



# Insurance Flash January 2025

## “WHAT'S IN A NAME?”

**Product liability - The European Court of Justice equates the liability of the supplier to that of the manufacturer for using the same name. Again on the table the distinction of product liability between companies of the same corporate group.**

On 19 December 2024, the Court of Justice of the European Union (CJEU) issued a judgment concerning the interpretation of Article 3(1) of Directive 85/374/EEC on liability for defective products. The case was about a dispute between Ford Italia SpA and the victim of a road traffic accident, who was driving a Ford vehicle purchased from Stracciari. The vehicle had been manufactured by Ford WAG in Germany and distributed in Italy by Ford Italia SpA. The accident was caused by a defect in the vehicle's airbag, and both the Court of First Instance (Tribunale di Bologna) and the Court of Appeal (Corte d'Appello di Bologna) found Ford Italia SpA liable, despite the fact that the invoice correctly identified the manufacturer.

Following an appeal against that judgment, the Italian Supreme Court (*Corte Suprema Di Cassazione*) asked the European Court of Justice, by way of a preliminary ruling, to clarify whether a supplier of a defective product must be considered as a "producer", within the meaning of Article 3(3) of the Directive, when the name of the supplier or the trade mark of the sold product is the same (or almost the same) as the name of the producer.

The European Court of Justice concluded that the supplier of a defective product must be considered to be a "person who holds himself out as the producer" according to the Directive, even if he has not put his name, trade mark or other distinctive sign to the product, provided that the trade mark of the producer is similar to the name of the supplier or a distinctive element of the supplier and, on the other hand, with the name of the producer. This irrespectively of whether the manufacturer is identified on the sales invoice of the vehicle (as it was the case here). This interpretation aims to protect the consumer by facilitating the identification of the responsible party in cases of defective products, and ensures that both the manufacturer and the supplier can be held liable in the same way, thus giving a bigger consumer protection.

In Spain, our Supreme Court ruled in 2020 on a similar dispute, but deciding in the opposite direction.

A Judgment dated 7<sup>th</sup> July 2020 of the Spanish Supreme Court decided on an appeal brought by an individual against Johnson & Johnson, S.A. (located in Spain), for damages caused by a defective hip prosthesis manufactured by DePuy International Ltd., a subsidiary of the Johnson and Johnson Group and located in the United Kingdom. The victim had undergone hip replacement surgery in 2005, and needed in 2012 revision surgery due to problems with the prosthesis.

The Supreme Court dismissed both appeals, upholding the judgment of the Court of Appeal of Barcelona which had overturned the initial conviction of Johnson & Johnson, S.A. on the grounds that it was the distributor and not the manufacturer of the prosthesis. The Court considered that DePuy International Ltd. was the manufacturer and that Johnson & Johnson, S.A. had complied with its duty to inform the victim of the identity of the manufacturer in accordance with art. 3.3 of the Directive.

The Supreme Court rejected the application of "lifting of the corporate veil doctrine" to try to attribute liability to Johnson & Johnson, S.A., as manufacturer, for belonging to the same corporate group. The Spanish Supreme Court pointed out that Directive 85/374/EEC and Law 22/1994 on Defective Products establish a liability regime focussed on the manufacturer, except in specific cases where the distributor does not identify the manufacturer. Furthermore, the Court stressed that the existence of a group of companies does not automatically imply the distributor's liability for defective products manufactured by another company of the same group.

The Court also rejected the consideration of Johnson & Johnson S.A. as an "apparent producer", on the basis that the inclusion of Johnson & Johnson's name on the labels and containers of the prostheses did not create the appearance that Johnson & Johnson S.A. was the manufacturer. Furthermore, the Court ruled that "apparent producer" liability requires the company to hold itself out as such, which had not occurred in this case.

Finally, the judgment states that this product was not purchased directly by consumers, but by expert intermediaries (hospitals), so that there is no risk of creating confusion in the mind of the final consumer.

In conclusion, the Supreme Court upheld the judgment of the Court of Appeal from Barcelona, dismissing the appeals lodged by the injured party and holding that Johnson & Johnson, S.A. was not liable for the damage caused by the defective prosthesis.

## Conclusion

The above-mentioned judgment of the European Court of Justice decided on a preliminary ruling on the correct interpretation of the concept of "producer" according to Directive 85/374/EEC.

With this new European ruling the supplier who benefits from using the same name as the manufacturer -and therefore generating the same confidence in the consumer and accountable for the quality of the product- will also assume the responsibility of the one who *"holds himself out as the producer"* in the sense of art. 3.1 of the 85 Directive.

Given that European law prevails over national law, our Courts will have to adapt this new approach and apply the interpretation of the European Court of Justice of the European Union, equating the supplier to the manufacturer for liability purposes, when the names (of the companies and of the brand of the product) are the same or similar. This new perspective could generate new case law in Spain that will differ from the existing case law of our Supreme Court in this respect (as the Johnson & Johnson case).

Although the ruling of the European Court of Justice still refers to Directive 85/374/EEC, which has been derogated with the recent entry into force of the new Directive 2024/2853 on defective products liability, a different approach is not expected under the new regulation because the concept of "producer" is maintained as well as the subsidiary liability of the "supplier" in the case of not being able to identify the producer.



**Olivia Delagrange**

Partner

Dispute Resolution – Insurance

T +34 91 426 28 85

E [olivia.delagrange@simmons-simmons.com](mailto:olivia.delagrange@simmons-simmons.com)



**Francisco de Leon (España)**

Partner

Corporate & Commercial

T +34 91 426 61 03

E [francisco.deleon@simmons-simmons.com](mailto:francisco.deleon@simmons-simmons.com)



**Javier Montero**

Supervising Associate

Dispute Resolution – Insurance

T +34 91 426 24 24

E [javier.montero@simmons-simmons.com](mailto:javier.montero@simmons-simmons.com)



**Rocio Barrero**

Supervising Associate

Dispute Resolution

T +34 91 426 29 72

E [rocio.barrero@simmons-simmons.com](mailto:rocio.barrero@simmons-simmons.com)



**Paloma Sanchez-Fayos**

Associate

Corporate & Commercial

T +34 91 426 29 36

E [paloma.sanchez-fayos@simmons-simmons.com](mailto:paloma.sanchez-fayos@simmons-simmons.com)



**Pedro Suarez**

Associate

Dispute Resolution

T +34 91 426 26 52

E [pedro.suarez@simmons-simmons.com](mailto:pedro.suarez@simmons-simmons.com)