



**British Institute of  
International and  
Comparative Law**

# Product Liability Forum Annual Review 2017

Product Liability Forum

## Product Liability Forum : Annual Review 2017

**Director:** Duncan Fairgrieve

<http://www.biicl.org/plf>

The objective of the Product Liability Forum is to allow for the practical application of policy and developments in product liability and safety law to be considered by leading lawyers in private practice, industry, academia, regulatory bodies and senior business managers, consumer representatives, public servants, public affairs professionals and other specialist practitioners. Its role is to analyse and improve the conduct of policy and practice in the spheres of product liability, product safety and mass torts.

The academic credentials of the Product Liability Forum set it apart from other bodies. It is not designed as a lobby group, nor is it to be identified with any particular perspective or sector. Mr Justice Burton, who gave judgment in the leading decision on product liability in *A v National Blood Authority*, has written that:

*‘The British Institute of International and Comparative Law has been in the forefront of debate in the field of product liability, organizing conferences from which no self-respecting practitioner or academic in the area could afford to be absent.’*

(In Duncan Fairgrieve, *Product Liability in Comparative Perspective* (CUP, Cambridge, 2005)).

### Members of the Product Liability Forum include:

4 New Square	Arnold & Porter LLP
Arthur Cox	BLM
Burness Paull LLP	Freshfields Bruckhaus Deringer LLP
Geldards LLP	Henderson Chambers
Herbert Smith Freehills LLP	Hogan Lovells LLP
Kennedys LLP	Leigh Day
McCann FitzGerald	Outer Temple Chambers
Serjeants’ Inn Chambers.	Shook Hardy & Bacon LLP
Tripp Haston, Bradley, Arant, Boult, Cummings LLP	Gerard McDermott QC, Outer Temple Chambers
Duniya Okada	Marcus Pilgerstorfer, 11 KBW

## **Honorary Members:**

Professor Richard Goldberg  
Professor Geraint Howells  
Professor Mark Mildred  
Professor Eleonora Rajneri  
Professor Erdem Bueyueksagis

## **Benefits of Membership**

- An invitation to exclusive Forum events. These are CPD-accredited.
- Access to a web-based database of legislation and judicial decisions on product liability, which is regularly updated, authoritative and user-friendly, including analysis from a Europe-wide network of academics and practitioners. Members of the Forum are allowed exclusive access to the legal materials (statutes, regulations, decisions etc) in their original language, and in a translated summary. Exclusive access is granted to Members for access to the analytical materials. The database covers all relevant legal sources applying to product liability in the relevant countries, whether that be legislation, regulations or case law. It is regularly updated whenever new information becomes available. National experts alert the team of new developments within their country.
- The opportunity to participate in an independently-run Forum that aims to influence policy and which provides an arena for ongoing and constructive debate with regulators and other decision-makers.
- The opportunity to act as speakers at both PLF and public events.
- Designated PLF representatives able to attend public BIICL standard evening events (2-3 hours) free of charge. Attendance to all other public events (such as half-day and day conferences) at a preferential rate.

## **Product Liability Research**

The status of the Product Liability Forum as a leader in the product liability and safety area has been recognized by the European Commission which has regularly requested our participation in the review process of the Product Liability Directive. In the current review of the Product Liability Directive underway, the Product Liability Forum was asked by the European Commission to participate in their Fifth Review of the Directive, and the PLF was duly involved with that process, liaising with the Commission's contractor EY Law, facilitating the involvement of the PLF members in the review process, and organising a joint stakeholder meeting with the European Commission in June 2017.

## Product Liability Database

The Forum continues to run an innovative web-based database of legislation and judicial decisions on product liability, aiming to bring together all judgments under the European Product Liability Directive in all the Member States. Each country report includes an analysis of domestic tort and contract law, the relevant procedural background, as well as the implementation of the Directive. This is then supplemented by case reports of all the major decisions in the country under the implemented Directive. Commentary on each decision is provided by a team of national experts drawn from both academia and practice. This is a major research effort; no similar tool exists. This database is viewable from the PLF webpage (members' access only):

<http://www.biicl.org/plf/database>

The PLF Database is now considered as an essential reference point for information on comparative product liability law. As already noted, the European Commission referred to the Database in its Fourth Review of the Product Liability Directive. The Database has been drawn upon extensively in academic work, such as the leading commentary *The Law of Product Liability*, edited by Geraint Howells, and published by Butterworths (2<sup>nd</sup> edition, 2007).

## Forum Events

Over the past year, a number of seminars have been organized under the aegis of the Forum, bringing together practitioners, academics and policymakers to examine the practical application of policy and developments in product liability and safety law.

During 2016 / 2017, we have welcomed many guest speakers from the UK and abroad, including distinguished speakers from :

- **public sector and the judiciary** : Mr Justice Stuart-Smith ; Hans Ingels, DG for Internal Market, Industry, Entrepreneurship and SMEs, European Commission ; Dr Ian Hudson, Chief Executive of the MHRA; Melissa Coutinho, Senior Lawyer, MHRA Nutrition & EU Team, Government Legal Department ;
- **academia** : Professor Jane Stapleton, Christ's College, Cambridge ; Professor Emily Jackson, LSE ; Professor Peter Rott, University of Kassel, Germany; Professor Eleonora Rajneri, Università del Piemonte Orientale, Italy; Dr Matt Dyson, Corpus Christi College, Oxford ; Professor Gilles Pillet, ESCP Europe ; Professor Maxi Scherer, Queen Mary University of London ; Professor Erdem Buyuksagis, University of Fribourg, Switzerland; Professor Astrid Stadler, University of Konstanz;
- **distinguished foreign colleagues** : Mark Behrens, Shook Hardy Bacon Washington; Pauline Faron, Hogan Lovells Paris; Marie Bresson, DLA Piper Paris ; Charles Demoulin, Deminor Recovery Services Brussels; Dr. Ariel Flavian, Herzog Fox & Neeman Israel ; Ludger Giesberts, DLA Piper ; Dimitri Lecat, Freshfields Bruckhaus Deringer Paris ; Christian Busca, EY Law, Milan.

The following Forum seminars have taken place this year:-

**17 March 2016. PLF Seminar : Defining Defect. Speakers included** Professor Erdem Buyuksagis, University of Fribourg, Switzerland; Professor Eleonora Rajneri, Università del Piemonte Orientale, Italy; Professor Peter Rott, University of Kassel, Germany.

**9 June 2016. PLF Seminar on the topic of EU Food Law : Regulatory and Liability Perspectives.** Seminar organised jointly with the Food Law Group, and covering the issue of "What Has the EU Done for Food Law?" Speakers included Claire Andrews, Gough Square Chambers ; Sian Edmunds, Burges Salmon; Pauline Faron, Hogan Lovells Paris; Brian Kelly, Covington & Burling.

**2 November 2016. PLF Seminar with the MHRA on the topic of “Emerging Risks in Healthcare Law.”** Seminar organised jointly with the MHRA, examining important emerging risks in relation to medicines and the law, with Dr Ian Hudson, Chief Executive of the MHRA in the Chair, and including speakers Melissa Coutinho, Senior Lawyer, MHRA Nutrition & EU Team, Government Legal Department, Dr Peter Feldschreiber, 4 New Square; Professor Emily Jackson, LSE.

**15 February 2017. PLF Seminar on the High Court judgment of Wilkes v DePuy.** The seminar covered a variety of themes relating to this topic, including issues such as risk-benefit analysis, relevance of avoidability, standards, regulatory compliance and learned intermediaries with Mr Justice Stuart-Smith in the Chair, and including speakers Dr Matt Dyson, Corpus Christi College, Oxford; Malcolm Sheehan QC, Henderson Chambers; Professor Jane Stapleton, Christ's College, Cambridge.

**14 June 2017. PLF Seminar with the European Commission on Reviewing the Product Liability Directive.** The seminar focussed on the Commission's current review of the Product Liability Directive, which includes a formal evaluation designed to examine the key features of the Directive -defect, product, defences etc- to determine whether they "are still fit for purpose", as well as whether the Directive is adapted to advances in technology. Speakers included Hans Ingels, DG for Internal Market, Industry, Entrepreneurship and SMEs, European Commission; Christian Busca, EY Law, Milan; Mark Behrens, Shook Hardy Bacon; Rod Freeman, Coolley LLP; Marcus Pilgerstorfer, 11 KBW.

## Public Events

**26 September 2016.** Seminar on the topic of “Where to Litigate Collective Claims?”, with Professor Astrid Stadler, University of Konstanz, in the Chair, including speakers Boris Bronfentrinker, Quinn Emanuel Urquhart & Sullivan, LLP ; Teresa Hitchcock, DLA Piper, LLP ; Stephen Wisking, Herbert Smith Freehills, LLP.

**23 November 2016.** Seminar on the topic of “The Global Class – Collective Redress Procedures across the Globe” at the British Council Building at les Invalides, Paris, including speakers Marie Bresson, DLA Piper ; Charles Demoulin, Deminor Recovery Services ; Dr. Ariel Flavian, Herzog Fox & Neeman Israel ; Ludger Giesberts, DLA Piper ; Dimitri Lecat, Freshfields Bruckhaus Deringer ; Gerard McDermott QC, Outer Temple Chambers ; Hugh Mercer QC, Essex Court Chambers ; Professor Gilles Pillet, ESCP Europe ; and Professor Maxi Scherer, Queen Mary University of London.

## Research activities

A number of books, journal articles and book chapters have been published recently :-

Duncan Fairgrieve, Comparative law in Practice: *Contract Law in a Mid-Channel Jurisdiction* (Hart Publishing, 2016).

D.Fairgrieve et al, “Product Liability Directive” in P.Macnikowski, *European Product Liability : An Analysis of the State of the Art in the Era of New Technologies* (Intersentia, 2017).

Erdem Büyüksagis, Ina Ebert, Duncan Fairgrieve, Renée Charlotte Meurkens, and Francesco Quarta, “Punitive Damages in Europe and a Plea for the Recognition of Legal Pluralism” [2016] EBLR 137.

Duncan Fairgrieve (with François Lichère), “La Responsabilité administrative en droit anglais” in A.Antoine and T.Olsen, *La Responsabilité de la Puissance Publique en Droit Comparée* (Paris, Société de Législation Comparée, 2016).

Duncan Fairgrieve, “Questionnaire sur l’évaluation du prejudice: droit anglais” in A.Antoine and T.Olsen, *La Responsabilité de la Puissance Publique en Droit Comparée* (Paris, Société de Législation Comparée, 2016).

Duncan Fairgrieve (with Mattias Guyomar), “Etat de Droit and Rule of Law : Comparing Concepts” in A.Lévi, *Les Libertés en France et au Royaume Uni : Etat de Droit, Rule of Law* (Paris, Société de Législation Comparée, 2016).

Duncan Fairgrieve and F.Lichère, ‘The Liability of Public Authorities in France’ in K Oliphant (ed.), *The Liability of Public Authorities in Comparative Perspective* (Intersentia 2016).