



# Product Liability

in 31 jurisdictions worldwide

Contributing editors: Harvey L Kaplan,  
Gregory L Fowler and Simon Castley

# 2013



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# Switzerland

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## Civil litigation system

### 1 The court system

What is the structure of the civil court system?

Switzerland has a federal system that consists of three different levels: the confederation, the cantons and the municipal authorities. The cantons are sovereign except to the extent that their sovereignty is limited by the federal constitution. Consequently, the 26 Swiss cantons have a considerable degree of lawmaking authority. Civil proceedings before cantonal courts are governed by a Federal Act – the Swiss Civil Procedure Code (CPC). The organisation of the civil court system remains in the authority of the cantons and is subject to cantonal law. Cantonal legislation usually provides for multiple district courts (court of first instance) and one superior court (court of appeal). Some cantons (for example, Zurich, Berne, St Gallen and Aargau) provide for a specialised commercial court, which is the sole cantonal instance in commercial matters. The highest court and court of final appeal in Switzerland is the Swiss Federal Supreme Court in Lausanne.

### 2 Judges and juries

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

Civil court proceedings in Switzerland are contradictory. Each party is heard by one or more judges at first instance. The judge (or president of the panel of judges) has formal and material control over the proceedings. A judge may set deadlines for party's submissions. The parties must substantiate their claims and present the facts to the court and submit evidence in support of their case (article 55, paragraph 1 CPC). If a party's submission is unclear, conflicting, ambiguous or incomplete, the court gives the party the opportunity to clarify or complete the submission by asking appropriate questions (court's duty to inquire, article 56 CPC). A judgment is based on the free assessment of the evidence taken. In its decision, the court does not award a party anything more than or different from what the party has requested, nor less than what the opposing party has acknowledged (article 58, paragraph 1 CPC). Swiss law does not provide for juries in civil or criminal matters.

### 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?

The ordinary proceedings are initiated by filing the statement of claim at the competent court including the prayers for relief, a detailed description of all relevant facts, notice of the evidence offered for each allegation of fact and the available physical records to be offered in evidence (article 221 CPC). The court serves the defendant with the statement of claim and at the same time sets a time limit to file a

written statement of defence (article 222, paragraph 1 CPC). Time limits set by the court may be extended for good reason if the request to do so is made before the period expires. The court may order a second exchange of written submissions if the circumstances require so and the court may hold instruction hearings at any time during the proceedings (article 225 CPC).

A case becomes pending when an application for conciliation (see question 4), an action or an application is filed (article 62 CPC).

### 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?

Litigation is generally preceded by a mandatory attempt at conciliation before a conciliation authority (article 202 CPC). If no agreement is reached, the conciliation authority grants authorisation to proceed and commence a formal lawsuit (article 209, paragraph 1 CPC). Under certain circumstances, conciliation proceedings are not held. For example, there are no conciliation proceedings if jurisdiction is with the commercial court or if the value in dispute exceeds 100,000 Swiss francs. The parties may also mutually agree to waive any attempt of conciliation. The plaintiff may unilaterally waive conciliation if the defendant's registered office or domicile is abroad or if the defendant's residence is unknown. The conciliation proceedings may be replaced by mediation upon request of both parties (article 213 CPC).

### 5 Summary dispositions

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

In Switzerland there are several mechanisms available to seek resolution of a case before a full hearing on the merits. An attempt at conciliation before a conciliation authority is generally mandatory and the conciliation authority only grants authorisation to proceed if no agreement may be reached (see question 4). A court may issue an interim decision delivering a judgment on single issues, for example, the jurisdiction of the court. The court may at any time attempt to achieve a settlement agreement between the parties (article 124, paragraph 3 CPC). Further, the parties may agree to seek resolution of the dispute in mediation (article 214 CPC). A settlement agreement approved by the court has the same effect as a legally binding decision.

### 6 Trials

What is the basic trial structure?

There are several stages in ordinary civil proceedings. Ordinary proceedings are predominantly conducted in writing and are initiated by filing the written statement of claim, subsequently followed by the exchange of written submissions (see question 3). In the main

hearing, the parties present their case and have the opportunity to reply, followed by a rejoinder. After the hearing, the court continues with the evidentiary proceedings. Before evidence is taken, the court issues an order, indicating the admissible evidence and which party bears the respective burden of proof or counter proof. Orders on evidence may be changed or amended at any time (article 154 CPC). Once the evidence is taken, the parties may comment on the result of the evidence and on the merits of the case. The court allows the parties the opportunity for closing submissions (article 232 CPC). The final stage of proceeding forms the deliberations of the court and the judgment. The court closes the proceedings by deciding not to consider the merits or by making a decision on the merits. The court decides by majority.

The court may hold instruction hearings (and take evidence) at any time during the proceedings in order to discuss the matter in dispute in an informal manner, to complete the facts, to attempt to reach an agreement and to prepare for the main hearing (article 226 CPC).

### 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?

Swiss law does not provide for group actions. However, claimants whose rights and duties result from similar circumstances or legal grounds (for example, product liability) may jointly appear as plaintiffs (article 71 CPC). If two or more actions that are factually connected are raised against one and the same defendant, each court that has jurisdiction over any one of the actions has jurisdiction over all of them (article 15, paragraph 2 CPC). The joint parties may appoint a joint representative. Swiss law does not provide a right for representative bodies to bring representative actions in the scope of product liability litigation in Switzerland.

### 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?

The duration of the overall proceedings may vary and depends on the complexity of the case, the conduct and tactics of the parties, the evidence to be taken and the workload of the respective court. Between filing the statement of claim, the exchange of written submissions and the main hearing (see questions 3 and 6) several months may pass. Hearings, however, usually last from a few hours to a couple of days, depending on the evidence to be taken.

## 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 is no pretrial discovery in Switzerland and parties are not required to disclose evidence before the evidentiary proceedings. Upon request, a court may order precautionary taking of evidence if the applicant, *inter alia*, shows probable cause that the evidence is at risk or if the applicant has a legitimate interest (article 158 CPC).

A party may be entitled to information that might be used for evidence based on other legal grounds (for example, contract law). Consequently, a party may file an action by stages, requesting information for evidence in a first step and then file a substantiated action.

### 10 Evidence

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

Evidence is required to prove facts that are legally relevant and disputed (article 150 CPC). The following means of evidence are admissible in civil procedures in Switzerland: testimony, physical records, inspection, expert opinion, written statements, questioning and statements of the parties (article 168 CPC).

In their submissions, parties are required, *inter alia*, to offer evidence for each allegation of fact. Parties to the proceedings and third parties have a duty to cooperate in the taking of evidence (article 160 CPC). In particular, they have the duty to make a truthful deposition as a party or a witness (usually by live testimony), to produce the physical records and to allow an examination of their person or property by an expert. The court may not, however, infer from a party's or third party's legitimate refusal to cooperate that the alleged fact is proven.

There is no cross-examination in Switzerland. Witnesses are summoned by the court. Upon request of a party, a court may ask additional questions (article 173 CPC). The court may also question one or both parties on the relevant facts of the case or it may *ex officio* order one or both parties to give evidence subject to criminal penalties for failure to do so (article 191 CPC).

### 11 Expert evidence

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

Expert evidence plays an important role in product liability actions. At the request of a party or *ex officio*, the court may obtain an opinion from one or more experts (article 183 CPC). The court must hear the parties before appointing an expert. The parties may appeal against the nomination of an expert by pursuing a legal remedy. The court may order that the expert submits his or her opinion in writing or presents it orally. The court may also summon the expert to the hearing in order to explain his or her written opinion. The court gives the parties the opportunity to ask for explanations or to ask additional questions. Swiss law does not provide for cross-examination of experts. All expert evidence of court appointed experts is considered to be independent.

The parties may also present evidence of self-selected experts. Such expert opinions are considered merely as statements of the parties. In practice, however, an expert opinion submitted by a party may have considerable weight and may convince a court regarding technical questions in dispute, depending on the reputation of the expert and the quality of the expert opinion.

### 12 Compensatory damages

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

Compensatory damages under the Product Liability Act (PLA) are available for personal injury and death and in respect of damage to property in private use (article 1 PLA (see questions 18 and 35)). No claim may be made under the PLA for damage to the defective product itself. Damages that are not recoverable under the PLA may be based on other legal grounds, for example, tort or contract (see question 19). In addition, where a person has been killed, or has sustained bodily injury, the judge may, having due regard to the particular circumstances, award to the injured person, or the next-of-kin of the deceased, an adequate sum of money as reparations (article 47 Swiss Code of Obligations (CO)).

For limitation periods, see question 28.

**13 Non-compensatory damages**

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

Non-compensatory damages are not available in Switzerland. Even if claims based on a product defect or a faulty description of a product are governed by foreign law, no damages may be awarded in excess of those that would have been awarded for such damage under Swiss law (article 135, paragraph 2 of the Federal Act on Private International Law (PIL)).

**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?

A person is entitled to legal aid if he or she does not have sufficient financial resources and his or her case does not seem devoid of any chances of success (article 117 CPC). In general, legal aid comprises an exemption from the obligation to pay advances and provide security, an exemption from court costs, the appointment by the court of a legal agent under the legal aid system if this is necessary to protect the rights of the party concerned and, in particular, if the opposing party is represented by a legal agent. The grant of legal aid does not relieve the party concerned from paying party costs to the opposing party (article 118 CPC).

A party must reimburse the legal aid received as soon as he or she is in a position to do so. The canton's claim prescribes 10 years after the closing of proceedings (article 123 CPC).

Generally, the opposing party may object to a decision granting legal aid to the other party, if it has a legitimate interest (for example, regarding an exemption from the obligation to provide security for party costs).

**15 Third-party litigation funding**

Is third-party litigation funding permissible?

Third-party funding of litigation is permissible in Switzerland. Third-party funders may, in return, reward a share of any awards made by the court to successful claimants.

**16 Contingency fees**

Are contingency or conditional fee arrangements permissible?

Contingency fee arrangements are not permissible in Switzerland. Attorneys are therefore not allowed to act on a no win no fee basis in return for a success fee. Attorneys may, however, agree on a basic non-conditional fee (covering costs, expenses and adequate profit) and an additional success fee.

**17 'Loser pays' rule**

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

As a general rule in Switzerland procedural costs are charged to the unsuccessful party (article 106, paragraph 1 CPC). If no party is entirely successful, the costs are allocated in accordance with the outcome of the case. The court, however, may diverge from the general principles of allocation and allocate the costs at its own discretion if certain requirements are met (article 107 CPC; for example, if an action has been upheld in principle but not the full amount claimed, and if the amount of the award was difficult to quantify).

The procedural costs (article 95 CPC) include the court costs (for example, fee for the conciliation proceedings, judgment fee, costs of taking evidence, costs of translation) and the party costs (for example, reimbursement of necessary outlays, costs for professional

representation). The cantons set the tariffs for the procedural costs. Procedural costs mainly depend on the specific value in dispute.

Therefore, the unsuccessful party will be ordered to pay the procedural costs (including legal fees and expenses of the successful party according to the cantonal tariffs). Additionally it bears the costs for its own attorney and expenses.

**Sources of law****18 Product liability statutes**

Is there a statute that governs product liability litigation?

The PLA imposes strict liability on manufacturers, importers and suppliers for personal injuries and damages to goods in private use caused by a defective product (see questions 23 and 25). The PLA follows the European Directive on Product Liability to a large extent (EC Directive 85/374). The Swiss Product Safety Act (PSA) and its implementing regulation provide rules on product safety. The PSA resembles the Directive 2001/95/EC of the European Parliament and of the Council on general product safety.

**19 Traditional theories of liability**

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

The PLA provides in article 11, paragraph 2 that, alternatively, product liability claims may be based on traditional theories of liability such as tort or contract. In general, liability under tort or contract law is fault-based.

Under contract law, product liability claims may be based on the general provisions of article 97 Swiss Code of Obligations (CO) or may be based on special provisions such as sales warranties (article 197 CO) or the liability of the contractor in the event of a defective piece of work (article 368 CO). Usually, however, there is no contractual relationship between the consumer and the manufacturer. Consequently, product liability claims against a producer may be brought forward under tort. An action in tort may be based on the so-called danger-rule (Gefahrensatz, article 41 CO) or the liability of the principal (article 55 CO).

Product liability claims may also be based on federal and cantonal public law, such as specific product, industry or activity-related statutes (for example, the Federal Act on Explosive Substances).

**20 Consumer legislation**

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

The PLA itself also protects consumers. In addition, the PSA imposes duties on manufacturers, inter alia, with the goal to ensure the safety of products and therefore indirectly protects consumers. In particular, post-sale duties according to the PSA only apply regarding consumer products. Likewise, specific product-related statutes may provide consumer protection provisions and impose certain duties on manufacturers (for example, Federal Act on Foodstuffs and Utility Articles).

Swiss law provides for special rules regarding jurisdiction of courts in matters relating to consumer contracts. Accordingly, in disputes concerning consumer contracts, a court has jurisdiction at the domicile of either of the parties (article 32 CPC).

**21 Criminal law**

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

The sale or distribution of defective products may lead to criminal sanctions under the Swiss Penal Code (SPC). Examples of criminal liability regarding defective products include involuntary

manslaughter (article 117 SPC), bodily injury by negligence (article 125 SPC), conflagration by negligence (article 222 SPC) or misuse of explosives or toxic gases without criminal intent or through negligence (article 225 SPC). Also, the PSA provides for criminal liability (article 16 and article 17). Further, public law regarding specific environmental or industry related laws and regulations provide for criminal liability (for example, Swiss Environmental Protection Act (EPA)).

A company may be held liable and face a fine of up to 5 million Swiss francs if a criminal act is committed in the exercise of commercial activities in accordance with the objects of the company and if it is not possible to attribute this act to any specific natural person due to the inadequate organisation of the company (article 102 SPC).

## 22 Novel theories

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

There is some debate regarding the new PSA and how it will influence product liability litigation in the future. It is likely that PSA widens the field for product liability claims. It is possible that the infringement of provisions of the PSA that cause personal injury or damages may lead to the compensation under general tort law. The interaction of PSA, specific product, industry or activity related statutes and PLA as well as general tort and contract law is not entirely clear at the moment and will have to be interpreted and clarified by the courts.

## 23 Product defect

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

According to article 4, paragraph 1 PLA, a product is defective if it does not provide the safety that a person is entitled to expect, taking into account all circumstances, particularly:

- the presentation of the product to the public;
- the use that one reasonably may expect; and
- the date on which the product was put into circulation.

For example, a product defect may result from a lack of appropriate information, a design or manufacturing defect.

## 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?

The test that courts apply under the PLA to determine if a product is defective is whether a product provides the safety that a person is entitled to expect (see question 23). The actual expectation of a specific person is not decisive. As a general principle, the claimant bears the burden of proof. No strict proof but a 'preponderant probability' for product defects is necessary with regards to the degree of the required standard of proof (BGE 133 III 81, E 4.2.2). In a recent decision the Swiss Federal Supreme Court has held that this does not reverse the onus of proof to the other party (BGE 137 III 226, E 3.2).

According to article 3 PSA, a product may only be put into market circulation if it poses no harm to the safety and health of users or innocent bystanders. Products have to meet basic requirements of safety and health or if no such requirements have been established, products must comply with the state of science and technology. Moreover, to ensure the safety and health of users and innocent bystanders, certain elements have to be considered: specified or estimated service life of a product; possible interactions with other products in normal use; the use by consumers; and the use by groups of consumers facing greater risks.

## 25 Possible respondents

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

The manufacturer of a product may be found liable for injuries and damages caused by defective products according to article 2 PLA. The term 'manufacturer' under article 2 PLA is defined broadly and includes:

- the manufacturer of an end product, any basic material or single product components;
- any person presenting itself as a manufacturer by affixing its name, trademark or other distinguishing feature to a product; and
- any person importing a product into Switzerland with the intent to sell, lease or otherwise distribute the product in the course of business.

In addition, each supplier is subsidiarily liable if the manufacturer of the product cannot be established and if the supplier does not disclose the identity of the manufacturer or the person who supplied it with the product upon request of the injured person and within a reasonable period of time (article 2, paragraph 2 PLA). In practice, however, claimants usually address the manufacturer or importer of the end product.

## 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?

The injured party bears the burden of proving the defect, damage and causation. There must be an 'adequate' causal link between defect and injury or damages in order to establish liability. Natural causation is not sufficient. With respect to product liability, the causation between the defective product and injury or damages is considered as an adequate causal link if the defect referred to general experience of life and the usual course of event is likely to cause such injury or damages.

## 27 Post-sale duties

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

The PLA does not specifically provide for post-sale duties of manufacturers. Post-sale duties of a manufacturer may be subsumed under the general principle that products have to provide the safety that a person is entitled to expect (article 4, paragraph 1 PLA). Furthermore, post-sale duties might arise pursuant to contractual obligations or under general tort law (articles 41 and 55 CO).

In contrast, the PSA explicitly provides post-sale duties for consumer products and products that could, under reasonably foreseeable conditions, be used by consumers. Post-sale duties include the duty to monitor the market and to inform the competent authorities in case of danger (article 8 PSA). Accordingly, the manufacturer or the importer is obliged to implement adequate procedures and measures after having put a product into circulation in order to identify and trace back the product and avert dangers originating from the product (for example, warnings, cessation of sales, withdrawal from the market or recall). Moreover, the manufacturer or importer is obliged to examine complaints regarding product security thoroughly and take samples if necessary. The retailer must cooperate in order to comply with the safety requirements and monitor the market. A breach of post-sale duties according to the PSA or other statutes may lead to liability under PLA and tort law (articles 41 and 55 CO).

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**Limitations and defences**


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**28 Limitation periods**

What are the applicable limitation periods?

Claims under the PLA must be brought within three years after knowledge (or after the claimant reasonably should have become aware) of the damage, defect of the product and the identity of the manufacturer (article 9 PLA). In any event, claims must be filed within 10 years from the date that the defective product was first put into circulation (article 10 PLA).

Claims based on general tort law must be brought within one year after knowledge (or reasonably should have become aware) of the damage and the liable person (article 60, paragraph 1 CO). Claims under tort law must be brought, in any event, 10 years after the date on which the loss or damage was caused.

Generally, claims based on contract law must be brought within 10 years after due date (article 127 CO). Certain claims become time-barred after five years (article 128 CO, for example, claims in connection with work carried out by tradesmen and craftsmen or purchases of retail goods). Claims based on sales warranties must be brought within one year after the delivery of the purchased product (article 210 CO). Also, the buyer must have notified the seller immediately in the event of defects (article 201 CO).

**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?

The PLA provides a state-of-the-art defence to claims made under the PLA. The onus of proof lies on the manufacturer to show that the defect was not discoverable in the light of the scientific and technical knowledge at the time the product was put into circulation (article 5, paragraph 1 lit e PLA). In such a case the manufacturer is not liable.

**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?

It is a defence to a claim if the manufacturer proves that the defect occurred due to mandatory legal requirements issued by the public authorities (article 5 paragraph 1 lit d). However, compliance with voluntary standards or requirements does not provide an exemption from liability according to the PLA (or tort or contract) since a manufacturer is obliged to design a safe product according to the latest state of scientific or technological knowledge.

**31 Other defences**

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

Other defences, further to the above-mentioned defences against claims brought under the PLA include the producer's proof that (article 5, paragraph 1 PLA):

- the product was not put into circulation by the producer;
- regarding the circumstances, it is likely that the defect did not exist at the time the product was put into circulation; or
- the product was neither manufactured for sale or any other form of distribution for economic purposes, nor manufactured or distributed in the producers' course of business.

Furthermore, the manufacturer of raw material or a component part is not liable if he or she proves, that the defect was caused by the design of the product into which the raw material or the component part was integrated or if the defect was caused by instructions issued by the manufacturer of the product (article 5, paragraph 2 PLA).

Other possible defences to claims under PLA are outlined in questions 29 and 30.

And further defences to claims arise based on other statutes and doctrine. As, for example, it is a defence if the defendant can show that the claimant consented to the act causing the damage, or if circumstances for which the damaged party is responsible have caused or aggravated the damage (article 44 CO). In such a case the judge may reduce or completely deny any liability based on tort law.

**32 Appeals**

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

In a district court trial, a party may appeal the decision to the cantonal appellate court if the value in litigation exceeds 10,000 Swiss francs (article 308, paragraph 2 CPC). The appellate court conducts a full review on points of fact or law. New facts and new evidence are only considered if they are submitted immediately and could not have been submitted in the first instance despite reasonable diligence (article 317 CPC). According to the Federal Act on the Federal Supreme Court (article 72) a party may appeal against a decision of a cantonal superior court to the Swiss Federal Supreme Court if the value in dispute exceeds 30,000 Swiss francs. An unsuccessful party in a commercial court trial may appeal directly to the Swiss Federal Supreme Court.

The Swiss Federal Supreme Court does not conduct a full review. Generally there is no or a very limited review of facts.

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**Jurisdiction analysis**


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**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?

Switzerland is not a member of the European Union but the Swiss Product Liability Act resembles, to a large extent, the EU Product Liability Directive (85/374/EC). Further, the Swiss Product Safety Act largely follows the principles of Directive 2001/95/EC of the European Parliament and of the Council on General Product Safety. The standard of product liability law and litigation is therefore on a similarly high level as in the European Union. In terms to redress perceived wrongs, however, Swiss product liability law remains underutilised (see question 35).

**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?

In 2011 the Swiss Federal Supreme Court ruled on the issue of whether a prematurely worn out hip prosthesis that needed to be replaced constituted compensable damage under the PLA (BGE 137 III 226).

The court held that a defective medical implant might be a basis for compensation if the defective implant caused bodily injury (without the need to examine whether the implant is a product in private use). The court held that although strict proof for product defects may not be required, the burden of proof does not shift to the other party. The court also held that product liability is excluded for non-discoverable defects in the light of the scientific and technical knowledge at the time the product was put into circulation. The court held further, that Swiss courts must take into account the intention of the Swiss legislator to harmonise Swiss law with European law. Although Swiss courts are not obliged to follow EU case law, the Federal Supreme Court held that courts must avoid dissimilar interpretation without legitimate reason.

There has been no change in the frequency or nature of product liability cases in the past 12 months. The new PSA has not (yet) had an effect on the frequency or nature of product liability cases in Switzerland. However, the PSA is likely to provide a further basis for liability claims and an infringement of provisions may therefore lead to liability under the PLA and general tort law.

### 35 Climate for litigation

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

The propensity to use product liability litigation compared to the level of consumerism in Switzerland is relatively low. Product liability cases regularly involve high costs and due to the burden of proof of the claimant involve a risk of litigation. Cases are regularly settled between the parties. Manufacturers also feel compelled to settle product liability cases for fear of negative publicity due to a public trial. Other potential claimants seek redress via insurance (Switzerland has a high level of insurance coverage) or warranties.

### Update and trends

The Product Safety Act (PSA) provides for post-sale obligations of manufacturers and importers. There is some debate on how the Product Safety Act (PSA) will influence product liability litigation in the future - also with regards to a retailer's duty to cooperate with manufacturers in order to comply with the safety requirements. It is likely that the PSA widens the field for product liability claims. The interaction of the PSA with specific product, industry or activity-related statutes and the Product Liability Act (PLA) as well as general tort and contract law will have to be interpreted and clarified by the courts.

### 36 Efforts to expand product liability

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

Swiss law does not particularly provide for mechanisms that would make product liability litigation more claimant-friendly than any other claims. In general, product liability litigation follows the rules of civil procedure as described above (see question 1). Punitive damages, class actions or contingency fees are not permissible do not exist in Switzerland. Litigation funding is permitted and available but is not (yet) an established and common business for product liability claims. As product liability claims usually involve high costs and the claimant bears the burden of proof with regards to the product defect, product liability litigation seems to be underutilised.



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