

NEWSLETTER

▣▣ PRODUCT LIABILITY

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Service providers' liability for consumer harm under product liability law

Liability

The term 'product liability claims' covers not only cases related to damages caused by defective products, but also liability issues deriving from the provision of services. As defined in Article 1(4) of Law 2251/1994, a 'consumer' is considered to be any natural person or legal entity to which the products or services offered on the market are addressed. The consumer can make use of such products or services provided that it constitutes the end user thereof. A 'supplier' is considered to be any natural person or legal entity that supplies products or renders services to the consumer in the course of its professional or business activity.

More specifically, Article 8 of Law 2251/1994 provides for the liability of a party rendering services if the consumer suffers any damage from those services. This article may be applicable to the provision of, for example, banking, investment, insurance, legal, medical or tourist services. ⁽¹⁾

Article 8

According to Article 8(1) of Law 2251/1994, a party rendering services is liable for any damage or moral harm caused by its action or omission while rendering services to a consumer. The party rendering services is that which renders services independently within the framework of its professional activity. ⁽²⁾ The person harmed must prove the damage and the causal link between the provision of the service and the damage (Article 8(3) of Law 2251/1994). However, the party rendering services must prove that it is not liable for the damage caused and that its actions were not unlawful. In order to determine whether there is liability, the safety reasonably expected from the services rendered and any special circumstances may be taken into account. More particularly, the following criteria are taken into consideration:

- the nature and the subject of the service, particularly in relation to the risk that the service *per se* entails;
- the presentation and the way in which the service was rendered;

- the length of time for which the service was rendered;
- the value of the service rendered;
- the freedom of the person harmed to act during the provision of the service;
- whether the person harmed belongs to a category of persons who are vulnerable; and
- whether the person rendered the service voluntarily (Article 8(4) of Law 2251/1994).

Other issues

Article 8 of Law 2251/1994 is applicable even if there is no contractual relation between the service provider and the person harmed. However, this particular provision does not exclude the application of the provisions of the Civil Code regulating contractual and tortious liability. The production or manufacture of products does not fall within the scope of Article 8, given that in such cases Article 6 of Law 2251/1994 shall apply (which refers to liability of the producer or manufacturer of a product). The party rendering services is held liable if the services do not meet the safety standard reasonably expected or if the diligence and safety obligations of the service provider have been violated. In addition, the service provider must act in an unlawful way (ie, by violating a particular legal provision). In order to bring a claim, the consumer should have suffered damage, which must be causally linked to the provision of services. If two or more parties are liable for the same damage, they are jointly liable towards the consumer and are entitled to subrogate claims against each other, depending on their contributions to the damage. Moreover, if the damage was caused through the consumer's own fault, the liability of the service provider may be limited or even lifted (Article 300 of the Civil Code). According to Greek law, any

agreement to limit or discharge the service provider's liability towards consumers is null and void.⁽³⁾

Class actions

Article 10 of Law 2251/1994 introduced, for the first time, the concept of consumer association actions for the protection of the general interests and welfare of consumers. Consumer associations, which have more than 500 active members, may bring any kind of action to protect the general interests of consumers. Such an action may also be brought if the unlawful conduct harmed the interests of at least 30 consumers. By virtue of such an action, under Article 10(16) of Law 2251/1994) a consumer association may claim:

- cessation of the supplier's unlawful conduct;
- monetary compensation for moral harm; ⁽⁴⁾
- safety measures to secure consumer demands for cessation of the unlawful conduct or monetary satisfaction until an (enforceable) final court order is issued; ⁽⁵⁾ and
- acknowledgment of the right to restore the damage sustained by consumers due to the unlawful conduct.

However, in practice, such claims are not rare and appear mainly in the field of banking law (eg, actions brought by consumer associations against banking institutions for the protection of consumers against unfair contractual terms).⁽⁶⁾

Endnotes

⁽¹⁾ See Professor Ioannis K Karakostas, *Consumers' Protection Law (Law 2251/1994, as it is in force following Law 3587/2007)*, Edition 2008, pages 298 and following.

(2) Rendering services in an independent way means that the service provider is not bound by particular indications, instructions or orders given by the consumer in relation to the kind, quality, form and way of performance of the services. The framework of professional activity includes any business which is steadily and continuously organised for living purposes (see Karakostas, *Consumers' Protection Law (Law 2251/1994, as it is in force following Law 3587/2007)*, Edition 2008, pages 285-286).

(3) See Karakostas, *Consumers' Protection Law (Law 2251/1994, as it is in force following Law 3587/2007)*, Edition 2008, pages 284 and following.

(4) In order to determine the amount of monetary satisfaction, the court takes into account, by way of indication, the severity of the violation, the size of the supplier's enterprise (defendant) and particularly its annual turnover, as well as the needs of general and special prevention (Article 10(16)(b) of Law 2251/1994).

(5) In cases of defective products, which endanger the safety or health of consumers, the safety measure requested may consist in the seizure of such products (Article 10(16)(c) of Law 2251/1994).

(6) Indicatively see Judgment 652/2010 of the Supreme Court.

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