ICLG

The International Comparative Legal Guide to:

Product Liability 2017

15th Edition

A practical cross-border insight into product liability work

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1 Liability Systems

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

Korea's legal system is based on civil law and thus all liability arises out of codified law. Product liability is primarily regulated by the Product Liability Act ("KPLA") which imposes liability for bodily injury and property damage caused by defective products. The key feature of the KPLA is that it imposes strict liability on manufacturers for damages caused by defective products. Before the KPLA was enacted in January 2000 (effective July 2002), product liability claims had to be brought as a tort action under the Civil Act, which requires the claimant to prove negligence.

The KPLA requires "manufacturers" to compensate for damages to life, body or property caused by a product "defect". The term "manufacturer" is defined as any person that is engaged in the business of "manufacturing, processing or importing" products, or puts the person's name on the product as having manufactured, processed or imported the product. This means that if the company had any involvement in the manufacturing process (e.g., provided parts incorporated into the end product or assembled the end product), the company can be held liable as a "manufacturer". However, even if the company had no involvement in the manufacturing, the company can be held liable if it imported the product for sale in Korea or if the company put its name or logo on the product.

The KPLA covers all products that have a defect in "manufacturing, design or indication". The key point of this definition is its emphasis on whether the product caused a lack of safety or damages rather than the manufacturer's duty of care and diligence. For example, the KPLA states that a product will be found to have a "defect in manufacturing" if there is a "lack of safety caused by manufacturing" or "processing of any product not in conformity with the originally intended design", and specifically states that whether the manufacturer performed its "duty of care and diligence" should not be taken into consideration. Similarly, in determining whether there was a "defect in design" or "defect in indication", the end result is the deciding factor – whether an alternative design or a warning label would have resulted in less damage or risk – and not the manufacturer's diligence.

The KPLA also contains a clause stating that if a consumer has signed a contract to exempt the manufacturer from product liability, the exemption clause is null and void.

The KPLA overall is a brief statute, which establishes strict liability for defective products, specifies some exemptions to the rule and sets a statute of limitations, but otherwise refers to the Civil Act for rules regarding the calculation of damages.

Aside from the KPLA, if the consumer purchased the product directly from the manufacturer, the consumer can also file suit for a breach of contract if the bodily injury or property damage caused by the product was caused by the manufacturer's negligence. Consumers can also file claims under the Civil Act. However, claims for a breach of contract or tort under the Civil Act are rare since remedy is available under the KPLA.

Korea has also enacted consumer fraud statutes, as well as product-specific safety laws, but these laws do not impose product liability on the manufacturer.

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

The Korean legislature has passed statutes establishing schemes of compensation for three products: pharmaceuticals; asbestos; and humidifier disinfectants. Under these schemes, the government will compensate consumers for bodily injury and property damage caused by the product regardless of the manufacturer's fault. The relevant government agency will usually provide compensation for injured or deceased persons for such costs and expenses as medical expenses, living expenses and funeral expenses. However, if a person has already been compensated by the manufacturer under the KPLA, the person may not seek compensation under the relevant scheme. If the person has been compensated under a scheme of compensation, the person will also be barred from seeking compensation from the manufacturer under the KPLA, although if the amount of compensation provided under the scheme of compensation is insufficient to cover actual damages, the person can seek additional compensation under the KPLA.

The scheme of compensation for humidifier disinfectants was established most recently. The first humidifier disinfectants were sold in the Korean market in 1997. However, it was not until around 2011 when the public became aware that the disinfectants may have caused lung damage and deaths. Compensation by the manufacturers – more accurately, the insufficient compensation in the eyes of the public – was a controversial issue for several years and the civil and criminal litigation against the manufacturers received wide media coverage.

In relation to these events, the legislature passed a statute in February 2017 (effective September 2017) which establishes a scheme of compensation for injured and deceased consumers of defective disinfectants.

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

Under the KPLA, the manufacturer and/or the importer bears responsibility for the defect. More accurately, an importer falls under the definition of manufacturer under the KPLA.

A distributor or retailer could be held liable, however, if the manufacturer cannot be identified and the distributor/retailer knows or could have known the manufacturer's identity and fails to inform the consumer of the manufacturer's identity.

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?

An obligation to recall can only be imposed by the consumer protection agency and not by a consumer or other third party. Similarly, there is no separate cause of action available to the consumer for a failure to recall and the consumer protection agency must decide to take action for a violation.

Product recalls are generally governed by the Framework Act on Consumers (the "Consumer Act"), which establishes rules for reporting safety issues and handling recalls. Under the Consumer Act, a manufacturer can conduct a voluntary recall by removing, destroying, or repairing the product and providing a replacement or refund, if the manufacturer independently determines that its product causes or is likely to cause bodily injury or property damage. Even if it does not conduct a voluntary recall, if a manufacturer or major retailer discovers a serious product defect that causes or is likely to cause injury or property damage, such company must file a report with the relevant government agency. The government agency will then test and inspect the product and depending on the results, the government may issue a recommendation to conduct a recall or issue an order to conduct a recall.

Aside from the Consumer Act, there are laws imposing recall obligations for specific products including automobiles, food, pharmaceuticals, livestock products, industrial products and drinking water. All recalls, whether under the Consumer Act or product-specific laws, are conducted voluntarily by the manufacturer or ordered by the government agency and there are no procedures by which a consumer can initiate a recall.

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

The KPLA does not impose criminal liability on manufacturers. However, a manufacturer could be held criminally liable under certain product-specific laws if it intentionally violates the relevant safety standards. A manufacturer or seller could also be prosecuted criminally if the defect was caused by negligence in the manufacturer's performance of its business duties and the defect causes serious bodily injury or death.

2 Causation

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

The claimant has the burden of proof pursuant to general principles of law. Since there is no fault requirement under the KPLA, the consumer does not have the burden of proving negligence. However, the consumer has the burden of proving the existence of a defect, damages and causation. The standard of proof with respect to causation, in particular, has been a controversial issue as described further below.

2.2 What test is applied for proof of causation? Is it enough for the claimant to show that the defendant wrongly exposed the claimant to an increased risk of a type of injury known to be associated with the product, even if it cannot be proved by the claimant that the injury would not have arisen without such exposure? Is it necessary to prove that the product to which the claimant was exposed has actually malfunctioned and caused injury, or is it sufficient that all the products or the batch to which the claimant was exposed carry an increased, but unpredictable, risk of malfunction?

Generally, the claimant must prove that the particular product used by the consumer was defective and that the product's defect caused the damages. However, the Supreme Court has recognised that causation can be presumed in certain cases. In 2006, the Supreme Court issued an opinion recognising that a product purchased by a claimant can be presumed to be defective and to have caused damages if: (i) the events leading to the injury or property damage commenced from an "exclusive area of control" of the manufacturer (i.e., an area outside of the control of the user and within the control of the manufacturer); (ii) the product was used for its intended purposes; and (iii) the injury/damage could not have occurred unless the product was defective. This opinion was issued in the context of an automobile case in which the claimant argued that a defect in the engine and related parts caused sudden acceleration and the manufacturer argued that the engine and related parts did not necessarily cause the accident since the claimant had control over the acceleration pedal. The court ruled that causation could not be presumed in this case because acceleration of the vehicle was not in the exclusive control of the manufacturer.

In another opinion issued in 2006, the Supreme Court held that if exposure to a certain risk factor is linked to an increased likelihood of contracting a particular disease, a product will be presumed to have caused the disease if use of the product exposes users to the risk factor.

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

The Korean courts have not recognised the theory of market-share liability in the context of product liability and the claimant will be required to prove causation.

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?

Failure to warn does give rise to liability under the KPLA. If damages or risk of damages could have been reduced or eliminated by an explanation, instructions, warning or other indication on the product and the manufacturer failed to provide such an indication, the manufacturer will be held liable for damages. In determining whether an indication would have reduced or eliminated damages (or risk thereof), the courts will look at the nature of the product, the intended use of the product, and a reasonable user's expectations. Thus, for example, if a product is intended to be used by a person with expert or professional knowledge, the manufacturer can prepare the instructions or warning label with this type of user in mind.

The KPLA and Korean courts have not recognised the concept of information to intermediaries or the "learned intermediary" principle which discharges a manufacturer's duty to warn.

3 Defences and Estoppel

3.1 What defences, if any, are available?

The KPLA provides for four exemptions from liability. A manufacturer will be exempt from liability if:

- the manufacturer did not supply the product (i.e., the product was stolen or otherwise distributed without the manufacturer's authorisation);
- the existence of the defect could not be identified given the state of scientific or technical knowledge at the time;
- the defect was caused by the manufacturer's compliance with standards set by law; or
- the defect arose from a design or manufacturing instructions given by another person.

The manufacturer has the burden of proof for these exemptions. Even if one of the above exemptions apply, in most cases, defendants will focus on the issue of causation for their defence, by arguing, for example, that the consumer did not use the product for its intended purpose, the product was not defective or the defect did not cause 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?

As mentioned above, manufacturers can assert as a defence that the defect could not be identified given the state of scientific or technical knowledge at the time the product was supplied. The manufacturer must show that the defect was not discoverable. If the manufacturer conducted testing that indicated any potential safety issues (e.g., adverse results during animal testing), the manufacturer cannot assert this defence.

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?

This is also an explicit defence under the KPLA. There are numerous statutes regulating testing and development of products, manufacturing specifications and maintenance/storage requirements intended to protect consumers, including laws covering automobiles, electronic devices and pharmaceuticals. If a manufacturer complies with these laws, it could be exempt from liability. However, it is not a defence simply for the manufacturer to show that it complied with statutory requirements. The manufacturer must show that the manufacturer's compliance with the statutory standards actually caused the defect. Because safety standards are usually set only after the standards are known to increase safety, it is unlikely that a manufacturer will be able to establish that the statutory standard was the cause of the defect.

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?

Claimants can re-litigate any issue so long as the issue arises in a separate proceeding and there is no form of estoppel that prevents this.

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

Under the KPLA, it is possible for a claimant to seek damages against multiple parties such as the manufacturer of the end product, the company that sells the product under its brand (if the manufacturing was outsourced), and the company that supplied the defective parts to the manufacturer – and it is possible for all parties to be held jointly and severally liable.

It is not possible for a defendant to bring other defendants into the proceeding. However, if the claimant has sued multiple parties and one defendant believes it has paid more than its allocation of liability, it is possible for the defendant to seek indemnification from other defendants, provided the defendant brings this claim for indemnification in a separate proceeding. The statute of limitations for such a claim is 10 years starting from the date on which the defendant compensates the claimant.

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

The defendants can allege that the claimant's actions contributed to the damage and the courts will take into consideration such contribution in determining damages. The KPLA states the rules regarding calculation of damages under the Civil Act apply to claims under the KPLA, and the Civil Act provides that a claimant's negligence will be considered in determining the amount of damages to award to the claimant. The Supreme Court has recognised this rule by stating that although the KPLA provides for strict liability, this does not mean the court should not take into account the contribution of the claimant's actions to reduce the amount of damages awarded.

4 Procedure

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

In Korea, the judge will rule on both the facts and the interpretation of the law. For certain types of criminal matters, the defendant can ask for a jury to participate and provide its opinion, but the jury's opinion is not binding on the judge even in this case.

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)?

Under the Civil Procedure Act, the court has the authority to appoint an expert and/or an appraiser to assess evidence presented by the parties. The expert or appraiser does not participate in the court's deliberations and the court has full discretion in determining the amount of weight given to the expert's assessments.

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

There are no class action procedures generally, or related to product liability, under Korean law that allow a representative to litigate on behalf of absent parties. There is a procedure under the Civil Procedure Act that allows multiple claimants in a lawsuit to appoint one of the claimants to act on behalf of the other claimants in the proceeding. However, in this case, all of the claimants will have explicitly agreed to be a party to the proceeding as a claimant and to appoint the representative to act on his/her behalf.

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

Under the Consumer Act, a consumer association or public interest group can bring a lawsuit against a manufacturer as a representative body if the manufacturer is in violation of the Consumer Act. The consumer association or public interest group must meet certain qualifications, e.g., it must be a registered organisation with the Korea Consumer Agency or with the Korean Fair Trade Commission, in order to bring this type of claim. The remedy available for this type of claim is injunctive relief and not compensation for damages.

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

Civil procedure in Korea is not divided into stages such as pleadings, discovery and trial. After the claimant files the complaint and the defendant files its answer, the court will allow briefs, submission of evidence and hold hearings as it deems appropriate for the particular case before issuing a ruling.

Typically, after the complaint and answer are filed, the court will set a date for a hearing. It usually takes about two to three months for the first hearing. At the first hearing, the judge identifies the facts and legal issues in dispute and hears each party's position. For straightforward cases, the court could issue its decision after the first hearing, but in most cases, the court will require the parties to submit briefs and evidence on the issues in dispute by the subsequent hearing date. The court may repeat this cycle multiple times before issuing its decision. Usually, there is about one to two months between each hearing date. Although the period from the filing of the complaint to the issuance of the ruling varies greatly depending on the complexity of the case, most cases are concluded within eight months to two years.

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?

It is possible for the court to issue a preliminary ruling on an issue of fact or law, but this is rare. Moreover, there is no procedure for a preliminary ruling that would dismiss a case before the final conclusion of the case such as a summary judgment. If it is clear to the court that the claimant does not have a legal or factual basis for a claim, the court will simply issue its final ruling without holding additional hearings.

4.7 What appeal options are available?

If a claimant or defendant is not satisfied with the district court judgment, the party can file for an appeal with the intermediate level courts within two weeks of the judgment. If there is an appeal, the appellate court will review the case *de novo* and rule on both factual and legal issues. After obtaining the appellate court decision, either party may appeal the ruling to the Supreme Court, although in this case, only issues of law may be appealed.

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?

As mentioned in question 4.2 above, the court can, independently or at a party's request, appoint an expert to assist the court in evaluating technical issues. In addition, either party may present expert evidence in written and oral form and there are no specific restrictions in this regard.

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?

If a factual or expert witness will be testifying at a hearing, the party presenting the witness must submit a written summary of the testimony to the counterparty before the hearing so that the counterparty can prepare cross-examination questions. If the party presenting the witness does not submit a written summary for review by the counterparty before the hearing and the counterparty does not object to the omission, the counterparty will be deemed to have waived its right to receive this written summary in advance of the testimony. Although a written summary is required before the hearing, it is not required for a party to present its witness for a deposition before the hearing.

It is also possible for either party to submit a written statement from a factual or expert witness. In such case, the other party can respond to the written statement through its own written rebuttal.

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

There is no general obligation to disclose documentary evidence and there are no discovery rules to provide a structured process for obtaining documents from the counterparty or third parties. If a party wishes to obtain documents from a third party such as the counterparty, the party must petition the court to issue a document production order on the third party, but the requesting party must be specific about the scope of its request and the courts will issue orders only on a limited basis.

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

The KPLA does not require any alternative dispute resolution methods before litigation and there is no such requirement applicable to lawsuits in Korea generally. In some cases, the court may recommend the parties to try to resolve the dispute through mediation, but the parties are not required to accept the mediator's recommendations and the parties can continue the litigation proceedings if they fail to come to an agreement through mediation.

If a consumer has agreed to a contract with an arbitration clause, the courts may strike down this clause as a violation of the KPLA.

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

If the claimant is not a resident of Korea, the claimant will still be able to file a suit against the defendant before the Korean courts if the defendant is a Korean resident or a legal entity incorporated in Korea, since residence by one party is likely to satisfy jurisdictional requirements.

If the claimant is a resident of Korea and the manufacturer is not, the manufacturer can still be sued in the Korean courts if the manufacturer or the matter at hand has "substantial relations" to Korea. In determining whether "substantial relations" exist, the courts will consider whether the manufacturer could reasonably have foreseen that a claim could be brought before the Korean courts. Even if the "substantial relations" test is met, the courts may deny jurisdiction in certain cases, for example, if it would cause undue inconvenience to one party while the other party would greatly benefit for the court to hear the case.

5 Time Limits

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

The KPLA imposes a time limit on claimants on bringing proceedings.

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

Under the KPLA, the claimant must file the claim within three years of both becoming aware of the damages and the identity of the manufacturer, but no later than 10 years from the date the manufacturer supplied the product. However, if the damages are caused by substances that accumulate in the body delaying the appearance of substances until a later period, the 10-year period runs from the date the damages actually occur.

The age of the claimant does affect the calculation of time limits in that for minors, the awareness of the damages by the minor's guardian will be considered rather than the minor's knowledge. However, the court does not have discretion to disapply time limits.

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

Concealment or fraud could prevent a defendant from seeking a dismissal based on the statute of limitations since the Civil Act provides that a statute of limitations defence will not be accepted if enforcing the statute of limitations would result in an abuse of rights.

6 Remedies

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

Under the KPLA, the available remedy is monetary compensation. As mentioned above, however, a consumer group or public interest organisation may seek injunctive relief under the Consumer Act.

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

The KPLA holds manufacturers liable for damages to "life, body or property", but specifically excludes damage to the product itself. Damages to "life, body or property" include cost of medical treatment, loss of income, and monetary compensation for mental distress.

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

The claimant must prove actual damages and, thus, cost of medical monitoring may not be recovered if the product has not yet malfunctioned and caused injury.

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

Currently, the law does not provide for enforcement of punitive damages. However, as discussed further in question 8.1, the Korean legislature passed an amendment to the KPLA on March 30, 2017 which allows claimants to seek punitive damages.

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

There is no statutory cap on damage awards.

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

There are no special rules for settlement of claims generally, or with respect to group actions or claims by infants. As long as the claimants and defendants (in the case of minor, their legal guardians) agree to the settlement, the settlements will be enforced without court approval.

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

Fundamentally, the government does not have authority to claim reimbursement against claimants for any damages awarded to claimants.

7 Costs / Funding

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

The successful party can recover court fees and expenses including attorneys' fees, but the amount will be determined by the court. Along with the court's ruling on the claim, the court will decide the amount of costs that should be borne by each party. In most cases, the court will allocate the amount of costs to be borne by each party based on the ratio between the amount of damages awarded to the total amount claimed. The court will strictly review whether the litigation expenses claimed should be recoverable and will limit the amount of attorneys' fees recoverable, in particular.

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

The Korean Legal Aid Corporation is a non-profit organisation that provides legal aid including free legal advice and representation for those in need. The court may also grant legal aid, in which case the relevant party may be entitled to deferred or suspended payment of court fees and attorneys' fees.

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

The court can decide on its own to grant legal aid, or grant legal aid upon a party's request, but in order to qualify for legal aid, the beneficiary must be financially unable to legal costs and expenses and it must not be clear that the beneficiary will lose his/her case.

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

Contingency fees are allowed in Korea. In fact, for civil litigation, most attorneys' fees are composed of a fixed amount paid upon commencement of litigation plus a success fee payable after the ruling, based on a percentage of the damages awarded (or denied).

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

There is no specific prohibition on claimants from soliciting funds for a lawsuit. In fact, if a claimant wishes to solicit donations from third parties (where the third parties do not expect repayment or other consideration) to file a claim, the claimant may raise up to KRW 10 million under the Act on Collection and Use of Donations. However, if the claimant intends to solicit funds from third parties with an agreement to share the damages awarded with the third party, it is possible that the third party could be prosecuted for violating the Attorney-at-Law Act, which prohibits non-lawyers from earning fees in relation to legal services (i.e., the third party could be prosecuted for acting as a broker).

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

There is no mechanism for the court to adjust legal costs and expenses incurred by the claimants or defendants.

8 Updates

8.1 Please provide, in no more than 300 words, a summary of any new cases, trends and developments in Product Liability Law in your jurisdiction.

There have been a couple of major developments in product liability law in the past year. Due to the media coverage of the litigation against the manufacturers of humidifier disinfectants and the negative publicity regarding insufficient compensation for victims, the legislature passed a law establishing a scheme of compensation related to the defective disinfectant as mentioned above.

In addition, the legislature passed an amendment to the KPLA on March 30, 2017 to strengthen protection for consumers.

The amendment implements two key changes to the KPLA. First, the KPLA permits claimants to seek punitive damages from the manufacturer if the manufacturer knew about the defect but failed to take corrective measures. In Korea, courts can only impose punitive damages if the statute specifically provides for this remedy and there are few laws that allow the enforcement of punitive damages. In the case of the amended KPLA, the claimant may seek up to three times the actual damages and the court will award the amount taking into consideration several factors including the degree of intent, the amount of profit gained, and the manufacturer's financial condition.

The other key change to the KPLA is related to causation. As discussed above, the Supreme Court issued an opinion in 2006 recognising that the courts can presume causation if the events leading to the injury or property damage commenced from an area outside of the control of the user and within the control of the manufacturer. The amended KPLA codifies this ruling by specifically presuming causation if: (i) the claimant used the product for its intended purpose; (ii) the damage arose from an area within the control of the manufacturer; and (iii) the damage would not have occurred unless the product was defective.

The amended KPLA will be in effect from April 2018.

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SEUM
법무법인 세움

SEUM was founded by attorneys from Korea's top law firms to provide top quality legal solutions better, faster and more efficiently. Blazing internet speeds and powerful smartphones have created the opportunity for new companies to disrupt the landscape across many service industries including transportation, accommodation, and entertainment. The legal profession, however, has been immune to such forces. In Korea, SEUM is at the forefront of this innovation. We understand that the key to delivering the best services is to know our clients and to provide solutions and expertise, not just information. Our client-centric approach drives us to act as an advisor, not just a legal technician, and offer practical advice that can be used to make decisions. At the same time, we offer the most competitive rates by keeping our overheads low. We have a small but resourceful team, fast internet, top-of-the-range laptops and powerful software. It's all we need.

Other titles in the ICLG series include:

- Alternative Investment Funds
- Aviation Law
- Business Crime
- Cartels & Leniency
- Class & Group Actions
- Competition Litigation
- Construction & Engineering Law
- Copyright
- Corporate Governance
- Corporate Immigration
- Corporate Investigations
- Corporate Recovery & Insolvency
- Corporate Tax
- Data Protection
- Employment & Labour Law
- Enforcement of Foreign Judgments
- Environment & Climate Change Law
- Family Law
- Fintech
- Franchise
- Gambling
- Insurance & Reinsurance
- International Arbitration
- Lending & Secured Finance
- Litigation & Dispute Resolution
- Merger Control
- Mergers & Acquisitions
- Mining Law
- Oil & Gas Regulation
- Outsourcing
- Patents
- Pharmaceutical Advertising
- Private Client
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- Project Finance
- Public Procurement
- Real Estate
- Securitisation
- Shipping Law
- Telecoms, Media & Internet
- Trade Marks
- Vertical Agreements and Dominant Firms

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