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Product Liability

"Plaintiffs have attempted to expand the use of public nuisance to a variety of contexts."

What was the most interesting development of 2025, and why?

Historically, courts addressed public nuisance claims in the context of interference with use of public land (such as environmental pollution) and litigants did not consider it a particularly effective private law remedy. Recently, however, plaintiffs have attempted to expand the use of public nuisance to a variety of contexts, including claims against gun manufacturers, opioid manufacturers and distributors, and social media companies.

In 2025, the Ontario Court of Appeal provided further insight into the contours of a public nuisance claim against manufacturers in the context of an allegedly defective product. In *Price v Smith & Wesson Corporation*, the plaintiffs commenced a class action against the manufacturer of a stolen firearm that was used to injure several people on Danforth Avenue in 2018. The plaintiffs alleged the manufacturer failed to implement technology that could have prevented unauthorized use of the gun.

In affirming that the public nuisance claim was not viable, the Court commented that public nuisance has never been applied to hold a manufacturer liable for a risk to public health and safety that may result from the criminal misuse of its product. While it is one thing to impose negligence on gun manufacturers for reasonably foreseeable consequences of third-party use of a firearm, it is quite another to impose liability for public nuisance which does not examine questions of foreseeability, proximity, or standard of care.

In other contexts, such as the Toronto District School Board's case against various social media companies (which is under appeal), a public nuisance claim survived a motion to strike at first instance in respect of allegations dealing with the impact of addictive digital products on student learning. If upheld, this finding would represent a significant expansion on the scope of manufacturer liability.

What are two takeaways from the past year?

Courts continue to clarify the limited cases when plaintiffs can recover compensation for defective products.

The Ontario Court of Appeal recently reinforced that plaintiffs must demonstrate recoverable loss, either through damage to other property, personal injury, or expenditures to avert imminent harm. In *North v Bayerische Motoren Werke AG*, the Court confirmed that internal component failures do not constitute damage to "other property," thereby emphasizing the strict limits on recovery for pure economic loss in negligence.

Manufacturers received some clarity on the application of Ontario's 15-year ultimate limitation period. In *Hennebury v Makita Canada Inc*, a failure to warn decision, the Court concluded that while the injury occurred in 2019 and the action was issued in 2020, the claim was statute-barred because the subject product was manufactured in 2001. There was no basis in that case to suggest the manufacturer's ongoing duty to warn tolled the limitation period, nor was there a finding of successive or repetitive conduct that established a continuing cause of action.

What's a decision you are looking forward to in 2026?

A key piece of evidence in product liability cases is often the allegedly defective product itself. Parties in litigation have an obligation to preserve the product for inspection and examination. Intentionally destroying or disposing of evidence to affect the outcome of anticipated or existing litigation is referred to as spoliation.

Although not a product liability case, the Supreme Court of Canada's upcoming decision in *SS&C Technologies Canada Corporation v Bank of New York Mellon Corporation* may clarify the law on spoliation and the consequences flowing from spoliation. Lenczner Slaght is co-counsel to the respondents on that appeal.

The current remedy for spoliation is entirely discretionary and can range from costs penalties to adverse inferences found against the spoliator, depending on the circumstances. In SS&C, the appellant argued that a harsher mandatory penalty was warranted. It was argued that once the high bar of the spoliation test is met, there should be no discretion: the remedy should be a presumption that the intentionally destroyed evidence would have supported the highest possible award against the spoliator. Beyond this issue, we look forward to potential clarification of when and what adverse inferences may be drawn as a result of spoliation.

KEY AUTHORS

Jonathan Chen
PARTNER
416-865-3553
jchen@litigate.com

Katrina Dods
ASSOCIATE
416-865-3728
kdods@litigate.com

OUR PRODUCT LIABILITY EXPERTISE

Lenczner Slaght regularly represents 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.