

On the Duty of Subsequent Observation of Products

Yaqi Huang

School of Law, China Jiliang University, Zhejiang, China

Abstract: Product safety is always a major issue related to people's lives. Especially from the 20th century, along with the development of industrial society and the development of science and technology, there are more and more various types of products. Nowadays, as the function of products becomes more and more complex, it brings convenience to people's life while there are many uncertainties. The problem of product safety risks due to underdevelopment and other reasons is also increasing. The setting of the obligation of follow-up observation of products in Article 1206 of Civil Code makes the product liability realise the breakthrough from monistic compensation to binary prevention of production operators, which doubly protects the legitimate rights and interests of consumers. This paper focuses on the interpretation of the subject, content, nature and other aspects of the provisions of Article 1206 of the Act, and from the analysis of the development of defective defences, the specific links between the obligation of subsequent observation of the product, and economics and sociology, the study negates the application of the development of defective defences of the product.

Keywords: Duty of Subsequent Observation of the Product; Risk Prevention; Development of a Defective Defence; Measurement of Interest

1. Introduction

1.1 General Rules on Product Liability Damages

1.1.1 Subject of compensation

Article 1202 of China's Civil Code explicitly defines the liability of product producers as strict liability and the liability of sellers as fault liability. At the same time, article 1203 of the Code provides for the first responsibility

system of producers and sellers: the infringed person may choose to claim compensation from the producer or seller of the product, the seller may claim compensation from the producer based on the internal recovery system, and the producer may also recover compensation from the seller who is at fault if the producer has compensated the seller. Producers and sellers of products infringed through the fault of a third party may also recover damages from the third party.

1.1.2 Compensation for property losses

Property losses include direct material losses and indirect financial losses arising from material losses. Article 41 of the Product Quality Law stipulates that if a defective product causes damage to a person or property other than the defective product (hereinafter referred to as other people's property), the producer shall be liable for compensation. And later, Article 1202 of the Civil Code includes the damage to the product itself in the property compensation. [1] In this regard, some old school support the former, that the product damage based on the contract signed by the seller should be liable for breach of contract. However, the majority of scholars still support the latter, that the breach of contract and tort liability should be strictly differentiated, but in terms of defective products to human damage, breach of contract liability and tort liability are adopted strict liability.

1.1.3 Personal injury compensation

From the provisions of article 44 of the Product Quality Law, China's law for personal injury compensation the scope of the provisions of the increasingly expanded, such as medical expenses (including follow-up), lost wages, nursing costs, transport costs, food and nutrition costs, if the death, disability should also be compensated for the corresponding death, disability compensation, etc. In 2003, the Supreme Court issued an interpretation of the defects of the product caused by the personal injury compensation to make detailed provisions.

1.2 Punitive Damages

Article 1207 of China's Civil Code stipulates that, if a product is produced or sold knowing that it is defective and causes death or serious damage to the health of another person, the infringed person has the right to request appropriate punitive damages. This kind of compensation subjectively requires that the producer or seller knows that the product is defective but still produces or sells it, and objectively causes the consequences of death or serious damage to health. Considering the greater subjective malice of the perpetrator, the amount of punitive damages far exceeds the amount of general damages. [2] For example, article 96 of the Food Safety Law provides that consumers may claim ten times the price of the product in addition to damages; article 55 of the Consumer Protection Law stipulates that if an operator has committed fraud in the provision of goods or services, he or she shall pay additional compensation up to three times the price of the goods purchased or the cost of the services received. The latter includes the provision of services in the category of punitive damages.

1.3 Risk Prevention in the Obligation to Observe Product Follow-up

With the occurrence of the "Sanlu" major food safety accidents, article 1206 of China's Civil Code stipulates that if a product is found to be defective after it has been put into circulation, the producer or seller shall promptly take remedial measures such as warnings and recalls. If the failure to take timely remedial measures or the ineffectiveness of remedial measures causes damages, the producer shall bear the tort liability. This kind of remedial measures for the product into circulation after the discovery of defects is a kind of risk prevention, it occurs in the product into circulation but before the damage occurs, and thus different from the product liability compensation described in the previous section. The creation of the obligation of subsequent observation achieves the dual protection of compensation for damage to consumer rights and interests after the occurrence of damage and prevention before the occurrence of, and plays an important role in promoting the maintenance of social public safety, balancing the interests of producers and

consumers, promoting enterprise production, and regulating the market order.

2. Interpretation of Article 1206 of the Civil Code on the Obligation to Follow Up and Observe the Product

2.1 Definitional Issues of "Input Circulation" and "Discovery"

With regard to article 1206 of the Act, which states that "where a defect is found in a product after it has been put into circulation", there is a dispute as to whether "put into circulation" enters the hands of the consumer or is removed from the control of the producer, and I believe that both of these points of view lack consideration of the subjective factor. If the consumer steals and uses the goods that have not been shipped out, it is equivalent to the producer passively puts the defective products into the market that may not meet the industry, national standards or the consumers' reasonable expectation, and if the consumer suffers damages and claims for compensation, according to the standard of recognising it as "put into circulation", the producer will not be able to invoke Article 41 "Products not yet in circulation" of the Product Quality Law to claim for damages. Article 41, "the product is not put into circulation" the first exemption to defend, will greatly damage the interests of producers. [3] Therefore, I believe that "put into circulation" should be the product "delivered to others", subjectively, the producer in accordance with the inner will of the product to people outside of the production chain; objectively, the consumer through normal channels from the market to obtain the product. For the "discovery" of the definition of the standard I think we can learn from the "Product Quality Law," Article 41, Article 3 exemptions "at the time the level of science and technology has not yet found defects," with specific reference to the overall level of science and technology, rather than the producer's ability to recognise the individual, at the same time, the producer needs to be At the same time, the producer needs to fulfil the duty of care during pre-sale production and the duty of diligence of timely follow-up, updating and remediation after sale, and not to deceive consumers.

2.2 Main Elements of the Obligation to

Follow Up on the Observation of the Product

2.2.1 Follow-up observation

The obligation to follow up and observe, also known as the obligation to follow up and observe, is mainly divided into positive and negative obligations to observe, the former referring to the manufacturer's obligation to observe the impact of its products in practice, the development of competitors and scientific and technological advances; the latter referring to the obligation to grasp and evaluate the negative information resulting from complaints or monitoring and sampling, and so on. A breach of the duty to observe does not generally result in actual damages, but because it is closely related to the duty to warn after the sale and the duty to recall the product, a breach of this duty constitutes prima facie evidence of a breach of the other two duties.

2.2.2 Post-sale warning

Post-sale warning means that the producer, after placing the product on the market, should avoid damage by warning and indicating the danger of the product if it discovers that it is unreasonably dangerous. The duty to warn is established when the producer knows or should have known of the defect within a reasonable period of time after placing the product in circulation, even if the product has not yet caused actual damage. [4] The purpose of warning is to minimise the damage to the product, so the degree of warning is required to be consistent with the degree of danger of the product, for example, the automobile industry provides for a one-to-one duty of warning, while the food industry, which has a wider audience, generally adopts the public, the hall of fame to inform the public, the news reports and other means of warning, and in addition, through internal and external mechanisms, with the help of the developed communication system and the media network to reduce the damage to achieve the purpose.

2.2.3 Product recall

Product recall means that the producer of a product that may or has endangered the personal and property safety of consumers by defective products takes measures in accordance with the law to carry out free repairs, recovery or transformation of the defective product, etc., with the competent authorities supervising the entire process. The obligation of product recall is set up to

eliminate the systematic defects existing in the products and effectively safeguard the legitimate rights and interests of consumers. A distinction is made between voluntary recall and mandatory recall, the latter being an administrative act of the competent authorities, and refusal to fulfil it will be subject to administrative penalties such as warnings and fines. China has already established a recall system for automobiles, food products, children's toys and other products, and the relevant legal measures have yet to be systematically improved in order to generally solve the problem of recalling defective products.

2.3 Subjects Responsible for the Obligation of Follow-up Observation of Products

Producers and sellers are clearly defined in the law as the subject of the obligation. Producers include suppliers of parts and raw materials and manufacturers of finished products. The obligation of subsequent observation of the product is a kind of relief measures for defects, so I think that starting from the type of defects, we can analyse the responsible subject of the obligation. [5] According to our country will be defective products into design, manufacturing, warning and development of defects in four categories, raw materials, parts and components providers relative to the finished product manufacturers can not be directly involved in the design and manufacture of the product, so they only need to bear the negative obligation to observe, that is, to receive the complaint or supervision of sampling failed to bear the responsibility is more reasonable. The point of contention of the seller is that they belong to the other party to the contract with the consumer, should bear the defect warranty and inform the buyer of the contractual obligations, but in the product into circulation, the damage is likely to be caused by the seller's warning defects or improper storage of the product occurs, stereotypical requirements for the producer to assume full responsibility will be unfair, which is back to the previous discussion of the product involved in the damage of the breach of contract liability and tort liability Not strictly distinguish the point of view, the seller should also bear the obligation of product follow-up observation. Considering that the seller's knowledge of the product and risk

prevention ability is lower than that of the producer, he acts as the producer's auxiliary obligor, after the actual damage occurs, the infringed person claims to claim compensation from a party, it can be borrowed from Article 1203 of the Civil Code for internal recovery.

2.4 The Nature of Responsibility for The Obligation to Follow Up the Observation of the Product

Although article 1206 of the law does not stipulate the nature of liability, but we can explain its purpose, this obligation is formulated in order to ensure product safety, better safeguard the consumer's rights and interests in person and property, therefore, the violation of this obligation should not be the producer, the seller of fault as a constitutive element, that is to say, as long as the damage caused by the producer shall bear the responsibility for the infringement of rights and responsibilities, and the producer to bear the responsibility of the faultless. The producer shall bear no-fault liability, which is different from strict liability in that the latter has the defence of exemptions, and this law does not provide for exemptions, so it bears no-fault liability. [6] Producers are in an active position in the market by investing production costs, which determines their ability to better control risks and share more risks with consumers, and the principle of no-fault liability allows for a more reasonable distribution of the risk of product damage brought about by the development of modern technology. From the perspective of legal economics, the famous economist Coase has put forward the theory of transaction costs, he pointed out that the enterprise and the market are two kinds of resource allocation mechanism that can replace each other, but the market exists limited rationality, opportunism, uncertainty and small number of conditions make the market transaction costs are high, in order to save the transaction costs, the enterprise replaces the market and exists, and the enterprise adopts the different organisational methods of the ultimate purpose also The ultimate purpose of the different organisational methods adopted by enterprises is also to save costs. If the enterprise bears fault liability, from the economic point of view, the enterprise can choose low-cost product inputs in order to make profits and increase the risk

of danger, and in the case that the infringer cannot prove that the other party is at fault, the enterprise will be exempt from the sanction. In order to promote the standardised development of the market and product quality assurance, product performance improvement, I believe that producers and sellers of follow-up observation obligations should bear no-fault liability.

3. Conflict between the Duty of Subsequent Observation of the Product and the Developmental Defect Defence

Article 41 of the Product Quality Law provides for a third exemption from liability for manufacturers and operators for "developmental defects", which I do not consider to be applicable in the event of a breach of the obligation to follow up on the observation of the product by the manufacturer or operator, with the following specific considerations:

3.1 There is a Substantial Contradiction between the Development of a Defect Defence and the Duty of Subsequent Observation of the Product.

Product follow-up observation obligation to fulfil the "scientific and technological level" to find defects as a prerequisite, when the consumer suffers damage and litigation are in the defects before the discovery, at this time we do not know the product damage is due to defects caused by the majority of cases is the consumer silently bear the loss of the consequences of the obligation to follow up on the observation of the product; when consumers When the consumer suffered damage before the discovery of defects, and filed a lawsuit after the discovery of defects, at this time the production and operation did not fulfil the obligation to follow up the observation belongs to the civil law of the civil law of the expansion of the part of the damage provided for in article 1206 of the civil code of the tort liability, because it does not relate to the obligation of the product liability law also does not apply to the development of the development of defects with the civil law does not apply to the defence. [7] It is then when both the occurrence of the damage and the filing of the lawsuit occur after the discovery of the defect that there is a conflict to be found between the two. Assuming that the

development of defects can be used as a defence, many manufacturers and operators will choose to conceal or ignore the existence of defects out of their own economic interests and avoid the implementation of the duty of subsequent observation such as warning, recall, etc., which has no harm to themselves, but the interests of the consumer has suffered a great loss. At this point, the duty of subsequent observation is no longer a duty that must be fulfilled but a moral duty, which makes the setting of Article 1206 of the Civil Code meaningless. Therefore, I believe that the application of the development of the defence makes the production and operation of the obligation to carry out follow-up observation of the product without the premise, there is a substantial conflict between the two, in the application of the relationship between the development of the defence should be limited or abolished. Some scholars believe that the recognition of the defence of developmental defects can encourage production operators to use science and technology to develop new products, to ensure the development of production and technological innovation, but from the practical point of view, the United States and other countries, although the abolition of the developmental defects of the defence, but their technical level of the industry is still among the world's top. [8]

3.2 Denial of the Application of the Developmental Defects Defence from a Sociological and Economic Point of View.

Pound, the famous sociologist of law, has put forward the theory of the measurement of interests, and he believes that the trade-offs of all systems are based on the consideration of the interests of the two to achieve a balanced state. Supporting or opposing the developmental defence also becomes a matter of trade-offs between maximising the interests of producers and sellers and consumers. As mentioned above, producers have more control over risk factors than consumers are already in an advantageous position, and if they support the development of a defective defence, it will bring great harm to consumers, and compared with product defects, the harms of systemic defects are more catastrophic and widespread. [9] At the same time applied to the litigation, the development of the risk of applying the defence of fault will lead to the producer, the

operator's responsibility is uncertain and increase the complexity of the litigation, contrary to the realization of the value of fairness and justice, for the sake of balancing the interests of the consideration should be exempt from the development of the risk of the defence. Economist Calibri's point of view that, due to product development risk caused by product liability whether the producer to bear, or the consumer to bear the loss, the key lies in which party is easier to avoid the cost of accidents and the expected cost of cost-benefit analysis between , and ultimately the lowest cost of avoidance of the person should bear the loss.[10] Let the producer bear the product liability caused by the development risk, because the producer can be lower cost to avoid accidents, and will be prompted to try to produce safe products to avoid accidents, which not only protects the interests of consumers, but also improves the efficiency of enterprises, and ultimately to achieve the best combination of efficiency and safety.

4. Conclusion

In conclusion, article 1206 of the Civil Code breaks new ground by establishing for the first time in our country the obligation of subsequent observation of products. In this area, the maximum protection of the legitimate rights of consumers, but also put forward higher requirements for product safety. However, the obligation of product follow-up observation is also a "double-edged sword", if used properly, it will play a positive role in promoting our country's economic development and social stability; if applied poorly, it will inhibit the enthusiasm of enterprises and affect the progress and development of science and technology. Especially at present, the legal provisions on the obligation are relatively simple and general, and there are no three relevant judicial interpretations to serve as a guideline, so it is a question worth thinking about in terms of specific operation and application.

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