

# Product liability and recall

Jim Sherwood  
September 2010  
Berrymans Lace Mawer London



Rob... knifed to death South LONDON, ENGLAND

# TOXIC SOFAS BURN 1,000

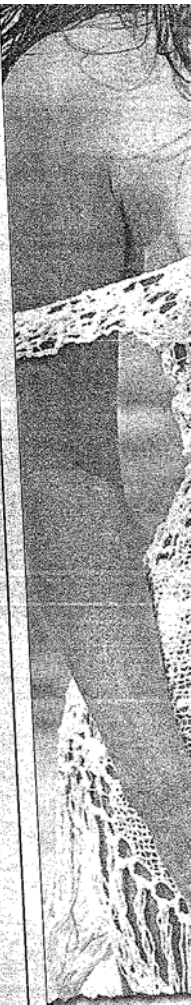


**Leather left  
tot in agony**

**EXCLUSIVE**  
By EMMA MORTON

AT least 1,000 people have been left with horrific burns from toxic sofas. Hundreds were hospitalised by a potent chemical in the leather. Tot Archie Lloyd-Bennett, left, is among victims.

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Berrymans Lace Mawer

# Extracted from EU product safety report

Figure 2 – Number of notifications 2003–2009

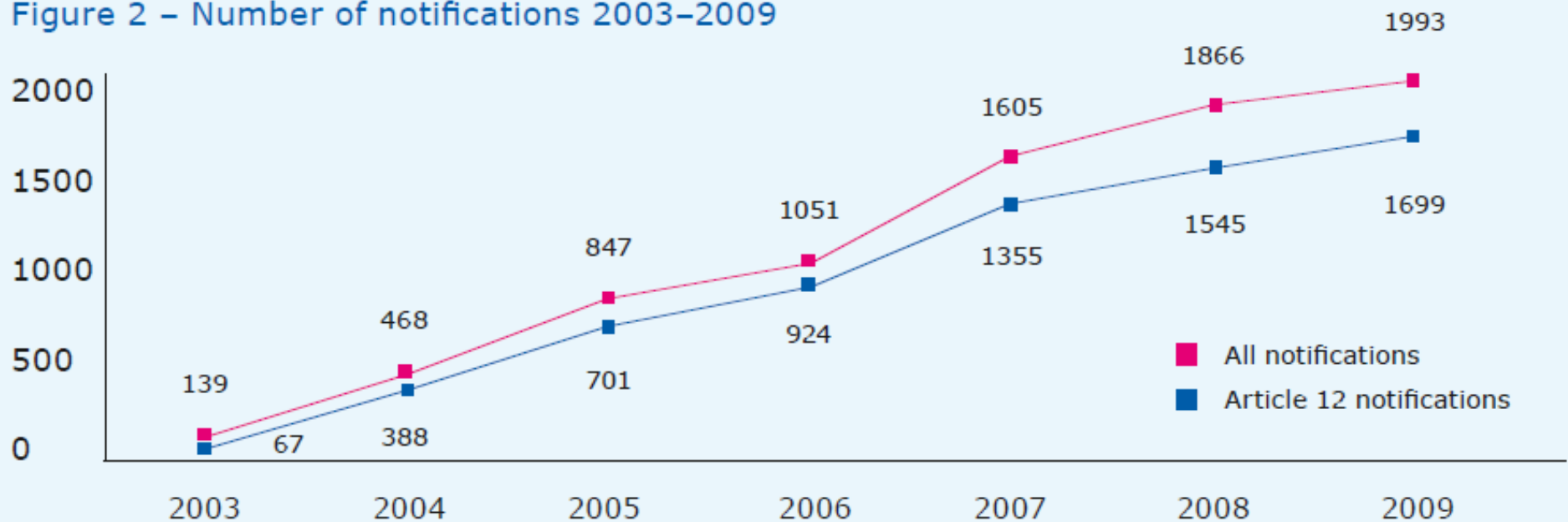


Figure 10 – The five most frequently notified product categories in 2009

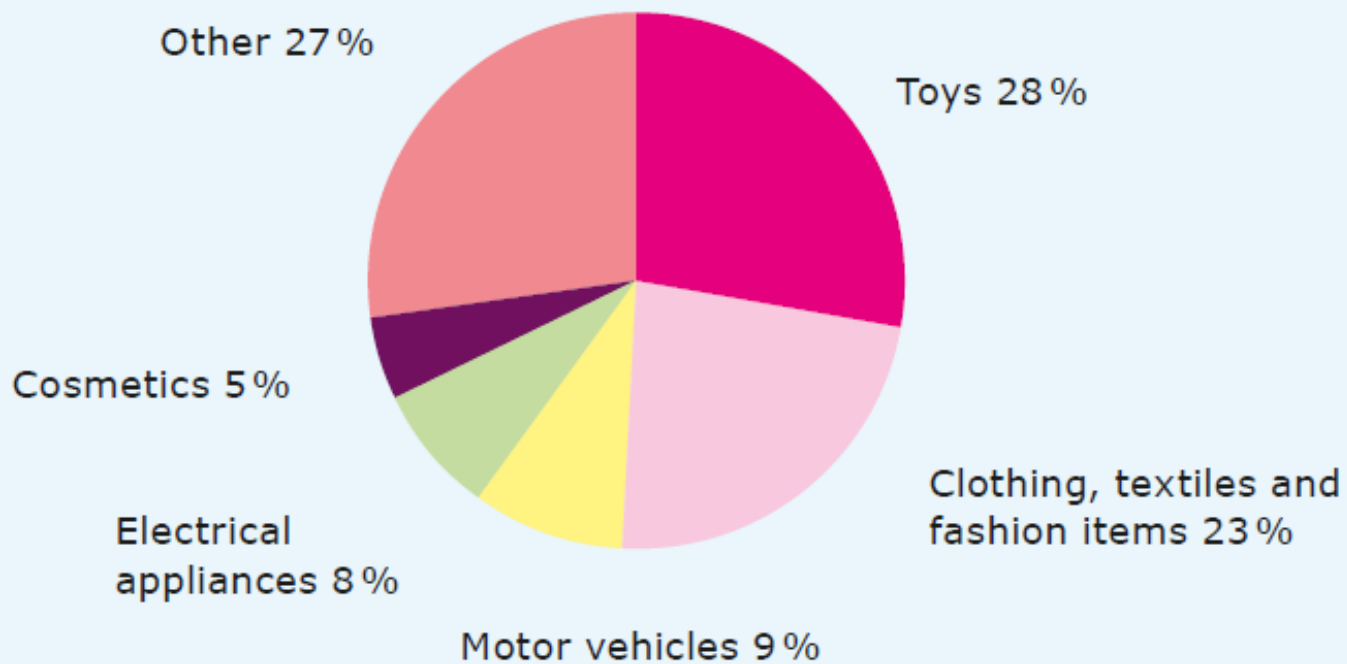
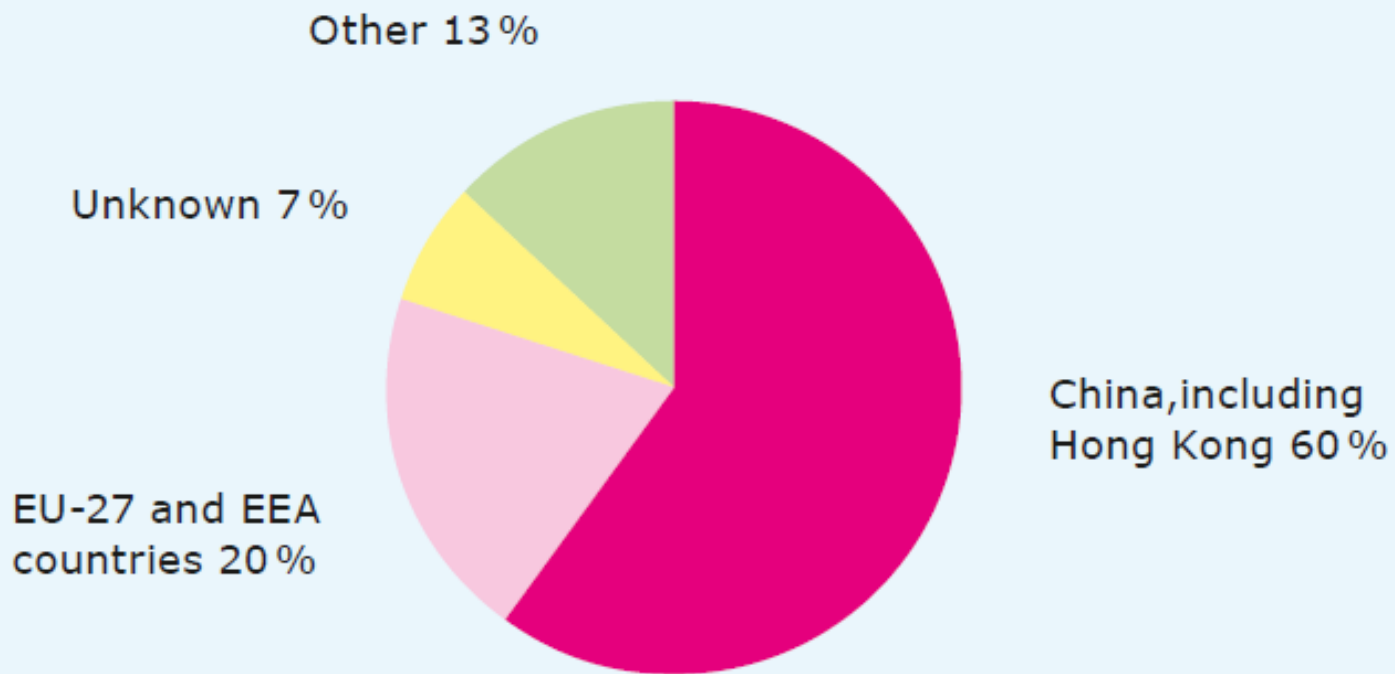


Figure 16 – Notifications by country of origin of the notified product (%)



8 **Sun** Thursday, June 5, 2008

26



Alert... an Argos sofa

EXCLUSIVE  
by EMMA MORTON

**A MUM of three died from a severe reaction to a toxic Chinese sofa, her family claimed yesterday.**

More than 1,000 Brits were burned by a potent fungicide in the seats.

But Elizabeth McLaughlin, 59, fell gravely ill after a pal bought the Argos Bari set last May and gave her the recliner.

Unsuspecting Elizabeth even **SLEPT** in it after swelling left her unable to breathe in bed. She died of heart failure in

# ARGOS TOXIC SOFA 'KILLED OUR MUM'

July and solicitors acting for her family plan to sue makers LinkWise. It is the first "fatal claim".

*Daughter, Charlene, 24, of Luton, Beds, said: "We believe we lost mum due to the chair."*

"Her arms, legs, chest and neck were all swollen up, she was full of fluid. She was tested for infections and other things

but the tests came back clear. The doctors could not understand what was causing it."

She added: "What made it worse was that mum used to sleep in the chair because she found it very difficult to breathe in bed."

In a cruel twist, Elizabeth died just more than a month before

Argos sent out a recall letter warning customers of the dangers from the sofas.

*The fungicide in the £600 and £850 sets was supposed to prevent mould during storage.*

The Sun revealed last week it caused burns and eczema.

Lawyers will go to court today to discuss a deadline for claims

against LinkWise. The McLaughlins' solicitor, Richard Langley, said: "The problem is of epidemic proportions. A lot of people have been hospitalised."

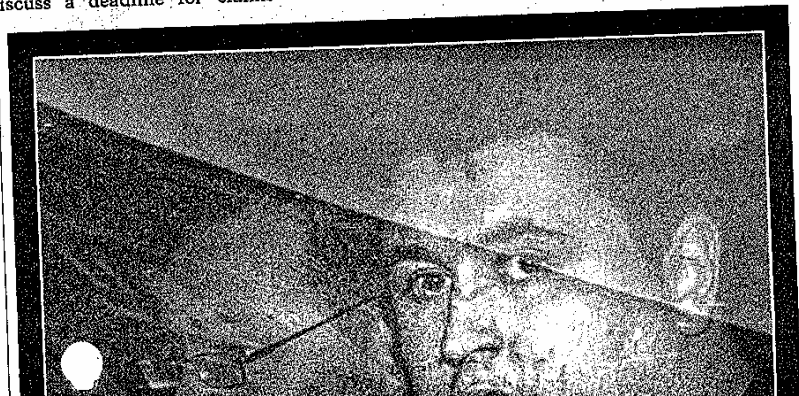
Land of Leather and Walmsley also sold the sets. Argos last night offered its "sympathy" to the McLaughlins.

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Alert... our story

Deals so good  
you'll be seeing  
double



## “Consumer Empowerment”

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- The European level
- The domestic level

*‘access to justice is ... still disproportionately weighted against claimants ... this has resulted in few claims being brought ... a number of meritorious claims simply have not seen the light of day’*  
*Civil Justice Council, 2008*

- The Jackson report
- The future?

## What is a GLO?

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- Genesis of group litigation  
‘managing the unmanageable’ – Lord Woolf, 1996
  
- Features
  - Court-based
  - Opt-in
  - Loser-pays principle



## What is a GLO?

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- Civil Procedure rules
  - Setting up the GLO
  - Register
  - The issues
  - Wide discretion
  
- Standard minimum requirements
  
- Access to Justice?
  - ‘many opt-in rates < 30%’

## Perils, pitfalls and practicalities

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- The early stages
  - Getting the right team in place
  - Retailer
  - Insurer and retailer
  - Should we enter a GLO?
  
- Relationships with other parties
  - Along the supply chain
  - Claimants' solicitors
  - Co-defendants
  - The experts

# Perils, pitfalls and practicalities

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- Managing the GLO
  - Publicity
  - Admissions
  - Questionnaires
  - Claims handling agreement?
  - Costs capping

## Liability update (1)

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- Consumer Protection Act 1987
  - little used
  - pragmatic v policy
  - technological development

# 'Over-the-counter stem cells in 20yrs'

STEM cell 'pharmacies' that dispense personalised tissue therapies could be as common as chemist shops within 20 years, an expert has claimed.

The era of stem cells is just beginning and will yield undreamed-of forms of tailored treatment for damaged body parts and organs, said Prof David Warburton.

'In about 20 years' time, we will have stem cell banks just like we now have pharmacies with medicines in them,' he said ahead of a major conference in Not-

By **Joel Taylor**

tingham. 'You'll get a diagnosis for a specific problem and be given stem cells to treat that problem.'

Stem cells are 'mother' cells that can be farmed in a laboratory to make replacement tissue, such as brain neurons or insulin-producing pancreas cells.

Cells obtained from embryos may develop into any kind of tissue in the human body – while adult stem cells can

be taken from any organ and will reproduce themselves, offering the potential for complete regeneration of any organ from a few healthy cells.

Combining genetics with regenerative medicine has enormous potential, Prof Warburton believes.

His team at the Children's Hospital of Los Angeles is attempting to grow lungs from stem cells – a feat already achieved in animals. 'It's a wonderful time to be working in medical research,' he said.

## Liability update (2)

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- Limitation
- *O'Byrne v Aventis Pasteur MSD Ltd (2010)*
  - When is product in circulation?
  - 10 years – fixed?
  - Supplier must name producer
  - Lessons?

## Quality control – Continuing duty on manufacturers?

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*CPP Ltd v Nu-Way Ltd* (2009)

- claim in negligence
- failure to warn of defect
- *Hobbs v Baxenden* (1992)
  - duty of care continues
  - avoid unnecessary alarm
- fact specific
- regulatory issues, warnings, press

## Coverage

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- *Horwood and others v Land of Leather (in administration), Zurich Insurance (2010)*
  - *breach of claims control clause*



## Trends and the future

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- Regulation – GPSD and by sector
- Internet/Social networking sites
- Collective redress
- Medical device claims
- Emerging issues
- Far East

## Trends – International network view

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- ‘Consumer expectation’ supplanting ‘risk/utility’
- Erosion of US jurisdictional arguments?
  - Foreign Manufacturers Legal Accountability Act
- New Motor Vehicle Safety Act in USA
- New tort laws in China – Effective from 10 July 2010
- Increase in level of awards/prosecutions
- Answers