

WHEN IS A PRODUCT DEFECTIVE IN THE EYES OF THE LAW?

THE LIABILITY FOR DEFECTIVE PRODUCTS ACT, 1991

1. Introduction

Before considering when a product is defective, pursuant to the terms of the Liability for Defective Products Act, 1991¹ ("the 1991 Act"), I wish to deal briefly with the imposition of liability outside the terms of the 1991 Act.

2. The imposition of liability before the implementation of the 1991 Act.

Under Irish law there are a number of ways by which liability may be imposed upon the manufacturer of defective goods or products. Essentially these are:-

(i) Liability in negligence

In order to establish liability in negligence the injured person, or plaintiff, must establish the following:-

- that the manufacturer owed him a duty of care when producing the goods,
- that the manufacturer failed in this duty of care, and
- that as a result of this failure the injured person, or plaintiff, suffered the injury of which he complains.

The manufacturer will be held liable to pay damages for negligence if it fails to act with the standard of care which the law expects of it and if damage or injury is suffered as a result.

Perhaps the greatest potential difficulty for an injured person suing in negligence is establishing that the manufacturer owed him a duty of care in the particular circumstances of the case. In addition, as we will see, establishing a causal connection between the breach of duty and the injury sustained

¹ The 1991 Act

may pose difficulties². Furthermore the law of Tort allows the manufacturer, in certain circumstances, to exclude or reduce his liability to an injured person.

(ii) Liability in contract

In addition to the terms which a seller (e.g. a manufacturer or retailer) of goods and the consumer may agree in their contract, legislation also imposes certain conditions, for example with regard to merchantability and fitness for purpose of the goods sold. The seller is limited by Statute in his ability to exclude many of these terms.

A buyer can recover compensation from the seller if the product he has bought does not comply with the terms of the parties' contract and if, as a direct result, he suffers loss, damage or injury.

To succeed in a case in contract the buyer does not have to prove any negligence on the part of the seller. He must establish that the product bought does not comply with the terms of his contract with the seller and that he has suffered loss or damage as a result.

Establishing liability under contract may be difficult because of the doctrine of “privity of contract”. Essentially this means that for a party to have an obligation or right under a contract it is necessary for him to be party to the contract. Thus where the injured person had no contractual relationship with the manufacturer or retailer (for example if the goods were a gift to the injured person), contract law may not afford him a remedy.

(iii) Liability pursuant to Statute

Liability may be imposed, by Statute or Statutory Instrument, upon manufacturers in respect of defective products. However, Statutes or Regulations frequently cover a restrictive range of products. The liability imposed by Statutes or Regulations is also frequently criminal rather than civil. This cause of action is therefore generally of limited application.

3. The Liability for Defective Products Act, 1991

The 1991 Act became law in Ireland on the 16th December 1991. The 1991 Act gives effect to the provisions of Product Liability Directive EEC 85/374 (“ Directive 85/374”).

² Duffy -v- Rooney and Dunnes Stores - High Court (Laffoy, J.) unreported 23rd June 1997, Supreme Court

Firstly it must be emphasised that the 1991 Act does not replace any pre-existing tortious, contractual or statutory remedies which may otherwise be available to an injured person. Thus an injured person or Plaintiff, who has a cause of action pursuant to the provisions of the 1991 Act, may well also have another cause of action (for example in negligence or contract). In practice it is normal for a claim under the 1991 Act to be made hand in hand with a claim for damages for negligence, breach of contract etc.

In passing it should be noted that the State's belated implementation of Directive 85/374 (which should have been implemented in 1988) raises the question as to whether the State could be liable for its failure to bring Directive 85/374 into force within the required period. If an individual could establish that had Directive 85/374 been implemented by the due date he/she would have been in position to recover damages for injury or damage caused by a defective product, the State may be held liable to him/her.

Directive 85/374 originally allowed Member States make certain derogations in their implementing legislation. For example it allowed Member States:

- to include primary agricultural products as being within the definition of “products” in their implementing legislation. Ireland did not do so, except for primary agricultural products which had undergone initial processing.
- to place a ceiling on the liability that could be imposed. Ireland did not place such a ceiling on liability which, accordingly, is unlimited.
- to exclude the “development risks” or “state of the art” defence from the implementing legislation. This defence, which will be considered later, is available under the 1991 Act.

A recent amendment to Directive 85/374 has removed the ability of Member States to exclude primary agricultural products from the definition of “products” in their implementing legislation. This amendment occurred as a reaction to the relatively recent BSE crisis. This amendment was incorporated into Irish law as and from 4th December, 2000³. Primary agricultural products are defined as “products of the soil, of stock farming and of fisheries”. Accordingly, producers of

23rd April, 1998.

³ S.I. No. 401 of 2000 signed by the Minister for Enterprise, Trade & Employment on the 5th December, 2000

primary agricultural products (farmers) fall within the ambit of the regime of the 1991 Act as and from 4th December, 2000.

4. Are you a producer?

The 1991 Act states that “the producer shall be liable in damages in tort for damage caused wholly or partly by a defect in his product”.⁴ The question immediately arises as to who is “the producer” for the purposes of the 1991 Act.

The 1991 Act defines “producer”⁵ widely as including:-

- the manufacturer or producer of a finished product, or
- the manufacturer or producer of any raw material or the manufacturer, or producer of a component part of a product or, in the case of products of the soil, of stock, farming and of fisheries and game, (which have undergone initial processing), the person who carried out such initial processing, or
- any person who, by putting his name, trademark or any other distinguishing feature on the product or by using his name or any such mark or feature in relation to the product, has held himself out to be the producer of the product or,
- any person who has imported the product into a member State from a place outside the European Union in order, in the course of any business of his, to supply it to another, or
- the supplier of a product who may, in certain circumstances, be held liable as the producer of the product where the producer of the product cannot be identified.

⁴ Section 2(1)

⁵ Section 2(2)

It will be readily appreciated that under the 1991 Act liability may be imposed upon a person or entity that did not actually manufacture the product in question. Where a defective product causes damage any person who supplied the product (irrespective of whether he had any hand, act or part in its production) may be held liable as if he were the producer unless he is in a position to identify either the actual producer or alternatively the person who supplied him with the product. To reduce the prospect of being made liable in such circumstances it is vital that each entity in the supply chain keep records which will enable this information be ascertained for a period of at least 10 years.

5. What is a product?

The 1991 Act now defines product⁶ as meaning:-

all movables including primary agricultural products⁷ which have not undergone initial processing including:-

- (a) movables even though incorporated into another product or into an immovable (for example a product incorporated into a building) whether by virtue of being a component part or raw material or otherwise,
- (b) electricity where damage is caused as a result of a failure in the process of generation of electricity.

Immovables (real property) are excluded from the provisions of the 1991 Act. However products incorporated into, or used for example as part of a building, fall within the terms of the 1991 Act. Neither does the 1991 Act apply to products placed into circulation before the 16th December 1991.

6. When is a product defective?

⁶ Section 1(ii)

⁷ As stated above primary agricultural products now fall within the definition of "product".

A product is defective if it fails, taking all the circumstances into account, to provide the safety which a person is entitled to expect.⁸ Accordingly to fall within the ambit of the 1991 Act the product must not only be defective, it must also be "unsafe". The circumstances relevant to determining whether a product is defective include:-

- the product's presentation,
- the use to which it could reasonably be expected that the product would be put, and
- the time when the product was put into circulation.

The 1991 Act provides however⁹ that a product shall not be considered defective for the sole reason that a better product is subsequently put into circulation. While the placing of a better product on the market may not, in and of itself, render the product it replaces or competes with defective, it is likely to be a factor which will be considered by the Judge hearing the case.

Depending upon the circumstances, it could also be the case that the appearance of a better product upon the market may have implications for the ability of the manufacturer or producer of the original product to successfully rely upon the "state of the art" defence.

7. Recent Case Law

There was a general expectation that when the 1991 Act became law it would result in a vast rise in the number of product liability claims. However that has not occurred. This may be due, partly in any event, to the fact that many cases settle before trial. It may also be partly explained by the fact that consumers may prefer to opt to sue the retailer/manufacturer in contract rather than negligence.

Richardson -v- LRC Products Limited¹⁰

⁸ Section 5(1)

⁹ Section 5(2)

¹⁰ UK High Court (case no. 99/NJ/0709) 2nd February 2000

The Plaintiff in that case became pregnant when a contraceptive device (a condom), being used by her husband, failed. The Defendant was the manufacturer of the device in question. The Plaintiff sued under the UK equivalent of the 1991 Act.¹¹ Unusually it appears that the Plaintiff's claim was based solely upon the provisions of the UK equivalent of the 1991 Act i.e. the Plaintiff does not appear to have made an alternative or parallel claim in either negligence or contract.

The Plaintiff's claim was for damages including the cost of the child's upbringing.

The Plaintiff contended that the device was defective by reason of the fact that it had failed. It was alleged, firstly, that there had been ozone damage to the condom during the manufacturing process and, secondly, the fact that the condom fractured during use demonstrated that it was defective. There was no alternative allegation that the device was defective by reason of inadequate warnings, inadequate instructions etc.

Expert evidence was unable to provide an explanation for the failure of the device. However it appears that the trial judge was persuaded by the Defendant's scientific evidence that the condom had not been affected by ozone damage during the manufacturing process.

In applying the test of defectiveness, as specified in the UK equivalent of the 1991 Act, the trial Judge conceded that "the user's expectation is that a condom will not fail". However the trial Judge held that the failure of the device had not established that it was defective for the purposes of the UK equivalent to the 1991 Act. The Judge noted that:-

"There are no claims by the Defendants that one will never fail and no one has ever supposed that any method of contraception intended to defeat nature will be 100% effective."

The trial Judge drew attention to the fact that the UK equivalent to the 1991 Act defined defectiveness as meaning that the safety of the product is not "such as persons generally are entitled to expect" taking into account the way it has been marketed, its get-up and warnings amongst other factors.

¹¹ Consumer Protection Act, 1987

In circumstances where the manufacturers had never claimed 100% effectiveness and where there was expert evidence that there are cases of unexplained failures, the trial Judge held that it was not possible to accept that the product was defective on that ground.

The Judge noted that the device was manufactured to a standard that exceeded the relevant British standard. However it is unclear whether, in determining the level of safety a person is entitled to expect, the Court was suggesting that the terms of the applicable British standard define what the consumer's expectation should be.

The trial Judge also stated, obiter, that had he found that the product was defective he would have accepted that any loss suffered by the Plaintiff was wholly attributable to her failure to take appropriate action to prevent a pregnancy i.e. the claimant was aware of the "morning-after pill" and it was her failure to take appropriate steps to obtain it which he regarded as contributing to her loss. However it should be borne in mind that there had been evidence in the case that the Plaintiff would have been quite happy to use the "morning-after pill". Presumably had the evidence been that she was opposed to the use of an abortifacient her view would have been respected.

Ultimately it appears that the Court's approach to the claim was the same as if the claim had been an action in negligence. There was no dispute but that the device had failed. However in order to substantiate the allegation that the product was defective, for the purposes of the UK equivalent of the 1991 Act, the Plaintiff was required to prove the cause of the failure. As the Plaintiff was unable to do so her action failed.

Worsley –v- Tambrands Limited¹²

In this case the Plaintiff suffered toxic shock syndrome (TSS) as a result of her use of the Defendant's product. The Plaintiff had used the Defendant's product for many years. From time to time she read some of the instructions and warnings that accompanied the product and modified her behaviour according to the advice contained in those documents. A leaflet inside the packaging of the product warned, in some detail, of the risk of TSS and included advice about seeking urgent medical advice if certain symptoms were experienced. In addition words warning of the risk of TSS were printed on the product's packaging.

¹² UK High Court December 3, 1999

When the Plaintiff developed TSS she was under the impression that she was suffering from food poisoning. This mis-diagnosis was also made by her doctor who treated her for suspected food poisoning. She subsequently became seriously ill.

Upon her recovery she commenced proceedings against the Defendant alleging that the Defendant had been negligent in failing to warn her adequately of the risk of TSS. She also claimed that the Defendant's product was defective due to inadequate warnings and claimed damages under the UK equivalent of the 1991 Act.

In this case the Defendant was also held to have no liability.

The trial Judge stated:-

“TSS is a rare but potentially very serious condition which may be life threatening, but it is necessary to balance the rarity and gravity. That balance is reasonably, properly and safely struck by the dual system of a risk warning on the box and a full explanation in the leaflet. If the former is clearly visible the latter is both legible and full”.

The trial Judge was satisfied that the Defendant's leaflet met these requirements. The fact that the warnings and leaflets that accompanied the same product in the United States were more detailed was, she held, immaterial to the Plaintiff's claim.

The Court also rejected the Plaintiff's contention that a manufacturer should anticipate that consumers might throw away leaflets or other package inserts and should therefore put all relevant information on the outer packaging of the product itself. In so concluding the trial Judge did not distinguish between the claim brought by the Plaintiff in negligence and that brought under the UK equivalent of the 1991 Act.

The case may illustrate that where a Court finds that warnings and instructions are not such as to be negligent, it may be unlikely to hold that a particular product was defective.

Mei –v- San Pellegrino SpA¹³

¹³ (1999) E.C.C. 550

In this case the Plaintiff purchased a bottle of mineral water at a motorway restaurant. While the Plaintiff was being handed the bottle, by a member of the Defendant's staff, the bottle fractured causing the Plaintiff injury to his right hand. The Plaintiff, not unreasonably, commenced an action against the Defendant (the manufacturer of the bottle) for damages. The manufacturer sought to have the case dismissed on the basis that the Plaintiff had failed to show any causal connection between the defect in the bottle and the injuries he had sustained.

The Defendant's attempt to have the claim dismissed was unsuccessful. It was held that:-

- On the evidence it could not be denied but that there was a causal connection between the damage, sustained by the Plaintiff, and the bottle manufactured by the Defendant
- Under Presidential Decree 224 a product was treated as defective if it did not offer the safety to be legitimately expected, taking into account all the circumstances, and which was normally offered by other products in the same range
- There was no indication of abnormal use and accordingly the case came within the strict liability provisions of the Presidential Decree, and
- The Plaintiff was entitled to damages for physical and psychological injury but not for material loss, which it was held had not been proved by the Plaintiff.

Duffy –v- Rooney and Dunnes Stores¹⁴

In this and the following case (Castles –v- Marks & Spencer Plc) the Court was seeking to determine whether the Defendants had been guilty of negligence causing injury. In the first case (Duffy –v- Rooney and Dunnes Stores) the coat, which was the subject matter of the proceedings, had been placed upon the market prior to the 16th December, 1991. It was accordingly held that the 1991 Act had no relevance to the Plaintiff's claim.

Here a child of five years and four months, suffered serious burns when her clothing, an overcoat, caught fire. The coat in question was not made of flame retardant materials, did not have affixed to it any warnings as to its flammability and, as I have said, had been placed on the market in 1991. It was one of 5,000 or 6,000 such coats sold by the Dunnes Stores Group. At the time the coat was

placed on the market (1991) there were no standards or regulations in force in relation to the manufacture or assembly of outer garments for children. No flammability testing was conducted by the UK manufacturer. No warning label was attached to the coat as there was no requirement to attach such a warning.

The Court imposed liability upon the girl's grandfather as it held he had failed to adequately supervise his granddaughter in the presence of an open fire. Liability was not imposed upon the retailer as the trial Judge was not satisfied that the child's grandmother (who had purchased the garment in question) would not have purchased the garment had a sufficient warning label been affixed to it. In fact at the time of the accident the child had been wearing other clothing with flammability warnings attached to it. Accordingly, while the Court held that the retailer had breached the duty of care which it owed to the garment's wearer, it was unable to establish a causative link between the retailer's breach of duty and the injury sustained by the child.

The trial Judge held that the risk inherent in the garment did not render it so inherently dangerous that it ought not to have been placed on the market. Likewise the Judge held that those risks, and the manner in which they might adequately be addressed, had to be weighed

in the balance against the user friendly nature and popularity of the garment. The trial Judge was not satisfied that a reasonably prudent manufacturer or retailer would have considered it necessary to produce a garment, placed into circulation in 1991, with low flammability material.

In her judgment the trial Judge set out 7 factors which influenced her finding that a reasonably prudent manufacturer, if it had properly addressed the issue, would have affixed a label to the coat warning that it should be kept away from fire. These factors were:-

1. the trend to use lighter weight flammable fabrics for garments primarily for use by children outdoors;
2. the similarity, in design terms, between the garment in question and night-dresses or dressing gowns in terms of length, looseness and size;

¹⁴ High Court (Laffoy, J.) unreported 23rd June, 1997 and Supreme Court 23rd April, 1998

3. that very young children are usually dressed by adults and often wear their outer garments indoors for a considerable period of time before going outdoors;
4. that open fires and gas heaters are a common feature of domestic life;
5. that young children are unpredictable and lack a sense of danger;
6. that fire accidents carry the gravest of consequences, and
7. the relatively low cost of labelling garments.

Having identified these features the trial Judge held that the retailer of the garment was in breach of its duty of care to the child in question in failing to affix a warning label to her coat. Notwithstanding this finding the retailer escaped liability as the Judge felt that the coat would have been purchased even if a label had been attached and was thus unable to establish a causative link between the absence of the warning label and the child's injuries.

Castles –v- Marks & Spencer Plc¹⁵

Unfortunately this case also concerned injuries sustained by a child when an item of clothing caught fire. The 1991 Act does not appear to have formed part of the Plaintiff's claim in this case.

In this case a child of five years suffered serious burns when her clothing, a light cotton dress, caught fire.

When the dress was purchased it had a label stitched into it. The words "KEEP AWAY FROM FIRE" appeared on that label. The trial Judge held that it was also probable that, while on display in the retail shop, the dress had attached to it two cardboard tags which were intended to be removed

¹⁵ High Court (Barron, J.) unreported March 25, 1999

after purchase. One of these tags contained, in red capital letters, the words “IN THE INTEREST OF SAFETY IT IS ADVISABLE TO KEEP YOUR CHILD AWAY FROM FIRE”.

At the time of the accident there were no regulations relating to children’s day wear. However Marks & Spencer recognised that certain light materials, if used in children’s day wear, might be so flammable as to constitute an unacceptable risk for children. Accordingly Marks & Spencer had voluntarily introduced a minimum requirement as to flammability in respect of materials used in children’s day wear sold by them. This minimum standard however fell substantially short of the flammability standard required by the Regulations governing children’s night wear.

The issue to be determined was whether, in all the circumstances, Marks & Spencer had exercised reasonable care in the marketing and sale of the dress in question.

The trial Judge held that the warning required by the Regulations applying to children’s night wear i.e. “KEEP AWAY FROM FIRE” was a sufficiently clear warning to carers that a child wearing the garment to which the warning was attached should keep away from unprotected fire. The Judge held that Marks & Spencer had discharged its duty of care regarding fire warning in relation to the child’s dress by adopting the form of words specified by the Regulations applying to children’s night wear. The trial Judge also held that Marks & Spencer had gone significantly beyond that requirement by appending a second more prominent and more specific warning on the cardboard hanging tag “IN THE INTEREST OF SAFETY IT IS ADVISABLE TO KEEP YOUR CHILD AWAY FROM FIRE”. In all the circumstances he held that there was no negligence on the part of Marks & Spencer as to the marketing of the dress and its sale.

As noted above these cases were primarily concerned with issues as to whether the Defendants had been negligent.

Surely it must be the case that the coat in the Dunnes Stores case (if marketed today) would be regarded as a defective product for the purposes of the 1991 Act. If such a garment appeared on sale in Ireland today one also assumes that the Director of Consumer Affairs would use the powers available (under the product safety regulations) to her to prevent, or at least limit, the danger that it posed to children.

8. Who is liable, and for what?

The producer is liable in damages in tort for damage caused wholly or partly by a defect in his product.¹⁶ Damage is defined¹⁷ as:-

- death or personal injury, or
- loss of damage to, or destruction of, any item of property other than the defective product itself.

This is subject to the proviso that the item of property:-

- is of a type ordinarily intended for private use or consumption, and
- was used by the injured person mainly for his own private use or consumption.

However it should be noted that the injured person must suffer damage with a value in excess of approximately IR£350 before he can avail of the provisions of the 1991 Act. This threshold figure excludes the value of any damage suffered to the defective product. Accordingly if a defect in a product resulted in damage to or the destruction of only the defective product itself the “injured person” would not have redress under the 1991 Act. Likewise if the defect resulted in either personal injury or damage to property (excluding the defective product) and that injury or damage did not exceed £350 in value any claim as a result would be outside the provisions of the 1991 Act. There is, as has been mentioned earlier, no ceiling on the producer’s potential liability under the 1991 Act.

9. Products in respect of which liability has been imposed

- Candles

In a German case liability was imposed upon a supplier of candles. The oil particles emitted from the candles damaged the Plaintiff’s apartment and furniture. Liability was imposed upon the supplier in circumstances wherein the Plaintiff had asked the supplier to provide the name of the manufacturer of the candles. The supplier’s response to that request was held to have been inadequate.

- Mountain bike

¹⁶ Section 2(1)

¹⁷ Section 1(1)

Liability was imposed upon the manufacturer in circumstances where the mountain bike it produced was allegedly defective resulting in personal injuries to the purchaser. The Plaintiff's expert evidence was that the mountain bike contained a manufacturing defect. The manufacturer did not in fact defend the claim.

- Kitchen stoves¹⁸

In Austria the Plaintiff, an insurer, sued the Defendant (a kitchen stove manufacturer) pursuant to the terms of Austria's Product Liability Act, 1988. The action was in respect of payments the Plaintiff had made, on behalf of its insured, to persons injured as a result of salmonella contracted having eaten food cooked in ovens manufactured by the Defendant.

When the oven, the subject matter of the proceedings, was placed on the market it did not embody a device to warn when a heating element cut out. However, it shared this feature with ovens manufactured by other parties at the time.

The Plaintiff's claim was unsuccessful. In dismissing the appeal it was held that expert evidence had established that the oven met the latest technical standards when it was placed upon the market.

10. What defences may be available?

The 1991 Act provides¹⁹ that a producer shall not be liable if he proves:-

- that he did not put the product into circulation, or
- that, having regard to the circumstances, it is probable that the defect which caused the damage did not exist at the time when the product was put into circulation by him or that the defect came into being afterwards, or
- that the product was neither manufactured by him for sale or any form of distribution for an economic purpose or manufactured or distributed by him in the course of his business, or

¹⁸ (2000) E.C.C. 137

¹⁹ Section 6

- that the defect concerned is due to compliance by the product with any requirement imposed by or under any enactment or any requirement of the law of the European Communities or
- that the state of scientific and technical knowledge at the time when he put the product into circulation was not such as to enable the existence of the defect be discovered (the “state of the art defence”), or
- in the case of the manufacturer of a component or the producer of a raw material, that the defect is attributable entirely to the design of the product in which the component has been fitted or the raw material has been incorporated or to the instructions given by the manufacturer of the product.

Pursuant to the “state of the art” defence a producer may escape liability, under the terms of the 1991 Act, if he is in a position to prove that the product in question was manufactured in accordance with the “state of the art” and that the “state of the art” would not have uncovered the existence of the defect in question. Producers should be aware that, as noted above, Directive 85/374 permitted Member States to derogate from the inclusion of this defence in their implementing legislation. Accordingly producers should be aware that this defence may not be open to them in respect of products exported throughout the European Union i.e. the defence will not be available if they are sued in a country which availed of the derogation and omitted this particular defence from its implementing legislation.

11. Periods of Limitation of Liability

It is the case that the 1991 Act provides²⁰ that an action for recovery of damages pursuant to its provisions shall not be brought after the expiration of three years from:-

- the date on which the cause of action accrued or, if later
- the date on which the Plaintiff became aware, or should reasonably have become aware, of the damage, the defect and the identity of the producer.

²⁰ Section 7

It is to be noted that no action under the 1991 Act may be brought after ten years from the date on which the producer put the product in question into circulation unless, of course, proceedings have been instituted by the injured person prior to the expiration of this ten year period.

12. CONCLUSION

The liability of a producer to an injured person, arising by virtue of the 1991 Act, may not be excluded by the term of any contract, by any notice or by any other provision. The 1991 Act does not apply to any product put into circulation before the 16th of December, 1991.

In light of the wide definition of “producer” it is clear that liability may not always rest with the manufacturer of the product. In certain circumstances liability may attach to any party in the chain of distribution or supply. It is accordingly essential that each party in the chain of a product’s distribution should take certain steps including, perhaps, the following:-

- (a) keep proper records of the identity of the parties supplying the relevant products,
- (b) keep full details of the date of supply,
- (c) ensure that supply/distribution contracts contain appropriate indemnities covering the potential liability under the 1991 Act for the benefit of this supplier/distributor,
- (d) precise details should be kept of dates upon which particular products were placed into circulation,
- (e) attention should, of course, be given to the packaging of products and the directions for use thereupon. These directions are likely to be important in determining whether a particular product is defective,
- (f) importers of products from outside the European Union should perhaps be particularly concerned with the prospect of being deemed the producer of a product they import. They should ensure that proper indemnities are in place, covering this potential liability.

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