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The International Comparative Legal Guide to:

Product Liability 2005

A practical insight to cross-border Product Liability work

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Latvia

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1 Liability Systems

1.1 What systems of product liability are available (i.e. liability in respect of damage to persons or property resulting from the supply of products found to be defective or faulty)? Is liability fault based, or strict, or both? Does contractual liability play any role?

Under the Latvian law, liability in respect of damage to persons or property resulting from the supply of products found to be defective or faulty can be claimed on the basis of tort or contract.

Tort law based claims can be brought on the basis of law On Liability for Defects in Product or Service (adopted on June 20, 2000) ("Product Liability Law") providing for strict liability, or on the basis of Civil Law (adopted on January 28, 1937) providing for fault based liability. The scope of liability that can be claimed on the basis of Product Liability Law is limited to damages to the life or health of an individual (e.g., disease or injury) and damages to the property (subject to certain limitations).

The contractual liability can be claimed on the basis of Civil Law and the Consumer Rights Protection Law (adopted on March 18, 1999) if the person suffering damage from the defective product has purchased or otherwise acquired it against consideration. According to Article 1593 of Civil Law, any transferor of title to the good is liable against the acquirer of title for defects and/or for absence of any of the good qualities which have been expressly promised or impliedly are deemed to be present.

1.2 Does the state operate any schemes of compensation for particular products?

The state operates a compulsory insurance scheme under the Land Transportation Means Owners' Civil Liability Compulsory Insurance Law (adopted on April 7, 2004) for certain traffic-related injuries and damage. Compulsory insurance is also provided for civil liability of various professionals, e.g., doctors, notaries, court bailiffs, persons engaged in construction, etc. (representing compensation schemes for particular services). These schemes apply as parallel sources of remedies along with product liability under the Product Liability Law.

1.3 Who bears responsibility for the fault/defect? The manufacturer, the importer, the distributor, the "retail" supplier or all of these?

Under the Product Liability Law, primarily the responsibility for the fault/defect rests with the manufacturer or the importer. If it is not possible to identify the manufacturer or importer of the product the Product Liability Law permits the claim to be brought against the distributor of the product or against any other person who has sold or otherwise distributed the product. The latter shall be released from liability if it provides information on the manufacturer or importer of the product or on other person who has supplied the product to it.

1.4 In what circumstances is there an obligation to recall products, and in what way may a claim for failure to recall be brought?

According to the Products and Services Safety Law (adopted on April 7, 2004), the manufacturer is obliged to take any measures as may be necessary to evaluate and eliminate the risks related to the use of the products, including, withdrawal of the products from the market, warning of the consumers, and recall of the products. The recall of the products may take place voluntarily or at the request of the supervisory authorities. The law does not identify any particular circumstances or criteria for the recall of the products leaving it to the discretion of the authorities to evaluate the necessity of such measures on a case per case basis. Breach of the duty to recall generally will be dealt with by the competent authorities under administrative enforcement procedures.

2 Causation

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

Under the Product Liability Law based claim the claimant will have to prove the defect, damage (loss) and the causation between the defect and damage (loss). In all other claims, whether tort or contract law based, the claimant will have to prove the fault also.

2.2 What test is applied for proof of causation? Is it enough for the claimant to show that the defendant wrongly exposed the claimant to an increased risk of a type of injury known to be associated with the product, even if it cannot be proved by the claimant that the injury would not have arisen without such exposure?

The Latvian laws do not contain specific provisions to determine the standard for proof of causation in product liability related claims and there is no relevant court practice either. Therefore, such issue would be a highly disputable. The more likely probability in view of the general court practice is that it would not be considered sufficient to establish a causal link if the claimant cannot prove that the injury would not have arisen without such exposure.

2.3 What is the legal position if it cannot be established which of several possible producers manufactured the defective product? Does any form of market-share liability apply?

Market-share liability is not recognised in Latvia. There is no relevant court practice in such cases, therefore it is unclear what position a court would take if a plaintiff could not prove the link between the defective product and the particular manufacturer. It is likely that the burden of proof will be deemed to rest with the plaintiff to prove that the particular defendant is responsible for the particular product.

2.4 Does a failure to warn give rise to liability and, if so, in what circumstances? What information, advice and warnings are taken into account: only information provided directly to the injured party, or also information supplied to an intermediary in the chain of supply between the manufacturer and consumer? Does it make any difference to the answer if the product can only be obtained through the intermediary who owes a separate obligation to assess the suitability of the product for the particular consumer, e.g. a surgeon using a temporary or permanent medical device, a doctor prescribing a medicine or a pharmacist recommending a medicine? Is there any principle of "learned intermediary" under your law pursuant to which the supply of information to the learned intermediary discharges the duty owed by the manufacturer to the ultimate consumer to make available appropriate product information?

According to the Latvian product safety and consumer protection laws, the manufacturer is obliged to provide to the consumer true and full information on the product (including warnings) to enable the customer to evaluate the risks relating to the use of the product during the normal or predictable period of use and to take precautionary measures, unless such risks are evident without special warnings. If the information provided by the manufacturer would be deemed insufficient or incorrect the product may qualify as unsafe.

Under Product Liability Law based claims only information provided directly to the injured party will be taken into account, and the manufacturer cannot escape liability in cases where information has been provided to the intermediary in the chain of supply but the information was not channelled further to the consumer. In such cases the manufacturer may have a recourse against the intermediary. Under fault-based claims the manufacturer has a defence of proving that the information was provided to the intermediary.

There is no concept of "learned intermediary" under the Latvian law and there are no special provisions regulating cases when the product can be obtained only through the intermediary who owes a separate obligation to assess the suitability of the product for the particular customer. The cases of damage being caused to the consumer by a doctor prescribing a medicine, by a surgeon using a medical device, etc. under Latvian law will fall under "service liability" rather than under "product liability", i.e., the respective professional will be directly liable to the consumer for defective service on the basis of Product Liability Law in its capacity as the service provider but it may have a recourse against the manufacturer of medicine, medical device, etc.

3 Defences and Estoppel

3.1 What defences, if any, are available?

Under Product Liability Law based claims the manufacturer can release itself from liability if it proves that one or several of the following circumstances took place:

- the manufacturer has not released the product for circulation;
- at the time when the product was released for circulation it did not have the defect which caused loss, respectively, such defect occurred later;
- the product was not intended for offering, sale or for other commercial distribution;
- at the time when the product was released for circulation the level of the scientific and technological development had not reached the level to allow to discover the deficiency or defect;
- the defect was caused due to compliance of the manufacturer with the requirements set forth by the state or self-government.

The liability of the manufacturer can also be limited or excluded in case of reciprocal fault, i.e., if the manufacturer proves circumstances indicating to malicious intent or negligence of the plaintiff.

3.2 Is there a state of the art/development risk defence? Is there a defence if the fault/defect in the product was not discoverable given the state of scientific and technical knowledge at the time of supply? If there is such a defence, is it for the claimant to prove that the fault/defect was discoverable or is it for the manufacturer to prove that it was not?

There are such defences available (see question 3.1 above).

There is no relevant court practice therefore it is difficult to predict how the burden of proof shall be deemed to apply where the defendant refers to the level of scientific / technical knowledge. It is likely, however, that the burden of proof shall be deemed to rest with the defendant, i.e., the manufacturer will have to prove that the defect was not discoverable.

3.3 Is it a defence for the manufacturer to show that he complied with regulatory and/or statutory requirements relating to the development, manufacture, licensing, marketing and supply of the product?

Again, there is no relevant court practice. It is likely that compliance with regulatory requirements or the fact that the product has been appropriately tested or licensed per se will not be considered sufficient defence, unless it can be shown that the defect was caused by or inevitably resulted from compliance with mandatory requirements.

3.4 Can claimants re-litigate issues of fault, defect or the capability of a product to cause a certain type of damage, provided they arise in separate proceedings brought by a different claimant, or does some form of issue estoppel prevent this?

According to the Civil Procedure Law, a case where a final and valid court judgement has been rendered can be re-litigated in very limited circumstances only. Thus, the case can be re-litigated if "newly discovered circumstances" are found, which include material circumstances that existed during the proceedings of which the applicant for re-initiation of the case was not aware and could not have been aware, cancellation of the judgement or the decision of an authority which served as the basis for the particular court judgement, etc. As a general rule, a final judgment on issues of fault, defect or the capability of a product to cause a certain type of damage is an absolute bar to the same issues being raised in subsequent proceedings between the same parties.

4 Procedure

4.1 Is the trial by a judge or a jury?

There are no juries in Latvian courts. The trial is by a single judge in District Courts (lower level courts) and the Regional Courts (the second level courts). The appeals are heard in the Regional Courts by the panel of three judges. At the Supreme Court level all cases are tried by a panel of three judges.

4.2 Does the court have power to appoint technical specialists to sit with the judge and assess the evidence presented by the parties (i.e. expert assessors)?

No, the Latvian law does not provide for 'expert assessors' or the like.

4.3 Is there a specific group or class action procedure for multiple claims? If so, please outline this. Are such claims commonly brought?

Class action is not available in Latvia. It is permitted to bring common claims only where the claims concern essentially the same legal relationship. Thus, multi-party product liability claims can be brought e.g. if the damages stem from the same act.

4.4 Can claims be brought by a representative body on behalf of a number of claimants e.g. by a consumer association?

The Latvian laws do not provide for the right of some representative body (public organisation, association, etc.) to bring the product liability related claim on behalf of a number of claimants. The Consumer Rights Protection Centre (the state public authority supervising compliance with the consumer rights protection laws) is entitled to bring claims with the court in order to protect rights and legal interests of the consumers, however, according to the current practice it extends only to the claims relating to the condition of the product, its replacement, compensation of value of the product and the like, but it does not extend to any claims for compensation of damages.

4.5 How long does it normally take to get to trial?

It depends on the particular court and the complexity of the case. Due to very tight schedules of judges and a significant backlog of cases (in particular with the Regional Courts) it may take even a year or more after the submission of the claim to get to the trial. Hearings with the District Court are usually scheduled to be held within three months from the date of submission of the claim.

4.6 Can the court try preliminary issues, the result of which determine whether the remainder of the trial should proceed? If it can, do such issues relate only to matters of law or can they relate to issues of fact as well, and if there is trial by jury, by whom are preliminary issues decided?

The court cannot try preliminary issues the result of which determine whether the remainder of the trial should proceed. The issues like jurisdiction, venue, defects/discrepancies in the claim or counter-claim, or the supporting documents submitted by either of the parties, application of provisional remedies, etc. shall be resolved without trial by the judge acting at its sole discretion. In few cases a court hearing will be summoned to decide on a particular issue, for example, obtaining witness testimony before the trial (see also question 4.9 below).

4.7 What appeal options are available?

There are two levels of appeal under the Latvian court system. The first level appeal (appeal de novo) is available on an issue of law or fact. The court that will hear such an appeal is dependant upon the first instance court in which the case was originally tried (for example, if the case was tried by the District Court the appeal has to be brought with the Regional Court). The second level appeal (cassation) is available only on an issue of law. Such appeals are always heard by the Senate of the Supreme Court.

4.8 Does the court appoint experts to assist it in considering technical issues and, if not, may the parties present expert evidence? Are there any restrictions on the nature or extent of that evidence?

Yes, the court is entitled on its own initiative or at the request of either of the parties to the proceedings to appoint an

expert to provide an opinion on the technical issues or any other issues requiring expert knowledge. There is no approved list of experts. The court may ask the parties for suggestions as to the names of potential candidates for the expert and the parties will also be requested to submit a list of questions to be answered by the expert. If the parties cannot agree on a particular expert, or the court rejects their suggestions, it will generally draw on the Latvian State Examination Scientific Research Laboratory, a state institution owned by the Ministry of Justice. The court appointed expert must submit a written opinion which will usually be shared with the parties.

The parties are also entitled to retain their own experts although it is within the court's discretion whether to admit the retained expert's opinion as evidence (there are no particular restrictions on the nature or extent of such evidence). The parties will normally be given an opportunity to cross examine both the court appointed experts and the privately retained experts allowed by the court.

4.9 Are factual or expert witnesses required to present themselves for pre-trial deposition and are witness statements/ expert reports exchanged prior to trial?

There is no general requirement for deposition of witnesses or exchange of statements or reports during the preparatory stage of proceedings. The court may take testimony from a witness prior to trial only if a party establishes that the evidence is necessary to support his claim and it may be difficult to obtain the evidence later. However, this is a very unusual procedure and may only be relevant where, for example, a witness is gravely ill.

4.10 What obligations to disclose documentary evidence arise either before proceedings are commenced or as part of the pre-trial procedures?

The documentary evidence has to be submitted by the parties within seven days prior to trial date unless the judge has set forth any other term for submission of evidence. As a part of pre-trial or trial procedures the party to the proceedings may ask the court to order that a certain document is presented by the other party or any third party provided such document constitutes valid and case relevant evidence. The request can be made for a specific document only and should explain why the party seeking the document believes it to be in the possession of the party from whom it is requested.

5 Time Limits

5.1 Are there any time limits on bringing or issuing proceedings?

Yes, time limits do exist.

5.2 If so, please explain what these are. Do they vary depending on whether the liability is fault based or strict? Does the age or condition of the claimant affect the calculation of any time limits and does the court have a discretion to disapply time limits?

The Product Liability Law based claim has to be brought within three years after the date the person who suffered damage (loss) became aware or should have become aware of the defect in the product, the loss and the potential respondent. Such claims cannot be brought if ten years have passed from the date the manufacturer has released the respective product for circulation. The statute of limitation for fault-based liability is ten years after the potential plaintiff became entitled to bring the claim (i.e., generally, the date when the damage occurred). The court has no discretion to disapply the time limit.

5.3 To what extent, if at all, do issues of concealment or fraud affect the running of any time limit?

The issues of concealment or fraud may affect the running of the 3-year time limit for bringing a Product Liability Law based claim to the extent the plaintiff's awareness of the defect, the loss and the potential respondent is affected by the respondent's concealment or fraud. It does not, however, affect the general statute of limitation - 10 years.

6 Damages

6.1 What types of damage are recoverable e.g. damage to the product itself, bodily injury, mental damage, damage to property?

Under Product Liability Law based claims the types of recoverable damage include damage to the life or health of an individual (e.g., disease or injury), and damage to the property of an individual or legal entity. The damage to property will be recoverable provided certain criteria are met: the damage is caused to the property other than the defective product, the damaged or lost property is the property which is used for personal needs or consumption, and at the time when damage was caused the amount of the loss exceeded equivalent of EUR 500 in Latvian lats. Under fault based claims (Civil Law and Consumer Rights Protection Law) the scope of recoverable damage is not limited by type of damage.

6.2 Can damages be recovered in respect of the cost of medical monitoring (e.g. covering the cost of investigations or tests) in circumstances where the product has not yet malfunctioned and caused injury, but it may do so in future?

Under the Latvian law there are no express provisions regarding recovery of such costs and thus far there is no court practice either. Theoretically, recovery of such damages would be permissible, however, it is likely that such claim would have to be fault based rather than strict liability based.

6.3 Are punitive damages recoverable? If so, are there any restrictions?

Punitive damages are not recoverable under Latvian law.

6.4 Is there a maximum limit on the damages recoverable from one manufacturer e.g. for a series of claims arising from one incident or accident?

There is no maximum limit on the damages recoverable.

7 Costs / Funding

7.1 Can the successful party recover: (a) court fees or other incidental expenses; (b) their own legal costs of bringing the proceedings, from the losing party?

The court fees (i.e., state duty for submission of claim, chancellery duties, etc.) on the basis of the court ruling shall be covered by the losing party. If the claim has been granted only partially, the plaintiff is entitled to recover court costs in proportion to the scope of claim granted by the court and the defendant is entitled to recover in proportion to the scope of the claim that has been denied.

The party's own legal costs of bringing the proceedings (i.e., legal fees, costs for traveling to the court hearings, etc.) may also be recovered from the losing party but is subject to certain limitations. For example, the legal fees recoverable may not exceed 5% of the sum of the claim granted, the defendant may recover its legal costs only if the plaintiff's claim is rejected entirely, etc.

7.2 Is public funding e.g. legal aid, available?

The Law on Latvian Bar Association provides for that each person must be provided access to legal aid in case of necessity. Individuals in poor financial condition who cannot afford an attorney to protect their interests in civil proceedings are entitled to apply to the Chairman of the court or the Latvian Bar Association to appoint an attorney to represent their interests. If the request is considered motivated the attorney shall be appointed and his/her services shall be paid for from the state treasury at officially established rates.

7.3 If so, are there any restrictions on the availability of public funding?

There are no fixed financial or other criteria for eligibility for legal aid.

7.4 Is funding allowed through conditional or contingency fees and, if so, on what conditions?

The payments for the services of attorney shall be made at the officially established rates. The state funding is not allowed through conditional or contingency fees.

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