Hogan Lovells

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About our Product Liability Practice

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 and children's products, sporting goods, blood products, aircraft and machinery. 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, Thomas Rouhette, at thomas.rouhette@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:

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Overview

As experience of product liability continues to grow in Europe, we are seeing the courts grappling with a number of fundamental principles that have implications for the liability risks for producers and suppliers of products. As the cases reported in this issue of *International Product Liability Review* highlight, the legal outcome very often points to important practical issues that companies need to consider in order to manage effectively their liability risks in Europe.

In Germany, the courts have considered the liability of non-manufacturers who permit their brand name or other trademark to appear on a product manufactured by a third party (page 20). The result is important because it has a direct impact on the practical decisions companies need to make when addressing their marketing practices, as well as in situations where one company might wish to licence another to use its trademark in association with a product. Also in Germany, the courts have considered issues related to what might be considered "justified" safety expectations for the purposes of the laws implementing the Product Liability Directive (page 17). The result in such a case raises practical issues about the extent to which a manufacturer needs to provide warnings and instructions having regard to the intended audience, as well as interesting issues relating to the effect where a product bears a quality mark from a third party certification body.

The question of the adequacy of warnings has also been considered by the courts in the Netherlands, specifically in the context of a pharmaceutical product and the risk of side effects (page 25). A key consideration in that case was whether the manufacturer could rely on the fact that the product warnings had been approved by the relevant regulatory authority, an issue which remains important – and controversial – in Europe. In the event the court ruled that the manufacturer did not have a defence on that basis, but rather had an independent obligation to warn of significant risks. This will certainly not be the last word in Europe on this fundamental issue.

We report on a number of developments in France on the regulatory and procedural fronts. Notably, we see France continuing to move towards introducing broad class actions provisions (page 14). We also report on the continuing controversy surrounding alleged risks associated with pesticides, in an article that provides an interesting insight into how occupational health risks are uniquely dealt with in France, and how that can have very important implications for product manufacturers which could well extend beyond the borders of France (page 7). This article also highlights the important implications for the pesticides industry itself.

We highlight some recent cases in the UK that demonstrate the importance of a rigorous approach to evidence before English courts, and the possible consequences of dealing with those issues unsatisfactorily (page 32).

Our feature article in this issue of International Product Liability Review is an interesting and valuable guide to managing discovery processes when dealing with cross-border disputes involving China (page 2). As this article highlights, the regime in China presents a number of challenges, including in relation to the protection of what common law lawyers might consider to be "privileged" documents. The article is well worth a careful read by anyone involved in international litigation that may have a Chinese element.

As this issue goes to print, the debate in Europe surrounding the proposed reforms of the consumer product safety regulations is starting to warm up. Look out for our coverage of these important developments in the next issue of *International Product Liability Review*.

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