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Press and Information

Judgment in Case C-358/08
Aventis Pasteur SA v OB

# During proceedings instituted incorrectly against the supplier of a defective product, the producer can be substituted for him only within a period of 10 years from the putting into circulation of the product

*After the expiry of this period that substitution is, however, possible where the supplier is wholly-owned by the producer and the latter determined the putting into circulation of the product on the market.*

The directive concerning liability for defective products[1] provides for a 10-year period for bringing proceedings against the manufacturer. The Act which implements that directive in the United Kingdom authorises, in the context of legal proceedings, the substitution, after that period, of one defendant for another in certain circumstances and in particular where there is a mistake about the identity of the person against whom proceedings should be brought.

The French company Aventis Pasteur SA (APSA) produces pharmaceutical products, including an antihaemophilus vaccine. Mérieux UK Ltd, a wholly-owned subsidiary of APSA acting as distributor in the United Kingdom, sold a consignment of vaccine units to the United Kingdom Department of Health for the purposes of a hospital which in turn supplied part of those units of vaccine to a medical surgery.

Subsequent to the administration of a unit of the vaccine at issue, OB suffered from severe brain damage. He brought, initially, an action for damages, within the 10-year period, against the United Kingdom subsidiary Mérieux UK Ltd, now Aventis Pasteur MSD (APMSD). Next, OB applied for an order that APSA be substituted for APMSD by virtue of the fact that, at the time of bringing the action, he wrongly believed that the manufacturer of the vaccine at issue was APMSD. However, that application for substitution was made after the expiry of the 10-year period for bringing an action against the producer.

The House of Lords, hearing the dispute, asks the Court whether the national law is compatible with the directive concerning liability for defective products.

The Court observes that the directive does not provide for procedural mechanisms which it is appropriate to apply when an injured person brings an action for liability for a defective product and makes an error as to the identity of the producer. Thus, it is, as a rule, for national law to determine the conditions in accordance with which one party may be substituted for another in the context of such an action.

However, a rule of national law cannot be applied in a way which permits an action to be brought against the producer, after the expiry of the 10-year period, as defendant in proceedings brought within that period against another person. An outcome to the contrary would amount to accepting that the limitation period can be interrupted with regard to a producer for a reason other than that proceedings have been instituted against him, but also to lengthening that period, which would undermine the principle of legal certainty.

[1] Council Directive 85/374/EEC of 25 July 1985 on the approximation of the laws, regulations and adminis´trative provisions of the Member States concerning liability for defective products (OJ 1985 L 210, p. 29).

The Court holds that to take subjective elements into consideration, such as the wrongful attribution, by the injured person, of the status of manufacturer of the allegedly defective product to a company which is not the manufacturer, would infringe the harmonisation rules laid down by the directive.

Consequently, the Court holds that, in principle, **the directive precludes national legislation which allows the substitution of one defendant for another during proceedings from being applied in a way which permits a producer to be sued, after the expiry of the 10-year period prescribed by it, as defendant in proceedings brought within that period against another person.**

Moreover, in the specific case before it, the Court holds that the directive does not preclude that, in the proceedings instituted within the 10-year period against the wholly-owned subsidiary of the producer, that producer can be substituted for its subsidiary if the court finds that the putting into circulation of the product in question was determined by that producer.

Furthermore, according to the Court, the directive must be interpreted as meaning that, **where the person injured by an allegedly defective product was not reasonably able to identify the producer before exercising his rights against the supplier of that product, that supplier must be treated as a 'producer'** for the purposes of the directive **if it did not inform the injured person, on its own initiative and promptly, of the identity of the producer or its own supplier**. However, in this specific case, APMSD, having, as subsidiary of APSA, bought the vaccine at issue directly from the latter, clearly knew the identity of the producer at the time when OB brought proceedings against it.

The Court states in that respect that it is for the national court to make the necessary determinations. If it treats APMSD as a 'producer', it could be held that the proceedings instituted by OB against that company interrupted the limitation period applicable to it. On the other hand, such a finding would not authorise upholding the application for substitution of APSA for APMSD in the light of the fact that the application was made after the expiry of the 10-year period.

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