ROUNDTABLE

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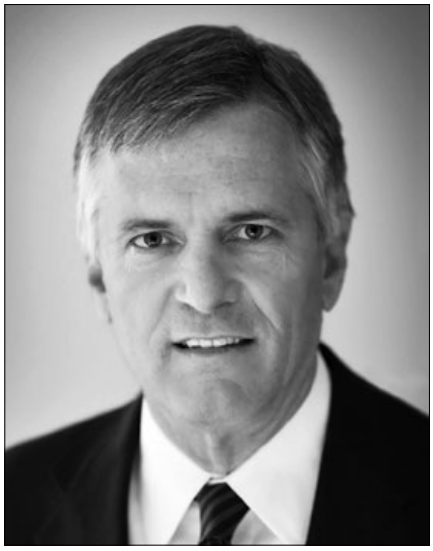

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Have there been any recent legal or regulatory developments that have affected product liability cases in your jurisdiction? If so, how have these affected the legal requirements of companies?

Colin Loveday: No new laws or regulations have been recently introduced in Australia. However, the Australian Law Reform Commission recently commenced an inquiry into class action proceedings and third-party litigation funders. As a result we are likely to see some recommendations by the end of this year for law reform. Given the current political environment, recommendations for enhanced access to justice and strengthening regulatory enforcement powers for consumer products are likely to be enacted. Manufacturers ought to be anticipating the potential for a more hostile product liability legal environment.

Kurt Gerstner: In 2017, the Korean Product Liability Act was amended, effective from May 2018. The amendments make it easier for plaintiffs to prove their claims and add further teeth to the sanctions that may be imposed against manufacturers selling defective products. The amendments were prompted, in large part, by a number of illnesses and deaths that occurred in Korea, allegedly resulting from the use of toxic chemical sanitiser products with portable humidifiers. Among other things, under the amended Act, a plaintiff can prevail by proving:

- injury occurred while the plaintiff was using a product in its normal and intended manner;
- the damage occurred in connection with an element of the product that was exclusively within the manufacturer's control; and
- such damage normally would not occur, absent a defect in the product.

To avoid liability in that circumstance, a manufacturer will now have the burden

of proving that the plaintiff's damages arose from something other than a defect in the product. Additionally, under the amendment, if a plaintiff cannot identify the manufacturer of a defective product, the party that sold the defective product may be liable. The seller may avoid liability if it identifies the manufacturer within a specified period of time. Finally, the revised Act now imposes punitive damages on manufacturers under some circumstances. Collectively, these amendments may result in an increase in product liability claims being brought in Korea.

Liam Kennedy: I would cite seven main areas of development.

First, multi-plaintiff litigation. A bill proposing to introduce a class action-type procedure was recently initiated in the Irish Parliament.

Product liability litigation typically involves many plaintiffs bringing similar claims. In the absence of class action procedures in Ireland, each plaintiff must initiate separate proceedings (which must be individually defended). This can lead to duplication and unnecessary costs, and may require different courts to determine the same issue (although solutions have been developed, particularly in the High Court, involving case management, "pathfinder" cases and also redress schemes). The proposed legislation contemplates the certification of similar causes of action as multi-party actions to be case-managed by a nominated judge. However, this bill has been initiated by opposition parties and it remains to be seen whether it will be enacted.

Second, third-party funding. The Supreme Court has recently confirmed third-party litigation funding (in return for a share in the proceeds) is unlawful in Ireland save for limited exceptions where the funder can demonstrate a genuine interest in the litigation (such as a shareholder funding a company's claim). In general, such funding would breach ancient rules against maintenance and champerty. It has been argued that the absence of such funding is a barrier to justice in Ireland, including in product liability litigation. However, the Supreme Court considered that any change was a policy issue for the legislature.

A bill proposing to allow litigation funding has been initiated in the Irish Parliament. However, once again, this is not a government bill and it remains to be seen whether it will be enacted.

Third, after-the-event (ATE) insurance. This is a form of legal expenses insurance that is taken out to cover certain litigation exposures (such as adverse costs orders). Unlike third-party funding, ATE has recently been approved by the Supreme Court as not contravening the principles of maintenance and champerty.

Fourth, alternative dispute resolution (ADR). The Irish courts have traditionally encouraged parties to consider ADR mechanisms where appropriate. This has now been put on a legislative footing with the enactment of the Mediation Act 2017. The Act requires lawyers to advise their clients to consider mediation before initiating proceedings. There are potential cost implications if a party refuses to consider or attend mediation, having been invited to do so by the court.

Fifth, redress schemes. In several recent cases of major litigation, each of which would have otherwise involved multiple claims, the courts have recognised private or state-sponsored redress schemes. For example, hip implant litigation has led to a large number of claims being initiated in Ireland and other jurisdictions. Claims have been brought in Ireland against various global manufacturers, with DePuy facing the largest number of claims. DePuy has put in place a redress scheme under which the value of the claims is assessed by members of an expert panel comprising retired judges. The panel's recommendations can then form the basis of a legally binding settlement (if accepted by both sides), failing which a claim can be litigated in the normal way. The High Court has encouraged use of the redress scheme before a claim is pursued through the courts.

Sixth, level of damages. The size of personal injury awards has been the subject of ongoing controversy in Ireland, with the insurance industry suggesting that the level of awards, and litigation costs, are very high, which in turn has an impact on insurance costs. In the product liability case, damages awards in two recent hip implant litigation claims illustrate the level of awards in the Irish courts. In *O'Sullivan v DePuy International Limited*, the plaintiff was awarded €300,000 general damages and €482,455 special damages; and in *Dineen v DePuy International Limited*, the plaintiff was awarded €120,000 general damages and €201,000 special damages. However, the Irish Court of Appeal has been reducing excessive awards for a number of years and this has been affecting the level of awards in the High Court to some degree.

Seventh, expert evidence rules. New rules have been introduced in respect of the exchange of expert evidence (some of which have yet to be fully implemented). The judge may now direct that the evidence on particular issues should be given by a single joint expert; or may direct a "debate among experts" (known as hot tubbing).

Matt Keenan: Two developments come to mind: one legal, one regulatory.

First, legal. In an era of forum shopping, where plaintiffs' counsel seek to file their cases in the most favourable jurisdictions no matter where their client resides, or where he or she actually sustained an injury, the US Supreme court's decision in *Bristol-Myers Squibb Co v Superior Court of California* stands as a major game-changer impacting the mass tort litigation landscape. In that case, the nation's highest court ruled that California courts do not have jurisdiction over out-of-state corporations such as Bristol-Myers with respect to the plaintiffs who did not live in California, or sustain injury there. This opinion has received extensive discussion in the legal circles and has already forced the dismissal of thousands of cases to be refiled in more defence-friendly jurisdictions.

Second, regulatory. On 13 December 2016, President Obama – in one of his last major legislative achievements – signed a piece of legislation known as the 21st Century Cures Act. The bill did many things, but one major change is that it expedited the FDA drug approval process by easing evidentiary requirements for new products or new drug indications under certain conditions. These include:

- The use of data summaries, where, for the approval of a new indication of a previously approved drug, the FDA may rely on data summaries for new indications or uses that are appropriate for a summary-level review; and
- the use of what is called "real-world evidence" – this allows the regulatory body to encourage use of data derived from sources other than randomised clinical trials, in order to support a new indication for an already approved drug, or post-approval studies.

The bill requires the FDA to issue guidance within five years when real-world evidence may be used and methodologies for analysis and collection of that evidence.

The FDA's website explains real world evidence this way:

> *Real world evidence is the clinical evidence regarding the usage and potential benefits or risks of a medical product derived from analysis of Real World Data – 'RWD.' RWD are the data relating to patient health status and/or the delivery of health care routinely collected from a variety of sources. RWD can come from a number of sources, for example:*
>
> - *Electronic health records (EHRs)*
> - *Claims and billing activities*
> - *Product and disease registries*
> - *Patient-related activities in out-patient or in-home use settings*
> - *Health-monitoring devices*

Why do I believe this law will become a very significant development in the already large world of pharmaceutical drug litigation? Because even before the bill had been signed, critics were declaring the Cures Act as the "End of Clinical Trials" with a lowering of the safety bar protecting patients' health and safety as a consequence.

Consider what some editorials offered on this:

> *Public Citizen, a progressive activist group that opposed the bill, called it 'sorely disappointing that Congress gave Big Pharma and the medical device industry an early Christmas present' that 'comes at the expense of patient safety by undermining requirements for ensuring safe and effective medications and medical devices.'* (*The Washington Post*, 7 December 2016)

> *The possibility of harm from overly indulgent regulatory approval is conveniently overlooked by industry mouthpieces demanding lessened scrutiny. Consider Merck's Vioxx, a painkiller and arthritis drug the FDA approved in 1999. Vioxx was pulled off the market in 2004 after it was shown to raise the risk of heart attacks. By then, according to research in the British medical journal Lancet, 88,000 Americans had heart attacks from taking Vioxx, 38,000 of them fatally.* (LA Times, 5 December 2016)

> *The law would likely save drug and device companies billions of dollars when it comes to bringing products to market by giving the Food and Drug Administration more discretion in the kinds of studies required to evaluate new devices and medicines for approval.* (NPR, 2 December 2016)

While I believe these criticisms are wrong, and in fact the law will allow for better, faster cures made available to the public, that will not stop plaintiffs, and their regulatory experts, from assailing the bill as putting profits over safety, and giving companies a new short cut to marketing new drugs more quickly.

Ron Peleg: Most significant product liability litigation in Israeli is conducted in relation to class actions based on product liability causes of action. Therefore, the developments in Israeli product liability litigation are intertwined with those affecting Israeli class actions. These include a pro-plaintiff tendency displayed by certain Israeli courts, which, coupled with a relatively low standard of certification, manifests itself in a high certification rate (over 40 per cent). Furthermore, courts have grown increasingly lenient in acquiring jurisdiction over foreign manufacturers and distributors. Additionally, today's global village has brought Israeli plaintiffs to file "copycat" claims, imitating earlier product liability claims filed elsewhere. This can be seen in a variety of fields, ranging from pharmaceuticals to automobiles and other consumer goods. These developments pose a twofold challenge: international corporations are more likely to be named in defendants in Israel; and the outcome of Israeli litigation has become increasingly dependent on defendants' conduct and proceedings outside Israel. Note that more than 1,500 new class actions are filed in Israel every year: a remarkably high rate in comparison to other countries that permit plaintiffs to file class actions.

Contingency fee arrangements and third-party funding are becoming more common in the product liability space. What effect is this having on the market?

Colin Loveday: Australia does not permit lawyers to charge contingency fees. But Australia does have a very active and thriving third-party litigation funding environment particularly in the context of class actions. Some third-party funders operating in Australia are publicly listed and some have international connections. Third-party funders can and do have contingency fee arrangements with their clients. To date, we have not seen third-party-funded cases in the product liability space but I suspect it is only a matter of time as the third-party-funding business becomes more and more competitive, and funders look to broaden their business and follow international developments.

Kurt Gerstner: Certainly these arrangements promote more product liability litigation, which can be quite expensive because of the need for expert witnesses, product testing and complex demonstrative evidence at trial. Even marginal liability cases not likely to be brought under normal circumstances may be filed if there is a litigation funder willing to "roll the dice". Such funding can also significantly increase the litigation costs for both parties, shifting the focus and outcome of cases from substantive issues to litigation cost issues. The advent of litigation funding can also create obstacles to getting cases settled, because plaintiffs will net less money after paying their attorneys and litigation funders. Additionally, there may be control issues between the plaintiff and the litigation funder, which can delay decision-making by plaintiffs' counsel and prolong the litigation.

Liam Kennedy: Contingency fee arrangements involving the sharing of proceeds of litigation are generally unlawful in Ireland. However "no foal, no fee" arrangements are common. These mean that the plaintiff's legal team will waive their fees unless the claim succeeds. In addition, there is increasing awareness and availability of ATE insurance and the Irish courts acknowledged the legitimacy of such arrangements in 2014. The courts have also recently confirmed that, depending on the terms of the policy, such insurance may be sufficient security for a defendant's costs, so as to justify a refusal of an order for security.

The full effect of these developments remains to be seen, but they are likely to facilitate plaintiffs and make it more likely that claims will be pursued if the prospects appear sufficiently strong to persuade lawyers to act on a "no foal, no fee" basis and to persuade insurers to offer ATE cover.

Otherwise, as noted above, the common law rule against maintenance and champerty remains in force in Ireland and the provision of financial assistance to a litigant by someone without a direct interest in the litigation is prohibited. The Supreme Court has confirmed that any change would be a matter for the legislature.

Matt Keenan: Third-party funding, in particular, is a very negative development whose impact will continue to be measured in the years to come. These outside sources are gambling on the merits of other people's lawsuits. The practice can incentivise the filing of weak or meritless claims and complicate the resolution process.

Where in some venues Article III judges are short and dockets are long, courts trying to settle cases may be unaware that their efforts may be complicated by an entity that is not even in the room.

It is my expectation and hope that courts will insist on transparency of the role of such funding sources.

Ron Peleg: Contingency fee arrangements and third-party funding have little effect on product liability litigation in Israel. This is because the bulk of such litigation is conducted in relation class actions. In Israel, class action plaintiffs can safely expect to be awarded up to 20 per cent of the total class compensation – without any significant risks (as most courts are hesitant to order them to pay significant costs) – which provide a sufficiently considerable incentive to file product liability suits regardless of contingency fee arrangements and third-party funding.

How has the globalisation of product liability litigation affected your practice?

Colin Loveday: Globalisation has affected my practice, although I should observe that multinational product liability cases (as I refer to them) have been a feature of my practice for close to 25 years. Over that period, I have observed two changes that are no doubt a product of globalisation.

First, there was a time when a particular product claim would commence in the US and then spread to other parts of the world after about 18 months to two years. Now there is virtually no delay in the commencement of claims. Indeed, simultaneous filings in multiple countries are not uncommon.

Second, multinational product claims used to be initiated by product claims commenced in the US. Now, the commencement of regulatory proceedings in any one of a number of countries will often be a trigger for regulatory proceedings in other countries and then the commencement of international product liability claims.

Kurt Gerstner: Global commerce brings products to all parts of the world and product liability claims follow. They are usually triggered by well-publicised government investigations or regulatory actions and/or product liability cases proceeding in a particular country. The number of "copycat" product liability lawsuits filed around the world has increased substantially. Typically, a particular type of product liability action will be initiated in the US. If that litigation is successful, or if it appears likely to be successful, it is very common to see it spread to other parts of the world. Plaintiffs' lawyers will use the same theories of liability, arguments and strategies that proved successful in the US to advance their positions. They will use helpful precedent from foreign cases to persuade judges in their cases. Moreover, in civil law jurisdictions where there is limited or no discovery, they will obtain discovery in US litigation from plaintiffs' lawyers there and use it as evidence to support their claims. In defending these claims, manufacturers and their lawyers now must consider strategies from an international perspective because what occurs in litigation taking place in one state or country now may have ramifications for the manufacturer in litigation taking place in many different countries.

Liam Kennedy: Manufacturers with global reach have the inevitable risk of global product liability litigation if product issues arise. Manufacturers can face vast numbers of claims across many jurisdictions.

It is extremely important that the defence of separate claims in multiple jurisdictions is effectively coordinated and that consistent strategies are adopted in different jurisdictions, meeting local requirements but also aligned internationally. Inconsistent approaches could damage the manufacturer's credibility and jeopardise the litigation, locally and internationally.

Further, any settlements or early findings or allegations against the manufacturer are easily disseminated through digital and social media and such media can also be used by plaintiffs' lawyers to generate publicity and to recruit claimants. This is increasing the numbers of claimants and claims. In the world of online forums where stories quickly "go viral", manufacturers also run an increased reputational risk when facing consumer claims.

As discussed above, the lack of a class action mechanism in Ireland gives rise to particular issues for defendant manufacturers as such claims can be logistically difficult and expensive for a manufacturer to defend.

Matt Keenan: The most common impact has been the impact of a different regulatory framework between the FDA and the EMA. While most of the attention has been directed on the difference of the approval process, my experience is the difference in the labels, and more particularly, when a label needs to be revised based on divergent standards. This is not uncommon. Companies with different labels for the same drug sold in different countries offers easy arguments for plaintiffs.

Ron Peleg: Recently, more and more international corporations are named as defendants in Israel. This phenomenon has been bolstered by the perception of these corporations as having deep pockets, as well as by the willingness of pro-plaintiff courts to acquire jurisdiction over them. Another significant effect is the emergence of "copycat claims", whereby Israeli plaintiffs copy suits filed elsewhere. While the availability and ease of access to foreign proceedings enable a diligent Israeli plaintiff to construct a formidable claim rather easily, many such claims are improperly adapted to the specific facts and causes of actions applicable in Israel, making them easier to rebut. Importantly, the existence of several parallel actions in different countries means that a global strategy must be carefully coordinated, often restricting the discretion of the defendant in any given jurisdiction. Such restrictions are particularly noticeable where potential international spillover is expected – such as issues of settlement and discovery.

In your opinion, what are the biggest challenges facing corporations looking to launch novel, innovative products into the market in terms of avoiding potential product claims?

Colin Loveday: In the case of novel, innovative products there is sometimes a disconnect between that part of the corporation that is responsible for product design and development and other parts responsible for marketing and sales. The latter (naturally) focus on the benefits of a product and positive claims to promote sales but limit references to product risk or the inclusion of precautionary language. In so doing balanced messages about risk, benefit and product performance may not be achieved. While a balanced message needs to be struck it is challenging to achieve.

A further challenge for corporations manufacturing novel and innovative products is managing consumer expectations. Some consumers will only focus solely upon the desirably qualities of a novel product. Important messages about product performance and any associated risks will be overlooked. Further, some consumers have a poor understanding of what expressions of risk actually mean. It is common for consumers to complain that product risks were not properly explained, that they have no recollection of being told of risks or that they knew that there was a risk but complain that it was never explained that the risk might actually fall in for them.

Kurt Gerstner: Manufacturers should assume that any new and novel products they develop will be on the "radar" of plaintiffs' attorneys that are looking for new litigation opportunities. Therefore, it is not only the products themselves but also the conduct of the manufacturers developing such products, that will be closely scrutinised by plaintiffs' attorneys claiming liability on multiple theories. Manufacturers should engage in a rigorous and multifaceted risk management process. Even before the product is being developed, investigation should be conducted to research past product liability cases related to products of the type they want to develop, including the causes of failures of those types of products in the past and the types of claims/arguments that have been made against those products in prior litigation.

Engineers and others involved in the product development should thoroughly study the scientific, engineering and other related literature to help them identify potential problems to be avoided in the new product. Proper evaluations and testing protocols should be developed and implemented to evaluate the quality and performance of the products being developed. Redundant safety features should be considered. Field monitoring of product performance and claims history also may help to identify potential problems so that measures can be taken to avoid claims.

Liam Kennedy: The challenge with novel and innovative products is to ensure they are not defective or inherently dangerous (in their ordinary use). Extensive testing can eat into R&D budgets. However, extensive global product liability litigation can also be disruptive and expensive even if the claims are not justified – the consequences can be devastating if such claims are well founded. Accordingly, prevention remains the best cure: undertaking appropriate tests; complying with regulations; ensuring adequate training, instructions, manuals, terms and conditions, etc; and documenting steps taken.

Furthermore, companies face the challenges of navigating increasingly complicated and demanding regulatory environments, with differing applicable legal standards and requirements across the world. This can be particularly challenging in contexts where novel products require specific regulatory approval in various jurisdictions.

Facilitating compliance with regulatory and administrative requirements can be time-consuming and expensive, and corporations should ensure they have sufficient resources to guarantee that notification and other deadlines can be met and administrative requirements complied with. As part of this, companies must ensure they have sufficient resources in place to guard against any potential infringement of IP rights of other entities, when developing new products.

Finally, the heightened awareness among consumers of their rights makes avoidance of product liability litigation where an issue has arisen very unlikely.

Matt Keenan: There will always be a place in healthcare for new therapies that improve lives. Today's patients are not only in tune with their health and available therapies, but are also much more informed about upcoming clinical trials. Still, there will always be attorneys looking to capitalise on the inevitability of rare complications that are seen once therapies are introduced to larger populations.

The aforementioned third-party finance opportunities, television advertising and access to multidistrict litigation filings –where cases can sit for many years until a resolution develops – further complicates matters.

Ron Peleg: We see two major challenges in this regard. First, corporations must understand that their actions in other jurisdictions – media releases, legal proceedings, product recalls, etc – are all closely monitored by Israeli plaintiffs, who are often eager to use them as a basis for their next class action. Second, there is a shift in Israeli product liability jurisprudence, from narrow enforcement of regulatory compliance to a broad notion of fair business practices. Courts often entertain claims even if formal compliance is proven prime facie. Therefore, a corporation looking to launch a novel product in Israel should first recognise that it is entering an exposing legal environment, and that regulatory compliance or following the accepted industry standards are simply no longer enough. Foreign corporations are encouraged to carefully inspect all aspects of their business, and to strike a delicate balance between regulatory compliance, consumer fairness, and avoidance of burdening business changes.

How do you see the field developing over the next five years?

Colin Loveday: Australia has a very active litigation environment, particularly with class actions. Several high-profile product liability class actions for a variety of products are currently before the courts. We have very active product regulators that are enforcing the consumer protection provisions and product standard compliance. Such regulatory enforcement is often prompted by overseas developments confirming an ever-increasing level of cooperation between regulatory agencies. At the conclusion of these regulatory enforcement actions we are seeing the commencement of consumer class action claims. There is no reason to believe that this dynamic environment will change over the next five years.

Kurt Gerstner: The Internet of Things (IoT) is going to create a sea change in product liability and generate enormous risks for product manufacturers. Plaintiffs' lawyers are seeing this product evolution as their next "cash cow". Already they have begun filing suits based on the potential "hackability" of products, privacy breaches and failure of IoT products to function properly. US discovery will see a shift to more discovery against defendant manufacturers focused on software in their products as plaintiffs search for new causes of product failures. An army of new software engineer experts will be developed to address IoT product liability claims. The IoT also will challenge the insurance industry in assessing risk where there is limited experience to guide insurance underwriters. New insurance products may need to be developed and there will likely be an exposure shift from product users (such as automobile operators) to product manufacturers. Software developers may also see increased exposure as their software is incorporated into more consumer and industrial products. Contractual liability including indemnification clauses will need to be reconsidered as product development partnerships between hardware and software companies expand. Product manufacturers also will face risks related to lagging and inconsistent laws and regulations as governments try to catch up with the technology. This can create inconsistent laws and increase expense as manufacturers may need to prepare for different regulatory schemes that might be imposed.

Liam Kennedy: Strengthening consumer rights and more rigorous regulatory supervision and enforcement could drive change over the next five years. Internationally, this is likely to contribute to the continued growth of multi-jurisdictional product liability litigation.

Some specific developments over the next five years could include:

- the introduction of the new rules to improve product safety proposed by the European Commission in February 2013 and adopted by the European Parliament in April 2014. The draft legislation aims to boost product safety rules and improve traceability of products across markets;
- the introduction of some form of class action system in Ireland; and
- further discussion on, and possibly the legalisation of third-party funding in Ireland.

Matt Keenan: In the near future, courts will struggle with the practical limitations of impanelling jurors and instructing them to not consult with evidence outside the courtroom. The notion of digital addiction, particularly with the younger demographic groups, is no longer a hypothetical concept. Experts are predicting that this may force quicker verdicts, as jurors demand

to be reconnected with society. "Fear of missing out" may not be simply limited to social media. It may influence the speed of deliberations, the tolerance for longer evidence, and a demand to wrap things up so they can get on with their normal routine: staring at their phone.

Trials will necessarily grow shorter, either as a function of the risks of digital isolation, or recognition of shorter attention spans. Judge Goodwin, in the pelvic mesh multidistrict litigation, placed on the parties prescribed time limits for the presentation of evidence.

Separately, but related, judges and counsel will struggle with jurors who violate court directives to consult evidence outside the courtroom. Three news stories are worth considering here.

Late last year, after a Florida criminal trial involving a public official named Mitch Needelman had ended, one juror — identified as Juror Rivera — contacted the defendant's lawyer saying the jurors had repeatedly discussed the case among themselves before deliberations, though they had been warned multiple times not to do so by the judge. "But one juror did admit she used her cell phone to look up the definition of bribery and its potential penalties and that she 'probably shared' that information with other jurors."

The judge presiding over the corruption trial denied a defence request to allow a search of a juror's mobile phone and home computer amid concerns about potential juror misconduct.

In September 2017, a criminal trial was stopped due to similar jury misconduct. From the news story:

> *A mistrial has been declared in the murder trial of Todd Maneke, but it wasn't because of a hung jury, but rather juror misconduct. It was alleged that three or four of the jurors did their own research outside of the court setting to get the information they need needed to reach a verdict. It's become a growing problem because of the proliferation of cell phones. Any juror that owns one of the devices can now start punching buttons from anywhere, and taint jury deliberations by introducing information that was not presented during the trial.* (WKZO.com)

In another case in Syracuse, New York, Dr Robert Neulander was found guilty of murdering his wife. Following the trial, Neulander's lawyers asked to probe a juror's mobile phone for prejudicial text messages. In reports of that case, it was stated, "A juror has been accused by an alternate juror of getting prejudicial text messages about the case during trial, and discussing the case outside the jury room."

The attorneys for the defendant wanted to have the juror's phone examined, and that motion was granted. The court found over 7,000 text messages from the juror to outsiders about the evidence. Ultimately the judge denied the defendant's motion to set aside the guilty verdict and the case is on appeal.

Ron Peleg: In line with recent years, more and more international corporations are expected to find themselves in the midst of Israeli product liability class actions. Two changes can be expected as to the nature of these claims. First, claims are likely to become more sophisticated, both as plaintiffs gain more experience and as technology progresses. More claims will likely revolve around high-end technological products, rather traditional consumer goods. Second, we are at the turning point of Israeli class action practice. The first wave was characterised by quick certifications and even quicker settlements. As the relevant legal actors have become more experienced, we can expect to see fewer quick settlements, instead seeing more cases being tried to their merits in full – including expert testimony and a complete bench trial. Thus, companies will invest more resources in fully trying the cases. This, in turn, would likely contribute to a reduction of the number of frivolous claims filed yearly.