

THE SUPREME COURT OF APPEAL
REPUBLIC OF SOUTH AFRICA
MEDIA STATEMENT – CASE HEARING IN SUPREME COURT OF APPEAL

**Price Waterhouse Coopers Inc and others v
National Potato Co-Operative Ltd**

Supreme Court of Appeal -448/02

Hearing date: 11 May 2004

Judgment date: 1 June 2004

Champerty – an agreement in terms of which a person provides a litigant with funds to litigate in return for a share of the proceeds of the litigation is not contrary to public policy or void - illegality of such agreement not a defence in the litigation - courts empowered to prevent abuse of process despite right of access in s 34 of Constitution - special order or costs against attorney ignoring agreements about record.

Media Summary of Judgment

From: The Registrar, Supreme Court of Appeal

Date: 1 June 2004

Status: Immediate

Please note that the media summary is intended for the benefit of the media and does not form part of the judgment of the Supreme Court of Appeal

**PRICE WATERHOUSE COOPERS INC AND OTHERS v NATIONAL
POTATO CO-OPERATIVE LTD**

The Supreme Court of Appeal held today (Tuesday, 1 June 2004) that an agreement in terms of which a person provides a litigant with funds to litigate in return for a share of the proceeds of the litigation is not contrary to public policy and void. It found accordingly that the agreement in terms of which Farmers Indemnity Fund (Pty) Ltd provided financial assistance to the National Potato Co-operative Ltd (NPC) to enable NPC to prosecute its action for damages against Price Waterhouse Coopers Inc and its predecessors (PWC), in return for 45 per cent of the proceeds of the action, is not unlawful and accordingly does not constitute a defence to NPC's claim. NPC instituted an action for damages against PWC claiming the sum of R283 million (it is now R353 million). NPC alleged

that PWC had breached the contracts in terms of which they were appointed as the auditors of the NPC during the years 1983-1998. PWC raised the defence that such an agreement, known as a *pactum de quota litis* or a champertous agreement, is contrary to public policy and void and that the court should not permit the action to proceed or grant the relief claimed by NPC. The Supreme Court of Appeal found that public policy does not prohibit such an agreement and that in any event, the illegality of the agreement would not be a defence to NPC's claim for damages.

The Supreme Court of Appeal consequently dismissed PWC's appeal against the finding of the court below that the agreement is not illegal and therefore does not constitute a defence to the claim.