

法律资讯

缺陷产品质量侵权之诉中举证责任的分配

生产型企业始终要应对产品质量缺陷的索赔或指控。本所经常受客户的委托在缺陷产品质量侵权之诉中抗辩。在这类诉讼中，产品质量是否存在缺陷这一问题，往往是双方当事人争议的焦点。那么，究竟是由原告就产品质量存在缺陷进行举证，还是应当由被告就产品质量不存在缺陷进行举证呢？这一问题看似简单，许多人却有所误解。

一、“谁主张，谁举证”是原则；“举证倒置”是例外，须有特殊规定方可适用。

《民事诉讼法》第 64 条规定“当事人对自己提出的主张，有责任提供证据”，即：我们通常所讲的“谁主张，谁举证”。这是民事诉讼中关于举证责任分配的基本原则。与此同时，我国法律从双方当事人的举证能力与公平角度出发规定有一些例外情况，在这些法律有特殊规定的例外情况下，由被告就原告所主张的事实不存在承担举证责任，如果被告未尽举证责任，则直接视为原告的主张成立，即：我们通常称之为“举证责任倒置”。必须强调的是，“举证倒置”的适用有严格限制，必须有法律明文规定。

二、“缺陷产品质量侵权之诉”常被误以为应适用“举证责任倒置”。

实践中，有些人误以为产品质量侵权之诉中应当适用“举证责任倒置”，其依据是《最高人民法院关于民事诉讼证据的若干规定》第四条第（六）款，“因缺陷产品致人损害的侵权诉讼，由产品的生产者就法律规定的免责事由承担举证责任”。本处所谓的“法定免责事由”是指《产品质量法》第 41 条所规定的以下三项免责事由：

- （一）未将产品投入流通的；
- （二）产品投入流通时，引起损害的缺陷尚不存在的；
- （三）将产品投入流通时的科学技术水平尚不能发现缺陷的存在的。

由此，有人就误以为在缺陷产品致人损害的诉讼中，但凡原告遭受了损害，而被告又没有以上三项之一的免责事由，被告就应当承担损害赔偿 responsibility。

我们必须指出，以上理解是完全错误的。举个简单的例子来说，

某消费者触电受伤，其诉称是因某电器的质量缺陷漏电所致，并向该电器生产商提起索赔。该消费者触电受伤是客观事实，而该电器的生产商却无免责事由，那么，按上述理解，即便没有依据证明该电器有缺陷，也没有证实是该电器漏电导致了事故，该电器生产商都不可避免要承担责任，如此公平吗？答案显然是否定的。

三、正确理解“缺陷产品质量侵权之诉中”举证责任的分配。

那么，又该怎样来正确理解缺陷产品质量侵权之诉中的举证责任呢？

事实上，要构成一个缺陷产品侵权有三大要件：（一）产品有缺陷；（二）有损失发生；（三）缺陷与损失之间有因果关系。上述《证据规则》第四条第（六）款并未将任一构成要件的举证责任分配给被告，既没有规定由生产者就产品不存在缺陷承担证明责任，也没有要求生产者对产品缺陷与损害之间不存在因果关系承担举证责任，可见，这根本不是“举证责任倒置”，而是标准的“谁主张、谁举证”。

至于由生产者对“免责事由”进行举证，其真正的含义是，在产品侵权案件中，首先应当由原告就侵权行为的构成要件进行举证，在原告完成举证的前提下，由被告就法定的免责事由进行举证。如果原告对三大要件的基本举证义务都没能完成，即使被告没有法定的免责事由，也是不用承担法律责任的。

认清这一点，对生产型企业在产品质量缺陷之诉中的抗辩至关重要。

希望上文能有所帮助。若您有任何问题，欢迎与我们联系。

Legal Tips

The Allocation of Burden of Proof in Infringement Action of Defective Product Quality

Manufacturers may always be faced with complaints or claims brought by defects in product quality. In these lawsuits, whether defects exist in the product has always been the focus of the dispute between the parties involved. A common question arising from these situations is who should bear the burden of proof, the plaintiff, by adducing evidence to prove defects existed in product quality, or the defendant, by proffering evidence to testify that product quality was sound and without defects?

I Who Bears the Burden of Proof

Article 64 of the Civil Procedure Law of the People's Republic of China stipulates that "a party shall have the responsibility to provide evidence in support of its own propositions", in other words, it "whoever makes a claim should offer the proof" the basic principle of burden of proof in civil procedure. Although, in certain circumstances Chinese law does stipulate some exceptions to this principle. Under such exceptions, the defendant shall proffer evidence

to prove that the facts alleged by the plaintiff do not exist. If the defendant fails to perform the burden of proof, the plaintiff's claim will be supported. This is the so called "inverted burden of proof" principle, the application of which must be subject to strict limitations and specific provisions of law.

II "Inverted Burden of Proof" and Infringement Action of Defective Product Quality

In practice, some are mistaken in believing "inverted burden of proof" is applicable to infringement actions involving product quality. Based on Paragraph 6 Article 4 of Provisions of the Supreme People's Court on Evidence in Civil Procedures "in an infringement action of damages caused by a defective product, the producer of the product shall be responsible for producing evidence to prove that there exist the exemptions of liabilities as provided in the law." The statutory exemptions of liabilities mentioned above refers to the following three items prescribed in Article 41 of the Product Quality Law of the People's Republic of China:

- i) The products have not been put into circulation;
- ii) The defects are non-existent when the products are put into circulation;
- iii) The defects cannot be found at the time of circulation due to restricted science and technology.

Therefore, some mistakenly hold that in infringement actions involving damages caused by defective products, as long as the plaintiff suffers injury or damage and the defendant

fails to prove himself an exempt from the liabilities by citing the above three exemptions, the defendant shall then be responsible for indemnification of damages.

We have to point out that the above interpretation is wrong. The following is a simple example; a customer, who was injured by an electric shock, claimed that the injury was caused by quality defects (i.e. electrical short in an electrical appliance) and therefore lodged a claim against the manufacturer of said appliance. It was a matter of fact that the customer was injured by an electric shock, yet the manufacturer had no exemptions mentioned above. According to the logic of the aforementioned understanding it would seem inevitable that the manufacturer would be required to assume liability, even though no evidence proved existing defects were present in the product. In addition, causality between the electrical short and the accident was never evidenced. Is this logical? Obviously, the answer is no.

III Allocation of burden of proof in infringement actions of defective product quality

How should the burden of proof be allocated in infringement actions involving claims of defective product quality?

In fact, there are three elements to establish infringement due to defective products: i) defect in product exists; ii) losses occur; and iii) causality between defect and losses are present. The burden of proof is not allocated to the defendant in these three instances as mentioned in Paragraph 6 Article 4 of Provisions of the Supreme People's Court on Evidence in Civil Procedures, according to which the manufacturer is neither obligated to prove the non-existence of defects in the product nor required to prove causality between the defects and the injury or damage. The onus of proof is clearly on the plaintiff.

The right interpretation of “the producer of the product shall be responsible for producing evidence to prove that there exist the exemptions of liabilities as provided in laws” shall be that **in infringement actions of products, the plaintiff shall firstly adduce evidence to successfully prove the elements required to constitute an infringement, only after which the defendant shall take responsibility to prove one of the statutory exemptions exist. If the plaintiff fails to fulfill his basic burden of proof according to the three elements constituting infringement, the defendant shall not be bound to any legal liability even when statutory exemptions do not exist.**

It is of utmost the importance for a manufacturer to recognize this when defending against an infringement action of defective product quality.

We hope this newsletter has been helpful. Should you have any queries or instructions, please feel free to contact us.

Best regards,

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