



## How a supplier should act upon receiving a product liability claim

*Judgement of the Court of Appeals of Islas Baleares of 5 September 2019*

### Introduction

In our Capsulas Newsletter of September 2019 we explained that a supplier may be able to avoid the direct product liability foreseen in Royal Decree 1/2017 if it identifies the producer of the product or if it is notorious that the injured party, before addressing any communication to the supplier, knew who was such producer.

In the present case, the foregoing rationale is used by the Court of First Instance which dismissed the claim presented by an injured party against a distributor on the basis that, according to the available evidence, it was clear and notorious that the plaintiff knew the identity of the producer. However, the Court of Appeal reached a different conclusion.

### If the supplier presents himself as the manufacturer/importer, it may be held liable as such

The Court of Appeals partially revoked the judgement of the Court of First Instance because it understood that the distributor presented himself before the injured party not only as a distributor but also as the producer of the product. Among other considerations, the Court pointed out that in the communications exchanged between the distributor (defendant) and the injured party (plaintiff) before the initiation of the judicial procedure, the distributor requested to the injured party very specific information that went far beyond the information usually requested by a distributor. In particular, such information was aimed to allow the

distributor to check if the prosthesis was in fact defective, and to determine what was the behavior of such prosthesis once installed in the patient. This information, according to the Court of Appeals, was information that was not relevant for a distributor. Additionally the distributor did not express any intention of sending this information to the manufacturer.

According to the Court of Appeals, the behavior of the distributor made the injured party believe (and this was a reasonable belief according to the Court) that the distributor was, in fact, the manufacturer of the product or, at least, an entity that would respond before him as such. On the basis of the foregoing, the Court of Appeals, unlike the Court of First Instance, understood that the claim was properly filed against the distributor.

### Tips for suppliers

If a supplier receives a product liability claim, the first reaction should be to identify the producer which is the one that, according to the applicable law, must bear the corresponding product liability. In the event a supplier is finally sued on the basis that it did not fulfill its duty to identify the producer, then it will be important that, during the judicial procedure, the supplier provides sufficient evidence to the court in order to prove that the injured party knew or could have easily known, the identity of the producer.

What is not advisable is for suppliers to act before the consumers as if they were the producers. If a supplier does so, it may be held liable for product liability.