

THE
PRODUCT
REGULATION
AND LIABILITY
REVIEW

FOURTH EDITION

Editors

Chilton Davis Varner and Bradley W Pratt

THE LAWREVIEWS

THE PRODUCT REGULATION AND LIABILITY REVIEW

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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 2016. Notably, many jurisdictions saw an increase in both mandatory and voluntary product recalls across various industries. In India, for instance, several global car manufacturers initiated voluntary recalls of vehicles owing to various product defects, such as emissions systems that violated environmental norms. This unprecedented rise in voluntary vehicle recalls spawned legislation known as the Motor Vehicles Amendment Bill, currently pending approval in the Indian Parliament, that would for the first time mandate vehicle recalls under certain conditions. Several jurisdictions also saw a proliferation of class actions in product liability contexts. In July, the Collective Claims Act came into force in Japan, enabling small consumer claims to be aggregated and pursued by 'certified organisations', which are required to disburse to consumers 50 per cent or more of the claims recovered from business operators. This edition also highlights how certain countries' product liability laws have grappled with novel issues in the modern economy, ranging from e-commerce (e.g., the Brazilian Superior Court of Justice's conclusion that internet search providers cannot be held liable for defective products marketed through their websites) to emerging technologies (e.g., Australia's interim ban on self-balancing scooters or 'hoverboards'). 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 22 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 colleagues Madison Kitchens and Jordan Raymond, who have been invaluable in assisting us in our editorial duties.

Chilton Davis Varner and Bradley W Pratt

King & Spalding and The Pratt Law Firm

United States

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ARGENTINA

*Ignacio Flores and Gonzalo García Delatour*¹

I INTRODUCTION TO THE PRODUCT LIABILITY FRAMEWORK

Product liability in Argentina is largely regulated by the Consumer Protection Law 24,240 (LDC) – a rule of national scope passed in 1993 and which was the subject of important modifications in 1998 (Law 24,999) and 2008 (Law 26,361) – since the vast majority of the claims observed in practice are brought by consumers. These consumers can be considered as such in the strict sense, as well as the ‘bystanders’,² and they can be both individuals and legal entities.

According to the LDC, a consumer relationship exists between a professional supplier of a product and a consumer as ‘final recipient, for his own benefit or his family or social group’ (Article 1), and the interpretation of the Argentine courts has admitted in several cases that an entrepreneur or commercial company acquiring a product for its production chain does so as final recipient.

Relatively few cases fall outside the scope of the LDC, but such cases will be governed by the recently adopted Civil and Commercial Code (CCC) (as of 1 August 2015).

The civil and commercial courts also have an important role regarding consumer product liability claims. Generally these claims are settled on the national and federal levels as well as in the provincial courts where the LDC and the CCC are applied. In addition, consumer associations may initiate collective consumer actions, even those of a strictly pecuniary nature.

Consumer protection has been enshrined since 1994 in the National Constitution (at Article 42), which specifically establishes the guarantee for the protection of the consumer’s health, safety and economic interests, as well as adequate and true information, freedom of choice and conditions of fair and dignified treatment.

The LDC provides for both judicial and administrative remedies, including conciliation instances and establishment of penalties before administrative bodies. The national and provincial states have issued rules for consumer protection.

In addition, the LDC regulates consumer associations, which have assumed a major role mainly in the proliferation of class actions.

The Criminal Code establishes penalties for those who cause injury owing to negligence or malpractice as well for those who endanger health by poisoning or adulterating drinking water, or food or medicinal substances, or goods dangerous for health.

1 Ignacio Flores is a junior partner at Estudio Beccar Varela, and Gonzalo García Delatour is a partner at Estudio Beccar Varela.

2 Any person that is not a direct part of the contractual consumer relationship but he is also injured or affected by the defective product or service.

II REGULATORY OVERSIGHT

The consumer legal framework includes a few general obligations that overlap with those involving product regulations, for example, specific duties of information for products that may be considered 'dangerous', or general safety obligations. For this reason, agencies that have enforcement powers related to consumer regulation may impose certain remedies (e.g., fines) for breaching consumer regulations related to product liability.

Beyond these general obligations, there are no other consumer agencies that deal with any kinds of products.

There are, however, regulatory agencies that issue and enforce specific regulations regarding specific kinds of products (e.g., ANMAT, the food and drug regulator) and that may have points of contact with product liability.

ANMAT's main areas of responsibility include:

- a* control of the manufacturing, production, packaging, distribution, commercialisation, import and export of medicines, medical technology, food and cosmetic products;
- b* registration of medicines, medical technology, food and cosmetic products before their manufacturing, import, distribution and commercialisation;
- c* control of all clinical trials performed in Argentina; and
- d* control of manufacturing and commercialisation of household cleaning products.

Each of Argentina's 23 provinces also has a local health authority with concurrent jurisdiction to ANMAT on health matters. Persons and entities carrying out activities in connection with products involving health issues in any of those jurisdictions are subject to the control of both ANMAT and, depending on the specifics of each case, the local health authority where the activity is performed.

ANMAT can order the recall of a product and impose and enforce penalties detailed in local regulations, and manufacturers can defend and challenge penalties. The penalties include warnings; monetary fines; total or partial, temporary or definitive closure of the premises in which the breach occurred; suspension or barring of the activity performed by the laboratory; seizure of products in breach; and cancellation of the authorisation to manufacture or commercialise products.

III CAUSES OF ACTION

Product liability arises owing to a defect of a product that entails harmful consequences and that may be owing to defects in design, manufacture or absence of adequate information. Also there may be the event of default of the seller for failure to comply with contractual stipulations pertaining to the sale as well as breaches of the manufacturer or sellers regarding administrative rules concerning the products.

As mentioned before, the great majority of product liability claims are brought under the LDC, the remainder being governed by the common rules of the CCC regarding civil liability for a breach of the obligation not to harm (consumers always have the option to bring an action according to the provisions of the CCC, which are not excluded by the application of the LDC).

Contractual breaches are also governed alternately by the LDC or by the CCC.

Consumers can also report non-compliance with a contractual or legal provision to the authorities as well as the existence of a defect in the product, and they may even claim compensation for material damage (direct damage).

Non-compliance with governmental regulations (see Section II, *supra*) is subject to penalties by the relevant national or provincial authorities.

Finally, the Criminal Code (Article 84) establishes penalties of one to five years' imprisonment for those who cause the unintentional death of a person owing to negligence or lack of skill in their art or profession or non-compliance with the regulations for their duties. Should there be more than one victim, the minimum is two years' imprisonment.

In the case of unintentional damage to the body or health (physical injury), the penalty will be of one month to three years' imprisonment or a fine of 1,000 to 15,000 pesos (in aggravated cases, a minimum of six months' imprisonment and a fine of 3,000 pesos).

The Criminal Code also provides for penalties between three and 10 years' imprisonment for those who intentionally endanger health through drinking water, food or medicinal substances intended for public use. Such penalties may rise to between 10 and 25 years' imprisonment in the event of death. For cases of negligence or malpractice, fines range between 5,000 pesos and 100,000 pesos, and penalties of six months to five years' imprisonment are provided for cases of illness or death.

There are also many types of criminal offence concerning the trade of medical products or the violation of rules relating to animal health.

IV LITIGATION

i Forum

Product liability claims can be filed directly before the courts, but some jurisdictions (including the city of Buenos Aires, Buenos Aires province, Córdoba and others) require mandatory mediation before bringing the case to court.

The court that will intervene will normally be of a civil and commercial nature consisting in a judge of first instance whose decisions may be appealed before a court of appeal. There is the possibility of extraordinary appeals before supreme provincial courts and before the National Supreme Court for certain special cases.

Upon becoming aware that a product is dangerous, the supplier must report it to the relevant governmental authorities immediately³ and to consumers through advertising.

Claimants sometimes report the case to a consumer authority before moving into the courts, usually to try to reach a quick settlement, otherwise if not, the authority would study the matter and can impose a fine of up to 5 million pesos and order this decision to be published.

In addition, the LDC provides for the closing down of a business for up to 30 days and the loss of administrative privileges, but such sanctions are not very usual.

An administrative claim does not prevent the commencement of legal actions.

Suppliers may not agree to arbitration with consumers. Suppliers are only allowed to register before the 'arbitration courts of consumption', which operate within the scope of the Secretariat of Commerce.

ii Burden of proof

According to the LDC, the consumer only has to prove the defect of the product and a causal relationship with the damage, without the need to prove the defendant's negligence or intent.

3 Article 4 of the regulatory decree of the LDC.

The defendant may only seek to break the causal link, proving that he or she was unrelated to the cause of the damage, a fact that generally takes place by proving the victim's fault.

The LDC establishes that the Attorney General's office (*Ministerio Público Fiscal*) shall be joined to the proceedings to ensure consumers' protection. It also establishes that suppliers shall produce all the evidence in their possession, according to the characteristics of the good or service, providing the necessary assistance to clarify the issue in dispute, which requires proactive behaviour of the defendants to prevent the judge from issuing a judgment presuming that there was a concealment that sought to cover up the fault of the supplier.

In addition, many rules state that the interpretation shall be made in favour of the consumer.

Likewise, although in common trials it is the burden of each party to prove the facts alleged thereby, such burden is subject to the theory of shifting burdens, according to which the burden of proof is borne by whoever is in a better position to prove a particular fact.

iii Defences

The limitation term of the legal action to claim damages is three years for a consumer⁴ and for any other damages claim derived from civil liability.⁵

When the consumer claims in court compliance with the provisions of the LDC that do not involve a civil liability claim (i.e., concerning the non-compliance of a contract of sale), the limitation term is the generic term of five years provided for in the CCC.⁶

In case of malfunctions or defects of any kind in the product (even if they were obvious or manifest at the time of the contract) there is a legal guarantee of six months from delivery, which decreases to three months if the product is used,⁷ as long as they concern the correspondence between the product offered and product delivered, or its proper functioning.

In the event of malfunction owing to hidden defects in the product that are not included in a consumer relationship, there is a limitation period of one year⁸ to initiate a legal action, which necessarily entails compliance with the burden of reporting the defect to the seller within 60 days of the occurrence of the defect⁹ and provided that this reporting occurred within six months from the date of receipt of the product or the date when the product was operated (three years in the case of real property), according to Article 1055 of the CCC.

There are grounds for interruption of the limitation, such as the initiation of a claim or the acknowledgement of responsibility, as well as grounds for suspension of the limitation through an extrajudicial communication or through the initiation of a pretrial mediation.

Article 40 of the LDC provides that only the supplier 'proving that he was not related to the cause of the damage' will be totally or partially released, which leads to the consideration of possible defences to demonstrate such lack of relationship.

As regards a non-manufacturer seller, he or she may claim not being aware of a defect that is attributable exclusively to the manufacturer; for example, in the case of a manufacturing or

4 Article 50 of the LCD.

5 Article 2561 CCC.

6 Article 2560.

7 Article 11 of the LDC.

8 Article 2564 of the CCC.

9 Article 1054 of the CCC.

design defect that he or she could not have known using due diligence. But this is controversial and currently a minority position, considering the joint and several liability established by Article 40 of the LDC.

Legal scholars and case law have established that when dealing with different companies that are linked by what is known as ‘related contract systems’ (i.e., a system of credit cards), although each acts autonomously, they all are participants in the business and profit from it, so they are not considered third parties potentially leading to joint and several liability. Currently, related contracts systems are defined in the new CCC, Article 1073.

Regarding product brands, the fact that these create trust in the consumer is considered decisive. For example, *Ivess*¹⁰ was a case where the owner of a brand that had terminated a contractual relationship with a beverage manufacturer prior to the harmful event was held liable, owing to the mere presence of the brand in the packaging. One possibility for brand owners to escape liability in the event of termination of relationship prior to the damage occurring is to show that they extensively advertised the termination.

Another possible defence is to prove the lack of causation between the damage and the defect of the product.

The defence most commonly raised in practice is that of ‘fault of the victim’, for example, failure to perform the service of a car, the use of non-original spare parts, the lack of proper handling of a bottle or the poor conservation of food. To prove this, it is desirable to produce evidence to demonstrate that the manufacturing process complies with all applicable safety standards and that quality control prior to product release is strict, not to demonstrate lack of fault – which is irrelevant in a context of strict liability – but, rather, to make certain doubtful aspects about the more plausible facts.

With regard to the ‘risk taking’ by the victim in certain activities, it may constitute a defence but it must be taken into account that its effectiveness will be relative to the existence of the safety obligation expressly established by the LDC.

It is also possible to raise the defence of *force majeure* or act of God. This is an event that could not be foreseen, or that even foreseen, could not be avoided.

In this regard, it should be pointed out that invoking ‘development risk’, consisting in the possibility of non-detectable defects in the light of technical and scientific knowledge at the time the product was released, has been considered as a contingency of the risk of the activity developed by the producer, and therefore not an act of God.

Regarding the ‘theory of the expert intermediary’ – according to which warnings about the use of a medical product must be provided by the manufacturer to the physician and not to the patient – it has been considered in some cases inadmissible under Argentine law, taking into consideration the obligation to inform the consumer (free of charge), according to Article 4 of the LDC and also to Article 42 of the National Constitution, which enshrines the constitutional right of the consumer to ‘adequate and true information’, which prevents the manufacturer that has provided wrong or insufficient information from hiding behind a physician to excuse his or her responsibility.

It has been also understood that if the product was approved by the state authority, it will not serve as an exemption in a claim for damages.¹¹

10 CNCiv., Sala F, *Ivess de Pinotti, Bárbara Lina vs. Soda Profesional S.A. y otro rel damages claim*, 18-05-2007, RCJ: 3642/2007.

11 Article 1757 of the CCC.

Finally, it should also be considered that in the Argentine market there are insurers that cover the risks of product liability.

iv Personal jurisdiction

With regard to damages arising from defective products, Article 40 holds responsible all the members of the marketing chain and also those who brand the product.

On the other hand, it has been judicially recognised that consumers may bring a claim in the jurisdiction of their own domicile or that of the place of accomplishment of the act of consumption or execution of the contract, at their choice, the jurisdiction prorogation clauses being invalid.

v Expert witnesses

In judicial proceedings, it is possible and very common to propose expert evidence on controversial issues. The parties shall provide accurate questionnaires that shall not contain leading questions.

Such evidence is provided by an expert appointed by the court from the existing official lists and by drawing lots. Judges sometimes appoint universities or prestigious technical entities as experts in the absence of experts in a particular speciality or owing to the complexity of the subject.

Each party may offer a 'technical consultant', who shall be entitled to participate in the interventions of the official expert and to submit his or her own written report together with that of the expert.

Since the procedure is mostly written, it is rare for the judge to call the experts to give oral testimony. Nor is a judge bound by the findings of the expert report.

Experts' costs are normally borne by the losing party at the end of the trial, but the consumer may litigate *in forma pauperis*, so it is possible for the supplier to have to pay 50 per cent of the cost even in the case of being the winning party, without proving that the consumer had sufficient solvency.

vi Discovery

In Argentina, there is no US-style discovery. Documentation may be requested from a counterparty through a request for preliminary diligence on the basis there is uncertainty about a certain aspect of the future claim that is necessary to clarify beforehand, and that it is impossible to obtain such information without obtaining judicial relief. An anticipated evidence measure may also be requested on the basis that there is danger that the information could be lost. Judges tend to be quite restrictive when granting such measures.

vii Apportionment

Mainly, the LDC places on the part of the ‘supplier’ an express safety ‘obligation’,¹² stating that: ‘The goods and services must be supplied or provided in such a way that, when used under foreseeable or normal conditions of use, they do not present any risk for the health or physical integrity of consumers or users.’

Likewise, the LDC establishes the obligation to provide the consumer with free, clear and detailed information on everything related to the essential characteristics of the goods and services provided, and the conditions of their commercialisation, and unless expressly stipulated otherwise, in physical medium.¹³

The above-mentioned is supplemented in its Article 40, stipulating strict liability for the risk or defect of a product (or service), for all members of its marketing chain and also for the individual who brands it (‘the producer, the manufacturer, the importer, the distributor, the supplier, the seller and the individual who brand the product or service’), all of which are equally bound to the consumer as ‘supplier’, without prejudice to the repetitive actions that correspond among them.

Joint and several liability and its total compliance may be required from any of the debtors simultaneously or successively at its election, simply based on belonging to the same marketing chain or because its brand is placed on the product.

The consumer should only demonstrate the product’s defect and its causal link with the damage occurred.

Such damage, according to some authors, must have transcended the product itself and propagated to the consumer or to other goods of the consumer, since if the damage is limited only to the defect of the product, they consider that it is only claimable to the direct supplier, in that solidarity that allows action against all members of the marketing chain is only justified owing to the requirement of safety of the product and not the exact compliance with the obligations assumed by the direct supplier.

Nevertheless, it is observed in practice that such distinction is rarely applied, and the judgments usually apply Article 40 of the LDC mechanically to all consumer claims, which end up collecting from the most solvent parties.

Lastly, the rules on defective or risky products that cause damage¹⁴ and for hidden defects¹⁵ are applied on non-consumer product liability claims.

In the first case, Article 1757 of the CCC establishes strict liability, and administrative authorisation or compliance with the prevention techniques are not liability exclusions. Once the defect of the product is demonstrated by the claimant, the defendant holds himself or herself free of liability by proving the interruption of the causal link (i.e., he or she was not related to the cause of damage, that being the fact or fault of the victim, a fact of a third party for whom it is not necessary to respond or an act of God not related to the product or activity).

Regarding hidden defects, liability is excluded if it is established that defects did not exist at the time of acquisition or that they were known or should have been known by the buyer.¹⁶

12 Article 5.

13 Article 4.

14 Article 1757 of the CCC.

15 Article 1051 and subsequent ones of the CCC.

16 Article 1053 of the CCC.

viii Mass tort actions

These kinds of proceedings are not regulated; therefore, it is usual to observe multiple associations competing with each other to take legal action with the same cause with respect to the same defendant before various courts, and even in different jurisdictions. That is why the Supreme Court had to establish procedural guidelines to regulate some aspects of the processes and to try to avoid the proliferation of cases with the same subject matter and possible contradictory judgments.

The Supreme Court of Argentina set out a concept of 'collective incidence rights aimed at individual homogeneous interests' in the case of *Halabi* (2009) in which the following requirements had to be met: (1) a common cause; (2) request for the same subject matter; and (3) claims not being sufficiently large to justify an individual claim.

In the past 15 years, there has been a huge increase of collective consumer actions, especially in the area of services, mainly banking and financial services; nevertheless, there were product liability claims, but in relation to the latter it is more difficult to verify the requirement of a common cause or little economic significance.

Collective actions require verification of the suitability of the association to carry them forward.

ix Damages

Judgments ordering the payment of compensation for damages issued both in actions deriving from the LDC and civil law will always provide that the compensation is quantified by taking into account only compensatory (non-punitive) criteria, except for one specific possibility of 'punitive damages' established by the LDC.

The scope of non-punitive remedy includes both the direct and the indirect consequences that could have been foreseen by the responsible person.¹⁷ That is to say, indirect non-foreseeable damage is not compensable.

According to Article 1727 of the CCC:

The consequences of a fact that are used to happen according to the natural and ordinary course of things are called 'direct consequences' in this Code. The consequences that result only from the connection of a fact with a different event are called 'indirect consequences'

One of the heads of damages is spiritual suffering (not material or physical, either because of the physical pain suffered or because of the worries or irritations caused by the damage), which it is left to the discretion of the judge to fix, although overly burdensome penalties under this head of damages does not occur often.

Damages are available for physical damage (including psychological and aesthetic damage) suffered by the consumer, with reference to the harm suffered by the consumer as per the incapacity chart (*baremo*) used by medical experts, and the impact of this disability on the possibilities of generating income of the claimant, whether permanent or temporary, and how it affects the claimant's life chances.

In case of death, close relatives may claim the 'life value' that is given by the economic aid from which they were deprived owing to the victim's death.

17 Article 1726 of the CCC.

Transfer and hospital expenses and fees of the different medical specialities that have intervened, medicines, prosthetics, not covered by civil insurance, social security or prepaid medical insurance may also be claimed (in which case those who made the payments are joined in the action against the defendants).

Likewise, compensation for damage to the consumer's material assets is also available.

Should the claimant fail to obtain a profit as a result of defective product, after demonstrating that the existence of real possibilities in such sense, there will be an obligation to compensate for the loss of opportunity or loss of profit.

Interest is paid on all items, in principle, from the harmful event.

Likewise, after a reform made in 2008 to the LDC (by Law 26,361), Argentine law that had previously considered damages claims as solely compensatory, incorporated 'punitive damages'. The expected legal maximum is 5 million pesos.

Punitive Damages. The supplier that fails to comply with his legal or contractual obligations to the consumer, at the instance of the victim, may be ordered by a judge to pay civil fine in favour of the consumer, which will be calculated based on the gravity of the fact and other circumstances of the case, regardless of other compensation that may be payable. When more than one supplier is responsible for the breach, they will all be jointly and severally liable to the consumer, without prejudice to the corresponding reimbursement actions. The civil fine shall not exceed the maximum fine imposed in Article 47, paragraph b) of this law.¹⁸

Relatively few judgments have applied punitive damages because, although several years have elapsed, the judges have been prudent and restrictive in their application.

The requirements for the application of punitive damages, which are not specified by the LDC or any other rule, have not yet been fully outlined by Argentine doctrine and legislation. For example, it has been said that they would not be applied in a case of strict liability, requiring the supplier's wilful misconduct.

In that sense, the current president of the Argentine Supreme Court, Ricardo Lorenzetti, has also stated, as an author, that an inherent requirement would be the necessary demonstration of 'economic benefits' owing to the wrongful act.¹⁹

However, there have been no high penalties for punitive damages.

During the judicial proceeding, and in certain circumstances (that is, a favourable first instance court pronouncement but being appealed, or when the alleged right is plausible and there is a serious risk based on the delay on arriving at a final decision), claimants may request from the judge a monetary attachment or other kind of injunction ordered against the defendant and its assets.

In addition to money judgments, a judgment may also impose other types of obligations to give, to do or to omit to do, provided that they have been requested and the judge considers them appropriate to avoid damage. Article 1710 of the CCC imposes the duty on any individual, as much as it depends on him or her, to take reasonable measures to avoid or remedy harm, so it is not to be ruled out that a judge considers it his or her duty to provide such a measure even if it had not been requested based on said legal obligation.

In this regard, Article 1711 of the CCC allows the bringing of 'preventive action' to any individual with a reasonable interest, to avoid damage. This is foreseen to be resolved without

18 Article 52 bis.

19 Ricardo Lorenzetti, *Las normas fundamentales del derecho privado*, Edit. Rubinzal Culzoni, 1995, p. 391.

having to prove a factor of attribution, such as the fault, it being enough to demonstrate the illegality of the damage. The measures may be both final and provisional. Such measures should be adopted with the least restrictive criteria and the best means to ensure efficiency in achieving the purpose.

The LDC also provides fines to be imposed by the administrative authorities for penalties for breach of obligations of suppliers. These may even reach the same amount of punitive damages (5 million pesos).

Also, Article 40 *bis* of the LDC provides that administrative authorities subject to requirements such as technical specialisation, independence and impartiality and subject to subsequent judicial review may provide for compensation for 'direct damage', which is detrimental to the consumer, subject to pecuniary appreciation, immediately caused on his or her property or on himself or herself, excepting any kind of non-pecuniary consequences.

Also take into account the criminal consequences (fine or imprisonment) referred to in Section III, *supra*.

To avoid unreasonable punishment, Article 1715 of the CCC empowers the civil or commercial judges to review and reduce the penalties.

V YEAR IN REVIEW

We do not believe there have been too many relevant developments in the past year. For a couple of years, many of the collective judicial proceedings have been practically stopped owing to frequent changes of establishment between different courts and divisions of the courts of appeals, owing to the necessity of determining criteria of the filing of cases before the same court that avoid the increase of legal processes with identical purpose and the issuance of contradictory judgments.

Liability trials for more numerous products appear to be those for automotive and technological products and pharmaceutical companies, as well as bottling and food processing companies. There are many administrative claims and mediations, which are not reflected in a legal claim, seeming to show that in many cases they are not genuine claims.

Recently ANMAT announcements have been issued on certain products, the movement of which was prohibited, as well as recall of automotive components.