The Manufacturer-Seller's Warranty in Québec: Still "Distict"!

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In late November 2007, the Supreme Court rendered a judgment on the law of sale in Quebec in the case of **ABB Inc. v. Domtar Inc.** in which it pointed out important differences between Quebec law and the law of the other Canadian provinces regarding limitation of liability clauses. It also clarified its thinking on the scope of the presumption of knowledge of the defect and the defences available to the anufacturer/seller and it dealt with the manufacturer/seller's duty to inform and the extent of the buyer's duty to inform himself.

This judgment is certainly a landmark decision, because it clarifies the Kravitz decision and older rulings concerning the rebuttability of the presumption of knowledge. It also makes a clear distinction between the rules applicable in the common law provinces and those applicable in Quebec. All manufacturers and professional sellers who sell products in Quebec will be affected by this decision. It will be difficult for them to invoke a clause excluding or limiting liability unless they have succeeded in establishing that the presumption of knowledge and bad faith applicable to them has been rebutted by the rare admissible defences. These are the buyer's own fault, the fault of a third person, an event of force majeure (superior force), or the existing state of technical knowledge at the time the good was manufactured. One may now have to consider the potential impact that a detailed disclosure of a product's characteristics may have on establishing the state of technical knowledge at the time of manufacture.

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