Newsletter

Insurance

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EDITO

Case Law That Secures and Clarifies Different Liability Regimes

Recent months have been marked by a series of major decisions that are reshaping the legal landscape in construction, insurance, and transport. These coherent and structuring developments reflect a clear intention of the French Cour de cassation: to strengthen predictability, secure practices, and provide market players with a more readable framework.

In **construction**, the Court forcefully reaffirms the strictly forclusive nature of the ten-year limitation period applicable to the decennial warranty. From now on, no acknowledgment of liability—even through remedial works—can interrupt this period.

Only the filing of legal action has interruptive effect. This clarification closes the door to amicable strategies that often created confusion, while giving insurers a much more stable risk horizon.

At the same time, the recognition of **the evidentiary value of a contractual amicable expert assessment**, provided it is joint and adversarial, marks a decisive shift. Judges may now base their decisions exclusively on such a report. This development paves the way for strengthened amicable mechanisms—faster, less costly, and encouraging parties to structure the management of future disputes contractually.

In insurance law, case law firmly refocuses the rules on **prescription**. The Court confirms that each loss has its own autonomy: an action brought for an initial Covid-related closure cannot interrupt the prescription applicable to a distinct period.

A welcome reversal also concerns policies not updated after the sale of insured property: if the insurer is unaware of the change of owner, it may validly send notice of default to the former insured at their last known address. This is a pragmatic solution aligned with operational market realities.

The confirmation that the claims adjuster may attend **medical expert** assessments—except during the clinical examination—also secures a practice essential to the management of bodily injury claims.

In **transport and maritime** law, the Court maintains a particularly demanding standard regarding inexcusable fault and definitively clarifies the ship-seizure regime: once redelivery has occurred, only a maritime lien can justify a new seizure.

Finally, in **civil liability**, conciliation, forfeiture, and prescription clauses are now enforceable against third parties: a major development that strengthens contractual coherence.

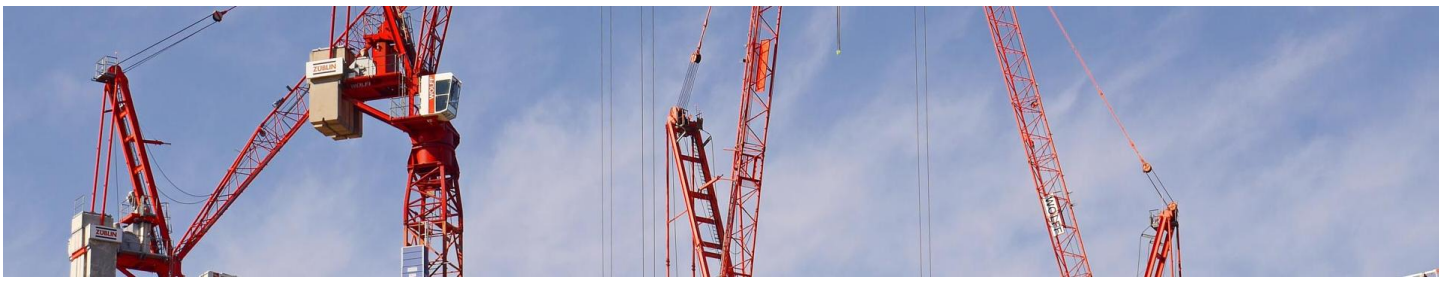
Happy reading,

Romain Dupeyré

CONSTRUCTION

Recognition of the builder's liability does not interrupt the ten-year limitation period

Cass. 3rd civ., 9 October 2025, no. 23-20.446



Key points of the decision

In a ruling dated 9 October 2025, the Court of Cassation confirmed that the recognition of a builder's liability has no effect on the limitation period for action based on the ten-year warranty, even when this period began to run before the 2008 reform of civil procedure.

The Court points out that the ten-year time limit for bringing an action based on the ten-year warranty is a limitation period, distinct from the statute of limitations. This classification has decisive legal consequences. Whereas the statute of limitations penalises the creditor's inaction and can be interrupted by several events, the limitation period is primarily intended to stabilise legal situations at the end of a strictly defined period.

As a reminder, the 2008 reform of civil procedure aimed to clarify the distinction between limitation and preclusion. It thoroughly overhauled the civil limitation regime by precisely listing the causes for interruption, including the debtor's acknowledgement of liability. However, the legislature clearly excluded limitation periods from this mechanism. Consequently, while an acknowledgement of liability may interrupt a limitation period, it has no legal effect on a foreclosure period, unless otherwise specified. This is the case for the period applicable to the ten-year guarantee.

This is precisely the crux of the decision of 9 October 2025. In this case, the project owner argued that the reworking carried out by the builder constituted an implicit acknowledgement of liability interrupting the ten-year period. The Court rejected this argument: while Article 2241 of the Civil Code provides that the limitation period may be interrupted by legal action, this is not the case for the acknowledgement of liability by the debtor, which has no effect on such a period. For the ten-year warranty, only the initiation of legal proceedings is interruptive.

Finally, the Court specified that this rule has applied since the 2008 reform came into force, including to ten-year periods that began to run prior to that date. Consequently, any acknowledgement of liability by a builder after the 2008 reform came into force has no interruptive effect on the limitation period applicable to actions based on the ten-year warranty.

Key points for insurers

The ten-year limitation period for the ten-year warranty is a limitation period: it can only be interrupted by legal action brought within that period. The resumption of work, acknowledgements of liability or amicable settlements by the builder have no effect on the duration of the risk.

Mathilde Mevel

CIVIL PROCEDURE

Recognition of the probative value of a contractual amicable expert assessment

Cass. 3rd civ., 8 January 2026, no. 23-22.803, published in the bulletin

Two project owners entrust a project manager with the task of rebuilding two homes.

The contract is terminated during the course of the work. It contains an amicable expert assessment clause under which the parties undertake to carry out an amicable expert assessment, conducted by an expert chosen by mutual agreement, prior to the initiation of any legal proceedings.

Armed with the expert report obtained under this clause, the project owners brought the case before the Besançon court to seek compensation for their losses.

Their claim was dismissed at first instance, but the project owners successfully appealed.

An appeal was lodged by the project manager, who considered that "*by relying solely on an amicable expert assessment, the Court of Appeal had violated Article 16 of the Code of Civil Procedure and Article 6 § 1 of the European Convention on Human Rights.*"

The Court of Cassation upheld the appeal ruling and dismissed the appeal.

Thus, although case law has consistently held that judges are not permitted to base their decisions "*exclusively*" on non-judicial expert reports carried out at the request of one of the parties (*see, for example, Cass., com., 27 September 2017, No. 16-17.859*), this principle has now been tempered.

The 3rd Civil Chamber of the Court of Cassation now accepts that judges may base their decisions exclusively on amicable expert reports.

Nevertheless, this solution is strictly regulated, as it appears that several cumulative conditions must be met. The report must be drawn up:

- In accordance with a contractual provision agreed between the parties;
- by an expert chosen by mutual agreement;
- in a contradictory manner.

This decision is undoubtedly part of a general desire to favour the amicable settlement of disputes. It comes on top of the entry into force of Decree No. 2025-660 of 18 July 2025, which aims in particular to facilitate the use of conventional expertise.

The solution reached by the High Court has been widely welcomed, as it offers the advantage of speed for the parties, who will now be less dependent on the judicial timetable. It is therefore now necessary to make contractual provision for this possibility.

Yasmine Bouchoucha

INSURANCE

Two-year limitation period: a halt to late claims for compensation related to Covid-19

Cass. 2nd civ., 27 November 2025, no. 24-14.627

Background

The insured, who ran a café-restaurant-brasserie, had taken out a comprehensive business insurance policy that included cover for operating losses resulting from a "ban on access".

Following the closures and restrictions imposed during the health crisis (orders of 14 and 15 March 2020, decrees of 23 and 29 October 2020), the insured sought compensation for operating losses incurred during the following three periods:

- 15 March – 15 June 2020,
- 23–29 October 2020,
- 30 October 2020 – 20 June 2021.

As the insurer refused to provide cover, the insured party's claims were dismissed in their entirety by the Commercial Court of Boulogne-sur-Mer in summary proceedings.

On appeal, in its submissions of 9 August 2022, the insured party added a fourth compensation period from 15 June to 23 October 2020, known as the "interim period".

A consistent solution applied in cases of operating losses

The Court of Appeal, whose ruling was upheld by the Court of Cassation, ruled that the claim for compensation for this interim period was inadmissible.

This is because Article L. 114-1 of the Insurance Code requires the insured party to claim compensation within two years of becoming aware of the loss. However, for the interim period, the claim was not made until 9 August 2022, more than two years after the losses occurred, at the latest on 23 October 2020.

The Court of Cassation noted that, according to the insured party's own terms, each closure constitutes a separate claim. Therefore, the action brought for the first three closures could not interrupt the limitation period attached to the claim specific to the interim period. The claim for compensation was therefore late and had to be declared inadmissible.

This decision is in line with the established case law of the Court of Cassation: the interruption of the limitation period does not extend from one claim to another, even when they are covered by the same insurance contract.

Souleymane Simpara

MARITIME

End of the game for post-redelivery ship seizures

Cass. com., 19 November 2025, No. 24-11.520, published in the Bulletin

In a ruling dated 19 November 2025, the Commercial Chamber of the Court of Cassation provided long-awaited clarification on the preventive seizure of a vessel after its redelivery, when the debt is owed by the charterer. Noting the inconsistency of previous case law solutions, the High Court specified the extent to which a creditor can go to secure its claim when the ship, although at the origin of the transaction giving rise to the debt, is no longer in the hands of the debtor.

1. The context

In this case, a company had chartered its vessel on a time basis to a Turkish company. During the charter, the latter procured bunkers from a Danish company, which remained unpaid.

The ship was then returned to its owner and immediately re-chartered to another company. During a stopover, the unpaid company sought and obtained a preventive seizure of the ship to secure its claim, even though this claim was directed exclusively against the former charterer.

The shipowner contested the seizure order, arguing that it was no longer possible after the redelivery. The Pau Court of Appeal rejected this argument, ruling that the mere allegation of a maritime claim was sufficient, regardless of the end of the charter. The dispute was then brought before the Court of Cassation.

2. The solution

The debate centred on the relationship between Article 3 of the 1952 Brussels Convention on the Arrest of Sea-Going Ships, which broadly opens up the possibility of preventive seizure in the event of a maritime claim, and Article 9, which states that the Convention does not create any autonomous right or right of pursuit, except where a maritime lien is recognised by the law of the forum.

To gauge the significance of the ruling of 19 November 2025, it is necessary to review previous case law on the subject.

The Court of Cassation had initially adopted a broad interpretation of Article 3 of the Convention: the creditor of a maritime claim could seize the ship to which his claim related even if it had been sold after the debt arose (Cass. com., 31 March 1992, No. 90-17.337), and even after the end of the charter party (Cass. com., 13 Dec. 1994, No. 92-14.307).

However, a reversal occurred with the *R One* ruling, handed down on 4 October 2005 (Cass. com., no. 02-18.201): the Court affirmed that under French law, the seizure of a ship that no longer belongs to the debtor is only possible if the maritime claim is accompanied by a maritime lien, which alone confers a right of pursuit.

In its ruling of 19 November 2025, the Court of Cassation reiterated the scope of the *R one* ruling and clearly ruled, overturning the appeal ruling and affirming that, pursuant to the aforementioned provisions of the 1952 Brussels Convention, the preventive seizure of a re-registered ship is only possible if the maritime claim is accompanied by a privilege conferring a right of pursuit.

3. A decision that better protects shipowners and new charterers

The ruling of 19 November 2025 marks a step forward in terms of legal certainty, where the *R One* ruling of 2005 had failed to dispel all uncertainties. Indeed, case law on the merits had remained divided, particularly due to the precise scope of *R One*.

The 2005 ruling concerned the case of a ship that had been sold, not a ship that had been chartered and then redelivered to its owner. This difference had led the courts of appeal to question whether the solution could be extended to redelivery: some saw it as a general principle, while others considered that the solution should be confined solely to the case of sale.

The ruling of 19 November 2025 therefore puts an end to this hesitation. The Court of Cassation clearly states that redelivery has the same effect as the removal of the asset from the debtor's estate: the preventive seizure of a ship by the charterer's creditor is only possible if the claim benefits from a maritime lien.

This solution thus tends to strengthen the protection of owners by limiting the risk of unpredictable immobilisation of the vessel after its return. It also helps to secure the position of new charterers, who are thus better protected from the debts incurred by their predecessors.

Juliette Doebeli

ROAD FREIGHT TRANSPORT

The carrier's inexcusable misconduct under French law: a high standard or an insurmountable hurdle?

Cass. com., 22 October 2025, No. 24-16.015

In a ruling dated 22 October 2025 (No 24-16.015), the French Supreme Court (the *Cour de Cassation*) has reaffirmed the strength of the limits of liability of road carriers.

In the case at hand, a retailer of mobile phones and electronic products entrusted a carrier with the shipment of a first load. Three days later, while still in the carrier's parking structure, the load was stolen in a break-in.

A few days later, the retailer, unaware of the first theft, entrusted the carrier with the shipment of a second similar load of mobile phones and electronic products. This second load was also stolen from the same parking structure, whose gates had not been repaired since the first break-in.

The merchant sued the carrier for liability and demanded that the carrier's limitations of liability be lifted for the second shipment, alleging an inexcusable misconduct on the carrier's part.

Since Law No. 2009-1503 of 8 December 2009, the inexcusable misconduct (defined in Article L.133-8 of the Commercial Code), is the only standard of misconduct that can override the limits of liability pursuant to Article 29 of the Convention on the Contract for the International Carriage of Goods by Road (CMR). Under French law, only an inexcusable misconduct qualifies as "*wilful misconduct or by such default on* [the carrier's] *part as, in accordance with the law of the court or tribunal seized of the case, is considered as equivalent to wilful misconduct*" (Article 29 of the CMR). It has been established as a very high standard, higher than the previous applicable standard of gross negligence.

An inexcusable misconduct is determined on a case-by-case basis, falling within the sovereign power of the first instance and appellate judges. However, the *Cour de cassation* ensures that appellate judges have clearly identified the four cumulative criteria required. Indeed, Article L.133-8 of the French Commercial Code states that:

"*Only the inexcusable misconduct of the carrier or freight forwarder is equivalent to fraud. An inexcusable misconduct* ***is a deliberate fault [1]*** *which implies* ***awareness of the likelihood of damage [2]*** *and* ***reckless acceptance of it [3] without a valid reason [4]****. Any clause to the contrary is deemed null and void."*

In this case, the Court of Appeal had characterised the carrier's inexcusable misconduct: it had held that

- the carrier committed deliberate fault by transporting goods
- whose value it was aware of,
- to a site that had been burgled the previous week,
- without having repaired the broken gates or taken effective protective measures,
- and that it had not notified the shipper of the first theft as soon as it was discovered, preventing it from choosing another transport solution until corrective measures could be taken.

The Court of Appeal concluded that, having necessarily been aware of the likelihood of another theft in such circumstances, the carrier had recklessly and without valid reason accepted this risk by failing to take additional precautions.

The *Cour de cassation* overturned this ruling and found that these grounds were insufficient to characterise an inexcusable misconduct on the carrier's part, as "*it could not result solely from a series of serious negligent acts*".

The ruling is not new, but its application in this case may appear harsh. Cargo interests and carriers will undoubtedly have differing interpretations of this decision. While the assessment of liability limits leads to *forum shopping* by CMR users, this decision confirms France's position as a jurisdiction favourable to carriers on this point.

Arnaud Attias

CIVIL LIABILITY

No limit to the "conditions and limits of liability" enforceable against third parties?

Cass. com., 17 December 2025, No. 24-20.154, published in the bulletin

A company that uses the services of an accounting firm is subject to a tax adjustment. As a result, the manager of the company is himself subject to personal bankruptcy proceedings. The company and its manager, considering that the difficulties encountered were attributable to the accounting firm, sue the latter before the Nice Court of Justice for breach of contract.

The latter referred the matter to the pre-trial judge, in particular, on the grounds of the court's lack of jurisdiction in favour of the commercial court (1) and various motions to dismiss (2). All of its claims were rejected, and the accounting firm appealed the pre-trial order.

The Court of Appeal of Aix-en-Provence (*CA Aix-en-Provence, Chamber 3 4, 8 June 2023, No. 22/15908*) upheld the order in its entirety, ruling in particular that:

*"As the pre-trial judge rightly stated**, the terms of the engagement letter** signed between France Comptabilité and VPS **cannot be enforced against Mr [S], who did not personally commit to them**."*

Yasmine Bouchoucha

The Court of Appeal's decision appears to be consistent with the position previously adopted by the Court of Cassation.

Indeed, although the High Court had successively admitted *(i)* the third party's tortious action on the basis of contractual fault and then *(ii)* the enforceability against the latter of the exceptions drawn from the contract, it seemed to limit said enforceability to the "*conditions and limits of liability*" alone.

The accounting firm successfully appealed to the Court of Cassation.

The Court of Cassation first reiterated its previous position, before considering that the clauses stipulated in the engagement letter - relating to foreclosure, limitation periods and prior conciliation attempts - were indeed admissible as "conditions and limits of liability" enforceable against third parties.

This resulted in a significant extension of the clauses enforceable against third parties: the clauses relating to prior conciliation and the extinction of the right to take action (foreclosure and limitation) are enforceable in the same way as the clauses limiting liability.

The scope of this decision remains unclear: does it herald further extensions, or is the Court of Cassation considering placing restrictions on certain clauses (such as arbitration clauses) and, if so, according to what criteria?

PERSONAL INJURY

Forensic medical expertise: the presence of the claims adjuster admitted by the Court of Cassation

Cass. 1st civ., 6 November 2025, no. 23-20.409

In a ruling dated 6 November 2025, the Court of Cassation provided essential clarification for insurance practice: an insurance adjuster may attend forensic medical examinations, even if the victim objects, with the exception of the clinical examination phase.

The essence of the decision

The Court ruled that medical confidentiality does not prevent an insurer, as a party to the proceedings, from being represented during the assessment by one of its employees, including a claims adjuster.

The choice of representative is at the sole discretion of the insurer and is not subject to the victim's consent.

The only clear restriction is that the claims adjuster may not be present during the clinical examination, which must take place exclusively between the medical expert and the person being examined.

This solution is based on Articles 161 and 162 of the Code of Civil Procedure, which guarantee the parties the right to attend and monitor the execution of investigative measures.

A reassuring decision for insurers

The Court of Cassation thus enshrines a practice that is widespread in personal injury cases. The presence of the claims adjuster during the assessment process allows for:

- a detailed understanding of the medical and compensation issues at stake,
- better anticipation of the settlement of the case,
- effective compliance with the adversarial principle.

While the Court's legal reasoning may still give rise to theoretical debate, the solution adopted is pragmatic and conducive to legal certainty in expert assessments. It reinforces the central role of the claims adjuster in assessing personal injury and controlling the compensation process.

Practical implications for insurers

What this decision changes (or confirms) in concrete terms:

- The claims adjuster is **guaranteed** to **be present** at expert meetings (excluding clinical examinations), even if the victim objects
- **No prior authorisation** from the victim required
- **Strengthening of the adversarial process** in the medico-legal phase
- **Better continuity**

Point to note:

- The inspector must **withdraw during the clinical examination**, otherwise the assessment may be contested.

Mathilde Mevel

INSURANCE

Disposal of the insured item and termination of the policy for non-payment of premiums: a welcome reversal

Cass. 2nd civ., 6 November 2025, no. 23-13.984, published in the Bulletin

According to a ruling published in the bulletin, the Court of Cassation now considers that an insurer who has not been informed of the disposal of the insured property has the option, in the event of non-payment of the premium, to suspend the cover and then terminate the policy, after sending a formal notice to the person who disposed of the property, or to the person responsible for paying the premiums, at their last known address.

In this case, the co-owners' association of a property complex was covered by an insurance policy. After the co-ownership lots were sold to a third-party company, the insurer gave formal notice to the co-owners' association to pay the premiums due, failing which the cover would be suspended and, after a period of 40 days, the insurance contract would be terminated. The acquiring company then paid the premiums, even though the termination period had expired. A claim was subsequently made and the company wished to invoke the insurer's cover.

The Insurance Code provides that in the event of disposal of the insured item, the insurance continues automatically for the benefit of the purchaser, who is then bound by the obligations that the previous insured party had towards the insurer (Article L. 121-10).

The same code provides that in the event of non-payment of the premium, the insurer has the option of suspending its cover and then cancelling the policy after giving formal notice to the insured (Article L. 113-3).

The Court of Cassation considered, in its previous case law, that the formal notice sent by the insurer to the former owner, who remained liable for the payment of premiums until such time as he informed the insurer of the transfer, had no effect on the cover, which could only be suspended by a formal notice sent personally to the purchaser (Civ. 1e , 28 June 1988, No. 86-11.005).

However, such a solution deprived the insurer of the ability to suspend its cover and then terminate the policy in the event that it did not know the identity of the new purchaser, as it was unable to send a formal notice to them.

Based on Article R. 113-1 of the Insurance Code, which stipulates that formal notice must be sent to the insured or the person responsible for paying the premiums, at the insurer's last known address, and on the criticism levelled by legal scholars, the High Court put an end to this situation with a deliberate and welcome reversal, "*to ensure the effectiveness of the insurer's right of termination*".

It now rules that "*where it has not been informed of the disposal of the insured item, it may, in the event of non-payment of the premium, suspend the cover and then terminate the contract, after sending a notice to the person who disposed of the item or to the person responsible for paying the premiums, at their last known address*".

Since the company in this case that had acquired the building had not notified the insurer of the change of ownership or its new address, the Court of Cassation upheld the Court of Appeal's ruling that the formal notice sent to the previous owner at their last known address was valid, meaning that the policy had been terminated in accordance with the law.

This is therefore a pragmatic and realistic solution, which demonstrates the Court of Cassation's willingness to review its case law when its position, even if long-standing, is inconsistent. It also highlights the attention that the supreme court may pay to criticism levelled by legal scholars in this regard.

Matthieu Lohr

Romain Dupeyré and Arnaud Attias will be attending the 33rd AMRAE Risk Management Conference from 4 to 6 February

We will be attending the AMRAE Meetings in Deauville from 4 to 6 February.

This year's event, which will focus on resilience, organisational transformation and new challenges in risk management, will be an opportunity for us to discuss innovative practices, emerging risks and developments in the insurance market.

We look forward to seeing our customers, partners and the entire risk management community.

If you would like to take advantage of the event to discuss business, please do not hesitate to contact us to arrange a meeting on site.

We look forward to seeing you there.

Congratulations to Juliette Doebeli on her swearing-in ceremony!

On 28 January, Juliette was sworn in as a barrister at the Paris Bar, surrounded by the entire team. We offer her our warmest congratulations and wish her all the best for this new stage in her career, which marks the beginning of a promising career in the profession.

We are very happy to see her take this important step and look forward to continuing the adventure alongside her and supporting her in her future professional development.

DWF opens new office in Hamburg

DWF is opening a new office in Hamburg with the arrival of a team of 16 professionals from ASD and SKW Schwarz. This new team, led by Dr Marco Remiorz, specialises in maritime and transport law and complements the group's recent expansions, particularly in Australia, Canada and the United Kingdom.

This development is part of DWF's strategy to strengthen its capabilities in key markets, with Germany being the EU's leading legal and insurance market. Hamburg thus becomes the group's third office in the country, alongside Munich and Düsseldorf, from which the group offers services in litigation, real estate, employment law, corporate law and commercial law.

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