

# Product Liability 2021

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# Product Liability

## 2021

**Contributing editors****Rod Freeman, William O'Connor and Matt Howsare**  
Cooley LLP

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Lexology Getting The Deal Through is delighted to publish the fourteenth edition of *Product Liability*, which is available in print and online at [www.lexology.com/gtdt](http://www.lexology.com/gtdt).

Lexology Getting The Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique Lexology Getting The Deal Through format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes a new chapter on Greece.

Lexology Getting The Deal Through titles are published annually in print. Please ensure you are referring to the latest edition or to the online version at [www.lexology.com/gtdt](http://www.lexology.com/gtdt).

Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Lexology Getting The Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editors, Rod Freeman, William O'Connor and Matt Howsare of Cooley LLP, for their continued assistance with this volume.



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# Greece

Nicholas Moussas and Konstantina Theodosaki\*

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## CIVIL LITIGATION SYSTEM

### The court system

1 | What is the structure of the civil court system?

Civil courts in Greece are divided into three instances. In the first instance, civil claims are tried by three types of district courts: small claims courts, single-member courts, and multi-member courts of first instance, depending on the value of the dispute. Small claims courts have jurisdiction over monetary disputes not exceeding the amount of €20,000, disputes arising out of lease agreements where the monthly rent does not exceed €600 and disputes between joined property owners up to €20,000. Single-member courts of first instance are competent for disputes ranging in value from €20,000 to €250,000 and (by exception) over certain disputes even exceeding the €250,000 threshold depending on their nature and subject matter (indicatively, labour and family law disputes). These courts also serve as appellate courts for judgments issued by small claims courts. Multi-member courts of first instance have jurisdiction over disputes for which the small claims courts or the single-member courts of first instance are not competent (ie, if the value of the dispute exceeds €250,000).

In the second instance, the single-member courts of appeal review decisions of the single-member courts of first instance. The three-member courts are competent for appeals against decisions of the multi-member courts of first instance.

The Supreme Court of the civil and criminal arm of the judiciary reviews appellate court decisions only on the basis of questions of law.

### Judges and juries

2 | What is the role of the judge in civil proceedings and what is the role of the jury?

All civil actions are heard before a judge without a jury. Civil courts operate under the adversarial model. The principle of free disposition embedded in the Greek Code of Civil Procedure (GCCP) and the principle of private autonomy prevailing in the Greek Civil Code (GCC) denote the dominant position of the parties in civil proceedings. The parties have the power to determine whether to commence a civil action or not; the subject matter; and the extent of the requested judicial protection. The parties' freedom is only limited by the rules of evidence and of procedure, including court rules about case-flow management. The judge has the authority to direct proceedings and examine witnesses and possibly the parties.

### Pleadings and timing

3 | What are the basic pleadings filed with the court to institute, prosecute and defend the product liability action and what is the sequence and timing for filing them?

The GCCP stipulates that civil proceedings under the ordinary procedure commence with the filing of an action with the competent court (either in person or electronically). A copy of the action must be served on the defendant at least 30 days or, if the defendant resides abroad or is of unknown address, 60 days prior to the first hearing of the case. Filing and service of the action bear both substantive and procedural consequences. Written pleadings, together with any supporting documentation, must be filed by the parties within 100 days of the filing of the claim or, if any of the defendants resides abroad, within 130 days of filing. Each party may file a rebuttal denying the allegations set forth in the opponent's pleadings 15 days after the filing of the pleadings, together with any supplementary documentation.

### Pre-filing requirements

4 | Are there any pre-filing requirements that must be satisfied before a formal lawsuit may be commenced by the product liability claimant?

Law No. 4640/2019, regulating mediation in national and cross-border civil and commercial disputes, introduces an obligation whereby, prior to the filing of any legal action, an attorney representing a claimant must inform its client on the possibility to resort to mediation for the resolution of the dispute. The acknowledgement of this notification must be signed by the client and the lawyer and then filed before the competent court together with the writ initiating proceedings (eg, the action) or the pleadings, at least until the hearing of the case, otherwise the action is declared inadmissible.

Furthermore, the same law provides for a mandatory preliminary mediation session for specific disputes, including consumer disputes, which are tried before the single-member court of first instance (provided that the value of the dispute exceeds the amount of €30) or before the multi-member court of first instance. In this initial mediation session, the mediator informs the parties of the dispute with respect to the mediation process. The initial mediation session suspends the statutory limitation (and relating deadlines) of the claim.

### Summary dispositions

5 | Are mechanisms available to the parties to seek resolution of a case before a full hearing on the merits?

Mechanisms such as a motion to dismiss or a motion for summary judgment are not provided under Greek law.

## Trials

### 6 | What is the basic trial structure?

The basic trial structure in civil proceedings is as follows:

- the action is filed with the competent court of first instance;
- the service of the action is effected by a court bailiff to the defendant upon the claimant's instruction 30 days before the trial or 60 days before if any of the defendants resides abroad or is of unknown domicile;
- pleadings and supporting evidence are submitted by the parties within 100 days of the action's filing date;
- counter-pleadings are submitted by the parties within 15 days of the filing of the pleadings;
- within another 15-day period the court's composition and the trial date are set;
- the hearing date is the actual date that the court seizes the case and the case is assigned to a particular judge;
- if pleadings are not submitted by the parties the trial is postponed and, within a period of 60 days of its postponement, the trial date may be set again and served to the parties (otherwise, the action is considered unfounded); and
- the court's ruling must be issued within eight months of the hearing (however, in practice, the judgment may take longer to be issued).

The role of the judge is to preside over the civil proceedings, decide on questions of law and of fact, and render a judgment based on claims and evidence presented by the parties.

The parties' advocates present their case in the form of written pleadings and counter-pleadings. The ordinary procedure does not call for a mandatory presence of the litigants and their attorneys at the hearing (as they are considered to stand properly by their written pleadings and power of attorney) and does not allow for witness examination; instead, written testimonies are provided prior to the hearing.

One trial session is usually provided for each case (ie, no periodic or consecutive sessions). However, if the judge, having read the file of the case, considers that examination of one witness from the side of each litigant is necessary, he or she may set a new additional hearing in this respect.

In special proceedings the procedure is much quicker and simpler as, besides the filing and servicing of the action, all procedural steps (including the submission of pleadings) take place on trial, while three working days later the parties submit their rebuttals. Witnesses and experts can still give oral evidence in disputes heard in the special proceedings (such as family and matrimonial disputes), the voluntary procedure or interim measures proceedings.

The publicity of judicial proceedings and of the pronouncement of the courts' judgments are explicitly guaranteed by the Greek Constitution. Only in exceptional cases is the publicity of the courts' sittings restricted, namely, if an open hearing might be contrary to good morals or public policy.

## Group actions

### 7 | Are there class, group or other collective action mechanisms available to product liability claimants? Can such actions be brought by representative bodies?

Collective claims and class actions are not generally provided in Greek law. An exceptional rule is introduced in article 10 of Law No. 2251/1994 on consumer protection, which provides that a consumer union of at least 500 members, which has been duly registered in the Registry of Consumer Unions for at least one year, may file an action of any kind for the protection of the general interests of consumers

(provided that the illegal behaviour in question infringes the rights of at least 30 consumers without distinguishing between members and non-members of such consumer unions).

Under the above-mentioned legal framework, there are four types of class actions that can be brought by the consumers' associations:

- action to prevent and stop any supplier from behaving unlawfully;
- action requesting reparation for moral damages – in such case, the court (to award indemnification) takes into consideration for each amount the extent to which public order is harmed due to the unlawful conduct, the size of the defendant supplier's business, the annual turnover and the needs for the general and specific prevention (of such behaviour);
- interim measures (injunctions) to secure consumers' interests until an enforceable decision has been granted; and
- action to recognise the right of restitution of the damages that the consumers had suffered as a result of the supplier's unlawful conduct.

## Timing

### 8 | How long does it typically take a product liability action to get to the trial stage and what is the duration of a trial?

Under the ordinary procedure, written pleadings, together with any supporting documentation, must be filed by the parties within 100 days of the filing of the claim or, if any of the defendants is domiciled in a foreign country, within 130 days. Additional pleadings and rebuttals can be filed 15 days after the filing of the pleadings together with any supplementary documentation. The judge (or the panel of judges) is appointed within 15 days of the closing of the case file. The trial is scheduled no later than 30 days after the end of the above deadline, unless the court's caseload prolongs the time frame. The judge renders a written judgment on average six to eight months after the hearing, provided that the initial hearing is not adjourned.

## EVIDENTIARY ISSUES AND DAMAGES

### Pretrial discovery and disclosure

#### 9 | What is the nature and extent of pretrial preservation and disclosure of documents and other evidence? Are there any avenues for pretrial discovery?

According to product liability regulation provisions, there are no ad hoc pretrial discovery mechanisms. Each party has to disclose all supporting documentation with its pleadings and may request the court to disclose the documentation in the possession of its opponent or a third party under specific requirements (articles 450 ff of the Greek Code of Civil Procedure (GCCP) and 901 to 903 of the Greek Civil Code (GCC)).

However, to preserve evidence from risk of loss or impairment, injunction proceedings are generally available. Therefore, a special procedure is provided in the GCCP (conservatory discovery) through which a party may request the court to order the examination and preservation of evidence prior to the main proceedings (article 348 of the GCC).

## Evidence

#### 10 | How is evidence presented in the courtroom and how is the evidence cross-examined by the opposing party?

Evidence may be presented both through live testimony and in written reports. Specifically, eight means of proof are exclusively stipulated in article 339 of the GCCP: documentary evidence, affidavits, expert

reports, autopsy, confession, examination of parties, testimony and presumptions.

In ordinary civil proceedings, in principle, the court does not perform oral examination of witnesses. Witnesses provide their written testimonies in the form of affidavits sworn before small claims courts, notaries or Greek consulates. In special proceedings, voluntary procedure or interim measures proceedings, witnesses are examined during the hearing.

All evidence (including testimonies) is submitted by the parties together with their pleadings and in support of their factual allegations. The presented evidence is then evaluated or rebutted by the parties through further counter-pleadings within 15 days of the submission of the pleadings.

### Expert evidence

#### 11 | May the court appoint experts? May the parties influence the appointment and may they present the evidence of experts they selected?

In questions that require special scientific or expert knowledge, the court may appoint experts. The court either examines the experts at the court hearing or adjourns the hearing for the experts to submit their reports on the issues to be proven (articles 368 to 392 of the GCCP). The court provides directions on the scope of the expert's report and indicates the time frame within which the report must be submitted.

Experts are appointed from an official list of experts, which is permanently with the court secretariat and is renewed or validated every one or two years through a court decision taking into account suggestions from the respective technical chamber.

The parties may object to the appointment of an expert by filing a written petition to the court stipulating the grounds on which a replacement is sought (eg, if the expert is a litigant or has a personal interest deriving from the outcome of the case or is otherwise related to or financially dependent upon the litigant or for any other reason raising suspicions regarding his or her impartiality).

Experts' reports can be based either on the information provided in the case file or on requested clarifications from the parties or third parties.

According to article 387 of the GCCP, repeating the general principle of the free evaluation of evidence (article 340 of the GCCP), the opinion of experts is freely weighed by the court, which, based on its own assessment of the case, may issue a deviating judgment.

In contrast to experts who are appointed by the court, the parties may retain their own technical advisers from a circle of persons qualified to be court-appointed experts (article 391 of the GCCP). Each party is allowed to appoint one technical adviser each, who reads the expert report, submits his or her opinion and raises relevant questions to the court expert.

The parties may adduce evidence from technical advisers they retain in the form of technical reports. In practice, the reports of party-appointed experts are of lesser evidentiary value than those of the court-appointed experts.

### Compensatory damages

#### 12 | What types of compensatory damages are available to product liability claimants and what limitations apply?

The types of damages that are recoverable relate to:

- damage caused by death or by personal injury to anyone; and
- 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 under conditions – in other words, that the damage exceeds €500 and that the product was

ordinarily intended for and actually used by the injured person for his or her own private use or consumption (Law No. 2251/1994 on consumer protection (the Consumers' Law), article 6, paragraphs 6 to 7).

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 the GCC).

Under contractual liability (sale of goods, articles 540 to 543 of the GCC), the buyer has the option to request:

- 1 repair or replacement of the defective product;
- 2 diminution of the price;
- 3 rescission of the contract; or
- 4 compensation for the damage incurred owing to non-performance of the contract.

Moreover, the buyer may claim damages to the extent not covered by the exercise of the rights listed in points 1 to 3 above.

No limitations on the amounts claimed as compensatory damages are prescribed under the Consumers' Law and the GCC.

### Non-compensatory damages

#### 13 | Are punitive, exemplary, moral or other non-compensatory damages available to product liability claimants?

The Greek system does not provide for punitive damages. However, in the way that collective claims are structured and the fact that the awarded amount for moral harm is invested for the purposes of serving consumers' education, briefing and protection bring it closer to a pecuniary sentence (a 'civil sanction' imposed on the producer).

Further, under the Consumers' Law and the GCC, in a claim in tort the aggrieved party may claim moral damages, and the claim is not subject to any limitation. The exact amount of compensation is determined by the court taking into consideration the circumstances of each case and the social and financial situation of the parties. Moral damages may be also awarded to the family of the deceased for their emotional suffering.

### Other forms of relief

#### 14 | May a court issue interim and permanent injunctions in product liability cases? What other forms of non-monetary relief are available?

Interim measures (article 682 ff of the GCCP) apply in case of imminent danger (urgency) and risk of irreparable damage. However, jurisprudence holds that such cases are usually resolved through ordinary proceedings.

## LITIGATION FUNDING, FEES AND COSTS

### Legal aid

#### 15 | Is public funding such as legal aid available? If so, may potential defendants make submissions or otherwise contest the grant of such aid?

Legal aid is available to low-income citizens under the provisions of Law No. 3226/2004 implementing Council Directive 2003/8/EC in conjunction with article 194 ff of the Greek Code of Civil Procedure (GCCP). Legal aid may be revoked or limited if the circumstances for its provision did not exist, have ceased to exist or have materially altered. Monetary sanctions may be imposed in cases where, owing to a false application, the party obtained the benefit of legal aid, although was not qualified for its provision.

### Third-party litigation funding

#### 16 | Is third-party litigation funding permissible?

The notion of third-party funding is not very popular and is not conceived of in any specific Greek legislation, though certain insurance companies offer legal expenses protection covering the costs of litigation. Owing to the lack of a legal framework regulating third-party litigation funding, there are no restrictions on funders. A litigation funding arrangement could take the form of a loan arrangement combined with assignment of future proceeds from litigation. A party is not required to notify its opponent of the funding arrangement per se, other than to perfect the assignment agreement to the funder vis-à-vis the opponent.

### Contingency fees

#### 17 | Are contingency or conditional fee arrangements permissible?

Contingency fees and other conditional arrangements are allowed between clients and lawyers (Law No. 4194/2013, article 60, also known as the Lawyers' Code) and the maximum fee percentage agreed may not exceed 20 per cent of the subject matter of the case (or 30 per cent if more than one lawyer is involved).

### 'Loser pays' rule

#### 18 | Can the successful party recover its legal fees and expenses from the unsuccessful party?

The unsuccessful party is required to pay both court and legal costs. Court expenses are 'only judicial and extrajudicial expenses that were necessary for the trial' and in particular are: stamp duties; judicial revenue stamp duty; attorneys' minimum fees set by the Lawyers' Code; witnesses' and experts' expenses; and the successful party's travelling expenses to attend the hearing. The expenses incurred as a result of the party's own fault or excessive prudence are not recoverable (article 189 of the GCCP).

It is at the court's discretion to award expenses in whole or in part and to order payment of the same by the unsuccessful party. Greek courts award costs that are usually substantially lower than those actually incurred. However, depending on the success or failure of the various claims raised by each of the parties, the court may allocate costs between the parties. If there are more defendants and they lose the case, the court may either order them to pay an equal share of the claimant's attorney and court fees or allocate them to the defendants proportionally, according to their liability. Furthermore, the court may offset the attorney and court expenses between the parties if the interpretation of the rules applied was deemed to be particularly difficult.

## SOURCES OF LAW

### Product liability statutes

#### 19 | Is there a statute that governs product liability litigation?

Product liability issues arising from the sale of products are regulated under the provisions of articles 534 to 558 of the Greek Civil Code (GCC). Further, Council Directive 85/374/EEC (the Product Liability Directive) (as amended by Directive 1999/34/EC) was transposed into Greek law through Law No. 2251/1994 on consumer protection (the Consumers' Law), further amended by Law No. 3587/2007 and Law No. 4512/2018, and sets the main product liability rules in Greece. Furthermore, Ministerial Decision Z3/2810 of 14 December 2004 implemented Directive 2001/95/EC on general product safety.

Article 6 of the Consumers' Law provides for the producer's strict liability for defective products if: a product placed on the market by the

producer is defective; the consumer incurs damage; or there is a causal link between the defect and the damage.

### Traditional theories of liability

#### 20 | What other theories of liability are available to product liability claimants?

Articles 513 to 573 (and especially 534 to 558) of the GCC on contracts of goods (contractual liability) require a direct contractual relationship between the parties where the buyer must not necessarily be a consumer. The seller is strictly 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 provisions in articles 914, 925 and 932 in conjunction with articles 281 and 288 of the GCC also apply. Although the claimant must establish the defendant's fault in tort claims, jurisprudence 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.

A defendant can be held criminally liable for defective products based on the Greek Criminal Code, Law No. 4177/2013 on Rules Regulating the Market of Products and the Provision of Services and other special legal provisions (Consumers' Law, article 13a, paragraph 2).

### Consumer legislation

#### 21 | Is there a consumer protection statute that provides remedies, imposes duties or otherwise affects product liability litigants?

The core legislation on product safety comprises Ministerial Decision Z3/2810 of 14 December 2004 and the Consumers' Law and is further supplemented by Regulation (EC) No. 765/2008 setting out the requirements for accreditation and market surveillance relating to the marketing of products. The General Secretariat of Trade and Consumer Protection of the Ministry of Economy and Development and Investments monitors producers' compliance with product safety rules. Producers' duties derive from the organisation of the production procedure from the supply and import of the raw material until the final stage and circulation to the market. Producers are required to take appropriate safeguarding measures, including implementation of monitoring processes; personnel training; issuance of guidelines for the use of the product and information notices on relevant risks to consumers and to the General Secretariat (and any other apposite authority depending on the type of the specific product); and supervision and revocation of the defective product in case of serious risk to repair or replace it.

The RAPEX procedure for the rapid exchange of information between EU member states and the European Commission on measures and action to be taken in relation to products posing a serious risk to the health and safety of consumers is also followed if a product is marketed outside Greece.

### Criminal law

#### 22 | Can criminal sanctions be imposed for the sale or distribution of defective products?

In addition to civil and administrative sanctions imposed by a decision of the competent minister, acting either ex officio or after a complaint filed under article 13a of the Consumers' Law, criminal sanctions may also be imposed in accordance with the Greek Criminal Code and Law No. 4177/2013 on Rules Regulating the Market of Products and the Provision of Services ranging from monetary penalties to imprisonment depending on the type and gravity of the committed crime.

### Novel theories

23 | Are any novel theories available or emerging for product liability claimants?

Novel theories such as medical monitoring have not been developed in Greece nor are they emerging.

### Product defect

24 | What breaches of duties or other theories can be used to establish product defect?

A product can be defined as defective when it does not perform as expected based on its specifications or is not as safe as reasonably expected given certain conditions (particularly its appearance), its expected use and the time at which it is released. A product is not characterised as defective only because another more advanced product is later released in the market (Consumers' Law, article 8, paragraph 5).

Pursuant to article 7 of the Consumers' Law and Ministerial Decision Z3/2810 of 14 December 2004 (MD Z3/2810), suppliers are required to distribute products in compliance with EU and national law, health and hygiene standards, EU recommendations on product safety assessment, codes of good practice in force in the sector concerned, and the state of the art and technology. To comply with their duty to circulate safe products, producers are required to provide consumers with relevant information to assess and to take precautions against risks inherent in a product throughout the normal or foreseeable period of its use where the risks are not immediately evident without appropriate warning. A failure to warn consumers may give rise to liability under MD Z3/2810, which prescribes administrative sanctions and stipulates that further criminal sanctions may be imposed by market surveillance or other supervisory authorities.

Further, in accordance with the provisions of the GCC on sale contracts, the seller is strictly liable for any defect or non-conformity with agreed qualities at the time of the passing of risk to the buyer. In this case, the purchaser is entitled to request the following:

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

The seller must proceed with repair or replacement of the defective product within a reasonable time frame and without causing significant inconvenience to the buyer.

### Defect standard and burden of proof

25 | By what standards may a product be deemed defective and who bears the burden of proof? May that burden be shifted to the opposing party? What is the standard of proof?

The consumer has the burden to prove the defectiveness of the product, the damage sustained and the causal relation between the damage and the defective product. Proof of fault is not required.

Jurisprudence and legal theory suggest 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 to meet his or her burden of proof obligations. Consumers do not have access to information falling exclusively within the manufacturer's sphere of influence (eg, the production method) and thus have an inherent difficulty in proving the cause of the defect during the production stage or at the time of circulation on the market. Hence, the defendant, to be released from liability, is obliged to prove absence of fault.

### Possible respondents

26 | Who may be found liable for injuries and damages caused by defective products? Is it possible for respondents to limit or exclude their liability?

Any person involved in the chain of supply of a defective product is potentially liable. The producer (ie, the manufacturer of a finished product, any raw material or any component, and any other person who presents themselves as a producer by putting his or her name, trademark or other distinguishing feature on the product) bears responsibility for the defect. Further, any person who imports (within the EU) a product for sale, leasing or hire, or any form of distribution shall be held 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 or she provides the injured person with information on the identity of the producer or of the person who supplied him or her 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 (Consumers' Law, article 6, paragraphs 2 to 4).

Any agreement restricting or exempting the producer from his or her liability is void (Consumers' Law, article 6, paragraph 12).

### Causation

27 | What is the standard by which causation between defect and injury or damages must be established? Who bears the burden and may it be shifted to the opposing party?

A general allegation that the defendant wrongly exposed the claimant to an increased risk of injury because of a defective product does not suffice. The claimant has the onus to prove that the damage incurred was a direct consequence of the product's defect (ie, that he or she would not have suffered an injury had the product not been defective).

### Post-sale duties

28 | What post-sale duties may be imposed on potentially responsible parties and how might liability be imposed upon their breach?

Producers and distributors are obliged to only place safe products on the market. This duty of care extends to all appropriate measures, including any preventive and corrective action such as product recall to avoid any risk of harm to consumers. The recall may be initiated by the producer or distributor of the product, or by the competent authority. The authorities also retain their power to publish warnings in the case that a producer or other liable party is in violation of the consumers' trust.

## LIMITATIONS AND DEFENCES

### Limitation periods

29 | What are the applicable limitation periods?

Claims against the manufacturer, where a product has a defect, are time-barred within three years of the claimant becoming aware of the damage incurred, the defect and the identity of the manufacturer (Law No. 2251/1994 on consumer protection (the Consumers' Law), article 6, paragraph 13). Ten years after the release of the specific product the rights of the party incurring the loss against the producer are written off. However, where other statutes grant the consumer a more favourable statute of limitations, the latter shall prevail. In this respect, pursuant to the Greek Civil Code (GCC) tort provisions, a claim arising from an unlawful act (tort) shall be prescribed at the lapse of five years from the time the injured party had knowledge of the prejudice and of the person liable for compensation. The provisions for the sale of goods



stipulate that the general limitation period within which a buyer, being a consumer or not, must exercise his or her rights from a contract for the sale of goods is two years. Service of a lawsuit interrupts the limitation period.

### State-of-the-art and development risk defence

**30** | Is it a defence to a product liability action that the product defect was not discoverable within the limitations of science and technology at the time of distribution? If so, who bears the burden and what is the standard of proof?

Producers can be relieved from liability if they prove any of the defences stipulated in Directive 85/374/EEC (the Product Liability Directive), among which is the state-of-the-art defence, which provides that at the time the product was placed on the market, the applicable scientific and technical knowledge could not identify the existence of the defect (Consumers' Law, article 6).

### Compliance with standards or requirements

**31** | Is it a defence that the product complied with mandatory (or voluntary) standards or requirements with respect to the alleged defect?

The Consumers' Law provides that the producer may be relieved from liability if he or she proves that the defect was the result of compliance with applicable mandatory regulations that dictated the production process, resulting in the defective product.

### Other defences

**32** | What other defences may be available to a product liability defendant?

Under the Consumers' Law, the producer is not liable if he or she proves one of the following:

- that he or she did not put the product into circulation;
- that the defect did not exist at the time of product's circulation;
- that he or she did not manufacture the product to distribute it and that he or she did not distribute it in the course of his or her business activity; or
- that, in the case of a producer of a component, the defect was caused by the final planning of the product or by the instructions given by the manufacturer of the final product.

The producer's liability can be limited or even abolished owing to contributory negligence of the person that suffered the damage. Limitation under Directive 1999/34/EEC and the Consumers' Law is restricted in relation to the general limitation provision (five to 20 years) since it is set to three years with a 10-year prescription period.

### Appeals

**33** | What appeals are available to the unsuccessful party in the trial court?

Definite judgments 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 claims were partially accepted by the court. Further, a cassation may be filed against appellate court decisions before the Supreme Court.

## SETTLEMENT AND ALTERNATIVE DISPUTE RESOLUTION

### Settlement

**34** | What rules and procedures govern the settlement of product liability cases?

Prior to filing a lawsuit, a party may refer to a Justice of the Peace for the latter to intervene for settlement of the dispute (article 209 ff of the Greek Code of Civil Procedure (GCCP)). Alternatively, the litigants might reach a settlement (either certified by the court or not as per the litigants' choice – article 214a of the GCCP) until the issuance of a final decision and provided that the substantive law requirements are met (ie, conformity to good morals or public policy, capability of entering into contracts, legal representation). Further judicial intervention is another choice that provides for a permanent mechanism set up in each court of first instance where nominated judges assist the litigants to reach a settlement (article 214B of the GCCP). Also, the court may propose that the litigants recourse to judicial intervention, and upon acceptance of the proposal, the case hearing is adjourned for three months (article 214C of the GCCP).

### Alternative dispute resolution

**35** | Is alternative dispute resolution required or advisable before or instead of proceeding with litigation? How commonly is ADR and arbitration used to resolve claims?

In principle, it is at the parties' discretion to resort to mediation or arbitration for the resolution of their dispute, even for pending actions. The parties may also address the competent district court to intervene for the settlement of the dispute at an early stage or recourse to judicial intervention.

Further, Law No. 4640/2019 provided for mandatory mediation of certain disputes, although this does not include product liability claims. However, the provisions of the aforementioned law stipulate a mandatory preliminary mediation session for disputes that are tried before the single-member court of first instance, provided that the value of the dispute exceeds €30, or before the multi-member court of first instance (thus encompassing consumer disputes fulfilling these prerequisites).

Moreover, Ministerial Decision No. 70330 of 30 June 2015 implements Directive 2013/11/EU (the Directive on consumer ADR) and sets supplementary rules for the application of Regulation (EU) No. 524/2014. Registered ADR entities as per Ministerial Decision No. 70330 are: the Consumer Ombudsman, which is the main ADR authority for consumers; the (sectoral) Ombudsman for Banking and Investment Services (part of the FIN-NET for credit and financial transboundary disputes); ADR Point, a private organisation; the European Institute for Conflict Resolution; and startADR, also a private organisation. The following bodies also exist for ADR: the Committee of Ministers that supervises friendly settlements; the Hellenic European Consumer Centre; the SOLVIT network; and the Citizen Ombudsman.

## JURISDICTION ANALYSIS

### Status of product liability law and development

**36** | Can you characterise the maturity of product liability law in terms of its legal development and utilisation to redress perceived wrongs?

Law No. 2251/1994 on consumer protection (the Consumers' Law) was gradually updated through the incorporation of the Council Directive 93/13/EEC and Directives 2005/29/EC, 1999/44/EC and 2011/83/EU by means of fragmentary amendments. This had, as a consequence,

overlapping provisions and conflicting definitions weakening the purpose of the provisions (ie, consumer protection) leading to legal uncertainty.

A recent legislative initiative, the implementation of Law No. 4512/2018 amending the Consumers' Law, aimed at unifying existing legislation to ensure equal competition levels between domestic and foreign providers and to strengthen consumer confidence in online markets. Among the core changes introduced were:

- uniform definitions of the terms 'consumer', 'supplier', 'seller' and 'producer';
- a clear definition of the general principles of the CE marking;
- unification of the legal provisions regarding advertisement and unfair commercial practices;
- an update of e-commerce regulation with a focus on distance contracts;
- reiteration of the free two-year legal guarantee for all goods (however, the sellers are no longer obliged to offer an additional commercial guarantee – the latter may be provided with an additional fee or in the form of an extension of the existing guarantee, subject to express agreement between the parties);
- revision of the notification procedure and the process of submission of complaints to the competent authorities;
- re-determination of the penalties imposed for non-compliance; and
- an update of the provisions with respect to subsidising consumer associations.

### Product liability litigation milestones and trends

**37** Have there been any recent noteworthy events or cases that have particularly shaped product liability law? Has there been any change in the frequency or nature of product liability cases launched in the past 12 months?

The diesel emissions scandal and its aftermath have instigated a new wave of product liability cases brought by vehicle owners against a leading European automobile manufacturer before Greek courts. The vehicle owners claim damages on the basis of violation of consumer protection legislation, European regulations and standards.

Our firm, being at the forefront of a novel matter with worldwide repercussions as the local member of a legal team representing and advising the manufacturer and its brands on the civil, regulatory and criminal aspects of the matter, had the unique opportunity to coordinate the defences in complex parallel proceedings constituting some of the most challenging product liability cases in the past four years.

### Climate for litigation

**38** Describe the level of 'consumerism' in your country and consumers' knowledge of, and propensity to use, product liability litigation to redress perceived wrongs.

The trend in many countries has been to increase consumers' level of awareness and protection. The Greek legislature has aligned the regulatory framework with European law for the Consumers' Law provisions to afford greater and more comprehensive protection to consumers.

Consumers are increasingly becoming less hesitant to exercise their rights in the form of multi-plaintiff actions. The existence of consumer policy institutions and consumer associations, and the relevant low litigation costs, have led to a rise in consumers' claims. However, the office of the Consumer Ombudsman, to which an increasing number of complaints are referred, and the easy access to ADR mechanisms often constitute a preferred alternative in resolving consumer disputes out of court.



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### Efforts to expand product liability or ease claimants' burdens

**39** Describe any developments regarding 'access to justice' that would make product liability more claimant-friendly.

Greece's legislative commission of the Ministry of Development and Investments is being convened to legislate amendments to the Consumers' Law by virtue of the impending (until 28 November 2021) transposition into national law of Directive (EU) 2019/2161. This Directive, known as the Omnibus Directive or the New Deal for Consumers, introduces amendments to Council Directive 1993/13/EC on unfair terms in consumer contracts, Directive 98/6/EC on consumer protection in the indication of the prices of products offered to consumers, Directive 2005/29/EC on unfair business-to-consumer commercial practices and Directive 2011/83/EU on consumer rights. Its aim is to update and reinforce the existing legal framework on consumer rights and to improve enforcement. Under Directive (EU) 2019/2161 it will be possible for a qualified entity, such as a consumer organisation, to bring group actions and to seek redress, such as compensation, replacement or repair, on behalf of a group of consumers harmed by an illegal commercial practice.

### UPDATE AND TRENDS

#### Emerging trends

**40** Are there any emerging trends or hot topics in product liability litigation in your jurisdiction?

Council Directive 85/374/EEC (the Product Liability Directive), already adopted by several EU member states (including Greece) to harmonise strict liability rules and level the playing field for producers supplying their products to different countries, is being put to the test with respect to the notions of product, defect and producer. The complex challenges arising from the interconnectedness of emerging digital technologies are gradually affecting the product liability litigation landscape.

Indeed, the prevailing role of artificial intelligence (AI) systems in current market conditions has obscured the distinction between product and service, and has posed challenges to the previously clear definitions of 'product' (eg, software that may legally be conceived as either a product or a product component) and 'defect' (in cases of derogations in the activity performed by a sophisticated AI autonomous system where the state-of-the-art defence may apply, thus releasing

the producer from liability). Further, when it comes to the stages of the production line of an AI system, it is harder to identify, on the one hand, whether the AI system constitutes a finished product or not, as it may be subject to consecutive upgrades and updates (a critical assessment taking into consideration that the key turning point for the producer's liability is when the product enters circulation), and on the other hand, which exact factors may have led to a malfunction that consequently caused damage.

\* *The information in this chapter was verified between August and September 2020.*

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