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Sweden

PRODUCT LIABILITY

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This country-specific Q&A provides an overview of product liability laws and regulations applicable in Sweden.

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SWEDEN

PRODUCT LIABILITY



1. Please summarise the main legal bases for product liability

Under the Product Liability Act (SFS 1992:18, the "PLA"), a company may be held liable for personal injury and damage to consumer property caused by a defect in a product manufactured, imported or distributed. Liability under the PLA is strict. The Consumer Sales Act (SFS 1990:932, the "CSA") applies to movable personal property. Provided the existence of a defect for which the seller is responsible, the consumer may be entitled to compensation for damage suffered. An injured party may also have a basis for claims under the Tort Liability Act (SFS 1972:207, the "TLA").

2. What are the main elements which a claimant must prove to succeed in a strict liability type claim for damage caused by a defective product?

Since liability under the PLA is strict, it is not necessary to establish negligence or wilful conduct. However, the claimant needs to establish that there is a defect in the product and that such defect has caused damage.

The main rule is that the claimant needs to present evidence to the same degree as is required in other civil cases. However, certain case law and comments in the legal literature support the standpoint that the standard of proof may be somewhat lowered, for example, in relation to complex assessments of causation.

Further, it may be mentioned that the Swedish Code on Judicial Procedure contains provisions to the effect that where full proof cannot be presented in respect of a loss, or only presented with considerable difficulty, a court may upon request by a party make an assessment of damages in the absence of evidence, such assessment being based on a principle of reasonableness. It should be noted that the aforementioned mechanism for easing of burden of proof is dependent on the claimant first having taken reasonable measures to calculate and prove the loss. Further, the claimant needs to establish

that there is a causal link between the damage and a defect in the product.

3. With whom does liability sit? If there is more than one entity liable, is liability joint and several?

A manufacturer, importer or company marketing a product by applying its own trademark is primary liable under the PLA. In the absence of such identified party, a supplier, who is not able to within one month disclose information sufficient enough to identify the importer or other supplier acting at an earlier level in the distribution chain, may be held liable for the defect.

4. Are any defences available? If so, please summarise them.

There are several explicit grounds for having liability discharged according to the PLA. A defendant may be discharged from liability if it is established: (i) that the defendant did not put the product into circulation, (ii) that it is probable that the defect which caused the damage did not exist at the time when the product was put into circulation, (iii) that the defect is due to compliance with mandatory regulations issued by public authorities, or (iv) that the state of scientific and technical knowledge at the time when the product was put into circulation was not such as to enable the existence of the defect to be discovered.

5. What is the limitation period for bringing a claim?

The period of limitation for a claim under the PLA is three years from the date the claimant knew or ought to have had knowledge about the circumstances underlying the claim. Under all conditions, a claim brought forward later than 10 years from the point of time when the product was put into circulation on the market is barred. Failure to observe these periods will upon objection result in the claim being denied.

6. To what extent can liability be excluded (if at all)?

A company liable under the PLA cannot opt out from liability by delegating responsibility. The obligation to provide information may, however, depend on the level of the distributor chain in relation to which the company is operating. Hence, a company directly in contact with the end-customer may have certain additional obligations to provide information, compared to an entity more remote from the end-customer.

7. What are the main elements which a claimant must prove to succeed in a non-contractual (eg tort) claim for damage caused by a defective product?

Contrary to the PLA, liability under the TLA presupposes that damage has been caused by wilful conduct or negligence.

8. What types of damage/loss can be compensated and what is the measure of damages? Are punitive damages available?

Swedish law does not provide for punitive damages.

9. How are multiple tortfeasors dealt with? Is liability joint and several? Can contribution proceedings be brought?

A company may be held liable under the TLA based on negligently having contributed to the damage incurred, irrespective of whether a producer has been identified or not. Several companies may be held jointly and severally liable for damage incurred. In situations where joint and several liability applies, the main principle is that liability will be distributed proportionally to contribution and in accordance with a principle of reasonableness.

10. Are any defences available? If so, please summarise them.

Although there are no defenses set forth in the TLA specifically related to a product liability claim as such, there are several defenses under general principles of tort law, such as, for example, the lack of causal link or negligence or the occurrence being deemed too remote. Further, liability may be excluded or eased if the injured party has acted negligently or otherwise contributed to the damage.

11. What is the limitation period for bringing a claim?

The general limitation period in Sweden is 10 years according to the Limitations Act (SFS 1981:130). The limitation period will be counted from the day the claim arose. There are several possibilities to have the limitation period extended.

12. To what extent can liability be excluded (if at all)?

There are no specific rules laid down in the TLA which would provide for exclusion of liability. However, as mentioned above, liability may be reduced or even excluded due to contributory negligence by the claimant. Further, information that serve to clarify risks may on a general basis reduce or ease liability.

13. Does the law imply any terms into B2B or B2C contracts which could impose liability in a situation where a product has caused damage? If so, please summarise.

In contracts between companies there are no compulsory terms implied. However, in the absence of contractual terms between companies, certain terms may be implied, primarily from the Swedish Sale of Goods Act (SFS 1990:931). Terms which may be implied and of relevance to defects in products may concern quality or information relating to the characteristics of the goods or their use which the seller has provided in the context of marketing the goods or otherwise prior to the sale, and which can be presumed to have influenced the sale.

The CSA applies to movable personal property. Provided the existence of a defect for which the seller is responsible, the consumer may be entitled to compensation for damage suffered. Unless otherwise provided for in the contract, goods shall, amongst other things, be fit for the general and specific purposes underlying the purchase and conform to the descriptions provided. It is explicitly mentioned that goods shall be considered defective if they are sold in contravention of an injunction issued pursuant to the Product Safety Act (SFS 2004:451) or in breach of other sales prohibition decrees aimed at preventing use of goods which may endanger life or health.

14. What types of damage/loss can be compensated and what is the measure of

damages?

Provided the existence of a defect for which the seller is responsible, the consumer may under the CSA be entitled to compensation for damage suffered.

15. To what extent can liability be excluded for contract liability (if at all)?

As a main rule, contractual terms which by comparison to the provisions of the CSA are disadvantageous to the consumer, are not enforceable.

16. Are there any recent key court judgements which have had a significant impact on the approach to product liability?

The Swedish Supreme Court has in a recent case elaborated on the concept of "products" and has stated that the way in which a product is manufactured is not decisive for whether it should fall within the scope of the law or not and that supply of unprocessed water should be included in the concept of product.

17. What are the initial litigation related steps you should take if you are facing a product liability claim or threatened claim?

A counsel which is specialised in the field and experienced in litigation should be engaged. Other important first steps would be to investigate possible insurance coverage, investigate applicable limitations to present claims, to clarify the identity of possible entities or persons liable as well as to secure evidence relevant to the claim or threatened claim.

18. Are the courts adept at handling complex product liability claims? Are cases heard by a judge or jury?

Yes, the courts are in general adept at handling complex product liability claims. The case will be tried by legally qualified judges without a jury.

19. Is it possible to bring a product liability related group action? If so, please summarise the types of procedure(s) available

Class action is possible but uncommon. In a class action,

one party represents a group of members based on common grounds. The representative shall qualify as an appropriate representative of the members considering, amongst other circumstances, interests in the proceedings and financial capability to carry out a class action. A group action may be initiated by individuals or legal entities/organisations or authorities. When the trial is initiated, the group consists of the persons mentioned in the statement of claims. Declaration by a group member that the member wants to be covered by the group action constitutes confirmation of the member's participation. A group member who has not notified the court in writing within the time period stipulated by the court will be deemed to have withdrawn from the group.

20. How are cases typically funded? Can lawyers charge success fees? Is third party funding permissible?

Contingency fees and conditional "no win, no fee" arrangements are in general and as a main rule contrary to the ethical rules of the Swedish Bar Association. The law on class actions allows for a limited form of contingency fees through a so-called "risk agreement" to the effect that if unsuccessful, no or only low compensation will be paid to the counsel, while the counsel may be entitled to extra remuneration in the event of success. A risk agreement shall be approved by the court handling the class action case.

Third party funding of claims is possible. There are no particular rules regulating such funding save for the ethical rules of the Swedish Bar Association. The funding of a third party will not have an impact on the court's allocation of litigation costs as between the parties.

21. How common are product liability claims and what factors influence their frequency?

Regulation and market control has a great impact on the frequency as well as possibilities for claimants to obtain funds for legal procedure. Another factor which has an impact is the possibility for consumers to gain information on deviations and faults from other users e.g. via social media.

22. What are the likely future developments in product liability law and practice? To what extent is the suitability of the law being challenged by advances in

technology?

We see that there will continue to follow quite substantial amendments in the regulations due to technical innovations, not least in relation to AI-related solutions and increasingly autonomous devices adapted and modified beyond producers' control.

Although the scope is not clear at this moment, Covid-19 will surely have an impact on standards (for example related to indoor air quality) and possible also on claims

based on defects related thereto.

23. Please provide an update of any interesting developments which have taken place in your jurisdiction over the last 12 months.

Please see Interesting developments e.g. relating to AI, autonomous devices and Covid-19 outlined above.

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