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Product Liability 2019

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A practical cross-border insight into product liability work

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Publisher
Rory Smith

Sales Director
Florjan Osmani

Account Director
Oliver Smith

Senior Editors
Caroline Collingwood
Rachel Williams

Group Consulting Editor
Alan Falach

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Global Legal Group Ltd.
59 Tanner Street
London SE1 3PL, UK

Tel: +44 20 7367 0720
Fax: +44 20 7407 5255
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Norway

Ole André Oftebro

Kyrre W. Kielland

Advokatfirmaet Ræder AS

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?

Depending on, *inter alia*, the type of product, cause of defect and type of damage, defective products are subject to various product liability systems under Norwegian law.

Most importantly, the Norwegian Product Liability Act (the "**PLA**") imposes a statutory strict liability system in case of personal injury or damage to "personal" property caused by a defective product. With effect from 1 January 1994, the PLA was harmonised with the European Product Liability Directive 85/374/EEC (the "**Product Liability Directive**"). Consequently, Norway's system of strict liability for defective products will in most cases reflect the European product liability system. It is worth noting, however, that Norway maintains a separate system of liability for pharmaceuticals pursuant to the PLA Chapter 3.

Further, as a separate system of liability available in case of damage caused by defective products, Norwegian tort law generally acknowledges liability based on negligence (or intent). In certain circumstances, Norwegian tort law also allows for strict product liability based on case law. Such strict liability would theoretically only be available for damage that falls outside the scope of the PLA, i.e. damage to commercial property. Further, the conditions for such strict liability (as laid down in case law) would normally be hard to overcome for non-consumers. Consequently, recourse for damage to commercial property is rarely awarded unless the claimant is able to produce evidence of negligence.

Contractual liability plays a role in case of damage to property falling outside the PLA, e.g. damage to commercial property or damage to the product itself. Where the end-user is not a consumer, the parties to the contract are free to agree on any warranty/indemnity/allocation of product liability. Where there is a lack of any agreement to the contrary, contractual liability for damage caused by a defective product would be implied through the Norwegian Sale of Goods Act. Unless the claimant can prove negligence, damages would be limited to direct damages, i.e. damages to the product itself and other property closely related to that product.

Where the end-user is a consumer, contractual liability pursuant to the Sale of Consumer Goods Act would apply notwithstanding any agreement(s) to the contrary. Damages would, however, be limited to damage to the product itself and other property closely related to that product, unless the defendant fails to prove that the damage was not caused by negligence.

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

Pursuant to the Norwegian Act on Patient Injury Compensation (No: *Pasientskadeloven*), the state operates a national compensation scheme for damage caused by public and private healthcare called the Norwegian System of Patient Injury Compensation (No: *Norsk Pasientskadeerstatning*). As such, damages from pharmaceutical products, medical devices and medical equipment might be compensated under this government-operated scheme regardless of proof of negligence or defect.

The Norwegian System of Patient Injury Compensation (No: *Norsk Pasientskadeerstatning*) also acts as claims handler for the Norwegian insurance scheme related to pharmaceutical products (No: *Norsk Legemiddelforsikring*). The pharmaceutical insurance scheme is a private insurance scheme wholly owned by producers and importers of pharmaceutical products, and was established pursuant to the PLA Chapter 3.

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

The PLA is fully harmonised with the Product Liability Directive in this respect, meaning that the following would bear the primary responsibility for a defective product: (i) the manufacturer of the product; (ii) any importer of the product into the European Economic Area; and (iii) any distributor or retailer marketing the product as its own.

In case the defect is caused by a defective part of the product, the sub-supplier of such defective part would be held liable on a joint and several basis with the main manufacturer.

In addition, the retailer might in certain instances be held liable, e.g. if it fails to refer the injured party to a responsible manufacturer, importer or distributor within a reasonable time.

1.4 May a regulatory authority be found liable in respect of a defective/faulty product? If so, in what circumstances?

For defective pharmaceuticals, the Norwegian System of Patient Injury Compensation (No: *Norsk Pasientskadeerstatning*) may have strict liability, see question 1.2 above.

Other than this, regulatory authorities may theoretically be held liable for defective products on the basis of negligence. One example can be that the defect is caused by the manufacturer designing the product in compliance with mandatory regulations issued by the public authorities. In these cases, the manufacturer will be relieved of strict liability, *cf.* the PLA section 2-2 c). If the regulatory body has acted negligently in relation to the regulations, however, the injured party may theoretically hold the regulatory authority liable on the basis of negligence.

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

The obligation to recall products is covered by, *inter alia*, the Norwegian Product Control Act (the "**PCA**"), which is based on the European General Product Safety Directive 2001/95/EC (the "**Product Safety Directive**").

Manufacturers, importers, distributors, retailers and others dealing with the product might be under the obligation to recall products which involve unacceptable risk of health or environmental damage, i.e. products that pose risks to the consumers that are incompatible with the general safety requirement as more particularly described in the Product Safety Directive.

Once made aware of hazardous products, the authorities may issue a recall order. However, as the PCA implies a duty on anyone dealing with the product to act duly and diligently in order to prevent products from causing damage, the actual duty to recall products normally arises prior to such formal order being issued.

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

Negligent or wilful breaches of the PCA or associated regulations might be sanctioned by fines. In theory, prison sentences might also be applicable for bodily injuries or death caused by defective products, subject to proof of negligence or intentional acts or omissions on the accused.

2 Causation

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

According to the PLA, the claimant has the burden of proving (i) that it has incurred damage, (ii) the existence of a defect in the product, and (iii) that there exists a causal link between the defect and the damage.

The PLA provides a number of possible defences for the defendant; see question 3.1 below. In relation to such defences, the burden of proof may shift from the injured party to the responsible party.

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? Is it necessary to prove that the product to which the claimant was exposed has actually malfunctioned and caused injury, or is it sufficient that all the products or the batch to which the claimant was exposed carry an increased, but unpredictable, risk of malfunction?

There is no established test for proof of causation under the Norwegian PLA. Nevertheless, as a general rule, the claimant has the burden of proving a causal link between the damage and the defect; see question 2.1 above. However, in complex cases with contributory causes, the claimant has the burden of proving that the defect in the product represents a necessary condition for the damage. Furthermore, a defect having only an insignificant part of the course of events leading to damage might not be sufficient, although theoretically being a necessary condition for the damage.

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?

The Norwegian PLA does not give rise to any form of market-share liability. However, if the damage is due to a defect in a component which forms an integrated part of the main product, both the manufacturer of the part and the manufacturer of the main product can be held jointly and severally liable.

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?

If a manufacturer of a product, which may represent a danger, does not provide appropriate warnings or give essential information about risk factors associated with the product, the manufacturer can be held liable if damage occurs. However, lack of warnings and/or information in itself does not give rise to liability. It is a condition for product liability that the damage occurred as a result of a defect. Lack of warnings and/or information is relevant when considering whether the product had a defect, albeit not decisive.

Norwegian law does not operate with any principle of "learned intermediary".

3 Defences and Estoppel

3.1 What defences, if any, are available?

Common defences under the PLA are failure by the claimant to prove (i) the occurrence of damage, (ii) the existence of a defect, or (iii) a causal relationship between the defect and the damage.

Additional defences available under the PLA are (iv) that the defendant did not put the product into circulation, (v) that the defect did not exist at the time the product was put into circulation, or (vi) that the defect is due to compliance of the product with mandatory regulations issued by the public authorities.

Defences relating to the non-existence of a defect are closely linked to the ability of the defendant to prove alternative causes of damage, e.g. external influence on the product, lack of maintenance, etc.

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?

By way of allowed derogation from the Product Liability Directive, the Norwegian PLA does not contain an express state-of-the-art/development risk defence. In principle, state-of-the-art products or products containing unforeseen or undiscoverable risks might therefore be deemed defective and the manufacturer/importer/distributor held liable. However, state-of-the-art products are less likely to be deemed defective than existing products posing greater risks of causing damages.

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?

Yes, but only where the defect itself is caused by compliance of the product with mandatory regulations. Compliance with more general regulations relating to development, manufacture, licensing, marketing and supply would therefore rarely suffice as a stand-alone defence, although such compliance makes a good argument where the exact cause of damage is unknown.

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?

Yes. A Norwegian court decision would only be legally binding on the parties to the case. Consequently, claimants may re-litigate issues of fault/defect/capability of damage which has previously been lost by other claimants. However, court cases in favour of the defendants might be submitted as evidence in later proceedings on the same issue.

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 defendant may seek indemnity from third parties such as a sub-supplier. Recourse claims may be heard in the same proceedings or in subsequent proceedings upon the choice of the defendant.

In general, the time limit for initiating subsequent proceedings against the third party is one calendar year after the payment of damages to the injured party. However, in many instances, the third party is entitled to a notice of proceedings within a reasonable time in order to avoid statutory limitation.

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

Yes. A claimant's actions contributing to the damage would be relevant both in terms of whether or not the product was defective and whether or not there was a causal relationship between the defect and the damage (see question 3.1 on defences above).

Even if the defendant is held liable, contributory negligence on part of the claimant may lead to a reduction or annulment of the damages amount pursuant to the Norwegian Damages Act section 5-1.

4 Procedure

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

Juries are not used in court cases related to product liability. As a general rule, only one judge hears product liability cases at the District Court. More rarely, the case can be tried with one judge and two lay judges upon request of one of the parties or the court. In the Court of Appeal, there are three judges (plus five lay judges upon request). Lay judges are not used in the Norwegian Supreme Court.

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)?

The court may appoint two technical specialists to sit with the judge. The parties may also request this.

Also, the court may appoint an expert to give affidavit evidence on the facts in the case (see question 4.8 below).

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?

According to the Norwegian Dispute Act, class actions can be brought to trial only if (i) several claimants/defendants have claims/obligations based on the same or substantially the same factual and legal basis, (ii) the claims can be heard by the same court

and essentially follow the same procedural rules, (iii) class action is the most appropriate form of proceedings, and (iv) the court is able to designate a class representative.

The procedure is normally "opt-in" (except in case of very small claims amounts), and can be initiated by (i) any natural or legal person with a claim covered by the class action, (ii) associations and foundations, as well as (iii) public bodies with the purpose of ensuring specific interests such as, for instance, consumer protection.

The class action vehicle is a relatively new possibility in Norwegian law, and although it has been available for some 10 years now, class actions are rarely brought in Norway.

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

Yes, see question 4.3 above.

4.5 May lawyers or representative bodies advertise for claims and, if so, does this occur frequently? Does advertising materially affect the number or type of claims brought in your jurisdiction?

When a class action is approved by the court, other potential claimants shall be informed either by a notice or by an advertisement/announcement, in accordance with the Norwegian Dispute Act § 35-5. The court may decide in each case what type of notice/advertisement and whether the court or the group representative counsel shall be responsible for such notice/advertisement. Advertisement for claims in media is very rare in Norway, if it ever occurs at all. Thus, advertisement for specific claims does not significantly affect the number or types of claims brought in Norway.

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

The time it takes to get to trial depends on which District Court handles the proceedings, and the characteristics of the case. On average it takes less than six months from the date the subpoena is sent to the main proceedings; however, it can take longer.

4.7 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?

In a preliminary stage, the court tries whether the case is admissible (procedural issues). Some grounds for dismissal must be invoked by the parties and some should be taken into account by the court *ex officio*. A preliminary decision will be based on the facts provided by the parties.

Material issues, whether related to matters of law or matters of fact, will not be decided upon in a preliminary hearing.

4.8 What appeal options are available?

A party in a civil case may appeal a judgment or decision rendered by the District Court to the Court of Appeal. A judgment by the District Court may be appealed on the basis of errors (i) in the assessment of facts, (ii) application of the law, or (iii) the proceedings underlying the decision.

The Court of Appeal's ruling may be appealed to the Supreme Court with the consent of the Appeals Committee of the Supreme Court. Consent may only be granted if (i) the appeal concerns issues that have an impact beyond the present case, or (ii) it for other reasons is particularly important to have the case decided by the Supreme Court.

4.9 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?

According to the Norwegian Dispute Act, there are two types of expert evidence. There are experts appointed by the court to provide affidavit evidence, and there are expert statements or witnesses offered as evidence by one of the parties.

The court can appoint an expert if requested by a party, subject to such appointment being a necessary and proportionate means to get a thorough factual basis for the ruling. Furthermore, if it does not lead to disproportionate costs or delays, the court may appoint more than one expert if the character of the technical questions, the significance of the case or other circumstances make it desirable.

Because of the principle of "free evaluation of evidence", expert evidence does not put constraints on the court. However, expert evidence will often have great importance for the court's decision.

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

There are no pre-trial depositions in Norway, except for cases before the Supreme Court.

Expert witnesses presented by one of the parties have to meet in court and give an oral statement. Experts appointed by the court, on the other hand, submit written reports, which constitute an exception to the general principles stating oral examinations and presentation of evidence in court. It is up to the court to decide whether the experts should meet in court for an oral statement. The expert reports must be submitted to the court prior to the trial and made available to both parties.

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

As a part of the pre-trial procedure, the parties are obliged to disclose all evidence which is in their possession and which is of relevance to the case. Furthermore, a party must inform the other party of important evidence which is not in the first party's own possession and which it cannot expect the other party to have knowledge of, notwithstanding to whose advantage that evidence might be.

Evidence should be disclosed at least two weeks before the main proceedings.

4.12 Are alternative methods of dispute resolution required to be pursued first or available as an alternative to litigation e.g. mediation, arbitration?

There are alternative methods of dispute resolution available in civil cases, such as mediation.

When a subpoena is sent from the claimant to the defendant, both parties will receive information and offers on mediation. Judicial mediation presupposes as a rule that both parties agree to participate. Judicial mediation makes it possible for the parties to find a settlement to the conflict of matter by using a mediator, and the purpose is to agree on a reasonable solution that meets the interests of both parties.

The Conciliation Board is another option, which gives the parties an opportunity to resolve the dispute. The board consists of only laymen, and both conciliation and judgment have legal force. In certain cases, launching proceedings with the Conciliation Board is a condition for access to court.

4.13 In what factual circumstances can persons that are not domiciled in your jurisdiction be brought within the jurisdiction of your courts either as a defendant or as a claimant?

According to the Dispute Act, a case can only be brought before Norwegian courts if the facts of the case are "sufficiently connected" with Norway. The application of this might differ depending on whether the case involves only EU jurisdictions or not.

Norway is a party to the Lugano Conventions, and the 2007 Lugano Convention is made statutory law. Consequently, Norwegian courts would take jurisdiction over any case where the defendant is domiciled in Norway. Further, in tort cases such as product liability cases, Norwegian courts would take jurisdiction if the defendant is domiciled within the EU and either (i) Norway is the place where the damage occurred, or (ii) Norway is the place of the event giving rise to the damage, *cf.* EU Case C 189/08 *Zuid-Chemie vs Philippo's Mineralenfabriek*. Insurance companies domiciled in the EU can also be brought within the jurisdiction of Norwegian courts regardless of place of damage, if the claimant is domiciled in Norway. The claimant's domicile is not relevant under the Lugano Convention.

In product liability cases involving non-EU jurisdictions, Norwegian courts would normally take jurisdiction if the defendant is domiciled in Norway or the damage occurred in Norway, subject to the matter having "sufficient connection" to Norway. The court might hold the claimant's domicile relevant in a broader consideration, but this would not be decisive.

Finally, according to the Dispute Act, a defendant may request that a claimant who is not domiciled in Norway provides security for its potential liability for legal costs.

5 Time Limits

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

Yes, see question 5.2 below.

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?

Claims based on strict liability under the Norwegian PLA are barred three years after the date the claimant obtained or should have obtained sufficient knowledge about (i) the damage, (ii) the defect, and (iii) who the manufacturer is. The time limit will under no circumstances lapse later than 10 years after the manufacturer put the harmful specimen of the product into circulation.

The time limit of three years from sufficient knowledge also applies to claims in tort based on case law; however, for such claims, the maximum period of liability is 20 years from the date of damage or alternatively 20 years from the date the negligent actions ceased. For certain personal injuries there is no maximum period at all.

Consequently, the time limits do not vary depending on whether the liability is fault-based or strict, but whether the liability falls within or outside the scope of the PLA.

Age and condition of the claimant might be relevant for the consideration of when the claimant had "sufficient knowledge" of its claim. Certain statutory exceptions from the limitation period also apply to personal injuries to children under 18 years.

Norwegian courts do not have discretionary powers to disapply time limits.

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

Issues of concealment or fraud do not affect the running of any time limits. However, concealment or fraud may be relevant concerning what date the claimant knew or should have obtained the necessary knowledge about his/her claim.

6 Remedies

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

The primary remedy in product liability cases is monetary compensation. However, the claimant is allowed to seek a declaratory judgment on certain aspects of the case, such as whether or not the defendant is liable in tort. Declaratory relief might in some cases be an appropriate step, e.g. if the amount of damages is difficult to assess when initiating proceedings or if the amount of damages is disputed and would be costly to litigate.

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

Pursuant to the Norwegian Damages Act, damages in tort may be awarded for death, bodily injuries, mental damage and damage to property, as well as any consequential losses thereof. However, only economic loss caused by the damage is recoverable, which often makes claims for mental damage difficult.

Pursuant to the PLA, there are certain restrictions on what damages are recoverable. The following damages are not recoverable under the PLA: (i) damage to the product itself; (ii) minor damage not exceeding a value of NOK 4,000; and (iii) damage to items of property of a type not ordinarily intended for private use or consumption, or not mainly used by the injured party for his own private use or consumption.

Damage to the product itself will, however, regularly be recoverable as a direct loss under the contractual liability regardless of fault.

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?

Such costs may be recoverable pursuant to the contract between the parties. In theory, such costs may also be awarded in tort. The claimant would, however, in both cases have to prove that the risk of malfunctioning or cause of injury was caused by a defect in the product and that the costs incurred are necessary and adequate in relation to prevent such defect from causing damage.

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

Norwegian tort law does not recognise punitive damages, and the courts would only award damages corresponding to the claimants' economic loss. Norwegian courts would, however, enforce reasonable contractual penalties (if so agreed to by the parties in relation to a potential defect).

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?

There is no maximum limit, but the court may reduce the amount of damages if the damages amount would otherwise be unreasonably burdensome for the defendant. Such reductions are rarely seen in product liability cases involving professional manufacturers and/or insurance companies.

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?

The court has to approve settlements in class actions. In all other cases, including cases where the claimant is an infant or child, or otherwise under guardianship, the legal guardian is empowered to settle the case without the court's prior approval.

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?

The Norwegian social security services (No: *Folketrygden*) may only claim recourse for expenses related to (i) bodily injury, and (ii) damage caused by intent, and only to the extent such governmental expenses have led to a reduction of the amount of damages awarded to the injured party from the defendant. The responsibility lies with the liable party, e.g. the manufacturer or distributor of the product.

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?

As a main rule, the successful party will be awarded court fees, legal fees and other costs related to the proceedings from the losing party. However, the court may exempt the losing party from such award (wholly or partially), e.g. if such exemption in the court's opinion appears to be reasonable.

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

Yes, the governmental Legal Aid Office (No: *Fylkesmannen*) may provide legal aid in certain cases.

7.3 If so, are there any restrictions on the availability of public funding?

Yes. Only natural persons may be awarded legal aid. Further, legal aid in personal injury cases will only be awarded against demonstration of financial need (both in terms of income and wealth). Legal aid for claims related to property damages would only be awarded in exceptional circumstances.

7.4 Is funding allowed through conditional or contingency fees and, if so, on what conditions?

Conditional fees are allowed, but the Norwegian Bar Association explicitly prohibits fees which are based on a share or percentage of the claim. Thus, conditional fees would have to be based on the lawyer's hourly rates rather than a percentage of the claim. There are also restrictions as to whether the lawyer is allowed to charge higher fees on a conditional basis than it would in normal conditions.

7.5 Is third party funding of claims permitted and, if so, on what basis may funding be provided?

Yes, third party funding may be provided without any statutory restrictions.

7.6 In advance of the case proceeding to trial, does the court exercise any control over the costs to be incurred by the parties so that they are proportionate to the value of the claim?

No. However, as mentioned above, the Court will conduct a reasonableness test of the legal fees before awarding costs to the winning party. Further, and upon a party's request, the Court may exercise a subsequent control over the legal fees charged by that party's own legal counsel. In both cases, the value of the claim is a relevant consideration, although not necessarily decisive.

8 Updates

8.1 Please provide a summary of any new cases, trends and developments in Product Liability Law in your jurisdiction including how the courts are approaching any issues arising in relation to new technologies and artificial intelligence.

There have been no statutory amendments and only a few Norwegian product liability cases recently.

More often than before, injured parties and insurance companies claim recourse for damage to property falling outside the scope of the PLA, e.g. damage to professional property, even where there is no proof of fault/negligence. We are not aware of any precedence relating to strict product liability for damage to professional property. On the contrary, in January 2016, the Court of Appeal acquitted a Norwegian distributor of household appliances after one of their products caused damage to a municipal apartment building. Being advised by Advokatfirma Ræder, the distributor and its insurer had acknowledged that the damage was caused by a defect in the product, but refused liability for any damage falling outside the scope of the PLA on the argument that there was no proof of negligence on part of the distributor, a fact which was not contested. The Court of Appeal held that the distributor was not liable on the basis of strict liability neither under the PLA nor case law.

Worth noting is a Court of Appeal decision from December 2018, concerning the distribution of liability between a non-EU producer, an EU importer and a Norwegian distributor following a house fire caused by inadequate recall measures for an electrical household product with a known fire risk. Represented by Advokatfirmaet Ræder, the liability insurer of the non-EU producer successfully sought (partial) recourse from the EU importer and Norwegian distributor and their insurers on the basis of negligence. In reaching its decision, the court found, *inter alia*, that the Norwegian distributor was jointly liable with the producer and importer towards the injured party as the lack of recall measures was considered a negligent breach of statutory duties.

With respect to new technologies and AI, we are not aware of any landmark cases yet. However, there has been some development in composing new laws related to the new challenges. For instance, recently a law on testing of self-driving vehicles (including provisions on liability) entered into force. With respect to liability for damage caused by robots and AI in general, the Norwegian authorities seems to be awaiting the outcome of ongoing discussions in the EU Parliament. Meanwhile the courts, if in receipt of damages claims related to new technology or AI, would have to apply existing concepts of law.

Ole André Oftebro

Advokatfirmaet Ræder AS
P.O. Box 2944 Solli
N-0230 Oslo
Norway

Tel: +47 23 27 27 00 / +47 97 56 74 32
Email: oao@raeder.no
URL: www.raeder.no/en

Ole André Oftebro specialises in product liability, employment law and civil litigation. He is co-author of the leading legal commentary on the Norwegian Product Liability Act (Gyldendal 2015), together with Kyrre W. Kielland.

Ole André holds broad experience with more than 100 product liability cases, and frequently represents leading producers and importers, especially within the electronics industry.

Kyrre W. Kjelland

Advokatfirmaet Ræder AS
P.O. Box 2944 Solli
N-0230 Oslo
Norway

Tel: +47 23 27 27 00 / +47 45 02 20 56
Email: kwk@raeder.no
URL: www.raeder.no/en

Kyrre W. Kielland holds broad experience of providing advice to and litigation for manufacturers, insurance companies and others within product safety and product liability law. In particular, he assists national and international clients within the industries of electronics, technology and shipping/offshore.

Kyrre works closely with the Norwegian Electronics Association and has been invited as keynote speaker on various conferences and legal courses within the electronics industry. Further, he is regularly appointed as an external examiner at the Faculty of Law, University of Oslo and Lillehammer University College.

Kyrre also assists his clients with contractual negotiations within the scope of his product liability practice or just outside, including distribution agreements, M&A and financing transactions.

Kyrre co-authors the leading legal commentary on the Norwegian Product Liability Act (Gyldendal, 2015) together with Ole André Oftebro.

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Advokatfirmaet Ræder is a leading, Oslo-based law firm with more than 60 experienced lawyers within all fields of commercial law. The department for Insurance and Tort consists of 10 specialised lawyers. The majority of our clients are national and international companies, organisations and government authorities. We focus on offering tailor-made, cross-disciplinary advice that suits the needs of each client. Our clients appreciate personal and hands on partner attention alongside leading expertise and business insights.

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glg global legal group

59 Tanner Street, London SE1 3PL, United Kingdom
Tel: +44 20 7367 0720 / Fax: +44 20 7407 5255
Email: info@glgroup.co.uk

www.iclg.com