LITIGATION NEWS

ABA Litigation Section

TOP STORY

Media Coverage Is Not Notice of a Potential Claim

By Andrea L. McDonald – August 7, 2024

The internet's accessibility might further complicate application of the "discovery rule." Under the discovery rule, the statute of limitations does not begin to run until the plaintiffs know, or should know, of their potential cause of action. Recently, a federal court of appeals vacated the dismissal of a product liability claim, holding that online news coverage of similar defect suits did not necessarily put the plaintiffs on notice of their claim. ABA Litigation Section leaders do not expect this case to end the discussion of the internet's effect on the discovery rule.

Reasonable Diligence and Mass Media

In *Landers v. Ford Motor Company*, more than five years after their daughter's fatal accident in an F-350, the plaintiffs brought a product liability claim against Ford. On Ford's motion, the U.S. District Court for the Central District of California dismissed the plaintiffs' suit as barred by California's two-year statute of limitations. The plaintiffs alleged that they did not suspect a product defect until years after the accident, and the "discovery rule" therefore excused their late filing. The district court disagreed and dismissed the plaintiffs' claim with prejudice, noting that "a simple internet search" would have revealed their claim.

In California, the discovery rule delays the statute of limitations period if a plaintiff specifically pleads its "inability to have made earlier discovery [of a potential claim] despite reasonable diligence." According to the district court, the plaintiffs should have known of their claim based on the vehicle's "catastrophic roof collapse." The district court further concluded that the plaintiffs had not shown reasonable diligence in their investigation because news coverage of similar accidents, allegations of roof-design defects, and related lawsuits was available online more than two years before the plaintiffs filed their complaint.

The Court of Appeals for the Ninth Circuit rejected the district court's reliance on "a simple internet search" and vacated the dismissal. Citing a California appellate opinion holding that "public awareness of a problem through media coverage alone" does not create constructive notice of a claim, the Ninth Circuit focused instead on the plaintiffs' investigation as alleged. Besides pleading specific reasons why they were initially unaware of the design defect, the plaintiffs' proposed amended complaint described their investigation and public information they researched, such as safety ratings and consumer reviews. With these amendments, the Ninth Circuit found that the plaintiffs had "plausibly alleged the catastrophic nature of the

automobile accident does not *only* support the conclusion that they should have been aware of Ford's potential liability."

Defining "Reasonable" Diligence

Although Litigation Section leaders agree that "discovery" of a products liability claim does not necessarily begin on the date of injury, determining when that discovery occurs is not so straightforward. "The discovery rule is balancing the need to protect defendants from having to defend against stale claims with allowing plaintiffs to make their case for recovery," explains Karen A. Crawford, Columbia, SC, Co-Chair of the Section's Mass Torts Litigation Committee. "Each case will be different, and it can be very difficult to prove when or how a plaintiff 'should have known' of a potential claim," Crawford observes.

"Succinctly, I think the Ninth Circuit got it right here," opines Clifford F. Kinney Jr., Charleston, WV, Co-Chair of the Section's Product Liability Litigation Committee, while also acknowledging that media coverage might provide notice of a claim in some cases, such as "a plane crash or another incident that receives major news coverage. Here, the plaintiffs had laid out sufficient reasons why they did not suspect a product defect earlier as opposed to the dynamics and physics of this particular accident," Kinney continues.

Nevertheless, a news media search may be part of a plaintiff's reasonable investigation. "The burden must be on the plaintiffs to demonstrate that they were unaware, despite 'reasonable diligence,' that their injuries were caused by a defective product. It seems to me that the search of news articles would be a part of the necessary 'reasonable diligence,'" Crawford suggests.

"A [Not So] Simple Internet Search"

Section leaders also have concerns about the district court's reliance on the internet as a source of reliable information. "The thing that stuck me when reading this case was the district court's reliance on 'a simple internet search,'" Kinney remarks. "An entire treatise could be written on how to interpret that phrase. There are so many variables as to what an internet search will find. It assumes the plaintiffs would run the same search as anyone else and receive the same results, and that those results are trustworthy."

"I don't necessarily think it must be an internet search," Crawford adds. "But the discovery rule requires plaintiffs to plead and prove—based on the facts—that their due diligence was 'reasonable.' These days, since most folks have the internet in their pocket, it is not unreasonable for the court to raise the question of an internet search."

Plaintiffs are advised to be active in researching the existence of a potential claim. "I think we will see more references to 'an internet search' in the future. It is something for practitioners to be alert to and appreciate that it may be argued by other counsel, it may be raised by the judge, and jurors and witnesses may be thinking it. Practioners need to be prepared to address that issue," Kinney advises.

Andrea L. McDonald is a contributing editor for Litigation News.

Related Resources

- Cal. Code Civ. Proc. § 335.1.
- *Unruh-Haxton v. Regents of University of California*, 76 Cal. Rptr. 3d 146, 163 (Cal. Ct. App. 2008).
- Elizabeth G. Thornburg, "The Lure of the Internet and the Limits on Judicial Fact Research," *Litig. J.*, Summer/Fall 2012, at 41.
- Onika K. Williams, "Use of ChatGPT for Research Leads to Bogus Cases, Sanctions," *Litigation News* (Nov. 1, 2023).