



Product Liability

in 31 jurisdictions worldwide

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Global Overview

Harvey L Kaplan

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Every year it becomes increasingly apparent how closely connected jurisdictions throughout the world are to one another. Therefore, it is essential that we stay abreast of developments in our respective product liability laws.

In the United States, for example, in April 2011, the Office of International Programs and Intergovernmental Affairs within the Consumer Product Safety Commission (CPSC) issued its 131-page recommendation for achieving global harmonisation of toy safety regulations. It is not yet clear what impact this recommendation will have but, at a minimum, it signals a further step down the road of global product safety convergence. In a similar spirit, the CPSC announced in January 2011 that it is opening an office in Beijing – its first overseas office – to aid in coordinating product safety between the two countries.

Another notable development in Asia is a pending bill which would radically change Korea's Product Liability Act. The amendment, as currently written, would shift the burden of proof to the manufacturers in all cases, requiring them to prove that the consumer was at fault or that the product was not defective. The rationale is to assist consumers with products that are particularly technical, making it difficult to identify the defect, but the bill's scope far exceeds this rationale.

The demand for greater 'access to justice' in Latin America continues to drive legislation with several notable developments in product liability in particular. For example, punitive damages are not currently available in Brazil, although some courts have been known to include a punitive element when awarding so-called 'moral damages' for pain and suffering. Today, several competing proposals to introduce punitive damages are pending in the legislature. One bill would permit judges to consider the financial means of the parties in establishing the award.

In Mexico, litigants will soon have a class action model for claims against product manufacturers. The law provides for an opt-in class action procedure with certification rules, and it envisions a two-phase procedure, with a first phase to assess general liability and a second phase for individual class members to claim individual relief. By the time this new edition of *Getting the Deal Through – Product Liability* is published, the federal class action bill will likely become law.

Class actions still appear to be in vogue in Europe. In the spring of 2011, the EU Commission conducted a public consultation on what steps it would take to ensure collective redress is available to consumers. The Commission's findings and recommendations are expected at the end of the year and have the potential to reshape the way consumers in jurisdictions across Europe seek redress against manufacturers.

In March 2011, the UK Ministry of Justice announced that a number of points from Lord Justice Jackson's report on civil justice costs will be implemented, most notably the introduction of contingency fees; the elimination of 'loser pays' from personal injury cases; and the fact that success fees, after the event insurance and associated costs in 'no win, no fee' conditional fee agreements will no longer be recoverable by the prevailing party.

The United States, on the other hand, has shown signs of moving in the other direction. The state of Texas recently adopted a tort reform bill aimed at helping businesses burdened by meritless lawsuits by allowing judges to rule on merits of civil cases much earlier in the process, limiting discovery and assessing court costs equitably at the end of a case through a kind of 'loser pays' scheme.

Product liability litigation on a global scale presents challenges for multinational product manufacturers. The following chapters provide counsel with a multi-country overview of potential risks by examining:

- their court system, including the respective roles of lawyers, judges and juries, if any, along with the nature of trials or hearings;
- theories of recovery available for product liability claims (strict, tort, contract, fraud, etc) and potential defences;
- discovery procedures available – disclosure and document production requirements – and the role of experts and company witnesses; and
- other important means for assessing potential risks, such as the status of class actions, damage awards and fee arrangements.

I hope that you will find the 2011 edition of this product liability survey useful in developing global product liability and risk minimisation strategies. We encourage you to seek the advice of any of the well-qualified authors, who contributed to this book, to assist in that effort.



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