

THE EXTENT TO WHICH COMPANIES' RIGHT TO CLAIM COMPENSATION FOR CONSEQUENTIAL DAMAGE IS PROVEN

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Abstract-Purpose: Damages incurred by the aggrieved party result in two main implications: the direct implication incurred by the principal aggrieved, and secondly: the consequential damages incurred by third parties associated with the principal aggrieved. The general rule is that; whether the aggrieved party is a natural or a juridical person, the latter has the right of recourse against the culprit and claim indemnification.

However, when referring to the provisions of the Jordanian Civil Code and decisions of varying degrees' courts, we find many judicial principles that imply establishing the right to indemnification against consequential damage incurred by natural person; but not juridical persons in general, and corporations in particular.

In fact, denying corporations the right to indemnification against consequential damages is incompatible with the principles of justice, that indemnify all lawful persons the right to litigate, and to achieve equality between natural persons and corporations in all rights, except for those intrinsic to the individual human.

Methodology: The researcher has adopted a descriptive approach to illustrate the legal meaning of corporations and consequential damages, as well as an analytical approach by analyzing some legal provisions that can be utilized to grant corporations the right to indemnification against consequential damages

Significance : The importance of the study appears in its subject, which is based on establishing the right of corporations to claim indemnification for consequential damages. This especially important since the Jordanian legislator categorized the types of lawful persons who enjoy legal protection when they incur certain damages into two types: natural persons - the human - and the juridical person; such as corporations, ministries, associations and others.

Establishing the right of corporations is based on a legal logic that aims at serving equality between natural persons and corporations in all rights, except for such rights intrinsic to natural persons. However, upon addressing the right to indemnification for consequential damages, the Jordanian legislator had made it exclusive to natural persons, as apparent in the judiciary's tendency when applying Article 267 of the Jordanian Civil Code, although it is possible to expand the interpretation of this article to include corporations when claiming indemnification for consequential damages.

Problem: The research problem emerges upon attempting to demonstrate the importance of the juridical personality of corporations. Such juridical personality plays an essential role in conferring rights, imposition of liability, and preserving right to claim indemnification for the damages they incur, including consequential damages that affect their financial liability, whether such damages are material or immaterial. The problem arises when we attempt to answer the following questions:

- What are the limits of indemnification against consequential damages?
- Do corporations have juridical personality?
- How applicable are the provisions under article 267 of the Civil Code, and how established is the right of corporations to claim indemnification against consequential damages?

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- *To what extent are corporations indemnified against the loss of opportunity; as a form of consequential damages?*

Keywords: *Natural person, corporations, consequential damages, indemnification, damaging act.*

INTRODUCTION

The damaging act is the first involuntary source of obligation that arises from an incident which the law considers implicative. Any breach of a legally imposed obligation; which inflicts damages to others, obliges the culprit to indemnify, whether the aggrieved party is a natural person - a human being - or a juridical person - corporate.

Such a breach occurs either against a financial, in-kind, or a personal right, which may materialize in the form of assault to a person's life or right to safety, existence, dignity, and financial consideration. The implications of damages are not limited to the principal aggrieved only, but rather extend to others who are associated with him/her. This is what we call consequential damages.

The indemnity constitutes the spirit and cause of culpability, which concur with the consequential damage in existence and absence, severity and mildness. An indemnity within culpable dereliction aims to redress the damage that corporations incur as a result of the damaging act, whether the damage is direct or consequential.

Case in point, a skilled worker is associated to the corporate under a legal bond that gives rise to several obligations and rights, rendering the worker's person a reckoned by the corporate. If such a worker is deceased as a result of a damaging act, the corporate shall be inevitably incur physical or immaterial damages. This postulates that the corporate's right to recourse against the aggrieved party and claim indemnification for consequential damages is established; pursuant to the general rule "every damage to a third party obliges the culprit to indemnify".

It is worth noting that the corporate's right to claim indemnification for a consequential damage is inconceivable from jurists' perspective; who often avoid investigating this issue and rather focus on establishing the right for natural persons.

This jurisprudential proclivity is based on the rulings of the Jordanian Court of Cassation, which brought a constant principle that negates the corporate's right to claim indemnification against immaterial damages within the framework of contractual liability, without involving itself in demonstrating to which extent its right to claim indemnification for the material consequential damages is set.

Quest I - The legal nature of collateral damage

Consequential damages are linked to the presence of pre-existing damages that affect the principal aggrieved; which are then reflected on third parties as a result of a certain relationship linking the principal aggrieved to the consequential aggrieved (**Abd Al-Qadir Al-Far: 2004**). The party that claims consequential damage, whether material or immaterial, shall carry the burden to prove it, regardless of whether the aggrieved party is a natural or a juridical person, as long as the damage is a natural result of the damaging act.

Problem 1: the scope of the consequential damages

According to the Jordanian Civil Code, provisions on damaging acts start with Article (256), which stipulates: "Every damage to a third party obliges the culprit, even if such damage is not distinguished with indemnification." Under this article, the third party includes natural persons and juridical persons - such as corporations, sports clubs, and others. Furthermore, damages may be material or immaterial.

1.1. Defining corporations' right to indemnification against consequential damages

Damages are defined as harm inflicted on a person - whether natural (human) or juridical (corporate) - in one of its rights or a legitimate interest. This right or interest may relate to the person's body, money or standing. These damages are not limited to the principal aggrieved only, but may extend in impact to third parties who are associated with the principal aggrieved. These damages are called collateral or consequential damages. (**Al-Sanhoury, 2011**)



The Jordanian Civil Code does not provide a specific definition of consequential damage. Articles 267/2 and 274 only provide for the establishment of indemnification to the persons associated with the principal aggrieved party in the event of the latter's death or gross harm. Therefore, consequential damage is the damage or subsequent damages inflicted on persons other than the principal aggrieved person against whom the damaging act occurred.

In order for the corporate's right to indemnification against consequential damage to materialize, the damage must be inflicted on the principal aggrieved party; e.g. worker, representative, member - and against the corporate as a consequence. In such a case, the consequential damage incurred by the corporate pertains in presence and absence to the principal damage. Additionally, there must be a relationship between the principal aggrieved party and the consequentially damaged corporate. Finally, there is a causal relationship between the damaging act and both damages, which is normal as long as both damages result from one damaging act. (Ibrahim Al-Sarayrah: 2014)

It is noted that the Jordanian Civil Code, similar to all other Arab legislation, limits the right to claim indemnification against consequential damages to natural persons; excluding corporations, which are lawfully juridical persons with a set of rights and many obligations. A fortiori, Juridical persons should've been equal to natural persons in indemnification against consequential damages resulting from the damaging act.

1.2. Limitation on consequential damages

The scope of consequential damages can be determined by identifying the persons against which the damage can consequentially occur, and types of such consequential damages. This is as follows:

1. Persons of consequential damage: Articles 267 and 274 of the Jordanian Civil Code (**No. 43 of 1976 and its amendments**) imply that the legislator has narrowed the scope of application of consequential damage to be limited to natural persons; without corporations.

Consequential damages may affect the person in one of its rights or legitimate interest, regardless of the latter's juridical personality, especially since the damaging act does not affect the aggrieved party only, but also transgresses that to affect the entire community. Anyone who can prove a causal relationship between the damaging act and the incurred damage can claim indemnification for the damages sustained.

The damage inflicted on the principal aggrieved person is not limited to one of its rights, but sometimes extends to third parties who have a certain relationship with the aggrieved party, thus entitling each third party to a personal claim that is completely independent of the right of the principal aggrieved party and is not restricted thereby, even if the source is one single damaging act.

Legal jurisprudence tends to focus on the natural person in the legal literature, to clarify the latter's entitlement to claim indemnification against consequential damages; often omitting juridical persons such as corporations. Case in point, offspring are indeed entitled to claim indemnification against consequential damages resulting from the death of their father. Furthermore, a worker may also be entitled to consequential damages, if the damaging act is committed against the employer, exposing the worker to unemployment and the loss of wages.

This legally conferred right to natural persons is not similarly granted to a corporate that enjoys the juridical personality recognized under the provisions of the law, especially when a worker whose personality was significant in the contract dies, should the death of the worker results in material and immaterial damages to the corporate.

2. Types of consequential damage: The consequential damage may be material or immaterial damage. Material damages are those that consequentially affect the financial liability of the aggrieved party. E.g. a professional athlete costs the sports club large sums of money, represented in the transition, wages, or various expenses. Should that athlete die or demise in performance as a result of an incident resulting from a damaging act, the club is directly affected financially. (Jabr, 1998).

As for immaterial (moral) damages, these are the damages that affect a person's immaterial value, i.e. a moral value, such as feelings of anguish, sadness, and grief. Despite the Islamic



jurisprudential difference (Al-Khafif: 1971, Al-Zarqa: 1988,) on the extent to which indemnification for immaterial damages is permissible, the supportive crowd of such argument asserts entitlement of such indemnity to natural persons; based on the general rule in Islamic jurisprudence “Do no harm.” (Explanatory note to the Jordanian Civil Law). This is the approach that jurists and the judiciary have taken, as the jurisprudential opinions and rulings of the Jordanian Court of Cassation consistently concur to the permissibility of indemnification for immaterial consequential damage to a natural person.

It is worth noting that court holdings are almost devoid of decisions allowing corporations to claim indemnification for consequential damage, regardless of whether the damage was material or immaterial. This omission may be acceptable when it comes to immaterial damages; due to the difficulty of applying the provision of Article 267/1 of the Jordanian Civil Code to corporations, although I disagree with this approach and will address it herein later, it is however not acceptable in terms of material damages due to the malleability of the legal provision in this matter.

Quest II: legal recognition of corporations as juridical persons

A juridical person consists of a group of people or funds aiming to serve a specific purpose. The law confers a juridical personality upon such entities to the extent necessary to achieve that purpose. A corporate attains its juridical personality by virtue of the law (**Articles 50,583 of the Jordanian Civil Code**) in order to practice a right or to be obligated of a right vis-à-vis third parties. The juridical person practices its mandate through its members, whether they are employees or representatives.

Section I: the legal basis for recognizing corporations as juridical persons

As a general rule, the Jordanian legislator recognized the juridical personality for corporations from the moment of the latter's formation and the completion of its articles of incorporation. Nevertheless, such personality is not validated vis-à-vis third parties, except after completing the registration and publication of the incorporation in the Official Gazette (**Article 583 of the Jordanian Civil Code**). As a result of acquiring a juridical personality, a corporate attains legal capacity that authorizes its conduct of businesses; within the limits specified in articles of incorporation, or as established by law (**Article 36 of the Jordanian Commercial Law Article 7/f, of the Jordanian Companies Law No. 22 of 1997, as amended by Law No. 17 of 2021**).

Thus, a corporate would have an independent financial liability vis-à-vis third parties, bears obligations, acquires rights, enjoys the right to litigation, and its domicile is determined in the place where its management HQ is located, which would have a representative of its will.

A corporate would not acquire a legal capacity until after obtaining a juridical personality, as it is a virtual person conceived by law. German jurist Zitelman (Dada, 1998) perceives “Will” as the core of juridical personality, arguing that juridical personality is the legal capacity to “will”, unlike others who view juridical personality as a mere metaphor or fiction granted by the state or the legislator by law (**Faqir, 2016**).

Accordingly, acquiring a juridical personality emerges as very important to protect the entity's rights vis-à-vis third parties, and grant it the right to claim any damages it may sustain, whether direct or consequential damage.

Section II: the juridical personality of corporations as a means to protect their rights

As an instrument to economic development and growth, corporations should have legal presence to practice its various activities, and thus must be incorporated by following a set of legal procedures. This results in the corporate acquiring a juridical personality. By virtue of law, a corporate would have a lawful personality as a natural person, but it is a juridical personality consistent with its nature.

Accordingly, the corporate, in its existence, formation, and acquisition of juridical personality, is subject to legally pre-set checks and balances, whereas the corporate can only engage in business relations with third parties once it meets such criteria, attains the rights, and assumes obligations. In this regard, the corporate would concur with a natural person but differ in some matters that are intrinsic to the human individual.



That's why it is noted that legislators interfere to customize the scope and limits of rights and obligations for each type of lawful person, which prompts the legislator to introduce regulatory adjustment to the legal position of corporations, in order to make it more responsive to the circumstances surrounding it. (Moqbel, 2005).

Accordingly, acknowledgment of the legal presence of corporations is subject to their acquisition of juridical personality, and as soon as they have a juridical personality independent of the personality of the founders, it would have an independent financial liability and capacity that postulates researching whether or not they should have the right to claim against consequential damage.

A corporate in this sense is able to acquire rights and assume obligations, and then it is conceivable to be entitled to claim indemnification against consequential damages via the representatives of its will; namely natural persons who have the authority to manage its affairs. This is provided that a relationship between the damaging act and the consequential damage it sustained is well established.

Quest II: Responsiveness of Civil provisions to indemnification of corporations against consequential damages

Consequential damages are peculiar in nature; a nature that stems mainly from its reliance on predicate damage that affects a third person; who is somehow associated with the aggrieved party. This peculiar nature prompted the judiciary and commentators on the law to address consequential damages from the perspective of the natural person, completely separate from juridical persons - such as corporations, without having any legally established negation of corporations' rights to claim indemnification against consequential damages, whether such damages are material or immaterial.

Quest I: The factual entitlement of corporations to claim indemnification against consequential damages

The corporate acquires a juridical personality by virtue of law (Article 583 of the Jordanian Civil Code) and is implicitly considered an unnatural person. Rather, the legislator grants it that legal capacity to exercise a right or assume an obligation.

Section I: delimitation of boundaries between rights of natural persons and juridical persons

Distinguishing between natural persons and corporations is inevitable, as they are two distinct persons, each with its own characteristics, advantages, and role in serving the purpose of the law. In the eyes of the law, a corporation is a lawful person similar to a natural person, but it is a juridical person. The idea of a person, in general, has become a postulate in the field of private law.

A corporate enjoys the same rights that a natural person does, except for what is inherent in a human being within the limits determined by law, as it has the capacity to conduct its business within the limits specified in its articles of incorporation, through a representative of its will (Article 51 of the Jordanian Civil Code)

The Jordanian legislator has assigned a number of rights for each of them and imposed on them many obligations that are commensurate with their legal nature. There appears to be a superiority of the natural person over corporations with regard to rights, especially in the area of culpable dereliction and the right to indemnification against consequential damage. The exclusion of corporations from this legal protection is worthy of reconsideration, especially since corporations' juridical personality is acknowledged by law; which confers such rights upon it.

A corporate is a lawful person and is worthy of legal protection, through the rights it enjoys vis-à-vis third parties, which are obligations at the same time. These rights may be related to material or immaterial things, so the right holder is unique in them, rendering a violation of these things a breach of the right.

In other words, just as a natural person has acquired the right to claim indemnification from the corporate for the death of a worker with whom the natural person has a relationship; based on Article 267 of the Civil Code, this right must be inversely proven as well. This means that the corporate must have the right to claim indemnification for the death of a worker as a result of a



damaging act, especially if the deceased worker's personality is contractually significant; making the loss of such an individual a financial loss for the corporate or loss of earnings. The basis of comparing the two rights is that this right is granted to a natural person as soon as the right to sustenance is established, and for corporations as soon as the significance of the worker's personality is proven and to which extent the damage is realized as a result of the worker's death.

It is worth noting that the law doesn't recognize the corporate as a legal person by its mere formation, as if it had a body and a soul, but rather defined it in terms of its mandate in the legal framework. Therefore, the law did not create the concept of juridical personality for corporations out of nowhere, but rather from the imposed reality as a juridical person engaged in exchanging services and money, conducting legal actions, bearing responsibility, litigation, and claiming various rights similar to a natural person. (Al-Qaylubi: 2008)

Section II: The position of the judiciary regarding the corporations' right to indemnification against consequential damages

Corporations are linked to their employees under an employment contract, and when a worker is lost, whether by death or permanent incapacity, the corporate may consequentially sustain financial damages, especially if this worker has a positive impact on the corporate's businesses and his/her personality is signified by the employer.

It is worth mentioning that the Jordanian Court of Cassation has compensated for immaterial damages within the framework of contractual liability, as it was stated in a ruling that: "indemnification shall not be granted for lost earnings and immaterial indemnification in contractual liability, except in the case of fraud and gross error. (Decision of the Court of Cassation, No. 560/90, 1990)

Thus, corporations are linked to workers under an employment contract, and it is this contractual bond that can be utilized for this provision to materialize, according to its verdict to consequential damages that affect corporations. Thus, the judiciary, according to this ruling, allows corporations affected by consequential damages the right to claim indemnification for the damages resulting from the loss of a worker, or when his dignity and prominence are violated.

Despite the foregoing ruling, the rulings of the Jordanian Court of Cassation have settled in many of its subsequent decisions on the non-indemnification for immaterial damage within the framework of contractual liability, as it stated in its ruling: "Entitlement to indemnification shall not be granted against immaterial (moral) damages, as the right to indemnification addresses moral damages in the event that the aggrieved party's freedom, family members, honor, reputation, or social position area infringed upon, which is not constituted in the contractor's liability, which is a contractual obligation arising from non-performance of contractual obligations. (Decision of the Court of Cassation, , No. 789/2014, 16/7/2014, & No. 3971/2010 of 4/5/2011, & No. 1095/97, 7/8/1997)

It follows from this that the Jordanian judiciary, when referring to the provisions of the Civil Code, especially Article 267, does not allow indemnification against immaterial damage within the framework of contractual liability. This is not consistent with the legislative policy, especially since Article 267 can be applied to contractual liability; due to the absence of an explicit provision in the law that prohibits indemnification against consequential damage within the framework of contractual liability, whether the damage was material or immaterial.

Quest II: the extent to which provisions of the civil law are applied to establish corporations' right to indemnification against consequential damages

To better serve justice, the scope of indemnification against consequential damages should be expanded to include corporations, especially since the principles of justice are a set of principles that are inspired by justice and the wisdom of legislation. Justice in the arrangement of rights between a natural person and corporations as juridical persons is an absolute value, that endeavor to arrive at what should be, and the law is the reality.



Section I: Indemnification based on missed opportunity

Missing the opportunity within the framework of culpable dereliction means depriving corporations of a certain benefit or sustaining a large loss, as there is a likely gain or avoidance of a large loss, but the culprit has prevented this with the damaging act.

Lost earnings manifest in the consequential damage that consequentially afflicts a third party as a result of the damage sustained by the principal aggrieved party, whether the loss sustained by the consequential aggrieved party is the result of infringement upon one of its rights, or a legitimate financial interest.

A consequential damage is a harm that is reflected on a third party; other than the principal aggrieved party, based on the third party's link to the principal with a material or immaterial interest that justifies such consequence. It is based on the idea of actual sustenance or financial loss, whatever its legal source is, or the contract in relation to the material damage, and the idea of affection in relation to immaterial damage, as one of the notions should be abundant to justify consequential damage. **(Bakr: 2016)**

Thus, for loss of earnings to materialize as an indemnifiable damage, there must be a serious and real opportunity to earn in the first place, so that the possibility or probability of this earning is realized with it. **(Malkawi & Al-Omari: 2006)**

Accordingly, if a professional athlete in a sports team is involved in an accident that prevents him/her from participating in the match, the professional athlete is the principal aggrieved party, and therefore is entitled to indemnification for the consequential and lost earnings, if any. In this case, the sports corporate is the consequential aggrieved party, and thus making any obligations vis-à-vis the injured player represents an indemnifiable consequential loss. If the team was unable to participate in the match; which had lost its potential earnings it would have otherwise earned if the player had not been injured, this would then constitute an indemnifiable lost earning. **(Jabr, 1998).**

This lost earning; manifesting in the injury of the professional athlete as a result of the damaging act, is a real and not potential damage, as the athlete's abrupt retirement due to the injury would afflict the sports corporate with a consequential damage on the basis of the missed opportunity, provided that the legal relationship between the aggrieved party and the corporate is established, and that the athlete's personality is of real significance based on previous performance and outcomes with the team in the interest of the sports corporate. Additionally, ascertainment of the missed opportunity and the severity of which is a matter of facts; subject to the discretion of the trial court, where the Court of Cassation has no oversight jurisdiction.

Section II: Legal equality in indemnification for consequential damages; pursuant to the provisions of the Civil Code.

Equality before the judiciary means granting the corporate; as a juridical person, the right to claim infringed rights, represented in indemnification against the consequential damage, under the provisions of the law; on equal footing with natural persons, who exclusively enjoy such rights. The congruence and similarity between persons in rights and obligations under the legal rule serves the principle of equality, which occupies a prominent position within the legal system of the contemporary state. **(Fikri: 2004)**

In reference to the provisions of the Civil Code in particular, we find discrimination and favoritism in favor of one stakeholder at the expense of the other. There is also differentiated treatment of similar legal positions; where as a natural person is superior to the juridical person with regard to establishing certain rights arising from the damaging act.

Not to mention that the corporate as a juridical person; in accordance with the provisions of the law, enjoys all rights, except for what is inherent in the character of a natural person, within the limits determined by law. And since the consequential damage occurs in several forms that vary depending on the type of infringed-upon right, a juridical person as corporations should then be entitled to whatever a natural person is entitled to; except when the infringement has occurred upon a right that is intrinsic to the character of the natural person.



This was referred to in the first paragraph of Article 267 of the Jordanian Civil Code: (The right to indemnification includes immaterial damage as well: “Any infringement upon others’ freedom, family, honor, reputation, social status, or finances renders the infringer liable for indemnification).

This provision refers to the rights infringed upon by the culprit, some of which are established for the natural person without the juridical person; such as corporations. These could include the right to liberty and the right freedom from to assault to honor. It also refers to the rights that are established for both natural and juridical persons, such as the right to reputation and the right to freedom from sabotage of the financial position.

This constitutes a clear principle that the juridical person has the right to protect its reputation and financial position against any assault by a third party, whether the assault is perpetrated directly against the corporate or one of its employees; which results in consequential damages to the corporate.

The indemnification resulting from immaterial damage in these manifestations does not qualify as a contentious issue among jurisprudence and the judiciary, if the legal provision is interpreted in a manner that serves justice between the natural person and the corporate. In most cases, such moral damage comes mixed with material damage or coupled with it; whereof a corporate whose reputation is smeared or misinformation is published about it would suffer adverse effects to its financial position before shareholders, and will inevitably suffer material and immaterial damage.

Furthermore, the provision of Article 267/1 of the Civil Code is worded in a manner that does not make it up to have specified the forms of immaterial damage exclusively. Its wording was as follows: “The right to indemnity includes immaterial damage as well, so that any infringement...] especially since the phrase (so that any...) came for clarification and assertion, and it cannot be interpreted to mean limitation. When doubt arises about the extent to which the text limits the cases of indemnity, then we must refer to the provision of Article 256 of the Civil Code; which came more generic pertaining to compensation for all forms of indemnity, including all forms of immaterial damage, since what is important for indemnity to realize is its type and form.

In addition to the above, this aspect of jurisprudence confirms that the Jordanian legislator did not intend to limit the cases of immaterial damage under Article 267/1 of the Civil Code, but rather provide examples, (Malkawi and Al-Omari, 2006), which means it’s possible to include among the cases or elements of damage mental anguish that afflicts the corporate as a result of the losing a worker of significant personality; even though it is not expressly stated in provision.

CONCLUSION

Findings:

- Corporations acquire the juridical personality in accordance with the provisions of the law that govern the nature of their establishment, exercising rights and assuming obligations.
- The natural person and the juridical person - corporations - are equal in rights, except for those intrinsic to the natural person.
- The consequential damage is the subsequent damage or damages sustained by persons other than the principal aggrieved person; against whom the damaging act occurred.
- Arab literature lacks specialized legal studies on the right of corporations to claim indemnification against consequential damages, whether such damages are material or immaterial.
- Judicial holdings are almost devoid of explicit rulings that grants corporations the right to indemnification against consequential damages. This omission is inconsistent with the legislative policy, especially since the provision of Article 267 can be applied to contractual liability; due to the lack of an explicit provision in the law prohibiting indemnification against consequential damage under contractual liability, whether material or immaterial damage.
- Corporations have the right to indemnify against lost earnings or missed opportunities resulting from the death of a worker whose personality is contractually significant; provided that the legal

relationship between the two parties is established and the causal relationship between the missed opportunity, financial damages and the death of the worker is proven.

RECOMMENDATIONS

- The researcher recommends jurists, especially those specialized in civil and commercial law, to work on expanding specialized legal research on the right of corporations to claim indemnification against consequential damages.
- The researcher recommends the competent judicial authorities to uphold equality between a natural person and corporations, when claiming indemnification against consequential damages, and to work on expanding the interpretation of Article 267 in order to reach clear legal principles that benefit researchers, jurists and judges.
- The researcher recommends the Jordanian legislator to find a legal solution to address the right of corporations to claim indemnification against consequential damages; by amending the provision of Article 267, or introducing a designated provision in the commercial law on this right.

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