

European Product Liability Review
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Hogan Lovells has a 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.

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FEATURE

2 The part, present and future of product regulation in the United States

Alvin Lindsay and Keisha McGuire (Miami) consider how the CPSC has developed into the regulatory body we recognise today, and the impact that the Consumer Product Safety Improvement Act of 2008 has had in increasing its regulatory competence.

LEGISLATION - EU

6 Regulation 1223/2009 on cosmetic products: how to get ready for 2013?

The law on cosmetics has been described as "ripe" for simplification: Sylvie Gallage-Alwis and Perrine Bertrand (Paris) discuss how simplification will be effected by the adoption of Regulation 1223/2009 on cosmetic products, which largely comes into force on 11 July 2013.

LAW AND PROCEDURE - FRANCE

10 Product safety in France: current trends and key points for successful cooperation with the French authorities

Thomas Rouhette and Sylvie Gallage-Alwis (Paris) consider the role of the DGCCRF in France, describing how its structure has been reorganised since 10 November 2009 and the trends that can be identified with respect to its changing behaviour towards manufacturers and distributors.

LAW AND PROCEDURE - POLAND

14 Introduction of a class actions concept to the Polish legal system

The Group Proceedings Act was adopted by the Polish Parliament in December 2009. Grzegorz Barszcz and Agnieszka Majka (Warsaw) consider the types of claims that can now be brought by way of a "group proceeding", and the likely impact on product liability and tort liability claims.

RECENT CASES - FINLAND

17 Helsinki Court of Appeal confirms that smokers, and not tobacco manufacturers, bear responsibility for contracting smoking related diseases

Siobhan Thomson (London) reports on the appeal court decision affirming the dismissal of three so-called "light" cigarette claims brought by plaintiffs in respect of a variety of smoking related diseases.

RECENT CASES - ITALY

20 Italian court rules on causation between protracted use of mobile phones and cancer

In an unexpected judgment, the appeal court found that the use of mobile phones caused the cancer of the plaintiff. Francesca Rolla (Milan) discusses how the court reached its findings, including its reliance on studies considered unreliable by independent authorities.

23 The Eternit case: a landmark in Italian asbestos litigation

Christian di Mauro (Milan) reports on the lawsuit against Eternit's former executives brought by over 2,000 former employees who worked in asbestos production sites, as well as individuals injured due to non-occupational asbestos exposure and state administrators and social security public bodies.

RECENT CASES - SPAIN

25 Asbestos litigation in Spain: decision of the Court of First Instance 46 in Madrid

Asbestos litigation is also topical in Spain: Bernadino Muniz (Madrid) discusses the recent decision against a company which owned two factories where materials containing asbestos fibres were used, and the judgment that the company should pay compensation to inhabitants of the village where the factories were situated.

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27 Toxic sofa litigation - update

David Graves (London) reports on the developments in the litigation relating to the sale of thousands of sofas supplied with a sachet of fungicide which was later found to cause skin complaints, eye problems, and breathing difficulties.

INTERNATIONAL REPORTS

28 Third time lucky? Latest incarnation of proposed Canada Consumer Product Safety Act gets a boost

It has been far from plain sailing for Bill C-36: the latest version of the proposed Canada Consumer Product Safety Act. Siobhan Thomson (London) considers the third version of the bill aimed at modernising and strengthening product safety law in Canada.

Overview

Against the background of an increasing convergence of factors driving forward product safety regulation in both Europe and the US, it is interesting to reflect on the evolution of product regulation in the US through the Consumer Product Safety Commission ("CPSC"). Our feature in this issue of *European Product Liability Review* (page 2) is a fascinating retrospective on the history of the CPSC, from its genesis back in 1967 through to the most recent, revolutionary changes in the nature of this organisation, which are still ongoing.

The CPSC's evolution, and the pressures that organisation has come under, reflect a growing worldwide trend which in fact has much of its origin firmly in Europe. Many of the factors that are influencing the changes in the US (and indeed in Canada (page 28)) have been part of the European regulatory landscape for many years, and the new challenges that are currently causing much controversy in the US have been part of the cost and risk of doing business in Europe for more than a decade.

That is not to say that the same factors are not having an impact in Europe, where we are continuing to see important changes to the nature and extent of product safety regulation. For example, this issue of *European Product Liability Review* also includes some interesting insights into the practicalities of dealing with safety enforcement officials in France (page 10). The article provides useful guidance on some of the issues that product manufacturers face around Europe generally when dealing with safety issues, but it also demonstrates the country-specific factors that need to be understood and managed within Europe in such circumstances.

The current reforms of the core legislation governing the safety of cosmetics in Europe (page 6) are also important, not only for businesses involved in manufacturing and distributing products in that sector, but also because these reforms reflect the current objectives of the policy-makers at the European Commission, who will be responsible for future reforms directly affecting other industries. Reform of the Cosmetics Directive has long been overdue in Europe. Having its origins in a 1976 Directive, it sits uncomfortably between the "old style" of European regulation and the "New Approach" that now dominates EU product safety regulation. The Directive has been amended many times since it was first adopted, and it is certainly time for it to be simplified and made more coherent. As might be expected, the reforms raise some new issues for those in the cosmetics industry, and there is work to be done before it takes full effect in 2013.

It is rare that an issue of *European Product Liability Review* goes by without some report on developments in asbestos litigation in Europe. This issue is no exception. Of particular interest are the reports from Italy (page 23) and Spain (page 25) that clearly show the extension of liability principles in relation to asbestos. In both countries, we see questions

arising as to the extension of liabilities to third parties (ie non-employees) exposed to asbestos as a result of the industrial use of the product by defendant company employers. In the case in Italy, we also see some interesting issues arising concerning the liability of former directors of defendant companies. These issues have been common features of asbestos litigation in the US for decades. The fact that they are just starting to arise in European litigation is another clear reminder that the full force of asbestos claims may still be around the corner in Europe.

The next issue of *European Product Liability Review* will be our ten year anniversary edition. We are planning to celebrate in style. Look out for some surprises.

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