

International Product Liability Review
(incorporating European Product Liability Review)
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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, John Meltzer, at john.meltzer@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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FEATURE

2 US litigation: eight simple rules for deciding whether to settle or try a case

Litigation in the US can be arduously long, unpredictable and expensive, with the prospect of a jury trial being one that few companies relish. In a bid to help companies decide whether to try or settle a case, Barry Thompson and David Skaar (Los Angeles) provide readers with eight key rules to aid the decision-making process.

EUROPE – FRANCE

5 A further step towards damage to the environment being recognised by the law

Notwithstanding the French Supreme Court's recent acknowledgment in the *Erika* oil spill case of the existence of an environmental head of damage, the French Minister of Justice has expressed her intention to have it officially governed by written law. Christine Gateau and Anne-Laure Judlin de Hemptinne (Paris) summarise the current status and consider the difficulties that are likely to arise from the most recent written proposal.

7 International day for asbestos victims held in France

Sylvie Gallage-Alwis and Constance Tilliard (Paris) report on the first "International Day for Asbestos Victims" which was organised by plaintiffs' associations and counsel and held at the French Senate on 12 October 2012.

EUROPE – ITALY

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Francesca Rolla and Alessandro Borrello (Milan) report on the recent decision of the Italian Supreme Court of Cassation, which upheld the 2010 ruling of the Brescia Court of Appeals and handed down a ruling on the existence of a link between prolonged use of mobile phones and cancer. As the authors comment, the ruling may not have deserved the sensationalist media attention that it received.

13 Pharmaceutical company's liability for injuries caused by a defective drug: the new trend in Italy

Most product liability cases in Italy have been resolved by the courts on the basis of the general rules on tort or on damage caused by dangerous activity. Jacopo Bartolomeo (Milan) reports on a recent decision of the Court of Sassari in which, unusually, the courts have assessed a manufacturer's liability for an allegedly defective drug under the strict liability regime imposed by the Product Liability Directive.

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With both the number and the costs of product recalls on the rise, insurance coverage is an increasingly important issue for manufacturers. Karen Jelsma (Amsterdam) considers how insurance policies may operate in practice with respect to the costs of a product recall.

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Eugenio Vázquez and Cristina Redondo (Madrid) consider some of the difficulties that arise in trying to apply Spanish product liability law to intangible goods.

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23 Court of Appeal revises ruling in *Simmons v Castle*

In an update to his article in our September issue, Giles Hutt (London) reports on the English Court of Appeal's amendment to its recent ruling that, in line with Lord Jackson's costs reforms, general damages should be increased by 10%.

NORTH AMERICA - US

24 First legal challenge to the Consumer Product Safety Commission's new complaint database validates industry concerns

The new consumer complaint database established by the US Consumer Product Safety Improvement Act gave rise to concern from industry as to how it would be policed. In a recent decision of the District Court of Maryland, the Court has sided with the plaintiff company and prohibited the CPSC from posting a report attributing a consumer's injury to the company's product. Alvin Lindsay and Yara Lorenzo (Miami) report on the significant decision.

OTHER - INTERNATIONAL

27 The Global Recalls Portal: a new step towards enhancing information sharing on consumer product safety

In October 2012, the Organisation for Economic Co-operation and Development (OECD) launched the "Global Recalls Portal", the first online tool to contain regularly updated information on consumer product recalls issued in jurisdictions around the world. Rod Freeman, Cecile Duchesne and Harriet Roessler (London) describe the key features of the Portal, and consider the implications for product manufacturers.

29 ECE – Product compliance as a key to minimising product liability and product safety risks within the worldwide automotive sector

Ensuring product compliance is important for any industry wishing to minimise product liability and safety risks. In this article, Dr Sebastian Polly and Angelika Tafelmaier (Munich) look at the ECE framework for compliance and safety within the automotive sector.

Overview

The launch of a "global portal" to publicise product recalls (page 27) is a landmark event by any standards. For many years we have, within the pages of *International Product Liability Review*, reported on the gradual "globalisation" of product safety regulation. Whilst that process is far from complete, the Global Recalls Portal launched by the OECD is the first tangible sign that active trans-continental cooperation between regulatory authorities is now a permanent feature of the product safety landscape.

The reality is that the existence of the Recalls Portal itself, at least in its current form, is unlikely to have a significant impact on the consumer protection landscape, or the risks for product manufacturers. Whilst a number of regulatory enforcement bodies contribute to the Portal, the range of products covered by each body and the criteria for reporting issues into the Portal vary considerably from region to region. Also, the information posted on the Portal is, generally, already in the public domain within the regions concerned and accessible via the internet. The real impact of the launch of the Portal will be seen when the authorities who participate in the project start to consider the next logical step - cooperation in the implementation of product recalls and in the enforcement of safety regulations. We are already seeing this kind of cooperation as a matter of routine between the US Consumer Product Safety Commission and Health Canada, and the topic remains high on the agenda in discussions involving other authorities around the world. As these developments lead to international cooperation between authorities when enforcing product safety regulations, then the risks for product manufacturers who do not keep pace with these changes will increase significantly.

On the theme of the "globalisation" of risks, in this issue of *International Product Liability Review* we report on an interesting conference held recently in France titled "International Day for Asbestos Victims" (page 7). Whilst the general objectives of the meeting were unquestionably important - namely to consider developments in the diagnosis and treatment of asbestos-related diseases, to discuss the ways in which different countries meet the financial and medical needs of those who suffer from asbestos-related diseases, and to discuss the continued industrial use of asbestos in some parts of the world where appropriate regulatory safeguards are not in place - the fact that issues of compensation and the role of litigation systems were discussed in an international forum such as this is significant. We are seeing a clear trend towards the litigation system being used increasingly to assert asbestos-related claims in many countries around the world where this has not previously been the norm, and very often under novel theories of liability. Whilst the objective of the conference in France was not overtly to promote litigation, it has, at the very least, demonstrated that issues relating to compensation and liability in the asbestos context are receiving higher levels of attention internationally.

With this issue of *International Product Liability Review* you will find the latest issue of "News" from the Hogan Lovells international product liability practice, reporting on a selection of our activities and achievements throughout 2012. The articles that you read in *International Product Liability Review* regularly cover issues that we have managed for our clients, and the authors of our articles are highly experienced in these areas. We hope you enjoy the insight into some of the work we have been doing for our clients over the past year. The format of the "News" document also provides a preview of some changes we will shortly be introducing to *International Product Liability Review*. Whilst basic format and content will remain as they are now, the next issue of *International Product Liability Review* will be published in our new format, featuring a brighter presentation and, we hope, a more interesting layout.

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