Ruling no 616 of 21 October 2020 (19-18.689) – Cour de cassation (*Court of cassation*) - First Civil Chamber ECLI:FR:CCAS:2020:C100616

Liability for defective products: conviction of Monsanto for accidental inhalation of herbicide fumes by a farmer.

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Liability for defective products - European Union

Dismissal

- **Summary 1**

According to Article 21 of Act No 98-389 of 19 May 1998 transposing Directive 85/374/EEC of 25 July 1985 relating to a harmonised system of no-fault manufacturer liability for defective products, Articles 1386-1 to 1386-18, which became Articles 1245 to 1245-17 of the Civil Code, apply to products put into circulation after the date of entry into force of the law, which occurred on 22 May 1998.
And it follows from Article 1386-5, which became Article 1245-4 of the Civil Code, that the date of the product's release into circulation means, in the case of mass-produced products, the date of marketing of the batch of which it was part.

A cour d'appel (*Court of Appeal*) having noted that the disputed product, acquired in April 2004, had been delivered in July 2002 to an agricultural cooperative by the summoned company, was able to hold, in the absence of proof of long-term storage of this product, that it had been put into circulation by its manufacturer after 22 May 1998, so that the regime of liability for defective products was applicable.

- **Summary 2**

Notwithstanding certain statements, written in small print on the packaging of the product, relating to the place of its manufacture and to foreign companies, a cour d'appel (*court of appeal*), which found that the name of the summoned company, its address and its registration number in the Trade and Companies Register appeared clearly on the label after the name and characteristics of the said product, was able to deduce that this company should be considered a manufacturer within the meaning of

Article 1386-6, Section 2, 1°, which became Article 1245-5, Section 2, 1° of the Civil Code, presenting itself as such.

- **Summary 3**

According to Article 1386-9, which became Article 1245-8 of the Civil Code, the appellant must prove the damage, the defect and the causal link between the defect and the damage. As a result, the appellant must first establish that the damage is attributable to the product. This proof can be brought by any means and in particular by serious, precise and concordant clues.

- **Summary 4**

A cour d'appel (*Court of appeal*), having held that the labelling of the disputed product did not comply with the applicable regulations and that no warning on the particular dangerousness of certain types of work had been made, was able to deduce from this that this product did not present the level of safety that could legitimately be expected and was therefore defective within the meaning of Article 1386-4, which became Article 1245-3 of the Civil Code (first and second parts).

Pursuant to Article 1386-9, which became Article 1245-8 of the Civil Code, proof of the causal link between the defect of the product and the damage may be brought forward by any means, and in particular by serious, precise and concordant presumptions or clues. This causal link cannot be deduced solely from the involvement of the product in the occurrence of the damage (third to sixth parts).

- **Summary 5**

The manufacturer is automatically liable for the damage caused by the defect of its product unless it proves, according to 4° of Article 1386-11, which became Article 1245-10 of the Civil Code, that the state of scientific and technical knowledge, at the time it put the product into circulation, did not make it possible to detect the existence of the defect.

Statements from a cour d'appel (*Court of Appeal*) noted that the state of scientific and technical knowledge, at the time the product was put into circulation, made it possible to detect the existence of the defect, and it was exactly from this that it was deduced that the manufacturer was not entitled to benefit from such an exemption from liability (first and second parts).

The application of Article 1386-13, which became Article 1245-12 of the Civil Code is unfounded in the absence of a causal link between the alleged fault of the victim and the damage (third part).

Appellant(s): Monsanto, successor to Monsanto Agriculture France, a simplified joint-stock company
Respondent(s): Mr A... X... and others

Facts and Procedure

1. According to the ruling under appeal (Lyon, 11 April 2019), referred on appeal (Mixed Chamber , 7 July 2017, appeal no 15-25.651, Bull. no 2), stating that Mr X..., on 27 April 2004, during the opening of a treatment tank of a sprayer, accidentally inhaled the vapours of an herbicide that he had acquired from an agricultural cooperative. This herbicide was marketed under the name "Lasso" by Monsanto Agriculture France, until its withdrawal from the market in 2007. Mr X..., a farmer, sued this company, whose rights were assumed by the company Monsanto, for compensation for his personal injury. He involves the Caisse centrale de la mutualité sociale agricole and the Mutualité sociale agricole de la Charente as parties to the action.

Reviewing pleas

On the first plea

Statement of plea

2. Monsanto objects to the ruling declaring it liable for the damage suffered by Mr X... on the basis of Articles 1386-1 et seq., which became Articles 1245 et seq. of the Civil Code, whereas:

> *"1°/ Articles 1386-1 et seq. of the Civil Code, which became Articles 1245 et seq., resulting from Act No 98-389 of 19 May 1998 transposing into French law Council Directive 85/374/EEC of 25 July 1985 on the approximation of the legal, regulatory and administrative provisions of the Member States concerning liability for defective products, apply, according to Article 21 of the Act of 19 May 1998, to products put into circulation after the date of its entry into force, which occurred on 22 May 1998. Under the terms of Article 1386-5, which became Article 1245-4 of the Civil Code, a product is put into circulation when the manufacturer has voluntarily relinquished it, and is only put into circulation once. In the sense of this text, the putting into circulation of a product must be understood to mean the moment when it has left the manufacturing process implemented by the manufacturer and when it has entered a marketing process in which it is in the state offered to the public for use or consumption. It follows that the putting into circulation of the product occurs when the manufacturer has voluntarily relinquished the product and not when a distributor who has not been involved in the manufacturing process, markets it in turn. In order to admit the applicability in this case of Articles 1386-1 et seq. of the Civil Code, which became Articles 1245 et seq., the cour d'appel (Court of Appeal) noted that it resulted from a certificate from the Corea Poitou Charentes cooperative, whose rights were assumed by the Civray Chives cooperative, accompanied by purchase orders, that the Lasso product, acquired in April 2004 by Mr X... had been delivered to the Civray Chives cooperative in July 2002 by the company Monsanto Agriculture France. The cour d'appel (Court of Appeal) concluded that this date should be retained as the date of marketing of the product and therefore as the date of release. It nevertheless, at the same time, considered that Monsanto Agriculture France acted as an entity considered equivalent to the manufacturer, which incurs its responsibility under Articles 1386-1 et seq. of the Civil Code, as it was not proven that it manufactured the disputed product. By thus taking as*

the date the product was put into circulation the date of its marketing by a person who was not the manufacturer, and not the date on which the manufacturer had voluntarily relinquished it, the cour d'appel (Court of Appeal) violated Article 21 of Act No 98-389 of 19 May 1998, together with Article 1386-5, which became Article 1245-4 of the Civil Code;

2°/ If the product can, by exception, be put into circulation when a simple distributor hands over the product to a third party, it is on condition that the links between this distributor and the manufacturer are so close that the distributor can in reality be considered as having been involved in the manufacturing process of the product concerned. In such a case, the transfer of the product from the manufacturer to the distributor does not take the product out of the manufacturing process implemented by the manufacturer, and therefore does not lead to its being put into circulation. In order to admit the applicability in this case of Articles 1386-1 et seq., which became Articles 1245 et seq. of the Civil Code, the cour d'appel (Court of Appeal) retained as the date of putting the product into circulation the date of its delivery by Monsanto Agriculture France to the Civray Chives cooperative, which would have occurred in July 2002. It also considered that, in the absence of proof that Monsanto Agriculture France had taken part in the manufacture of the product, it could only be held liable on the basis of Articles 1386-1 et seq. in its capacity as an entity considered equivalent to the manufacturer. By thus taking as the date of the product's entry into circulation the date of its marketing by the person who was not the manufacturer, without noting the existence, between the manufacturer of the product and Monsanto Agriculture France, of links so close that the latter could in fact be considered as having been involved in the manufacturing process of the product concerned, the cour d'appel (Court of Appeal) deprived its decision of a legal basis with regard to Article 21 of Act No 98-389 of 19 May 1998, together with Article 1386-5, which became Article 1245-4 of the Civil Code."

Court's response

3. Directive 85/374/EEC of 25 July 1985, on the approximation of the legal, regulatory and administrative provisions of the Member States establishing a system of no-fault liability of the manufacturer for defective products, was transposed by Act No 98-389 of 19 May 1998 into Articles 1386-1 to 1386-18, which became Articles 1245 to 1245-17 of the Civil Code.

4. According to Article 21 of this act, these provisions apply to products that were put into circulation after the date of entry into force of the act, which occurred on 22 May 1998.

5. Under the terms of Article 1386-5, which became Article 1245-4, of the Civil Code, a product is put into circulation when the manufacturer has voluntarily relinquished it and is only put into circulation once.

6. As a result of this text, in the case of mass-produced products, the date on which the product was put into circulation means the date on which the batch to which it belonged was marketed (First Civil Division, 20 September 2017, appeal no 16-19.643, Bull. 2017, I, no 193).

7. After rightly holding that the release of the product into circulation corresponds to its entry into the marketing process, the ruling notes that the Lasso product, acquired by Mr X... in

April 2004, was delivered in July 2002 to the agricultural cooperative by Monsanto Agriculture France, which does not provide any evidence of long-term storage of the product within the cooperative.

8. The cour d'appel (*Court of Appeal*), which was not obliged to follow the parties in the detail of their arguments, was able to deduce that the product had been put into circulation by its manufacturer after 22 May 1998 and that the regime of liability for defective products was therefore applicable.

9. The plea is therefore unfounded.

On the second plea

Statement of plea

10. The Monsanto company objects to the ruling that the company was considered as equivalent to the manufacturer, whereas:

> *"1°/ The liability instituted by Articles 1386-1 et seq. of the Civil Code, which became Article 1245 et seq., is in principle incumbent on the manufacturer of the product. By exception, it is incumbent on the entity who, acting in a professional capacity, can be considered equivalent to a manufacturer. Under the terms of Article 1386-6, Section 2, 1° of the Civil Code, which became Article 1245-5, Section 2, 1°, any entity acting in a professional capacity who presents itself as a manufacturer by affixing its name, its trademark or another distinctive sign to the product is considered a manufacturer. In order to admit in this case the consideration of the company Monsanto Agriculture France as equivalent to a manufacturer of the product within the meaning of the aforementioned provision, the cour d'appel (Court of Appeal) considered that if it is true that the mention* "fabriquée en Belgique" *and in small print* "Monsanto Europe SA" *and* "marque déposée de Monsanto Company USA" *appears on the packaging of the product, nevertheless, the label produced at the deliberations highlights the fact that Lasso, written in large white-on-black letters, is a selective herbicide for grain, seed and fodder corn and soybeans, with the text* "un herbicide Monsanto" *followed by* "siège social Monsanto Agriculture France SAS" *with the address in Lyon and the registration number in the Lyon Trade and Companies Register. In so ruling, without finding that Monsanto Agriculture France had affixed its name to the packaging of the disputed product and thus presented itself as the manufacturer of the said product, the cour d'appel (Court of Appeal) deprived its decision of a legal basis with regard to Article 1386-6, Section 2, 1°, which became Article 1245-5, Section 2, 1° of the Civil Code;*
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> *2°/ According to the terms of Article 1386-6, Section 2, 1°, which became Article 1245-5, Section 2, 1° of the Civil Code, any person acting in a professional capacity who presents themselves as a manufacturer by affixing their name, their trademark or another distinctive sign on the product is considered equivalent to a manufacturer. Within the meaning of this provision, the mere affixing, on the packaging of the product, of the name of its supplier is not sufficient to have it considered as the same as the manufacturer when this mention is not, in view of the circumstances of the case, such as to create in the public mind the belief that it is the true manufacturer of the product. This is the case in particular when the supplier, whose name is affixed to the*

packaging, does not present itself as the manufacturer of the product, and when the names of two other companies, one of which happens to be the true manufacturer, as well as the place of manufacture of the product, located in a country other than that of the supplier's registered office, also appear on the packaging. In order to admit considering the company Monsanto Agriculture France as a manufacturer of the product within the meaning of the aforementioned provision, the cour d'appel (Court of Appeal) considered that if it is true that the mention "fabriquée en Belgique" *and in small print* "Monsanto Europe SA" *and* "marque déposée de Monsanto Company USA" *appears on the packaging of the product, nevertheless, the label emphasises the fact that Lasso, written in large white-on-black letters, is a selective herbicide for grain, seed and fodder corn and soybeans with the text* "un herbicide Monsanto" *followed by* "siège social Monsanto Agriculture France SAS" *with the address in Lyon and the registration number in the Lyon Trade and Companies Register. At no time did the cour d'appel (Court of Appeal) note that Monsanto Agriculture France presented itself as the manufacturer of the product. The cour d'appel (Court of Appeal) did note that the packaging of the said product included the names of two other companies, including that of the Belgian company Monsanto Europe SA, as well as a place of manufacture located in Belgium, from which it resulted that the public could not legitimately believe, on reading the indications on the packaging, that the company Monsanto Agriculture France was the manufacturer of the product. In so doing, the cour d'appel (Court of Appeal) violated Article 1386-6, Section 2, 1°, which became Article 1245-5, Section 2, 1° of the Civil Code."*

Court's response

11. According to Article 1386-6, Section 2, 1°, which became Article 1245-5, Section 2, 1° of the Civil Code, transposing Article 3 of the aforementioned directive, any entity acting in a professional capacity who presents itself as a manufacturer by affixing its name, its mark or another distinctive sign to the product is considered equivalent to a manufacturer.

12. After noting that the packaging of the product contains the words "*fabriqué en Belgique*", as well as in small print, the words "*Monsanto Europe SA*" and "*marque déposée de Monsanto Company USA*", the ruling notes that the label emphasises the fact that Lasso, written in large white-on-black letters, is a selective herbicide for grain, seed and fodder corn and soybeans, with the text "*un herbicide Monsanto*", followed by "*siège social Monsanto Agriculture France SAS*" with the address of the company in Lyon and the registration number in the Lyon Trade and Companies Register.

13. Having thus pointed out that Monsanto Agriculture France presented itself as the manufacturer on the product label, the cour d'appel (*Court of Appeal*) was able to deduce that it should be considered equivalent to the manufacturer.

14. The plea is therefore unfounded.

15. With regard to the findings of the ruling concerning the presentation of the product label, the questions referred for a preliminary ruling are not useful in resolving the dispute, so that there is no need to refer the matter to the Court of Justice of the European Union.

On the third plea

Statement of plea

16. Monsanto objects to the ruling in that the ruling states that the alleged damage is attributable to the product, whereas:

> *"1°/ If liability for defective products requires the appellant to prove the damage, the defect and the causal link between the defect and the damage, the participation of the product in the occurrence of the damage is an implicit prerequisite, necessary to the possible exclusion of other possible causes of the damage, for the search for the product's defectiveness and the causal role of this defectiveness. If the participation of the product in the occurrence of the damage can be established by means of presumptions of fact, it is incumbent on the judge to ensure that the evidence produced is sufficiently serious, precise and concordant to authorise the conclusion that the use of the product appears, notwithstanding the elements produced and the arguments presented in defence by the manufacturer, to be the most plausible explanation for the occurrence of the damage. Among the indications whose conjunction could, if necessary, lead the judge to consider that a victim has satisfied the burden of proof incumbent on them by virtue of Article 1386-9, which became Article 1245-8 of the Civil Code, are notably the temporal proximity between the use of the product and the occurrence of the disorders alleged by the appellant, the absence of personal and family medical history, in relation to these disorders, as well as the existence of a significant number of listed cases of occurrence of these disorders following such use. In order to accept in this case the existence of a causal link between the damage that occurred and the use of the product on 27 April 2004, the cour d'appel (Court of Appeal) considered that all the factual elements relating to the inhalation of the vapours of the product by Mr X... not only made it possible to establish the veracity of the latter, but also constituted a network of serious, precise and concordant clues demonstrating this causal link. The cour d'appel (Court of Appeal) nevertheless, at the same time, recalled that it appeared from a certificate produced by Mr X... himself that he had, together with Mr Y..., prepared, on the morning of the accident itself, not only Lasso, but also another herbicide, Adar. It further emphasised that Mr X... was anxious and had a phobic hypersensitivity to phytosanitary products. It also pointed out, following the forensic experts, that no effective study [had] been carried out on humans on the cumulative effect of monochlorobenzene and alachlor, the two main substances that make up Lasso. Notwithstanding these elements, the cour d'appel (Court of Appeal) based itself, in order to retain a causal link between the use of the product and the damage, on the sole circumstance that Mr X..., who would have been exposed to Lasso as of 13 April 2004, had been treated at the hospital in Ruffec on 27 April 2004, after having inhaled vapours from it. This circumstance did not constitute a network of serious, precise and concordant clues whose conjunction would allow the conclusion to be drawn that the use of the product appeared in this case, notwithstanding the elements produced and arguments presented in defence by Monsanto, to be the most plausible explanation for the occurrence of the damage. In so ruling, the cour d'appel (Court of Appeal) deprived its decision of a legal basis in light of Article 1386-9, which became Article 1245-8 of the Civil Code;*
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> *2°/ Under the terms of Article 1349 (former designation) of the Civil Code, presumptions are consequences that the law or the magistrate draws from a known fact to an unknown fact. A presumption cannot therefore be based on a fact that is itself unknown, the veracity of which has only been judicially established by means of a*

bundle of clues and attestations. In order to uphold the existence in this case of a causal link between the damage that occurred and the use of the product on 27 April 2004, the cour d'appel (Court of Appeal) considered that all of the factual elements relating to the inhalation of the product by Mr X... constituted a network of serious, precise and concordant clues demonstrating this causal link. In order to establish the veracity of the inhalation, which had taken place without any direct witness, the cour d'appel (Court of Appeal) first relied on the fact that Mr X... had indeed acquired the herbicide allegedly inhaled, which would be evidenced by a purchase order produced by Mr X..., dated 13 April 2004, as well as a statement from the Civray Chives cooperative dated 28 March 2008; that it then relied on three statements, one of which came from Mr X...'s wife, to admit that the product thus acquired was indeed the product that Mr X... allegedly inhaled on 27 April 2004, as well as on a statement dated 19 May 2009, written by an occupational physician, in which the latter simply stated that he had been contacted on 27 April 2004 by the emergency room of the hospital in Ruffec for a request for information on the toxicity of Lasso. By thus presuming the existence of a causal link between the alleged damage and the use of the product on the basis of an unknown fact, the veracity of which had only been judicially established by means of clues and statements, the cour d'appel (Court of Appeal) violated Article 1349 (former designation) of the Civil Code, together with Article 1386-9, which became Article 1245-8 of the Civil Code."

Court's response

17. According to Article 1386-9, which became Article 1245-8 of the Civil Code, transposing Article 4 of the aforementioned directive, the appellant must prove the damage, the defect and the causal link between the defect and the damage.

18. As a result, the appellant must first establish that the damage is attributable to the product. This proof can be brought by any means and in particular by serious, precise and concordant clues.

19. The ruling holds that Mr X... acquired Lasso on 13 April 2004. It states that he brought three statements to the deliberations, from which it was shown that his wife, on 27 April 2004, informed a witness. She had observed that Mr X… was staggering, and that he had inhaled fumes from an herbicide used for corn farming and was poisoned. She took him to the hospital and asked the witness to bring the label of the product to the hospital. An occupational physician, the referring physician for the Charente department (16) of the Phyt'attitude network, certified that he had received a call from the emergency room the same day, concerning a request for information on the toxicity of Lasso for a hospitalised patient. It appears from the consultation report that Mr X... was hospitalised for inhaling toxic substances, in this case a chlorinated product associated with solvents. It added that, according to the experts appointed by the court, the disputed inhalation resulted in loss of consciousness, headaches and migraines, haemoptoic sputum and an irritating cough, all clinical signs indicative of neuronal and respiratory tract damage at the time of the poisoning on 27 April 2004, as well as post-traumatic stress.

20. Having considered, in the exercise of its sovereign discretion and without presuming the existence of a causal link, that this evidence constituted serious, precise and concordant clues, the cour d'appel (*Court of Appeal*) was able to deduce that such a link was established between the inhalation of the product and the damage that had occurred.

21. The plea is therefore unfounded.

On the fourth plea, taken in its first two parts

Statement of plea

22. Monsanto objects to the ruling that the product is defective, whereas:

> *"1°/ Points f) and g) of Article 34 of the Order of 6 September 1994 implementing Decree No 94-359 of 5 May 1994 concerning the control of plant protection products require the manufacturer to formulate the indications and precautions they refer to "in the form of standard phrases, chosen in an appropriate manner", the nature and number of which are determined by the health authorities at the time of issue of the marketing authorisation, as set out in Article 15, point 4 of Title II of this order. A predefined and standardised list of these model phrases appears in Appendices III and IV of Council Directive 67/548/EEC of 27 June 1967 on the approximation of laws, regulations and administrative provisions relating to the classification, packaging and labelling of dangerous substances, and in Appendix V of Council Directive 78/631/EEC of 26 June 1978 on the approximation of the laws of the Member States relating to the classification, packaging and labelling of dangerous preparations (pesticides). Concerning "pesticides" / "dangerous preparations", Article 6, 4 of Council Directive 78/631/EEC of 26 June 1978 on the approximation of the laws of the Member States relating to the classification, packaging and labelling of dangerous preparations (pesticides) removes all room for manoeuvre for manufacturers in this area since it provides that "precautionary advice concerning the use of pesticides must appear on the label or on the packaging and, where this is materially impossible, on another label firmly attached to the packaging. Such advice shall be selected by the competent services for pesticides which are subject to registration, in other cases by the manufacturer or any other person who places the said preparation on the market. Precautionary statements must be in accordance with Appendix IV to Directive 67/548/EEC and Appendix V to this Directive". In order to find a defect in the product in this case, due to an alleged deficiency in its labelling, the cour d'appel (Court of Appeal) noted that "the labelling of the Lasso product, marketed by the company Monsanto, does not comply with the regulations referred to above insofar as the risks associated with the inhalation of monochlorobenzene (or chlorobenzene), present in significant quantities in Lasso, are not indicated, nor is the recommendation for respiratory protection devices, particularly for cleaning tanks". It further emphasised that "no warning is given on the particular dangerousness of work on or in the tanks and vats, in violation in particular of points f) and g) of Article 34 of the Order of 6 September 1994" (ibid.). In so ruling, without specifying, within the predefined list that sets them out, which were the standard phrases that the manufacturer could have included on the packaging concerning the information allegedly omitted, the cour d'appel (Court of Appeal) deprived its decision of legal basis with regard to Article 34 of the Order of 6 September 1994, together with Article 1386-4, which became Article 1245-3 of the Civil Code;*
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> *2°/ The judge has the obligation not to distort the documents of the case. In order to retain in this case a defect in the product, resulting from a deficiency in its labelling, the Court of Appeal noted that the latter did not recommend the wearing of respiratory protection devices, in particular for the cleaning of tanks. It based its analysis on the*

1997 edition of the INRS toxicological data sheet no 23 on chlorobenzene. As the cour d'appel (Court of Appeal) itself points out, however, this data sheet recommends the wearing of respiratory protection devices "for exceptional work of short duration or emergency interventions". By considering that this data sheet expressly referred to the wearing of a respiratory apparatus, in particular for the cleaning of tanks, whereas such a routine operation on agricultural spraying equipment does not constitute either exceptional work of short duration or an emergency intervention within the meaning of the INRS data sheet, the cour d'appel (Court of Appeal) misunderstood the clear and precise meaning of the terms of this sheet, and violated the principle that the judge must not distort the documents of the case."

Court's response

23. According to Article 1386-4, which became Article 1245-3 of the Civil Code, transposing Article 6 of the aforementioned directive, a product is defective when it does not offer the safety that can legitimately be expected and, in assessing the safety that can legitimately be expected, account must be taken of all the circumstances and in particular of the presentation of the product, the use that can reasonably be expected of it, and the time of its being put into circulation.

24. The ruling notes that Article 7 of the Act of 2 November 1943, amended by Act No 99-574 of 9 July 1999, requires that the labels of the products in question mention the precautions to be taken by users, and that Article 34 of the Order of 6 September 1994, implementing Decree No 94-359 of 5 May 1994, stipulates that all packaging must bear an indication of the nature of the particular risks and protections to be taken for humans, animals or the environment in the form of standard phrases chosen in an appropriate manner. It adds that the toxicological data sheet established by the INRS in 1997 mentions recommendations relating to the handling of chlorobenzene by recommending in particular to avoid the inhalation of vapours, to use respiratory protection devices for certain work, and to never carry out work on or in tanks or vats that have contained chlorobenzene without taking the usual precautions. Finally, it notes that the labelling of the Lasso product does not comply with the regulations insofar as the risks related to the inhalation of chlorobenzene, present in significant quantities in Lasso, are not indicated, any more than the recommendation of respiratory protection devices for the cleaning of tanks.

25. From these findings and statements, free of distortion, the cour d'appel (*Court of Appeal*), which was not required to follow the parties in the detail of their arguments, was able to deduce that, because of labelling that did not comply with the applicable regulations and a lack of warnings about the particular dangerousness of work on or in tanks and vats, the product did not present the product safety that could legitimately be expected and was therefore defective.

26. The plea is therefore unfounded.

On the four other parts of the fourth plea

27. Monsanto objects to the ruling to rule in this way, maintaining a causal link between the defect in the product and the damage, whereas:

"3°/ Under the terms of Article 1386-9, which became Article 1245-8 of the Civil Code, the appellant must prove the damage, the defect and the causal link between the defect of this product and the damage. The mere involvement of the product in the occurrence of the damage is not sufficient to establish the causal link between the defect and the damage. In order to find a defect in the product in this case, the cour d'appel (Court of Appeal) relied on the fact that its labelling was insufficient, the risks linked to the inhalation of vapours of monocholorobenzene, present in quantity in Lasso, not being indicated, nor the recommendation of respiratory protection devices, in particular for the cleaning of the tanks. In order to then admit a causal link between the defect in the product and the damage, the cour d'appel (Court of Appeal) relied, on the one hand, on the injuries suffered by Mr X..., which would be attributable to poisoning resulting from the inhalation of the vapours of Lasso on 27 April 2004, and on the other hand, on a series of symptoms of which Mr X... complained. At no time, however, did the cour d'appel (Court of Appeal) find any causal link between the defect in the product, due to a deficiency in its labelling, and the inhalation of the product that caused the damage alleged by Mr X.... In so ruling, whereas the mere implication of the product in the realisation of the damage is not sufficient to establish the causal link between the defect of the product and the damage, the cour d'appel (Court of Appeal) deprived its decision of legal basis with regard to Article 1386-9, which became Article 1245-8 of the Civil Code;

4°/ Under the terms of Article 1386-9, which became Article 1245-8 of the Civil Code, the appellant must prove the damage, the defect and the causal link between the defect and the damage. In order to find a defect in the product in this case, the cour d'appel (Court of Appeal) relied on the fact that its labelling was insufficient, the risks linked to the inhalation of monocholorobenzene, present in quantity in Lasso, not being indicated, nor the recommendation of respiratory protection devices, in particular for cleaning the tanks. It expressly noted, however, that Mr X... did not wear any protection on his face, even though the product's labelling recommended the wearing of eye and face protection. By thus establishing a causal link between the defect in the product, resulting from a deficiency in its labelling, and the damage alleged by Mr X..., whereas it resulted from its own findings that the deficiencies in the labelling had nothing to do with the damage suffered by Mr X..., who in any event had in no way followed its recommendations before accidentally inhaling vapours from Lasso, the cour d'appel (Court of Appeal) violated Article 1386-9, which became Article 1245-8 of the Civil Code;

5°/ When there is uncertainty over the causal link between a liability event and the damage caused, only the loss of chance of avoiding it can be remedied. The cour d'appel (Court of Appeal) has, in the present case, at no time noted that, if the labelling of the product had not been deficient, and had at the same time mentioned the risks linked to the inhalation of monochlorobenzene and recommended the wearing of a breathing apparatus in particular for the cleaning of the tanks, the damage suffered by Mr X... would certainly have been avoided. It has in fact in no way established that Mr X... would have consulted this labelling and would have scrupulously followed its recommendations. It has on the contrary expressly noted that Mr X... would have been able to avoid the damage caused by the use of a respirator, in particular for cleaning the tanks. Mr X... did not wear any protection on his face, even though the product's labelling recommended that he wear eye and face protection. By finding, in such circumstances, a causal link between the defect of the product, resulting from a

deficiency in its labelling, and the alleged damage, whereas, given the uncertainty affecting the causal link between the defect of the product and the damage alleged by the victim, the only thing that could have been determined, if necessary, was the loss of chance to avoid said damage, the cour d'appel (Court of Appeal) violated Article 1386-9, which became Article 1245-8, and Article 1382, which became Article 1240 of the Civil Code;

6°/ In any event, in order to retain the existence of a causal link between poisoning following inhalation of vapours from the product and all the disorders alleged by Mr X..., the cour d'appel (Court of Appeal) affirmed, with regard to the forensic expertise, that the expertise commissioned eliminated all probability and established that all the symptoms complained of by Mr X... are indirectly related to the poisoning but directly related to the anxiety and fear generated by the poisoning. In the final version of their report, dated 13 July 2013, the legal experts nevertheless note that "the neurological symptoms (malaise and loss of consciousness) are symptoms of anxiety probably favoured by the fear generated during the poisoning of 28 (sic) April 2004" and further note that "in the aftermath of the poisoning an increase in migraines was observed, which may have been favoured by the poisoning at least for the immediate migraines". It thus follows from this report that the causal link between poisoning following inhalation of vapours of the product and the subsequent disorders presented by Mr X... was only probable, but by no means certain. In ruling as it did, the cour d'appel (Court of Appeal) thus disregarded the clear and precise meaning of the terms of the forensic report, and violated the principle that the judge must not distort the documents of the case."

Court's response

28. According to Article 1386-9, which became Article 1245-8 of the Civil Code, transposing Article 4 of the aforementioned directive, the appellant must prove the causal link between the defect of the product and the damage.

29. This proof can be brought by any means and in particular by serious, precise and concordant presumptions or clues. A causal link cannot, however, be deduced solely from the involvement of the product in the occurrence of the damage (First Civil Chamber, 27 June 2018, appeal no 17-17.469, published, and 29 May 2013, appeal no. 12-20.903, Bull. 2013, I, no 116).

30. After having retained, on the one hand, that the disorders presented by Mr X... and noted by the initial medical certificate and the post-traumatic stress felt in the long term were attributable to the inhalation of the vapours of Lasso, and on the other hand, that said product was defective for the reasons mentioned in point 24, the ruling notes that that inhalation occurred accidentally, when, at the end of a spraying session, the person concerned cleaned the treatment tank, that the information leaflet of the product did not show the necessity of avoiding the inhalation of vapours and avoiding carrying out any industrial operations in closed areas, nor, in this case, to wear a respiratory protection apparatus and never to carry out work on or in tanks and vats containing or having contained chlorobenzene without taking the precautions of use, this recommendation referring to the indications of the toxicological data sheet relating to chlorobenzene.

31. From these findings and statements, which did not result from any distortion of the expert's report and from which it follows that it did not rely solely on the involvement of the product in the occurrence of the troubles experienced by Mr X..., the cour d'appel (*Court of Appeal*) was able to deduce the existence of a causal link between the defect and the damage suffered by him.

32. The plea, inadmissible in its fifth part as new and mixed in fact and in law, since Monsanto did not argue, on appeal, that only a loss of chance could be upheld, is unfounded for the rest.

On the first two parts of the fifth plea

Statement of plea

33. The Monsanto company objects to the ruling, by its dismissal of the exoneration of liability provided for in Article 1386-11, 4°, which became Article 1245-10, 4° of the Civil Code, whereas:

> *"1°/ According to the terms of Article 1386-11, 4°, which became Article 1245-10, 4° of the Civil Code, the manufacturer is automatically liable unless it proves that the state of scientific and technical knowledge, at the time it put the product into circulation, did not allow the existence of the defect to be detected. In order to exclude in this case the application of this cause of exoneration to the benefit of Monsanto, the cour d'appel (Court of Appeal) noted that "the aforementioned regulations as well as the INRS data sheet establish that in 2002, the date chosen for the release of the product, Monsanto had full latitude to know the existence of the defect, in this case inadequate labelling, a defect unrelated to the one alleged by Monsanto". The alleged inadequacy of the labelling, which, according to the cour d'appel (Court of Appeal), constituted the product defect, stemmed from the fact that it did not mention the risks related to the inhalation of vapours of monochlorobenzene and did not recommend the wearing of a respiratory protection device, in particular for cleaning the tanks. However, neither the regulation referred to by the cour d'appel (Court of Appeal), nor the INRS data sheet mentioned, in 2002, the date on which the product was put into circulation, the information allegedly omitted on the product's packaging. By relying solely on these elements to assess the state of scientific and technical knowledge and to judge that Monsanto had full discretion to know the existence of the alleged defect, the cour d'appel (Court of Appeal) deprived its decision of a legal basis with regard to Article 1386-11, 4°, which became Article 1245-10, 4° of the Civil Code;*
>
> *2°/ In the sense of Article 1386-11, 4°, which became Article 1245-10, 4° of the Civil Code, a product is put into circulation when it leaves the manufacturing process implemented by the manufacturer and enters a marketing process in which it is offered to the public in the state in which it is offered for the purpose of being used or consumed. It follows that the product is put into circulation at the moment when the manufacturer relinquishes itself of it and not when a simple distributor in turn markets the product. In order to rule out any exemption from liability of Monsanto on the basis of Article 1386-11, 4° of the Civil Code, the cour d'appel (Court of Appeal) considered that the aforementioned regulations as well as the INRS data sheet establish that in 2002, the date chosen for the release of the product, Monsanto had full discretion to know the existence of the defect, in this case insufficient labelling, a defect unrelated to*

that alleged by Monsanto. The date of release thus retained by the cour d'appel (Court of Appeal) for the purpose of assessing the state of scientific and technical knowledge corresponded to the date on which Monsanto Agriculture France, which was not the manufacturer of the product, had delivered it to another distributor, the Civray Chives cooperative, from which the product would have been acquired by Mr X.... In so ruling, whereas the date on which the product was put into circulation, on which the state of scientific and technical knowledge had to be assessed, corresponded not to the date on which it had been delivered by a distributor who was not the manufacturer, but to the date on which the manufacturer had relinquished itself of it, the cour d'appel (Court of Appeal) violated Article 1386-5, which became Article 1245-4, and Article 1386-11, 4°, which became 1245-10, 4° of the Civil Code."

Court's response

34. Under the terms of Article 1386-11, 4°, which became Article 1245-10, 4° of the Civil Code, transposing Article 7 of the aforementioned directive, the manufacturer is automatically liable unless it proves that the state of scientific and technical knowledge, at the time when it put the product into circulation, did not make it possible to detect the existence of the defect.

35. The Court of Justice of the European Union has ruled that "in order to have a defence (...), the producer of a defective product must prove that the objective state of scientific and technical knowledge, including the most advanced level of such knowledge, at the time when the product in question was put into circulation was not such as to enable the existence of the defect to be discovered." (CJEU 29 May 1997 Commission v. United Kingdom, C-300/95).

36. After having, in view of the facts and evidence submitted to the trial, set the date of the product's entry into circulation in July 2002, by ruling on the application to the dispute of the provisions of the Civil Code relating to the liability regime for defective products, the ruling notes that the regulations on the basis of which the existence of a defect was established, as well as the aforementioned 1997 INRS toxicological data sheet, establish that in July 2002, Monsanto Agriculture France had full discretion to determine the defect related to the product's labelling and the absence of a warning about the particular dangerousness of the work.

37. From these statements and findings, the cour d'appel (*Court of Appeal*) rightly deduced, without having to re-examine the date of release of the product, that the company could not benefit from this exemption from liability.

38. The plea is therefore unfounded.

On the third part of the fifth plea

39. The Monsanto company objects to the ruling deciding against the existence of a fault on the part of Mr X..., whereas "*by virtue of Article 1386-13, which became Article 1245-12 of the Civil Code, the liability of the manufacturer may be reduced or eliminated, taking into account all the circumstances, when the damage is caused jointly by a defect in the product and by the fault of the victim or of a person for whom the victim is responsible..." After noting that if any normally vigilant user knows that it is unreasonable to inhale the vapours of an herbicide such as Lasso, said user may think that the eye and face protection device is sufficient when this is not the case. The cour d'appel (Court of Appeal) found that Mr X... was*

not wearing any protection on his face when he inhaled the vapours of the product. In order to rule out any fault on his part, having contributed to the occurrence of the damage he suffered, the cour d'appel (Court of Appeal) considered that the exclusive cause of the damage resided in the lack of information on the product and its harmful effects, since a farmer is not a chemist. In so ruling, while it resulted from his own statements that Mr X..., contrary to the recommendations appearing on the product label, did not wear any protection on his face, had not behaved as a normally vigilant user of the product, the cour d'appel (Court of Appeal) violated Article 1386-13, which became Article 1245-12 of the Civil Code."

Court's response

40. According to Article 1386-13, which became Article 1245-12 of the Civil Code, transposing Article 8.2 of the aforementioned directive, the manufacturer's liability may be reduced or eliminated, taking into account all the circumstances, when the damage is caused jointly by a defect in the product and by the fault of the victim or a person for whom the victim is responsible.

41. The ruling holds that Mr X... inhaled Lasso vapours, after having introduced his face into the tank, that if, as claimed by Monsanto, he was not wearing protection intended to avoid contact with the product on his face, in any event, such protection would have been ineffective in the event of inhalation, in the absence of respiratory protection.

42. The cour d'appel (*Court of Appeal*) was able to deduce from this that the fault of Mr X..., alleged by Monsanto, was not causally linked to the injury.

43. The plea is therefore unfounded.

ON THESE GROUNDS, the Court:

DISMISSES the appeal;

President: Ms Batut
Reporting judge : Mr Mornet
Advocate-General Mr Lavigne
Lawyer(s): SCP Waquet, Farge et Hazan - SCP Piwnica et Molinié