



**British Institute of  
International and  
Comparative Law**

**Product Liability Forum**  
**Annual Review 2013**

## Product Liability Forum : Annual Review 2013

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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:

Arnold & Porter LLP	Arthur Cox
British American Tobacco	Berrymans Lace Mawer LLP
Clifford Chance	DAC Beachcroft LLP
Freshfields Bruckhaus Deringer LLP	Herbert Smith Freehills LLP
Hogan Lovells LLP	Kennedys
Reynolds Porter Chamberlain LLP	Shook Hardy & Bacon LLP
Serjeants' Inn Chambers	Claire Andrews, Gough Square Chambers
Tripp Haston, Bradley, Arant, Boult, 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 in 2011 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 Legal, 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): [www.biiicl.org/plf](http://www.biiicl.org/plf).

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.

### **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 2012 / 2013, we have welcomed many guest speakers from the UK and abroad, including distinguished speakers from the public sector (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), academia (Dr Richard Goldberg, Durham University, Professor Mark Mildred, Nottingham Law School), as well as distinguished foreign colleagues (Tim Smith, CBM International Lawyers LLP; Samuel Sebree, Shook Hardy Bacon; Marco Bona, Studio Legale Bona Oliva & Associati, Turin; José Luis Prieto, Freshfields Bruckhaus Deringer LLP Madrid).

The following Forum seminars have taken place:-

**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.

**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.

**20 November 2012: Thalidomide : Legal & Medical Perspectives.** Chaired by Professor Sir Alasdair Breckenridge CBE, Chairman, MHRA. Speakers included Dr Mike Emanuel, Centre for Health, Medicine and Society, Oxford Brookes University; Professor Mark Mildred, Nottingham Law School; Caroline Moore, HoganLovells; June Raine, head of Pharmacovigilance at the MHRA.

**Joint PLF Event with MHRA. 14 June 2012: Medical Devices Regulation & Liability.** Chaired by Professor Sir Alasdair Breckenridge CBE, Chairman, MHRA. Speakers included :

John Wilkinson, Director of Devices, MHRA; Anne Ware Kennedys; Dr Peter Feldschreiber, MHRA/4 New Square.

**Joint Meeting with The Food Law Group. 2 April 2012 : Comparative Perspectives on Food Regulation.** Speakers included : Claire Andrews, Gough Square Chambers; Gilles Boin, Hogan Lovells, France; Dr Barbara Klaus, Meyer Rechtenwaite, Italy; Levke Voss, Meyer Rechtenwaite, Germany.

**8 February 2012: Access to Justice in Product Liability Cases : European Comparisons.** Speakers included : Marco Bona, Studio Legale Bona Oliva & Associati, Turin; Stefan Lenze, British Institute of International and Comparative Law & Rechtsanwalt, Germany; Marta Otero Crespo, University of Santiago de Compostela, Spain; José Luis Prieto, Freshfields Bruckhaus Deringer LLP Madrid.

### **Public Events**

**21 May 2013. Going East: Product Liability in China.** This Conference organized jointly with Prof. Eleonora Rajneri, Università del Piemonte Orientale gathered European and Chinese specialists of Product Liability such as Prof. Gianmaria Ajani, University of Torino, Prof. Lihong Zhang, East China University of Political and Science and Law, Dr Shenkuo Wu, University of Verona, Dr. Paolo Beconcini, CBM International LLP, Beijing, Prof. Ignazio Castellucci, University of Trento and Prof. Geraint Howells, University of Manchester.

**20 March 2013 : The role of good faith in English contract law after Yam Seng PTE Ltd v International Trade Corporation Ltd,** chaired by Diana Wallis, former vice-president of the European Parliament. Speakers included : Professor Hugh Collins, London School of Economics ; Professor Roger Halson, University of Leeds ; Professor Dr Thomas Riehm, University of Marburg; Dr Duncan Fairgrieve, British Institute of International and Comparative Law.

**12 February 2013 : Settlements and Alternative Mechanisms in Collective Redress,** including Nicholas Blaney, Department for Business Innovation and Skills; Professor Richard Fentiman, University of Cambridge; Sandrine Giroud, Lalive, Geneva; Alexander Layton QC, 20 Essex Street; Dr Helene van Lith, Sciences Po Law School Paris; Paul Lomas, Partner, Freshfields Bruckhaus Deringer; Professor Rachael Mulheron, Queen Mary, University of London; Professor Astrid Stadler, University of Konstanz; University of Rotterdam.

**31 January 2013: Comparative Torts before the Courts,** chaired by Lady Justice Arden. Speakers included : Avvocato Marco Bona, Studio Legale Bona Oliva, Turin ; Professor Andrew Dickinson, Visiting Fellow, British Institute of International and Comparative Law; University of Sydney ; Marie Louise Kinsler, 2 Temple Gardens ; Maître Carole Sportes, Cabinet BOPS, Paris ;Robert Weir QC, Devereux Chambers.

### **Research activities**

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

- “The Product Liability Directive : Time to Get Soft” (2013) *Journal of European Tort Law* 1 (with Geraint Howells, and Marcus Pilgerstorfer).
- “Intent on making mischief : seven ways of using comparative law” in *P.G.Monateri, Methods of Comparative Law (Edward Elgar, 2012) with M.Andenas.*
- “Collective Redress Antitrust Proceedings” in M.Danov, F.Becker and P.Beaumont, *Cross-Border EU Competition Law Actions* (Hart, 2012).

The following books were also published :-

- Duncan Fairgrieve & Eva Lein (eds) *Extraterritoriality and Collective Redress* (OUP, 2012);
- D.Fairgrieve and F.Lichère (eds) *Public Procurement Law: Damages as an effective remedy* (November 2011 with Hart Publishing);
- D. Fairgrieve and RS Goldberg, *Product Liability* (OUP 3rd edition) *forthcoming*.
- A paperback version was published of the book edited by Duncan Fairgrieve (with Mads Andenas) on Tom Bingham and the Transformation of the Law : *A Liber Amicorum* (eds), (OUP, 2011).

There are also a number of ongoing projects. Duncan Fairgrieve is working with Richard Goldberg on a 3<sup>rd</sup> 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.

During the current year, a research project has been undertaken on product liability in China, which gave rise to a seminar in May 2013 entitled Going East: Product Liability in China. This will be followed by a publication, including contributions from Prof. Eleonora Rajneri, Università del Piemonte Orientale, Prof. Gianmaria Ajani, University of Torino, Prof. Lihong Zhang, East China University of Political and Science and Law, Dr Shenkuo Wu, University of Verona, Dr. Paolo Beconcini, CBM International LLP, Beijing, Prof. Ignazio Castellucci, University of Trento and Prof. Geraint Howells, University of Manchester.

A series of seminars have also been launched on the topic of European Private Law, for which Ghislain Guillaume is responsible. The first of these events on 31 January 2013 was on the topic of Comparative Torts before the Courts and was chaired by Lady Justice Arden. The second event in March 2013 was on *The role of good faith in English contract law after Yam Seng PTE Ltd v International Trade Corporation Ltd*, and was chaired by Diana Wallis, former vice-president of the European Parliament.