Cassels

Duty Free: Recent Appellate Decisions Narrow the Duty of Care in Negligence for Manufacturers

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In determining the outcome of a product liability suit based on negligence, a court will first look to whether the manufacturer owed a duty of care to the injured party. A duty of care will often be found if the harm was reasonably foreseeable. Canadian appellate courts have recently considered whether the categories of foreseeable harm should be framed more narrowly. Two recent decisions from the Ontario Court of Appeal and the Supreme Court of Canada have address this question head on, finding that the circumstances of the case did not give rise a duty of care on the part of the defendant. These decisions bode well for limiting the scope of tort liability on manufacturers in product liability cases.

Did They "Meat" The Duty of Care? The ONCA's *Maple Leaf* Decision

In *1688782 Ontario Inc. v Maple Leaf Foods Inc.*, the Ontario Court of Appeal granted summary judgment to a manufacturer, finding that the manufacturer owed no duty of care to restaurants in respect of the reputational harm and business losses arising out of contaminated products.[1]

In August 2008, Maple Leaf Foods found that certain brands of their ready-to-eat meats (RTE Meats) were contaminated with listeria monocytogenes. Upon discovering this, they recalled the meats and closed the plant. At this time, Maple Leaf was the exclusive supplier of meats for Mr. Sub franchisees. A class action was commenced and certified on behalf of Mr. Sub franchisees against Maple Leaf. The representative plaintiff claimed that Maple Leaf negligently manufactured and supplied meat that could be contaminated, and negligently represented that the supplied meats were fit for human consumption. The plaintiff also claimed damages for loss of sales, profits, and goodwill.

Maple Leaf brought a motion for summary judgment seeking to have these claims dismissed. The motion judge concluded that Maple Leaf owed a duty to the franchisees "in relation to the production, processing,

sale and distribution of the RTE Meats" and a duty "with respect to any representation made that the RTE Meats were fit for human consumption and posed no risk of harm." Maple Leaf appealed this decision.

The Court of Appeal reversed the lower court's decision on appeal, finding that the trial judge erred in finding that Maple Leaf owed a duty of care to the plaintiff restaurant owners. The Court stated that, in determining whether a duty of care exists, one must determine whether there is a relationship of proximity, and the scope of duties resulting from that relationship.

The Court found that Maple Leaf's duty to supply meat fit for human consumption was a duty owed to Mr. Sub's customers, rather than the franchisees. Based on this, the Court ruled that the representative plaintiff could not "bootstrap" their claim for damages based on their loss of sales and reputation on the duty owed to customers. The Court additionally decided that the scope of Maple Leaf's duty to Mr. Sub's franchisees did not extend to protecting their reputation. In short, the Court stated that pure economic losses arising from reputational harm did not fall within the scope of the duty that Maple Leaf owed to the Mr. Sub franchisees.

Driving Towards a Narrower Framing of Foreseeability: The SCC's *Rankin* Decision

Although not a product liability action, the Supreme Court of Canada's recent decision in *Rankin (Rankin's Garage & Sales) v J.J.* took a similarly restrictive approach to the duty of care analysis which will be helpful to manufacturer defendants in product liability cases.[2]

The *Rankin* case was a negligence action stemming from a car accident sustained by two minors while joyriding in a stolen vehicle. After drinking alcohol and smoking marijuana, the two minor plainitffs stole an unlocked vehicle from a commercial garage owned by the defendant, Rankin's Garage & Sales. The garage had left the car unlocked with its keys in the ashtray. While driving on the highway, the plaintiffs crashed the car, and the passenger suffered a catastrophic brain injury. The passenger sued Rankin's Garage, claiming that they owed a duty to secure the vehicles to prevent possible harm arising from theft of the vehicle.

The trial judge and the Ontario Court of Appeal both held that Rankin owed a duty of care to the plaintiff. Both judgments found that the harm was reasonably foreseeable, as Rankin knew it had the obligation to secure its vehicles, and could have foreseen that theft could occur and could possibly lead to an accident. Rankin appealed.

A majority of the Supreme Court of Canada reversed the decision of the lower courts, finding there was no duty of care owed by the garage owner and that the courts below erred in allowing a category of duty as broad as "foreseeable physical injury." The Court further held that a risk of theft does not necessarily lead to a risk of physical injury, and that such a leap would extend liability too far. The Court concluded that "a business will only owe a duty to someone who is injured following the theft of a vehicle when, in addition to theft, the unsafe operation of the stolen vehicle was also reasonably foreseeable."

Key Takeaway Principles

The *Maple Leaf* and Rankin decisions both work to narrow the analysis of whether a duty of care exists in ways that will be helpful to manufacturers defending product liability actions. Specifically, both decisions effectively work to require more scrutiny throughout the duty of care analysis. Whether suggesting that the analysis must take into greater account the scope of the duty (as in *Maple Leaf*) or the nature of the duty (as in *Rankin*), both cases support a narrower focus. A principle of framing a duty of care in a narrower way would give further protection to manufacturers by preventing them from being held liable for harms that are outside of the realm of foreseeability.

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[1] 2018 ONCA 407, <http://www.ontariocourts.ca/decisions/2018/2018ONCA0407.htm> ["*Maple Leaf*"].
[2] 2018 SCC 19 (CanLII), <http://canlii.ca/t/hrxsd> ["*Rankin*"].