

Amsterdam

Programme

**International
Bar Association
2000 Conference**

Amsterdam, The Netherlands
17-22 September 2000



International
Bar Association

Section on Business Law Programme

Electronic signatures, electronic contracting, customer authentication and compliance with writing requirements

Speakers

Vincenzi Sinisi *Sinisi Ceschini Mancini & Partners, Rome, Italy*

Ricardo Barretto *Carvalho de Freitas e Ferreira, Rio de Janeiro, Brazil*

1430 – 1730

Session Co-Chairs

Christopher Millard *Clifford Chance, London, England*

Peter Verloop *Nauta Dutilh, Amsterdam, the Netherlands; Co-Chair, Subcommittee E4 (Clearing and Settlement of Financial and Securities Transactions)*

Providing online financial services to retail customers

Speaker

Jari Tukiainen *eQ Online, Helsinki, Finland*

Bank secrecy issues

Speaker

Mark Hutchinson *Slaughter and May, London, England*

Data protection and privacy

Speaker

Diana Alonso Blas *Senior International Officer, Dutch Data Protection Authority, The Hague, the Netherlands*

Supervision of key third party outsourced relationships; information and system security issues

Speakers

Kersten von Schenck

Trevor Nagel *Shaw Pittman Potts & Trowbridge, Washington, District of Columbia, USA*

Issues in 'data aggregation'

Speaker

Margaret Sheehan *Alston & Bird, Washington, District of Columbia, USA*

THURSDAY 21 SEPTEMBER

1300 A LUNCH will be held for Committee members.
See page 98 for details.

FRIDAY 22 SEPTEMBER

1000 – 1300 Room D

e-commerce - law and business changing at cyberspeed

Joint session with Committees 16 and 21. See Committee 16, page 77, for details.

S

Products Liability, Advertising, Unfair Competition and Consumer Affairs

Chair

Martin Kurer *Badertscher Dörig & Poledna, Zurich, Switzerland*

TUESDAY 19 SEPTEMBER

1430 – 1730 Room O

Chemical, regulatory and health issues with respect to food safety

Joint session with Committees F and 21 and Subcommittee C1. See Committee F, page 38, for details.

THURSDAY 21 SEPTEMBER

1000 – 1730 Room OT + N1

Effects of consumer and antitrust law on innovation

Joint session with Committees C and 21

Consumer laws intended to protect public health and safety, product liability laws aimed at providing compensation when products fail, and antitrust laws enacted to foster competition and enhance the quality and variety of consumer goods in the marketplace can and do have unintended negative effects on innovation. Consumer and antitrust laws are essential to the societies and economies of industrialised countries, but when governments impose overly restrictive requirements on business and when liability awards are excessive, consumers lose. This session will examine the interrelation between relevant laws (and defences) and the willingness of firms to introduce innovative products and services. Using examples from the pharmaceutical, food, automotive and other industries, speakers from corporate, academic, government and consumer sectors will compare the legal environment – and therefore the marketplace – in different jurisdictions, including Europe and the USA.

1000 – 1300

Impact of product regulation and product liability

Session Co-Chairs

Elizabeth Toni Guarino *Collier Shannon Scott PLLC, Washington, District of Columbia, USA; Secretary, Committee 5*
Christopher Hodges *CMS Cameron McKenna, London, England; Vice-Chair, Committee 5*

- Impact of US product liability on FDA-regulated product innovations. Focus on new US restatement of the Law of Product Liability, including its analyses of the liability of sellers of drugs, devices and food: when products are defective, in (non) compliance with product safety regulations, in recall situations, etc. Effects on product/insurance costs, research and developments, availability of products, consumer choice and public health.

How can legislatures/courts strike the right balance between scientific/technical progress and public health and safety?

Brian Murchison *Washington and Lee University School of Law, Lexington, Virginia, USA*

- Case history on vaccines: the impact of litigation on price, supply and public health
Richard Manning *Pfizer Inc, New York, USA*
- For dietary supplements and genetically-modified (GM) foods, public perceptions and consumer demand have driven legislative/regulatory actions worldwide, in particular in the US and Europe. Information and communication gaps between scientific/technical knowledge and public understanding have played significant roles in regulatory developments. Health-enhancing potential is great, but largely untapped. Impacts on clinical research, development of innovative products and public health implications are compared in context of US Dietary Supplement Health and Education Act, US regulation of GM foods and regulatory approaches outside the US.
Elizabeth Toni Guarino
- Impact of European product regulation; increased costs; slowing the speed of product development; impact on SMEs. Case study of EU legislation on pharmaceuticals and comparison with the more recent medical devices Directives on EC marking. Further evidence from the European Commission's consideration of possible reform of product liability and general product safety, including on increased notification and recall and a ban on exporting dangerous products.
Christopher Hodges

1430 – 1730

Impact of antitrust and trade law on innovation

Session Chair

Stephen Kinsella *Herbert Smith, Brussels, Belgium; Secretary, Committee C (Antitrust and Trade Law Committee)*

Innovation requires investment but those investment decisions may be adversely impacted by uncertainty as to whether antitrust or trade laws could excessively hamper the ability to derive appropriate rewards from the investment. This session will examine by reference to recent case studies, whether legislators have got the balance right between encouraging innovation and protecting consumers/competitors.

Speakers

Rambod Behboodi *Canadian Trade Mission to the EU, Brussels, Belgium*
Doug Gregory *IBM, Brussels, Belgium*
Philip Marsden *Linklaters & Alliance, London, England*
Bert Oosting *Ekelmans Den Hollander, Amsterdam, the Netherlands*
Simon Topping *Bird & Bird, Brussels, Belgium*

2000 A DINNER will be held for Committee members and guests.
See page 98 for details.

FRIDAY 22 SEPTEMBER

1000 – 1300 Room L

Warranties and disclaimers: limitation in consumer related transactions

Joint session with Committees M and Cc

Session Co-Chairs

Martin Kurer
Klaus Günther *Oppenhoff & Rädler Linklaters & Alliance, Cologne, Germany*
Jorge Santiago Neves *Santiago Neves & Associados, Lisbon, Portugal; Vice-Chair, Committee S*

The session will focus on the following issues:

- legal and contractual warranties in contracts for the supply of goods or services (manufacturer/distributor/end-user): an overview of warranties offered in different industries
- disclaimers/limitation of liability: methods used:
 - disclaimers/limitation of representations ("fitness for a certain purpose" etc.) in contracts limiting representations where usually no written contract is concluded
 - contractual exclusion/limitation of liability (in general/for certain consequences)
 - limitation of potential compensation
 - choice of law/forum shopping
 - others
- secure limitation of liability downstream: how to create a back-to-back system for manufacturer/service supplier down to end-user? Methods to defer risks to other parties, particularly insurers.
- do disclaimers/limitations work? Obstacles:
 - distinguish individually negotiated contracts/general conditions
 - legal provisions limiting disclaimers/limitation of liability in general and in case of general conditions
 - special interest laws: product liability, clauses covering certain industries
 - pitfalls for the agreements as such

Correspondents from nearly 30 countries have provided reports covering their jurisdiction. Four speakers will present a summary of the reports and panellists will discuss the findings from the perspective of an international company.

Speakers

Contractual and implied warranties
Jorge Santiago Neves
Consequences of a breach of warranty
Klaus Günther
Disclaimers and limitation of liability
Lawrence Teh *Rodyk & Davidson, Singapore; Vice-Chair, Committee S*
Alternative ways to reduce exposure to liability risks
Peter M Stevens *Manches & Co, London, England*

Section on Business Law Programme

Country correspondents

- Claudio A Onetto *Carregal & Funes de Rioja, Buenos Aires, Argentina*
Colin Loveday *Clayton Utz, Sydney, New South Wales, Australia*
Andreas Foglar-Deinhardstein and Jürgen Brandstätter *Foglar-Deinhardstein & Brandstätter, Vienna, Austria*
Helena de Backer *De Backer & Bastin, Brussels, Belgium*
Walter Douglas Stuber and Marcio Belluomini *Amaro Stuber e Advogados Assoc., Rio de Janeiro, Brazil*
Lionel Blanshay *Borden Ladner Gervais, Montreal, Quebec, Canada*
Karen Larsen *Dania Advokater, Copenhagen, Denmark*
Nicholas D Sayers *Lane & Partners, London, England*
Gérard Kling *Bureau Francis Fefebvre, Paris, France*
Klaus Günther
Dimitris Emvalomenos *Bahas, Gramatidis & Associates, Athens, Greece*
Pieter W Tubbergen *van Harmelen & Beijneveld, Rotterdam, the Netherlands*
Amitabha Sen *Amitabha Sen & Co, New Delhi, India*
Anthony E Collins *Eugene F Collins, Dublin, Ireland*
Eytan Epstein *Epstein Gross Chomsky, Tel Aviv, Israel*
Gianmatteo Nunziante *Becchis Nunziante & Partners, Rome, Italy*
André Harpes *Molitor Felgen & Harpes, Luxembourg*
Javier F Becerra and Daniel del Rio *Basham Ringe y Correa, Mexico City, Mexico*
Rune Solberg *Thommessen Krefthing Greve Lund, Oslo, Norway*
Joel Ayson *Quasha Ancheta Pena & Nolasco, Manila, the Philippines*
Jorge Santiago Neves
Olga A Tissen *Tissen & Partners, Novosibirsk, Russian Federation*
Louis van Wyk *Spoor & Fisher, South Africa*
Sonja Cortes *Bufete Mullerat, Barcelona, Spain*
Tom G. Johanssen *Lagerlöf & Leman, Stockholm, Sweden*
Stefano Codoni and Massimiliano Parli *Badertscher Dörig & Poledna, Lugano, Switzerland*
Mehmet Gün *Mehmet Gün & Co, Istanbul, Turkey*
Essam A Al Tamini *Al Tamini & Company, Dubai, United Arab Emirates*
Elizabeth Toni Guarino

T

International Construction Projects

Co-Chairs

- Peter J Rees *Norton Rose, London, England*
Arne Bierfreund *Bech-Bruun & Trolle, Copenhagen, Denmark*

MONDAY 18 SEPTEMBER

1430 – 1730 Room L

Mega-projects: lessons learned and new perspectives

Session Chair

Michael E Schneider *Lalive & Partners, Geneva, Switzerland; Chair, Subcommittee T7 (Resolution of Construction Disputes)*

- Analysis of completed projects: (1) Storebelt and Øresund Crossings (Denmark/Sweden), (2) Hong Kong airport and related projects, (3) Channel Tunnel and (4) Sony Center Berlin. The analysis of these projects will consider such aspects as the contractual framework (type of contract, contract forms, provisions on dispute settlement), what type of problems arose and how they were solved, disputes that arose and the procedures for their resolution, general assessment of the project.

Speakers

- Peter Wengler *Jørgensen Plesner & Gronborg, Copenhagen, Denmark; Chair, Subcommittee T6 (Architects/Engineers Law)*
George Rosenberg *Shadbolt & Co, Reigate, Sussex, England*
John Bishop *Masons, London, England*
Gerhard Lögters *HOCHTIEF Building, Berlin, Germany*

- New perspectives – alliancing/partnering and the New Engineering Contract (NEC) in practical application: Presentation of two rail projects in the course of construction: (1) the “Waardse alliantie” project in the Netherlands and (2) the Channel Tunnel Rail Link in the United Kingdom.

Speakers

- Susan van Hooft *Dutch Railways Infrabeheer, Utrecht, the Netherlands*
Michael E Davis *Herbert Smith, London, England*
- Short updates on ongoing projects
 - Roundtable – reasons for success or failure of mega-projects

TUESDAY 19 SEPTEMBER

1000 – 1730 Room B

Infrastructure financing in continental Europe

Joint session with Committees E and K. See Committee E, page 37, for details

WEDNESDAY 20 SEPTEMBER

1000 – 1300 Room P

The technical expert: use and misuse

Session Chair

Nicholas Gould *Lovells, London, England; Section on Business Law Council member*

The session will examine the following topics:

- the proper role of an expert: why an expert is used at all and what he or she is supposed to achieve
- what sorts of expert are typically used, including court appointed experts under civil law jurisdictions, an expert appointed under a contract, an expert adviser to a court or arbitration tribunal and the engineer under FIDIC and similar contracts
- how experts are typically used in practice and how they are and ought to be controlled in court and arbitration proceedings. This examination will include a consideration of the effect of the IBA Rules of Evidence