

# The International Comparative Legal Guide to: Product Liability 2005

A practical insight to cross-border Product Liability work



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# Bulgaria

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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?

In the last 20 years the legal doctrine and practice in Bulgaria, in terms of product liability, developed greatly due to the serious economic transformations leading to establishment and development of the free-market economy. In 1999 Bulgaria adopted the first **Consumer Protection and Rules of Trade Act** (the “CPA”) in line with the EU Directives. However the adoption of a new Consumer Protection Act by the Bulgarian Parliament is imminent. The new act is aimed to further and more accurately implement Directive 85/374/EEC, as well as a number of other EU directives.

In general, Bulgarian law recognises three legal grounds for product liability in the sphere of civil law and one in criminal law - general tort liability (*delict*), strict product liability, contractual liability and criminal liability.

**Strict product liability**, defined in Art. 14 of the CPA, is a specific liability which compared to tort liability is non-fault and is based on objective reasons. In order to successfully engage the strict liability under the CPA, consumers have to prove three main interrelated facts in *corpus delicti*: a defect, existing at the time of putting the product on the market, material damage and causal link between the defective product and the relevant damages. Unlike general tort liability this specific liability, being purely objective does not provide the liable person with opportunity to exculpate on subjective grounds by proving he was not acting intentionally or he was not negligent. Another characteristic feature is that the compensation may cover only material damages.

Strict liability as of the date hereof does not explicitly provide for liability in relation to defective services but only for liability related to *defective products*. As the rules of the CPA, related to the product liability, are considered *lex specialis* in relation to the general tort liability they could not be subject to interpretation thus extending the strict liability over cases that are not specifically provided for in the CPA. Thus, under the present regime in case liability arises from rendering of *defective services* by the manufacturer, importer or retailer the consumer may seek protection of his rights

under tort law.

**General tort**, defined by Art. 45 and following of the Obligations and Contracts Act (the “OCA”), is applicable, *inter alia*, to matters regarding product liability. Tort under OCA is fault based either on intent or negligence on the side of the wrongdoer who in cases of product liability could potentially be manufacturer, importer or retailer. Fault under OCA, i.e. negligence, in the form of non-compliance with the objective test of *due care*, is presumed, thus shifting the burden of proof for a *corpus delicti* fact from the injured party to the wrongdoer and resulting in the procedural burden for the wrongdoer to prove that he indeed applied the due care when his behaviour was in objective breach of law. The consumer would have to prove that the wrongdoer acted or omitted to act; the act or omission to act caused, as a result, a breach of law; and there was damage and a direct causal link between unlawful result and the damage. In addition Art. 14 of CPA explicitly limits strict product liability of the manufacturer, importer or the retailer only to obligation for compensation for material damages. Therefore, should a party injured by a defective product seek indemnification of non-material damages, the only existing legal solution would be to follow the general procedure by seeking damages in tort as set forth in Art. 52 and 45 of OCA, according to which the court based on equity resolves on the non-material damages resulting from tortious behaviour.

**Contractual ground** is another legal option for seeking relief for damages suffered from a defective product. Unlike the strict and tort liabilities, contractual liability may include obligation for compensation for damages arising only from the defective product itself and not from the death, personal injury or damage to other property of the consumer, caused by the defective product. Contractual liability is limited in respect of the persons it could be brought against. Under OCA any claims arising from a contract may be directed only towards a party thereto. Therefore in cases of product liability, based on contractual non-conformity (shortages, defects, incompliance with sizing etc.), besides claiming damages, the consumer may also claim:

- reimbursement of the money paid;
- replacement of the defective product with another (in case of generic goods);
- price discount; and
- free repair of the defective product.

The aforementioned legal grounds work on a concurrent basis i.e. the different forms of liability (strict, tort and

contractual) do not exclude but supplement each other as to provide the consumer with sufficient and efficient integral indemnification.

The Bulgarian Penal Code sanctions some acts or omissions to act which are of a nature to adversely and substantially affect the interests of the consumers and the society.

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

No such schemes exist in Bulgaria.

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

Under the strict liability regime the liability for the defect, respectively for the damages incurred, is born by the **manufacturer**. 'Manufacturer', according to the CPA, is any person who manufactures or renovates products or parts thereof or offers services, extracts or processes raw materials or represents himself as a manufacturer by using his trade name or distinctive sign.

In case the product is imported in Bulgaria than the **importer** may be hold liable under the strict regime of the CPA. An importer under the CPA is "*any person who first acquires the ownership over imported products on the customs territory of Bulgaria or mediates such acquisition*".

If neither the manufacturer or the importer can be identified then the **retailer** should be hold liable. According to the CPA, 'retailer' is "*any person that sells or offers for sale goods or provides services, as well as manufacturer or importer, which sells or offers for sale goods directly to the consumer*".

Provided that several persons qualify as liable manufacturer, importer or retailer they bear joint liability and may eventually seek within their internal relations distribution of the liability engaged.

In case of tort only the person in fault (manufacturer, importer or retailer) could be held liable. If an injury was caused by the act / omission to act of several wrongdoers they would bear joint liability. In cases of contractual breach joint liability exists only if explicitly stipulated in the contract, otherwise defaulting contractors may bear only several liability.

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

In order for a product to be recalled under the CPA first of all it has to fail an abstract safety test - a product is considered safe if under normal circumstances of use it does not generate any risk or generates minimal risk, deemed acceptable in terms of protection, and safety of the consumer. Whoever of the manufacturer, the importer or the retailer finds out that a product is unsafe he is under a duty to recall the products representing a threat to the life, health or property of the consumers. The responsible person should inform immediately in a suitable way the consumers and the controlling authority (The Trade and Consumer Protection Commission) for all risks, related to the exploitation of the products.

If the person under the duty to recall a product fails to do it then any consumer, group of consumers, consumer association or the Trade and Consumer Protection Commission would have legal interest and legitimacy to a claim under Art. 52 and 53 of the CPA establishment and suspension of the breach including obliging the liable person to recall the product in due time. Further to this judicial procedure the Trade and Consumer Protection Commission or the municipality administration could establish that the manufacturer, importer or retailer are not performing their duty to recall unsafe products and following the issue of a statement of findings either the Trade and Consumer Protection Commission or the mayor of the municipality could issue administrative act in the form of order for mandatory recall and destruction of all dangerous products of a certain type.

## 2 Causation

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

In general, according to Art. 127, par. 1 of the Civil Procedure Code, each party is to establish the facts which serve as grounds for its claim or objection. The above provision sets the general rule for the main burden of proof in the Bulgarian legal system (with the party making allegations based on existence of positive facts).

Particularly in case of strict product liability the burden of proof lies with the consumer. He has to prove the defect, the damage and the causal link between them. As stated below the allegedly liable person could not exculpate but could exonerate himself on exhaustively listed grounds for objection in Art. 16 and Art. 18, par. 2 of the CPA (see question 3.1 below).

In case of tort the law lays down a refutable presumption that the existence of fault (negligence) is assumed provided the other, objective components of the tort are present. In this hypothesis the burden of proof lays with the manufacturer / importer who may seek means of proving that he was not negligent and has applied the necessary professional effort thus satisfying the requirement of the abstract, objective and relative *professional due care*.

In relation to potential contractual liability - the party claiming damages as a result of non-performance has to prove the non-conformity of the product with the specifications as set out in the consumer agreement.

### 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?

Causation could be investigated in two directions:

The first relates to the relationship between the behaviour defined as an act or omission to act of the allegedly liable person (cause) and the unlawful result of this behaviour expressed in the breach of consumer law or contract (effect). This particular causal link is very often considered second important to the other causal relationship - between the



unlawful result of one's behaviour and the relevant damages, caused by the same result, which may be compensated. Nevertheless it undoubtedly plays an important role in the construction of the civil liability as it is proving the existence of tort or contractual default and its author (**ground for liability**).

The second causal link is between the unlawful result of one's behaviour (cause) and the damages incurred under the contract (effect). This second causal relationship relates to the recoverable damages sought by the victim, thus establishing the **scope of the liability**. In view particularly of the strict liability under the CPA, only the second causal link (between the unlawful result and the relevant damages) is to be investigated. The main argument for this conclusion is based on the fact that the product liability under the CPA excludes the behaviour of the liable person (disregarding whether lawful or unlawful) leading to the production, import or sale of the defective product as a *legally relevant fact* when engaging the strict product liability.

In order to identify the relevant damages two tests are usually applied, corresponding to two different causation theories. The first test is related to the *condition sine qua non* theory of causation, proving that there is factual causation between the defect, existing at the time of the passing of risk to the consumer, and the damages suffered. The defect is viewed as one of several preconditions which lead to the damage of the consumer. Would the damage still occur, if the defect of the product is imaginarily taken out? A negative answer leads to establishing a *factual* causal relationship. However, it has to be pointed out that not all factual damages are recoverable under the Bulgarian law. The *legally relevant, direct* damages are the limit of the civil liability. That is why in order to identify the direct damages we put the factual damages to a second test using the *adequate causation* theory. This test would isolate only damages which are: a typical, normally occurring and necessary result; a consequence from contractor's default; or unlawful behaviour, which are characteristic and repeat under the same related conditions".

In view of the aforesaid it is not sufficient to prove exposure to increased risk that *might have led to or is usually associated* with the damages of the bodily constitution or property of the injured person provided that the consumer cannot prove that the specific injury would not have arisen without such particular exposure.

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

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If several manufacturers have taken part in the manufacturing of the defective product and it cannot be established which of them exactly manufactured the defective part of the product than they would bear joint liability. For details, please, see question 1.3.

There is no market-share liability system in Bulgaria.

### 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?

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The CPA explicitly grants to the consumer the right of information before acquiring a product, as the obligation for providing certain information lies with the retailer. The information would have to cover a minimal scope of characteristics of the product - contents, packaging, directions for use, price and quantity, impact on other goods, the risks associated to the use or maintenance, terms and conditions of the warranty and expiry date. The information needs to not only satisfy the requirements of a minimal scope, covering particular issues, but it has to be true, complete, accurate and clear. It has to also be in the Bulgarian language, as the measures should comply with the International System of Units (SI). At the request of the consumer and if the type of product allows the retailer should demonstrate the use of the product. The CPA specifically provides that the retailer could not exonerate his failure to perform the above obligations, arguing that he was not provided with the necessary information by the manufacturer or the importer. Moreover, the consumer is also entitled to obtain advance information if the offered goods are used or expired, have deviations from preliminary declared characteristics or are subject to clearance sale while the trader is obliged to designate special places in its commercial outlet for the sale of aforementioned goods, separately from the other goods.

Should the retailer fail to duly perform any or all of the above obligations any consumer, group of consumers, consumer associations, as well as the Trade and Consumer Protection Commission, could lodge a claim for establishment of breach of the CPA, for termination of and desisting from the established breach and/or for damages caused (Art. 51-54 of CPA).

Only the information provided directly to the injured party is taken into account.

Notwithstanding his professional qualifications, under Bulgarian law, the retailer being a contractual party should assess the suitability of a product to its intended use as stipulated in the contract between the retailer and the consumer. Otherwise if the product does not qualify for the intended contractual or normal use, thus rendering it defective in accordance with §1, p.9 of the CPA, this might consequentially provide grounds for product and contractual liability under the CPA.

In conclusion, the Bulgarian law does not apply the principle of "the learned intermediary" as it places the main burden for providing information to the consumer with the direct

retailer rather than the manufacturer or importer. In contrast, the obligations of the manufacturer or importer, which do not qualify as retailers, arise from their duty to abstain from marketing unsafe products, being therefore with a narrower scope compared to the obligation of the retailer. Hence, manufacturers or importers, excluding retailers, are under an obligation to provide information to the consumer allowing them to assess only the health- and life-threatening risks, related to the normal or foreseeable circumstances of use. That is why despite the fact that the manufacturer or importer might have provided some information to the retailer as an intermediary in the chain of supply to the consumer, the direct retailer is still under obligation to provide the consumer with particular information regarding the safety of the product.

### 3 Defences and Estoppel

#### 3.1 What defences, if any, are available?

In case of the strict product liability there are 6 grounds under Art. 16 of the CPA for exclusion of the manufacturer's liability:

- did not put the product on the market;
- the defect which caused the damage did not exist at the moment of the putting the product on the market;
- he did not produce or distribute the product with the objective/aim to put it on the market;
- the defect is due to compliance of the product with the mandatory requirements issued by the state authorities;
- the state of scientific and technical knowledge at the moment of the putting of the product on the market did not allow the detection of the defect; or
- he produced only a component part of the product and the defect is due either (i) to the design or the assembling of the product by another manufacturer; or (ii) to the compliance with the instructions of the other manufacturer for the transportation, storage or exploitation.

However, manufacturer's liability may not be waived in a contract. The law stipulates that such contractual clause is deemed null and void *ex lege*.

In case of contract there are 4 grounds for exclusion of manufacturer's liability - (a) there is no breach of contractual obligation; (b) that the breach of contract or non-conformity is not attributable to the manufacturer, i.e. it is due to *force majeure* or other circumstances beyond the control of the manufacturer which made the performance of his obligations objectively impossible; (c) there is no causal link between the particular damage and the breach of contract; or (d) the defect / damage is not covered by the terms and/or conditions of the applicable contractual warranty (e.g. it is time-barred).

In case of tort - it has to be proved that there is no fault (negligence) on the part of the manufacturer / importer, i.e. the burden of proof rests on the manufacturer to demonstrate that he did not breach his general *duty of care / not to cause damages to third parties*.

In all hypotheses the liability of the manufacturer may be fully excluded or reduced proportionally where the

consumer has solely caused or has contributed by his own act or omission to act for the occurrence of the damages.

#### 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?

The state of the art/development risk defence is given in Art. 16, item 5 of the CPA as "*state of scientific and technical knowledge*". The manufacturer / importer has to prove that the defect was not discoverable at the time of the release of the product in question in circulation on the market, which is an objective test.

#### 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?

Under Art. 16, item 4 of the CPA the manufacturer must prove that "*the defect is due to compliance of the product with compulsory requirements issued by state authorities*". A stricter interpretation of this rule may lead to the conclusion that the defect should have been caused solely due to the compliance with the mandatory requirements (which were valid and in the form specified in the applicable normative act) issued by the competent state authority. However, the observance of the applicable minimum statutory standards and/or quality and safety requirements will not be sufficient per se to exclude the liability of the manufacturer unless he can prove that compulsory instructions of a state authority had been issued and complied with.

#### 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?

After judgements enter into force they have the effect of *res judicata* between the parties to the solved court case. As an exception the same parties can "re-litigate" on the same matter only if (i) the legal ground for the claim is different (tort instead of contract liability); or (ii) the facts justifying the claim occurred after the date of the last hearing of the case.

In addition an interested party may request the revocation of a judgement after its entry into force in certain hypotheses including *inter alia* new facts or new documentary evidence of significant importance for the case are found or it is established that witness statements or expert opinions on which the court had based its judgement were false.

If the Supreme Court of Cassation, being competent to review the request, finds that the request is justified it may revoke entirely or partially the contested judgement, reopen the case and return it to the issuing court for a new review. Clearly, in such case, the court to which the case has been returned can, taking into account the specific revocation

grounds, reconsider the issues of fault, defect or capability of a product to cause a certain type of damage.

A different claimant (who is a third party to a solved court case) can lodge identical claim against the same manufacturer, and thus, “re-litigate” issues of fault, defect or causation already adjudicated on the solved case.

## 4 Procedure

### 4.1 Is the trial by a judge or a jury?

A jury system does not exist in Bulgaria. Regional Courts are the first instance courts with general jurisdiction to adjudicate on civil, including product liability, cases. District Courts have special jurisdiction to hear as first instance court product liability cases where the value of the claim exceeds BGN 10,000 (approximately €5,100). All first instance courts comprise of a single professional judge.

Alternative dispute resolution methods are also available but have not yet become common in product liability cases. The CPA provides for conciliation commissions assisting in the resolution of disputes related to warranty liability, right of claims for goods and services and unfair contractual terms.

Pursuant to the Mediation Act, effective as of December 21, 2004, product liability disputes may be referred to mediation by the parties. In such case the dispute may be settled amicably with the help of mediators, by entry into a binding settlement agreement. Monetary claims regarding product liability disputes may also be referred to arbitration if the parties agree so.

### 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)?

Law stipulates that experts are to be appointed by the court if the judge possesses no specific scientific or technical knowledge. In cases involving product liability, experts are appointed either *ex officio* or upon request of a party whenever the case contains issues of a technical or medicinal nature which require special knowledge and experience. Such experts, however, do not sit with the court and do not take part in the decision-making process. Experts are required by the law to be non-biased and their opinions are true and impartial (otherwise they can be subjected to criminal liability). A party may request dismissal of an expert appointed by the court in case of a reasonable doubt as to his impartiality. Generally, the scope of the expert opinion is determined by the parties by the tasks and questions specified by the latter and recorded in the court ruling for appointment. Expert opinions must be filed in writing with the court at least 5 days prior to the court hearing, and presented again verbally at an open hearing where the parties and the court may interrogate the expert and request extension of the scope of the opinion or a more in-depth opinion or appointment of new expert/s. Expert opinions are *non-binding* upon the court. The court has the sole discretion whether to rely on the findings of the expert, assessing the opinion in the light of all other relevant evidence on the case.

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

There are no group or class actions under the Bulgarian legal system.

In certain circumstances (in case of strict product liability and tort) several claimants can file a common claim based on the same legal grounds and set of circumstances (damage, defect, causal link) against one manufacturer / importer provided that the same court has jurisdiction to adjudicate on all those cases. Alternatively, in case of a number of claims filed with the same court the latter can *ex officio* decide to consolidate all claims into one single case if the above conditions are satisfied. However, in both situations the consolidated cases will be resolved by the court by means of separate decisions (which may be incorporated by the court in a single judgement) reflecting the different circumstances in each case which shall be binding exclusively *ex parte*. It is generally accepted that in the above hypothesis the court decisions have to be absolutely identical with respect to the so-called “common facts”, i.e. the facts which have the same legal or evidential importance for all claimants in the consolidated case.

In general, the court has the sole discretion to decide whether to consolidate the claims which have sufficient connection with each other into one case.

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

CPA provides for certain claims for “*collective defence of the consumers*” which, however, cannot be used in the context of the liability of the manufacturer for damages suffered by an individual consumer, even in case of multiple claims of individual consumers resulting from the same type of defect and damage, from the same product and directed against the same manufacturer. Pursuant to the law every individual consumer, group of consumers, consumer association or the Consumer Protection Commission is entitled to file:

- a claim for imposition of appropriate measures for termination of the infringements under the CPA or other applicable laws directly or indirectly protecting consumer rights; and
- (only the consumer associations) a claim for compensation of the damage caused to the collective consumer interest as a result of an infringement of CPA or other applicable laws directly or indirectly protecting consumer rights. If the court grants the claim, it adjudicates the compensation to all claimants for joint disposal.

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

There is no pre-trial procedure in Bulgaria. A case is considered opened at the moment when the claim is lodged with the competent first instance court conditional on its acceptance as admissible by the latter. Depending on the workload of the competent court first court hearing is normally scheduled within 1 to 3 months from the filing of the claim.



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

No. First instance courts are only empowered to assess the admissibility of the statement of the claim. In case the judge finds certain insufficiencies he can request their remedy within a 7-day term and if the claimant fails to provide adequate remedy, the court refuses to open a case. The court refusal is subject to appeal before a higher court instance.

**4.7 What appeal options are available?**

The decisions of the Regional Courts are subject to appeal before the District Court within the judicial territory of the respective Regional Court. The first instance decisions of the District Courts are subject to appeal before the Courts of Appeal. The time limit for appeal of a first instance judgement is 14 days as of the date of announcement of the judgement and the motives thereto for the parties present or represented at the hearing or as of date of receipt of the court notice that the judgement and the motives are issued - for the parties absent. District Courts and Courts of Appeal sit in panels of three professional judges.

The Supreme Court of Cassation is the third and final instance on civil cases with respect to decisions of the Courts of Appeal and the second instance decisions of the District Courts. However, decisions of the Courts of Appeal and second instance decisions of the District Courts on cases where the value of the claim is below BGN 5,000 (approximately €2,550) are final and are excluded from cassation appeal. The time limit for appeal of a second instance judgement is 30 days as of the date of the announcement of the motivated judgement at a court hearing or as of date of receipt of the notice that the judgement is issued. The Supreme Court of Cassation sits in panels of three professional judges. The parties cannot present new evidence at the cassation instance and can only argue that the appealed second instance judgement is (i) null and void; (ii) inadmissible; and/or (iii) inaccurate due to violation of the applicable substantive law or to substantial violation of the procedural rules or insufficient motivation.

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

See answer to question 4.2. Experts are chosen solely by the court from official public lists of experts from a particular field of science, profession or practice. The lists are adopted by a special magistrates' commission and are updated annually.

The parties may present written expert opinions prepared by experts of their own but the opinions will be considered as private statements originating from an interested party.

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

No. As an exception, witnesses can be interrogated before the trial only in case there is danger that the collection of their statements would be hindered or prevented at the time of the trial.

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

It is only required that the claimant attach to his claim all supporting documentary evidence at his possession. In case the claim is found admissible by the court copies of the claim and the supporting documentary evidence are sent to the defendant.

Only in the specific hypothesis where there is danger of destruction or loss of evidence or that its collection would be hindered or prevented, a party may request from the court to order certain preventive measures in order to collect such evidence.

A party may also request the court to order a third party to present a specific document in its possession which is of relevance to the subject matter of the case.

## 5 Time Limits

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

Yes time limits do exist.

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

A general remark: the lapse of the time limit specified in the law only precludes the right to file a claim and does not extinguish the substantive right to compensation for the damages suffered - any payment made by the manufacturer to the injured person after the lapse of the time limit shall not constitute unjustified enrichment and shall not be subject to reimbursement.

In case of strict liability the claim for compensation has to be filed with the court within 5 years from the date on which the injured person became or should have become aware about the damage, the defect and the identity of the manufacturer but in all cases not later than 10 years from the date on which the defective product was put on the market.

In case of tort - within 5 years starting from the date when the manufacturer of the defective product, has become known to the injured person.

In case of contract the time limit for filing of a claim for compensation for damages caused by a non-performance of contract is set at 3 years from the date on which the receivable has become due and payable.

In principle, age or condition of the claimant does not affect the calculation of the time limits. However, the OCA

stipulates that the running of the time limit shall be suspended in respect of minors (under the age of 18 years) or judicially disabled individuals for the period during which they do not have a duly appointed statutory representative or guardian and for 6 months after the appointment of such or, respectively, after the end of the judicial incapacity.

The court has no discretion to disapply time limits, but they cannot be applied *ex officio* - such defence must be explicitly raised by the defendant.

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

Concealment and fraud are not among the exhaustively listed grounds for suspension or discontinuance of the running of time limits under the OCA.

## 6 Damages

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

As explained above under the strict product liability system only *material* damages, both actual damages (*damnum emergens*) and lost profits (*lucrum cessans*), resulting in personal injury, death or damage to objects, other than the defective product itself, in the property of the injured person are recoverable. The consumer would have legal interest to claim compensation under the special strict liability regime provided the defective product has damaged other goods to the extent of more than two minimal monthly salaries, as established by the Council of Ministers, at the time of causing the damages - this limit at present is at BGN 300 (€150). In cases of personal injury no such limitation is set.

The *moral* damages (pain and suffering), resulting from caused death, disability, health deterioration etc., may be compensated on the grounds of tort liability as set in Art. 52 and Art. 45 of OCA. In those cases the court would rule on the moral damages based on equity and deliberating not only on the scope of the compensation and the types of sufferings for which such compensation is awarded, but also on the line of persons that may have legitimate claim for such damages incurred. According to the jurisprudence as unified by the mandatory interpretative resolutions of the Supreme Court, presumably interested parties, that may initiate such a claim, could be: the closest relatives and the persons in factual relationships resembling those of adoption and marriage. All other persons claiming damages from death, disabilities etc. of another person would have to prove how the loss / injury incurred to another person has affected them.

The general rules of tort are applicable in cases where pursuant to Art. 15, par. 4 of the CPA, the claim for compensation of material damages (strict product liability) was not granted. In such cases the consumer may choose to claim the same compensation in accordance with the general rules of tort as set in Art. 45 - 54 of the OCA.

The damage to the product itself is recoverable based on the contractual relationship between the seller (in most cases retailer) and the consumer.

Under all forms of civil liability only *direct damages* are recoverable - the obligation for compensation is set as the

top limitation of the civil liability. Direct damages are result of the causation as explained in question 2.2 hereto. Under contractual liability, however, a lower limit of the damages is set if the defaulting contractual party is being only negligent, failing the *professional due care test*. In that case only foreseeable at the time of the formation of contract damages may be compensated. Foreseeable are damages whose occurrence is foreseeable if the debtor applies the standard *pater famillias care*.

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

So far the Bulgarian jurisprudence has been very consistent that in order for a compensation to be awarded there has to be actual damage incurred. The case of medical monitoring relates to potential damages, normally associated to certain risk factors. Given the present legal standards in Bulgaria, only medical expenses following and in direct relation to the damage could be recovered.

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

The civil liability in Bulgaria, including the strict product liability, has only compensatory, no punitive function. The principle is that civil liability distributes the damages arising from a contractual default, tort or strict product liability, relieving the suffering party and providing the wrongdoer, manufacturer, importer or retailer (for strict liability) with additional obligation for compensation. As mentioned above direct damages represent limitation of the civil liability in any form. The only exception is the case where the parties to a contract explicitly stipulate punitive forfeit which may exceed several times the actual scope of the damages potentially incurred.

Notwithstanding the above, the CPA provides for the legal solution of administrative penalties - fines which in certain cases could reach a maximum of BGN 30,000 (approximately €15,300).

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

The CPA aims at balancing the consumer interests with the interests of manufacturers, importers and retailers, because the public interest of an efficient, productive and growing economy would not be satisfied if strict product liability, favouring the consumer, is unlimited with respect to identical incidents related to defective products, produced by one and the same manufacturer. As per Art. 17 of the CPA the accumulative amount of compensations that a manufacturer may be obliged to pay for death or personal injury of several injured persons, caused by one and the same defect of identical products, is set at BGN 100 million (approximately €1 million).

As for the claims based on general tort liability no maximum limit set in the form of a fixed amount exists.



## 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?

In principle, the losing party must bear the legal costs to the extent established by the law. However, the costs awarded by the court to the successful party are in practice lower than the actual costs incurred on the case.

In cases of litigation related to product liability issues the general rules in the Bulgarian legislation regarding litigation expenses apply. Court fees and litigation expenses paid by the claimant, as well as the remuneration for one advocate should be recovered in relation to the award on the claim. If the award is partial then the consumer would bear the respective part of the expenses incurred.

Other legal costs and expenses related to the litigation are subject to the general rules of indemnification and accordingly would have to be proved to become direct damages as explained in questions 2.2 and 6.1 hereto.

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

Yes. Legal aid, financed by the state budget, is available to individuals in difficult material situation. Such individuals are entitled to file a request for waiver of the court fees to the chairman of the competent District Court or to the regional court judge. There are no specific criteria or thresholds as to the persons eligible to such legal aid specified in the law.

In addition to that advocates are permitted to represent *pro*

*bono* individuals in difficult material situation.

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

The law does not provide for any requirements or restrictions on the availability of legal aid. The judges have discretion to apply the court fees waiver on a case-by-case basis.

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

The new Advocacy Act (2004) introduced contingency fees with the rule that advocate's remuneration may be agreed in the contract between the advocate and the client as a lump sum and/or percent of certain proprietary interest depending upon the outcome of the trial. The applicability of the above provision is only excluded in respect of criminal cases and civil cases with non-material interest.

In all cases with regard to the advocate's remuneration the Advocacy Act stipulates that it has to be specified in a written contract and its amount must be fair and justified, not less than the minimum thresholds laid down in a regulation of the Supreme Bar Council.

## Acknowledgment

This chapter was prepared jointly by Borislav Bozhidarov, Pavel Hristov and Violeta Hristova of Borislav Boyanov & Co.



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