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The International Comparative Legal Guide to:

Product Liability 2006

A practical insight to cross-border Product Liability work

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Winston & Strawn LLP

Romania

Razvan Gheorghiu-Testa

Tuca Zbârcea & Asociatii

Sebastian Radocea

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 Romania, the main statute regulating product liability is Law No. 240/2004 on producers' liability for damages caused by defective products ("**Law No. 240/2004**") as well as Government Ordinance No. 21/1992 on consumer protection, as amended ("**GO No. 21/1992**").

The Romanian system of product liability may be regarded as a two-fold regulated system, as it is grounded on both tort liability and contractual liability.

Tort liability

The tort liability of producers for damages caused by defective products, as regulated by Law No. 240/2004, is mainly based on the general tort liability principles set forth by the Romanian Civil Code (the "**Romanian Civil Code**"). Articles 998 and 999 of the Romanian Civil Code set forth that any person, who by its faulty acts causes damages to another person, shall be obliged to repair such damage. That is to say, tort liability is based on the fault of a person that may stem not only from the commission of an act, but also from omission to perform an act. A faulty behaviour is assessed in relation to the objective standard of a *bonus pater familias*, which is the standard of care of a diligent and prudent person. As mentioned, product liability is generally based on the general rules and principles of tort liability. Pursuant to Art. 3 of Law No. 240/2004 "*the producer is held liable for the present and the future damages caused by the defects of its product*". However, unlike tort liability under the Romanian Civil Code, which is fault-based, product liability is strict. Thus, Law No. 240/2004 provides that the person incurring the damage caused by a defective product only needs to prove (i) the damage; (ii) the defect of the product; and (iii) the causal nexus between the damage and the defect of the product. No fault must therefore be proven by the claimant.

Contractual liability

Under Romanian civil law, contractual liability applies to claims arising (i) between parties to a contract that has been validly concluded; and (ii) in connection with the non-performance or improper performance of the parties' obligations under the respective contract.

According to the applicable contractual liability principles, in a sale-purchase contract, only the purchaser may engage the contractual liability of the seller and only for hidden defects of the purchased good.

Under the special product liability regulations, the consumer has the right to file a legal action against the seller to seek compensation for damages caused by defective products (Art. 12 of GO No. 21/1992). The term "consumer" regards not only the person who purchased the product from the producer, but also the person who subsequently acquired the product from the initial purchaser (i.e. the one who uses or consumes the product). Should any of these persons incur damages resulting from a defect product, they may file a claim against the seller and assert breach of the seller's obligations under the sale-purchase contract.

Also, the consumer can hold the seller liable not only for latent defects of the product, but also for ostensible defects, as GO No. 21/1992 does not make any distinction between these categories of defects.

Liability imposed for breach of statutory obligations

For certain categories of products, conformity and safety standards are imposed by special statutes (such as low voltage equipments, toys, industrial machines etc.). However, by simply failing to observe such standards, the liability of producers cannot be engaged by consumers if, in addition, consumers cannot prove causation of any damage resulting from such failure. Nevertheless, the breach of such aforesaid standards is regarded as an administrative offence (misdemeanour) and sanctioned with fines of up to RON 10,000 (approx. EUR 3,000).

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

We are not aware of any schemes of compensation for particular products, operated by the Romanian State.

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

Law No. 240/2004 provides that the liability for defective products is borne by the producer. However, the term "producer" covers a broad range of individuals or legal

entities, as provided by Art. 2 letter a) of said statute:

(a) the manufacturer of the finished product, of the raw material, or of components of the product;

(b) any person which is presenting itself as the producer by putting its name, trademark, or other distinctive element on the product;

(c) the importer of a product in Romania, who shall be liable on the same terms as the manufacturer; or

(d) any supplier, if the producer or importer cannot be identified and the supplier fails to provide the consumer with information necessary for the identification of the manufacturer or importer, within a reasonable period of time.

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?

The recall of products is regulated by Law No. 245/2004 on the general safety of products ("**Law No. 245/2004**"). Not all defective products can be recalled, but only those falling under the scope of a "dangerous product". According to the aforesaid statute, a dangerous product is a product which, under normal or predictable conditions of use, presents a high degree of risk for the health or safety of the consumers.

The measure to recall products may be conducted either at the initiative of the producer of the dangerous product or of the National Authority for Consumer Protection (Romanian *Autoritatea Nationala pentru Protectia Consumatorilor*).

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

In specific cases, the supply of defective products, due to its serious consequences, could be regarded as a criminal offence. Certain provisions of the Romanian Criminal Code (Romanian *Codul penal*) may serve as a basis for criminal liability concerning death or injuries caused by defect products. These provisions refer, inter alia, to:

(a) Involuntary manslaughter (Art. 178 of the Criminal Code). Involuntary manslaughter could be committed by producers who, through their defective products, have caused the death of consumers.

(b) Bodily injury (Articles 181 and 182 of the Criminal Code). This criminal offence could be committed by producers who, through their defective products, have caused an injury to the health or physical condition of consumers.

(c) Involuntary bodily injury (Art. 184 of the Criminal Code). Fault for involuntary bodily injury on the part of the producer would consist in negligence, meaning that the producer has not foreseen the result of his action (i.e. the causation of an injury to the health or physical condition of consumers), although, considering its skills and experience, he could have and should have foreseen the causation of such injury.

(d) Destruction of goods, caused either through indirect intention or negligence (Articles 217 to 219 of the Criminal Code). This criminal offence could be committed by producers in circumstances where a defective product has caused destruction or damage to, or has rendered unusable, a good belonging to a consumer.

2 Causation

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

As an application of the Roman law principle "*probatio incumbit actor*" (the claimant has the burden of proof), the applicable Romanian statutory provisions on product liability explicitly state that the person incurring the damage as a result of a defective product bears the burden of proving the damage, the defect of the respective product and the causal nexus between the damage incurred and the defect.

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?

Although various tests for the proof of causation have been proposed by legal scholars, Romanian case law has focused on and applied the test consisting of the coexistence of (i) the so-called "necessary cause" (Romanian *cauza necesara*), which is considered to be the event in the absence of which the damage would have not occurred; and (ii) the conditions which, although not decisive for the occurrence of the damage, have yet favoured such occurrence. Therefore, as a general rule, both the "necessary cause" and the favouring conditions are taken into account by the relevant courts when establishing the causal nexus and the liability. As a result, irrespective of whether the defect of the product represented the necessary cause of the damage or, on the contrary, just a collateral condition which contributed to the occurrence of the damage, the liability of the producer of the defective product will be nevertheless engaged.

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 general rule set forth by Art. 1003 of the Romanian Civil Code is that all persons who have caused damage through committing a tort are to be held jointly and severally liable for such damage. This principle is also provided by Art. 5 of Law No. 240/2004 in connection with product liability. Nevertheless, the situation of a product whose manufacturer, out of several possible manufacturers, cannot be established is not covered by the Romanian applicable statutes. However, by applying the principle of joint and several liability, a possible solution that can be grounded would be that the person incurring the damage may file a claim against any producer who is part of a group of producers who manufactured the products, including the defective one.

Market-share liability is not regulated under Romanian law.

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?

An important element that is to be assessed in relation to a product in order to qualify such product as a "safe" one is the existence of adequate information in connection with the features and other technical and non-technical aspects of such product, such as instructions for use. The producer bears responsibility for making such information available to the consumers. Specifically, pursuant to Art. 19 of GO No. 21/1992, the producer needs to provide information regarding the name of the product, the trademark of the producer, the quantity, the warranty period, the validity period, the main technical and quality features, the potential foreseeable risks and the instructions for use.

Considering that the supply of complete product information is an essential element for the assessment of the product's safety vis-à-vis consumers, failure to comply with such information obligation may engage the producer's liability, as the product may be regarded as dangerous or defective. However, the injured person bears the burden of proving the casual nexus between the absence or flaws of the instructions or warnings provided by the producer and the actual incurred damage.

There are no provisions regarding the discharge of the abovementioned duty of the producer in case it only supplied information to a "learned intermediary". The producer is obliged to supply relevant product information to the end consumers and failure to fulfil such obligation engages its liability.

3 Defences and Estoppel

3.1 What defences, if any, are available?

Producers that are defendants in product liability lawsuits may assert several cases of exoneration or limitation of their liability. Pursuant to Art. 7 of Law No. 240/2004, the producer of a defective product may be exonerated of liability if it can prove that:

(a) it is not the person who released the product on the market;

(b) the defect which caused the damage did not exist at the moment the product was released on the market or the defect occurred afterwards due to causes for which he bears no responsibility;

(c) the product has not been manufactured for sale or distribution for lucrative purposes and such product has not been manufactured or distributed in the exercise of the producer's business operations;

(d) the defect is the result of the observance of certain mandatory conditions that have been imposed on the basis of regulations issued by the relevant authorities;

(e) the level of scientific and technical knowledge existing at the moment when the product was released on the market prevented the producer from discovering the defect;

(f) the defect is the result of the consumer's failure to observe the instructions provided as part of the technical documentation that accompany the product, the existence of which need to be proved on the basis of a technical survey; and/or

(g) the manufacturer of components may be exonerated if he proves that the defect was caused by the design of the product into which the component was integrated or by the wrong instructions given by the manufacturer of the product into which the component was integrated.

Art. 8 of Law No. 240/2004 provides that the relevant court may decide to exonerate or limit the producer's liability in case the damage is caused by both the defect of the product and the fault of the injured consumer or of another person for the acts of which the injured person may be held liable. Besides the abovementioned defences provided by the specific product liability legislation, other such defences that can be asserted by the producer are based on the general principles of civil law applicable in Romania. These producer's defences are:

(a) the fault of a third party; and/or

(b) the occurrence of *force majeure*.

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?

As mentioned under question 3.1 above, the level of scientific and technical knowledge existing at the moment when the product was released on the market, which prevented the producer from discovering the defect, is a defence that can be asserted by the producer for being exonerated from liability by the relevant court (Art. 7, letter e) of Law No. 240/2004).

However, it is for the producer to provide evidence proving that the defect was impossible to discover at the date of its release on the market.

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?

As mentioned under question 3.1 above, pursuant to Art. 7, letter d) of Law No. 240/2004, the producer may assert a defence that the defect is the result of the observance by the producer of certain mandatory conditions that have been

imposed on the basis of regulations issued by the relevant authorities.

However, the legal requirements only establish a minimal level of standards that the producer may not derogate from. This is because the producer is obliged to release on the market only safe products and therefore it has to take all appropriate measures and to establish such standards (even higher than those provided by the law) in order to assure the safety of his products.

Concerning pharmaceuticals, Art. 20 of GEO No. 152/1999 provides that "*granting the marketing authorisation by the Medicine National Agency does not diminish the civil and criminal liability of the producer*."

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?

The Romanian legal system applies the defence of *res judicata* (Romanian *exceptia puterii de lucru judecat*), meaning that a matter that has already been decided by a court in a lawsuit cannot be re-litigated if the parties, the object and the cause of the other lawsuit are the same. Having said that, a different claimant can re-litigate issues of fault, defect or the capability of a product to cause a certain type of damage.

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?

The defendants cannot assert a defence against the injured person by claiming that the fault/defect was due to the actions of a third party. As mentioned, Art. 4 of Law No. 240/2004 provides that "*the producers' liability shall not be limited if the damage is caused both by the defect of the respective product and the action or omission of a third party*." The defendant faces therefore full liability for the entire damage vis-à-vis the claimant. However, the producer may seek a contribution or indemnity from the third party who contributed to the damage, even within the same proceeding. Thus, the Romanian Civil Procedure Code (Romanian *Codul de procedura civila*) allows the defendant to promote, within the same proceeding initiated by the claimant, a so-called "request for guarantee" (Romanian *cerere de chemare în garantie*). This is a request addressed by the defendant to the court to cite a third party against whom the defendant may seek contribution or indemnity, in case the defendant would be obliged by the court to pay damages to the claimant. Nevertheless, the producer may opt to file a separate lawsuit against such third party.

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

As mentioned at question 3.1 above, if the producer is able to prove that the claimant's action (i.e. failure to observe the usage instructions provided in the technical documentation accompanying the product) caused the damage, the former would be exonerated of liability (Art. 7, letter f) of Law No. 240/2004).

4 Procedure

4.1 Is the trial by a judge or a jury?

Within the Romanian court system, lawsuits are judged by courts formed of one judge or by a panel of judges. There are no juries provided by the Romanian court system.

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 only persons entitled to decide on a matter brought before a Romanian court are judges. Hence, experts have no decision power within a trial. A court has, however, the prerogative to appoint experts, but their advice is not binding, since the evidence subject to an expert's opinion can only be assessed by a judge.

4.3 Is there a specific group or class action procedure for multiple claims? If so, please outline this. Are such claims commonly brought?

No group or class actions are acknowledged under the Romanian judicial system. However, several claimants may file a common claim against one or more producers if the object and the grounds contemplated by each plaintiff are the same. If the judge is confronted with a large number of claimants, he may decide that the claimants appoint a representative to stand before the court in the name of all claimants.

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

GO No. 21/1992 provides for the possibility of consumers to establish consumer associations. Such entities are NGOs set up for defending the rights and interests of their members or of consumers, in general.

As a general rule, the only person who can stand before a court as a claimant is the holder of the claim that is put under discussion within the lawsuit. Generally, only such person may justify an interest to file a lawsuit. However, the applicable statutes provide for several exemptions, by granting to certain collective bodies the power to file claims in the name of its members. As mentioned, this is the case of the consumer associations that, according to Art. 38 letter f) of GO No. 21/1992 have the "*right of filing claims for defending the rights and the legitimate interests of consumers*."

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

Product liability lawsuits deriving from torts are regarded by the Romanian Civil Procedure Code as civil law-based trials and, therefore, no pre-trial stage is provided.

Product liability lawsuits deriving from the breach of a contract represent commercial law-based trials. For commercial law-based trials, Art. 720[1] of the Romanian Civil Procedure Code provides for a pre-trial stage, called "direct conciliation" (Romanian *conciliere directa*), which the claimant must undergo before filing the claim with the relevant court. This pre-trial stage mainly consists in an invitation to conciliation submitted by the potential claimant towards the potential defendant for a date not earlier than 15 days as of the submission of the notification. Immediately after the parties' failure to find an amicable settlement of their dispute (or after 30 days as of the submission of the notification if the defendant fails to honour the invitation for conciliation), the claimant may file the claim with the relevant court.

After a claim has been filed, litigation moves straight to the trial. The duration of the court proceedings vary depending notably on the complexity of the case. It can therefore take several years before a final and enforceable court decision is passed.

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?

Certain preliminary issues can be tried by the court, before reaching the merits of the case. Such preliminary issues may be raised by the defendant or by the court *ex officio* and can regard lack of competence, the statute of limitation with regard to the claim brought before the court, lack of interest of the claimant, lack of capacity to stand before a court etc. Such issues are usually solved prior to the court analysing the merits of the case and, some of them, if accepted, may put an end to the lawsuit even before the merits of the case are analysed. As an exemption, for the case where, in order to solve certain preliminary issues, debates on evidence related to the merits of the case are considered necessary, the court may postpone the judgment on such issue and decide simultaneously both on the preliminary issue and the merits of the case.

4.7 What appeal options are available?

Under the Romanian Civil Procedure Code, as a general rule, a first instance judgment may be appealed on factual and legal grounds, while decisions passed by appeal courts may subsequently be challenged exclusively on strictly provided statutory grounds.

For product liability claims based on torts of the producers provided under Law No. 240/2004, the first lawsuit cycle is judged by the relevant Lower Courts (Romanian *judecatorie*) if the value of the claim is lower than RON 500,000 (approx. EUR 145,000) and by the relevant Tribunals (Romanian tribunal), if the value of the claim exceeds said amount.

The decisions of the courts of first instance (i.e. either the Lower Courts or the Tribunals) can be appealed under the second lawsuit cycle at the relevant Tribunals and Courts of Appeal (Romanian *curtea de apel*), respectively, depending on the court that has ruled in first instance.

Finally, the decisions passed by Tribunals or Courts of Appeal within the second lawsuit cycle may be challenged, in a third lawsuit cycle (Romanian *recurs*), at the Appeal Court or at the High Court of Justice and Cassation (Romanian *Înalta Curte de Justitie si Casatie*), respectively.

For product liability claims based on a breach of contract and filed by consumers against the sellers, as they are regarded by the Romanian procedural law as commercial law-based trials, the Civil Procedure Code provides for a different competence of the courts.

Thus, the Lower Courts are competent to rule on claims with values below RON 100,000 (approx. EUR 30,000), while the Tribunals are competent for values exceeding said amount.

In the second lawsuit cycle, the decisions of the aforesaid courts may be appealed at Tribunals and Courts of Appeal, respectively. In the third lawsuit cycle, the decisions passed by Tribunals and Appeal Courts may be challenged before the Appeal Courts or the High Court of Justice and Cassation, respectively.

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?

Experts may be appointed to assess certain technical issues, at the initiative of the court or at the request of any party. Although judges are not bound by the conclusions of the expert, the expert's opinion may have a decisive role in connection with the merits of the case, as it provides a professional point of view on the assessed aspects.

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?

As a general rule, prior to the commencement of a trial, neither factual witnesses nor experts may be required to make depositions. Pursuant to Art. 235 of Civil Procedure Code, in exceptional cases though, if there is a risk that certain evidence may disappear or be later evaluated with difficulty during the actual trial, the court may accept the deposition of a witness or the opinion of an expert prior to the trial.

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

Under Art. 172 of the Romanian Civil Procedure Code, at the request of one party, the court may oblige the other party to disclose certain documentary evidence related to the case. The court cannot overrule the demand of the respective party if the requested documentary evidence is common to both parties, if the other party referred to it during the trial, or such party has a statutory obligation to present such evidence.

However, the obligation to disclose documentary evidence may not be imposed to persons bound to observe certain confidentiality duties (such as lawyers, public notaries, priests, physicians) or in circumstances where such disclosure would engage the criminal liability of the

respective person or if the documentary evidence regards strictly private issues.

5 Time Limits

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

Yes, court proceedings must be filed within a determined period of time, as they may otherwise be affected by statute of limitation.

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?

The statute of limitation in connection with the proceedings vary depending on whether the product liability claim is based on torts of the producers or on breach of contract.

If the product liability claim is based on torts of the producers, according to Art. 11 of the Law No. 240/2004, the compensation claim for damages incurred as a result of the defective product shall be time-barred within 3 years upon the date when the claimant became or should have become aware of the damage, of the defect and the identity of the producer. In any case, such claim must be filed within 10 years as of the date the producer released the product onto the market.

For product liability claims based on the breach of contract, a distinction should be made between defects occurred within the warranty or validity period and those which occurred within the average product life.

For defects occurring within the warranty or validity period, the consumer may oblige the seller to remedy the defects, to replace the defect product or to reimburse the purchase price of such defect product. However, the lapse of the warranty period does not exonerate the seller of his liability and he would continue to be liable for latent defects during the entire average life of the product.

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

Under classical contractual liability provided under the Romanian Civil Code, the purchaser may file a claim against the seller for the latent defects of the good within 6 months as of their discovery. However, if such latent defects were intentionally concealed by the seller, the statute of limitation is 3 years and shall be calculated from the date of their discovery.

Concerning the specific Romanian legislation on product liability, no such distinction is being made and, therefore, defects (either hidden by the seller's negligence or deliberately, by concealment or fraud) do not affect any available time limits.

6 Damages

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

For product liability claims grounded on torts of the producers, Law No. 240/2004 provides for a detailed enumeration of damages that may be recovered further to the engagement of product liability of the producer.

Pecuniary damages

Law No. 240/2004 makes reference to death, bodily injury or health injury as part of the personal damages that may engage the liability of the producer. Also, the producer would be held liable for damaging or destroying any good with a value exceeding RON 200, other than the defective product, provided that such good is designed for private use or consumption and was used by the injured person for such personal purposes.

Non-pecuniary (moral) damages

The problem of compensation for moral damages has historically been a source of controversy, especially during the communist regime. In 1952, the Supreme Court ruled that "*no material compensation may be granted for moral damages*", grounding such decision on the inconsistency between socialist fundamental principles which consider as the main source of revenue, the work rendered by man, on the one hand and speculative gains deriving from an allegedly moral damage, on the other hand. Gradually, certain corrections to this position have been attempted which allowed a limited grant of non-pecuniary damages for those asserting moral damages.

The problem has been solved pursuant to the fall of communism in Romania, as the award of compensation for moral damages has been acknowledged by various post-communist statutes. The Law No. 240/2004 clearly states in Art. 2(3) that the statutory provisions prescribing compensation for moral damages are fully applicable.

If the claim is grounded on contractual liability, the consumer may request compensation both for actual incurred damage (*damnum emergens*) and lost benefits (*lucrum cessans*) deriving from the breach of contract by the seller of the product.

6.2 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?

Costs of medical monitoring in circumstances where the product has not yet malfunctioned and caused injury but may do so in the future are, as a rule, not recoverable. This is because such costs would equate to compensation for future potential damages and such compensation type is not accepted under Romanian law. As mentioned under question 1.1 above, the first element that the claimant must prove is the incurred damage.

Nevertheless, both legal scholars and case law acknowledge that the damage, in order to give rise to compensation, needs to be certain. It has been stated that a future damage may also be viewed as certain if it can be proved beyond any

doubt that it will eventually occur. However, a potential, but yet not certain future damage will not give the right to any compensation claim under Romanian law.

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

Punitive damages are not provided for in the Romanian legal system.

6.4 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?

Romanian law does not provide for any limit on the amount of damages that can be awarded.

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?

According to Art. 274 of the Romanian Civil Procedure Code, the successful party is entitled to recover from the party that lost the trial all court expenses and other incidental expenses (fees of the technical experts, expenses in connection with the witnesses etc.).

The successful party is also entitled to recover the fees paid to its lawyers in connection with the proceedings.

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

According to Art. 75(2) of the Civil Procedure Code, legal aid may be granted by the court, partially or totally, at any stage of the trial.

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

Legal aid may only be granted to the person who proves that it cannot afford to pay the expenses in connection with the proceedings without jeopardising his own or his family's means of subsistence. The court is entitled to decide on the granting of legal aid, mainly consisting in exemptions or reduction of the applicable judiciary fees and in making available a *pro bono* lawyer for legal assistance and representation.

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

The rules of the Romanian Bar Association (Romanian *Uniunea Nationala a Barourilor din România*) explicitly prohibit the so-called *quota litis pact*, under which the entire attorney fees are contingent upon the outcome of the trial. It is nevertheless allowed to establish "success fees" consisting of an amount payable in case a certain outcome is achieved. Such success fees can be established only as complementary fees, in addition to the agreed retainer or hourly fees.

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Razvan Gheorghiu-Testa

Tuca Zbârcea & Asociatii
Victoriei Square, 4-8 Nicolae Titulescu Ave.
America House, West Wing, 8th Floor
Sector 1, Bucharest
011141 Romania

Tel: +40 21 204 88 96
Fax: +40 21 204 88 99
Email: razvan.testa@tuca.ro
URL: www.tuca.ro

Razvan Gheorghiu-Testa is a Partner at Tuca Zbârcea & Asociatii. With over 10 years of legal practice, Razvan Gheorghiu-Testa has been involved in a variety of corporate/M&A and energy projects. He is the former named partner of Testa, David & Asociatii, the correspondent law firm of Ernst & Young in Romania, where he headed the corporate/M&A practice. Razvan Gheorghiu-Testa has gained valuable experience in domestic mergers and cross-borders acquisitions, privatisations, green field projects, including corporate matters related to real estate transactions. His areas of practice cover various industries, including energy, consumer goods and telecommunications. He is also well-versed in taxation matters and product liability. Razvan Gheorghiu-Testa is fluent in English, French and Italian.

Sebastian Radocea

Tuca Zbârcea & Asociatii
Victoriei Square, 4-8 Nicolae Titulescu Ave.
America House, West Wing, 8th Floor
Sector 1, Bucharest
011141 Romania

Tel: +40 21 204 88 90
Fax: +40 21 204 88 99
Email: sebastian.radocea@tuca.ro
URL: www.tuca.ro

Sebastian Radocea is a Senior Associate at Tuca Zbârcea & Asociatii. He specialises in corporate & commercial law, as well as in banking and finance. Sebastian is also experienced in public procurement and product liability.
Previously a foreign associate with Hengeler Mueller in Frankfurt am Main and a senior associate with Testa, David & Asociatii, the correspondent law firm of Ernst & Young in Bucharest, Sebastian is a graduate of the University of Bucharest and has also earned a L.L.M. (Finance) degree at the Institute for Law and Finance in Frankfurt am Main, Germany. He is fluent in English and German.

TUCA ZBARCEA ASOCIAŢII

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