

NEWSLETTER

▣▣ PRODUCT LIABILITY

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NATIONAL LEGISLATION

According to Greek law, product liability issues are governed by the following provisions:

- Articles 534 to 558 of the Civil Code⁽¹⁾ dealing with sale contracts (contractual liability), provided that there is a direct

contractual relationship between the producer and the consumer;

- the tortious liability provisions of the Civil Code – Articles 914, 925 and 932, in conjunction with Articles 281 and 288; and
- the Consumer Protection Law (2251/1994),⁽²⁾ as amended by Law 3587/2007. Article 6 provides for the producer's liability for defective products.

KEY ISSUES

Legal standing to bring a claim

Under the aforementioned provisions of the Civil Code, the seller of a defective product and the servants and agents of the seller are liable for damage caused to the purchaser by the defective product.

Under Article 6 of the Consumer Protection Law, the producer of a defective product is held liable for any damage caused to the consumer by such product. In addition, under certain conditions provided for by Articles 6(3) and (4) of the law, the same liability is extended to the importer into Greece of a defective product (should such a product have been imported into Greece from a non-EU country), as well as to the supplier of such product.⁽³⁾ According to this law, in order for a

party to qualify as a plaintiff in such a claim, it must be the 'consumer' of the defective product. According to the legislative definition (Article 1(4(a)) of the Consumer Protection Law), a 'consumer' is an entity or person to whom the products or services offered in the market are addressed and who makes use of those products or services, provided that such consumer constitutes the end user.⁽⁴⁾

Definition of “Defective”

According to Article 6 (5) of the Consumer Protection Law,⁽⁵⁾ a product is considered defective if its performance is not the same as that provided for by the specifications of the product or if it does not conform to the safety requirement that can be

reasonably expected in view of any special circumstances, particularly in regard to:

- the presentation of the product;
- the expected use thereof; and
- the time when the product was circulated in the market.

However, a product is not deemed to be defective solely because another, better product was later circulated in the market.

What type of damage are recoverable?

According to Article 540 of the Civil Code, if the seller is held liable for a defective product, the purchaser may bring the following claims against it:

- a request for repair or replacement of the product, unless this is impossible or requires disproportionately expenses;
- a reduction in the consideration payable; and
- rescission of the sale contract, unless the defect is minor.

The seller must proceed with repair or replacement of the defective product within reasonable time and without causing additional trouble to the purchaser. In addition, under the provisions on tort, the plaintiff may claim compensation for damages or loss of profits, provided that it can establish a causal link between such damages and the defective product. Compensation for moral damages (caused by bodily injury or mental damage suffered) may also be claimed.

Article 6(6) of the Consumer Protection Law also provides for the damages recoverable due to a defective product. More specifically, the damage caused by a defective product for which the producer is liable includes:

- damage due to death or bodily injury; and

- damage to or destruction of any asset of the consumer caused by the defective product, provided that such damage or destruction exceeds €500 and the product was indeed used by the person harmed (for private use or consumption only) and according to the nature of the product.

However, damage to or destruction of the defective product itself does not fall within the scope of this law. In case of violation of Article 6, the plaintiff may also claim monetary satisfaction due to moral harm.

Who has the burden of proving fault/defect and damage?

The person harmed has the burden of proving that there was a defect in the product and that such defect resulted in the damage, as well as proving the causal link between the defect and the damage. However, as a consumer who has sustained damage from a defective product is not familiar with the production method for the defective product and therefore cannot prove the cause of the defect during the production stage or at the time of circulation on the market (which falls within the producer's liability domain), a consumer must prove only that the defectiveness of the product was objectively harmful and the damage incurred. The manufacturer must prove that the defectiveness of the product was not due to faulty construction or maintenance of the product before the product left the production facility. It may even prove that the construction or maintenance failure was not its fault or its servants' fault (for which the manufacturer is liable throughout the production process).

Is there any possibility for the procedure to be released?

According to Article 6(8) of the Consumer Protection Law, the manufacturer is released from liability if it can prove that:

- it did not circulate the product in the market;

- the defect did not exist at the time when the product was circulated;
- it did not manufacture the product with the intention of distributing it and did not distribute the product as part of its business activity;
- the defect was due to the fact that the product was manufactured in accordance with mandatory legal requirements; or
- at the time when the product was circulated on the market, the existing scientific and technical standards did not allow it to diagnose the product's defectiveness.

Furthermore, Article 6(9) provides that the producer of a component of a product is not liable if it can prove that the defect was due to the design of the product in which the component was included or the guidelines provided by the manufacturer.

What happens where several parties are liable for a defective product?

According to Article 926 of the Civil Code, if the damage is due to the joint action of several parties or if there is parallel liability of more than one party for the same damage, all the parties involved are jointly liable. The same applies where several parties acted simultaneously or one after the other and it is impossible to determine whose action caused the damage. Article 6(10) of the Consumer Protection Law repeats this provision and provides that if two or more parties are liable for the same damage, then those parties are jointly liable towards the person harmed. Practically speaking, if more than one producer manufactured a defective product, the plaintiff (consumer) may bring an action against all producers involved. The producer which ultimately pays damages to the plaintiff is entitled to subrogate against the other co-defendants, requesting their contribution to the compensation.

Are any special duties imposed on the producer?

As mentioned above, product liability claims may also fall within the scope of the tort law provisions. The establishment of tortious liability on the part of the producer, in case of damage caused by a defective product, takes place through the imposition of certain duties and obligations on the manufacturer. The duties of the manufacturer derive from the organisation of the production procedure, which covers all stages of the production, since product safety is impossible to ensure only by monitoring the final product. In particular, the producer bears the following obligations and duties.⁽⁶⁾

Obligations while designing the product

Said duties cover the stage before production of the product and aim at the prevention of risks which are likely to appear after production is concluded. At this stage, the producer is obliged to be informed and take into account the relevant experience globally. If a defect appears at this stage, then all products manufactured on the basis of this particular design are defective. This is of crucial importance for the burden of proof lying on the person harmed. If, however, there is a defect in the product design, despite the fact that the producer took into account international scientific and technical standards, then the producer is not considered to be liable for such scientific failure.

While producing the product

These duties include:

- the safeguarding of the necessary production means;
- the continuous survey of the technical means;
- the monitoring of the products (from the supply and import of the raw material until the final stage of exit of the product from the factory);
- the continuous survey and technical information; and

- training of the personnel.

If, however, there is a defect at this stage, although all above obligations are fulfilled, then such defect is characterized as an 'escaped defect', for which the producer is not held liable.

Obligation to provide information and guidelines for the product

The more dangerous a product is, the more necessary the provision of guidelines and the notification of possible risks. Moreover, if the use of the product according to the guidelines does not exclude risks which are likely to be caused by the use thereof, then this should also be clearly pointed out. The violation of this obligation is causally linked with the damage only if it is certain (and not simply likely) that the use of the product in accordance with the guidelines would definitely prevent the harmful result.

Obligation to supervise and revoke the product

The manufacturer is obliged to keep in continual contact with products which have been circulated in the market. In case a defect appears in the products, which could not be diagnosed at the time the products were produced, the manufacturer must:

- inform consumers;
- grant the necessary instructions and information;
- proceed with technical suggestions; and
- in case of serious risk, revoke the defective product in order to repair or replace it.

The same obligation to revoke defective products is also set forth by Article 7(6) of the Consumer Protection Law.

Is there any statute of limitations for product liability claims?

Claims based on contractual liability, deriving from Articles 534 to 558 of the Civil Code, are subject to the statute of limitations set forth by Article 554 of the Civil Code. More specifically, the purchaser's rights due to defectiveness of a product are statute barred after the lapse of two years for movable property and five years for immovable property. Such period commences from the date on which the product was delivered to the buyer, without taking into account the time it took the buyer to discover the defect.

However, claims based on tort (Articles 914 and following of the Civil Code) are statute barred after the lapse of five years from the time when the person harmed became aware of the damage and the person liable. In any case, a claim based on the tort provisions is statute barred after the lapse of 20 years from the time when the act took place. However, if the tort also constitutes a criminal offence which provides for a longer statute of limitations, this later time limit shall apply.

Claims based on the Consumer Protection Law are subject to the statute of limitations provided for in Article 6(13), whereby claims against the producer for damages incurred by defective products are statute-barred after the lapse of three years from the time when the person harmed was notified or should have been notified of the damage, the defectiveness and the identity of the manufacturer. In any case, after the lapse of 10 years from the time when the product was circulated in the market, the person harmed has no rights against the manufacturer.

Endnotes

(1) Articles 534 to 558 of the Civil Code were amended by Law 3043/2002, which was enacted to bring the national legislation into line with the EU Consumer Products Directive (44/1999/EC).

(2) Law 2251/1994 incorporated the EU Product Liability Directive (85/374/EC) into the national legislation.

(3) The manufacturer of a final product, raw material or component, as well as any person that appears to be the producer of a product by putting its trade name, brand or other characteristics thereon, is considered to be a producer (Article

6(2) of the Consumer Protection Law). In addition, any person importing a product for sale, lease or distribution within the framework of its commercial activity is considered to bear the same liability as the producer (Article 6(3)). Moreover, if the producer is unknown, any supplier of the product is considered to be the producer (under the Consumer Protection Law), unless it notifies the consumer within a reasonable period of time of the producer's identity.

(4) Taking into account the definition of a 'consumer', the Athens Court of Appeals has held that a plaintiff's lawsuit under the Consumer

Protection Law was unlawful since the plaintiff obtained the goods for its business and in order to sell them to third parties; he was not the end user of the products and was not a 'consumer' according to the legal definition (Judgment 2857/2003).

(5) In light of Articles 534 to 535 of the Civil Code, a sold product is considered to be defective in the following four cases:

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