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Ontario Court of Appeal Overturns Certification of BMW Class Action: The Limits of Negligence Claims for Defective Products

In *North v Bayerische Motoren Werke AG*, the Ontario Court of Appeal delivered a significant ruling on the boundaries of product liability in negligence. The decision confirms that negligence claims for pure economic loss in product liability cases can only succeed in narrow circumstances. For class action and product liability lawyers, the case serves as a reminder of the limits that govern certification in negligence-based claims.

The Superior Court Certifies but Narrows the Proposed Class Action

The proposed class action was brought by Patricia North and Dinis Rego, against BMW and its affiliates. North and Rego alleged that BMW vehicles equipped with N20 engines sold or leased in Canada between 2012 and 2015 contained a defect in the timing chain assembly system. They claimed this defect caused sudden loss of power and catastrophic engine failure, leading to unaffordable repair costs and forcing some owners to sell their vehicles “as is”. They sought to certify a national class action on behalf of over 66,000 owners and lessees for negligence in the design, manufacture, and failure to warn of the defect.

The Ontario Superior Court of Justice granted certification of the case on a narrower basis than North and Rego had originally sought. Justice Morgan rejected the broad framing of their claims, narrowing the certified cause of action to negligent design or manufacturing resulting in the cost of repairing engine damage or averting imminent harm. The Court found no viable cause of action for a failure to warn, and excluded class members who had not incurred repair costs. While Rego was accepted as a suitable representative plaintiff (having paid a diagnostic fee), North was excluded for not incurring any repair or disposal expenses.

The Court of Appeal Denies Certification Entirely and Reaffirms Supreme Court Jurisprudence

On appeal, North and Rego argued the decision was too narrow and unjustly excluded those, like North, who had not paid for repairs due to cost or lack of knowledge of the defect. They also contended that their claims went beyond pure economic loss and included recoverable property damage and imminent risk of injury. BMW cross-appealed, arguing that no valid cause of action had been pleaded, that no common defect existed across all class vehicles, and that neither North nor Rego qualified as representative plaintiffs.

The Court of Appeal ultimately dismissed North and Rego's appeal, allowed BMW's cross-appeal, and set aside the certification order entirely. Writing for a unanimous panel, Associate Chief Justice Fairburn found that North and Rego's claims fell squarely within the category of pure economic loss and were not grounded in compensable property damage or personal injury. The Court reaffirmed that, under the Supreme Court of Canada's decisions in *Winnipeg Condominium Corporation No 36 v Bird Construction Co* and *1688782 Ontario Inc v Maple Leaf Foods Inc*, repair costs are only recoverable in negligence if they were incurred to avoid a real and substantial danger. Since the timing chain system was integral to the engine, and the engine to the vehicle, any damage resulting from its failure was not to "other property".

The Court explicitly rejected the "complex structure theory," which would have allowed recovery for damage to one part of a product caused by another defective part. The Court held that this theory has been disapproved by the Supreme Court of Canada and cannot be used to transform internal component failures into compensable property damage. The only recoverable damages in such cases are the costs incurred to avoid a real and substantial danger to persons or property – costs that must actually be incurred, not just speculative or notional.

The Court of Appeal further held that the certified claim for post-failure repair costs could not proceed. These costs were aimed at fixing a defective product, not at preventing harm, and therefore did not fit within the narrow exceptions that allow recovery for pure economic loss. The Court also ruled that Rego's "diagnostic fee" did not qualify as a recoverable disposal cost under the *Maple Leaf Foods* decision. With neither Rego nor North having a valid negligence claim, the Court concluded there was no suitable representative plaintiff. Without one, certification could not stand.

Key Takeaways

This decision reinforces that for a negligence-based class action to be certified, plaintiffs must demonstrate recoverable loss –

either through damage to other property, personal injury, or expenditures to avert imminent harm. The decision confirms the strict limits on recovery for pure economic loss in negligence, clarifies that internal component failures do not constitute damage to “other property,” and underscores the importance of having a representative plaintiff with a viable, compensable claim.

For lawyers, *North v BMW* is a cautionary tale: successful certification in product defect cases will require careful pleading of actual, recoverable damages and a clear understanding of the boundaries between contract and tort remedies. For defendants, *North v BMW* offers a roadmap for resisting certification where claims are rooted in pure economic loss and the representative plaintiffs lack legally recognized injuries.