Cassels

A Warning to Warn: Ontario Court of Appeal Expands on a Manufacturer's Duty to Warn

Stefanie Holland, Robert Sniderman, Christopher Harasym

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In a recent decision of the Ontario Court of Appeal, *Burr v. Tecumseh Products of Canada Limited*,[1] the Court upheld a trial decision related to the negligent design of a ventilator and the indemnity provisions in a contract between the product manufacturer and the manufacturer of a sub-component. This decision touches on the importance of complying with industry standards in product design – especially when industry standards exceed the relevant regulatory requirements – and the need for manufacturers to utilize their own experts and testing to determine possible safety issues. This case further highlights the extent of a manufacturer's duty to be knowledgeable of potential design deficiencies or risks.

Background

This case arose out of an incident involving a heat recovery ventilator designed and manufactured by Venmar Ventilation Inc. ("Venmar"). The motor was manufactured by Tecumseh Products Company, then called Fasco ("Fasco").[2] In 2012, the motor in the ventilator installed in the plaintiffs' home overheated, and the ventilator then caught fire and exploded, causing over $1 million in damages to the plaintiffs' home.[3]

The trial judge held that Venmar was responsible for negligent design of the ventilator but not liable for failure to warn the plaintiffs of the risk of fire. The trial judge further found that Fasco was not liable for negligent manufacture or design of the ventilator, nor for failure to warn the plaintiffs, and that even if Fasco was liable, the contract between Venmar and Fasco required Venmar to indemnify Fasco for any claim.[4] In other words, the contract protected Fasco from any finding of liability and any order for damages arising out of such liability.

The Decision

Venmar's Liability

The Court of Appeal upheld the trial judge's decision that Venmar was liable for negligent design of the ventilator.[5] Key to this finding was the expert opinion that while the ventilator met applicable certification standards, it did not meet industry standards at the time that the ventilator was installed.[6] The Court agreed with the trial judge that Venmar had or should have had the relevant knowledge of what industry standards required at the time, and was therefore responsible for its "choice of an inappropriate component" for the ventilator.[7]

In assessing whether Venmar breached its duty to warn the plaintiffs, the Court noted that once Venmar discovered the problem with the motor, it acted “quickly and forcefully” to notify their customers and send adapters to those customers.[8] The Court held that these steps “were consistent with industry practice” at the relevant time, and therefore, Venmar did not breach its duty to warn customers of the risk of fire.[9]

Fasco’s Liability

The Court noted several reservations in the trial judge’s finding that Fasco was not negligent and did not breach its duty to warn the plaintiffs. In particular, the Court held that there was no “principled reason” why Fasco should be exempted from a manufacturer’s duty to warn of risks associated with the reasonably foreseeable use of their products.[10] Despite this finding, however, the Court held that it was not necessary to conclusively address Fasco’s liability, as Venmar was contractually obligated to indemnify Fasco.[11]

Venmar’s Indemnity Obligations

The terms and conditions of the contract between Venmar and Fasco explicitly stated that Venmar would indemnify Fasco for:

[A]ny and all claims, actions, causes of action, liabilities, liens, losses and costs ... relating to the Goods or any device, material or things to which the Goods [are] attached or of which the Goods are made a part of or within which the Goods are enclosed, regardless of whether Fasco may be wholly, concurrently, partially, jointly or solely negligent or otherwise at fault.[12]

While Venmar claimed it was unaware of and did not consent to these terms, the Court upheld the trial judge’s findings that the parties were sophisticated commercial entities and that the contract had remained the same for multiple years. Therefore, Venmar would have known of the contractual terms, including its obligation to indemnify Fasco.[13]

The Upshot

It is important to note that the Court’s finding in this case will not be applicable in every case where a sub-component of a product fails. The Court was limited in its ability to interfere with the trial judge’s decision not only because of the obligation to give deference to the trial judge’s analysis of expert evidence, but also because of the contractual provisions at issue in this case. This case does not support the notion that manufacturers of sub-components will not be liable for product failures.

This case does, however, endorse the fact that manufacturers should be aware that a finding that a product fails to meet industry standards can be sufficient to find a manufacturer negligent, even where regulatory standards are met.[14] Manufacturers must not only comply with all regulatory standards, but should also comply with established industry standards beyond those regulatory requirements. In other words,

manufacturers have a duty to acquire knowledge about how their product operates, to obtain information available in the industry through testing, and to rely on their own engineers when doing so.[15]

Further, manufacturers ought to carefully consider the terms of their relationship with sub-component manufacturers before relying on their expertise. Such reliance may be insufficient for the product manufacturer to discharge its duty of care owed to customers, including in cases where there are clear indemnification provisions in the contract.[16] Accordingly, manufacturers and their legal counsel ought to give full and careful consideration to the existence and role of indemnity provisions in their contracts with sub-component manufacturers and ensure that proper protection is afforded in cases where a sub-component fails.

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[1] 2023 ONCA 135 ("***Burr***").

[2] *Burr* at paras 1-3.

[3] *Burr* at para 7.

[4] *Burr* at para 8.

[5] *Burr* at para 82.

[6] *Burr* at paras 65-68.

[7] *Burr* at paras 71-74.

[8] Burr at paras 84-87.

[9] *Burr* at para 88.

[10] *Burr* at paras 104-106.

[11] *Burr* at para 107.

[12] *Burr* at para 109.

[13] *Burr* at paras 112-116.

[14] *Burr* at paras 22-26 and 82.

[15] *Burr* at para 63.

[16] *Burr* at para 95.

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