## Bill No. CS for SB 378

Amendment No. \_\_\_\_

|        | CHAMBER ACTION Senate House                                    |
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| 11     | Senator Diaz-Balart moved the following amendment:             |
| 12     |  |
| 13     | Senate Amendment (with title amendment)                        |
| 14     | On page 4, line 27, through page 5, line 15, strike all        |
| 15     | of said lines  |
| 16     |  |
| 17     | and insert: intentional misconduct or gross negligence and     |
| 18     | that the award is not excessive in light of the facts and      |
| 19     | circumstances which were presented to the trier of fact.       |
| 20     | (c) This subsection is not intended to prohibit an             |
| 21     | appropriate court from exercising its jurisdiction under s.    |
| 22     | 768.74 in determining the reasonableness of an award of        |
| 23     | punitive damages that is less than three times the amount of   |
| 24     | compensatory damages.  |
| 25     | (2)(a) Except as provided in paragraph (b), punitive           |
| 26     | damages shall not be awarded against a defendant in a civil    |
| 27     | action if that defendant establishes, before trial, that       |
| 28     | punitive damages have previously been awarded against the      |
| 29     | defendant in any state or federal court in any action alleging |
| 30     | harm from the same act or single course of conduct for which   |
| 31     | the claimant seeks compensatory damages. For purposes of a     |

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civil action, the term "the same act or single course of conduct" includes acts resulting in the same manufacturing defects, acts resulting in the same defects in design, or failure to warn of the same hazards, with respect to similar units of a product.

- (b) In subsequent civil actions involving the same act or single course of conduct for which punitive damages have already been awarded, if the court determines by clear and convincing evidence that the amount of prior punitive damages awarded was insufficient to punish that defendant's behavior, the court may permit the jury to consider the issue of awarding subsequent punitive damages. In permitting the issue of awarding subsequent punitive damages, the court shall make specific findings of fact in the record to support its determination of the insufficiency of the prior punitive damages awards. In its determination the court may consider whether the defendant's act or course of conduct has ceased. If a jury then subsequently awards punitive damages, the court shall, in entering final judgment, reduce the subsequent punitive damages award by the total amount of any prior punitive damages awards rendered in any state or federal court; provided the subsequent damages award shall be reduced only if, prior to the jury making a determination of the amount of any subsequent award, the jury is informed that the amount of its award will be reduced and informed of the amount of such reduction.
- (3) The claimant attorney's fees, if payable from the judgment, are, to the extent that the fees are based on the punitive damages, calculated based on the entire judgment for punitive damages. This subsection does not limit the payment of attorney's fees based upon an award of damages other than

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punitive damages.
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          (4) Except as provided in subsection (2), the jury
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   may neither be instructed nor informed as to the provisions of
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    this section.
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   ====== T I T L E A M E N D M E N T =========
8
   And the title is amended as follows:
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           On page 1, lines 19-22, strike all of said lines
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11
   and insert:
          with respect to intentional misconduct or gross
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          negligence; specifying the basis for
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           calculating attorney's fees on judgments for
          punitive damages; providing for the effect of
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           certain previous punitive damages awards;
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