

International Product Liability Review

Issue 57

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About our Product Litigation, Compliance and Mass Torts Practice

Hogan Lovells has the leading international product liability practice covering all aspects of product liability, compliance and mass torts. We have experience of acting for clients around the world in respect of a wide range of products including food and beverages, pharmaceuticals and medical devices, cars, tobacco, mobile phones, cosmetics, electrical and electronic products, chemicals and hazardous substances, toys and children's products, sporting goods, aircraft and machinery. Hogan Lovells' product liability and product safety lawyers are supported by a dedicated Science Unit and Project Management Unit.

If you would like more information about Hogan Lovells' product litigation, compliance and mass torts practice, please visit our website at www.hoganlovells.com or contact the Product Liability Group Leader, Rod Freeman, at rod.freeman@hoganlovells.com or any of the lawyers listed on the back page of this publication.

ABOUT INTERNATIONAL PRODUCT LIABILITY REVIEW

In December 2000, Lovells (as it then was) launched its quarterly *European Product Liability Review*, the only regular publication dedicated to reporting on product liability and product safety developments in Europe for international product suppliers, and others interested in international product issues. Over the next ten years, this unique publication featured hundreds of articles, from authors across our network, covering issues in Europe and, increasingly, further afield. Reflecting the growing globalisation of product risks, and following the creation of Hogan Lovells through the combination of Lovells with Hogan & Hartson in May 2010, the publication was renamed *International Product Liability Review* in March 2011.

Hogan Lovells' *International Product Liability Review* continues to be the only regular publication dedicated to reporting on global developments in product liability and product safety regulation. It is distributed worldwide free of charge to our clients and others interested in international product issues. If you would like additional copies of this publication, please return the form enclosed with this edition, or contact a member of the editorial team by e-mail:

Rod Freeman
rod.freeman@hoganlovells.com

Valerie Kenyon
valerie.kenyon@hoganlovells.com

Danyal Arnold
danyal.arnold@hoganlovells.com

Zen Cho
zen.cho@hoganlovells.com

Anthea Davies
anthea.davies@hoganlovells.com

This issue of *International Product Liability Review* is produced with the support of our International Co-ordination Panel:

Jacopo Bartolomeo (Milan)
jacopo.bartolomeo@hoganlovells.com

Esther Vogel (Paris)
esther.vogel@hoganlovells.com

Colleen McKnight (Baltimore)
colleen.mcknight@hoganlovells.com

Laura-Jean van de Ven (Amsterdam)
laura-jean.vandeven@hoganlovells.com

Valerie Kenyon (London)
valerie.kenyon@hoganlovells.com

Carolin Konzal (Munich)
carolin.konzal@hoganlovells.com

Eugenio Vázquez (Madrid)
eugenio.vazquez@hoganlovells.com

Phoebe Yan (Shanghai)
phoebe.yan@hoganlovells.com

In this issue...

1 Overview

FEATURE

2 The unexpected effect of EU data privacy on the Internet of Things

"Connected" devices will increasingly dominate our lives in the future, and Eduardo Ustaran and Katie McMullan (London) comment on a recent decision in the Court of Justice of the European Union which has significant implications for the manufacturers of "Internet of Things" devices. Manufacturers may be expected to explain to consumers the data privacy risks and obligations arising from domestic usage of these devices, including CCTV cameras.

EUROPE – EU

5 EU "recasts" its rules on jurisdiction and enforcing judgments

Giles Hutt (London) reviews the recently "recast" version of the Brussels I Regulation and considers its impact on how parallel proceedings will be approached by EU courts from now on. He comments on the key changes introduced by the "recast" Regulation, highlighting remaining loose ends. What remains to be seen is how the courts approach the ambiguities and gaps in its drafting, and whether the Commission will further develop the rules on "third states".

7 Towards a "circular economy": how manufacturers will be affected by the European Commission's new zero waste programme

Proposals recently adopted by the European Commission are intended to foster the growth of a more "circular" economy in the EU, and dramatically reduce reliance on scarce and increasingly expensive resources. As Christopher Norton (London) explains, there are likely to be real long-term cost savings for companies that commit to investment in this area now.

9 EU one step closer to allowing member states to ban GMO cultivation in their territories

A recent vote by the Environment Committee of the European Parliament has taken the EU one step closer to enacting a law that will allow member states to restrict or prohibit the cultivation of genetically modified organisms ("GMOs") in their own territories. As Ellie Pszonka (London) points out, with these proposals likely to be adopted in early 2015, it is likely to become even more difficult for GMO manufacturers to cultivate GMOs in the EU.

EUROPE – FRANCE

11 French draft Bill provides for the introduction of class actions in health-related matters

Charles-Henri Caron and Isabelle Chivoret (Paris) summarise key features of Article 45 of a draft Bill relating to the health sector, which provides for the introduction of class actions in health-related matters. Broadly based on the principles underpinning class actions in the consumer law area, this Bill could profoundly affect actions related to health products in France.

EUROPE – GERMANY

15 Court of Justice of the European Union hands down judgment on compatibility of German drug liability information claim with European Product Liability ("PL") Directive

Ina Brock and Dr Carolin Konzal (Munich) review a recent judgment by the Court of Justice of the European Union examining the interpretation of Article 13 of the EU Product Liability Directive. As they point out, amongst other implications, the CJEU's decision impacts on the presumption of causation under German law.

In this issue...

EUROPE – NETHERLANDS

20 Dutch draft bill on redress of mass damages in a collective action

Karen Jelsma and Laura-Jean van de Ven (Amsterdam) report on a draft bill recently submitted by the Minister of Security and Justice which sets out to amend the law surrounding collective action (*collectieve actie*). The proposed legislation has attracted a number of strong objections, including concerns that it will put increased pressure on allegedly liable parties to settle.

EUROPE – SPAIN

24 Consumer legislation and contractual relationships between companies: clarification of Spanish law

Guillermo Meilán (Madrid) reviews a recent decision by the Regional Court of Almeria, summarising the conclusions of the Court of Justice of the European Union in an earlier case and confirming that the provisions of the revised text of the General Law for the Protection of Consumers and Users (the "LGDCU") can sometimes apply even where the contractual relationship does not include an end-consumer.

EUROPE – UK

26 English Court of Appeal gives guidance on identifying domicile of a company

Charlie Clarke-Jervoise (London) comments on a recent Court of Appeal decision examining where companies should be considered to be domiciled for the purposes of EU jurisdictional law. As well as providing a useful reminder of the different ways in which "domicile" can be understood under EU law, it also highlights the clear distinctions that the English courts draw between the decisions of a company and those of its parent.

28 Consideration of what constitutes a "defective" product under the Consumer Protection Act 1987

Cécile Duchesne (London) comments on a recent High Court decision that considered what

constitutes a "defective" product under the Consumer Protection Act 1987. Among other matters, the Court looked at questions surrounding the burden of proof and the way in which the definition of "defect" should be approached.

30 Consideration of "actionable injury" and "pure economic loss" in tort and contract

A recent High Court decision has clarified what constitutes an actionable injury in tort. Danyal Arnold (London) summarises the judgment and assess its impact on future cases.

33 The Jackson reforms: 18 months on

In the 18 months since the Jackson reforms of English civil justice procedure were introduced, there has been considerable activity in some areas, such as relief from sanctions and costs budgeting, with over 100 court decisions on what the reforms mean in practice. However, as Matthew Felwick and Reshma Mistry (London) point out, we have yet to see a consistent approach being taken by the courts towards interpreting the reforms. As a result, considerable uncertainty surrounds their application.

38 Personal injury: can the involvement of solicitors be bypassed in some low-value claims?

Katie Vernon (London) comments on a recent High Court decision dismissing a claim brought by solicitors against insurers. The decision provides a cautionary tale for personal injury lawyers where their ability to recover costs is concerned.

40 Third party funding: a focus on the key developments driving growth in this market

Initially supported by encouraging decisions in the courts seeking to enable broader access to justice, the level of third party funding in the UK has continued to rise during the last 12 years. Matthew Felwick and Sophie Horton (London) highlight key developments in this market.

Overview

If contemplating what might be the key area of activity in the field of product liability in future years, it is difficult to look past the rapid evolution of "connected" products and the "internet of things". The development of technology in these areas is going to infiltrate every product sector, and change the way in which most products are designed, manufactured, marketed and used. Our day to day lives will be increasingly influenced, supported and, sometimes, controlled by connected devices. The technologies are finding applications in our homes, on the roads, in the workplace, and in our leisure time. There will be exciting applications in hospitals, in factories, and out in the field. The pace of technological development is moving far beyond the pace of regulatory adaptation, and endless array of applications of such technology creates real-world risk scenarios that, only a few years ago, would have been resigned to science fiction. The rush to commercialise these exciting technological developments is almost certainly creating product-related risks that will give rise to the need to resolve liability claims and regulatory challenges down the road.

In this issue, we start to explore some of these issues, which will increasingly be featured in International Product Liability Review. Our feature article [page 2] in this edition focuses on a recent decision of the European Court, analysing the privacy implications of consumer-use cameras that collect information from public places. This interesting issue is just a small insight into the novel issues that are raised by new technologies, and the risks that they can create for companies responsible for delivering the technologies to the market.

We also report in this issue of International Product Liability Review on an important, and relatively rare, decision of the European Court interpreting an aspect of the European Product Liability Directive [page 15]. The concern in this case was the scope of the German Drug Law as it sits alongside the Product Liability Directive in the German legal system. These are important issues that will impact on the exposure of companies in the pharmaceutical industry to potential liability in the German courts.

In the UK, we are seeing the ongoing evolution of the civil justice system, and we report on some of the important implications for product manufacturers [page 33 and page 40]. While initially, there was some

uncertainty as to the impact of the reforms on product manufacturers, experience is showing that litigation risks are not significantly diminished by the reforms and the UK remains a risk jurisdiction for product manufacturers operating on an international level.

With this issue, International Product Liability Review moves into its 15th year of publication. We have a few changes planned for 2015, and look forward to further expansion of our international team's reporting of important developments in the world of product litigation and product regulation around the world.



Rod Freeman
London
rod.freeman@hoganlovells.com