THE PRODUCT REGULATION AND LIABILITY REVIEW

Sixth Edition

Editors
Chilton Davis Varner and Madison Kitchens

THE LAWREVIEWS

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SIXTH EDITION

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Editors
Chilton Davis Varner and Madison Kitchens

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PREFACE

In today's global economy, product manufacturers and distributors face a dizzying array of overlapping and sometimes contradictory laws and regulations around the world. A basic familiarity with international product liability is essential to doing business in this environment. An understanding of the international framework will provide thoughtful manufacturers and distributors with a strategic advantage in this increasingly competitive area. This treatise sets out a general overview of product liability in key jurisdictions around the world, giving manufacturers a place to start in assessing their potential liability and exposure.

Readers of this publication will see that each country's product liability laws reflect a delicate balance between protecting consumers and encouraging risk-taking and innovation. This balance is constantly shifting through new legislation, regulations, treaties, administrative oversight and court decisions. But the overall trajectory seems clear: as global wealth, technological innovation and consumer knowledge continue to increase, so will the cost of product liability actions.

This edition reflects a few of these trends from 2018. Most notably, various jurisdictions continued to experiment with regulatory and procedural innovations that may augur increased exposure for product manufacturers. In 2018, the first collective action was brought under the Collective Redress Act in Japan, which joined the ranks of other nations (such as France and Belgium) that have newly embraced class adjudication. A draft law on class actions is currently under consideration by the Russian State Duma as well. In Europe, implementation efforts continued apace on the European Databank on Medical Devices, an initiative designed to strengthen market surveillance and transparency for medical devices. The EUDAMED Database is slated to be launched in March 2020, a mere two months prior to the deadline for medical device companies to recertify their products under the EU's new Medical Device Regulation. Meanwhile, as the incidence of product recalls has escalated globally, various jurisdictions in Asia are establishing new regulatory bodies to monitor product safety and respond to crises. For instance, the Singapore Food Agency is being formed to oversee food safety and security, while India has introduced the Consumer Protection Bill 2018, which will establish the Central Consumer Protection Authority and a broad mandate to protect consumer rights. Perhaps most notably, China has established the State Administration for Market Regulation, an institution housed directly under the State Council, that is responsible for ensuring product quality and safety and guiding the China Consumers Association.

Other novel challenges facing product manufacturers were spawned by judicial decision, rather than legislative decree. For example, France's Court of Cassation ruled that, when adverse reactions to a drug are severe enough relative to the expected benefits, the product

should be deemed 'defective,' regardless of whether the manufacturer provided express warnings about those side effects on the product label. Moreover, the Spanish Supreme Court ruled in favour of a plaintiff property owner who argued that damages caused by a metal pipe leak resulted from a manufacturing or design defect – rather than external causes – even though the piping had performed without incident for more than six years after installation. By placing the burden on the product manufacturer to rebut the presumption of a defect, the Court's opinion abrogated prior case law holding that the chain of causation is presumptively broken once sufficient time has elapsed since the product was placed into circulation. And in the United States, the Supreme Court is poised to decide a landmark pre-emption case that may provide valuable guidance to product manufacturers seeking to minimise their exposure to failure-to-warn claims arising under state law. Additionally, this edition highlights how certain countries' product liability laws have grappled with cutting-edge issues in the modern economy, including e-commerce innovations and the emergence of autonomous vehicles and artificial intelligence. Although these changes and trends may be valuable in their own right, they also create a need for greater vigilance on the part of manufacturers, distributors and retailers.

This edition covers 17 countries and territories and includes a high-level overview of each jurisdiction's product liability framework, recent changes and developments, and a look forward at expected trends. Each chapter contains a brief introduction to the country's product liability framework, followed by four main sections: regulatory oversight (describing the country's regulatory authorities or administrative bodies that oversee some aspect of product liability); causes of action (identifying the specific causes of action under which manufacturers, distributors or sellers of a product may be held liable for injury caused by that product); litigation (providing a broad overview of all aspects of litigation in a given country, including the forum, burden of proof, potential defences to liability, personal jurisdiction, discovery, whether mass tort actions or class actions are available and what damages may be expected); and the year in review (describing recent, current and pending developments affecting various aspects of product liability, such as regulatory or policy changes, significant cases or settlements and any notable trends).

Whether the reader is a company executive or a private practitioner, we hope that this edition will prove useful in navigating the complex world of product liability and alerting you to important developments that may affect your business.

We wish to thank all of the contributors who have been so generous with their time and expertise. They have made this publication possible. We also wish to thank our colleague Alex Gray, who has been invaluable in assisting us in our editorial duties.

Chilton Davis Varner and Madison Kitchens
King & Spalding
United States
March 2019

Chapter 15

SWITZERLAND

Frank Scherrer, Andrea Schütz and Marcel Boller[1]

I INTRODUCTION TO THE PRODUCT LIABILITY FRAMEWORK

In Switzerland product liability is governed mainly by the Product Liability Act (PLA), contract law, general tort law and criminal law.

Although Switzerland is not a Member State of the European Union, its product liability and product safety legislation to a large extent implements EU legislation. The PLA is based on Directive 85/374/EEC on liability for defective products.

Until the PLA came into effect in 1993, product liability was mainly governed by the rules on contract law and tort law. The PLA does not affect other legal rights.[2] Therefore, in addition to the rules of the PLA, the rules of the Swiss Code of Obligations (CO) on contract and tort law can still apply if a product is defective. A claim may be based on different legal grounds. In addition, a person responsible for a defective product can be subject to criminal liability.

According to the PLA, a producer is liable if a defective product leads to the death or injury of a person, or damage to, or destruction of, property for private use.[3]

The following persons are deemed to be producers:

a the manufacturer (in whole or in part) of the defective product;
b any person who applied its name or trademark to the product;
c any person who imported the product for commercial distribution; and
d the person who supplied the product, if the producer (at items (a) to (c)) cannot be identified.[4]

According to the PLA, a product is deemed to be defective if, at the time it is marketed, it is not as safe as it can justifiably be expected to be, taking into account all circumstances. Special consideration must be given to:

a the ratio between benefit and risk;
b the method and manner used to present the product (particularly the product information);
c the use of the product that can be reasonably expected; and
d the point in time the product was placed on the market.

1 Frank Scherrer is a partner and Andrea Schütz and Marcel Boller are associates at Wenger & Vieli Ltd.
2 Article 11 PLA.
3 ibid., Article 1.
4 ibid., Article 2.

The subsequent launch of an improved product on the market does not in itself make an older product defective.[5] In a decision of 2013, the Federal Supreme Court clarified that a lack of functionality of products that serve to protect against dangers, such as a fire extinguisher, is also to be qualified as a defect although strictly speaking the lack of functionality does not concern the safety of the extinguisher as such.[6]

The Product Safety Act (PSA) of 2009 and many other administrative laws and corresponding ordinances contain rules on conformity assessments and on standards and proceedings that specific products have to fulfil to be considered safe. To a large extent, these rules refer to or implement EU or international harmonised standards and proceedings. The PSA provides in its Article 6 that the applicable technical standards are published in the Swiss Federal Gazette.

II REGULATORY OVERSIGHT

In Switzerland, administrative laws grant different regulatory agencies the authority to enforce legal rules on product safety. The regulatory authorities' competence depends mainly on the nature of the product. Based on the federal structure of Switzerland, there is often also a cantonal authority competent for enforcement of the legal rules. Prominent authorities are the Federal Food Safety and Veterinary Office, competent in the fields of food safety, nutrition, cosmetics and animal health and the Federal Inspectorate for Heavy Current Installations, competent in the fields of electrical products, domestic installations and heavy-current installations.

The PSA is applicable if no other federal legal rules on the safety of products apply.[7] The State Secretariat of Economic Affairs (SECO) is responsible for coordinating the enforcement of the PSA.[8]

According to the PSA the manufacturer or other distributors (importer, retailer or service provider) of consumer products have to notify the competent authorities if they have reason to assume that their product is a danger to the health or safety of the user or third parties.[9] Notification can be made with the form provided on the SECO website.[10] Product recalls can be published on the website of the SECO free of charge.

It is also possible for consumers, assessment bodies and authorities to notify the SECO if they suspect a product to be defective.

The competent authority can take the necessary measures to ensure the safety of products, such as inspecting products, banning the distribution of or confiscating certain products, and issuing warnings regarding certain products (see Article 10 PSA).

Similar rules apply based on other federal laws. For example, the Swiss Agency for Therapeutic Products (Swissmedic) is the competent authority in the field of the safety of medicinal products and medical devices. The Act on Therapeutic Products vests Swissmedic with broad competence for ensuring the safety of these products.

5 Article 4 PLA.

6 BGE 139 II 534.

7 Article 1 Section 3 PSA.

8 Article 3 of the Ordinance on Product Safety.

9 Article 8 Section 5 PSA.

10 https://www.seco.admin.ch/seco/de/home/Arbeit/Arbeitsbedingungen/Produktsicherheit.html.

As many different authorities are competent in the field of product safety, it is often not entirely clear for the distributor or manufacturer which agency has to be notified in the event of product defects or which agency is authorised to enforce legal rules on product safety.

III CAUSES OF ACTION

Actions for product liability may be based on the PLA, general tort law and contract law. Furthermore, criminal provisions may apply. Federal and cantonal laws governing certain products or activities such as railways or explosives may also serve as a basis for product liability claims.

Under the PLA, the manufacturer is liable for damages in the event of death or personal injury or damage to things that are intended for private use or consumption and have been used mainly for private purposes. Under the PLA, the manufacturer is not liable for damage to the defective product itself. To prevail in a claim based on the PLA, the plaintiff must generally show the following elements: (1) the damage; (2) the defect; and (3) adequate causation of the damage by the defective product.

Under contract law and tort law, damage caused by a breach of contract or an illegal act must be compensated. To prevail in a claim based on breach of contract or general tort law, the plaintiff must generally show the following elements: (1) the damage; (2) the breach of contract or breach of a protective legal provision; (3) adequate causation of the damage by the breach of contract or breach of a protective legal provision; and (4) a fault of the liable person (intent or negligence). In the case of breach of contract, the fault is presumed and the contract partner must prove that no fault is imputable to it. Unless the state is damaged itself, the government may not start civil actions for product liability.

In cases of intentional or negligent distribution of a defective product, the provisions of the Swiss Criminal Code may apply, such as common assault, endangering of health, serious assault or homicide through negligence. Penalties for such crimes extend to a 10-year custodial sentence (in cases of intentional serious assault).

The PSA provides penalties (a fine of up to 40,000 Swiss francs) for putting into circulation a product that does not fulfil the requirements of the PSA, if the safety or health of the user or third parties is thereby endangered. Various sector-specific laws also contain criminal provisions.

Companies can, generally, be held criminally liable if a criminal act is committed in the exercise of commercial activities in accordance with the purpose of the corporation and if it is not possible to attribute this act to any specific individual owing to inadequate organisation of the company.[11] In such cases, a fine of up to 5 million Swiss francs can be imposed on the company.

IV LITIGATION

i Forum

Product liability claims are tried before the general civil court system. The system is partly regulated by cantonal law, thus there are some local variations. There are four distinct levels of ordinary civil courts:

11 Article 102 of the Swiss Criminal Code.

a the local conciliation authority;
b the local court of first instance;
c the cantonal high court; and
d the Federal Supreme Court.

With certain exceptions, the claimant must start by initiating a mandatory conciliation proceeding. The conciliation authority will try to reconcile the parties in a conciliation hearing (Articles 201 and 203 of the Swiss Civil Procedure Code (CPC)). The parties must appear in person at the conciliation hearing, but may be accompanied by a legal representative. Parties domiciled outside the canton or in a foreign country are exempt from the obligation to appear in person and may send a representative on their behalf.[12] The conciliation authority can, on petition, issue decisions on monetary claims if the value of the claim does not exceed 2,000 Swiss francs.[13] For claims of a higher value, the conciliation authority has no competence to decide on the merits of the case.

The local courts of first instance are competent to hear civil cases for which no reconciliation was achieved before the conciliation authority. Court decisions are rendered by one or several judges, depending on cantonal law and value of the claim.

There are no jury trials in Switzerland for civil lawsuits. A civil trial is commenced by filing a written statement of claim to the local court of first instance, within three months of authorisation to proceed being granted by the conciliation authority.[14] Usually, there will be an exchange of one or two written statements and, thereafter, one or several days in court (hearing witnesses, final statements by the parties). Swiss litigation is, in practice, highly focused on the written statements and on the other documents submitted by the parties, although, formally, the oral part of the proceeding and other means of proof are not less meaningful. After the first written statements have been filed, the instructing judge will usually hold a hearing and propose a settlement to the parties.

Judgments by the conciliation authority and the courts of first instance can be appealed (the details vary depending on the value of the claim) and brought before the cantonal high court.

If the value of the claim is over 100,000 Swiss francs, the parties can agree to commence proceedings directly before the cantonal high court.[15]

Four cantons have installed commercial courts that are competent to hear certain claims that would otherwise be handled by the regular civil courts. For product liability claims, the following preconditions of the competence of commercial courts are relevant: registration of at least the defendant in the commercial registry in Switzerland or in a comparable registry in his or her country of domicile and value of the claim of at least 30,000 Swiss francs.[16] If only the defendant, but not the claimant, is registered in the commercial registry, the claimant may choose whether to proceed before the commercial court or the ordinary courts.

12 Article 204 CPC.
13 ibid., Article 212.
14 ibid., Article 209.
15 ibid., Article 8.
16 ibid., Article 6.

Judgments by the cantonal high court and the commercial court can be appealed before the Federal Supreme Court, the highest court in Switzerland, if the value of the claim amounts to at least 30,000 Swiss francs (subject to further preconditions).[17]

For any stage of a civil proceeding, the claimant or the party appealing will be required to pay an advance on the court fees.

Proceedings by the administrative authorities regarding product safety are separate from civil proceedings. Federal administrative authorities can issue orders and obligate a manufacturer or distributor to take certain measures regarding product safety (e.g., a product recall).[18] Orders by federal administrative authorities can be appealed before the Federal Administrative Court.[19] Judgments of the Federal Administrative Court are subject to appeal before the Federal Supreme Court.[20]

Criminal proceedings are handled by cantonal criminal authorities (i.e., public prosecutors and criminal courts; usually the local court of first instance and, on appeal, the cantonal high court and the Federal Supreme Court). Criminal courts may also decide civil claims connected to criminal allegations.[21] Administrative authorities are often also vested with a certain competence to impose fines. They issue penal orders that are subject to appeal.

ii Burden of proof

In civil litigation, the burden of proof for an alleged fact rests on the person who derives rights from that fact; therefore, in a product liability case, the burden of proof for the preconditions of product liability rests on the plaintiff. The plaintiff needs to prove the defectiveness of the product, the damage and adequate causation. Adequate causation means, according to the Federal Supreme Court, that a cause must be appropriate to cause a result of the kind that occurred or to considerably facilitate the occurrence of such a result based on general experience of life and the usual course of things. The standard of proof is overwhelming likelihood.[22] The defectiveness does not necessarily need to be proven by an expert opinion.

iii Defences

The producer is not liable for a defective product under the PLA if it proves any of the following:

a it did not market the product;

b the product was not defective when it was put into circulation;

c it did not manufacture the product for a business purpose or within the framework of its professional activity;

d the defect is attributable to compliance with compulsory, official regulations;

e the error was not identifiable on the basis of scientific and technological knowledge at the time the product was put into circulation (development risk); or

17 Article 77 et seq. of the Federal Law on the Federal Supreme Court (FCL).

18 Article 10 PSA.

19 Article 31 of the Federal Act on the Federal Administrative Court.

20 Article 75 FCL.

21 Article 122 of the Swiss Criminal Procedure Code.

22 BGE 133 III 81, E.4.2.2.

f it had produced only base material or part of the product and the defect was caused by the construction of the product, in which the base material or part was incorporated, or by the instruction given by the producer of that product.[23]

Apart from defects owing to compliance with compulsory, official regulations, there is no 'regulatory compliance defence' in civil litigation, that is, liability cannot be excluded only because all regulatory requirements have been complied with. However, as defectiveness is assessed based on all circumstances, compliance with regulatory requirements and the assessments of the experts of the regulatory authorities need to be taken into account.

In administrative proceedings, compliance with (harmonised) technical standards constitutes a (disputable) presumption that the product complies with the essential health and safety requirements.[24]

The statute of limitations period for product liability claims under the PLA is three years from the day when the injured person gained or could have gained knowledge of the damage, the defectiveness and the person of the manufacturer. Claims under the PLA are in any case time-barred if no lawsuit is filed within 10 years of the day when the product in question was put on the market.

The statute of limitations period for product liability claims under general tort law is one year from the day the injured person gained knowledge of the damage and the person liable, or 10 years from the day of the damaging act or omission. In the case of a longer limitation period for a criminal act, this longer period would apply.

The general statute of limitations period for contractual claims is five (foodstuffs, everyday retail goods) or 10 years (other goods). The statute of limitations period for claims based on defects of a purchased product, however, is generally two years from the delivery of the product. The buyer is obliged to examine the product and to notify the seller immediately when he or she discovers a defect.

Apart from the statute of limitations there are additional defences against contractual claims or claims under general tort law.

iv Personal jurisdiction

International jurisdiction is determined by the Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters of 30 October 2007 (the Lugano Convention (LC)) for defendants domiciled in a contracting state of the Lugano Convention.

According to the Lugano Convention, claims must generally be brought before the courts of the state in which the defendant is domiciled. However, the Lugano Convention defines a number of exceptions to this general rule. There are several situations in which a person domiciled in a contracting state may be sued in another contracting state. The relevant additional forums for product liability cases are:

a for claims based on the PLA or general tort law, the courts at the place where the harmful event occurred;[25]

23 Article 5 PLA.

24 Article 5 PSA.

25 Article 5.3 LC.

b in matters relating to a contract, the place of performance of the obligation in question (i.e., in the state where the defective product was delivered);[26]

c for civil claims for damages or restitution that are based on an act giving rise to criminal proceedings, the court handling those criminal proceedings, to the extent that the court has jurisdiction, under its own law, to entertain civil proceedings;[27]

d if a number of defendants are sued together, in the courts of the place where at least one of them is domiciled;[28] and

e in an action on a warranty or guarantee, or in any third-party proceedings, in the court of the primary proceedings.[29]

In cases where the defendant is not domiciled in a contracting state of the Lugano Convention, international jurisdiction of Swiss courts is determined by the Federal Act on International Private Law (PILA).

The PILA provides for the following additional places of jurisdiction besides the domicile of the defendant that are relevant for product liability trials:

a for claims based on the PLA and general tort law, the courts at the place where the harmful act was committed or where its effect took place or, for claims based on the activities of a Swiss branch office, at the branch office's domicile;[30]

b for claims based on a contract, the place of performance of the characteristic contractual obligation;[31] and

c for claims based on contracts with consumers, the domicile of the consumer.[32]

v Expert witnesses

In civil litigation, the parties have to present the facts of the case to the court in substantiated form and are obligated to offer evidence supporting their factual statements. The court must review or administer the evidence offered by the parties for facts that are disputed among the parties and that are legally relevant to the case. The following evidence is admissible: testimony, physical records, inspection, expert opinion, written statements and questioning as well as statements of the parties.[33] The court forms its opinion based on its free assessment of the evidence.[34]

According to the Federal Supreme Court, expert opinions commissioned by the parties themselves are not to be regarded as expert opinions within the meaning of the CPC. Such a 'private expert opinion' may not be treated as evidence by the courts but merely as a statement by the party that commissioned the expert opinion.[35]

Parties can, however, request the court to appoint an independent court expert. Parties have the right to be heard regarding the identity of the expert and the questions he or she

26 ibid., Article 5.1.
27 ibid., Article 5.4.
28 ibid., Article 6.1.
29 ibid., Article 6.2.
30 Article 129 PILA.
31 ibid., Article 113.
32 ibid., Article 114.
33 Article 168 CPC.
34 ibid., Article 157.
35 BGE 141 III 433.

shall be asked. They may also request that the court asks additional questions after reviewing the expert opinion. Usually, as far as technical or scientific matters are concerned, a court will rely strongly on a court expert's opinion.

vi Discovery

Swiss law does not provide for the possibility of discovery or depositions as they are known in common law jurisdictions. The parties generally have to gather the evidence they consider necessary to substantiate their claim or defend themselves, or request the court to collect such specified evidence in the evidentiary proceeding. In the evidentiary proceeding in a pending lawsuit, the court may order a party to produce certain pieces of evidence. If the party refuses to comply with such an order, the court may weigh this behaviour against this party.[36]

The CPC provides the possibility of precautionary taking of evidence by the court if the applicant shows credibly that evidence is at risk or that he or she has a legitimate interest.[37] If an expert opinion is to be a central piece of evidence in a future court proceeding, a party can request that the court commissions the expert opinion before an actual trial is commenced based on Article 158 CPC.[38] The requesting party has to cover the costs for such an expert opinion.[39]

Witnesses may be summoned to appear in court if a party requests that they are questioned. The questioning of witnesses is conducted by the court. The parties or their representatives may ask additional questions.

vii Apportionment

In principle, a court decision may only hold that the named defendant is liable towards the claimant. If the defendant named in a lawsuit would, in the event that it loses the trial, turn towards a third party such as a manufacturer, it is possible either to invite the third party to join the process or to file a formal claim against this third party. In the first situation, the third party is not obliged to join the process, whereas in the second the process is extended to it.

Where several persons are liable for the same damage based on similar or different causes (e.g., several persons being considered the manufacturer, or where a doctor is liable on the basis of a contract and a manufacturer on the basis of product liability), they are jointly and severally liable and can each be sued for the full amount of the damage.[40] The law states that the judge may determine to what extent they have recourse claims against each other.[41] If two or more persons are liable based on different legal grounds, the law provides that the person having caused the damage through tort shall bear the liability for the damage primarily and the person being liable without fault and without contractual obligation shall bear the liability for the damage lastly.[42]

36 Article 164 CPC.
37 ibid., Article 158.
38 BGE 140 II 16, E. 2.5.
39 BGE 140 III 30.
40 BGE 115 II 42, E. 1.
41 Article 50 CO.
42 ibid., Article 51.

viii Mass tort actions

Swiss law does not provide for class or mass actions. Several claimants can ask that their respective claims be joined and the proceedings conducted together, but the claims remain separate from each other and are judged separately.

In 2017, the Swiss Foundation for Consumer Protection started a 'lawsuit project' with about 6,000 claimants against Volkswagen/AMAG, combining individual claims for damages and a 'group action' by the Foundation based on the Unfair Competition Act, and backed by various legal expense insurers. This is the first combination of lawsuits of this kind and scale in Switzerland. The background is the Volkswagen emissions scandal and therefore is not a product liability issue, but if the procedural mechanics used prove successful, they could potentially also be used in product liability cases in the future. In July 2018, the Commercial Court of Zurich refused to hear one of the claims of the Foundation for lack of interest. The Foundation for Consumer Protection appealed this decision to the Swiss Federal Supreme Court.

Currently, the Swiss government examines amendments to the CPC to facilitate class actions. However, if and when such a revision will be implemented into the CPC is not yet settled.

ix Damages

There are no maximum limits of damages available for one claimant or available from one manufacturer. According to Swiss law, damage is generally defined as the difference between the injured person's actual assets compared with this person's hypothetical assets if the damaging event had not taken place.

Under the PLA, the injured person may claim for compensation of personal damage and material damage to things for private usage. The PLA provides for a retention of 900 Swiss francs in cases of material damage to things. These limitations do not apply for liability under general tort law or contract law. Damages can also be allocated if the amount of the damage cannot yet be exactly defined; however, the damaging event must have occurred. Punitive damages are not available in Switzerland. Amends for non-economic damage such as pain and suffering are available to the injured person or their next of kin. The amounts are usually moderate, but range from about 100,000 to 200,000 Swiss francs in cases of severe violations of physical integrity.

V YEAR IN REVIEW

Cases on product liability and safety decided by the Swiss Federal Supreme Court are rare. In 2017, the Federal Supreme Court issued a decision regarding product safety (Decision 2C_75/2016 / 2C_76/2016, BGE 143 II 518): in summary, the court held that a competent authority can prohibit products that are in line with applicable EU harmonised standards if the authority comes to the conclusion that a product does not meet health and safety requirements. The Court held that first the product's compliance with the requirements of the applicable harmonised standard has to be assessed. Second, it has to be assessed whether the risks spotted by the competent authority are addressed by the standard. If this is not the case, the producer has to prove that the product meets safety requirements. If the risks in question are addressed by the standard, the presumption of conformity applies. This presumption may, however, be proven wrong by the competent authority. The Court came to the conclusion that the machines in question did not meet the basic health and safety protection requirement

that reasonably foreseeable mishandling should be taken into account when constructing the machines (a requirement that is not taken into account by the standard SN EN 474-1 on earth-moving machinery either).

The Swiss Federal Administrative Court also decided two cases concerning product safety in 2017. One case concerned procedural issues regarding product safety proceedings. The other case concerned the question as to which is the competent authority for decisions with regard to a particular product category.

Appendix 1

ABOUT THE AUTHORS

FRANK SCHERRER

Wenger & Vieli Ltd

Frank Scherrer obtained his law degree from the University of Neuchâtel, Switzerland in 1991; his LLM in European legal studies from the University of Exeter, United Kingdom in 1993; his Dr.iur. from the University of Zurich, Switzerland in 1996; and he was admitted to the Bar in Switzerland in 1999. His areas of practice include pharmaceutical and health law, product liability law, contract law, unfair competition and cartel law, and advertising law.

Recent mandates include advising and representing pharmaceutical and other companies in product liability matters, as well as advising and representing pharmaceutical companies on a regular basis regarding marketing authorisation and reimbursement, contracts, advertising, sponsoring and gifts, clinical trials and data protection.

Mr Scherrer speaks German, English and French.

ANDREA SCHÜTZ

Wenger & Vieli Ltd

Andrea Schütz obtained her law degree from the University of Fribourg, Switzerland in 2003; her Dr iur from the University of Zurich in 2011, her LLM in health and medical law from the University of Melbourne in 2014; and her CAS in forensics from the University of Lucerne in 2016. She was admitted to the Bar in Switzerland in 2008.

Her areas of practice include pharmaceutical and health law, product liability law, life sciences, administrative law, data protection law, intellectual property law and administrative criminal law.

Recent mandates include advising and representing pharmaceutical companies in legal proceedings concerning product liability. Ms Schütz has advised and represented pharmaceutical companies in appeal proceedings regarding price decreases and revisions of marketing authorisations. She also advises companies on a regular basis regarding contracts, advertising, sponsoring and gifts, and data protection.

Ms Schütz is also performing the legal review of a multinational pharmaceutical company's advertising and PR material for Switzerland.

She speaks German, English and French.

MARCEL BOLLER

Wenger & Vieli Ltd

Marcel Boller's professional qualifications include a law degree from the University of Zurich, Switzerland in 2010, a doctorate at the University of Zurich, Switzerland in 2016 and being admitted to the Bar in Switzerland in 2018.

Marcel Boller's areas of practice include pharmaceutical and health law, product liability law, corporate and commercial law, information technology and data protection law, intellectual property law, unfair competition law and litigation.

Recent mandates include advising and representing companies in pretrial negotiations and legal proceedings concerning product liability; advising pharmaceutical companies and manufacturers of medical devices regarding contracts, cooperation with other stakeholders in the health sector, clinical trials and data protection on a regular basis; and advising and representing pharmaceutical companies in administrative and appeal proceedings regarding price decreases and revisions of marketing authorisations.

Mr Boller speaks German, English and French.

WENGER & VIELI LTD

Dufourstrasse 56
8034 Zurich
Switzerland
Tel: +41 58 958 58 58
Fax: +41 58 958 59 59
f.scherrer@wengervieli.ch
a.schuetz@wengervieli.ch
m.boller@wengervieli.ch
www.wengervieli.ch

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