

# A Difficult Birth for the Product Liability Law

By Hamano Takayoshi



Consumer groups gather to demand early enactment of a product liability system, which as a result of forceful appeals will finally be implemented from July 1995.

The Product Liability (PL) Law, aimed at facilitating redress for damages on life, body and assets caused by defective products, passed the Diet in June 1994 and will go into effect from

July next year. The bill originated from the Social Policy Council, an advisory body to the prime minister, and was submitted in draft form in late 1993 to then Prime Minister Hosokawa

Morihiro with a recommendation for quick implementation. In response, the government drew up a bill, consisting of six articles and attached rules, to be discussed in the Diet.

After nearly 20 years of discussion, Japan has finally introduced a PL system, already implemented in more than 20 countries. But will the new system be a step forward toward realizing a consumer-oriented society?

## A long wait

During the period when the Social Policy Council was deliberating the question, a celebrity's television set burst into flames resulting in the house catching on fire. The maker of the set initially refused to listen to the complaint filed by the wife, but upon learning that the home belonged to a celebrity became cooperative. In Japan, compensation for damages caused by defective products such as electric machinery or cars is usually settled through direct negotiation between the victim and the maker. One survey showed that most consumers are generally satisfied with responses from manufacturers, and this has been used as a reason why complaints regarding PL issues have been insignificant.

However, gradually more people have come to express their discontent with the way makers handle grievances—sometimes giving favorable treatment to certain kinds of people like celebrities—and prefer to make compensation discreetly with no detailed explanation about the cause, nor public announcement about the existence of the problem.

In fact, how to provide relief measures for damages caused by defective products has been under discussion for a while. In 1975 the Social Policy Council submitted a proposal to improve the situation, and later, in 1976 and 1981, introduced more concrete proposals involving the introduction of a PL system. However, these proposals



did not initiate moves toward enactment of a PL law.

Again in 1990, the introduction of a PL law was back on the agenda, reflecting newly surfaced problems. With the increase in imports people became aware that with defective foreign products to make claims for compensation. But in Japan this is hardly the case.

The hitherto legal system required victims of defective products prove the existence of "fault" on the side of the maker, in addition to substantiating the relation between the defective product and the accident. With the many high-tech goods which can be found everywhere these days, this requirement is very difficult for a victim to meet, and as a result since the end of World War II only about 160 lawsuits have been filed for damages caused by defective goods. Consumers began to argue for elimination of the clause which necessitated proof on the maker's part, and in its place proposed that the victim receive compensation by proving the relation between the defective product and the resulting damage.

A PL system, based on the concept of "responsibility for defect," was first implemented in the U.S. Then following instructions from the European Committee, EC members followed suit, and later EFTA members under conditions similar to the EC instruction. As a result, more than 20 nations, including Hungary, the Philippines, Australia, China and most of the 19 member states in the EC and EFTA, have a PL system based on the principle of "responsibility for defect," regardless of establishing fault on the maker's end.

Despite the widespread adoption of the PL system in the international village, as a result of strong opposition from Japanese industry the council had great difficulties in reaching an agreement. Industry became even more cautious after a series of pro-consumer tentative proposals were published by bar associations, private law academic associations, and the then-opposition Komei and Social Democratic parties. The Social Policy Council decided to draw up models based on European PL sys-

tems because they thought the U.S. model, which can enforce payment of a huge amount of punitive compensation upon corporations, might provoke fierce rejection by corporations and was thus not suited to Japan. After 39 meetings during 1991 and 1992, the council still could not reach a consensus, and postponed the deadline for yet another year to hear opinions from concerned administrative offices.

It was the collapse of the so-called "1955 system," in which the Liberal Democratic Party (LDP) held unbroken rule following the merger of two conservative parties in 1955, that brought a change in the tide. In the summer of 1993, the Hosokawa coalition Cabinet, replacing the LDP government, launched a strong policy campaign to place the consumer as a priority. Thus, industrial circles resigned themselves to the introduction of a PL system, and by the end of the year the council reached an agreement on a draft report incorporating "responsibility for defect."

As the draft included demands made by industry at the final stage, it was criticized by bar associations and consumer organizations as being inadequate to defend consumers. However, Diet passage was relatively smooth because Komeito and the SDPJ were now in the ruling coalition.

## Characteristics of the system

The newly introduced PL law is not specific in detail, leaving interpretation and decisions to the court's discretion. For example, the law defines defect only as "a lack of safety normally expected for a product," the same as the EC direction. The law also omitted more detailed definitions which were included in the original proposal, such as "price relative effects," meaning, for example, a car priced at ¥1 million and equipped with less safety apparatus than a car priced at ¥10 million, is not a defective product. These considerations are left to the discretion of the judge. Yet, in an actual trial it is expected that the original council proposal should become the basis of judgments.

Also, according to the law, the maker can be exempted from responsibility if it can prove that, due to the level of scientific technology at the time of product delivery, the defect could not be predicted.

Potential fields for such cases are mainly in the pharmaceutical, chemical, and other bio-related fields. Although consumers were initially opposed to this provision, law makers were more concerned that future corporate development activities for new products might be thwarted. In the EC instruction, this issue is left to the discretion of each member state, and all but Luxembourg have implemented similar provisions.

Japan's PL system is not an exact copy of the European model. In the EC instruction, there are ceilings on the amount of compensation paid by corporations, while the Japanese system has no such ceilings.

Moreover, the Japanese PL system assigns to government research institutions the job of establishing cause, considering the difficulty for Japanese victims to prove faultiness for high-tech products, as the Japanese judiciary system does not have a discovery system (based on victims' claims, the court can demand that the maker submit related information) such as in the U.S., nor an appraiser system such as in Germany.

Regarding accidents, Japan does not have a background for settling disputes in court such as in America, so the PL system places emphasis on settlements outside of court through, for example, strengthening the functions of the Complaint Management Committee in prefectural governments.

The Japanese PL system is being criticized as siding with industry. However, it can be viewed as a compromise between consumers and corporations. This may not be a great leap, but still is a step forward. What is important now is to develop a system through accumulation of case precedents, with the view that the consumer is the priority. ■

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