

Manufacturers face strict liability for defective products

Saber Ahmed Jazbhay
Attorneys Omar and Jazbhay

With the Consumer Protection Act No 68 of 2008 becoming law the hitherto common law position whereby a manufacturer of a defective good could not be held strictly liable in delict for the unintended harm caused by such good, has now been drastically overhauled in terms of section 61 thereof.

This is a positive development that is constitutionally sound for it raises the threshold against products that are not produced according to acceptable high standards and it protects consumers against manufacturers who were hitherto indemnified against strict liability.

Lawyers remember, the product liability case wherein the Supreme Court of Appeal decision in **Wagner v Pharmicare Limited/ Cuttings v Pharmicare Limited** handed down on 28 March 2003 (Case Number 32/ 2002) to the effect that a manufacturer of a defective good was not strictly liable in delict for unintended harm caused by the defective manufacture of a product where there was no contractual privity between the manufacturer and the injured person.

Section 61 of the CPA puts paid to that by providing that a producer, importer, distributor or retailer of any defective or unsafe good will be held liable for any harm caused 'wholly or in part as a consequence of (a) supplying any unsafe goods; (b) a product failure, defect or hazard in any goods, or (c) inadequate instructions or warnings provided to the consumer pertaining to any hazard arising from or associated with the use of any goods,' irrespective of whether there was any negligence on their part.

Although the CPA will only become operational on 29 October 2010, it is imperative that manufacturers/producers, importers, distributors or retailers better shore up their insurance cover.

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See also :
Supreme Court of Appeal of South Africa
28 March 2008
[32/2002 \[2003\] ZASCA 153](#) ; [7001/2000 \[2003\] ZASCA 30](#)
Wagener v Pharmicare Ltd; Cuttings v Pharmicare Ltd