

Product Liability Law B.E. 2551

The Liability for Damages Caused by Unsafe Goods Act B.E. 2551 (the “Product Liability Law”), which will be effective for products sold on or after 20 February 2009, holds “entrepreneurs” jointly liable to “damaged parties” for damages caused by unsafe goods sold to consumers, whether caused by the deliberation or recklessness of the entrepreneurs. The Act provides an important addition to the personal injury law of Thailand. “Goods” is broadly defined to mean all moveable assets produced or imported for sale, including agricultural goods (excluding spontaneously developed products) and electricity, but excluding goods specified by ministerial regulation.

The Product Liability Law defines “entrepreneur” broadly to include:

1. the producer or the party commissioning the production of the unsafe goods,
2. the importer,
3. the seller of goods whose producer, party commissioning the production or importer cannot be identified, and
4. the party using a name, trade name, trademark, mark or statement or otherwise presenting in any way that said party may be construed as being the producer, the party commissioning the production or the importer

The “damaged party” is defined to be the party sustaining damage, which includes damage to body, mind (including pain, suffering, fear, worry, depression, humiliation or other similar damage) or assets (excluding damage to the unsafe goods), and the damaged party is required to prove that it sustained damages from the goods of the entrepreneur and that such goods were stored or used in accordance with conventional practice. Importantly, the damaged party is not required to prove which entrepreneur caused the damages.

Entrepreneurs have several defenses, but they bear the burden of proof. These defenses include:

1. the goods are not unsafe goods (where unsafe goods are defined to be goods causing damage whether because of defect in production or design or because of a lack of or incorrect or unclear storage instructions, warnings or product information, taking into

consideration the nature of the goods and the reasonably expected use and storage of the goods),

2. the damaged party was aware that such goods were unsafe goods and
3. the damages were caused by incorrect use or storage of the goods as per the usage or storage instructions, warnings or product information that was correctly and reasonably clearly provided by the entrepreneurs.

In addition, an entrepreneur producing goods at the commission of a party commissioning the production of said goods will not be liable if it can prove that the danger was caused by the design of or instructions provided by the commissioning party and that the producing entrepreneur did not and should not have expected the danger.

Also, an entrepreneur producing components of goods will not be liable if it can prove that the danger was caused by the design or assembly of the goods or the provision of usage or storage instructions, warnings or product information by the party producing the goods.

Entrepreneurs cannot escape liability under the Product Liability Act by agreements with consumers to disclaim or limit liability.

In addition to the damages provided by the Civil and Commercial Code, courts may also require the following:

1. compensation for damages to the mind resulting from damages to the body, health or hygiene of the damaged party, which compensation may inure to the benefit of heirs of the damaged party if the damaged party is dead and
2. punitive damages for knowing or reckless behavior or failure to take appropriate action after learning that the goods are unsafe; *provided* that punitive damages may not exceed two times the actual compensation.

The statute of limitations for suits brought under the Product Liability Act is three years from the day on which the damaged party learns of the damages and the entrepreneurs responsible or ten years after the goods are sold or, in the case of damages caused by substances accumulating inside of the body, three years from the day on which the damaged party learns of the damages and the entrepreneurs responsible or ten years from the day on which the damaged party learns of the damages.

The Product Liability Act does not supersede other laws that may provide greater coverage.

The rationale for the Product Liability Act is to shift the burden of proving that goods are unsafe from the consumer, who is unlikely to be able to know if a product is unsafe, to the entrepreneurs.

Thailand Law Forum