

Destructive Testing Marks Start Of Two year Limitation Period In Product Claim

21 août 2018

Limitation periods can be subject to much dispute. While the time limit to commence a claim is presumed to run from the date of loss, the plaintiff bears the burden of demonstrating that the cause of action was not discoverable until later. The recent case of *Hamilton (City) v Daimler Trucks North America LLC*, 2018 ONSC 4617 (Hamilton) considered the limitation period in a product liability fire claim involving a vehicle fire where the claim was commenced more than two years after the fire.

Background

In this case, the fire occurred on September 22, 2010. The fire department was called to **extinguish the fire and advised the plaintiff's representative handling the loss that the truck had sustained an engine fire.** The plaintiff retained an expert the day after the fire and non-destructive examination of the truck took place on September 27, 2010. This **investigation was suspended on the expert's recommendation that further investigation would involve destructive testing and that the manufacturer of the vehicle had not been put on notice.**

Following notice of destructive testing to both defendant manufacturers, the testing was completed on November 12, 2010. The plaintiff served an expert report 11 months later **on October 12, 2011, confirming that the origin of the fire was on the driver's side section of the engine compartment.** While the cause of the fire was noted to still be under investigation, the expert report opined that faulty wiring and/or fastening techniques represented an ignition source for the loss. A claim was ultimately commenced on February 19, 2013, more than two years after the fire.

The defendants brought a motion for summary judgment. The plaintiff argued that the date of discovery was the date that the plaintiff received a report by its expert. However, the court concluded that, at the latest, the plaintiff knew, or ought to have known, of their cause of action on November 12, 2010, the date when the destructive examination of the truck took place.

The Court's Analysis

In finding the plaintiff's claim statute barred, the court distinguished this case from an earlier line of jurisprudence where a limitation period was found to have commenced following receipt of an expert report. The court emphasized that the law of discoverability does not require the plaintiff to prove causation before commencing a claim against a defendant. Indeed, the court pointed out that the plaintiff's expert report was not conclusive on the cause of the fire, noting that the report indicated further investigation was required on the issue of cause.

Further, the court disagreed with the plaintiff's argument that it was impossible for the adjuster handling the loss to know of a potential claim without an expert report. In doing so, the court highlighted the adjuster's discovery evidence that he had over 27 years' experience investigating claims, including fire loss claims, and that he put the defendants on notice of the fire and the destructive testing because he thought the plaintiff could have claims against them.

Finally, the court also rejected the plaintiff's argument that it was waiting on the expert report in order to rule out their own responsibility for the fire as the court found no evidence supporting this assertion.

In its analysis, the court also highlighted the importance of the plaintiff acting with reasonable diligence to acquire the material facts upon which to base a claim against the defendants. The court found that the plaintiff did not act with reasonable diligence by failing to follow up with its expert in the 11-month period between the date of destructive examination and the receipt of the report.

Takeaways

The case is a reminder for those defending product claims that a limitation period defence can often be an effective means of achieving a dismissal.

It is also a reminder to be attentive to potential claims prior to obtaining expert reports. Conducting any testing, including destructive testing, as soon as possible remains a best practice for handling product liability matters.

Par

[Edona C. Vila, George R. Wray](#)

Services

[Contestation de réclamations d'assurance](#)

BLG | Vos avocats au Canada

Borden Ladner Gervais S.E.N.C.R.L., S.R.L. (BLG) est le plus grand cabinet d'avocats canadien véritablement multiservices. À ce titre, il offre des conseils juridiques pratiques à des clients d'ici et d'ailleurs dans plus de domaines et de secteurs que tout autre cabinet canadien. Comptant plus de 800 avocats, agents de propriété intellectuelle et autres professionnels, BLG répond aux besoins juridiques d'entreprises et d'institutions au pays comme à l'étranger pour ce qui touche les fusions et acquisitions, les marchés financiers, les différends et le financement ou encore l'enregistrement de brevets et de marques de commerce.

blg.com

Bureaux BLG

Calgary

Centennial Place, East Tower
520 3rd Avenue S.W.
Calgary, AB, Canada
T2P 0R3

T 403.232.9500
F 403.266.1395

Ottawa

World Exchange Plaza
100 Queen Street
Ottawa, ON, Canada
K1P 1J9

T 613.237.5160
F 613.230.8842

Vancouver

1200 Waterfront Centre
200 Burrard Street
Vancouver, BC, Canada
V7X 1T2

T 604.687.5744
F 604.687.1415

Montréal

1000, rue De La Gauchetière Ouest
Suite 900
Montréal, QC, Canada
H3B 5H4

T 514.954.2555
F 514.879.9015

Toronto

Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3

T 416.367.6000
F 416.367.6749

Les présents renseignements sont de nature générale et ne sauraient constituer un avis juridique, ni un énoncé complet de la législation pertinente, ni un avis sur un quelconque sujet. Personne ne devrait agir ou s'abstenir d'agir sur la foi de ceux-ci sans procéder à un examen approfondi du droit après avoir soupesé les faits d'une situation précise. Nous vous recommandons de consulter votre conseiller juridique si vous avez des questions ou des préoccupations particulières. BLG ne garantit aucunement que la teneur de cette publication est exacte, à jour ou complète. Aucune partie de cette publication ne peut être reproduite sans l'autorisation écrite de Borden Ladner Gervais S.E.N.C.R.L., S.R.L. Si BLG vous a envoyé cette publication et que vous ne souhaitez plus la recevoir, vous pouvez demander à faire supprimer vos coordonnées de nos listes d'envoi en communiquant avec nous par courriel à desabonnement@blg.com ou en modifiant vos préférences d'abonnement dans blg.com/fr/about-us/subscribe. Si vous pensez avoir reçu le présent message par erreur, veuillez nous écrire à communications@blg.com. Pour consulter la politique de confidentialité de BLG relativement aux publications, rendez-vous sur blg.com/fr/ProtectionDesRenseignementsPersonnels.

© 2026 Borden Ladner Gervais S.E.N.C.R.L., S.R.L. Borden Ladner Gervais est une société à responsabilité limitée de l'Ontario.