



# Product Recall

in 20 jurisdictions worldwide

Contributing editor: Mark Tyler

# 2010



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# Israel

## Avi Ordo and Moran Katz

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### General product obligations

- 1 What are the basic laws governing the safety requirements that products must meet?

The most pertinent piece of legislation regulating product safety requirements is the Standards Law, 5713-1953 (the Standards Law), which provides that upon a declaration by the Ministry of Industry, Trade and Labour (the MOI) of an Israeli standard as an official standard, no person may deal with any product whose specification has been so classified (a standard-subject product), unless such product complies with the requirements of such official standard.

In addition, specific industry or product legislation has been enacted that lays down the safety requirements for specific products.

A general duty to ensure product safety may be imposed on a manufacturer, importer or other dealer (collectively, a dealer) by means of Israeli general tort laws and, in particular, the tort of negligence under the Civil Wrongs Ordinance (New Version), 5728-1968 (the Civil Wrongs Ordinance) and the strict liability for personal injury as imposed under the Defective Products (Liability) Law 5740-1980 (the Defective Products Law). Such general pieces of legislation may form a basis for expansion of the relevant entities' obligations with respect to safety requirements and other product safety-related aspects, beyond those imposed on them, through specific legislation and guidelines. A duty to ensure product safety may, of course, also be imposed by virtue of contractual obligations undertaken by a dealer.

- 2 What requirements exist for the traceability of products to facilitate recalls?

Specific requirements for the traceability of products may be gleaned from subsidiary legislation or guidelines issued by the relevant governmental authorities.

For example, with respect to vehicles, the Ministry of Transportation (the MOT) maintains an official registry of vehicles, which includes, inter alia, the vehicle registration number and details of the vehicle owner. Specific provisions of law relating to vehicles regulate issues dealing with the mandatory registration of vehicles in the official registry and updating said registry upon the sale of a vehicle. Under guidelines issued by the MOT in October 2007, entitled Guideline 83 Recall (Guideline 83), the MOT will assist the importer of vehicles in which a defect has been located to trace the owners of affected vehicles.

With respect to transportation-related products other than vehicles, according to the provisions of the Control of Commodities and Services (Manufacture and Trade of Transportation-Related Products) Order, 5742-1982 (the Transportation-Related Products Order), upon the sale of a transportation-related product an invoice must be issued, on which is reflected, inter alia, the name of the product and its catalogue number (or such other details as specified

in the Transportation-Related Products Order in substitution for the catalogue number).

In the pharmaceutical sector, pursuant to the Pharmacists Ordinance, 5741-1981 and the Pharmacists Regulations (Preparations), 5746-1986 (the Pharmacists Regulations), a medicinal preparation (a preparation) must be marked, inter alia, with the date of manufacture and batch number. Concerning prescription preparations, every pharmacy must maintain a registry of prescriptions received by it, including the patient's name. In addition, under the Pharmacists Regulations (Good Manufacturing Practice for Preparations), 5768-2008 (the GMP Regulations), which will become effective in October 2009, the holder of a registration for a preparation (the registration holder) and the holder of a business permit for manufacturing, marketing or storing preparations (the permit holder) are each obliged to take the appropriate measures that may enable the traceability of a product batch and the number of preparations sold, to facilitate the recall of a defective preparation.

In the food sector, according to the Control of Commodities and Services (Code Marking of Pre-Packed Foods) Order, 5743-1983, a code must specify the date of manufacture or some other mark identifying the relevant product batch. In terms of Guideline 05-007 issued by the MOH and entitled 'Import of Regular Food - Preliminary Registration and Release from Port' (Guideline 05-007), both the production and marketing reporting systems, as well as the code or production date marking, should be designed in a manner so as to enable a product recall simply and efficiently.

Additionally, as mentioned in question 1, the courts may determine, on the basis of Israeli general torts law, that, in certain circumstances (eg, when a defect in the product may result in a safety hazard), a dealer is obliged to take appropriate measures to facilitate an effective and quick recall.

- 3 What penalties may be imposed for non-compliance with these laws?

The penalties depend on the specific law imposing each and every obligation (or empowering the authorities to issue secondary legislation or guidelines imposing the relevant obligations). The penalties range from imprisonment to fines and other administrative sanctions, such as forfeiture of the products or profits earned from the sale of such products, as well as revocation of the business permit. Furthermore, the consequences of non-compliance with the relevant provisions (eg, bodily injury or damage to property) could be a basis for criminal or civil liability.

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### Reporting requirements for defective products

- 4 What requirements are there to notify government authorities (or other bodies) of defects discovered in products, or known incidents of personal injury or property damage?

A determination in this regard must be made on a case-by-case basis. Without derogating from the foregoing, it should be noted that

legislation and guidelines have been enacted or published to deal with such defective products or incidents.

For example, in the pharmaceutical sector, according to the Pharmacists Regulations, any change in the details that were provided to the MOH at the time of registration of a preparation (including with respect to the safety, efficacy and quality thereof), should be immediately reported to the MOH. According to guideline 3 issued by the MOH and entitled 'Recall of Medical Preparation and/or Prohibiting its use' (guideline 3), the registration holder is obliged to notify the MOH immediately after becoming aware of a defect in the quality of a preparation. Further, the MOH should be notified immediately in the event a preparation is found to contain a serious and unexpected side effect, or lacks efficacy. According to guideline 6 issued by the MOH and entitled 'Reporting Side Effects of Medical Treatment by the Registration Holder' (guideline 6), the registration holder is obliged to report to the MOH every serious side effect discovered while using the preparation in Israel. Serious side effects occurring abroad and that may be attributable, with a high degree of reasonableness, to treatment with the preparation, should also be immediately reported to the MOH (however no requirement exists to report each incident separately). A side effect will be deemed serious if it caused death, endangered life, caused or extended hospitalisation, caused severe and long-lasting disability or caused a birth defect. In addition, under the GMP Regulations, a permit holder is obliged to notify the MOH of any defect that may lead to a limitation in the manufacture and supply of the preparation or to recalling it from the market.

In the vehicle sector, according to guideline 83 the importer of a vehicle is obliged to notify the MOT in the event that the manufacturer of the vehicle declares a product recall. In addition, under the Control of Commodities and Services (Garages and Vehicle Factories) Order, 5730-1970, the manager of a garage or factory is obliged to notify the MOT of the discovery of any serious malfunction in the safety assembly in the vehicle, where such malfunction presents a safety hazard and the vehicle owner has refused to repair it.

In the transportation-related products and food sectors, according to guideline 22/2007 issued by the MOT, entitled 'Recall of Defective Transportation-Related Products' (guideline 22/2007), upon becoming aware of a defect in a transportation-related product, the importer of such product should perform a product recall, and immediately notify the MOT in writing of such fact and if the product falls within the supervision of a certified laboratory, also the laboratory. A similar provision is included in guideline 05-007 with respect to foodstuffs.

According to unpublished guidelines of the MOI, any recall of a standard-subject product (eg, electrical appliances, toys or detergents for domestic use), must be notified to, and performed in coordination with, the MOI.

5 What criteria apply for determining when a matter requires notification and what are the time limits for notification?

Different specific criteria apply to various sectors. For example, in the pharmaceutical field, all the incidents mentioned in question 4 must be immediately reported, by facsimile. In certain circumstances, notification by telephone and outside working hours is also required.

In the vehicle sector, the notification should be provided immediately upon becoming aware of an announcement by the manufacturer of its intention to conduct a product recall. With respect to transportation-related products, the notification should be provided immediately upon the importer becoming aware of a defect in the relevant product.

In addition, in view of the strict liability imposed on dealers under the Defective Products Law, and the 'reasonable man' standard, as set forth in the Civil Wrongs Ordinance, it is advisable to involve the relevant authorities as soon as practicable following the discovery of a defect in a product that is likely to cause personal injury.

6 To which authority should notification be sent? Does this vary according to the product in question?

The relevant authority to be addressed varies according to the product sector in question. For example, in the food and pharmaceutical sectors, notification must be made to the MOH and in the vehicle and transportation-related products sectors, notification must be made to the MOT. The specific departments or officers to be notified within the various authorities will similarly vary according to the product in question and the nature of the defect discovered. Notification of a standard-subject product should be made to the commissioner of standardisation at the MOI.

7 What product information and other data should be provided in the notification to the competent authority?

The information to be provided varies according to the product sector in question.

For example, with respect to vehicles, the report must include:

- a description of the defect;
- a description of the operational instructions of the manufacturer's vehicle;
- a description of the type and model of vehicle, quantity of vehicles involved, projected date for completing the execution of the manufacturer's instructions;
- an explanation regarding performance of the recall procedure by the importer;
- a copy of the notification by the manufacturer (including a Hebrew translation thereof);
- technical specifications together with drawings clarifying the nature of the defect;
- a copy of the notification from the importer to the garages regarding the product recall, together with instructions to the garages as to the manner for handling such product recall; and
- a copy of the letter to the vehicle owners.

For transportation-related products, the report must include the notification regarding the discovery of the defect, the number of transportation-related products sold by the importer and the number of products remaining in the importer's possession.

For food products, the report must include:

- the name of the manufacturer or importer and its contact details;
- the code or date of production of the relevant batch;
- a description of the defect, the actions required to be taken and the extent of urgency;
- a list of all marketing outlets where the product might be located;
- a list of all persons who received the recall notice;
- the quantity of products manufactured and the duration of the manufacturing period;
- the estimated quantity of products still in the market and the time it will take to recall such products; and
- proposed strategy for the product recall and contact details of the contact person at the manufacturer or importer.

Notices to the MOH under guideline 3 should be made on the specific form annexed to the guideline, which includes the following details:

- the company's name and contact details of the reporting officer;
- details of the preparation;
- a detailed description of the defect or hazard;
- where the preparation is imported into Israel, a description of the steps taken in other jurisdictions with respect to such defect or hazard;

- where a defect exists in the quality of a specific batch of the preparation, indications as to the existence of another batch of the same preparation on the market; and
- proposed actions by the registration holder.

Further, any serious adverse drug reaction that occurs in Israel should also be reported on the specific form appended to guideline 6 and include, inter alia, details of the patient, details of the suspected drugs, details of the adverse drug reaction, the clinical background of the patient and follow-up treatment.

- 8 What obligations are there to provide authorities with updated information about risks, or respond to their enquiries?

The extent of such obligation also varies according to different sectors.

With respect to pharmaceuticals, the requirement to report any change in the details provided to the MOH at the time of registration may be construed as imposing a duty to provide the MOH with complete and updated information about risks. In addition, guideline 3 imposes specific duties to file reports with the MOH during the course of the product recall.

With respect to vehicles, according to the Import of Vehicles Order, 5738-1978 (the Import of Vehicles Order), an importer is obligated to comply with official inquiries. An importer's obligation to adhere to any instruction received from a competent authority is also included in the relevant application for an import permit filed with the MOT. In addition, according to guideline 83, an importer must file with the MOT a quarterly status report, setting forth the status of all product recall processes handled by the importer. The MOT should also be notified of any vehicle owner who fails to respond to an importer's notice concerning a safety hazard and necessitating immediate repair within 45 days from the date of notification.

With respect to transportation-related products, the Transportation-Related Products Order imposes on a dealer a general duty to comply with the competent authority's instructions. With respect to the actual recall of transportation-related products, guideline 22/2007 provides that the importer must file with the MOT (and with the supervising laboratory, if applicable) bi-weekly status reports and a summary report at the conclusion of the recall.

- 9 What are the penalties for failure to comply with reporting obligations?

As mentioned above, the specific obligations relating to product recall are usually imposed by guidelines issued by the relevant authorities conferred with the power to do so either through primary or secondary legislation. The relevant guidelines do not include provisions relating to sanctions for non-compliance with the obligations included therein. However, such violation may be deemed a violation of the primary legislation as well as a violation of the relevant importing or manufacturing licence, where the licence specifically states that the importer or manufacturer undertakes to comply with the instructions of the competent authority. In such cases, failure to comply with the reporting obligations may constitute a basis for criminal liability, for which the penalties span from imprisonment to fines and other administrative sanctions, such as forfeiture of the goods and the temporary or permanent revocation of licences. In the absence of a specific provision in the relevant legislation with respect to sanctions for non-compliance with the authorities' directives, the provisions of Israeli Penal Law 5737-1977 shall apply. Under that law, anyone failing to comply with an order from the competent authority may face criminal liability, the penalty for which is two years' imprisonment.

- 10 Is commercially sensitive information that has been notified to the authorities protected from public disclosure?

The prominent legislation dealing with the disclosure of information by the authorities is the Freedom of Information Law, 5758-1998

(the FOI Law), which provides that any Israeli citizen or resident has the right to accept information from a public authority, in accordance with the provisions of that law. The relevant authority is entitled to decline an application to disclose information, inter alia, in the event that the information requested contains trade secrets. When considering an application for disclosure, the relevant authority should consider, inter alia, the public interest in the disclosure, having regard to public health, public safety and the interest of the applicant. The company about which an application has been submitted to the authority requesting that it disclose information must be given a chance to oppose any such disclosure. The decision of the authority to reveal, or decline to reveal, the requested information may be challenged in court. However, to date, no case relating to the FOI Law in the context of defective products has been brought before the courts. In view of the various conflicting interests requiring consideration, and the fact that any case may involve different interests, it is extremely difficult to predict how the courts will treat an application to disclose commercially sensitive information that has been notified to the authorities in connection with a recall of defective products. However, the possibility of the court prescribing a general rule prohibiting the disclosure of such information is remote.

- 11 May information notified to the authorities be used in a criminal prosecution?

There is no specific provision prohibiting such use of information notified to the authorities in the context of a product recall. In addition, no case law dealing with this issue has been identified. The general rule is that, in the absence of a specific provision limiting the use of information provided to the authorities under an obligation imposed by law, such information may be used in criminal prosecution. In one Supreme Court decision it was suggested, albeit incidentally, that a privilege for admission provided under an obligation imposed by law may also be inferred when the existence thereof stems from the policy underlying the relevant law. Based on the underlying interests in the context of product recall (primarily public safety and health), it may be argued that information notified to the authorities should not be used in criminal prosecution. However, as mentioned above, such argument has never been dealt with by the Israeli courts.

#### Product recall requirements

- 12 What criteria apply for determining when a matter requires a product recall or other corrective actions?

Subject to the general 'reasonable man' criteria as referred to in question 5, no general criteria exist that would apply to all the different product sectors; therefore an evaluation must be done on a case-by-case basis.

For example, in the pharmaceuticals sector, under guideline 3, a product should be recalled in any of the following circumstances:

- the preparation's composition is not as declared;
- control of the finished product or the production thereof was not performed as required;
- the preparation does not meet registration conditions;
- a serious and unexpected side effect was discovered during the conventional use of the preparation; or
- the preparation's registration was revoked or not renewed and the MOH chose to prohibit its marketing during the sell-off period provided under the Pharmacists Regulations.

The criteria specified in guideline 3 include:

- the risks to the health of the patient as a consequence of the defect;
- the likelihood that the defect is real and occurred in the preparation;
- the probability of a shortage of the preparation in the market;

- the availability of alternative products; and
- the expected clinical effect due to cessation of provision of the preparation.

Once a decision to recall a defective product has been reached, the scope of recall will be dictated according to the risk level:

- I the defective preparation might endanger life or cause severe damage to health;
- II the defective preparation does not fall within level I, but might cause illness or mistreatment; and
- III the preparation does not meet GMP or registration conditions, but will probably not cause health damage.

When a risk level I situation is identified (and in certain cases also level II) a public recall (through publication in the media) will be mandatory. For risk level III (and in certain cases, level II), a product recall through only the marketing channels will be possible.

With respect to the vehicle, transportation-related products and food sectors, the relevant legislation does not stipulate specific criteria. The Import of Vehicles Order merely states that upon discovery and publication by the vehicle manufacturer of a defect in the manufacture of a vehicle model, the importer must invite all affected vehicles to its service garages for repair, replacement or service, as determined by the foreign vehicle manufacturer. Guideline 83 provides that the manufacturer's recall instructions may vary according to the nature and severity of the defect. With respect to transportation-related products, guideline 22/2007 states that upon becoming aware of a defect in a product, the importer should perform a product recall.

- 13 What are the legal requirements to publish warnings or other information to product users or to suppliers regarding product defects and associated hazards, or to recall defective products from the market?

In addition to the duties stemming from the general obligation under the Civil Wrongs Ordinance to act as a reasonable dealer, under the Consumer Protection Law, 5741-1981, a dealer may not take any action, whether by act or omission (including following the sale of the products), that may mislead a consumer with respect to matters material to the transaction. Included among such listed matters are the risks deriving from the products and an expert's opinion referring to such risks.

Further legal requirements exist in the specific product legislation. For example, as mentioned above, in the pharmaceutical sector the manner of recall (through the media or through marketing channels) will be determined according to the risk level identified by the MOH. In the transportation-related products sector, a notice to the public should be published in three daily newspapers (at least one of which caters to the religious public) at any time so required. In addition, a product recall document should be sent to the company's agents and customers. As for the vehicle sector, a letter should be sent to all owners of affected vehicles. Moreover, a letter should be sent to the relevant garages, informing them of the product recall and containing instructions as to the relevant required action.

- 14 Are there requirements or guidelines for the content of recall notices?

The content to be included in recall notices also varies according to different sectors. In the vehicle sector, for example, the importer is required to send letters to all owners of vehicles subject to the product recall in a form according to the template appended to guideline 83 (detailing the manufacturer's name, type of vehicle, a description of the nature of the defect, clarification that repair of the defect will be for the importer's account and the estimated time for repairing the defect).

In the pharmaceutical sector, according to guideline 3, the content of the notification to the public or marketing channels (which should be approved by the MOH) shall include: the name of the preparation; its active ingredients and strength; the manufacturer's and registration holder's names; the dosage form; the content of the packaging; the batch number; the expiration date; any further details that could assist in identifying the preparation; the reason for the product recall; the form of product recall; and, if necessary, the clinical symptoms and a recommendation that the patient consult with a physician.

With respect to transportation-related products, it is a requirement that the publication be easily legible.

With respect to standard-subject products, the publication requirements are defined by the MOI on a case-by-case basis.

- 15 What media must be used to publish or otherwise communicate warnings or recalls to users or suppliers?

The media to be used also varies according to the different sectors. For example, in the transportation-related products sector, warnings must be published in newspapers. In the vehicle sector, a personal letter must be sent to each of the vehicle owners and garages. In the pharmaceutical sector, the MOH determines such means of communication or publication on a case-by-case basis, according to the relevant risk level.

- 16 Do laws, regulations or guidelines specify targets or a period after which a recall is deemed to be satisfactory?

In certain sectors, the targets or periods of time may be inferred from the relevant guidelines. For example, in the pharmaceutical sector guideline 3 specifies a date by which a completed final report should be submitted to the MOH (six weeks after commencement of the product recall). A decision whether the recall is deemed to be completed is reached by the MOH's regional pharmacists, in consultation with the company's chief pharmacist, following examination of the quantity of recalled products, the stock of the product and treatment of recalled products by the company. In the transportation-related products sector, according to guideline 22/2007, at the conclusion of the product recall, the importer is required to submit a final report to the MOT to ensure that the entire quantity of defective products that were imported into Israel have been recalled. It may therefore be understood that a product recall will be deemed satisfactory when all the defective products have been successfully recalled.

- 17 Must a producer or other supplier repair or replace recalled products, or offer other compensation?

According to the general principles of Israeli law, the producer or other supplier is required to repair or replace the recalled products or otherwise compensate the consumer, in a manner that will restore the consumer to the position previously existing, absent the malfunction or defect.

With respect to transportation-related products and vehicles, for example, the relevant guidelines provide that the letter to the company's agents and customers informing them of the product recall should refer to replacement of the products or a refund of payments and, with respect to vehicles, should clarify that the examination and replacement costs will be borne by the manufacturer.

- 18 What are the penalties for failure to undertake a recall or other corrective actions?

See question 9.

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 Authorities' powers
 

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 19 Can the authorities impose recall action plans?
 

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The authorities' power to impose recall action plans may be based on the specific product legislation, or on the authorities' inherent power to issue orders that are necessary so as to facilitate enforcement of the legislation falling within their field of responsibility.

In the pharmaceutical sector, for example, according to guideline 3, a final decision as to whether a product recall is required and the scope thereof, lies with the MOH. In the vehicle sector, according to guideline 83, the MOT may oblige an importer to invite owners of vehicles sold by him to check or repair such vehicles. In the food sector, according to the Public Health (Food) Ordinance (New Version), 5743-1983 (the Food Ordinance), a governmental physician who finds that a food product being offered for sale may damage human health or is not suitable for human consumption may order the destruction of such food product or prevent any use being made of such food product in any other manner. In the transportation-related products sector, the Transportation Products Order empowers the MOT to issue any directive that is required to facilitate enforcement of such order.

 20 Can the government authorities publish warnings or other information to users or suppliers?
 

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The authorities' power may be based on specific product legislation or on the authorities' inherent power, as described in question 19.

In the pharmaceutical sector, for example, according to guideline 3, when a product recall is made through the media the MOH will, if required, publish the recall notice through its spokesman. With respect to standard-subject products, in the absence of cooperation on the part of the manufacturer or importer the MOI will publish a recall notice (following a hearing enabling the manufacturer or importer to present its arguments).

 21 Can the government authority organise a product recall where a producer or other responsible party has not already done so?
 

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Such action on the part of the authority may also stem from the authorities' inherent power, as mentioned in question 19.

In addition, in certain cases, the specific product legislation may be interpreted as vesting the relevant authorities with such powers. See, for example, the governmental physician's authority under the Food Ordinance, described in question 19. As for the pharmaceutical sector, the GMP Regulations provide the MOH, inter alia, with the authority to enter a place where raw products or preparations are kept and to seize such raw products or preparations, to prohibit the manufacturing and sale thereof and to also destroy them, in the

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 Update and trends
 

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The level of 'consumerism' has gained strength in recent years. Consumers are well aware of product liability laws and apply them without hesitation to redress perceived wrongs. It is expected, therefore, that cases involving product recall incidents will be brought to court more frequently.

Presently, Israeli case law relating to product recall issues is scarce, as is the relevant legislation. In fact, most of the specific provisions are found in product-specific guidelines, which do not provide overall and comprehensive guidance with respect to recall-related issues. Additional recall-related obligations may also be imposed by the courts through general legislation. Under such circumstances, those involved in product recall cases usually face a high degree of uncertainty.

The authorities' involvement in product recall issues has become more intensive than in the past. Such involvement finds expression, inter alia, in the publication of new guidelines relating to product recall, such as those mentioned above.

This trend is particularly evident in the pharmaceutical sector. In addition to updating the existing guidelines, in July 2008 the MOH also published a recall guideline regulating the handling within the MOH of recall incidents. The GMP Regulations, which will shortly become effective, also regulate product recall issues and, inter alia, oblige any registration or permit holder to maintain a system for the recording and investigation of consumer claims; to take the appropriate measures that may enable the traceability of a product; and to inform the MOH of any defect that may lead to any such recall.

event that it is suspected that such products or preparations harm or may harm public health.

 22 Are any costs incurred by the government authority in relation to product safety issues or product recalls recoverable from a producer or other responsible party?
 

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Based on the general principles of Israeli law and, particularly, those entrenched in the Civil Wrongs Ordinance and the Unjust Enrichment Law, 5739-1979, costs arising from the performance by the authorities of product recalls or other product safety issues instead of the manufacturer, importer or other third party responsible therefor are recoverable by the authorities.

 23 How may decisions of the authorities be challenged?
 

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A judicial review of authorities' decisions is performed by either the Supreme Court or the District Courts, sitting as administrative courts, depending on the specific circumstances.

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 Implications for product liability claims
 

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**24** Is the publication of a safety warning or a product recall likely to be viewed by the civil courts as an admission of liability for defective products?

Based on the Israeli laws of evidence, the publication on behalf of a manufacturer or importer is likely to be viewed by the civil courts hearing a claim against such party as an admission on its part of the facts described in the publication.

In a motion to approve a claim as a class action heard by the Tel-Aviv District Court (CF 3006/00 *Danush et al v Chrysler Corporation et al*) the applicants relied on the argument that the importer of a vehicle ignored the recall notice issued by the vehicle manufacturer abroad. The court denied the motion, holding that, according to the dates of manufacture stated in the recall notice, it did not affect any vehicles imported into Israel (an appeal filed by the applicants with

the Supreme Court was rejected; CA 1509/04 *Danush et al v Chrysler Corporation et al*). However, the possibility for relying on the recall notice as an admission of liability for the specific defect described in the notice was not rejected.

**25** Can communications, internal reports, investigations into defects or planned corrective actions be disclosed through court discovery processes to claimants in product liability actions?

Yes. Under the Israeli rules of evidence, within the framework of preliminary proceedings in civil litigation, each party must disclose (at the request of the counterparty) all relevant documents. The physical disclosure of a relevant document (but not the need to reveal the existence thereof) may be avoided, based on general categories of privilege (eg, privilege of documents prepared mainly for a trial, trade secret privilege, attorney–client privilege).

