

Product Liability Claims

Brief summary of the Regulatory Framework and Claims Trends in various jurisdictions in Asia

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Introduction

This document comprises a compilation of short reports produced by a number of local law firms in the region, which we have incorporated into this paper. These reports provide an overview of the product liability legal frameworks and trends in product liability claims in a number of jurisdictions across Asia.

The reports do not follow a uniform format, as each firm has adopted its own style to its summary.

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National reports

China

Recent changes in legislation

Since December 2002 there has been no change in the PRC Product Quality Law which is the most relevant national law. However there have been changes to minor legislation that will have implications for the product liability regime in China.

Several regulations involving the regulation of product quality in the areas of feather fibre manufacturing, food manufacturing and manufacturing and use of special equipment (including boiler, pressure vessel, penstock manifold, elevator, hoisting machinery, ropeway for passenger transport and large-sized amusement facilities) were promulgated and took effect in 2003. Heavier administrative penalties for violation of these regulations were set than those set in the PRC Product Quality Law. However these regulations failed to set new standards and principles to determine the liabilities of the manufacturer, user and seller of these products in the event that they fail to meet the standards set forth in these regulations and cause loss, injury or death.

In addition from August 2003 China will begin to enforce the implementation of its China Compulsory Certification system ("3C system"). Under this system, four types of products, namely (i) electrical wire and cable, (ii) electronic circuit switches, protection or electronic appliances used for interconnection purposes, (iii) low voltage electronic appliances and (iv) electromotors with low power, must obtain the 3C certification prior to being put onto the market. This implies that if the manufacturer or seller fails to obtain such prior certification, it will be more likely to have product liability claims brought against it by the purchasers and/or users of defective products.

General trends in product liability claims across China

- (a) Which parties are bringing the claims - Usually purchasers and/or users of defective products will bring claims against the manufacturers and/or sellers. Where the conveyancer or storekeeper is liable for the product defects, the manufacturer or seller may in turn bring a claim against the conveyancer or storekeeper after compensating the purchasers or users.
- (b) Who is most likely to be sued - Most recently reported cases relate to claims being brought against manufacturers and sellers of residential houses, decoration and building materials, communication products (especially mobile phones), computer products, transportation vehicles, food, medicine and home-used electronic appliances.
- (c) Noticeable rise in the instances of claims - Compared with 2001, the year of 2002 has witnessed a noticeable rise in the instances of product liability claims, especially for the products mentioned in (b) above.
- (d) Awards increasing in relation to claims – The size of awards ordered by judicial bodies in relation to product liability claims has been increasing in recent years.

Hong Kong

Product liability law in Hong Kong is not as well developed as in other jurisdictions. Unlike in England, there is no comprehensive statutory regime to protect consumers. In Hong Kong, a consumer injured by defective products must look to the common law of negligence and the law of tort. This means that all consumers, whether the original consumer or someone injured by a defective product, should bring an action in tort to recover any loss and/or damages.

If a consumer is a party to a contract, there exists the possibility of bringing an action under the Sale of Goods Ordinance. This enables a consumer to hold a seller to account for the quality of the goods he has provided. It relies upon there being a contract. The Ordinance provides that goods need to be of a satisfactory standard and provides statutory protection over this for a claimant. It provides for warranties relating to fitness for purpose. When there is a non-business consumer, and a breach of warranty occurs, claims can be brought against the seller. This Ordinance provides for damages to be recovered as well as other remedies such as not having to pay for certain goods or being able to refuse to accept them.

However, in the vast majority of cases, the goods may be excluded from the definition of goods as set out in the Ordinance, or the party injured may not actually be an original party to the contract. In all these cases, the common law will be the form with which they need to seek damages.

In February 1998, the Law Reform Commission produced a report entitled "Civil Liability for Unsafe Products". This recommended a wider adoption of strict liability against manufacturers, based on the defects approach. However, as of yet, no legislation has been adopted, despite the emerging international trend towards enacting strict product liability legislation.

There are a number of regulatory provisions provided by Hong Kong legislation. For example, in July 1993, Hong Kong enacted the Toys and Children's Product Safety Ordinance, which was seen as a significant step forward for consumer protection. There are now a number of other pieces of legislation, which cover a whole host of different products. There is also the Consumer Safety Goods Ordinance, which seeks to impose a duty on manufacturers, importers and suppliers of certain consumer goods to ensure that the goods they supply are of a requisite safety standard and are suitable for their purpose. This Ordinance does not provide a means by which a claimant can seek damages for substandard goods but provide a means by which Government Officers can impose sanctions for falling below the expected standard. However, if someone is injured as a result of a breach of this Ordinance, then obviously there is a greater chance of liability in any civil claim for compensation which may follow. Whilst this Ordinance covers "consumer goods" defined as "goods which are ordinarily supplied for private use or consumption and includes the packaging in which the consumer goods are supplied", there is a schedule excluding certain products from the definition which includes amongst other things, aircraft, motor vehicles, electrical products, pesticide, tobacco products, pharmaceutical product, toys and children's products etc. However, many of these fall within the specific legislation which is designed to cover and apply to those specific products i.e. these kinds of products have their own specific legislation applicable to them.

Regulatory support

The Consumer Council is an independently-administered governmental body, established in 1974 with a mandate to protect and enhance consumer rights. The council is also trustee of the Consumer Legal Action Fund, which provides aid to consumers to launch legal proceedings.

Current trends in product liability claims

Due to the growing worldwide threat of quality conscious consumers, increasing numbers of companies are strengthening their quality assurance systems. This is reflected by the growing number of Hong Kong companies certified as complying with ISO 9000, an internationally recognised standard for quality management systems. Such measures seek to limit exposure to product liability claims.

As more design works are being undertaken by Hong Kong companies, there is a tendency for overseas importers to shift liabilities arising from defective products to local manufacturers and traders. It has thus become increasingly critical for Hong Kong exporters to observe laws and regulations in relation to consumer protection and product liabilities in overseas markets.

Statistics

It has proved difficult to find clear statistics on the number of product liability claims in Hong Kong, but the Law Reform Commission stated that the number is low, giving the following as possible reasons (Report on Civil Liability for Unsafe Products, February 1998):

- (a) If the injury or damage is suspected to have been caused by misuse, then the user would refrain from making any claim;
- (b) The reserved nature of Asian culture may lead people to stop using the product, rather than make a claim;
- (c) The majority of the instances of injury or damage are minor, and could be settled expeditiously by the parties involved without recourse to legal action;
- (d) The average citizen would find the complexity of the existing law and the costs involved in lodging a claim prohibitive, even if they have a valid claim.

Whether these suggestions are merely speculative or have a valid foundation is difficult to tell without any statistical evidence. However, what is clear is that there have been a growing number of consumer complaints, which, although do not all lead to claims, do reflect consumer activity and attitude. Complaints to the Consumer Council have risen steadily over the past 10 years, and the latest annual report indicated for the first time, that there were more complaints related to services (12,248 or 59%) than products (8,550 or 41%), a reflection of Hong Kong's service-based economy. The majority of those complaints over products were linked to telecommunications equipment.

Indonesia

The Indonesian Government enacted law No. 8 of 1999 dated 20 April 1999, regarding Consumer Protection Law. However, Indonesia does not have a specific product liability law such as Japan or China.

In theory, Consumer Protection Law adopts the concept of strict product liability. In practice, however, strict product liability up to the present has never been applied. This is reflected in the various consumer disputes that have been decided by the court. The court applies only the theory of fault based liability. Based on this theory, it is difficult for the consumer to prove his right because the consumer in many cases has no ability to prove the producer's faults.

Korea

As a general background, before the enactment of the Product Liability Act (PLA), the Korean Civil Code provided for compensation for injuries that are caused by defective products based on general tort principles under a negligence theory. As such, the burden of proof was on the injured party, and it was difficult in many instances for the injured party to carry its burden. In view of the limited consumer protections offered under the Civil Code, the PLA was passed and became effective on July 1, 2002. The PLA was passed, in significant part, to alleviate the burden of proof to the injured party through a strict liability theory and to expand manufacturers' responsibility for defective products. When the PLA was drafted, the legislators based the PLA on the EU Directive on Product Liability. The PLA also takes some principles from American, Japanese, French and German laws regarding product liability. For example, the definition of defect under the PLA is similar to the definition found in the American Law Institute's "Restatement of the Law Third, Torts: Products Liability".

Since the PLA has been effective for only about a year and there are not many product liability cases, it is difficult to provide an accurate assessment of trends. In addition, as companies are likely to settle such cases, complete data on product liability cases is difficult to compile. We can provide, however, examples of the types of product liability cases that have been brought to date. These cases include:

- ▶ Auto industry cases related to sudden starts and defective airbags
- ▶ A software case related to a problem in an operating system
- ▶ Tobacco cases
- ▶ A soft drink case related to tooth decay

However, most of current product liability cases in Korea are related to automobiles.

In Korea (unlike the U.S., for example), there are no class actions or provisions for punitive damages. As such, there is little incentive to create an environment of litigation based upon product liability. However, there is a recent trend of increasing litigiousness of Korean consumers and as we go forward, if plaintiffs begin to win product liability cases (and as damages awards increase), then more consumers may be encouraged to file lawsuits. In addition, it is possible, although not certain, that the Korean legislature could allow plaintiffs to create a consumer class action for product liability cases. Such developments would probably result in more product liability cases in the future.

Malaysia

Legislative framework

The laws relating to product liability in Malaysia are not contained in a single act. They comprise several individual acts that were enacted by Parliament at varying periods during the last 3 decades. Prior to this the available laws governing product liability were the general laws of contract and tort.

As an overview, product liability law can be divided into 2 branches of law. First there is private law that depends upon an individual to bring a legal action against another person and secondly, public law where the government intervenes in the form of legislation.

Private law includes the general law relating to contract and tort, including, inter alia, the Contracts Act 1950 (revised 1974) and the Sale of Goods Act 1957.

Public law includes, amongst others, the Poisons Act 1952 (revised 1989), Trade Description Act 1972, Medicine (Advertisement and Sale) Act 1956 (revised 1983) Pesticides Act 1974 and Sale of Drugs Act 1952 and Housing Developers (Control and Licensing) Act 1966.

The most recent legislation is the Consumer Protection Act 1999 ("CPA"). The Act is aimed at supplementing the protection currently available to consumers under existing laws. To date there is no reported case on the CPA.

Product liability law in Malaysia is relatively similar to that in the UK and UK cases have been used most consistently in developing product liability law in Malaysia.

Trends In product liability claims

Since the introduction of the Consumer Claims Tribunal under the CPA, product liability claims are on the increase. The latest statistics available show a total of 127 claims on the grounds of defective products in a mere 3 month-period from 1-1-2001 to 31-3-2001. Almost half the claims are from both the State of Wilayah Persekutuan and Johor. The popularity of the Tribunal could be attributed to the low cost and expediency of seeking redress. Lawyers are also not permitted to appear before the Tribunal, a further cost saving to the claimant.

Most of the cases received by the Tribunal were related to dissatisfaction over the purchases of personal computers, cellular telephones and laundry dry cleaning services.

Pakistan

Consumer awareness has been a vital issue worldwide over the last four decades, which did not gain significant importance in Pakistan. This concept has only been confined to provincial levels in Pakistan where the government has tried to protect the consumer's interest by legislation. At present, there are two provincial statutes; the Islamabad Consumer Protection Act 1995 and the North West Frontier Province Consumer Protection Act 1997. The Sindh government is yet to pass an Act and has prepared draft legislation (Consumer Protection Act 1999). However, this draft law has not been promulgated to date.

These Acts provide a narrow definition of a consumer. It appears that the public sector, which is a major service provider in Pakistan, is intended to be excluded from the operation of the Acts. The consumers are subject to a slow and expensive judicial process for the disposal of consumer complaints. Courts are already burdened with the backlog of cases pending for several years and thus are not able to quickly dispose of consumer cases.

In addition to the Consumer Protection Act as discussed above, there are certain specific pieces of legislation which may be regarded as providing some statutory protection to consumers against product liability. These include the Drugs Acts 1940 and 1976, Pakistan Standards and Quality Control Authority Act 1996, and the West Pakistan Pure Food Ordinance 1960. Whilst a detailed analysis of these laws is beyond the purview of this report, it would suffice to say that these laws have failed to provide any effective protection against product liability. This is mainly due to the failure of the concerned authorities to apply these laws with full conviction and vigour, and also due to the lack of awareness amongst the intended beneficiaries (i.e. the general public) of such laws.

If a claimant or complainant does not have a contractual relation with the manufacturer/supplier of the goods, he may initiate proceedings in tort for damages. The law of torts, per se, is rather undeveloped in Pakistan, hence product liability and consumer protection vis-à-vis this sphere of law is minimal. However, of the tortious claims that do arise, Pakistani courts follow English principles. Product Liability also takes its roots in the traditional law of contract codified in the form of the Sale of Goods Act 1930 and the Contract Act 1872. The Pakistan Penal Code also offers consumer protection against defective products, however, it is restricted to the narrow ambit of food, drink and drugs.

As discussed above, the three basic heads under which a possible action for product liability may be initiated are (1) product liability statutes, (2) claim for damages in tort and (3) contractual claim for damages. Under the above-mentioned heads, the possible Respondent in a product liability claim would essentially be the manufacturer, the importer and the supplier of the defective product.

In a claim under tort, the standard would be based on the general principles of the liability of negligence and the complainant/Plaintiff would be required to establish that there was a duty of care owed by the Defendant to the Plaintiff and the defect in the product complained of, amounts to a breach of that duty and that the said breach has caused damage to the plaintiff.

The defences in a product liability claim would essentially depend on the nature of the claim itself, i.e. whether contractual, tortious, or statutory. In a contractual claim the defences could be based on the specific terms of the contract itself. In a tortious claim, the defendant may rely on *res ipsa loquitur*, contributory negligence, or remoteness of damage claimed. In a claim under the consumer protection laws discussed above, the defendant may disclaim liability if complaints are not lodged within the prescribed timeframe.

The climate for litigation/legislation relating to product liability is not very good at the moment. In the earlier legislation (e.g. the Contract Act 1872 and the Sale of Goods Act 1930), the protection offered to

consumers vis-à-vis product liability is minimal and there is a lack of any express consumer orientated thinking. Even in the recent legislation that created industrial regulators such as the National Electric Power Regulatory Authority (Regulation of Generation, Transmission and Distribution of Electric Power Act 1997), and the Pakistan Tele-communication Authority (Pakistan Telecommunication (Re-organization) Act 1996), there is no evidence of a clear and consistent consumer welfare policy. In either case, there is no power for the concerned authorities to award compensation or damages to consumers for any loss or harm suffered.

The provision of compensation/damages for the harm suffered by a person is consistently neglected and the legislators have failed to provide adequate compensation and damages as statutory remedies. In the absence of such statutory provisions, the fall back is the recourse to contract and/or tort principles of law. However, these areas of law are also highly undeveloped and remain inactive areas of laws in Pakistan, receiving minimal attention from the concerned authorities.

However, Courts have on a sporadic basis awarded damages (which are fairly conservative) for claims relating to fatal accidents resulting from the negligence of service providers such as electricity and transport. Whilst these areas do not strictly fall within the purview of product liability matters, they are nevertheless indicators of the fact that the Courts are willing to look into matters involving negligence and can equally be applied in a matter pertaining to product liability.

Among the few cases in tort which have come before the courts, even fewer relate to product liability. However, the notable ones concern the fatal accident matters and aviation disasters where claims based on manufacturing defects of the aircraft involved have been filed (though invariably they were settled out of court). Likewise, cases involving the tobacco industry have also been filed claiming damages or seeking a ban on tobacco advertisements. There has also been some activism in the public interest litigation scenario.

Philippines

Overview of legal framework

The Philippines has a "Consumer Act", promulgated in 1992, which, among others, bans substances hazardous to health and safety, protects against deceptive, unfair and unconscionable sales acts and practices involving consumer products, including misleading advertisements and fraudulent sales promotion practices, and regulates consumer credit transactions. The same law prohibits "chain distribution plans" or "pyramid sales schemes" in the sale of consumer products. Further, the Consumer Act authorizes the periodic publication of Consumer Product Standards which regulate product quality, packaging, storage, labelling, etc.

Consumer complaints are heard and decided by Consumer Arbitration Officers of the Office of Legal Affairs of the Department of Trade and Industry in the Regional Offices which has jurisdiction over the complaint. Administrative sanctions include a cease and desist order restraining certain acts/practices, an order to recall, replace, repair or refund the money value of defective products, seizure of hazardous products, rescission of contract without damages, and administrative fines from P500.00 to P300,000.00, plus P1,000.00 for each day of continuing violation. The most recent amendment in the Consumer Act relates to stringent rules against "chain distribution plans" or "pyramid sales scheme".

Filipino consumers have likewise sought enforcement of product liability by filing damage suits under our Civil Code. Civil cases are heard and decided by our trial courts (municipal or regional, depending on the amount of damages claimed). Damages awarded are based on what has been proved at trial. Other forms of damages such as moral and punitive damages, as well as attorney's fees and costs of suit, may also be awarded by the trial court.

Whether the legal framework mirrors other established systems worldwide.

We are not aware if the Philippine legal framework mirrors those of other countries. Our Consumer Product Quality And Safety Standards, however, follow international standards.

General trends in product liability claims

Consumer complaints filed with the Department of Trade and Industry are usually against manufacturers of appliances (such as washing machines, refrigerators) and computers. A few complaints have been filed against car manufacturers.

In the past two years, there has been a noticeable increase in the number of consumer complaints, especially against companies who sell consumer products using "chain distribution plans" or "pyramid sales schemes".

The awards in relation to consumer complaints have not noticeably increased. On the average, about half of cases filed annually are amicably settled with the help of the Consumer Arbitration Officer.

Singapore

The law governing product liability in Singapore

The legal framework governing product liability in Singapore straddles the two largest bodies of the common law namely, contract and tort. No specific piece of legislation has been enacted in Singapore to tackle the issue of product liability locally, unlike in other jurisdictions.

As mentioned above, redress for product liability in Singapore is found in contract law and tort law. A purchaser's contractual remedy for product liability lies in one of the following areas of contract law:

- i. breach of an express term in the sale and purchase contract;
- ii. breach of terms implied in the sale and purchase transaction by way of the Sale of Goods Act (1999 revised edition). The terms normally sought to be implied in product liability cases are those requiring goods sold to be of satisfactory quality or fitness, in sales by sample to conform with the sample provided and in sales by description to conform with the description provided; and,
- iii. misrepresentation.

A purchaser's contractual claim, whether for a breach of an express term in a sale and purchase contract in respect of a product, or a claim pursuant to the breach of a term implied by the Sale of Goods Act, would be limited by the doctrine of privity of contract. In circumstances where there exists no privity of contract between the claimant and the vendor of the product, the claimant's only recourse would be in the tort of negligence. In establishing a case in negligence against a vendor, the claimant would have to establish the elements of a duty of care, a breach of the duty of care, causation and remoteness of the damage caused to the claimant. The legal principles applicable in this regard are akin to those in England.

Recent developments in local legislative framework

As previously mentioned, the only notable piece of local legislation pertaining to product liability is the Sale of Goods Act of which a revised edition was published in 1999. Sections 13, 14 and 15 of the said Act are of particular importance to product liability law in Singapore.

General trends in Singapore

To our knowledge, there is no available data in respect of the number of cases of product liability claims in Singapore over any span of time. Accordingly, we are unable to give you an accurate assessment of whether there has been a rise in the number of product liability claims in Singapore in recent times. However, given the higher degree of protection given to consumers in other large, developed jurisdictions such as the United States and England, it would not be surprising if the numbers of product liability claims in such jurisdictions dwarfed those in Singapore. We are of the view, however, that Singapore may witness a paradigm shift in the number of claims pertaining to product liability over the course of the next few years. This spurt may materialise following the outcome of the highly publicised "Slim 10" case. Much public interest has been aroused by the "Slim 10" case involving the death and injury of several consumers of a weight loss drug known as Slim 10. One of the consumers is a popular television personality, Ms Andrea DeCruz, who suffered severe liver damage and eventually required a liver transplant. She filed a suit against the manufacturers, distributors and sellers of the Slim 10 product, and received judgment in her favour.

The Andrea DeCruz case is likely to be followed by several other suits commenced by other consumers of the drug. The potential defendants in the subsequent suits are likely to be similar parties though this would depend on whether such parties remain solvent.

Taiwan

Taiwan enacted the Consumer Protection Law (the "CPL") and accompanying enforcement rules in 1994, which were most recently amended in 2003. Drafters of the law borrowed heavily from existing consumer protection regimes in the United States, Japan, England and Germany to suit Taiwan's particular needs, and in many cases trends in those countries should be looked at as likely directions that Taiwan courts and government agencies might follow. In comparison to other jurisdictions, the CPL is relatively strict in terms of liability imposed on business operators.

The most notable feature of the CPL is its standard of strict liability for harm to consumers arising from their use of goods or services. This is a dramatic shift from the former fault-based principle whereby victims were required to establish manufacturer fault, provided for under disparate laws and regulations in place prior to the CPL (and over which the CPL took precedence upon promulgation). Provisions for punitive damages for non-intentional, negligent harm to consumers are another salient feature of the CPL.

Businesses have faced much more exposure to risk since the implementation of the CPL, at least in the sense that stringent measures exist in the letter of the law. In practice, however, resources for monitoring products and practices and the enforcement of the law are inadequate. Low compensatory damage awards and the lengthy litigation proceeding for complainants serve to deter somewhat the likelihood of product liability claims being pursued. In comparison to their western counterparts, Taiwanese are generally not litigious in matters of consumer protection. Apathy among Taiwan consumers with regard to consumer rights, has been commented on by scholars and in the popular press, particularly given the litany of egregious consumer rights violations exposed in recent years. Nevertheless, some are developing a "claims consciousness" and the Consumer Foundation of the Republic of China is one of the most active and successful non-profit organizations in Taiwan and has played a major role to facilitate action on behalf of consumers.

The competent authority established pursuant to the CPL is the Consumer Protection Commission (the "Commission"). The Commission is a central government-level, inter-ministerial agency directly under the Executive Yuan (Cabinet) and is chaired by the Vice-Premier. The primary role of the Commission under the CPL is to "study, propose and review the basic policies relating to consumer protection and supervise their implementation." Pursuant to the CPL, local governments have established consumer service centres and consumer dispute mediation commissions to promote consumer protection and handle consumer complaints.

Recent changes

Amendments to the CPL became effective in January 2003. Under the new law, the scope of consumer protection for "mail order purchases" has been expanded to include transactions via Internet. Another amendment provides that a "standard contract" shall only be deemed as accepted where the consumer has had no less than thirty days to review the terms and conditions therein; the competent authorities may determine the length of such review period for specific industries. The new law also provides that business operators may not limit or relieve themselves of their liability to the consumer. Under the new law, the CPC is authorized to implement guidelines for local consumer dispute mediation commissions handling consumer complaints and to issue guidelines clarifying the mediation process. Moreover, the result of disputes resolved through mediation need not be made public pursuant to the amended law. Businesses and many of the foreign trade offices (presumably reflecting the interests of their constituents) are concerned by the absence of liability defences for manufacturers and distributors in the CPL, among other issues, and are expected to lobby for further amendments in 2003.

Key provisions in the old CPL that remain substantially unchanged by the amendments include:

- ▶ strict liability;
- ▶ joint and several liability;
- ▶ potential reduced liability for business operators (distributors excluded);
- ▶ punitive damages;
- ▶ seven-day “trial period”;
- ▶ redress via mediation or litigation;
- ▶ class action law suits;
- ▶ mandatory product recall; and
- ▶ discontinuation of service and administrative punishments.

General trends in product liability claims in Taiwan

A substantial number of consumer disputes are settled through mediation, or if litigated are settled prior to a decision being rendered. Under the amended CPL the results of mediation do not have to be released to the public and thus trends in practice are difficult to discern. The number of consumer disputes is increasing, though available data does not indicate a substantial upsurge, and awards to victims, though still low by western standards, are also on the rise, according to the Consumer Foundation.

The majority of product liability complaints have been filed against manufacturers and vendors in the electronics and automobile industries. In the last few years, most court cases concerning product and service liability on which information is available involve electronic goods and medical services. In two recent judgments, however, the courts ruled that service liability under the CPL does not include medical services. Nevertheless, a definitive conclusion as to whether the term “services” in the CPL encompasses medical services has not been reached.

Product and service liability claims are predominantly brought by individuals (often with the support of a consumer protection group), but consumer protection groups approved by the Commission may also put forth claims on behalf of the victims in the form of a class action suit. The most active private consumer group in Taiwan is the Consumer Foundation, founded in 1980.

Thailand

Legislation

Thailand is a Civil Law country. As such, in the absence of a specific statute, damages arising from Product Liability incidents are dealt with under the general provisions of the Civil and Commercial Code and, in the context of personal injury, would be treated in a manner analogous to a tort in the Common Law jurisdictions. Punitive damages are seldom awarded here and, if granted are token amounts only. Loss of future earnings are also seldom awarded. US style damage awards for torts, say in the region of US\$200,000, are very rare. Litigation is very protracted in Thailand.

A draft Product Liability Act ("draft Act") has been pending for years. The final version's contents, if anything is passed, is not known. The timing of passage is also unknown. Thus, there is at present no relevant specific legislation. The highlights of the draft Act are that manufacturers of defective goods or harmful goods and the distributor or seller of goods that cause injury are liable for direct and indirect (including mental anguish, but whose is an open question) damages without proof of fault. However, contributory negligence is a defence. For manufacturers to be sued, they must be "found" in Thailand. At present under local jurisdictional theory, if a manufacturer merely sells from abroad to a local customer or if the sale is indirect, the manufacturer will not have a legal presence in Thailand and thus cannot be "found". The draft Act implies that latent defects will not lead to liability, and allows the injured party or the Consumer Protection Committee on behalf of that party to bring suit.

The Consumer Protection Act is in effect. It does not directly deal with product liability issues but primarily covers areas such as deceptive practices and misleading advertisements.

Trends

Defective and non-conforming goods are simple contract or, as advised, Consumer Protection Law matters. Lower court decisions are not reported. These courts are scattered throughout the country, therefore it is not possible to search these. Likewise, since Thailand has a Civil Law system and product liability is not a defined term, in the absence of a special Law on the topic, even Supreme Court (a second and last appeal court) decisions have little precedent value. They cannot be searched. Damage awards here are not substantial

Vietnam

Legislative development

Prior to April 1999, the law imposed product liability through scattered provisions, mainly in the Civil Code, Commercial Code, contract law and general product quality regulations.

On April 27, 1999, the National Assembly passed the Ordinance on Protection of Consumers' Interests (the "Ordinance"), creating the foundation for a specific framework regarding product liability. However, a mechanism to implement the Ordinance only started to take shape in October 2001 through a governmental decree.

Even so, the regime remains somewhat brief and broad. A producer or service provider is generally liable, without delay or avoidance, to honour its warranty obligations, repair defects and perform other obligations in accordance with its agreement with a customer. This indicates that the provision of a warranty is not mandatory, and the liability which a manufacturer/service provider owes to a customer is not strict, rather, it is contractual liability.

Vietnam does not have a specific body of tort law to impose strict liability on a manufacturer or service provider in the absence of a contractual term on product liability. However, the Ordinance seems to incorporate several tort-like rules. It establishes a consumer's right to bring a lawsuit against a manufacturer or service provider for infringement of interest and/or damages. It also stipulates broadly that a manufacturer/service provider whose product or service endangers human lives may be subject to criminal liability.

Distributors and importers of foreign products are clearly subject to the Ordinance, are directly liable for the products they sell, and hence, can be sued, say, for compensatory damages.

Foreign manufacturers are stipulated to be subject to the Ordinance only in connection with their activities in Vietnam. However, a foreign manufacturer cannot be brought to a court in Vietnam. A Vietnamese court only has jurisdiction to try a case if the defendant is located in the same locale.

Vietnam takes a more serious approach to products like foodstuffs and pharmaceuticals than to normal consumer products. Requirements for registration of quality of foods and pharmaceuticals are more strict. The Criminal Code imposes harsh sentences, including life imprisonment and capital punishment, on certain food and medicine-related offences.

In parallel with the Ordinance, the combined force of the Civil Code, Commercial Code, contract law and product quality regulations are still reliable.

Trends in product liability claims

Consumers have become increasingly aware of their rights. Consumer protection activist groups have been established in various locations. Vietnam Standards and Customer Protection Association is a major player and probably the most active group. Instances of claims have risen over the years. The Association's statistics shows that it has been involved in settling an average of 400 claims by customers every year, most relating to areas such as electronic and mechanical appliances, motorbikes and personal sanitary products.

Most claims were settled directly with the manufacturers. According to the Association, in 70 - 80% of those instances, the manufacturers agreed to compensate consumers both physically and mentally.

In Vietnam, a lawsuit is not a popular approach to claim product liability. Legal proceedings in Vietnam are time-consuming and costly, and awards have been inadequate.

About CMS Cameron McKenna

CMS Cameron McKenna is a founding member of CMS and is an award-winning full service international law firm, which advises businesses, financial institutions, governments, and public sector bodies. The firm has an excellent reputation in a number of fields and has been recognized in several prestigious awards. Our 141 partners and more than 622 fee earners operate from offices located throughout Europe, North America and Asia. Our worldwide presence allows us to combine local knowledge with international experience.

CMS Cameron McKenna in Asia

We have had a presence in Asia for 23 years and currently have an office in Hong Kong and have members of our China practice seconded to the Shanghai office of CMS Bureau Francis Lefebvre (CMS' French member firm). We have advised clients doing business in China for many more years and were one of the first foreign law firms to receive approval from the PRC Ministry of Justice to establish an office in Beijing in 1993.

Electronic information

To be kept up to date with new legal developments in the product liability, pharmaceuticals, biotechnology and other sectors and to have access to a comprehensive archive of legal news analysis in this area, please register for our free electronic information service, Law-Now, at www.law-now.com. This service also covers a wide range of other business sectors and jurisdictions.

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