International Comparative Legal Guides

Product Liability 2021

A practical cross-border insight into product liability work

19th Edition

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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? Can liability be imposed for breach of statutory obligations e.g. consumer fraud statutes?

Law 2251/1994 on "Consumers' Protection" ("Consumers' Law"), which implemented EU Directive 85/374/EEC "on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products" (as amended by EU Directive 99/34/EC), sets the main product liability rules in Greece (articles 6 and 7). Moreover, Ministerial Decision Z3/2810/14.12.2004 ("MD") implemented EU Directive 2001/95/EC on "General Product Safety". Although the Consumers' Law has been amended several times, extensive amendments were introduced in 2007 and 2018 (by Laws 3587/2007 and 4512/2018, respectively).

The Consumers' Law establishes a strict liability regime, i.e. not fault-based. Article 6, para. 1 of the Consumers' Law provides that "the producer shall be liable for any damage caused by a defect in his product". It follows that, in order for a producer to be held liable, the pre-requisites are: a) a product placed on the market by the producer is defective; b) damage occurred; and c) a causal link between the defect and the damage exists (established under the prevailing theory of "*causa adequata*"). However, this strict liability system does not preclude other liability systems from providing a consumer with greater protection on a specific case (article 14, para. 5 of the Consumers' Law). Such additional systems are:

- Contractual liability (articles 513–573 of the Greek Civil Code ("GCC") on contracts of sale of goods also incorporating Directive 1999/44/EC): this liability system requires a contractual relationship between the parties where the buyer must not necessarily be a consumer. The seller is strictly (irrespective of his fault) liable for the sold product's defects or non-conformity with agreed qualities at the time the risk passes to the buyer, the knowledge of the latter releasing the seller from liability under conditions, together with other reasons for such a release provided by law.
- Tortious liability (esp. articles 914, 925 and 932, together with articles 281 and 288 of GCC): although the claimant must establish the defendant's fault in tort claims, case law reverses the burden of such proof in favour of the claimant-consumer, based on the "theory of spheres", thus obliging the defendant to prove absence of fault to be released from liability.
- Criminal liability: derived from the Greek Criminal Code and Law 4177/2013 (Rules Regulating the Market of Products and the Provision of Services) (article 13a, para. 2 of the Consumers' Law).

1.2 Does the state operate any special liability regimes or compensation schemes for particular products e.g. medicinal products or vaccines?

No, it does not, although sectoral regulation exists on a variety of products such as medicinal ones; see also question 1.4 below.

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

Article 6, paras 2–4 of the Consumers' Law provides that the "producer", who bears responsibility for the defect, is the manufacturer of a finished product or of any raw material or of any component, and any other person who presents himself as a producer by putting his name, trade mark or other distinguishing feature on the product. Moreover, any person who imports (within the EU) a product for sale, leasing or hire, or any form of distribution shall be responsible as a producer. Where the producer of the product may not be identified, each supplier of the product shall be treated as its producer, unless he provides the injured person with information on the identity of the producer or of the person who supplied him with the product. The same applies to the supplier of imported products when the importer's identity is unknown, even if the producer's identity is known.

1.4 May a regulatory authority be found liable in respect of a defective/faulty product? If so, in what circumstances?

The potential liability of a regulatory authority falls within the legal frame of the state's and state entities' liability (articles 104–106 of GCC's Introductory Law), requiring an unlawful act or omission at the exercise of their duties and being regulated by the general provisions of GCC regarding legal entities; a non-liability exception applies where a general public interest supersedes. Joint liability of the state/state entity and the particular person who acted in breach of the law is established.

1.5 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 article 7 of the Consumers' Law and article 3 of the MD, producers are obliged only to place safe products on the market. Accordingly, producers must provide consumers with the relevant information to enable them to assess the product's risks throughout the normal or reasonably foreseeable period of the product's use. Producers must also take any action needed in order to avoid these risks, as well as taking any appropriate preventive and corrective action (such as a recall of the product), depending on the specific circumstances. Based on the above, a claim for failure to recall may be brought on the grounds of the producer's negligence to act accordingly.

1.6 Do criminal sanctions apply to the supply of defective products?

Yes (see question 1.1 above).

2 Causation

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

The plaintiff-consumer has to prove the defect, the damage and their causal link, whereas proof of fault is not needed. Where a plaintiff sues in tort, as a rule he must prove the defendant's fault. However, case law and theory hold that the burden of proof may be reversed if the plaintiff would otherwise be unable to prove the defendant's culpable conduct. This is held when the fact to be proven lies in the exclusive sphere of the defendant's influence, and the plaintiff is unable to gain access in order to meet his burden-of-proof obligations; in such a case, the defendant is required to prove that he was not responsible for the occurrence of the injurious fact. The reversal is applied under the case law primarily for consumers' claims (see question 1.1 above).

It should be noted that before the 2018 revision of the Consumers' Law (see question 8.1 below), the definition of "consumer" was extremely broad, including any natural or legal person or entity without legal personality that was the end recipient and user of products or services, as well as any guarantor in favour of a "consumer" (but not for a business activity) (previous article 1, para. 4a of the Consumers' Law); moreover, such definition had been further expanded by case law to cover persons that used the products or services not only for private use but also for business use. As of 18.3.2018, this extended definition was narrowed and "consumer" is considered any natural person acting for purposes not falling within a commercial, business, handcraft or freelance activity (new article 1a, para. 1 of the Consumers' Law).

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? Is it necessary to prove that the product to which the claimant was exposed has actually malfunctioned and caused injury, or is it sufficient that all the products or the batch to which the claimant was exposed carry an increased, but unpredictable, risk of malfunction?

It is not enough for the claimant to generally allege that the defendant wrongly exposed the claimant to an increased risk of injury. A direct connection between the injury caused and the specific defect has to be established by the claimant. As per current case law, it is necessary to be proven that the product to which the claimant was exposed has actually malfunctioned and caused the claimant's injury.

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?

By law, where more than one person is responsible for the same damage, their liability towards the person injured is joint and several, whereas they have a recourse right against each other based on their contribution to the damage, as a matter of proof (article 6, para. 10 of the Consumers' Law and article 926 of GCC).

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?

The producer has to provide adequate warnings for the risk evaluation of the specific product, and failure to do this may result in his liability; not only civil, but also administrative and criminal (article 7 of the Consumers' Law and MD). The learned intermediary doctrine, although not provided for by law, may work on a particular case taking into account all the circumstances, as a defence to manufacturers of medicines and medical devices towards discharge from their duty of care to patients by having provided warnings to prescribing physicians. However, in the case where the use of the product, even according to the producer's guidance, bears a danger for the consumer, this fact needs to be clearly brought to the consumer's attention by the producer. Failure to warn is seen to have caused the damage only when it is fully proven that the use of the product according to the producer's guidelines would have prevented the damage. Also, any intermediaries (e.g. doctors) have their own and separate obligations to consumers under the service liability rules (article 8 of the Consumers' Law). In any event, a producer's liability is not reduced where third parties are co-liable (article 6, para. 11 of the Consumers' Law).

3 Defences and Estoppel

3.1 What defences, if any, are available?

The producer may be relieved from liability if he proves that: a) he did not place the product on the market; b) when he manufactured the product, he had no intention whatsoever of putting it into circulation; c) at the time the product was placed on the market the defect did not exist; d) the defect was caused by the fact that the product was manufactured in a way from which a derogation was not permitted (subject to mandatory regulation); or e) when the product was placed on the market, the applicable scientific and technological rules at that time prevented the defect from being discovered (the so-called *state-of-the-art* defence).

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 is a state-of-the-art defence, as noted above under question 3.1 (point e), and it is for the manufacturer to prove that the fault/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?

Yes, as noted above under question 3.1 (point d). In particular, two opinions were expressed on this, namely: a) the manufacture of a product according to the applicable scientific and regulatory safety requirements is one of the factors determining its expected safety level. The producer's observance of the set safety requirements does not necessarily mean that the product is not defective; rather, it simply indicates a lack of defect, which must be proven by the producer (this is followed by the current jurisprudence); and b) the producer's conformity with the applicable safety specifications leads to the assumption that the product lacks defectiveness and the damaged consumer must argue against it.

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?

Greek courts' final decisions which may not be challenged through appellate proceedings: a) are irrevocable; and b) have a *res judicata* effect, but only among the litigants, only for the right that was tried, and provided that the same historical and legal cause applies. In that respect, re-litigation by other claimants is possible.

The above rule is differentiated where a court's decision is issued following a collective lawsuit. As per the Consumers' Law (article 10, paras 16 *ff.*), in such cases, the decision issued has an *erga omnes* effect, namely towards non-litigants as well, this being a very special characteristic under Greek law. In particular, the *res judicata* effect of a declaratory decision issued on a collective claim, recognising the recovery right for damages suffered by the consumers due to an unlawful behaviour, favours any such consumers damaged, even if they did not participate in the relevant trial. As a result, once such a decision becomes irrevocable, any damaged consumer may notify his claim to the producer. In a case where the producer does not compensate the consumer at issue within thirty (30) days, the latter may file a petition before the competent court asking for a judicial order to be issued against the producer. Further, individual consumers' rights are not affected by the collective pursuance of a claim, nor by a decision rejecting a collective claim.

3.5 Can defendants claim that the fault/defect was due to the actions of a third party and seek a contribution or indemnity towards any damages payable to the claimant, either in the same proceedings or in subsequent proceedings? If it is possible to bring subsequent proceedings, is there a time limit on commencing such proceedings?

The producer's liability cannot be limited due to the fact that a third party is also liable (see question 2.4 above), but the producer has a right of recourse in such a case which may be pursued as long as it does not become time-barred.

3.6 Can defendants allege that the claimant's actions caused or contributed towards the damage?

A producer's liability can be limited or abolished in cases where the damaged consumer's contributory negligence may be proven.

4 Procedure

4.1 In the case of court proceedings, is the trial by a judge or a jury?

Private law disputes, including product liability claims, are tried exclusively by civil courts and only by one to three judges, depending on the amount of the dispute. As a rule, justices of the peace are competent to examine claims valued up to €20,000; one-member first instance courts, claims between €20,000 and €250,000; and three-member first instance courts, claims exceeding €250,000 (articles 14 and 18 of the Greek Code of Civil Procedure – "GCCP"). Collective claims are subject to the exclusive competence of the three-member first instance courts (article 10, para. 19 of the Consumers' Law; see also questions 3.4 and 4.4).

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)?

Yes; if the court finds that the issues to be proven require special scientific qualifications, it may appoint one or more experts (articles 368–392 of GCCP; see also question 4.8 below).

4.3 Is there a specific group or class action procedure for multiple claims? If so, please outline this. Is the procedure 'opt-in' or 'opt-out'? Who can bring such claims e.g. individuals and/or groups? Are such claims commonly brought?

Class action procedures for multiple claims brought by a number of plaintiffs do not exist in Greece, but there are provisions regarding collective actions as analysed herein (see e.g. questions 3.4 and 4.4).

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

Consumer associations meeting the prerequisites specified in the Consumers' Law may file collective lawsuits for the protection either of the general consumers' interests or the interests of specific (at least 30) consumers (article 10, paras 16 *ff.*). A collective lawsuit is distinguished from a common one, where several claimants connected to each other by a specific object of the trial are represented before the court by one or more of their co-claimants. Collective lawsuits may only be generally filed by registered consumers' associations or by chambers, which however may claim only moral harm.

The current legal landscape is expected to change following the transposition of the recent Directive (EU) 2020/1828 on Representative Actions, which will apply as from 25.6.2023.

Also, a special type of collective redress was recently enacted within the frame of Regulation (EU) 2019/1150 regarding online intermediation services, applicable from 12.7.2020. In brief, organisations/associations representing business users or corporate website users and public bodies assigned with such a task, as same entities/bodies and users are defined in the Regulation (articles 14 and 2 respectively), may take judicial actions against the providers of online intermediation services or online search engines to stop or prohibit non-compliance with their obligations. Law 4753/2020 was enacted to supplement the application of the above regulation and includes provisions such as on the prescription period, the competent courts and kind of proceedings followed, including injunctive measures, a special registrar set up for those entities/bodies, the supervisory authority, the sanctions that may be imposed, etc. (articles 1–7).

4.5 May lawyers or representative bodies advertise for claims and, if so, does this occur frequently? Does advertising materially affect the number or type of claims brought in your jurisdiction?

Lawyers may not advertise for claims in any case. Representative bodies may do so, provided their public announcements are true, accurate and not misleading, otherwise administrative sanctions may be imposed on them and may result in their deletion from the registry of consumer associations (article 10, paras 26–28 of the Consumers' Law); however, such advertising occurs rather rarely, and it does not materially affect relevant claims brought.

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

Under the legal regime up to 31.12.2015, and as an average, a hearing for an action under ordinary proceedings was fixed between approximately 18 and 24 months following its filing, and the decision was issued six to eight (6–8) months after the hearing, provided that the initial hearing was not adjourned (one adjournment being common practice). The aforementioned average times very much depend on the type of the court (see question 4.1 above), as well as the place where it is located. To speed up proceedings, a new law was introduced in 2015 (Law 4335), and it is in force since 1.1.2016. Under the new regime, the hearing was purported to take place around six to seven (6–7) months after the filing of a lawsuit (articles 215 and 237 of GCCP) but that timeframe is, in practice, prolonged significantly, especially in the courts of large cities.

4.7 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?

No, there are no separate proceedings specifically for preliminary issues, such as on the court's jurisdiction or competence; these are dealt with at the time of the main trial, this being either the ordinary or injunction proceedings. However, where the court considers it important to be informed on foreign law or on specific scientific/technical matters, it may issue an interim order thereon.

4.8 What appeal options are available?

Every definite judgment issued by a first instance court may be contested before the Appellate Court. An appeal can be filed not only by the defeated party, but also by the successful party whose allegations were partially accepted by the court. Further, a cassation before the Supreme Court may be filed against Appellate Court decisions.

4.9 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?

As stated above under question 4.2, the court may appoint experts to assist it in considering technical issues. The expert(s) may take knowledge from the information in the case file and/or request clarifications from the parties or third parties. The parties are also entitled to appoint one technical advisor each, who reads the expert report, submits his opinion and raises relevant questions to the court expert. The opinion of the court-appointed expert is not binding on the court. Additionally, the parties may submit to the court an unlimited number of expert/technical reports supporting their allegations. In practice, the reports of party-appointed experts are of lesser evidentiary value than those of the court-appointed ones.

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

Factual or expert witnesses appointed by the parties may, instead of giving oral evidence before the court, give sworn depositions before a justice of the peace, a notary public or, if outside Greece, before a Greek consular authority. The opponent must be summoned to such depositions two working days in advance and is entitled to obtain a copy prior to trial. Non-compliance with the procedural requirements renders the depositions inadmissible. There are restrictions to the number of sworn depositions (articles 421–424 of GCCP).

Court-appointed experts have to submit their reports at the time ordered by the court, adjourning the hearing for that purpose.

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

There are no pre-trial discovery proceedings. Each litigant has

to disclose all documents supporting his case (unless he has a serious reason not to) by the filing of his submissions at the specified time, depending on the court and kind of proceedings. The general principles of good faith, *bonos mores* and honest conduct apply (esp. articles 116 and 450 of GCCP). A litigant may request from the court to order disclosure of documents in the possession of his opponent or a third party under conditions (articles 450 *ff.* of GCCP and 901–903 of GCC).

4.12 Are alternative methods of dispute resolution required to be pursued first or available as an alternative to litigation e.g. mediation, arbitration?

Parties may choose (but, as a rule, are not obliged to opt for) mediation or arbitration as the means for resolving their disputes, even for actions pending before the court. Also, before initiating actions, they may voluntarily address the competent justice of the peace, asking for the latter's intervention in order for the dispute to be settled at an early stage (with very limited applicability) or recourse to the permanent judicial mediation mechanism existing at the first instance and appellate courts (see further question 6.6 below). Mandatory mediation was introduced for the first time in Greece and for certain disputes (although not including product liability/safety claims), initially by Law 4512/2018 and eventually by Law 4640/2019 (see question 8.1 below).

Further, the 2013 EU legislation on alternative dispute resolution ("ADR") applies to Greece; specifically, Ministerial Decision 70330/30.6.2015 implemented the ADR Directive 2013/11/EU and set supplementary rules for the application of the Online Dispute Resolution Regulation 524/2013. Registered ADR entities within the abovementioned framework are: a) the Consumer Ombudsman, being the key ADR authority for consumers and all sectors; b) the (sectoral) Ombudsman for Banking and Investment Services ("HOBIS" – also part of the FIN-NET network for credit/financial trans-boundary disputes); as well as c) "ADR POINT – Alternative Dispute Resolution Centre"; d) the "European Institute for Conflict Resolution"; and e) the "Institute for Alternative Dispute Resolution – StartADR", all being private organisations.

Various other bodies/authorities exist for ADR, and have increased in number continuously in recent years. These include: i) the Committees for Friendly Settlement, which are seated at and managed by the regional authorities as of 17.1.2018; ii) the European Consumer Centre of Greece, supported by the Consumer Ombudsman and regarding trans-boundary EU ADR; iii) the SOLVIT network regarding the improper application of Internal Market rules by the EU public administrations at a cross-border level, supervised by the Ministry of Finance; iv) the Citizens' Ombudsman (Law 2477/1997), which deals with disputes between citizens (in general) on the one hand and public authorities, public entities, utilities municipalities on the other hand; v) the Insurance Mediator (PD 190/2006; Directive 2002/92/EC); vi) the Mediator for collective labour disputes (Law 1876/1990; however, following its amendment by Law 4635/2019, no sanction is provided for a mediation refusal); vii) the Committee dealing with infringements of IP rights on the internet (Law 4881/2017); and viii) the Committee for the extra-judicial settlement of taxation disputes (Ministerial Decision 127519/2020). Moreover, a draft law on outdoor protests, which is under discussion, will introduce the legal status of police and port mediators, being police and port officers respectively (if passed).

Lastly, it may be noted that among the lawyers' duties, mediation for the settlement of disputes is expressly provided for by the Lawyers Code (article 36, para. 1 of Law 4194/2013, as in force).

4.13 In what factual circumstances can persons that are not domiciled in your jurisdiction be brought within the jurisdiction of your courts either as a defendant or as a claimant?

As a rule, any person, either Greek or non-Greek, is subject to a Greek court's jurisdiction, thus he may sue or be sued, provided a Greek court is locally competent to try the case (article 3 of GCCP). Such competence is determined by a rather detailed categorisation; among the various legal bases and regarding a tortious act, the one regarding the place where the event that caused the damage either took place or is to occur establishes the competence, and thus the jurisdiction, of a Greek court (articles 22 *ff.* and especially article 35 of GCCP). At the EU level, one may also mention Regulation 1215/2012 "on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters" (ex-Regulation 44/2001/"Brussels I"), as in force (recast text), as this is also applicable to Greece.

5 Time Limits

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

Yes (see question 5.2 below).

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?

For strict liability and according to article 6, para. 13 of the Consumers' Law, a three (3)-year limitation period applies to proceedings for the recovery of damages, while the right to initiate proceedings against the producer is extinguished upon the expiry of a ten (10)-year period from the date the producer put the product into circulation. The age or condition of the claimant does not affect the calculation of the time limits, while the court may not disapply time limits.

In case of a collective lawsuit, it must be brought within six (6) months from the last unlawful behaviour challenged, unless the mere recognition by the court that an unlawful act had taken place is sought, where the general five (5)-year prescription period for torts applies (article 10, para. 18 of the Consumers' Law).

For a claim in tort, a general five (5)-year prescription period applies, whereas the claim is in any case extinguished twenty (20) years from the date of the tortious act (article 937 of GCC).

Contractual liability claims under a contract of sale of goods are time-barred after two (2) years for movables and five (5) years for immovable property, whereas further detailed regulation applies (articles 554–558 of GCC).

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

The Consumers' Law does not contain specific provisions. Article 6, para. 13 sets, as the starting point from which the time limitation runs, the day on which the plaintiff became aware or should have become aware of the damage, the defect and the identity of the producer. Regarding knowledge of the damage, it is not required for the plaintiff to be informed of the individual

damage; knowledge of the possibility of a forthcoming loss-making result is enough. Knowledge of the defect includes the circumstances from which it results that the use of the product does not meet the consumer's safety expectations. Furthermore, the consumer needs to be in a position to know that the damage is the result of a specific defect of the product.

Under the provisions on contracts for the sale of goods, concealment or fraud by the seller precludes him from invoking prescription (article 557 of GCC).

6 Remedies

6.1 What remedies are available e.g. monetary compensation, injunctive/declaratory relief?

Monetary compensation under civil proceedings is available to the victim (see question 6.2 below). Criminal or administrative proceedings, which it is also possible to pursue, are not aimed at compensating the victim. Especially under a collective claim, consumers' associations may ask: a) that a producer abstain from unlawful behaviour even before it occurs; b) for the recall, seizure (as injunctive measures) or even destruction of the defective products; c) for moral damages; and d) that the court recognise consumers' right to restore the damage caused to them by the producer's unlawful behaviour (article 10, para. 16 of the Consumers' Law).

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

According to article 6, paras 6 and 7 of the Consumers' Law, the types of damage that are recoverable are: a) damages caused by death or by personal injury to anyone; and b) damage or destruction caused by the defective product to any consumer's asset other than the defective product itself, including the right to use environmental goods, provided that i) the damage exceeds €500, and ii) the product was ordinarily intended for and actually used by the injured person for his own private use or consumption. Compensation for moral harm or mental distress (to the family of the deceased) may also be claimed.

Under a claim in tort, full damages may be recoverable (article 914 *ff.* of GCC).

Lastly, under contractual liability (sale of goods), the buyer may request (especially articles 540–543 of GCC): a) the repair or replacement of the defective product; b) a reduction of the consideration; c) rescission of the contract; and/or d) compensation, under conditions.

6.3 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?

A causal link is always required between the defect and the damage in order for the producer to be held liable. So, in cases where the product has not yet malfunctioned and caused injury, there is an absence of this condition. If the product malfunctions in the future, medical monitoring costs may be recovered provided actual damage suffered by the consumer is proven.

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

No. However, in collective claims, the way the amount for moral damages awarded is calculated and the effect of the relevant decision (see questions 3.4 and 6.1 above) bring it closer to a pecuniary sentence – a so-called "civil sanction" imposed on the producer (article 10, paras 16.b and 20 of the Consumers' Law). It should be noted that by the latest revision (see question 8.1 below), the obligation to allocate 20% of the moral damages awarded to the General Consumers' Secretariat so that same are invested for the promotion of policies regarding consumer protection was abolished. It is noted that moral harm as a result of a collective claim may be awarded only once for the same breach of law (article 10, para. 22 of the Consumers' Law).

6.5 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?

No, there is not.

6.6 Do special rules apply to the settlement of claims/proceedings e.g. is court approval required for the settlement of group/class actions, or claims by infants, or otherwise?

Yes, although they are rarely applied by the interested parties. An option is a party's referral to a justice of the peace, prior to the filing of a lawsuit, for the latter's intervention in order to try and obtain a settlement (articles 209–214 of GCCP). Another option is a settlement between litigants until the issuance of a final decision and provided the substantive law requirements (see below) for the same are met; such settlement may or may not be certified by the court, as per the litigants' choice (article 214A of GCCP). Another alternative introduced in 2012 and titled "judicial intervention" is in fact an extension of the above-mentioned justice of the peace intervention and provides for a permanent mechanism to be set up in each first instance and appellate court, where nominated judges may assist the parties in dispute to reach a settlement, if the same ask for it at any time before or after *lis pendens* (article 214B of GCCP). Additionally, the court may propose that litigants have recourse to mediation and, if accepted by them, the hearing of the case is adjourned for three to six months; this falls within the general duty of the court to encourage the extra-judicial settlement of the dispute brought before it at any stage of the proceedings, by any means, such as by mediation (articles 214C and 116A of GCCP in force as from 1.1.2016, as amended by Law 4640/2019; see question 8.1 below).

On substance, the out-of-court settlement is characterised as a typical civil contract where the parties need: a) to conform to *bonos mores* or public policy/order in general; b) to be capable of entering into contracts; and c) to be legitimately represented (in the case of companies, by their legal representatives; and in the case of minors, by their parents or the person who has the power to represent them). Special permission needs to be granted by the court in cases where a minor waives any claims by settling them (article 797 of GCCP and articles 1526 and 1624 of GCC).

6.7 Can Government authorities concerned with health and social security matters claim from any damages awarded or settlements paid to the claimant without admission of liability reimbursement of treatment costs, unemployment benefits or other costs paid by the authorities to the claimant in respect of the injury allegedly caused by the product? If so, who has responsibility for the repayment of such sums?

Yes, they can initiate proceedings against the claimant for recovery, but only in the case that the claimant received the amount of damages awarded or settlement paid by committing fraud against the state.

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 loser-pays rule applies. Court expenses are "only the court and out-of-court expenses that were necessary for the trial" and, in particular, include: a) stamp duties; b) judicial revenue stamp duty; c) counsels' minimum fees set by the Greek Lawyers' Code; d) witnesses' and experts' expenses; and e) the successful party's travelling expenses in order for him to attend the hearing. However, the expenses that the successful party recovers are, as per the general practice, substantially lower than his actual expenses, whereas the court very often sets off the expenses between the litigants on the basis of complex legal issues involved in the litigation (article 173 *ff.* of GCCP).

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

Yes. Law 3226/2004 on the provision of legal aid to low-income citizens (implementing Directive 2003/8/EC) sets the relevant requirements, together with articles 194–204 of GCCP.

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

As per Law 3226/2004, beneficiaries of legal aid are low-income citizens of the European Union, as well as of a third state, provided that they reside legally within the European Union. Low-income citizens are those with an annual familial income not exceeding two-thirds (⅔) of the minimum annual income provided by the National General Collective Labour Agreement. Furthermore, legal aid may be granted under the condition that the case, subject to the discretion of the court, is not characterised as apparently unjust.

Further and as per GCCP, legal aid in civil and commercial matters entails an exemption from the payment of part or all of the court's expenses, the submission of a relevant petition by the beneficiary and the nomination of a lawyer, notary and judicial bailiff, in order to represent him before the court. The exemption includes primarily stamp duty payment and judicial revenue stamp duty. Also, the beneficiary is exempt from paying the remuneration of witnesses and experts and the lawyer's, notary's and judicial bailiff's fees.

Lastly, by a recent amendment (Law 4689/2020), different prerequisites and proceedings for the legal aid benefit were introduced for criminal cases as opposed to civil and commercial ones.

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

Yes. Contingency fees and other conditional arrangements are allowed between clients and lawyers as per the Lawyers' Code under the following basic restrictions: they must be made in writing; and the maximum fee percentage agreed may not exceed 20% of the subject matter of the case at issue (or 30% if more than one lawyer is involved). Further detailed regulation is provided by the Lawyers' Code (article 60 of Law 4194/2013).

7.5 Is third party funding of claims permitted and, if so, on what basis may funding be provided?

Third-party funding of claims is not specifically regulated; thus, it is permitted. Some insurance companies offer funding of litigation expenses to the insured. However, it is neither common nor "culturally" accepted.

Also, the lack of a legal framework could raise issues of transparency. Exceptionally, the finding/income of consumer associations that may bring collective claims (see question 4.4 above) is regulated restrictively regarding the course and way thereof (article 10, paras 6–8 of the Consumers' Law).

7.6 In advance of the case proceeding to trial, does the court exercise any control over the costs to be incurred by the parties so that they are proportionate to the value of the claim?

No, it does not.

8 Updates

8.1 Please provide a summary of any new cases, trends and developments in product liability law in your jurisdiction, including how the courts are approaching any issues arising in relation to new technologies and artificial intelligence.

A. The Consumers' Law

The Consumers' Law has been amended several times. The first set of important changes introduced in 2007 on the product liability rules were: a) the expansion of the defectiveness concept to not only include the standard *safety* consideration, but to also take into account the product's "expected performance per its specifications"; b) the subjection of the moral harm and mental distress compensation to the ambit of the strict product liability rules (formerly covered under the general tort legislation); and c) new rules on collective actions to the extent they concern product liability infringements.

In 2012, the right to bring collective actions under the Consumers' Law was extended to other EU Member State entities authorised for this, as per the respective list provided for by Directive 2009/22/EC (article 10, para. 30 of the Consumers' Law).

In 2013 and 2015, changes were introduced to, among other aspects, the financing of consumers' organisations, the sanctions that may be imposed for non-compliance with its provisions, and the categorisation of complaints filed under it (articles 10, 13a and article 13b of the Consumers' Law).

Lastly, in 2018 the Consumers' Law was again extensively revised and also codified into a new text (in force as of

18.3.2018). Regarding product liability rules, a) material change was made to the definition of "consumer", which was narrowed; other basic changes regard b) the regulatory authorities and their enforcement duties, c) the funding of consumers' associations, and d) administrative proceedings and the sanctions imposed (articles 1a.1, 7, 10, 13a and 13b of the Consumers' Law).

Overall, there is a continuing trend towards increased consumers' rights and sanctions for relevant breaches.

B. Alternative Dispute Resolution

A trend towards ADR instead of litigation may be seen in various amendments to the Civil Procedural Rules of 2011–2015 (see question 6.6 above).

This trend is broader in Greek law (see question 4.12 above) and within the same scope one may also note i) Law 3898/2010 which implemented Directive 2008/52/EC "on certain aspects of mediation in civil and commercial matters", ii) Law 4512/2018 which introduced extensive provisions on mediation in civil and commercial matters, including mandatory mediation for certain disputes; however, the constitutionality of such mandatory mediation was questioned (Opinion 34/2018 of the Supreme Court's Administrative Plenary Session) and the relevant provisions have never come into force, and iii) Law 4640/2019 (amended by Laws 4647/2019 and 4690/2020) which came into force on 30.11.2019, abolished Law 4512/2018 and provided for a new set of mediation rules, including mandatory mediation for specified cases (effective from 30.11.2019, 15.1.2020 or 1.7.2020, depending on the case).

ADR has been generally limited in the past; however, the discussion that preceded the latest Mediation Law 4640/2019, and eventually its enactment, gave some momentum to mediation and to a general shift in culture towards this kind of ADR. So, mediation as ADR is now expressly provided in various laws for the settlement of disputes related to *sociétés anonymes* (article 3 of Law 4548/2018), corporate transformations (article 5 of Law 4601/2019), trademarks (article 31 of Law 4679/2020), and the extra-judicial settlement of debts between a debtor and his financial creditors in the context of pre-bankruptcy proceedings (articles 5–30, and especially article 15, of Law 4738/2020). Also, its use is especially provided for in a current bill on the extensive revision of the family law.

Mediation is also being especially promoted by the recent Regulation (EU) 2019/1150 regarding online intermediation services and online search engines, applicable from 12.7.2020 (see also question 4.4 above).

C. Technology

The way the Greek courts dealt with issues related to new technologies and artificial intelligence remained for a long time at a rather elementary level. However, in recent years, significant efforts have been made towards digitalisation and technological upgrades, including to the court system, through the introduction of actions effected electronically such as, among others: the filing and service of judicial documents; the filing of petitions and issuance of various certificates; the collection of court decisions which have been issued; electronic dockets; lawyers' digital signatures; digitalisation of the payment of state dues; and the development of supreme courts' case law databases. Law 4727/2020 on digital governance and electronic communications (implementing various EU directives) has been a significant step in this direction. These efforts cannot but continue, with specific legislative interventions being made on an *ad hoc* basis to cover particular needs.

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