



**British Institute of  
International and  
Comparative Law**

# Product Liability Forum Annual Review 2023

Product Liability Forum

## Product Liability Forum : Annual Review 2023

**Director:** Pr. 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:

Addleshaw Goddard LLP	A&L Goodbody LLP
Arnold & Porter LLP	Arthur Cox LLP
Burness Paull LLP	Cooley LLP
Crown Office Chambers	Freshfields Bruckhaus Deringer LLP
Hausfeld LLP	Henderson Chambers
Herbert Smith Freehills LLP	Hogan Lovells LLP
Kennedys LLP	Leigh Day
Mason Hayes & Curran LLP	McCann FitzGerald
Serjeants’ Inn Chambers	Shook Hardy & Bacon LLP
Signature Litigation	Simmons & Simmons LLP

Taylor Wessing LLP	12 King's Bench Walk
2 Temple Gardens	Zelle International LLP
Duniya Okada	Marcus Pilgerstorfer QC, 11 KBW

**Honorary Members:**

Professor Richard Goldberg  
 Professor Geraint Howells  
 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.
- The opportunity to act as speakers at both PLF and public events.
- Designated PLF representatives able to attend public BIICL standard evening events (2-3 hours) free of charge. Attendance to all other public events (such as half-day and day conferences) at a preferential rate.

## **Revision of the Product Liability Directive**

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, including the 4<sup>th</sup> (2011) and 5<sup>th</sup> (2018) European Commission Reviews. In the current Review of the Product Liability Directive, the Product Liability Forum was asked by the European Commission to participate in their Fifth Review of the Directive, and the PLF was duly involved in that process, and the assistance in compiling the resultant report was acknowledged and referenced in the Evaluation Report produced by EY for the purpose of the European Commission's Fifth Report, entitled the *Evaluation of Council Directive 85/374/EEC on the approximation of laws, regulations and administrative provisions of the Member States concerning liability for defective products* (2018). Duncan Fairgrieve has been a long-standing member of the European Commission Expert Group on Product Liability, and the PLF has also been involved in the ongoing revision of the Product Liability Directive, with Duncan Fairgrieve participating in stakeholder meetings. Mr Mark Beamish, the European Commission official working on the revision participated in a PLF Meeting in March 2022. Duncan Fairgrieve has again been liaising with the Commission during the ongoing legislative process of the Directive.

## **Product Liability Research**

Many research projects have been undertaken this year on topics relating to product liability and product safety (see also publications below). The PLF project relating to vaccines and product liability has continued. Under the auspices of the PLF, an important project has focused on the potential liability of online platforms, undertaken with PLF members as well as with foreign colleagues. This has given rise to a comparative law paper which was recently submitted for publication in a leading law journal. Work has also continued on the proposed revision of the PLD, with a series of event organized on this topic, as well as research activities.

There have been a number of research outputs in respect of these projects, including :-

- Duncan Fairgrieve headed up an international research project on vaccine compensation schemes with a strong comparative law dimension, bringing together leading academic and practitioner experts from around the globe as well as representatives of WHO / COVAX vaccine programme. This gave rise to a major publication : D.Fairgrieve et al, 'Comparing Vaccine Injury Compensation Schemes' 31 TUL. J. INT'L & COMP. L. 75 (2023).
- D.Fairgrieve et al, 'No-Fault Compensation Schemes for COVID-19 Vaccines: Best Practice Hallmarks' Public Health Rev, 03 May 2023.
- D.Fairgrieve and R.Salim, 'Improving Collective Redress in Europe : Implementing the Representative Actions Directive' (2023) Civil Justice Quarterly 52-70.
- D.Fairgrieve and R.Salim, 'Collective Redress in Europe : Moving Forward or Treading Water' (2022) ICLQ 465.

## **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 selected judgments under the European Product Liability Directive. 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 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>

## **Forum Events**

Over the past year, a number of seminars and webinars 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.

The following PLF seminars have taken place this year:-

**PLF Event on 10 March 2022 on Reforming the Product Liability Directive**, with Mark Beamish, European Commission official responsible for the reform.

**PLF Event on 11 July 2022 on Access to Justice in Products cases**, with panelists including Professor Rachael Mulheron (Queen Mary University of London) and Sarah Moore (Hausfeld).

**PLF Event on 22 November 2022 on Surveying European Developments in Product Liability with panelists including** Antoinette Collignon, Partner Legaltree, Netherlands ; Sylvie Gallage-Alwis, Partner Signature Litigation, France; Marco Bona, Partner MB.O Turin, Italy; David Kidman, Partner Simmons & Simmons, Solenn Le Tutour, Le Tutour Avocats, France.

**PLF Event on 16 March 2023 with IADC on Toxic Torts and Emerging Risks: European and US Perspectives** with a series of panels, and a dinner with Andrew Baum, Head of Pharma Research at Morgan Stanley as an after-dinner speaker.

**PLF Event on 6 July 2023 - Medical Devices and Product Liability.** Panelist included John Wilkinson, Cooley LLP, Graeme Tunbridge, Senior Vice President Medical Devices, BSI, Roddy Bourke, McCann FitzGerald LLP, Sarah Moore, Hausfeld LLP, Jantina Hiemstra, Hausfeld LLP, Dr Peter Feldschreiber, Clerksroom, Aline Lautenberg, Director Legal & Compliance, MedTech Europe, Dr Tom Melvin, Trinity College Dublin.

## Public Events

**30 June – 1 July 2022. International Class Action Conference in Amsterdam**, in collaboration with the University of Amsterdam and University of Tilburg.

## Research activities

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

- N.Lenoir, A.Blumrosen et D.Fairgrieve, ‘Du privilège légal à la confidentialité de leurs avis juridiques des juristes d’entreprise’ *Dalloz* 2023.1523.
- D.Fairgrieve et al, ‘Comparing Vaccine Injury Compensation Schemes’ 31 *TUL. J. INT’L & COMP. L.* 75 (2023).
- Philip Bailhache and Duncan Fairgrieve, ‘Channel Islands’ in *Elgar Encyclopedia of Comparative Law* (Edward Elgar Publishing, 2023).
- D.Fairgrieve et al, ‘No-Fault Compensation Schemes for COVID-19 Vaccines: Best Practice Hallmarks’ *Public Health Rev*, 03 May 2023.
- D.Fairgrieve and R.Salim, ‘Improving Collective Redress in Europe : Implementing the Representative Actions Directive’ (2023) *Civil Justice Quarterly* 52-70.
- D.Fairgrieve and R.Salim, ‘Collective Redress in Europe : Moving Forward or Treading Water’ (2022) *ICLQ* 465.