

# Product Liability

Through more than two decades of practice across the spectrum of commercial litigation, Lenczner Slaght has developed unique expertise in the area of product liability.

We regularly represent manufacturers faced with claims involving alleged design and manufacturing defects, incorrect or incomplete labelling or instructions, breaches of the duty to warn and other liability issues. We also provide advice on risk management and insurance-related matters, drawing on our lawyers' deep industry-specific knowledge, as well as their expertise in the legal and regulatory environments in which our diverse clients operate.

From research into highly specialized manufacturing techniques to managing the complexities of multiple insurer claims, Lenczner Slaght lawyers are skilled in all aspects of product liability litigation. Several have been singled out as leaders in this area by The Best Lawyers in Canada, The Lexpert/American Lawyer Guide and other peer-based rankings. In addition, our firm has recognized expertise in class actions, having acted in many of Canada's most closely watched cases over the past 20 years.

## Products of Every Description

Lenczner Slaght provides liability litigation support to makers of a wide range of products, including:

- pharmaceuticals and medical devices
- processed food and beverages
- personal care products
- motor vehicles
- trains, boats & planes.
- elevators and escalators
- heating and plumbing systems
- construction and building materials
- industrial equipment
- computer hardware and software

## Cross-Border Litigation

Our product liability lawyers have a wealth of experience in meeting the litigation challenges of clients based in the US and other countries around the globe. Whether serving as lead counsel, coordinating the efforts of international firms as Canadian counsel, or managing a multi-jurisdictional litigation, Lenczner Slaght helps cross-border clients navigate the complexities of Canadian law and government regulations. We also represent their interests at Canadian coroner's inquests and other public inquiries.

### RECOGNITION

- ▶ **Best Lawyers in Canada (2006-2021)**  
 Alternative Dispute Resolution, Appellate Practice, Bet-the-Company Litigation, Class Action Litigation, Corporate & Commercial Litigation, Director & Officer Liability, Intellectual Property, Legal Malpractice, Personal Injury Litigation, Product Liability, Securities
- ▶ **Best Lawyers in Canada (2006-2024)**  
 Administrative & Public Law, Appellate Practice, Bet-the-Company Litigation, Class Action Litigation, Corporate & Commercial Litigation, Director and Officer Liability Practice, Health Care Law, Intellectual Property, Legal Malpractice, Medical Negligence, Personal Injury Litigation, Product Liability, Securities
- ▶ **Best Lawyers in Canada (2014-2024)**  
 Corporate & Commercial Litigation, Health Care Law, Insurance, Medical Negligence, Product Liability
- ▶ **Canadian Legal Lexpert® Directory (2012-2020)**  
 Class Actions, Commercial Arbitration, Litigation - Corporate Commercial, Litigation - Directors' & Officers' Liability, Litigation - Product Liability, Litigation - Public Law, Litigation - Securities, Medical Negligence (2019), Professional Liability
- ▶ **Canadian Legal Lexpert® Directory (2012-2024)**  
 Litigation - Corporate Commercial, Litigation - Defamation & Media, Litigation - Regulatory & Public Law, Professional Liability, Litigation - Public Law (2023)
- ▶ **Canadian Legal Lexpert® Directory (2014-2024)**  
 Litigation - Commercial Insurance, Litigation - Corporate Commercial, Litigation - Product Liability, Medical Negligence, Professional Liability

### SELECT CASES

- ▶ **Burr v Tecumseh** – Counsel to the successful Defendant, Tecumseh, at trial for manufacturer of electric motors in product liability action.
- ▶ **Product Liability** – Defence of a product liability action including allegation of negligent design and manufacture of a multi-million-dollar electric arc furnace.
- ▶ **Bernstein v Peoples Trust Company** – Counsel to the Defendants in a class proceeding alleging that various brands of network-branded payment cards were subject to activation, dormancy, and other fees that constitute misrepresentations, breach of contract, and breaches of various provincial consumer protection legislation and related regulations.
- ▶ **De Muelenaere v Great Gulf Homes Limited** – Counsel to the

defendant developer in a class action alleging breach of contract and negligence relating to the installation of plumbing fixtures.

- **Berglund v BCE Inc** – Counsel to a defendant cell phone manufacturer in a proposed class proceeding alleging that cellular phones designed, manufactured, and sold by various defendants emit excessive amounts of radiation that allegedly causes adverse health effects.
- **Fepro Farms v Wajax GP Holdco Inc** – Counsel to a manufacturer of biogas engine in a product liability proceeding.
- **Alves v Hennessy Industries Inc** – Counsel to the manufacturer of a tire changer alleged to have malfunctioned.
- **Erco Worldwide v General Electric Canada** – Counsel to a manufacturer of transformers in a product liability proceeding.
- **McAllister v 1537768 Ontario Inc** – Counsel to General Electric in product liability proceedings relating to light bulbs alleged to have caused a fire at a marina.
- **Cristofari Farms Inc v Union Gas Limited** – Counsel to a manufacturer of regulators in a product liability proceeding.
- **McLaren v LG Electronics Canada Inc** – Counsel to LG Canada Inc. in a products liability claim alleging negligence in the manufacture and sale of refrigerators.
- **Barbiero v Pollack** – Counsel to a physician in a class action relating to the use of an injectable treatment.
- **Robinson v Rochester Financial Limited** – Counsel to the defendant law firm in a class action for solicitor's negligence involving a tax shelter based on charitable donations using in part borrowed money for tax deductions.
- **Denis v Bertrand & Frère Construction Co.** – Counsel to defendant Lafarge Canada Inc. in a class action by homeowners alleging defective concrete products manufactured in use in house foundations.
- **Fantl v Transamerica Life Canada** – Counsel to plaintiff in a class action alleging defective segregated investment fund products issued by insurance company.
- **Pet Valu Canada Inc. Class Action** – Counsel to defendant Pet Valu Canada Inc. in a class action alleging negligent manufacture, distribution and sale of allegedly defective pet foods

## SELECT PUBLICATIONS AND PRESENTATIONS

- **Division of Endocrinology Professional Development Day 2024** – Colin Johnston was invited to speak at the University of Toronto's *Division of Endocrinology Professional Development Day 2024*. Colin will participate in a panel on CPSO Complaints.

## BLOG POSTS

- **The Devil is (Apparently, Not Always) in the Details: Court of Appeal Comments on Pleadings Requirement in Product Liability Actions** – Pleadings continue to be a popular battleground in the product liability context. Over the years, a body of law has developed respecting motions to strike for negligent design, negligent manufacture and failure to warn claims. Nevertheless, there continues to be debate as to the specificity needed for pleading these types of claims. That debate is fuelled in part

by jurisprudence demonstrating a high tolerance for claims that are arguably vague and lacking in material facts. Even where a claim is struck, plaintiffs are routinely permitted to amend their pleading.

- **Recent decision in pharmaceutical class action highlights importance of scrutinizing common issues in proposed class proceedings** – While class actions can be a useful tool for access to justice, there are limits to the types of claims that can be appropriately advanced through class proceedings. Indeed, the requirements for certification that appear in similar form in virtually every class action statute across Canada are meant to ensure that only those actions that can meaningfully proceed as class actions are in fact certified. Many cases, including certain types of pharmaceutical product liability claims, will simply be unsuitable for certification as a class action. The recent decision of the Ontario Superior Court in *Price v H Lundbeck A/S* provides an example of such a case.
- **A Matter of Fairness: Pre-Trial Inspection of Property in Product Liability Cases in the Small Claims Court** – A recent decision of the Divisional Court of Ontario has opened the door for a limited expansion of the discovery process under the *Small Claims Court Rules* (“Rules”). In *Riddell v Apple Canada Inc*, the Divisional Court upheld an order for inspection of property, made by a Deputy Judge of the Small Claims Court. The decision clarifies the Rules concerning discovery-type motions in the Small Claims Court and, in particular, confirms that the Small Claims Court has jurisdiction to make orders for pre-trial inspection of property.
- **Versa Fittings ruling underscores high bar to relieve insurer of duty to defend** – The recent decision of the Ontario Superior Court in *Versa Fittings v. Berkley Insurance Co.* (2015 ONSC 1756) reinforces that a Rule 21 motion is an expedient way to secure a ruling on whether an insurer’s duty to defend has been triggered.

#### SELECT NEWS ARTICLES

- **The 2024 Lexpert Directory Recognizes Lenczner Slaght’s Litigation Excellence** – Lenczner Slaght’s litigators continue to be recognized by their peers as the foremost practitioners in their fields.
- **Lenczner Slaght’s Litigation Excellence Recognized in 2023 Lexpert Directory** – Following comprehensive peer review surveys and interviews with senior members in the legal profession, the *2023 Canadian Legal Expert Directory* has recognized 31 of the firm’s expert litigators for their experience, knowledge, and precision, with 108 rankings spanning 17 practice areas.
- **Lenczner Slaght Litigators Recognized Among the Best Lawyers in Canada** – In the latest edition of *Best Lawyers in Canada*, 39 of our expert litigators are recognized by their peers for their expertise across 24 practice areas.
- **The 2022 Lexpert Directory Recognizes Lenczner Slaght’s Litigation Excellence** – 31 of our expert litigators are recognized by their peers as the foremost practitioners across 18 fields.
- **Best Lawyers in Canada Recognizes Lenczner Slaght’s Litigation Expertise** – Lenczner Slaght is proud to announce that 33 of our expert litigators are recognized in *Best Lawyers in Canada 2021*. Our lawyers received a total of 128 rankings, up from 100 in 2020.
- **Lexpert Highlights Lenczner Slaght’s Professional Excellence** – Lenczner Slaght’s litigators continue to be recognized by their peers as

the foremost practitioners in their fields.

- **Best Lawyers in Canada Recognizes Lenczner Slaght with 100 Rankings** – In the latest edition of *Best Lawyers in Canada*, 28 Lenczner Slaght lawyers earned a total of 100 rankings, up from 86 in 2019.
- **Lenczner Slaght Litigators Ranked in Best Lawyers in Canada** – Canada's leading litigation firm is proud to announce that 25 of the firm's 58 lawyers have been recognized in the *Best Lawyers in Canada 2019* publication across multiple categories.
- **Lexpert Recognizes Lenczner Slaght's Professional Excellence** – An increasing number of the firm's lawyers have been ranked by their peers as leading practitioners in their field.
- **Lenczner Slaght Ranked Among the Best** – Almost half of the leading litigation firm's lawyers are recognized in the *Best Lawyers in Canada*.
- **Lenczner Slaght Shines in 2017 Lexpert Rankings** – Lenczner Slaght's litigators continue to be recognized by their peers as leading practitioners in their fields according to the 2017 Canadian Legal Lexpert Directory.
- **Jonathan Chen Joins Lenczner Slaght** – Canada's leading litigation firm continues to attract top talent.
- **Peers Recognize Lenczner Slaght's Expertise in Cross-border Litigation** – Fifteen Lenczner Slaght lawyers have been ranked in the Lexpert 2016 Guide to the Leading U.S./Canada Cross-Border Litigation Lawyers in Canada
- **Lenczner Slaght Leads in Cross-Border Litigation** – Recognition of Lenczner Slaght lawyers as Canada's Leading Cross-Border Litigators Endures
- **Lenczner Slaght Lawyers Repeatedly Ranked Among the Best** – Half of the firm's lawyers are ranked as leading practitioners and three named "Lawyer of the Year" in the latest Best Lawyers in Canada Directory.
- **20 Lenczner Slaght Lawyers Recognized in 2015 Lexpert Directory** – Recognized by Canadian Legal Lexpert® Directory as leading practitioners.
- **Class actions aren't the only game in town for product liability claims** – Lawrence Thacker was quoted in the Financial Post on May 27, 2015 in relation to the issue of mass tort litigation as an alternative to class actions.
- **Premier practice comprised of Toronto's premier litigators** – Legal 500 Canada recommends Lenczner Slaght in Dispute Resolution, Intellectual Property, Labour and Employment Law.
- **A Leader in Cross-Border Litigation** – 14 Lenczner Slaght litigators ranked in Lexpert 2014 Guide to the Leading U.S./Canada Cross-Border Litigation Lawyers in Canada.
- **23 Lenczner Slaght Lawyers Ranked Among the Best** – Nearly half of the firm's 49 lawyers are ranked as leading practitioners and two named "Lawyer of the Year" in the latest Best Lawyers in Canada Directory.