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## Consumer News

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## *After one year, NAFTA appears to be working well*

Once highly controversial, NAFTA appears to be working well in its first year. The U.S. Commerce Department estimated that U.S. trade with Mexico rose 22 percent through September 1994. In addition, U.S. trade with Canada rose 12 percent during the same period. NAFTA is also responsible for 130,000 jobs in the U.S., according to the Commerce Department. Moreover, it estimates only 12,000 U.S. workers have lost their jobs because of imports under NAFTA and approached the government for help.

Detractors of NAFTA, however, dispute government figures. The Institute for Policy Studies, a research organization based in Washington, with ties to organized labor, believes that as many as

30,000 workers have been hurt by NAFTA. Furthermore, the institute believes the number of new jobs created by NAFTA to be minimal.

Regardless of the detractors, hundreds of U.S. enterprises, as expected, increased their exports, setup operations abroad, forged joint ventures, and invested billions of dollars. For example, Ford Motor Co. exported 25,000 U.S.-made cars to Mexico in 1994, up from 1,500 in 1993. Similarly, General Motors enjoyed a jump from 1,700 exported vehicles to 10,000. In addition, Caterpillar Inc., Washington state apple growers and Montfort International, a meat packer in Greeley, Colo., credit NAFTA

with 50 to 77 percent increases in exports.

The list of U.S. investors continues to grow as AT&T Corp. announced a \$1 billion joint venture for long-distance phone service with Grupo Alfa Industrial, one of Mexico's largest holding companies. Also, retailer Office Depot plans to open as many as 50 office-supply stores in Mexico joining Wal-Mart, J.C. Penney Co., Pier 1, and Dillard's. Additionally, restaurant chains, ice cream stores, law firms, architects, and NBC Television are expanding operations abroad.

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## **These toys are no fun**

One of every six toys may pose safety hazards to children, according to the Institute for Injury Reduction, a national nonprofit group of lawyers, consumer advocates, and physicians. The group warns that many toys could blind, choke, strangle, or kill a child playing with them.

The Consumer Product Safety Commission (CPSC) tests only 1 percent of all toys on the market, according to the Institute. Of the 120,000 types of toys on the market in 1993, the safety commission tested 1,026 toys and required recalls or adjustments of 167 products. The Institute suggests more comprehensive testing as well as performing pre-market testing. The Institute's 1993 annual report found that 165,400 toy-related injuries required emergency care. Furthermore, 25 of the injuries were fatal.

In early December, 1994, the CPSC recalled 46,000 Christmas books, 42,000 tea sets, 2 million bean bag chairs, 14,000 baby toys and 30,000 Christmas lights. The timing of the recall was meant to call attention to

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## ***Frequent-flyer suits***

The U.S. Supreme Court has cleared the runway for a group of air travelers to proceed with their lawsuit against American Airlines for retroactively restricting frequent-flyer awards. Potentially, the 6-2 decision clears the way for lawsuits against the nations' airlines that could total hundreds of millions of dollars.

Specifically, the ruling allows members of American Airlines' AAdvantage frequent-flyer program to continue an Illinois lawsuit against American Airlines for program changes made in 1988. The changes made it more difficult for passengers to travel with award tickets by restricting travel dates as well as limiting the number of seats available to free flyers on each flight.

The Court's ruling allows consumers to sue the airline in state court for alleged breach of contract. The lawsuit was filed on behalf of an estimated 4 million frequent flyers. "We're very pleased with the decision," said Michael B. Hyman, one of the attorneys who filed the suit. "Under the law in Illinois and most other states, you can't breach a contract retroactively."

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## Pearl Jam leads legal challenge to Ticketmaster

The Seattle-based rock band Pearl Jam continues to battle Ticketmaster, the nation's largest ticket-selling company. Pearl Jam, whose first two album's sales have topped 12 million, refused to tour last summer in protest of Ticketmaster fees. The band also filed a complaint with the U.S. Justice Dept. last summer and testified before a House subcommittee.

The dispute between the band and Ticketmaster began when Pearl Jam planned to hold a low-price concert tour. According to the complaint filed by the band, Ticketmaster refused to cooperate and

threatened to sue the band's promoter when the band sought to hold a tour without them.

A string of class-action suits against Ticketmaster was filed last year challenging the service fees charged by the agency. The 14 suits have since been consolidated in Federal District Court in St. Louis. The suit alleges that the Ticketmaster fees, which have been as high as 40 percent of the ticket price, are excessive. Furthermore, because of long-term financial agreements with concert venues and promoters, Ticketmaster is accused of anticompetitive practices. The

company has denied wrongdoing.

"This case could fundamentally change the way tickets are sold to the public," says Peter Jablow, a former Ticketmaster official and now a consultant for ticket firms. "Every consumer and music act could benefit substantially."

In January, Pearl Jam became the first major band in years to sidestep ticket agencies entirely. The band sold tickets without a surcharge through a mail-order lottery system. Over 165,000 fans mailed in postcards hoping to purchase tickets to two pro-choice benefit concerts held in Washington.

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## *take flight against airlines' award programs*

The majority opinion, written by Justice Ruth Bader Ginsberg, held that the "terms and conditions airlines offer and passengers accept are privately ordered obligations" and can be governed by state contract law. The Court rejected the airline's argument that the complaint should be handled by the U.S. Department of Transportation and not the state courts. The Court ruled in favor of American Airlines and held the plaintiffs cannot allege that the airline violated Illinois' consumer fraud laws, which would permit plaintiffs to seek punitive damages and attorneys' fees.

A spokesman for American Airlines denies any wrongdoing. "American does not believe it has breached any contract with its AAdvantage members," said John Hotard of American Airlines. "We expressly reserved the right to change the program at any time."

American Airlines was the first airline to institute a frequent-flyer program in 1981, which other major airlines quickly followed. Presently, the AAdvantage program has over 23 million members. Frequent-flyer programs have been wildly successful as a marketing tool and promote customer loyalty. However, as the programs have become more popular, it has been

increasingly easy for consumers to accumulate points through credit-card purchases, hotel stays and rental car tie-ins. Consequently, the programs become more costly to the airlines.

Ironically, the Supreme Court ruling was announced less than two weeks before most major airlines made changes that make it more difficult for frequent flyers to earn free tickets. On Feb. 1, American, United, and Continental Airlines all raised the minimum award points needed to qualify for free travel. Points required for a free round-trip ticket for domestic travel will be increased from 20,000 to 25,000 points. Similarly, USAir raised its requirement on Jan. 1, while Northwest Airlines has raised its requirement for most of the year, except for the off-peak travel season, Sept. 1 through Nov. 14.

On Feb. 1, three frequent flyers sued American Airlines, the day the mileage requirements for free travel were raised. The lawsuit, filed in Illinois state court, could lead to a giant class-action case involving the 23 million members of the AAdvantage program. In addition, similar suits against other airlines may also be filed.

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## NAFTA working

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In addition to increased exports within North America, the first year of NAFTA saw expansion to South America. Chile was invited to join the United States, Canada, and Mexico in the bold economic experiment. With a population of 14 million and South America's fastest-growing economy, Chile is expected to become a full member of NAFTA in mid-1996.

While NAFTA has fostered a great deal of growth in its first year, the agreement is designed to be an exercise in gradualism. Many provisions will be delayed for five or ten years to avoid disrupting weak industries. For example, eliminating barriers against sugar in the U.S. and used cars in Mexico does not take effect until 2010.

"Free trade is a long-term economic objective," according to economic analyst Ray Perryman. "The full effects of NAFTA, or any other trade agreement, aren't felt right away. The first year was a pretty good one. You're going to see more impacts in the second and third years. You would expect the ripples to grow over time."

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## Unsafe toys

*Continued from page 42*

"the most serious safety hazards," said CPSC Chairman Ann Brown. Most products that are recalled can be returned to place of purchase for a full refund, said Brown.

The Institute urges parents to test toys for safety before allowing a child to play with it. For example,

the Institute suggests parents use the cardboard tube from a roll of toilet tissue to determine if a toy is safe. If a toy or a piece of a toy can fit inside the tube, a child could choke on it and the toy is not safe, according to Dr. Lisa Thornton Godbold of the Pediatric and Adolescent Rehabilitation Program at the Rehabilitation Institute of Chicago. Most products are recalled because they have small parts that might cause a child to choke, according to Brown. "That is the major hazard of children's toys," she said.

In addition to toys with small parts, chairs and books can also harm children. For example, HarperCollins is taking back a children's book called "Christmas in

the Manger" by Nola Buck and Felicia Bond because the book contains a page decorated with plastic jewels that can be peeled off and swallowed by small children, according to the CPSC.

Certain bean-bag chairs with zippers were also cited by Brown as potentially hazardous. A 19-month-old Missouri boy suffocated after unzipping the bag and crawling into the resulting pile of pellets. The CPSC recalled over 2 million of the chairs that are labeled with the name of the manufacturer, the Baseline Design Division of Crain Industries of Fort Smith, Ark.

For further information on recalled toys, call the CPSC at 312/353-8260.

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## Special contest issue

In this issue of the *Consumer Law Reporter*, we are pleased to present the Judge Edwin A. Robson \$10,000 Essay Competition winner, beginning on the next page. Beginning on page 60, we present one of the honorable mentions in the contest.

The essays were chosen from those submitted to the Robson Competition through last July. The contest money came from the generosity to two individual donors, though the contest was administered by the Institute for Consumer Antitrust Studies.

For more information on the Robson Contest, please write to Loyola University Chicago School of Law, Institute for Antitrust Studies, 1 East Pearson Street, Chicago, Illinois, 60611-2055.