



**British Institute of  
International and  
Comparative Law**

# Product Liability Forum Annual Review 2012

Product Liability Forum

## Product Liability Forum : Annual Review 2012

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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
Ashurst	Berrymans Lace Mawer LLP
British American Tobacco	Clifford Chance
Covington & Burling LLP	DAC Beachcroft LLP
Four New Square	Freshfields Bruckhaus Deringer LLP
Henderson Chambers	Herbert Smith LLP
Hogan Lovells	Irwin Mitchell
Kennedys	Old Square Chambers
Reynolds Porter Chamberlain LLP	Shook Hardy & Bacon LLP

### Individual Members

- Claire Andrews, Gough Square Chambers
- Tripp Haston, Bradley, Arant, Boult, Cummings LLP.
- Marcus Pilgerstorfer, 11 KBW

## **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 report of the European Commission to work of the Product Liability Forum, including the Product Liability Database.

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 Tort Law Centre 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. We already have a number of countries online. This database is viewable from the PLF webpage (members' access only): [www.biicl.org/plf](http://www.biicl.org/plf).

## 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.

This year, we have welcomed many guest speakers from the UK and abroad, including :-

- distinguished speakers from the public sector : **Professor Sir Alasdair Breckenridge**, Chairman, MHRA; **Iram Akhtar**, Ministry of Justice; **John Wilkinson**, Director of Devices, MHRA;
- academia : **Professor Rachael Mulheron**, Queen Mary, University of London; **Professor Marta Requejo Isidro**, University of Santiago de Compostela, Spain; **Dr Francesco Quarta**, University of Salento, Lecce, Italy; **Professor Marco Bona**, Turin.
- foreign colleagues : **Avv Daniele Vecchi**, Gianni Origoni Grippo & Partners, Italy, **Professor Ianika Tzankova**, NautaDutilh; **José Luis Prieto**, Freshfields Bruckhaus Deringer LLP Madrid; **Dr Barbara Klaus**, Meyer rechtanwaite, Italy ; **Levke Voss**, Meyer Rechtanwaite, Germany.

The following seminars have taken place:-

### ***18 May 2011 : Contingency Fees in Comparative Perspective: Update on the developments in England & Wales compared with practice in Germany, Italy and Spain***

**Iram Akhtar**, Civil Litigation Funding and Cost Issues team, Ministry of Justice  
**Stefan Lenze**, Freshfields Bruckhaus Deringer LLP London  
**José Luis Prieto**, Freshfields Bruckhaus Deringer LLP Madrid  
**Avv Daniele Vecchi**, Gianni Origoni Grippo & Partners, Italy

### ***2 November 2011, Punitive Damages : Europe Strikes Back***

**Professor Rachael Mulheron**, Queen Mary, University of London ;  
**Professor Marta Requejo Isidro**, University of Santiago de Compostela, Spain ;  
**Dr Maxi Scherer**, WilmerHale, London and Sciences Po, Paris ;  
**Dr Francesco Quarta**, University of Salento, Lecce, Italy.

### ***8 Feb 2012. Access to Justice in Product Liability Cases : European Comparisons***

**Professor Marco Bona**, Studio Legale Bona Oliva & Associati, Turin ;  
**Stefan Lenze**, Rechtsanwalt, Germany ;  
**Marta Otero Crespo**, University of Santiago de Compostela, Spain ;  
**José Luis Prieto**, Freshfields Bruckhaus Deringer LLP Madrid.

### ***2 April 2002. Comparative Law Perspectives on Food Regulation and Product Liability***

**Claire Andrews**, Gough Square Chambers ;  
**Gilles Boin**, Hogan Lovells, France ;  
**Dr Barbara Klaus**, Meyer rechtanwaite, Italy ;  
**Levke Voss**, Meyer Rechtanwaite, Germany.

## **14 June 2012. *Medical Devices Regulation & Liability***

Chair : Professor Sir Alasdair Breckenridge, Chairman, MHRA.

**Dr Peter Feldschreiber, MHRA & 4 New Square** : overview of current medical device European legislative framework.

**John Wilkinson, Director of Devices, MHRA** : analysis of the current legal framework for medical devices, and what needs to be done to improve upon / strengthen the regulatory system through the current proposed recast of the Medical Devices Directives.

**Anne Ware, Kennedys** : Medical Devices - current liability issues.

**Professor Richard Goldberg, University of Durham** : comments.

## **Public Events**

**11 April 2011. *Enforcement of Public Procurement Rules: Lessons from a Comparative Perspective***, with Mark Clough QC, Brodies LLP, Ciara Kennedy-Loest, Hogan Lovells, Professor Francois Lichère, University of Aix-Marseille III, Professor Steen Treumer, University of Copenhagen, Denmark, Michael Bowsher QC, Monckton Chambers, Professor Dr iur Martin Burgi, Ruhr-Universität Bochum, Professor Roberto Caranta, Turin University, Italy, Professor Martin Trybus, University of Birmingham, Professor Fabrizio Cassella, Turin University, Italy, Dr Dacian C Dragos, Babes Bolyai University, Romania, Professor Chris Yukins, George Washington University Law School.

**17 June 2011, *Seminar on Rule of Law, Etat de Droit & Rechtsstaat***, organised by the Bingham Centre for the Rule of Law at Supreme Court, United Kingdom, with Lord Mance, Bernard Stirn, Président, Section du Contentieux, Conseil d'Etat, Mattias Guyomar, Conseil d'Etat ; Maud Vialettes and Xavier Domino, Conseil d'Etat ; Judge Angelika Nußberger, Judge of the European Court of Human Rights.

**27 June 2011, *Focus on Collective Redress – What now, what next?*** Including Katia Lenzing, European Commission, Avv Massimo Todisco, CODACONS, Italy, Gerard McDermott QC, Outer Temple Chambers, Professor Dr Astrid Stadler, University of Konstanz, Germany, Rob Murray, Crowell & Moring LLP, David Burstyner, Omnibridgeway, Bert Foer, AAI, Christine O'Neill, Brodies LLP, Edinburgh, Stijn Franken, NautaDutilh, the Netherlands.

**17 Nov 2011. *Celebrating 20 Years of Francovich in the EU*** (full day conference) with Paul Berman, Treasury Solicitors ; Professor Roberto Caranta, Turin University, Italy ; Sir David Edward KCMG ; Jon Lawrence, Freshfields Bruckhaus Deringer ; Dr Dorota Leczykiewicz, Trinity College Oxford ; Dr Tobias Lock, University of Surrey ; Thomas de la Mare, Blackstone Chambers ; Rob Murray, Crowell & Moring ; Dr Renato Nazzini, University of Southampton ; Michael Patchett-Joyce, Outer Temple Chambers ; Professor Norbert Reich, Emeritus, University of Bremen ; Professor Giuseppe Tesauro, Judge, Italian Constitutional Court, former Advocate General of the European Court of Justice ; Professor Takis Tridimas, Queen Mary, University of London ; Professor Richard Whish, King's College London.

## Research activities

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

- A chapter on causation was produced by Duncan Fairgrieve, as D.Fairgrieve and F.G'Sell, "Causation in French Law: pragmatism and policy" in R.Goldberg (ed), *Perspectives on Causation* (Hart, 2011).
- Duncan Fairgrieve also produced a comparative law chapter in *International Product Liability Manual* (Kluwer Law, 2011) (with Professor Geraint Howells).
- Two Chapters on Collective Redress and the impact of the Brussels I Enforcement & Recognition rules on collective actions in *Extraterritoriality and Collective Redress* (Sep 2012 with OUP).
- Duncan Fairgrieve published a contribution entitled "Le Régime britannique" in J-L.Dewost, *Les services d'intérêt économique général et le marché intérieur : régimes nationaux et cadre juridique européen* (Paris, 2012).

The following books were also published :-

- D.Fairgrieve and F.Lichère (eds) *Public Procurement Law: Damages as an effective remedy* (November 2011 with Hart Publishing);
- 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).
- Duncan Fairgrieve & Eva Lein (eds) *Extraterritoriality and Collective Redress* (Sep 2012 with OUP).

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. Along with Geraint Howells, and Marcus Pilgerstorfer, Duncan Fairgrieve is writing an article entitled "Reforming the Product Liability Directive : Time to get Soft" to be submitted to a leading journal.

During the current year, Duncan has also developed his work on remedies, by developing a project on the international law of reparations. He has also worked on comparative public law issues, presenting a paper, with Mattias Guyomar of the French Conseil d'Etat, on the topic of the Rule of Law and *Etat de Droit* at a Bingham Centre event.