

THE TUNISIA BEACH SHOOTING ENQUIRY & INDEMNITIES (PART 6)

Dear FEDHASA Member,

The captioned matter has made waves in the industry as it has been suggested in the inquiry that operators & even venues may end up being liable!!

That is a scary thought so I have written a series of brief notes on preventative measures if such a (however remote) possibility were to become reality - this is the 6th of 7 inserts

What about **insurance**?

- All travelers should be obliged to pay for comprehensive insurance cover including such irregular but extremely expensive events as repatriation of mortal remains
- Each the travel agent, tour operator and venue should discuss their particular activities and exposure with their brokers and ensure the widest possible cover is provided for
- Cover for liability in terms of Section 61 of the CPA is extremely important - see details below
- The good news is that if the travel agent, tour operator and venue take the steps I have suggested above, their risk profile should be reduced materially and they should be able to negotiate better deductibles and premiums

Liability in terms of **section 61 of the CPA** could arise from one of the following:

- 'Unsafe goods'
- '**Product failure, defect or hazard** in any goods'
- '**inadequate instructions or warnings** provided to the consumer pertaining to any hazard arising from or associated with the use of any goods'

Why is it **serious and absolutely imperative to not only discuss your exposure with your insurance broker** but also to **review your contracts with third party suppliers** (and include back-to-back indemnities) of goods?

- The liability is **absolute** i.e.
- Liability is not limited to the '*producer, importer, distributor or retailer*' – **includes e.g. an adventure tourism operator providing a faulty quad bike/canoe or an event organizer arranging a conference at a venue where a chair collapses and the person is seriously injured:**

'A supplier of services who, in conjunction with the performance of those services, applies, supplies, installs or provides access to any goods, must be regarded as a supplier of those goods to the consumer, for the purposes of this section'

- The **nature of damage** ('harm') that made be claimed for is quite startling & it includes the following:
 - (a) the death of, or injury to, any natural person;
 - (b) an illness of any natural person;
 - (c) any loss of, or physical damage to, any property, irrespective of whether it is movable or immovable; and

(d) any economic loss

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