

1996

Consumer News

Charles Whitt

Follow this and additional works at: <http://lawcommons.luc.edu/lclr>

 Part of the [Consumer Protection Law Commons](#)

Recommended Citation

Charles Whitt *Consumer News*, 8 Loy. Consumer L. Rev. 272 (1996).

Available at: <http://lawcommons.luc.edu/lclr/vol8/iss4/2>

This Consumer News is brought to you for free and open access by LAW eCommons. It has been accepted for inclusion in Loyola Consumer Law Review by an authorized administrator of LAW eCommons. For more information, please contact law-library@luc.edu.

CONSUMER NEWS

by Charles R. Whitt

Supreme Court declines product-liability cases

The U.S. Supreme Court declined to review three cases addressing a fundamental question in product liability lawsuits—if Congress passes a law regulating a product, are people injured by that product barred from suing the manufacturer in state court? Last term in *Medtronic, Inc. v. Lohr*, 116 S. Ct. 2240 (1996), the Court opened the door to lawsuits against medical-device manufacturers by ruling that a 1976 federal statute regulating the safety of medical-devices does not necessarily bar lawsuits against the manufacturer.

Nationally, plaintiff and defense attorneys sought clarity on the scope of last term's decision. Plaintiff lawyers wanted the logic in *Lohr* to apply to all federal laws regulating products such as cars, cigarettes, pesticides, breast implants and hazardous chemicals. Conversely, manufacturers wanted the Court's ruling on medical devices restricted to the facts and circumstances in *Lohr*. The three cases not ruled on by the high court

each effect different products. In *Montag v. Honda*, 75 F.3d 1414 (10th Cir. 1996), Honda Motor Co. was sued over a Prelude that wasn't equipped with an airbag; in *Schuver v. Dupont*, 546 N.W.2d 610 (Iowa 1996), DuPont Co. was sued over alleged damage to farmland cause by a pesticide; and in *Busch v. Amrep Inc.*, 644 N.E.2d 839 (Ill. App. Ct. 1995), Amrep was sued by the family of a woman killed after accidentally inhaling an industrial cleaning product.

Prior to the Supreme Court's decision not to review, the other courts in all three cases ruled that the federal safety laws prevented the plaintiffs from suing or restricted the claims the plaintiffs could bring. The Supreme Court's refusal to hear these combined cases means the prior court's decisions are effectively still in place. However, the Court may wait to see how other federal circuits decide the issue before granting certiorari to review similar cases.

Eighth Circuit delays competition for Baby Bells

The United States Court of Appeals for the Eighth Circuit in Kansas City, Missouri suspended an important provision of the Federal Communications Commission's ("FCC") landmark "interconnection" rules. The rules governed how new rivals could connect with local phone markets under the new telecommunications law. The court order delays pricing and contract rules which would have forced the Baby Bells to offer discounts to competitors entering their local phone markets. The decision also returns oversight of new competition back to state regulatory panels

where local phone companies exert the most influence.

The court suspended critical provisions of the new FCC rules until the appeals by the Baby Bells, GTE Corp., and other states reach the higher courts. Reed Hundt, the FCC chairman, said he would immediately appeal the ruling to the U.S. Supreme Court. Hundt declared the Eighth Circuit decision "throws a monkey wrench into the carefully designed congressional machinery for introducing competition." However, the three-judge panel of the Eighth Circuit, which must ultimately rule on the broader

challenge to the FCC regulations, called the FCC's approach a "roundabout construction" of the new telecommunications law. The court also noted that phone companies and other groups challenging the agency's plans "have a better than even chance of convincing the court that the FCC's pricing rules conflict with the plain meaning of the [new telecommunications law]."

The Baby Bells welcomed the court's ruling and want more of the FCC's provisions stricken. "This was good news for the Bells as well as consumers," said Edward Young, associate general counsel of Bell

NTSB recommends changes to Boeing 737 rudders

The National Transportation Safety Board ("NTSB") recently recommended that Boeing Co. and all United States airlines flying Boeing 737 ("737s") jets should install new safety devices to avoid possible loss of control due to rudder failure. The change requires "retrofitting" planes currently in service and changing the design of new 737 airplanes. The potential cost of the change could reach up to \$100 million. Pilot union leaders and other safety groups supported the recommended additional safety feature. However, Boeing and the Federal Aviation Administration ("FAA") still have discretion in determining what long-term design changes are necessary for the entire 737 fleet in order to "preclude the potential for loss of control," according to the NTSB recommendation.

The safety of the aircrafts were criticized in the past few years when two 737 twin-engine jets crashed, one in Pennsylvania and one in Colorado, killing everyone aboard. Although the causes of the crashes

remain under investigation, some safety officials believe that violent rudder movement most likely caused the accidents. Boeing has continuously maintained that the rudders are safe. The latest version of the aircrafts have new rudder designs, but Boeing states that all changes were due to size rather than safety concerns.

The NTSB recommendations also proposed changes in the cockpit indicators on new jets to provide more details on rudder position and movements. The board looked at data supplied by a number of foreign airlines, hundreds of incident reports in which pilots noted problems with rudders or autopilot systems, as well as the results of discussions with Boeing staff and operators of 737s. FAA officials, which previously recommended more moderate changes to the 737 fleet, expressed support for the changes. The FAA has 90 days to decide whether the NTSB's proposal will be implemented.

Atlantic Corp. "With states back in control they can decide what prices are good for their consumers and decide accordingly. Now there is a clear path to local and long distance competition," Young said.

The Baby Bells argued that the FCC essentially was forcing them to sell to rivals at less than actual costs. The FCC regulations, prior to the court's suspension, required local phone monopolies to give new rivals discounts of 17-25 percent off the price of their retail phone service and 50-60 percent off the retail price of network equipment. The Baby Bells complained

that this practice amounted to illegal confiscation of property. They also argued the discounts left no room for local phone companies themselves to offer better bargains. The FCC contended that without mandatory discounts the local monopolies would hinder new competition by charging them unreasonable high rates just to enter the local communities. The stay of the FCC rules now allows local companies to freely negotiate their own prices with new rivals.

The Eighth Circuit also delayed enforcement of a provision that allowed new phone companies

seeking to enter the market the power to review the contracts that other new entrants received from either the Bells or other local providers. The new competitors, after reviewing all the contracts, could then select the best deal for themselves. Local phone companies argued this rule undermines the entire concept of competition. Final rulings on all challenges to FCC rules are likely to be appealed directly to the U.S. Supreme Court.

Archer Daniels-Midland Co. pleads guilty to price fixing

Archer Daniels-Midland Co. ("ADM"), an Illinois-based, \$13 billion dollar global "agribusiness" conglomerate, has pled guilty to criminal price-fixing charges resulting from the company's international marketing of lysine, an animal feed supplement, and citric acid. ADM processes corn, soybeans, wheat and other agricultural products and turns them into oils, vitamins and proteins. The company agreed to pay a record \$100 million in fines but gained immunity for both its chairman and company president. "This \$100 million criminal fine should send a message to the entire world," said Attorney General Janet Reno. "If you engage in collusive behavior that robs U.S. consumers, there will be vigorous investigation and tough, tough, penalties."

The federal antitrust investigation into price-fixing developed with the cooperation of ADM's former corporate vice president and FBI officials. The plea agreements describe conversations and meetings between ADM executives and foreign companies to set prices and quotas for lysine. The charges initially focused on three of ADM's product areas and concluded when a special committee of ADM's board negotiated the plea agreement with the Justice Department. The company also settled related civil litigation by paying a reported additional \$100 million. As part of the plea agreement, ADM has agreed to cooperate in the ongoing government investigations of additional antitrust violations.

The plea agreement states that ADM violated Section 1 of the Sherman Act, which carries a maximum fine of \$10 million for corporations. The fine may be increased to twice the gain derived by the company from the crime or twice the loss suffered by the victims of the

crime if either of these amounts exceeds the statutory maximum fine of \$10 million. Specifically, the two-count felony charged that ADM:

- (1) Agreed to set lysine and citric acid prices at certain levels and to increase those prices accordingly;
- (2) Agreed to allocate among the corporate conspirators the volume of lysine and citric acid to be sold by each;
- (3) Issued price announcements and price quotations in accordance with the agreements; and
- (4) Participated in meetings and conversations for the purpose of monitoring and enforcing adherence to the agreed-upon prices and sales volumes.

"Customers in the citric acid and lysine markets were robbed of their ability to bargain for the best price. Higher prices for those products translated into higher prices for American consumers. [The Justice Department's] action ensures that these markets will be competitive," said James B. Burns, U.S. Attorney for the Northern District of Illinois.

The Justice Department also found that Kyowa Hakko Kogyo Co. Ltd. of Tokyo and Sewon American, a U.S. subsidiary of a South Korean firm, conspired with ADM. Both pleaded guilty in the U.S. District Court in Chicago. Another Tokyo company, Ajinomoto Co., attempted to plead no contest, but U.S. District Court Judge Ruben Castillo rejected its plea. Under the terms of the plea agreement, Ajinomoto Co. agreed to pay \$10 million dollars in fines if the judge accepted a no contest or guilty plea. Ajinomoto Co. now has four weeks to change its plea to guilty or go to trial.

FBI nabs 45 penny-stock figures

The Federal Bureau of Investigation ("FBI") described a recent securities fraud sting operation as the "largest single set of arrests ever made in the securities industry." In all, 45 penny-stock promoters, brokers and company officers were charged with securities

fraud after a nationwide undercover investigation uncovered rampant bribery of brokers in small stocks. Mary Jo White, a U.S. Attorney in Manhattan, said the operation revealed a "a sordid picture of greed and indifference to the investing public."

The arrest covers a wide range of people involved in corporate investment. Among the defendants are four officers of public companies, with the rest made up of current and former brokers and promoters. All 45 defendants face jail time of 5 to 50 years and fines of

as much as \$250,000 for each count if found guilty. William Lucas, head of enforcement at the Securities and Exchange Commission ("SEC"), said the explosion in popularity of the stock market has attracted scam artists and rapid industry growth has increased the opportunities for con men and crooks to deceive hopeful investors.

The sting operation used FBI agents posed as brokers at a phony brokerage firm set up in New York. The agents claimed they managed the accounts of wealthy customers and wanted to invest the client's assets in blue-chip stocks as

well as some speculative investments. The agents informed the defendants that they would be willing to accept money and other compensation in exchange for selling specific securities to customers. According to the government, most of alleged payments were made through stock brokers who sometimes worked with officers of the companies whose stock was being offered. The promoters paid as much as 40 percent of the price of the stock being sold to consumers. According to prosecutors, the agents spent between \$5,000 and \$15,000 per transaction.

According to the FBI, the agency has received over \$100,000 in cash and stock payments from various promoters. The arrest from the sting operation represents more vigorous efforts by federal regulators to bring criminal charges against offenses that in the past were dealt with by imposing civil administrative sanctions or denying violators from ever trading again in the industry. In addition to criminal charges, the SEC brought 22 administrative proceedings against 28 of the people charged.

Research indicates consumer confidence on the rise

The Conference Board ("the Board"), a New York-based nonprofit business research group that measures the monthly consumer confidence index, says American consumers are confident that the United States economy has improved and will continue to improve. The Board recently released the results of its Confidence Report, a study which surveyed 5,000 United States households. The study compared current opinion polls and monitored trends in consumer behavior. The report indicated that in recent months the public's optimistic attitude toward the economy has been at its highest levels since the early 1990s. The index is measured by comparing current figures to a 1985 base year of 100. The Conference Board's index for August 1996 was 112.0, the highest since December 1989. The index has been climbing each month from a low of 88.4 at the beginning of 1996.

The study also measured the index levels for such areas as consumer expectation for the economy's health and consumer attitudes toward the job market. The August index of consumer expectations for the economy's health over the next six months also showed an increase to 100.3, up from a low of 79.9 at the beginning of the year. Additionally, the study reported

consumers appear more comfortable with employment conditions. In September, 20.8 percent of those surveyed agreed with the statement that "jobs are hard to get," a drop from 21.9 percent the previous month and the lowest percentage in six years. Likewise, the number of people who said jobs were "plentiful" reached the highest level since 1990. Some economists question the predictive value of the study, suggesting the study only measures current economic performance but is a poor indicator of the economy's true state.

Another factor effecting high consumer confidence is increased incomes. According to recently released figures from the Commerce Department, per capita incomes in 1995 registered the fastest growth in five years, while national per capita income increased 5.3 percent from 1994 to \$23,208. The statistics are higher than the Department's original estimate of only a five percent increase. Per capita gains exceeded inflation in every state except Hawaii and North Dakota. Despite the poor economic outlook at the beginning of the decade, increased reports of corporate downsizing, and the lingering effects of a once tight job market, American consumers appear to be responding as if a strong economy will persist.