

Statute of Repose Does Not Apply if a Product is Materially Altered

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In *Florian v. GATX Rail Corp.*, Case No. 91A04-1002-PL-77, decided on July 19, 2010, the Indiana Court of Appeals held that the statute of repose will not time-bar a product liability claim if the product has been materially altered within the statutory time period.

In *Florian*, the court was asked to determine, among other things, whether the statute of repose precluded a negligence action against a railroad company, GATX, arising out of an accident at a railroad crossing. The plaintiff collided with a tank car, which was manufactured in 1975 and was painted black. The trial court granted GATX's motion for summary judgment and the plaintiff appealed. The court of appeals affirmed.

The court of appeals addressed various issues, including whether the Federal Railroad Safety Act preempted the plaintiff's claims. However, the issue that will be of greater general interest to Indiana litigators will be the court's application of the the 10-year statute of repose found at Indiana Code § 34-20-3-1. The plaintiff argued that his claim was not barred by this statute, because the tank car had been painted black within 10 years of the accident and that the color of the tank car was a contributing factor to the accident. The Court rejected this argument, holding that a change to a product must "materially alter" the product to avoid the statute of repose. In this case, the tank car was painted black when it was delivered and had been repainted black on multiple occasions, which did not amount to a material alteration of the product.

Those interested in issued of federal preemption will want to read that section of this opinion. However, that section of the opinion will not substantially change the manner in which that issue is litigated in the future. The Court's holding that the statute of repose does not apply if a product is "materially altered," on the other hand, will provide parties with a focus toward which they should build their cases and direct their proof if the statute of repose is an issue in their case.

Lessons:

1. When litigating a product liability case in which the ten-year statute of repose may become an issue, be prepared to introduce evidence (possibly even expert testimony) on whether the product has been materially altered within the last ten years.
2. If you are bringing a claim that may be preempted by federal law, tie your claim to a particular local safety hazard, if possible.