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Sweden

PRODUCT LIABILITY

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

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SWEDEN

PRODUCT LIABILITY



1. What are the main causes of action upon which a product liability claim can be brought in your jurisdiction, for example, breach of a statutory regime, breach of contract and/or tort? Please explain whether, for each cause of action, liability for a defective product is fault-based or strict (i.e. if the product is defective, the producer (or another party in the supply chain) is liable even if they were not individually negligent).

Under the Product Liability Act (SFS 1992:18, the "PLA"), a company may be held liable for personal injury and damage to consumer property caused by a defect in a product manufactured, imported or distributed. Liability under the PLA is strict. The Consumer Sales Act (SFS 2022:260, the "CSA") applies to movable personal property. Provided the existence of a defect for which the seller is responsible, the consumer may be entitled to compensation for damage suffered. An injured party may also have a basis for claims under the Tort Liability Act (SFS 1972:207, the "TLA"). It may also be mentioned that guarantees may supplement remedies available to consumers and may form the basis for claims in situations where a claim would otherwise be denied or dismissed due to lack of liability under statute or due to lack of contractual relationship. In addition to the above, there are certain specific regulations which may come into play such as, for example, the Electricity Act (SFS 1997:857) and the Environmental Code (SFS 1998:808).

2. What is a 'product' for the purpose of the relevant laws where a cause of action exists? Is 'product' defined in legislation and, if so, does the definition include tangible products only? Is there a distinction between products sold to, or intended to be used by consumers, and

those sold for use by businesses?

The definition of "product" is wide. In principle, all sort of movables is comprised, irrespective of the methods for production or use. A product which has been incorporated in another object, or in fixed property, would still be considered a product under the PLA. There is no general distinction between products intended for private use and those intended for commercial use.

3. Who or what entities can bring a claim and for what type(s) of damage? Can a claim be brought on behalf of a deceased person whose death was caused by an allegedly defective product?

The PLA does not preclude claims e.g. from foundations, non-profit associations or an estate of a deceased person.

4. What remedies are available against a defendant found liable for a defective product? Are there any restrictions on the types of loss or damage that can be claimed?

Under the PLA, remedies for monetary compensation are available. In product liability claims, seizing of assets to secure payment of damages awarded in a final judgment is possible. Assets may be seized if the party requesting it may show probable cause and that it is reasonable to suspect that the counterparty, by removing or disposing property, or other action, will try to evade payment. According to the main rule, no security measure may be granted unless the claimant deposits with the court security for the loss that the opposing party may suffer due to the security measure. An action for a declaration may be pursued if it is deemed appropriate and may fulfil a purpose to clear out uncertainty related to certain specified matters of law.

5. When is a product defective? What must be shown in order to prove defect?

A product is defect if it does not provide the level of safety reasonable to be expected by the consumer.

6. Which party bears the burden of proof? Can it be reversed?

Since liability under the PLA is strict, it is not necessary to establish negligence or wilful conduct. However, the claimant needs to establish that there is a defect in the product and that such defect has caused damage. The main rule is that the claimant needs to present evidence to the same degree as is required in other civil cases. However, certain case law and comments in the legal literature support the standpoint that the standard of proof may be somewhat lowered, for example, in relation to complex assessments of causation. Hence, (i) if the defendant reasonable is in possession of information necessary to clarify the course of events (e.g. information about the design of a product and the manufacturing process) but no exculpating circumstances has been invoked or presented and (ii) the claimant presents evidence which to a fairly high degree of probability supports the claim, such conditions may conceivably lead the court to the conclusion that the claimant has met the relevant standard of proof. Further, it may be mentioned that the Swedish Code on Judicial Procedure contains provisions to the effect that where full proof cannot be presented in respect of a loss, or only presented with considerable difficulty, a court may upon request by a party make an assessment of damages in the absence of evidence, such assessment being based on a principle of reasonableness. It should be noted that the aforementioned mechanism for easing of burden of proof is dependent on the claimant first having taken reasonable measures to calculate and prove the loss.

7. What factors might the court consider when assessing whether a product is defective? To what extent might the court account for a breach of regulatory duty, such as a breach of a product safety regulation?

The strict liability according to the PLA is limited to cases where the damage has been caused by a product due to a safety defect. Breach of regulatory duties such as breach of product safety regulations would be taken into account and be of immediate relevance whereby it would be for the court to consider whether there is a

sufficient causal link between safety defect and damage.

8. Who can be held liable for damage caused by a defective product? If there is more than one entity liable, how is liability apportioned?

A manufacturer, importer or company marketing a product by applying its own trademark is primary liable under the PLA. In the absence of such identified party, a supplier, who is not able to within one month disclose information sufficient enough to identify the importer or other supplier acting at an earlier level in the distribution chain, may be held liable for the defect. Questions of allocation of liability may also arise, for example, if damage is caused by a defective component in a product. The manufacturer of the compound product and the manufacturer of the component may then be both held responsible.

9. What defences are available?

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

10. What is the relevant limitation period(s) for bringing a claim? Does a different limitation period apply to claims brought on behalf of deceased persons?

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

11. To what extent can liability be excluded, if at all?

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

12. Are there any limitations on the territorial scope of claims brought under a strict liability statutory regime?

General procedural rules would apply, such as sufficient connectivity to the state of venue. In addition, conventions and ordinances may have an impact, e.g. EU regimes applicable to member states.

13. What does a claimant need to prove to successfully bring a claim in negligence?

The claimant needs to establish that there is a defect in the product and that such defect has caused damage. The main rule is that the claimant needs to present evidence to the same degree as is required in other civil cases.

14. In what circumstances might a claimant bring a claim in negligence?

If not possible to invoke strict liability an injured party may have basis for claims under the TLA. Contrary to the PLA, liability under the TLA presupposes that damage has been caused by willful conduct or negligence.

15. What remedies are available? Are punitive damages available?

Remedies such as compensatory damages, specific performance and injunctions. Swedish law does not provide for punitive damages.

16. If there are multiple tortfeasors, how is liability apportioned? Can a claimant bring contribution proceedings?

Several companies may be held jointly and severally liable for damage incurred. In situations where joint and several liability applies, the main principle is that liability will be distributed proportionally to contribution and in accordance with a principle of reasonableness.

17. Are there any defences available?

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

18. What is the relevant limitation period(s) for bringing a claim?

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

19. To what extent can liability be excluded, if at all?

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

20. Do the laws governing contractual liability provide for any implied terms that could impose liability where the product that is the subject of the contract is defective or does not comply with the terms of sale?

In contracts between companies there are no compulsory terms implied. However, in the absence of contractual terms between companies, certain terms may be implied, primarily from the Swedish Sale of Goods Act (SFS 1990:931). Terms which may be implied and of relevance to defects in products may concern quality or information relating to the characteristics of the goods or their use which the seller has provided in the context of marketing the goods or otherwise prior to the sale, and which can be presumed to have influenced the sale. The CSA applies to movable personal property. Provided the existence of a defect for which the seller is responsible, the consumer may be entitled to compensation for damage suffered. Unless otherwise provided for in the contract, goods shall, amongst other things, be fit for the general and specific purposes

underlying the purchase and conform to the descriptions provided. It is explicitly mentioned that goods shall be considered defective if they are sold in contravention of an injunction issued pursuant to the Product Safety Act (SFS 2004:451) or in breach of other sales prohibition decrees aimed at preventing use of goods which may endanger life or health.

21. What remedies are available, and from whom?

Remedies such as right to demand rectification, delivery of substitute goods, reduction in price and damages. The buyer may also be entitled to withhold payment for the goods.

22. What damages are available to consumers and businesses in the event of a contractual breach? Are punitive damages available?

Damages payable as a consequence of defect in the goods may include compensation for expenses, loss of income, price differences due to replacement purchase at a higher price and other loss due to the defect. Damages may also include damage incurred in respect of other property than the goods in which the defect exist. No, Swedish law does not provide for punitive damages.

23. To what extent can liability be excluded, if at all?

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

24. Are there any defences available?

Under the CSA, a seller may discharge liability e.g. by establishing that the defect is due to an impediment beyond the control of the seller which the seller could not reasonably have foreseen at the time of the sale and the consequences of which the seller could not reasonably have avoided or overcome.

25. Please summarise the rules governing the disclosure of documents in product liability claims and outline the types of documents that are typically disclosed.

During a proceeding and following a request of either party, the court may order the other party or a third party to provide information or data that may be of importance as evidence. The requested information or data must ultimately be of relevance to establish a specified circumstance of direct relevance for the outcome of the dispute. Fishing expeditions are not allowed. The requested information or data shall be produced and delivered to the court and will thereafter be made available to the requesting party. If the request for disclosure concerns trade secrets, the threshold for having the request granted by the court is placed at a higher level (exceptional reasons will then be required).

26. How are product liability claims usually funded? Is third party litigation funding permitted in your jurisdiction and, if so, is it regulated?

Third party funding of claims is possible. Please see comments under 27 below on ethical rules of the Swedish Bar Association. The funding of a third party will not have an impact on the court's allocation of litigation costs as between the parties. It may also be noted that many private persons and entities have insurance covering legal fees incurred due to disputes up to in the policies specified levels.

27. Can a successful party recover its costs from a losing party? Can lawyers charge a percentage uplift on their costs?

The successful party may as a main rule recover costs and expenses, including fees for legal counsel, provided the costs are deemed reasonable by the court.

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

28. Can product liability claims be brought by way of a group or class action procedure? If so, please outline the mechanisms available and whether they

provide for an 'opt-in' or 'opt-out' procedure. Which mechanism(s) is most commonly used for product liability claims?

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

29. Please provide details of any new significant product liability cases in your jurisdiction in the last 12 months.

Earlier, the Swedish Supreme Court concluded in the case NJA 2018 s. 475 that supply of water – irrespective of whether it has been processed or not – should be included in the concept of product and that such an application was consistent with the Product Liability Directive (85/374/EEC). Recently, and related to the same cause of action, the Supreme Court has in the case T 486-23 made an assessment as to whether residents (appellants in the Supreme Court) had suffered personal injury due to elevated levels of PFAS in their blood due to

the supply of water by a Swedish municipality. The Supreme Court noted that a precondition for an affirmative assessment was that a physical deterioration had occurred with an impact sufficiently significant to constitute damage. In the case, the Supreme Court concluded that the elevated levels of PFAS, established to be present in the appellants, were to be regarded as a physical deterioration constituting personal injury.

30. Are there any policy proposals and/or regulatory and legal developments that could impact the current product liability framework, particularly given the advancements in new technologies and increasing focus on the circular economy?

Upcoming new revised directive on product liability e.g. due to the impact of new technologies.

31. What trends are likely to impact upon product liability litigation in the future?

Trends based on the adaption to the digital economy, such as applications for computers or smartphones and corrupt or lost data. AI-systems as well as cybersecurity vulnerabilities will most likely have a great impact on product liability litigation in the future. Further, connectivity issues related e.g. to health monitoring services or health metrics which a product may rely on, will likely be a focus area. Finally, integration or interconnection of related services and components and responsibility for a manufacturer to provide updates or upgrades for such services or components will likely be an area which will attract great attention.

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