

LEGAL UPDATE

The liability expiry date for individual parts of a product

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Under Article 6:185 of the Dutch Civil Code (“DCC”), a manufacturer can be held liable for damage caused by a defect in its product. An injured party's right to receive compensation from the manufacturer expires ten years after the latter puts the product into circulation (Article 6:191(2) DCC). Unlike a limitation period, an expiry period cannot be interrupted, which means that the matter has to have been brought before the courts before the expiry period ends. In a judgment issued by the [Dutch Supreme Court](#) on 16 July this year, the central question was when the expiry period had begun in the case of a hip prosthesis consisting of separate parts.

The patient had had hip replacement surgery in hospital in 2004. The hip prosthesis in question consisted of four parts, specifically a metal socket and a metal head with an adapter housing in the head to which a stem was attached. These parts had been put into circulation on different dates. Specifically, the head, the stem, the socket and the adapter housing had been moved from the production process to the sales process on 11 February 2004, 5 June 2004, 7 August 2004 and 18 August 2004, respectively. In 2012, the patient was found to have elevated cobalt and chromium levels due to wear and tear as well as corrosion of the hip prosthesis. The head and socket of the hip prosthesis were then removed.

On 19 May 2014, the patient filed proceedings seeking compensation from the manufacturer who had marketed the hip prosthesis. One of the manufacturer's defence arguments was that the right to claim damages had lapsed because the head of the hip prosthesis had been put into circulation more than ten years prior to the date of the summons. The key question was then whether the individual parts of the hip prosthesis were each to be regarded as a finished product within the meaning of Article 6:187(1) DCC, or whether the hip prosthesis as a whole qualified as a finished product. In other words, when did the ten-year expiry period begin?

The Supreme Court found that, if a hip prosthesis is assembled during surgery, it cannot be deemed to be a finished product that the manufacturer has produced and put into circulation at that time. Accordingly, the assembly of the hip prosthesis does not constitute a new product put into circulation within the meaning of Art. 6:187(1) DCC and, consequently, it does not trigger the beginning of a new liability expiry period.

The Supreme Court held that the parts were each separately identifiable as individual products and, given that they had been put into circulation separately, each part had its own expiry date for liability. This meant that if the socket had been considered defective within the meaning of Article 6:186 DCC, for example because it had caused damage when coming into contact with the head, the liability expiry period had begun on 8 August 2004. According to the Supreme Court, the fact that the manufacturer could not (or could no longer) be held liable for the head because liability for the head had already expired made no difference to that.

The conclusion to be drawn from this judgment is that, if a product is made up of different parts which are each deemed to be finished products within the meaning of Article 6:187(1) DCC, each part/product has its own liability expiry date. If a defect in a product is caused by the combination of two of parts of it, the producer may be liable for the damage caused by the defectiveness of that part/product for which liability has not yet expired, even if its liability for the other part has already expired.

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