Product safety: The Québec Court of Appeal reaffirms the scope of manufacturers' duty of warn

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In a recent case, the Québec Court of Appeal reiterated manufacturers' important responsibility to provide product safety information, including about risks discovered only after their products have been launched on the market.

In particular, this decision points out that mere compliance with regulatory standards on consumer product safety may sometimes be insufficient for manufacturers to fully meet their legal duties to provide information on the dangers associated with their products.

This case involved the use of a cleaning product, which caused a faucet pipe to rupture from corrosion, resulting in several thousand dollars worth of damage to a residence.

Given the lack of sufficient indication on the product label about the risk of metal corrosion and how to prevent it, the manufacturer was held liable for the damages. The distributor of the faucet damaged by the product was also held partly liable for the damages, due to its own failure to proactively communicate a warning about the risk of corrosion to customers who had already purchased the faucets.

The extent of a manufacturer's duty of warn

In this case, the manufacturer was found liable for the product's lack of indications pursuant to articles 1468, 1469, and 1473 of the *Civil Code of Québec*, as well as section 53 of Québec's *Consumer Protection Act*.

In Québec, manufacturers have a general duty to provide information on their products. This obligation stems from various sources, including articles 1468 and 1469 of the *Civil Code of Québec*, which deal specifically with safety defects in goods. In addition, under section 53 of the *Consumer Protection Act*, manufacturers are also required to provide consumers with information on how to protect themselves against risks or dangers that cannot be detected by them.

Thus, manufacturers must not only inform users of the risks inherent to the use of their products, but also how to safely use them. Manufacturers' liability is presumed where a

user or consumer establishes by a preponderance of evidence that: (1) the product presents a danger; (2) the consumer has suffered damage; and (3) there is a causal link between the two. However, in such circumstances, manufacturers can avoid liability by demonstrating that they have complied with their duty of warn.

In its decision, the Court of Appeal notes that the manufacturer failed to provide adequate information about its cleaning product's potential to corrode metals. Furthermore, the manufacturer was aware of this risk, as one of its equivalent products, intended for the industrial sector bears an explicit statement that it could prove corrosive to metals.

The Court of Appeal also emphasizes that compliance with regulatory labelling standards does not exempt manufacturers from providing the necessary information to adequately warn users of the risks associated with the product. It also points out that the intensity of the manufacturer's duty to provide information varies according to the hazards and risks specific to a product. The greater the risks associated with the product, and the more severe the potential consequences of these risks, the more the manufacturer will need to ensure that the required information is adequately communicated to users.

In addition, the Court points out that when a new risk is discovered, end users who have already acquired the product may need to be notified. In short, amending product documentation following the discovery of a new safety defect may not be sufficient. Here, the distributor who had sold the faucet to consumers was also found partly liable for the damages caused by water leakage, following the corrosion of the faucet, because it failed to proactively warn previous purchasers of the corrosion risks to the faucet when certain cleaning products are used.

Conclusion

Before marketing a product, it remains imperative to ensure that consumers are provided with appropriate warnings about the risks associated with the product, as well as ways of safeguarding against these risks. Such warnings should therefore be accompanied with instructions on the appropriate means of protection that consumers should be taking. The greater the dangers and consequences associated with products, the more courts expect manufacturers and distributors to provide adequate information.

Contact us

BLG lawyers regularly assist manufacturers and distributors with ensuring that their products comply with all applicable regulations, including the *Consumer Protection Act*. If you have any questions, don't hesitate to reach out to one of the key contacts below, or any member of BLG's Consumer Goods & Hospitality Group.

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