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

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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.

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