



**British Institute of  
International and  
Comparative Law**

# Product Liability Forum Annual Review 2016

Product Liability Forum

## Product Liability Forum : Annual Review 2016

**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	Geldards LLP
Freshfields Bruckhaus Deringer	Henderson Chambers
Herbert Smith Freehills LLP	Hogan Lovells LLP
Irwin Mitchell Solicitors	Kennedys LLP
Leigh Day	Outer Temple Chambers
Serjeants' Inn Chambers.	Shook Hardy & Bacon LLP
Claire Andrews, Gough Square Chambers	Tripp Haston, Bradley, Arant, Boulton, Cummings LLP
Gerard McDermott QC, Outer Temple Chambers	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. 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 has regularly requested our participation in the review process of the Product Liability Directive. In the last review 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.

**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 2015 / 2016, we have welcomed many guest speakers from the UK and abroad, including distinguished speakers from :

- **public sector and the judiciary** : Mr Justice Stuart-Smith; Lord Reed, Justice of the Supreme Court of the United Kingdom; John Wilkinson, Director of Devices, MHRA; Frédérique Dreifuss-Netter, Judge of the 1st Chamber, Cour de cassation, France ;
- **academia** : Professor Siewert Lindenbergh, Erasmus School of Law, Rotterdam ; Morten Nadim, University of Bergen; Arlie Loughnan, Associate Professor, University of Sydney, Australia; James Chalmers, Regius Professor of Criminal Law, University of Glasgow, Professor Eleonora Rajneri, Université del Piemonte Orientale ;
- **distinguished foreign colleagues** : Professor Jean-Sebastien Borghetti, Université Paris II; Tripp Haston, Bradley Arant Boult Cummings LLP / IADC President; Ianika Tzankova, Bentham Europe ; Morgan Templeton, Wall Templeton Attorneys; Professor Paolo Giudici, Free University of Bozen, Italy ; Siewert Lindenbergh, Erasmus School of Law, Rotterdam; Colin Loveday, Clayton Utz; Dr. Henning Moelle, Taylor Wessing ; Professor Ina Ebert, Munich Re ; Professor Erdem Buyuksagis, University of Fribourg, Switzerland; Frédéric Pelouze, Alter Litigation ; Prof Dr Axel Halfmeier, Leuphana University; and Tim Smith, Harden, Wells & Smith, Stuttgart.

The following Forum seminars have taken place this year:-

**20 April 2015. PLF Seminar with IADC on Global Litigation Patterns for Global Products.**  
**Speakers included** Tripp Haston, Bradley Arant Boult Cummings LLP / IADC President; Morgan Templeton, Wall Templeton Attorneys; Ianika Tzankova, Bentham Europe; Thomas Rouhette, HoganLovells Paris; Joanna Fulton, Burness Paull LLP; Colin Loveday, Clayton Utz and Dr. Henning Moelle, Taylor Wessing.

**1 July 2015. PLF Seminar : Considering the impact of the Boston Scientific judgment.**  
**Speakers include** Professor Jean-Sebastien Borghetti, Université Paris II; Paul Llewellyn, Geldards LLP; Marcus Pilgerstorfer, 11KBW; and John Wilkinson, Director of Devices, MHRA.

**18 November 2015. PLF Seminar : The Issue of Automotive Liability. Speakers included** Professor Ina Ebert, Munich Re ; David Kidman, BLM ; Iwan Parry, TRL ; Tim Smith, Harden, Wells & Smith, Stuttgart.

**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.

### **Public Events**

**2 July 2015. Funding Collective Redress: A Trans-national Perspective. Speakers included** Simon Dluzniak, Bentham Europe; Jeremy Marshall, Bentham Europe; Anthony Maton, Hausfeld; Frédéric Pelouze, Alter Litigation; Ben Rayment, Monckton Chambers; Julia Salasky, CrowdJustice and Till Schreiber, CDC.

**20 July 2015. Comparing Tort and Crime.** In the Chair, Lord Reed, Justice of the Supreme Court of the United Kingdom. Speakers included Matthew Dyson, Fellow in Law, Trinity College, Cambridge, John Randall QC, St Philips Chambers, Bencher of Lincoln's Inn and Adjunct Professor, School of Law, University of New South Wales, Australia, Arlie Loughnan, Associate Professor, University of Sydney, Australia, James Chalmers, Regius Professor of Criminal Law, University of Glasgow, Veronique Wester-Ouisse, Maître de conférences, University of Rennes, France, Frédérique Dreifuss-Netter, Judge of the 1st Chamber, Cour de cassation, France.

**8 December 2015. Securities Claims: A Trans-national Perspective. Speakers included** Professor Paolo Giudici, Free University of Bozen, Italy ; Prof Dr Axel Halfmeier, Leuphana University ; Natasha Harrison, Boies, Schiller & Flexner LLP ; Dr Nadine Herrmann, Quinn Emanuel, Hamburg ; Jeremy Marshall, Bentham Europe ; Anthony Maton, Hausfeld ; Joseph Sacca, Skadden, New York ; Prof Dr Ianika Tzankova, Bentham Europe; Tilburg University.

**3 March 2016. The Personal Injury Claims Process: Comparing Legal Cultures.** In the Chair, Mr Justice Stuart-Smith. **Speakers included** Siewert Lindenbergh, Erasmus School of Law, Rotterdam; Annette Morris, Cardiff Law School; Morten Nadim, University of Bergen; Ken Oliphant, University of Bristol; Jørn Øyrehaugen Sunde, University of Bergen.

### **Research activities**

There has also been a significant research output relating to a PLF event with the recent publication of the following article: 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] *European Business Law Review* 137. This article derived from a PLF seminar on this topic in 2014, giving rise to the collaboration which generated the further research leading to the published article.

A number of other 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, forthcoming, 2016).

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.

*M.Andenas and D.Fairgrieve, Courts and Comparative Law* (Oxford University Press, 2015).

Eva Lein, Duncan Fairgrieve, Marta Otero Crespo and Vincent Smith, *Collective Redress in Europe : Why and How?* (BIICL, 2015)

A.Bretonneau, S.Dahan and Duncan Fairgrieve, “L’influence grandissante du droit comparé au Conseil d’État : vers une procédure juridictionnelle innovante » RFDA n°4-2015, page 1.

Duncan Fairgrieve, “Etat de Droit and Rule of Law: Comparing Concepts” [2015] Public Law 40.

Duncan Fairgrieve, « Le Royaume-Uni » in D. Le Prado (ed) *Les Procédures d’Urgence devant les Juges de l’Administration : Etude Comparative* (Paris, SLC, 2015).

A.Antoine and Duncan Fairgrieve, « Le Royaume-Uni et les ordres juridiques européens » in Baptiste Bonnet (ed) *Les Rapports entre Ordres Juridiques : Bilan, Enjeux, Perspectives* (forthcoming, 2015).