

International Product Liability Review
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Hogan Lovells has the leading product liability practice covering all aspects of product safety as well as civil and criminal liability. We have experience of acting for clients in respect of a wide range of products including food, pharmaceuticals, cars, tobacco, mobile phones, cosmetics, electrical and electronic products, toys, sporting goods, blood products, aircraft and trains. Hogan Lovells' product liability lawyers are supported by a dedicated Science Unit and Project Management Unit.

If you would like more information about Hogan Lovells' product liability practice, please visit our website at www.hoganlovells.com or contact the Product Liability Group Leader, John Meltzer, at john.meltzer@hoganlovells.com or any of the lawyers listed on the back page of this publication.

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:

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In this issue...

1 Overview

SCIENCE FEATURE

2 Nanomaterials: developments and case studies

The use of engineered nanomaterials in consumer products provides a range of technical benefits. However, the ability to assess, manage and regulate the potential problems associated with nanomaterials continues to be an area of intense interest. A recent paper published by the European Commission's Joint Research Centre at the Institute for Health and Consumer Protection conducts a human and environmental risk assessment appraisal of four main types of nanomaterial: fullerenes, carbon nanotubes, metals and metal oxides. Marion Palmer (London) reports.

EUROPE - EU

8 New RoHS Directive increases obligations on manufacturers and suppliers of electrical and electronic equipment

On 1 July 2011, the new RoHS Directive 2011/65/EU was published in the EU Official Journal. Claire Taylor (London) reports that, as of 2 January 2013, the categories of electrical and electronic equipment included within the scope of RoHS will be significantly broadened, and manufacturers, importers and suppliers will see their obligations for compliance increased.

11 REACH: Guidance in a Nutshell on Requirements for Substances in Articles

The European Chemicals Agency has issued a concise summary information document intended for those involved in the manufacture and supply of articles in the context of REACH. Dr Hannah von Falkenhausen and Gianna-Maria Jungblut (Munich) discuss "Guidance in a Nutshell on Requirements for Substances in Articles", which is aimed in particular at managers and decision makers who have little experience with chemicals regulatory affairs, and is intended to support companies in their implementation of the requirements.

13 European Commission's fourth report on the Product Liability Directive: still maintaining the balance between the interests of producers and consumers

The European Commission has recently published its fourth report on the Product Liability Directive, broadly concluding that the Directive is still achieving a balance between consumer protection and the producer's interests as regards liability for defective products. In this article Rod Freeman and Valerie Kenyon (London) and Perrine Bertrand (Paris) explore the Commission's key finding.

16 Clash of cultures – European privacy versus foreign regulatory disclosures

Personal information should be handled carefully by product manufacturers, in particular when dealing with demands for information by non-EU authorities. A company may encounter difficulties when it holds protected personal data and is bound by obligations not to disclose such data, and yet is simultaneously required to disclose product safety issues which might lead to the disclosure of personal data. Rod Freeman and Cécile Duchesne (London) report.

EUROPE - FRANCE

19 Force majeure: a "spare wheel" for companies under certain conditions

In cases of national disaster, companies face a choice between the threat of demands to pay damages for breach of contract, and the investment of additional money and means to meet their obligations and so protect their business relationships. Sylvie Gallage-Alwis and Constance Tilliard (Paris) write that whilst proving an event of force majeure can exempt the company from its obligations, the difficulty lies in proving that such an event has occurred.

23 Chernobyl radioactive cloud: Paris Court of Appeal orders dismissal of longstanding investigation

On 26 April 1986, at the nuclear power plant of Lenin near the city of Chernobyl in Ukraine, reactor number 4 of the power plant exploded causing a radioactive cloud to spread over France. On 7 September 2011, the Paris Court of Appeal put an end to a lengthy investigation on the possible radioactive fallout in France from the Chernobyl nuclear disaster. Virgine Adam and Laetitia Guillet (Paris) consider the decision of the Court of Appeal.

25 Overview of the French landscape of safety agencies/authorities

On 6 July 2011, a report was published by the Commission on Social Affairs of the French Parliament into the operation of France's safety agencies, the agencies responsible in France for monitoring public health and safety issues. Its conclusion? The system is unique and has clear advantages, but it now shows a number of limits and needs to be amended. The landscape is considered by Sylvie Gallage-Alwis and Perrine Bertrand (Paris)

EUROPE - ITALY

29 Towards manufacturers' liability for injuries caused by products destined for professional use?

The Italian legislation imposing no-fault liability on manufacturers for defective products has been in force since 1988. In this article Francesca Rolla (Milan) explores a recent decision by the Court of Verona, which is the first in Italy in which the product liability regime was applied to a case of damage to health caused by a product destined for professional (not private) use.

EUROPE - UK

31 Ministry of Defence not at fault for injuries suffered by officer during adventurous climbing training

A junior army officer was very seriously injured in a climbing accident in the German Alps in the course of a formal army "adventurous training" exercise. The High Court had to determine whether the Ministry of Defence had breached its duty of care to the officer and, if so, whether such breach had caused the accident; the High Court returned a verdict in favour of the defendant, reinforcing the concept of personal responsibility for accidents occurring in the course of undertaking dangerous activities. Libby Hannan (London) and Perrine Bertrand (Paris) report on the case.

33 Corporate Manslaughter – imposition of a fine that puts the defendant company out of business is acceptable

In February 2011, Cotswold Geotechnical Holdings Limited became the first company in the UK to be convicted of the new offence of corporate manslaughter. In May 2011, the Court of Appeal Criminal Division upheld the ruling, as well as the Crown Court's decision to impose a fine on the company that would ultimately put it out of business. Claire Taylor (London) reports.

EUROPE - UK

36 Expert witness fails to impress in car tyre case

Divya and others v. Toyo Tire and Rubber Co. Limited and Mr Paranirupasingham was recently heard in the English High Court, and emphasises the importance for a party to English proceedings of taking great care when selecting an expert to give evidence. Rod Freeman and Mark Hunting (London) write that this case highlights key lessons for product manufacturers and their advisers in trial and expert preparation when defending a product liability case in the UK.

NORTH AMERICA - US

38 US Supreme Court reaffirms the limits of personal jurisdiction

On 27 June 2011, the US Supreme Court handed down judgment in the cases of *Goodyear* and *J McIntyre*, addressing for the first time in several years the standards for general and specific jurisdiction. The judgments reaffirm existing limits on when state courts can hear claims involving non-resident defendants, making it more difficult for plaintiffs to hale foreign defendants into court in the US. Analysis is provided by Lauren Colton and Mark Gately (Baltimore), David Weiner (Washington), Alvin Lindsay (Miami) and Thad Dameris (Houston).

41 Climate change litigation update: US Supreme Court bars climate change lawsuit

Climate change litigation has been on the horizon for carbon dioxide-emitting industries and their insurers ever since the first lawsuit of this kind was filed in 2004. In this article Trevor Jefferies (Houston) and Dr Hannah von Falkenhausen (Munich) explore the recent decision of the US Supreme Court, in which attempts to address greenhouse gas emissions by using federal common law nuisance claims were rejected.

ASIA PACIFIC - CHINA

43 Measures to improve the administration of medical device recalls in China

On 1 July 2011, China's "Measures for Medical Device Recall (Trial)" took effect. The Measures aim to establish and improve the system of medical device recall in China. Eugene Chen and Yuping Zhao (Shanghai) report that with the issuance of the Measures, foreign medical device manufacturers will now have to take more proactive steps with respect to the safety of medical devices they distribute within China.

45 New hazardous substances certification requirements for electronic information products

China has, over the years, increased its regulation of hazardous substances in consumer products. In the Summer of 2011 two new circulars were released imposing new certification requirements for the presence of hazardous substances in electronic information products. Similar regulation of other equipment types can be expected in the not too distant future. Eugene Chen and Jieni Ji (Shanghai) report.