

Georgia's Products Liability Statute of Repose: "First Sale" vs. "A Sale"

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In *L'Oreal USA, Inc. v. Burroughs*, 372 Ga. App. 30, 2024 Ga. App. LEXIS 250, the Court of Appeals of Georgia (Appellate Court) considered whether Georgia's ten-year statute of repose for products liability precluded strict liability and/or negligence claims where the product, allegedly causing injury, was *first* purchased more than 10 years ago, but new containers of the same product were purchased within the last 10 years. The Appellate Court found that the "first sale" triggers the products liability statute of repose.

In *Burroughs*, Kiara Burroughs (Burroughs) alleged that she continuously used chemical hair relaxers from the age of six to twenty-five. In 2018, Burroughs was diagnosed with uterine fibroids, which caused her significant health problems. In October 2022, a scientific health study was released finding an association between chemical hair relaxers and uterine cancers. On October 27, 2022, Burroughs filed her original complaint, including claims for strict liability, negligence, and failure-to warn against L'Oreal USA, Inc. and others (collectively, Defendants). Defendants filed a Motion to Dismiss based, in part, on the statute of repose.

Defendants argued that Burroughs' claims were barred by the statute of repose. The trial court disagreed stating that "each application of hair relaxer constituted exposure to a new product, with her last use occurring in 2014." Further, the trial court found that "the last sale of the property as new" triggered the statute of repose, or potentially even the date of Burroughs' injury.

On appeal, Defendants contended, among other things, that the trial court erred in concluding that the statute of repose did not bar Burroughs' products liability claim. The Appellate Court agreed with Defendants on the statute of repose issue.

While the plaintiff may assert that the statute of repose is reset every time a consumer purchases a new container of product, the Appellate Court explained that the repose period begins with the "first sale" of the product, as intended by the language of O.C.G.A. § 51-1-11(b)(2). With regard to this case, the period of repose began when Burroughs first purchased the product at six years old. As such, the trial court improperly concluded that each application of the hair relaxer constituted exposure to a new product. Similarly, the trial court improperly concluded that the statute potentially ran from the date of Burroughs' injury, in 2018. A statute of repose, unlike a statute of limitation, is not triggered by the date of the injury.

As subrogation professionals, it is important to be on the lookout for state-specific applications of the products liability statute of repose. Here, the Appellate Court found that the period of repose was triggered by the "first sale" of the product, rather than "a sale." Failing to understand how Georgia interprets the law could lead you to invest time and energy into a case where the plaintiff has already lost its right to bring an action.

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