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PRODUCT LIABILITY: CANADIAN LAW & PRACTICE

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Publisher's Special Release Note 2021

The pages in this work were reissued in December 2021 and updated to reflect that date in the release line. Please note that we did not review the content on every page of this work in the December 2021 release. We will continue to review and update the content according to the work's publication schedule. This will ensure that subscribers are reading commentary that incorporates developments in the law as soon as possible after they have happened or as the author deems them significant.

Changes to chapter and heading numbering may have occurred. Please refer to the Correlation Table in the front matter if you wish to confirm references.

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This unique resource serves as a legal reference and practical guide — offering insight into the tactics and strategies used to effectively bring and defend a product liability case. This vital text includes: a review of substantive law of product liability; an examination of procedural law as it relates to product liability actions; a discussion of tactical and strategic issues and considerations; and checklists and precedents.

What's New in this Update:

This release features valuable updates to chapters L2 — Negligent Design and Manufacture, L3 — Failure to Warn or Instruct, L4 — Breach of Warranty and Representations, L5 — Target Defendants and L9 — Liability for Economic Loss. It also updates the Selected Legal Literature tab.

HIGHLIGHTS

CASE HIGHLIGHTS

Failure to Warn or Instruct — Post-Sale Duty to Warn — Information about competitor's warning practices can also be relevant. In *St Isidore Co-op Limited v. AG Growth International Inc.*, the Court considered the evidence about how a competitor had notified purchasers of a safety retrofit, including a letter sent to registered owners, a bulletin to dealers and a follow-up bulletin to dealers four years later. Compared with the defendant, which only listed the retrofit kit in its catalogue and offered the kit to those who sold replacement parts for older machines, the Court found that the defendant had failed in its duty to warn: *St Isidore Co-op Limited v. AG Growth International Inc.*, 2020 ABCA 447 (Alta. C.A.)

Target Defendants — Parts Suppliers — In *Kett v. Mitsubishi Materials Corporation* the British Columbia Superior Court considered whether a parts supplier can be liable to end users under the *Business Practices and Consumer Protection Act* (S.B.C. 2004, c.2). The question was whether the suppliers of automotive parts used in a motor vehicle were “suppliers”, which was defined in the BPCPA as a party that “participates in a consumer transaction by ... supplying goods ... to a consumer...” The defendants argued that they did not supply goods, because the “good” must mean the vehicle, not the parts that make up the vehicle. The Court accepted this argument, finding that the defendants only supplied components that are incorporated into the good, being the vehicle. The Court noted that this interpretation does not immunize the parts suppliers from the consequences of their wrongdoing, since the vehicle manufacturer was entitled to claim over against the parts suppliers, or make

contractual claims up the chain under the *Sale of Goods Act*. Finally, the plaintiff could bring an action in negligence if the component was dangerous (para 74): *Kett v. Mitsubishi Materials Corporation*, 2020 BCSC 1879 (B.C. S.C.)

Target Defendants — Wholesale Distributors — Distributor as Warrantor — Distributors can also be held liable for warranties that they provide to product purchasers, but if those warranties are clear, they can defeat all claims. For example, in *Murray v. Ford Motor Company of Canada*, the Court considered an appeal of a Master’s decision granting summary judgment. The plaintiff complained of multiple defects with an automobile and sued the distributor, seeking a new replacement vehicle. Noting the “separate and distinct corporate existence” between the distributor, the dealer and the finance company, the distributor could only be liable for breach of warranty (para 51). Even if a repairer misdiagnosed a vehicle’s problem, that was not a breach of warranty, and fault lay with the party that made the misdiagnosis (para 71). The Court found that the warranty was unambiguous and therefore, the Court had to give effect to its clear language (para 63). The warranty provided that the distributor agreed to repair and replace defective parts, and therefore the distributor could not be liable to provide a new vehicle to the plaintiff (para 64). Given that the vehicle had been repaired under warranty, and that the distributor confirmed that it continues to be willing to provide warranty service, the distributor did not breach the warranty: *Murray v. Ford Motor Company of Canada*, 2020 ABQB 729 (Alta. Q.B.)

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