

Product Liability

Contributing editors

Gregory L Fowler and Simon Castley



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GETTING THE
DEAL THROUGH 

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Product Liability 2016

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Korea

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Civil litigation system

1 The court system

What is the structure of the civil court system?

The Korean civil court system is divided into three levels: district courts of first instance, High (appellate) Courts and the Supreme Court. In addition, there are special courts such as patent courts (at the level of the High Court), family courts and administrative courts (at the level of the district courts).

The three-trial system is applied to civil cases in Korea and the jurisdiction of court is determined for each level. District court cases can be heard by a single judge or a panel of three judges depending on the size of the claims. A panel consists of a presiding judge and other judges (namely, associate judges). In some cases, a presiding judge may delegate to an associate judge certain matters such as the handling of preparatory process, settlement recommendations, evidence examination outside court, etc. A presiding judge is in charge of a case under the law, and for each case, one of the panel judges is designated as the chief judge to review the documents and prepare the court's decision.

2 Judges and juries

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

Korean courts generally adopt the principle of pleading where a party to litigation should collect and submit the litigation materials (for example, facts and evidence) and the court should consider only such litigation materials collected and submitted by the party. However, such a principle of pleading is limited to the method of presenting facts and evidence; and the court (judge) has discretion to evaluate the evidence and make its decision based on the facts asserted by parties.

The principle of pleading is based on the assumption that both parties have the equal and perfect ability to litigate the case. However, such ability is not equal or perfect in reality. In order to overcome such flaws in the pleading principle, a court aggressively exercises its right to request an explanation or to conduct discretionary investigation on certain issues, such as confirmation of jurisdiction and laws. 'Right to request for explanation' means the court's authority to ask, demand or make inquiries in order to clarify relevant issues, or both, so that a party may present its argument as to certain legal issues that the party has not noted before.

Since January 2008, Korea has implemented the system for citizen participation (jury trial) in criminal cases on a limited basis. However, citizen participation in trials is not available for civil litigations such as product liability litigation.

3 Pleadings and timing

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

A plaintiff's filing of a written complaint to the relevant court and the delivery of the complaint to the defendant commences the legal action. Such a written complaint should contain the remedies sought by the plaintiff (for example, performance such as payment, or prohibition order) and factual and legal grounds supporting the requested remedies, and names and addresses of plaintiff and defendant. The defendant should submit a written reply within 30 days from the date of receipt of the complaint (article 256

of the Civil Procedure Act). If a defendant fails to submit its reply within the 30 days, the court may render a decision, without holding any pleadings, based on the assumption that the defendant has admitted plaintiff's claims (article 257 of the Civil Procedure Act).

Once a defendant submits its reply, the court sends a copy to the plaintiff within three to four weeks (usually with an order to submit the preparatory brief and evidence). Until the end of the hearing, the parties may make their written submissions at any time without restriction.

4 Pre-filing requirements

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

There is no pre-filing requirement (for example, mandatory mediation) to be satisfied before a formal lawsuit may be commenced by the product liability claimant. A product liability claim can be filed directly to the court.

5 Summary dispositions

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

In Korea, there is no summary disposition such as a motion to dismiss or motion for summary judgment.

6 Trials

What is the trial structure?

After one or two exchanges of briefs between the parties, the court sets the date for a hearing or preparatory hearing, which usually takes three to five months from the filing of the claim. Preparatory hearings used to be a mandatory requirement, but are now selectively applied by court since the amendment to the Civil Procedure Act of 26 December 2008.

Despite this amendment, courts often hold preparatory hearings in cases that raise complicated or important issues. Preparatory hearings involve presentation of parties' claims and main issues, requests for evidence, etc, and are conducted by a presiding judge or an associate judge. Preparatory hearings are usually held once but can be held two or three times if necessary.

In Korean civil litigation proceedings, there is no concentrated trial or hearing that lasts for a number of days in a row. Main hearings are held usually once a month and involve presentation of arguments by both parties and examination of evidence. Parties should submit their claims in writing (article 272 of the Civil Code) but, recently, oral argument has tended to play a more significant role than in the past.

Methods for evidence examination include written submission, witness examination, inspection and appraisal, among which the written submissions and witness examination are most commonly used. Witness examination starts with the examination by the party that called for the witness, followed by cross-examination by the opposing party and supplement examination by the court. In practice, witness examination takes about 30 minutes for each witness but may take longer than one or two hours if the case involves complicated facts or issues. Based on the consideration of the witness and the evidence to be presented by the witness, court may substitute witness examination for a written statement by witness (for example, a notarised affidavit).

7 Group actions

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

Although the Securities-Related Class Action Act, which can be applied to certain illegal acts (for example, false or insufficient filing of securities reports or business reports, etc), has been effective since January 2005, there is no general class action system in civil proceedings in Korea (including product liability cases). The 'appointed-party' system in Korea has some similarities with the class action system but is differentiated because, under the 'appointed-party' system, only those participating in the trial can enjoy the court's award.

8 Timing

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

After the filing of the complaint, it usually takes three to five months for the court to designate the hearing (or preparatory hearing) date. The trial court's decision usually takes eight to 12 months from the filing of the complaint but may take longer if the case involves complicated facts and issues. For example, in a cigarette case in Korea, the complaint was filed in 1999, the trial court's decision was rendered in 2007 and the appellate court's decision in 2011.

Evidentiary issues and damages

9 Pretrial discovery and disclosure

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

There are no pretrial discovery proceedings in Korea. However, during a trial, a party may request the court to make a document production order. Also, preservation of evidence may be permitted upon the application of a party if the court recognises the existence of exceptional circumstance where the evidence should be examined beforehand because the evidence cannot be used after the trial starts.

10 Evidence

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

Evidence may be submitted to the court in the form of witness testimony, written documents, party statement or an expert report or statement. A party may submit materials rebutting the evidence submitted by the other party. Prior to witness examination at the court, a party requesting witness examination should submit the contents of its examination to the court and the opposing party. The opposing party should prepare its cross-examination in writing and submit to the court at the time of cross-examination. This procedure also applies to expert witness examination. Credibility and value of the evidence can be disputed by the opposing party who can impeach the person who produced the evidence, submit its own evidence rebutting the disputed evidence and request to examine its own witness.

11 Expert evidence

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

When expert knowledge or experience is necessary, the court may appoint an expert as an appraiser at its discretion or upon request by a party. Each party may recommend to the court a certain expert or institution of expertise. In the appraisal process, each party may send inquiries to the appointed appraiser through the court and request for examination of the appraiser regarding the report submitted by the appraiser. Separately from the appraisal conducted by the court-appointed appraiser, a party may submit the written report of its own expert and call him or her as a witness. A party may submit its own witness report or statement without restriction, and the court has the discretion to determine whether a party expert should be selected as a witness upon the request by a party.

12 Compensatory damages

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

Under the Product Liability Act (PLA) of Korea, a manufacturer is liable for the damages to life, persons and property caused by product defect. Damage to the product itself is excluded from the 'damage' under the PLA. The PLA does not define the scope of damages and provides that the Civil Code should apply to the general provisions of compensation for damages. As such, direct damages (for example, property damage and medical expenses), indirect damages (for example, loss of potential benefit) and compensatory damages are recognised.

The Civil Code categorises the damages caused by intentional or negligent torts into ordinary damages and extraordinary damages. Ordinary damages are normally expected to incur by an instance of illegal conduct, while extraordinary damages may incur due to the extraordinary circumstances of the injured and can be compensated only when the offender could have foreseen such extraordinary circumstances.

13 Non-compensatory damages

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

There are no punitive damages in Korea, and, therefore, no compensation is available under the PLA other than those for the damages to life, persons and property caused by a product defect. However, since the PLA does not limit the maximum amount of damages, a court may take the significance of the case and the type of illegal act into consideration in determining the damage amount. However, a Korean court has never recognised a large amount of punitive damages as has been seen in US cases. On 10 October 2013, certain members of the National Assembly proposed a draft bill that would allow courts to impose exemplary damage not exceeding 12 times the amount of actual damage if the manufacturer knew of the alleged product defect before delivery of product, but took no action to correct it.

Litigation funding, fees and costs

14 Legal aid

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

Unless it is certain that a party has no chance to win the case, upon the request by a party or at its own discretion, the court may grant legal aid to a party unable to pay for the litigation costs. A party applying for legal aid must present to the court the evidence of its financial status. Legal aid includes deferred payment of court fees and attorneys' fees and exemption from the deposit for court fees. The opposing party may not object to the court's decision of granting legal aid other than the exemption from the deposit for court fees.

In addition, Korea Legal Aid Corporation, a public organisation, provides legal assistance (including representation during trial) to individuals with financial difficulties at minimal fees or without charge.

15 Third-party litigation funding

Is third-party litigation funding permissible?

There is no law or regulation specifically prohibiting third-party litigation funding in Korea.

16 Contingency fees

Are contingency or conditional fee arrangements permissible?

Contingency or conditional fee arrangements are permitted in Korea and there is no legal restriction on the maximum amount of such fee.

17 'Loser pays' rule

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

The 'loser pays' rule is applicable in Korea. After the case is completely closed (meaning the final closing of the case with no possibility of further proceeding), the prevailing party must apply for the court to assign

the final allocation of the litigation costs. The court determines the final amount of each party's costs for the proceedings, pursuant to which, the prevailing party may recover certain costs (for example, stamp tax, service of process fees and appraisal costs) from the losing party. However, only a portion (not the full amount) of attorneys' fees may be recovered under court regulations.

Sources of law

18 Product liability statutes

Is there a statute that governs product liability litigation?

The PLA governs the product liability litigation in Korea. Pursuant to clause 1, article 3 of the PLA, a manufacturer is responsible to compensate for the damages to life, persons and property caused by product defect, except for the damages incurred to the product itself. A manufacturer cannot be relieved from its responsibility for damage compensation unless it can prove any of the following (clause 1, article 4 of the PLA):

- the manufacturer did not supply the product;
- existence of the defect was not discoverable by the state of science or technical knowledge at the time when the manufacturer supplied the product;
- the defect was due to the compliance with any act or subordinate statute at the time when the manufacturer supplied the product; or
- in the case of raw materials or components, the defect was attributable to the design of the product in which any raw materials or components have been fitted or to the instructions concerning manufacturing given by the manufacturer of the product using them.

In addition, any special agreement excluding or limiting the manufacturer's liability for damages under the PLA is invalid, unless a person who received a product in order to use it for his or her own business makes a special agreement excluding manufacturer's liability for the damages on his or her business property (article 6 of the PLA). However, contractual liability for non-performance of obligations may also arise between the contracting parties.

Although there was a revision to the PLA in 2013, most of the revision involved changes to the wording as opposed to any substantive law changes.

19 Traditional theories of liability

What other theories of liability are available to product liability claimants?

Prior to the enactment of the PLA, a product liability action could be brought as torts or non-performance of liability claims under the Civil Code. In such cases, the plaintiff had the burden of proving a defendant's wilfulness or negligence and defect in product, occurrence of damage and the causal link between the defect and the damage. However, if the plaintiff could prove that the accident had happened within the realm of the manufacturer's exclusive control and that such an accident does not usually happen without being someone's fault and the defendant could not prove that the accident was caused by a reason other than the product defect, the court mitigated the plaintiff's burden of proof by acknowledging the inference of manufacturer's liability.

20 Consumer legislation

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

Article 19 of the Framework Act on Consumers of Korea (FAC) provides for manufacturer's responsibilities as follows:

- duty to take necessary measures to prevent any danger and injury from goods or services to a consumer's life, person or property;
- duty not to use any condition or method of trade that might interfere with rational choice or interest of consumers, in the supply of goods or services;
- duty to sincerely provide consumers with accurate information on goods, etc; and
- duty to settle any consumers' complaints or damages owing to the defects of goods or services through providing necessary compensation, etc, and to indemnify them for any damages caused by non-fulfilment of obligation.

A consumer may request for compensation for damages caused by using products or service under the FAC.

The Act on the Registration and Evaluation of Chemicals (K-REACH) came into force on 1 January 2015. K-REACH is intended to prevent hazards caused by chemical substances and products containing hazardous chemical substances in advance and to protect public health and the environment by systematically managing hazards and risk of chemical substances and establishing a chemical safety management programme which requires manufacturers and importers of certain chemical substances to register with the Ministry of Environment (MOE) prior to the manufacture or import and allows the MOE to identify them as toxic, permitted or restricted substance based on its assessment of hazards and risks of the substance.

In addition to such administrative measures, K-REACH also imposes the burden on the manufactures to reduce hazardous chemicals, develop a safe substitute or a new technology, and undertake other necessary measures and on the manufacturers and importers to ensure that no physical or property damage will be caused by hazardous chemical substance contained in the product concerned. Such requirements under K-REACH would have the effect of placing consumers in a more favourable position in relation to the recognition of the existence of a 'defect' in a product liability case.

21 Criminal law

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

Under the FAC, if an administrative agency considers that a company causes or may cause any danger or injury to consumers' lives, bodies, or property due to a defect in goods furnished by the company, the administrative agency may order the company to remove, destroy, or repair such goods, exchange them for other goods, refund the costs, or prohibit manufacturing, import, sale or supply of such goods, and to repair relevant facilities or take other necessary measures, pursuant to the procedures determined by the Presidential Decree (clause 1, article 50, FAC). In addition, in order to prevent any danger or injury to consumers' lives, persons, or property arising from goods, etc, the state should determine the standards the companies should abide by (clause 1, article 8, FAC). If a company manufactures, imports, sells or provides the products or services in violation of such standards, an administrative agency may order the company to suspend such act of violation or take other corrective measures (clause 1, article 80 of the FAC). A violator of such an order could be subject to imprisonment for not more than three years or a fine not exceeding 50 million South Korean won (item 1, clause 1, article 84, FAC).

In addition, a person who causes the death or injury of another by occupational or gross negligence may be punished by imprisonment for not more than five years or by a fine not exceeding 20 million South Korean won under the Korean Criminal Code (article 268 of the Criminal Code). Such provisions may be applied to a seller of a defective product, who is deemed to have such gross negligence and caused the death or injury of another.

22 Novel theories

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

On the duty to warn by a manufacturer and the legal standard governing a design defect, the Korean Supreme Court stated the following in its *Agent Orange* decision in 2013:

- a manufacturer who designs and manufactures a chemical product containing a toxic substance that is harmful to the human body has a high standard of obligation to prevent risks;
- the manufacturer should thoroughly verify the safety of the manufactured product using the highest level of technology available at the time, and remove and minimise the risks that may occur through investigation and research; and
- if a manufacturer designs a chemical product with a risk of causing harm to human life and body, and manufactures and sells such a product the way it is designed in violation of such a high standard of obligation to prevent risks, it is appropriate to recognise that, unless special circumstances exist, such chemical products have a design defect.

In addition, on whether statistical connection proves the causation in a product liability suit, the Korean Supreme Court held as follows in the *Agent Orange* decision and the cigarette decision. With respect to non-specific

diseases, even if an epidemiological correlation is recognised between a risk factor and a non-specific disease, the probability of causation between the risk factor and the non-specific disease cannot be seen to have been proven by mere proof of the fact that an individual was exposed to the risk factor and that the individual was afflicted with the non-specific disease. The probability of causation between the risk factor and the non-specific disease should be proven by showing through a controlled epidemiological study on a group exposed to the risk factor and another general group not exposed thereto that the incidence rate of the non-specific disease in the exposed group is significantly higher than that in the unexposed group and by additionally proving the time and extent of exposure to the risk factor, the time of occurrence of the non-specific disease, health conditions prior to exposure to the risk factor, lifestyle, progress of the non-specific disease and family history in respect of individuals in the exposed group. (Hence, the decisions were rendered that there was no proof of the connection between the Agent Orange and non-specific diseases such as diabetes or the connection between smoking and non-specific diseases such as non-small cell lung cancer.

23 Product defect

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

In determining the existence of a product defect, the Korean Supreme Court considers various factors such as a common understanding of the society, characteristics and usage of product, ordinary form of use, expectation of users, expected risk, user's awareness of risk, possibility of user's avoidance of risk, possibility and economic costs of alternative design, and relative advantages and disadvantages of the current design and the alternative design. (Supreme Court Decision No. 2007DA52287, 28 February 2008).

24 Defect standard and burden of proof

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

Since the manufacturer and seller of products are ordinarily required to produce safe products within the expected scope in light of present technology and economic efficiency in structure, quality and performance of products, the product is deemed to have a 'defect' if the product lacks such safety. In connection therewith, the PLA defines the term 'defect' as the defect of any products in manufacturing, design or warning falling under any of the following items or lack of safety that the product ordinarily should provide (clause 2, article 2 of the PLA):

- defect in manufacturing – lack of safety caused by manufacturing or processing of any product deviating from the originally intended design, regardless of whether the manufacturer faithfully performs the duty of care and diligence with respect to the manufacturing or processing;
- defect in design – lack of safety caused by the failure of the manufacturer to adopt a reasonable alternative design in a situation that any damage or risk caused by the product would otherwise be reduced or prevented; and
- defect in warning – conditions that a manufacturer fails to give reasonable explanations, instructions, warnings and other indications on the product, while occurrence of damage or risk caused by the product could otherwise be reduced or prevented.

The PLA does not provide for allocation of burden of proof, and, therefore, like in other civil litigation, the plaintiff should prove the existence of defect, occurrence of damage and causation between the defect and the damage. However, based on the precedents, the courts may mitigate the plaintiff's burden of proof in product liability cases. Although the PLA does not prescribe the standard of proof for a 'defect', the general principle has been that the plaintiff should prove the existence of a defect by a preponderance of the evidence. On 9 July 2010, certain members of the national assembly proposed a draft bill that would require the manufacturer to prove that the consumer was negligent or the product was free of the alleged defect in a damages claim alleging product defect. This draft bill, however, was automatically discarded after the term of the proposing members of the National Assembly expired on 29 May 2012.

25 Possible respondents

Who may be found liable for injuries and damages caused by defective products?

A manufacturer subject to product liability under the PLA is defined as follows (clause 2, article 3, PLA):

- a person who is engaged in the business of manufacturing, processing or importing any product; or
- a person who presents himself or herself as any person falling under the previous item by putting his or her name, firm name, trademark or any other distinguishable feature (his or her name) on the products, or a person who puts his or her name, etc, on the product in a manner mistakable for any person falling under the previous item.

When a manufacturer is unidentifiable, the person who supplied the product for profit, in a form of sale or lease, etc, shall be liable for damages, if the supplier knows or could have known the manufacturer's identity but fails to inform the injured party (or legal representative) of the manufacturer's identity within a reasonable time (clause 2, article 3 of the PLA).

26 Causation

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

There is no specific provision regarding the causation under the PLA. Accordingly, the plaintiff should prove causation between defect and damages under the general theory and the proof of causation should be sufficient for the court to exclude any reasonable doubt. Provided, however, that with respect to the damage caused by high-tech products manufactured by mass production, the court mitigates the plaintiff's burden to prove causation between defect and damage because it is very difficult for consumers to scientifically and technically prove the defect and causation between the defect and damages (see question 19).

27 Post-sale duties

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

A manufacturer cannot be exempted from liability if the manufacturer fails to take appropriate measures to prevent damages even though the manufacturer, after delivery of a product, knew or could have known of the defect in the product (clause 2, article 4, PLA).

Also, the FAC prescribes that, upon discovery of a material defect in the goods or services provided to consumers that causes or may cause any danger or injury to consumers' lives, persons, or property, a company must report to the administrative agency (clause 1, article 47, FAC). In the case of a defect, a company should remove, destroy, or repair the relevant goods or services, exchange them for other goods or services, refund the costs, or prohibit manufacturing, import, sale or supply of such goods or services and take other necessary measures (article 48 of the FAC).

Limitations and defences

28 Limitation periods

What are the applicable limitation periods?

The PLA provides for the 10-year long-term statute of limitations and three-year short-term statute of limitations, and the statute of limitation runs with whichever occurs earlier. Specifically, a claim under the PLA should be brought within 10 years from the delivery of the defective product and within three years from the plaintiff's discovery of damages and relevant liabilities. For the damages caused by harmful substances or the damages that become apparent after a certain latent period, the long-term statute of limitation will be calculated from the occurrence of damages.

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

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

State-of-the-art or development risk defence is recognised in the PLA, which prescribes that a manufacturer may be exempted from liability if the manufacturer proves that it was not possible to discover the product defect by the state of science or technology at the time of supply of the product. The manufacturer has the burden of proof for such defences. However, a manufacturer cannot be exempted from liability if the manufacturer fails to take appropriate measures to prevent damages even though the manufacturer, after delivery of product, knew or could have known of the defect in the product.

30 Compliance with standards or requirements

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

The PLA prescribes that 'the manufacturer shall be exempted from the liability if the product defect was due to manufacturer's compliance with the standards provided by the laws or regulations at the time of delivery of the defective product'. The manufacturer has the burden of proof in such a case.

31 Other defences

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

See question 18 for the statutory defences under the PLA.

32 Appeals

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

The appeals process in product liability cases is the same as in other civil cases in Korea. A party may appeal the decision of the trial court (namely, district court) to the High Court, and the High Court's decision can be appealed to the Supreme Court. The appeals must be filed within two weeks from the receipt of the lower court's decision. As the appeals proceedings at High Courts are conducted by trial de novo, the facts or evidence not presented to the trial court can be submitted and there is no time limit to submit the reasons for the appeal.

However, the reasons for an appeal to the Supreme Court should mainly discuss questions of law and should be submitted within 20 days from the receipt of notice that the Supreme Court has received the case records. If the reasons for the appeal are filed after such a period, the appeal will be dismissed by the Supreme Court.

Filing an appeal provides a practical benefit that it may suspend the enforcement of the court's decision. If the court renders a decision recognising a plaintiff's claim for damages, a provisional enforcement order is also issued and enforcement of the order can be made based on the first court's decision, without closing the case. However, the appellant may request for the suspension of enforcement when filing an appeal, and the suspension of enforcement may be ordered on the condition of providing security. If an order of provisional enforcement is attached to the judgment of the appeals court (namely, the High Court), the request for suspension of enforcement is usually rejected even if an appeal is filed with the Supreme Court.

Jurisdiction analysis

33 Status of product liability law and development

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

Even before the PLA became effective on 1 July 2002, such legal principles had been recognised in many precedents. However, the PLA provides more clear definition of the conditions and scope of product liabilities. In Korea, the introduction of the PLA was designed to strengthen the obligation of

enterprises to ensure the product safety and promotes consumers' rights and interests. Efforts to promote consumers' rights and interests are active in Korea due to the high level of consumer awareness, educational background and keen interest in their rights developed during the process of rapid economic growth within a short period of time.

As a result, manufacturers must pay great attention to consumer safety as well as protection of consumer rights and interests, which has been reflected in changes to legislature. For example, the FAC stipulates the obligation on entrepreneurs to take actions necessary to protect consumers from any harm to their safety and that the government may collect and destroy products that cause harm to consumers. Also, collective lawsuits were introduced in 2008 to allow consumer organisations to file a lawsuit for individual consumers if their rights and interests are harmed by enterprises' violations of the law. There have not been many cases of collective lawsuits, but such changes have led to the increase in enterprises' awareness of consumer safety and voluntary efforts to improve their product quality such as product recalls when defects are identified in their products.

34 Product liability litigation milestones and trends

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

With respect to the case where Vietnam War soldiers requested the United States herbicide manufacturers to indemnify for damages because of their diseases owing to Agent Orange, on 12 July 2013, the Korean Supreme Court remanded the case to the Seoul High Court, ruling partially in favour of the appeals of the defendants and rejecting all other appeals of the defendants (represented by Shin & Kim) and the plaintiffs. While the Seoul High Court found a causal relationship between exposure to Agent Orange and 11 diseases, such as chlorine cane, lung cancer and throat cancer, the Korean Supreme Court denied such causal relationship for all diseases except for chlorine cane. The Korean Supreme Court refused to find the causation merely based on the facts that there is a statistical correlation between exposure to Agent Orange and the other 10 non-specific diseases suffered by the plaintiffs and that the plaintiffs did suffer from such non-specific diseases. That is, the Supreme Court viewed that the individual causal relationship cannot be admitted by the epidemiologic causation, but require additional evidence. This decision of the Supreme Court is noteworthy because it states that the individual causal relationship cannot be acknowledged only by the epidemiologic causation. In the remand proceeding, the Seoul High Court dismissed all of the damages claims by the defendants with non-specific diseases, and issued its decision consistent with the Supreme Court's decision on 14 November 2014.

35 Climate for litigation

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

There is a high level of awareness regarding consumer rights in Korea. Accordingly, collective lawsuits by consumers and the consumer dispute mediation process were introduced. The class action lawsuit has not yet been introduced in Korea, but the *Agent Orange*, *automobile gas emissions* and *cigarette* cases could be considered as class action lawsuits. Recently, the customers, who suffered from the financial companies' leakage accident of personal information, jointly filed a lawsuit against the financial companies. These cases raised public controversy over the necessity for a legal system that allows a group of victims having the same cause to efficiently file a lawsuit. As such, the class action lawsuit similar to that permitted under the common law will likely be introduced in Korea in the near future. Moreover, the passage of the law amendment for the introduction of a punitive compensation system is likely to cause the easier filing of more lawsuits.

36 Efforts to expand product liability or ease claimants' burdens

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

In the run-up to publication, two amendments to the PLA, proposed by members of the National Assembly on 28 November 2012 and 10 October 2013, were pending approval by the National Assembly. The amendment

proposed on 14 November 2014 was also pending approval by the National Assembly. Note that these amendments were automatically discarded with the end of the term of the 19th National Assembly on 31 May 2016. The amendments contained provisions that would have triggered the presumption of the following in a product liability case:

- a defect in the product in question if damages resulted from a normal use of the product; and
- a causal connection between the defect and the damages if the damages suffered are the same as the damages that can result from the defect in question.

These provisions were intended to ease the burden of proof on the plaintiffs. As well as these presumptions, the amendments sought to impose on manufacturers punitive damages within the range of 12 times the actual damages suffered, authorising the courts to assess damages by considering a set of factors comprising whether the manufacturer committed an intentional wrongdoing or was aware of the likely occurrence of the damages, what the actual damages were in amount, the duration of the conduct of the manufacturer and the size of the damages, and the endeavours by the manufacturer to redress the damages.

The amendment proposed on 14 November 2014 provided for the following:

- expanding the scope of product liability by stipulating to 'consider lack of safety customarily expected';
- deleting 'compliance with the law at the time the product was supplied' from the exemption clause;
- the introduction of a 'presumption of causation clause' between the defect and damages to ease the customer's burden of proof; and
- excluding the application of the Civil Act because the Product Liability Act is a special Act to the Civil Act that requires the defect of a product as an additional requirement for compensation of damages.

In a recent case in which the plaintiff, a Korean citizen, sued a Japanese company for damages in connection with the compulsory military draft during the Japanese colonial period in Korea, the Korean Supreme Court rejected the defendant Japanese company's argument that the statute of limitations had already run on the claim, holding that the plaintiff could still raise a claim for damages.

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