



**British Institute of  
International and  
Comparative Law**

# Product Liability Forum Report 2008/2009

Product Liability Forum

Dear PLF Member,

The Forum Year 2008/2009 has now come to an end and we would like to take this opportunity to thank you for your ongoing support.

We can report that during this current year a number of lively PLF Seminars took place during, on topics as diverse as:

- The Reform of Group Actions under English Law
- Regulation and Licensing of Medicines - Reforms in Light of Seroxat
- Product Liability and Mass Torts in a Global Market Place;
- Reforming Group Action Procedures: the Civil Justice Council Report on Collective redress
- The Future of Mass Tort Claims

These seminars brought together guest speakers from the UK and abroad, and we were particularly fortunate this year to be addressed by many distinguished public sector officials including:

- **Dame Deirdre Hutton**, Chair of the Food Standards Agency
- **Diana Wallis MEP**, Vice President of the European Parliament
- **Mr Justice Cranston**
- **Professor Kent Woods**, Chief Executive of the MHRA
- **Robert Musgrove**, CEO, Civil Justice Council
- **Professor Sir Alasdair Breckenridge CBE**, Chairman, Medicine and Health Regulatory Agency (MHRA)

If you were unable to attend any of these events, the seminar papers & materials are available for download on the members-only resources page of our website ([www.biicl.org/plf](http://www.biicl.org/plf)). Do not hesitate to contact us if you should require assistance in accessing these.

We continue to produce the Product Liability Alerter with our partner Linex Legal, with a monthly compilation of articles on topical issues, reaching product liability practitioners all around the world. Further details can be found on the Linex Legal website: [www.linexlegal.co.uk/productliability](http://www.linexlegal.co.uk/productliability). All members of the PLF are automatically added to the email distribution of the Product Liability Alerter. Do let us know if you would like any of your colleagues to be added to the distribution list.

We are already busy preparing events for the 2009/2010 Forum Year. As ever, we would be most grateful for your feedback on the last year and suggestions for the coming year.

We would like to take the opportunity to alert you to a forthcoming evening seminar to take place on 18 November 2009, at which *Professor Christian von Bar* will be speaking about the ongoing efforts towards the harmonisation of European Civil law, and the recent publication of the Draft Common Frame of Reference, examining whether this could provide “a model Code for Europe”!

Yours faithfully,

Duncan Fairgrieve,  
Director, Product Liability Forum

## PLF Report 2008/2009

At a glance:

### Past Events

#### (i) Exclusive Forum Events

- 23 October 2008: Regulation and Licensing of Medicines - Reforms in Light of Seroxat
- 1 December 2008: Reforming Group Action Procedures: the Civil Justice Council Report on Collective redress
- 6 February 2009: The Future of Mass Tort Claims
- 28 April 2009: Recent developments in health care product liability - The impact of *Wyeth v Levine*

#### (ii) Public Events organized by the PLF and Tort Law Centre

- 13 March 2009: EC Public Procurement Law: Damages as an effective remedy?
- 11 June 2009: 2009 Conference on the Law of Food and Drink
- 30 June 2009: Credit Crunch Litigation: Offshore, Domestic and International Perspectives

### Research Activities

- Product Liability Database
- Publications

### Membership

### Product Liability Alerter

## Past Events

### Exclusive PLF Events:

#### 16 April 2008: **The Reform of Group Actions under English Law.**

Chair:

**Professor Geraint Howells**, Lancaster University

Speakers:

- **Diana Wallis** MEP, Vice President of the European Parliament
- **Cornelia Kutterer**, Senior Legal Advisor, The European Consumers' Organisation (BEUC)
- **Stijn Franken**, Nauta Dutilh, and **Dr Ianika Tzankova**, Nauta Dutilh/Tilburg University
- **Rob Murray**, Managing Partner, London Office, Cohen Milstein Hausfeld & Toll PLLC

#### 23 October 2008: **Regulation and Licensing of Medicines - Reforms in Light of Seroxat**

Speakers:

- **Professor Kent Woods**, Chief Executive of the MHRA
- **Professor Mark Mildred**, Nottingham Law School
- **Professor Emily Jackson**, LSE
- **Dr Richard Goldberg**, Aberdeen University
- **Shane Sayers**, Kennedys

This seminar was organized with the MHRA on the topic of pharmaceutical regulation and medicines licensing. The aim of our seminar was to look in a dispassionate way at broader issues arising from the Seroxat investigation, in particular the inadequacies of the legislative framework & ways in which this can be ameliorated. This was a rare opportunity to discuss issues relating to the regulation of medicines with the Chief Executive of the MHRA, Professor Kent Woods.

#### 1 December 2008: **Reforming Group Action Procedures: the Civil Justice Council Report on Collective redress**

Chair:

- **Mr Justice Cranston**

Speakers:

- **Robert Musgrove**, CEO, Civil Justice Council
- **Professor Adrian Zuckerman**, Professor of Civil Procedure at Oxford University
- **Professor Geraint Howells**, Lancaster University
- **Professor Rachael Mulheron**, Queen Mary College, University of London.
- **Simon Pearl**, Davies Arnold Copper

This seminar looked at the recommendations made by the Civil Justice Council in its recent report on the reform of collective redress. Co-authors Robert Musgrove of the CJC and Professor Rachael Mulheron joined a panel of experts examining the report in light of civil procedural reform in England and Wales, and the ongoing Europe initiatives.

6 February 2009: **The Future of Mass Tort Claims**

- **Donald F. Zimmer**, Jr, King & Spalding
- **Professor Ina Ebert**, Munich Re
- **Rod Freeman** and **Marion Palmer**, Lovells

With comments from:

- **Marcus Pilgerstorfer**, Old Square Chambers
- **Duncan Fairgrieve**, British Institute of International and Comparative Law, 1 Crown Office Row

28 April 2009: **Recent developments in health care product liability - The impact of *Wyeth v Levine***

Chair

- **Professor Sir Alasdair Breckenridge CBE**, Chairman, Medicine and Health Regulatory Agency (MHRA)

Speakers:

- **Tripp Haston**, Bradley Arant Boult Cummings LLP
- **Andrew Baum**, Morgan Stanley
- **Professor Dr Ina Ebert**, Munich Re
- **Stefan Lenze**, Freshfields Bruckhaus Deringer LLP
- **Professor Mark Mildred**, Nottingham Law School

This seminar considered the latest developments in the area of healthcare product liability in the US and Europe. In the highly significant case of *Wyeth v Levine*, the US Supreme Court earlier this month held that a drug manufacturer may be liable for injuries caused by medicines even if they carry health warnings approved by the US Food and Drug Administration (FDA). A day after the decision, democratic lawmakers in both the House of Representatives and the Senate moved to propose new legislation that would make it easier to bring claims against manufacturers of medical devices. It is expected that these developments will contribute to rendering product liability litigation a continuing, and significant, risk to manufacturers of health care products. The impact of these developments is likely to reach beyond the US market, potentially giving fresh impetus to the pursuit of claims at a time when there has been a significant increase in the number of law suits being filed against pharmaceutical companies in Europe.

Public Events organized by the PLF and Tort Law Centre

On 13 March 2009, the Institute organised a very successful seminar on the topic of **EC Public Procurement Law: Damages as an effective remedy?** We were fortunate enough to have high-profile pan-European speakers including: **Konrad Schiemann**, Judge at the European Court of Justice; **Bernard Stirn**, Président of the Section du Contentieux, French Conseil d'Etat; **Professor Steen Treumer** from Copenhagen Business School, **Professor Dr. iur. Martin Burgi** from Ruhr-Universität Bochum, and **Professor Robert Caranta** from Turin University, which allowed for very interactive discussions & questions from an audience of over 120 delegates. Topics covered

included a review of the latest case law across Europe, views from the European Commission, conditions for claims, quantum, causation and loss of a chance.

On 11 June 2009, we ran in conjunction with Henderson Chambers and Freshfields the **2009 Food and Drink Law Conference**. Speakers included: **Dame Deirdre Hutton**, Chair of the Food Standards Agency, **Dr David Atkins**, Head of the Chief Scientist Team at the Food Standards Agency, **David Herman**, Senior Counsel, Grocery Manufacturers Association US, **Edward Mitchell**, Senior Underwriter Product Recall, XL Insurance Company Ltd, **Fiona Anderson**, Managing Director of The Food & Drink Forum. This conference brought together industry members, lawyers, insurers and regulators to discuss the practice and principles of food and drink law. This conference focused on how the sector is affected by developments in: consumer information and product labelling regulation; consumer litigation and collective redress; trends in regulatory enforcement; and insurance, recalls and risk management. The papers for that event are available on the Biicl website exclusively for members.

On 30 June 2009, we ran a successful conference on the topic of Credit Crunch Litigation: Offshore, Domestic and International Perspectives. This brought together bankers, litigators & academics from around the world to examine ongoing domestic, offshore and international litigation. The papers for that event are available on the Biicl website exclusively for members. Speakers included: **Michael Swainston QC**, Brick Court Chambers; **Professor Kern Alexander**, University of Cambridge; **Richard Andrews**, KPMG LLP; **Javier Cremades**, Cremades & Calvo-Sotelo, Madrid, Chairman of the Global Alliance of Law Firms: Madoff Case; **Tom Custance**, Fox Williams LLP; **Richard East**, Quinn Emanuel Urquhart Oliver & Hedges LLP; **Dr Duncan Fairgrieve**, British Institute of International and Comparative Law; **Michael J Fay**, Ogier; **Gaetano Iorio Fiorelli**, Baker & McKenzie, Milan; **David J. Grais**, Grais & Ellsworth LLP; **Julien Hay**, avocat à la cour, Hay & Mendelsohn France; **Peter Hayden**, Mourant du Feu & Jeune, Cayman Islands; **Gaytri Kachroo**, McCarter & English LLP; **Stephen L. Ratner**, Proskauer Rose LLP; **Daan F. Lunsingh Scheurleer**, NautaDutilh, Amsterdam; **Professor Davide Sola**, ESCP Europe; **Professor Michael Troege**, ESCP Europe.

## Research Activities

- **Product Liability Database**

The Product Liability Database continues to be developed. We are currently putting in place a search function for the Database so as to allow for greater ease of access for users in identifying relevant materials.

- **Publications**

#### *Product Liability & Safety*

Duncan Fairgrieve has been working on a number of product liability-related papers. He is currently undertaking a contribution to the *International Product Law Manual* produced by Kluwer Law International.

#### *Comparative Law*

Dr Fairgrieve has also recently co-edited the book *Tom Bingham and the Transformation of the Law : A Liber Amicorum*, with Mads Andenas (eds), (OUP, 2009). Tom Bingham is among the most influential judges of the 20th century, having occupied in succession the most senior judicial offices, Master of the Rolls, Lord Chief Justice and then Senior Law Lord. His judicial and academic work has deeply influenced the development of the law in a period of substantial legal change. In particular his role in establishing the new UK Supreme Court, and his views on the rule of law and judicial independence have left a profound mark on UK constitutional law. He has also been instrumental in championing the academic and judicial use of comparative law, through his judicial work and involvement with the British Institute of International and Comparative Law.

This book edited by Mads Andenas and Duncan Fairgrieve brings together over fifty essays from colleagues and those influenced by Lord Bingham, from across academia and legal practice. The essays survey Lord Bingham's pivotal role in the transformations that have taken place in the legal system during his career.

#### *Civil Procedure*

The Product Liability Forum has followed closely the ongoing debate on the reform of civil procedure at a domestic and international level. The reform of group procedures for damages actions is a particularly topical one with developments at both European and Member State level. The Forum has organized a series of events on this topic and conducted research on the comparative and European perspective.

Duncan Fairgrieve and Geraint Howells have jointly produced a paper entitled "Collective Redress Procedures – European Debates" which compares and contrasts the position in a number of European countries and assesses the role of the European Union in both promoting reforms at a supranational level and also indirectly fostering developments in Member States.

This paper has recently been published in the journal *International and Comparative Law Quarterly* as follows: "Collective Redress Procedures – European Debates" (2009) 58 ICLQ 379 – 409.



## Membership

The Product Liability Forum counts among his Members:

- Four New Square
- Arnold & Porter LLP
- Ashurst
- Berrymans Lace Mawer
- Clifford Chance
- Covington & Burling LLP
- Davies Arnold Cooper
- Dechert LLP
- Freshfields Bruckhaus Deringer
- Gough Square Chambers (Claire Andrews)
- Henderson Chambers
- Herbert Smith
- Kennedys
- Irwin Mitchell
- Lovells
- Old Square Chambers
- McGrigors
- Skadden, Arps Slate Meagher and Flom LLP
- Smith & Partners
- Reynolds Porter Chamberlain LLP
- Sidley Austin LLP
- Shook Hardy & Bacon LLP

## Benefits of Full Membership:

- 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 suggest research or other work to be carried out;
- An invitation to exclusive Forum events - these are all CPD points regulated events.
- The opportunity to recommend guest speakers to be invited to meetings of the Forum
- 12 month's subscription to the Product Liability Alerter in partnership with Linex Legal
- Access to a web-based database of legislation and judicial decisions on Product Liability which is regularly updated, authoritative and user-friendly, and includes analysis from a European-wide network of academics and practitioners;
- Individual BIICL membership benefits for three nominated representatives of each Forum member;
- The opportunity to act as speakers at both the PLF and Public events.

## Product Liability Alerter

The Product Liability Alerter, a co-operation between the PLF and Linex Legal, is proving a big success. Every two weeks this product liability devoted email service reaches over **1500 recipients** around the globe, including law firms in China, South Korea, Japan, Australia and South Africa.

The idea behind the alerter is a merger of the practice and academic legal worlds with a strong international presence. Apart from providing our members with valuable resources and legal updates, the alerter also fulfills an important publicity function for the Forum and its members.