



## It is necessary to verify the safety of the product in order to be exempt from liabilities

*Judgment of the Provincial Court of Madrid, Section 8, number 589/2012, of 29 of October of 2012*

### Background

The Provincial Court of Madrid (APM) has issued a judgment on civil liability for defective product that examines one of the cases foreseen by law to exempt the manufacturer or importer of the product from liability even if the defect, the damage and the causal relationship between these two elements have been proven.

The examined ground for exemption arises when the state of the scientific and technical knowledge existing at the moment of the release of the product in the market did not permit the discovery of the defect.

### Chinese chair syndrome

In the case at issue, the aggrieved party had bought a chair that had some bags in its creases containing dimetilfumarate, which served to prevent the chair from becoming mouldy. Such substance caused the claimant physical damage –burning sensations, stinging and pain– and also moral damage, since the injuries prevented her from attending her son's wedding causing her great suffering and sorrow.

Despite the fact that evidence was provided of the damage suffered by the aggrieved party as well as of the defect of the chair and also of the causal relation of between the two, the judgment issued by the Court of 1st instance acquitted the manufacturer of all liability by applying the ground for exemption from liability

consisting in the fact that the state of the then-current scientific and technical knowledge was insufficient to discover the defect.

### Safety verifications must be carried out

The judgment of the APM revoked the judgment of the Court of 1st Instance and held the manufacturer liable as it considered that the mentioned ground for exemption from liability did not apply.

The APM reiterated the doctrine highlighted by a judgment of the Supreme Court of 9 of December of 2010 according to which those products that may present risks due to the fact that, at the moment of their release, the lack of toxicity or dangerousness is not verified when it is reasonable that it might appear, are not safe. For this type of products liability will be exempted only if the lack of the verifications is accredited to the fact that such verifications are not required according to the state of the current scientific and technical knowledge.

The APM considered that the manufacturer of the chair did not credit having performed studies to verify the possible toxic effects of the substance dimetilfumarate nor did he justify that the lack of such verifications was due to the fact that they were not required according to the state of the scientific and technical knowledge existing at the moment of the release of the product. The APM considers that the absence of such verifications prevents the ground for exemption from liability from being applied.