



**British Institute of  
International and  
Comparative Law**

# Product Liability Forum Annual Review 2015

Product Liability Forum

## Product Liability Forum : Annual Review 2015

**Director:** Duncan Fairgrieve

<http://www.biiicl.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, and regulatory bodies. 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.
Arthur Cox.	BLM.
British American Tobacco.	Burness Paull.
Clifford Chance.	DAC Beachcroft.
Fox Hartley Solicitors.	Freshfields Bruckhaus Deringer
Henderson Chambers.	Herbert Smith Freehills LLP
Hogan Lovells LLP.	Irwin Mitchell Solicitors
Kennedys LLP.	Serjeants' Inn Chambers.
Shook Hardy & Bacon LLP.	Claire Andrews, Gough Square Chambers.
Tripp Haston, Bradley, Arant, Boult, Cummings LLP.	Gerard McDermott QC.
Boz Michalowska, Leigh Day	Dr Duniya Okada, Do Science.
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.
- 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 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):

<http://www.biiicl.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 (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 2014 / 2015, we have welcomed many guest speakers from the UK and abroad, including distinguished speakers from the public sector (John Wilkinson, Director of Devices, MHRA; Professor Angela Thomas, Deputy Chair, Commission on Human Medicines and Consultant Paediatric Haematologist, Royal Hospital for Sick Children, Edinburgh; Melissa Coutinho, MHRA; Lord Reed, Justice of the Supreme Court of the United Kingdom), academia (Professor Rachael Mulheron, Queen Mary College London; Professor Jean-Sebastien Borghetti, Université Paris I; Professor Larry Phillips, LSE; Professor Eleonora Rajneri, Université del Piemonte Orientale), as well as distinguished foreign colleagues (Professor Ina Ebert, Munich Re ; Professor Marco Bona, MB.O Law; Tripp Haston, Bradley Arant Boult Cummings LLP / IADC President; Morgan Templeton, Wall Templeton Attorneys; Colin Loveday, Clayton Utz; Dr. Henning Moelle, Taylor Wessing).

The following Forum seminars have taken place this year:-

**8 July 2014 – PLF Rapid Reaction Seminar on High Court Glucosamine Judgment.** Speakers included Brian Kelly, Covington & Burling and Melissa Coutinho, MHRA.

**22 September 2014. Class Actions and Product Liability Litigation: An Australian Perspective.** Speakers included Jason Betts, Herbert Smith Freehills LLP, Damian Grave, Herbert Smith Freehills LLP and Professor Rachael Mulheron, Queen Mary College London.

**15 January 2015. PLF Seminar on Vaccines - Regulatory and Liability Perspectives.** In the Chair was Professor Angela Thomas, Deputy Chair, Commission on Human Medicines and Consultant Paediatric Haematologist, Royal Hospital for Sick Children, Edinburgh. Speakers included Professor Jean-Sebastien Borghetti, Université Paris II, Professor Larry Phillips, LSE, Alexandre Regniault, Simmons & Simmons Paris, and Professor Eleonora Rajneri, Université del Piemonte Orientale.

**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.

#### **Public Events**

**19 June 2014. Collective Redress in Europe – Why?** Speakers included Anne-Lise Sibony, University of Liège ; George Barker, Director, Centre for Law and Economics, ANU; Marcus Smith QC, Competition Appeals Tribunal; Mr. Justice Meinrad Wösthoff, Director of the County Court Hanau, Gemany.

**8 December 2014. International Environmental Mass Litigation - Lessons for Europe.** In the Chair was Mr Justice Dove. Speakers included Stephen Fietta, Volterra Fietta ; Dr Albert Ruda, Universitat de Girona, IECPL ; Tim Smith, Managing Partner, Harden, Wells & Smith (Beijing, Shanghai, Stuttgart) ; Gordon Wignall, Barrister, No5 Chambers.

**24 March 2015. Revisiting Rome II: National Developments.** In the Chair, Gerard McDermott QC, Outer Temple Chambers. Speakers include Professor Marco Bona, MB.O Law; Philip Mead, Old Square Chambers ; Silina Pavlakis, Pavlakis, Moschos & Associates Law Offices; Carlos Villacorta, BCV Lex

**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.

### **Research activities**

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

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

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, « 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).

Mads Andenas and Duncan Fairgrieve, 'Simply a matter of style? Comparing Judicial Decisions' (2014) *European Business Law Review* 361.

A.Antoine and Duncan Fairgrieve, « Écrire les décisions de justice... une comparaison franco-britannique » *Revue du droit public et de la science politique en France et à l'Étranger*, 01 mai 2014 n° 3, 759.

Duncan Fairgrieve, "Suing the military : the justiciability of damages claims against the armed forces" (2014) 73 *Cambridge Law Journal* 18 (case note on *Smith v MoD* [2013] UKSC 41).

Mads Andenas, Eirik Bjorge and Duncan Fairgrieve, "A Fair Price for Violations of Human Rights?" (2014) 130 *LQR* 47 (case note on *R (on the application of Faulkner)* [2013] UKSC 23).

The following books were also published :-

- 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).