injunctive measure. When the distraint covers bank accounts of the defendant and the latter becomes the claimant for damages subsequently, the damages claimed may include the bank fees, including the monthly service fees which the bank charged during the term of the wrongfully-issued injunctive measures.

In the cases in which a case is brought to secure a claim by several claimants, they are all active co-claimants. If the defendant suffers damage, all claimants are considered to have caused the damage and hence they are jointly liable. Then the claim for damages may be filed against all of them jointly or each of them severally up to the full amount of the claim. Where a claim is filed against a particular claimant, the latter may involve the non-participating co-claimants and file a regression claim against them.

Conversely, where the damage is suffered by several defendants in the proceedings to

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secure a claim, each of them may file a claim for damages severally. There is no legal obstacle for all defendants who suffered damage to file a joint claim against the person(s) who benefited from the wrongfully awarded collateral.

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