Chapter 14

Bulgaria

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1 Liability Systems

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

In general, Bulgarian law recognises three legal grounds for product liability in the sphere of civil law and one in criminal law: general tort liability (*delict*); strict product liability: contractual liability; and criminal liability.

Strict product liability, defined in Art. 133 of the Consumer Protection Act (the "**CPA**"), is a specific liability which compared to tort liability is non-fault and is based on objective reasons. In order to successfully engage the strict liability under the CPA, consumers have to prove three main interrelated facts: a defect, existing at the time of putting the product on the market; material damage; and causal link between the defect of the product and the relevant damages. Unlike general tort liability, this specific liability does not provide the liable person with opportunity to exculpate on subjective grounds by proving he was not acting intentionally or he was not negligent. There are, however, objective grounds to exempt liability of the producer which are expressly enumerated in the law and are to be proved by the producer who refers to any of them. Another characteristic feature is that the compensation may cover only material damages.

General tort, defined by Art. 45 *et seq.* of the Obligations and Contracts Act (the "**OCA**"), is applicable, *inter alia*, to matters regarding product liability. Tort under the OCA is fault based either on intent or negligence on the side of the wrongdoer who in cases of product liability could potentially be the manufacturer, the importer or the retailer. Fault under the OCA, i.e. negligence, in the form of non-compliance with the objective test of *due care*, is presumed, thus shifting the burden of proof for a *corpus delicti* fact from the injured party and resulting in the procedural burden for the wrongdoer to prove that he indeed applied the *due care* and that his behaviour was not in breach of law. The consumer shall prove that the wrongdoer acted or omitted to act; the act or omission to act caused was in breach of law; the damage suffered by the consumer, and a direct causal link between the unlawful behaviour of the wrongdoer and the damage. Since Art. 131 of the CPA explicitly limits strict product liability of the manufacturer or the supplier only to obligation for compensation for material damages, should a party injured by a defective product seek indemnification of non-material damages, the only existing legal solution would be to follow the general procedure by claiming damages in tort. In the latter procedure as set forth in Art. 52 of the OCA the court based on equity resolves on the non-material damages resulting from tortious behaviour.

Contractual ground is another legal option for seeking relief for damages suffered from a defective product. Unlike the strict and tort liabilities, contractual liability may include obligation for compensation for damages arising only from the defective product itself and not from the death, personal injury or damage to other property of the consumer, caused by the defective product. Contractual liability can be brought only against a party to the contract, and can be based only on contractual non-conformity. Besides claiming damages, the consumer may also claim: (i) reimbursement of the money paid; (ii) replacement of the defective product with another (in case of generic goods); (iii) price discount; and (iv) free repair of the defective product.

The aforementioned legal grounds work on a concurrent basis i.e. the different forms of liability (strict, tort and contractual) do not exclude but supplement each other as to provide the consumer with sufficient and efficient integral indemnification.

The CPA provides that consumers and consumer associations are entitled to submit alerts, complaints and petitions to the control authorities performing consumer protection functions in any case of breach of statutory obligations of producers and retailers. Control bodies can impose administrative sanctions including fines on the wrongdoers.

In serious cases when acts or omissions to act are of a nature to adversely and substantially affect the interests of consumers and society criminal liability is applicable as provided by the **Penal Code**.

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

Currently, under the EU rules and the national legislation on the implementation of the common organisation of markets of agriculture products and processed agricultural products, Bulgaria implements EU schemes for export refunds for export of agriculture and processed agriculture products and compensations in case of withdrawal of fresh fruits and vegetables from the market.

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

Under the strict liability regime the liability for the defect, respectively for the damages incurred, is borne by the manufacturer. 'Manufacturer', according to the CPA, is any person who

manufaetures finished products, raw materials or component parts included in the manufacturing of other products and any person who, by putting his name, trade mark or other distinguishing sign on the produet presents himself as its manufaeturer. Without prejudice to the liability of the manufacturer, any person who imports into the European Community products for sale, hire, leasing or any form of distribution in the course of his business shall be deemed to be a manufacturer within the meaning of the CPA and shall be responsible as a manufacturer.

If neither the manufacturer nor the person who has imported the products into the European Community can be identified then the supplier should be hold liable. According to the CPA, 'supplier' (distributor or trader) is "any person other than the manufacturer who puts the product into circulation." The supplier shall not be held liable if he informs the injured person, within a term of 14 days, of the identity of the manufacturer, importer or the person who supplied him with the product. The supplier, however, may not direct the injured person to any person outside the territory of the Republic of Bulgaria.

Provided that several persons qualify as liable manufacturers, importers or suppliers they bear joint liability and may eventually seek within their internal relations distribution of the liability engaged. Where damage has been caused by a defective product which is a component part of another product, the manufacturer of the said component part and the person who installed it shall be liable jointly.

In case of tort, only the person in fault (manufaeturer, importer or supplier) could be held liable. If an injury was caused by the act/omission to aet of several wrongdoers they would bear joint liability.

In cases of contractual breach, joint liability exists only if explieitly stipulated in the contract, otherwise defaulting contractors may bear only several liability.

1.4 In what circumstances is there an obligation to recall products, and in what way may a claim for failure to recall be brought?

In case it is established that certain products placed on the market represent a threat to the life and/or health of consumers, recall of such product from consumers shall take place as a last resort if other measures undertaken by manufacturers, distributors and suppliers are not suffieient to prevent the risk to eonsumers. If a producer, a distributor or a provider of services knows or ought to know, on the basis of the information in his/its possession, that his/its products or serviees placed on the market pose a risk to the health and safety of consumers, the said produeer, distributor or service provider shall immediately (within 24 hours after he/it came to know of the danger) inform the control authorities of this and shall give the said authorities details of the aetion taken to prevent and terminate risks to the health and safety of consumers. Any such information must contain, as a minimum, the particulars speeified in the law. Government Regulation speeifies the terms and procedure for submission of sueh information.

For failure to provide information on dangerous (risky) goods the producers/distributors/serviee providers may be sanctioned with a monetary sanction between BGN 3,000 and BGN 10,000.

In sueh case, the control authorities may impose mandatory measures including to order, coordinate or organise, together with the manufacturers and the distributors, the reeall from consumers of dangerous products already supplied to them and to order their destruction. These measures shall be without prejudice to assessment of the eriminal liability of the party concerned.

Another Government Regulation stipulates the procedure for product recall, collection from consumers and destruction of dangerous goods. For failure to recall dangerous products the persons responsible for the recall shall bear administrative liability with a monetary sanction between BGN 500 and BGN 5000. Any damages caused as a result of failure to recall dangerous products can as well be claimed by the injured persons.

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

Art. 228 and Art. 231 of the Penal Code provide criminal liability for persons who as managers of enterprises or as control bodies order or allow the production of low-quality, sub-standard or incomplete sets of industrial goods or articles which do not meet the requirements established for them with respect to quality, type or features. Criminal liability is as well provided for persons who release for sale such industrial goods in considerable qualities or of considerable value, without express declaration of their defects.

It should be noted that for engaging the criminal liability of the perpetrators it must be proven that they have aeted with intent to commit the respective crime.

2 Causation

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

In case of **strict product liability**, the burden of proof of the consumer includes only the obligation to prove the defeet, the damage and the causal link between them. No burden to prove the fault for the defect and/or damages is required.

In case of **tort**, the injured person must prove the damage, the act or omission to act of the wrongdoer and the casual link between the act or omission to act and the damage incurred. The law lays down a refutable presumption about the existence of fault (negligence) and the burden of proof lays with the manufacturer/supplier who may seek means of proving that he was not negligent and has applied the required professional effort thus satisfying the requirement of the abstract, objeetive and relative *professional due care*.

In relation to potential **contractual liability**, the party claiming damages as a result of non-performance has to prove the non-conformity of the produet with the specifications as set out in the consumer agreement.

2.2 What test is applied for proof of causation? Is it enough for the claimant to show that the defendant wrongly exposed the claimant to an increased risk of a type of injury known to be associated with the product, even if it cannot be proved by the claimant that the injury would not have arisen without such exposure?

In order to identify the relevant damages two tests are usually applied, corresponding to two different eausation theories. The first test is related to the *condition sine qua non* theory of causation, proving that there is *factual* causation between the defect, existing at the time of the passing of risk to the eonsumer, and the damages suffered. The defect is viewed as one of several preconditions whieh lead to the damage of the consumer. Would the damage still oeeur, if the defect of the product is imaginarily taken out? A negative answer leads to establishing a faetual eausal relationship. However, it has to be pointed out that not all faetual damages are reeoverable under the Bulgarian law. The *legally relevant, direct* damages are the limit of the civil liability. That is why in order to

identify the direct damages we put the factual damages to a second test using the *adequate causation* theory. This test would isolate only damages which are: a typical, normally occurring and necessary result; a consequenee from contractor's default; or unlawful behaviour, whieh are characteristie and repeat under the same related conditions".

In view of the aforesaid it is not sufficient to prove exposure to increased risk that *might have led to* or *is usually associated with* the damages of the bodily constitution or property of the injured person provided that the consumer cannot prove that the specific injury would not have arisen without sueh particular exposure.

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

If several manufacturers have taken part in the manufacturing of the defective product and it cannot be established which of them exactly manufactured the defective part of the product, then they would bear joint liability.

There is no market-share liability system in Bulgaria.

2.4 Does a failure to warn give rise to liability and, if so, in what circumstances? What information, advice and warnings are taken into account: only information provided directly to the injured party, or also information supplied to an intermediary in the chain of supply between the manufacturer and consumer? Does it make any difference to the answer if the product can only be obtained through the intermediary who owes a separate obligation to assess the suitability of the product for the particular consumer, e.g. a surgeon using a temporary or permanent medical device, a doctor prescribing a medicine or a pharmacist recommending a medicine? Is there any principle of "learned intermediary" under your law pursuant to which the supply of information to the learned intermediary discharges the duty owed by the manufacturer to the ultimate consumer to make available appropriate product information?

The CPA explicitly grants to the consumer the right to information before acquiring a product and the obligation for providing eertain information lies with the retailer. The information provided has to be presented in the Bulgarian language and have to cover a minimal scope of characteristics of the product - contents, packaging, directions for use, price and quantity, impact on other goods, the risks associated to the use or maintenance, terms and conditions of the warranty and expiry date. The CPA specifically provides that the retailer could not exonerate his failure to perform the above obligations, arguing that he was not provided with the necessary information by the manufacturer or the supplier.

Any products the use of which requires technical knowledge, any products containing dangerous substances or any products where the use presupposes possession of special skills or compliance with special safety requirements, must be accompanied by instructions for use prepared by the manufacturer. The instructions for use shall contain information needed by consumers for the correct and safe use and installation, coupling, maintenance or storage of the products.

The Bulgarian law does not apply the principle of "the learned intermediary". It places the main burden for providing information to the consumer with the direct retailer rather than the manufacturer or importer. Hence, manufacturers or importers, excluding retailers, are under an obligation to provide information to the consumer allowing them to assess only the health- and life-threatening risks, related to the normal or foreseeable circumstances of use. That is why despite the fact that the manufacturer or importer might have provided some information to distributors as intermediary in the chain of supply to the eonsumer, the direct retailer is still under an obligation to provide the consumer with partieular information regarding the safety of the produet.

3 Defences and Estoppel

3.1 What defences, if any, are available?

In case of the strict product liability there are 6 grounds under the CPA for exclusion of the manufacturer's liability: (i) he did not put the produet into eirculation; (ii) having regard to the eircumstances, it is probable that the defeet which caused the damage did not exist at the time when the product was put into eireulation by him or that this defect came into being afterwards; (iii) the product was neither manufaetured by him for sale or any form of distribution for eeonomic purpose nor manufactured or distributed by him in the eourse of his business; (iv) the defect is due to compliance of the product with mandatory regulations issued by the publie authorities; (v) the state of scientific and technical knowledge at the time when he put the product into circulation was not such as to enable the existenee of the defect to be discovered; or (vi) in the case of a manufacturer of a component, that the defeet is attributable to the design of the product in which the component has been fitted or to the instructions for the product given by its manufacturer.

In case of contract there are 4 grounds for exclusion of manufacturer's liability: (a) there is no breach of contractual obligation; (b) that the breach of contract or non-eonformity is not attributable to the manufacturer and eould not have been foreseen, i.e. it is due to *force majeure*; (c) there is no causal link between the particular damage and the breach of contract; or (d) the defect/damage is not covered by the terms and/or conditions of the applicable contractual warranty (e.g. it is time-barred).

In case of tort it has to be proved that there is no fault (negligence) on the part of the manufacturer/supplier, i.e. the burden of proof rests on the manufacturer to demonstrate that he did not breach his general *duty of care*.

In all hypotheses the liability of the manufacturer may be fully excluded or reduced proportionally where the consumer has solely caused or has contributed by his own act or omission to act for the occurrence of the damages.

3.2 Is there a state of the art/development risk defence? Is there a defence if the fault/defect in the product was not discoverable given the state of scientific and technical knowledge at the time of supply? If there is such a defence, is it for the claimant to prove that the fault/defect was discoverable or is it for the manufacturer to prove that it was not?

The state of the art/development risk defence is given in Art. 137, Par. 1 item 5 of the CPA as "*state of scientific and technical knowledge*". The manufacturer/supplier have to prove that the defect was not discoverable at the time of the release of the product in question in circulation on the market. This is an objective test.

3.3 Is it a defence for the manufacturer to show that he complied with regulatory and/or statutory requirements relating to the development, manufacture, licensing, marketing and supply of the product?

Under Art. 137, Par. 1 item 4 of the CPA the manufacturer must prove

that "the defect is due to compliance of the product with compulsory requirements issued by state authorities". However, the observance of the applicable minimum statutory standards and/or quality and safety requirements will not be sufficient *per se* to exclude the liability of the manufacturer unless he can prove that compulsory instructions of a state authority had been issued and complied with.

3.4 Can claimants re-litigate issues of fault, defect or the capability of a product to cause a certain type of damage, provided they arise in separate proceedings brought by a different claimant, or does some form of issue estoppel prevent this?

A different claimant (who is a third party to a solved court case) can lodge an identical claim against the same manufacturer, and thus, "re-litigate" issues of fault, defect or causation already adjudicated on the solved case.

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

Yes, the defendants may seek the liability of a third party, either in the same proceedings or in subsequent proceedings. If the defendant decides to implead the third party in the pending proceedings this motion must be made with the written response to the statement of claim at the latest and simultaneously a recourse action against the third party-defendant must be brought in the same proceedings. The impleader shall not be granted if the third party does not have a permanent address in the Republic of Bulgaria or is resident abroad.

If the defendant decides to bring action against the third party in subsequent proceedings there is no time limit on commencing such proceedings except for the general five-year time limit for filing of a claim - see question 5.2 below.

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

Yes, the liability of the defendant may be reduced proportionally if he proves that the damage is caused both by the defective product and by the fault of the claimant or of any person for whom the claimant is responsible. Respectively the defendant's liability may be excluded in case the damage was caused by the claimant exclusively.

In addition it may be noted that under the CPA "the liability of the producer shall not be reduced when the damage is caused both by a defective product and by the act or omission of a third party".

4 Procedure

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

The trial is by a judge.

4.2 Does the court have power to appoint technical specialists to sit with the judge and assess the evidence presented by the parties (i.e. expert assessors)?

Experts are to be appointed by the court if the judge possesses no specific scientific or technical knowledge. Experts are appointed either *ex officio* or upon request of a party. When appointed experts may with the permission of the court ask questions to witnesses if that would be necessary for the clarification of facts. Experts do not sit with the court and do not take part in the decision-making process. They are required by the law to be non-biased and their opinions are to be true and impartial. Expert opinions are non-binding upon the court. The court has the sole discretion whether to rely on the findings in the expert's opinion, assessing it in the light of all other relevant evidence on the case.

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

The new Civil Procedure Code (effective as of March 1, 2008) introduced the first procedural law provisions regulating class action proceedure in Bulgaria.

A class action lawsuit may be initiated on behalf of persons who are harmed by the same infringement where the circle of affected persons cannot be defined precisely but is identifiable. Any person who claims that he/she has been harmed by such infringement, or any organisations responsible for the protection of injured persons, may file a complaint on behalf of all injured persons against the alleged wrong-doer petitioning the court to proclaim the harmful act and to issue a decision for cessation of the infringement, for rectification of the consequences of the infringement and/or for compensation for the damages inflicted on the plaintiffs.

The statement of claim shall contain the circumstances upon which the class action is founded, shall specify the circumstances which identify the circle of injured persons and state the form in which the publication of the opening of the procedure should be publicly announced. The court shall accept the participation in the case of any other injured persons and/or organisations responsible for the protection of the injured persons that have declared, within a time limit set, a motion for participation in the procedure. The court shall exclude the injured persons who have declared, within the time limit set, that they will pursue a remedy in separate proceedings. Hence, the Bulgarian class action procedure is a typical "opt -in" procedure.

The judgment of the court shall have effect in respect of the defendant, the person or persons who have brought the action, as well as in respect of those persons who claim that they are harmed by the established infringement and who have not declared that they wish to pursue a remedy independently in a separate procedure. The excluded persons may avail themselves of the judgment whereby the class action has been granted.

As of the date of this article we are aware of only one class action statement of claim filed and presently the proceedings are pending.

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

Yes, registered consumer associations may bring claims for termination of violation of the CPA or other applicable laws directly or indirectly protecting consumer rights and for compensation of the damages caused to the collective consumer interest as a result of such violation.

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

There is no pre-trial procedure in Bulgaria. A case is considered

opened at the moment when the claim is lodged with the competent first instance court conditional on its acceptanee as admissible by the latter. Depending on the workload of the competent court, a first court hearing is normally scheduled within 1 to 3 months from the filing of the claim.

4.6 Can the court try preliminary issues, the result of which determine whether the remainder of the trial should proceed? If it can, do such issues relate only to matters of law or can they relate to issues of fact as well, and if there is trial by jury, by whom are preliminary issues decided?

After verification of the admissibility of the action brought and the conformity of the statement of action. the court shall verify *ex officio* the capacity of the person or persons who have brought the class action to protect the harmed interest seriously and in good faith and to ineur the charges related to the conduet of the case, including the costs. The court shall not admit the case to examination if none of the persons who have brought the action satisfies the said conditions or if all such persons together do not satisfy these conditions.

There is no trial by jury proceedings.

4.7 What appeal options are available?

The decision on the merits of the calls action rendered by the court of first instance may be appealed to the appellate court. The appeal may be grounded both on issues of law and fact.

The decision of the appellate court may he challenged before the Supreme Court of Cassation if grounds for cassation appeal can be found. The Supreme Court of Cassation has discretion to decide whether to accept the appeal and will decide only on questions of law.

4.8 Does the court appoint experts to assist it in considering technical issues and, if not, may the parties present expert evidence? Are there any restrictions on the nature or extent of that evidence?

See the answer to question 4.2. Courts usually appoint experts included in the lists of experts on different fields of seience, profession or practiee. Such lists however are not exclusive and parties may propose other experts. Experts' opinions are prepared for and submitted with the court.

Parties may present written expert opinions prepared by experts of their own but such opinions arc not considered evidence gathered under the requirements of the law.

4.9 Are factual or expert witnesses required to present themselves for pre-trial deposition and are witness statements/expert reports exchanged prior to trial?

No. There is no pre-trial procedure in Bulgaria.

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

The claimant is under the obligation to attach to his claim all supporting documentary evidence at his possession. The same obligation falls on the defendant when filing the response to the statement of elaim. Only in specific hypothesis where there is danger of destruction or loss of evidence or that its collection would be hindered or prevented, may a party request from the court to order certain preventive measures in order to collect such evidence prior to the filing of the statement of claim.

4.11 Are alternative methods of dispute resolution available e.g. mediation, arbitration?

Alternative dispute resolution methods are also available but have not yet become common in product liability cases. The CPA provides for conciliation commissions assisting in the resolution of disputes related to warranty liability, right of claims for goods and services and unfair contractual terms.

Pursuant to the Mediation Act, product liability disputes may be referred to mediation by the parties. In sueh case the dispute may be settled amicably with the help of mediators, by entry into a binding settlement agreement. Monetary claims regarding product liability disputes may also be referred to arbitration if the parties agree so.

5 Time Limits

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

Yes time limits do exist.

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

As a general remark: the lapse of the time limit specified in the law only precludes the right to file a claim and does not extinguish the substantive right to compensation for the damages suffered - any payment made by the manufacturer to the injured person after the lapse of the time limit shall not be subject to reimbursement.

In case of strict liability, the claim for compensation has to be filed with the court within 3 years from the date on which the injured person became or should have become aware about the damage, the defect and the identity of the manufacturer but in all cases not later than 10 years from the date on which the defective product was put on the market.

In case of tort, within 5 ycars starting from the date when the wrongdoer is discovered, e.g. the manufacturer of the defective produet has become known to the injured person.

In case of contract. the time limit for filing of a claim for compensation for damages caused by a non-performance of contract is set at 3 years from the date on which the receivable has become due and payable.

In principle, age or condition of the claimant does not affect the calculation of the time limits. However, the OCA stipulates that the running of the time limit shall be suspended in respect of minors or judicially disabled individuals for the period during which they do not have a duly appointed statutory representative or guardian and for 6 months after the appointment of such or, respectively, after the end of the judieial incapacity.

The court has no discretion to disapply time limits and at the same time, time limits are not applied by the court *ex officio* - it is the defendant who has the right to raise that question as part of his defence.

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

Concealment and fraud are not among the exhaustively listed grounds for suspension or discontinuance of the running of time limits under the OCA.

6 Remedies

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

An individual consumer as an injured party may bring an action against the allegedly liable person seeking monetary compensation for the damages suffered. In case a class action is brought the persons who claim that have been harmed by the alleged infringement, or any organisations responsible for the protection of injured persons may file a statement of claim petitioning the court: (i) to proclaim the harmful act or omission to act, the wrongfulness of the said act or omission and the fault of the defendant; (ii) to issue a decision for cessation of the infringement, (iii) for rectification of the consequences of the infringement; and/or (iv) for compensation for the damages inflicted on the plaintiffs.

The court may sentence the defendant to perform a specific act, to refrain from performing a specific act, or to pay a specific amount. Acting on a petition by the plaintiff, the court may rule on adequate interim measures for protection of the harmed interest.

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

Under the strict product liability system only *material* damages are recoverable, both actual damages and lost profits, resulting in personal injury, death or damage to objects, other than the defective product itself, in the property of the injured person. The consumer would have a legal interest to claim compensation under the special strict liability regime provided the defective product has damaged other goods with a value not lower than BGN 1,000 (EUR 500). In cases of personal injury no such limitation is set.

The *moral* damages (pain and suffering), resulting from caused death, disability, health deterioration etc., may be compensated on the grounds of tort liability as set in Art. 52 and Art. 45 of OCA.

The damage to the product itself is recoverable based on the contractual relationship between the seller (in most cases retailer) and the consumer.

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

So far the Bulgarian jurisprudence has been very consistent that in order for a compensation to be awarded there has to be actual damage incurred. The case of medical monitoring relates to potential damages, normally associated to certain risk factors. Given the present legal standards in Bulgaria, only medical expenses following and in direct relation to the damage could be recovered.

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

The civil liability in Bulgaria, including the strict product liability, has only compensatory, no punitive function. Contractual liability may include punitive damages if so agreed by the parties but is not common in consumer contracts.

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

No maximum limit set in the form of a fixed amount exists with respect to the strict product liability under the CPA or the general tort liability under the OCA.

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

In case of class action a settlement agreement may take effect only after being approved by the court. The court shall approve the settlement if it does not conflict with the law and good morals and if the harmed interest can be protected to a sufficient degree through the measures envisaged in the settlement agreement. In case of claims brought by infants the consent of their legal representatives is required prior to the court approval of the settlement.

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

Bulgarian law does not provide for reimbursement of health and social security payments made to claimants in connection with their damages allegedly caused by the product.

In addition, it may be noted that the Commission on Consumer Protection may bring actions for cessation or for prohibition of acts or commercial practices infringing the collective interests of consumers.

7 Costs / Funding

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

In principle, the losing party must bear the legal costs, including court fees, fees paid for legal assistance and representation in front of the court, commensurate to the portion of the action granted.

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

Yes. Legal aid, financed by the state budget, is available to individuals in difficult material situation. Legal aid is granted by request. Legal aid refers to free of charge legal assistance for bringing and handling of a court action. In addition on request of a party the court may waive his or her obligation to pay court fees and costs for proceedings.

opened at the moment when the claim is lodged with the competent first instance court conditional on its acceptance as admissible by the latter. Depending on the workload of the competent court, a first court hearing is normally scheduled within 1 to 3 months from the filing of the claim.

4.6 Can the court try preliminary issues, the result of which determine whether the remainder of the trial should proceed? If it can, do such issues relate only to matters of law or can they relate to issues of fact as well, and if there is trial by jury, by whom are preliminary issues decided?

After verification of the admissibility of the action brought and the conformity of the statement of action, the court shall verify *ex officio* the capacity of the person or persons who have brought the class action to protect the harmed interest seriously and in good faith and to incur the charges related to the conduct of the case, including the costs. The court shall not admit the case to examination if none of the persons who have brought the action satisfies the said conditions or if all such persons together do not satisfy these conditions.

There is no trial by jury proceedings.

4.7 What appeal options are available?

The decision on the merits of the calls action rendered by the court of first instance may be appealed to the appellate court. The appeal may be grounded both on issues of law and fact.

The decision of the appellate court may be challenged before the Supreme Court of Cassation if grounds for cassation appeal can be found. The Supreme Court of Cassation has discretion to decide whether to accept the appeal and will decide only on questions of law.

4.8 Does the court appoint experts to assist it in considering technical issues and, if not, may the parties present expert evidence? Are there any restrictions on the nature or extent of that evidence?

See the answer to question 4.2. Courts usually appoint experts included in the lists of experts on different fields of science, profession or practice. Such lists however are not exclusive and parties may propose other experts. Experts' opinions are prepared for and submitted with the court.

Parties may present written expert opinions prepared by experts of their own but such opinions are not considered evidence gathered under the requirements of the law.

4.9 Are factual or expert witnesses required to present themselves for pre-trial deposition and are witness statements/expert reports exchanged prior to trial?

No. There is no pre-trial procedure in Bulgaria.

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

The claimant is under the obligation to attach to his claim all supporting documentary evidence at his possession. The same obligation falls on the defendant when filing the response to the statement of claim. Only in specific hypothesis where there is danger of destruction or loss of evidence or that its collection would be hindered or prevented, may a party request from the court to order certain preventive measures in order to collect such evidence prior to the filing of the statement of claim.

4.11 Are alternative methods of dispute resolution available e.g. mediation, arbitration?

Alternative dispute resolution methods are also available but have not yet become common in product liability cases. The CPA provides for conciliation commissions assisting in the resolution of disputes related to warranty liability, right of claims for goods and services and unfair contractual terms.

Pursuant to the Mediation Act, product liability disputes may be referred to mediation by the parties. In such case the dispute may be settled amicably with the help of mediators, by entry into a binding settlement agreement. Monetary claims regarding product liability disputes may also be referred to arbitration if the parties agree so.

5 Time Limits

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

Yes time limits do exist.

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

As a general remark: the lapse of the time limit specified in the law only precludes the right to file a claim and does not extinguish the substantive right to compensation for the damages suffered - any payment made by the manufacturer to the injured person after the lapse of the time limit shall not be subject to reimbursement.

In case of strict liability, the claim for compensation has to be filed with the court within 3 years from the date on which the injured person became or should have become aware about the damage, the defect and the identity of the manufacturer but in all cases not later than 10 years from the date on which the defective product was put on the market.

In case of tort, within 5 years starting from the date when the wrongdoer is discovered, e.g. the manufacturer of the defective product has become known to the injured person.

In case of contract, the time limit for filing of a claim for compensation for damages caused by a non-performance of contract is set at 3 years from the date on which the receivable has become due and payable.

In principle, age or condition of the claimant does not affect the calculation of the time limits. However, the OCA stipulates that the running of the time limit shall be suspended in respect of minors or judicially disabled individuals for the period during which they do not have a duly appointed statutory representative or guardian and for 6 months after the appointment of such or, respectively, after the end of the judicial incapacity.

The court has no discretion to disapply time limits and at the same time, time limits are not applied by the court *ex officio* - it is the defendant who has the right to raise that question as part of his defence.