



**British Institute of
International and
Comparative Law**

Product Liability Forum Annual Review 2014

Product Liability Forum

Product Liability Forum : Annual Review 2014

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<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	British American Tobacco
Berrymans Lace Mawer LLP	Clifford Chance
DAC Beachcroft LLP	Fox Hartley Solicitors
Freshfields Bruckhaus Deringer LLP	Herbert Smith Freehills LLP
Hogan Lovells LLP	Kennedys
Shook Hardy & Bacon LLP	Claire Andrews, Gough Square Chambers
Serjeants' Inn Chambers	Tripp Haston, Bradley, Arant, Boulton, Cummings LLP.
Marcus Pilgerstorfer, 11 KBW	

Honorary Members:

Professor Richard Goldberg
Professor Geraint Howells
Prof Mark Mildred
Prof Eleonora Rajneri

Benefits of Membership

- An invitation to exclusive Forum events. These are CPD-accredited.
- 12 months' subscription to the Product Liability Alerter.
- 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. A recent example of this was the PLF response to the European Commission questionnaire on the application of the Product Liability Directive.
- The opportunity to act as speakers at both PLF and public events.
- Attendance at a preferential rate to all public events related to the field.

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 requested our participation in the review process of the Product Liability Directive. In 2010, the Product Liability Forum was asked by the European Commission to participate in their Fourth review of the Directive, and the PLF submitted, in February 2011, a response to the Commission Questionnaire. Reference was duly made in the ensuing Commission report to the work of the Product Liability Forum, including the Product Liability Database.

We have also been working with the European Council E-Justice Working group on the Product Liability Database (see below).

We also produce, together with our partner Linex Systems, the Product Liability Alerter, a fortnightly e-mail alerter which examines the latest developments in the sector and is sent out to thousands of in-house counsel specializing in this area, including Forum members. Every two weeks this product liability updater 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.

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>

In May 2013, the PLF Database was showcased at a meeting of the European Council E-Justice Working group, bringing together representatives from the European Council and from Member States across Europe and received very positive feedback after that presentation.

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 (2nd 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 2013 / 2014, we have welcomed many guest speakers from the UK and abroad, including distinguished speakers from the public sector (Peter Bischoff-Everding, European Commission, DG SANCO; Victoria Griffiths, Department for Business Innovation and Skills; Melissa Coutinho, MHRA; Professor Sir Alasdair Breckenridge, former Chairman, MHRA; Sir Gordon Duff, current Chairman, MHRA; June Raine, head of Pharmacovigilance at the MHRA; John Wilkinson, Director of Devices, MHRA; Diana Wallis, President of the European Law Institute and former Vice-President of the European Parliament), academia (Dr Francesco Quarta, University of Bologna; Prof Erdem Büyüksagis Fribourg University, Switzerland; Prof Richard Goldberg, Durham University; Professor Mark Mildred, Nottingham Law School), as well as distinguished foreign colleagues (Professor Ina Ebert, Munich Re ; Wendy Fleishman, Lief Cabraser New York; Marco Bona, Studio Legale Bona Oliva & Associati, Turin; Professor Alfred H. Meyer, German lawyer at Meyer Rechtsanwaelte; Pamela Furman Forrest, King & Spalding, Washington DC).

The following Forum seminars have taken place:-

19 March 2013: Emerging Risks in Product Liability and Mass Tort Cases. Speakers included Professor Ina Ebert, Munich Re ; Tim Smith, CBM International Lawyers LLP; Samuel Sebree, Shook Hardy Bacon.

Joint PLF Event with MHRA. 10 June 2013. Chaired by Sir Gordon Duff, Chairman, MHRA. Speakers included John Wilkinson, Director of Devices, MHRA ; Pamela Furman Forrest, King & Spalding, Washington DC, an expert on US Devices regulations & liability.

2 October 2013: Product Safety and Market Surveillance Package: Cross Perspectives on the Commission Proposal, including Claire Taylor, Hogan Lovells, London Office; Peter Bischoff-Everding, European Commission, DG SANCO; Professor Geraint Howells, University

of Manchester; Sylvie Gallage-Alwis, Hogan Lovells, Paris Office; Victoria Griffiths, Department for Business Innovation and Skills (BIS).

12 November 2013: Oral Contraceptives: Medical, Regulatory and Legal Perspectives. In the Chair, Professor Sir Alasdair Breckenridge CBE. Speakers included Peter Feldschreiber, MHRA; 4 New Square; Wendy Fleishman, Lieff Cabraser New York; Professor Phil Hannaford, NHS Grampian Chair of Primary Care and Vice Principal of Research and Knowledge Exchange, Aberdeen University; Professor Mark Mildred, Nottingham Law School; Dr June Raine, head of Pharmacovigilance at the MHR.

February 2014: Accountability Strategies in relation to Regulatory and Product Liability issues with Food and Drink Products. In the chair was Roger Gardner, former Legal Director for General Mills Europe. Speakers included Professor Alfred H. Meyer, German lawyer at Meyer Rechtsanwalte; William Hibbert of Henderson Chambers.

20 March 2014 : Punitive Damages in Europe. In the chair is Dr Solène Rowan, LSE. Speakers included : Prof. Ina Ebert (Munich Re), Tim Cowen (Sidley Austin), Dr Francesco Quarta (University of Bologna) and Prof Erdem Büyüksagis (Fribourg University, Switzerland).

8 July 2014 : Rapid Reaction Seminar with the MHRA and the Food Law Group on the High Court Glucosamine Judgment. Speakers included Melissa Coutinho, MHRA and Brian Kelly, Covington & Burling.

Public Events

11 June 2013. Righting Private Wrongs: Competition Law, Investor Claims and Mass Litigation in the EU.

14 Oct 2013. The Commission Recommendation on Collective Redress. Speakers included Alexander Layton QC, 20 Essex Street; David Burstyner, Omni Bridgeway, Litigation Funder; Diana Wallis, President of the European Law Institute and former Vice-President of the European Parliament; Georg Kodek, University of Vienna and Austrian Supreme Court; Hélène van Lith, Sciences Po, Paris ; Jacek Garstka, European Commission ; John Sorabji, the Legal Adviser to the Master of the Rolls ; Kate Wellington, Which? ; Professor Astrid Stadler, University of Konstanz, University of Rotterdam ; Rob Murray, Mishcon de Reya; Vincent Smith, Sheppard & Smith, British Institute of International and Comparative Law.

15 January 2014. BIICL Rapid Response Seminar on Suing the Military: Tracing the Contours of Legal Liability of the Armed Services. Speakers included Dr Jonathan Morgan, Corpus Christi College, Cambridge University; Robert Weir QC, Devereux Chambers.

28 Jan 2014. Latest Developments in the Law of Reparations. Speakers included Peter Van der Auweraert, Head of the Land, Property and Reparations Division, International Organization for Migration (IOM); Dr Francesca Capone, Sant' Anna School of Advanced Studies; Carla Ferstman, Director, REDRESS; Daniel Leader, Leigh Day & Co.

Research activities

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

Duncan Fairgrieve, "Suing the military : the justiciability of damages claims against the armed forces" (2014) 73 *Cambridge Law Journal* 18.

Duncan Fairgrieve, "A Fair Price for Violations of Human Rights?" (2014) 130 *Law Quarterly Review* 47 (with M.Andenas and E.Bjorge)

« Vers un rapprochement des modalités de rédaction des décisions de justice en Europe ? Les enseignements tirés de la comparaison franco-britannique » *Revue du Droit Public* 2014.755, with A.Antoine.

"Simply a Matter of Style? Comparing Judicial Decisions" (2014) *European Business Law Review* 361 (with Mads Andenas).

Duncan Fairgrieve, « Nouvelles de l'Etranger » (2014) 1 *Journal de Droit de la santé et de l'Assurance Maladie* 1 ; « Regulatory Standards and Damages Liability » (2013) *Journal de Droit de la santé et de l'Assurance Maladie* 130.

Russell Weaver, Duncan Fairgrieve, and François Lichère, "The Creation of Transnational Administrative Structures Governing Internet Communication" (2013) 78 2 *Missouri Law Review* 527.

Duncan Fairgrieve, Review of Bell and Ibbetson, *European Legal Developments, The case of Tort*, in (2013) 4 *Revue Internationale du Droit Comparé*.

"The Product Liability Directive : Time to Get Soft" (2013) *Journal of European Tort Law* 1 (with Geraint Howells, and Marcus Pilgerstorfer).

'The Liability of Public Authorities in France' in K Oliphant (ed.), *Public Authority Liability in Comparative Perspective* (Intersentia 2014, forthcoming), with F Lichere.

There are also a number of ongoing projects. Duncan Fairgrieve is working with Richard Goldberg on a 3rd edition of the standard text *Product Liability* to be published by OUP. He is also the country rapporteur for France in the Common Core project on Product Liability, which will result in a combined publication to be published by Cambridge University Press. He is also the country rapporteur for France in the Public Authority Liability project run by the European Group on Tort Law.