Hogan Lovells

International Product Liability Review

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About our Product Litigation and Compliance Practice

Hogan Lovells has the leading international product liability practice covering all aspects of product liability, compliance and mass torts. We focus on acting for clients around the world covering all products sectors 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 and compliance 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 litigation and product 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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With thanks to Samantha Tharle

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

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Meet the team

We are pleased to introduce two of the authors who have contributed to this edition of *International Product Liability Review*: Cécile Burgess (London) and Charles-Henri Caron (Paris).

CÉCILE BURGESS

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As a dual qualified English and French lawyer, Cécile Burgess focuses her practice in Hogan Lovells' London office on product liability and compliance. Cécile has experience of acting on a wide variety of disputes, including both contractual and tortious claims, for clients around the world with respect to a wide range of products, including pharmaceuticals, medical devices, cosmetics, electrical and electronic products. Cécile also has experience in advising clients on regulatory, product safety and compliance issues. This work includes coordinating on an international basis large recalls of consumer products on behalf of market-leading international brand names, advising on litigation risks, coordinating advice from local counsel in multiple jurisdictions, and managing authority notifications across Europe and worldwide.

Cécile plays an active role in developing a "Global Issues Initiative" which Hogan Lovells and the Product Liability Advisory Council (PLAC) in the US are working on together. This includes running a series of webinars on a range of global product liability and safety issues. Cécile is also a member of IPLR's International Co-ordination Panel and of IPLR's editorial team.

See page 26 for Cécile's article "Part 36 offers: genuine attempt to settle or disguised request for total capitulation?"

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Charles-Henri is a Senior Associate in the Litigation practice of Hogan Lovells' Paris office and is a member of the firm's international life sciences team. Over the past six years, Charles-Henri has worked extensively with French and international pharmaceutical companies, biotech companies and medical devices manufacturers in commercial litigation, product liability and group actions.
He notably represents companies in mass litigation cases involving thousands of plaintiffs and has specific experience in complex product liability matters, particularly multi-jurisdiction bodily injury cases and the cross-border coordination these cases require. Charles-Henri works on a daily basis with colleagues within the firm; he was seconded to our London Litigation practice in 2013.

As a graduate from Sciences Po Paris and HEC Paris business school, Charles-Henri understands the business objectives of our clients in this complex regulatory environment. Charles-Henri is a member of the young lawyers committee of the association of defence counsel DRI International. He regularly publishes articles regarding both legal and procedural developments such as, in this edition, the introduction of class actions mechanisms in France.

See page 5 for Charles-Henri's article "Class actions in health-related matters: they're here – for better or for worse"

In this issue...

Overview

As this publication moves into its seventeenth year of publication, our focus turns to some of the controversial product liability questions facing the European judiciary. These issues are fast becoming the common subject matter of our most senior courts in Europe.

In the Netherlands, the Dutch Court of Appeal has been grappling with the question of liability for gambling addiction alleged to have been caused by use of a drug (page 16). This case highlights the challenges faced by a court when trying to assess the questions of product defect and causation when dealing with a complex pharmaceutical product.

The question of causation in the context of pharmaceutical-related product liability cases has in fact, now been referred to the Court of Justice of the European Union, the highest court in Europe, in a case involving an alleged link between a vaccine and certain diseases (page 10). In this hugely significant case, the European Court has been asked to determine to what extent a court needs to take into account the state of scientific evidence when considering questions of causation. Whilst the outcome from this case is pending, the result will likely have a serious impact not only on companies within the life sciences industry, but for manufacturers across many sectors.

In Spain, the Supreme Court has rendered a decision on asbestos liability, seemingly extending traditional principles to introduce a need, in some circumstances, for a company to take “extreme diligence” to avoid harm (page 19). Again, a case that risks affecting product manufacturers well beyond the context in which the case itself arose.

In France, we see the introduction of class action procedures for “health-related claims” (page 5). An important development that affects liability risks for manufacturers of products such as pharmaceuticals, medical devices and, interestingly, cosmetic products, France has long been considered a leader in Europe in the field of innovative procedural mechanisms for the commencement of grouped claims before the courts. This latest development, if successful, may spread over time across Europe.

Our Feature article in this issue of *International Product Liability Review* is an overview on the trends in the reporting of dangerous consumer products via the European Commission’s RAPEX regime (page 2).

The findings are interesting, showing that the high level of reporting over the past years is continuing. Whilst the growth pattern now appears to have abated, the number of products reported into the system remains high, and a number of national member state authorities are emerging as particularly active in this area. A finding that is consistent with the Hogan Lovells team’s own experience in working with clients dealing with regulatory challenges raised by authorities in Europe.

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