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Consumer News

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Debate Continues on Product Liability Reform

Congressional interest in product liability reform has been growing at a rapid pace since President Bush expressed his support for such legislation in his January State of the Union address. "Product liability reform is gaining the kind of critical mass needed to pass this year," said Senator Kasten (R-Wis.). "1990 is the year for product liability reform."

Kasten introduced a product liability bill, S. 1400, that now is cosponsored by a full quarter of the Senate. S. 1400 was approved by the Senate Commerce Committee in May, by a vote of 13-7, and will be reviewed by the Judiciary Committee this coming fall before it is considered by the full Senate. If passed, S. 1400 would impose stricter statutes of limitation on product liability suits, eliminate joint and several liability for non-economic damages, and provide immunity from punitive damages in some circumstances.

The Bush Administration strongly supports S.1400. According to Vice President Quayle, product liability reform is a "top competitive priority" for the Administration. The current system, he said, is essentially a "lawyer tax" that generates excessive litigation, creates uncertainty for American businesses and inflates insurance costs. "Ultimately," he said, "the costs of our inefficient product liability system are borne by the consumers." For example, Quayle noted, liability insurance accounts for \$60 of the cost of a \$110 football helmet. Because reform would reduce the risk of liability, he concluded, product costs would shrink accordingly.

A recent study by the General Accounting Office ("GAO"), commissioned by the Subcommittee on Commerce, Consumer Protection and Competitiveness, speaks against reform, however. The

GAO study, which considered jury awards in five states, concluded that product liability verdicts are by and large reasonable and that concerns about excessive compensatory and punitive awards are largely unfounded. The size of compensatory awards, the GAO found, is generally correlative to the severity of the injury.

Another critic of the reform movement is Chicago personal injury attorney Philip H. Corboy, who said that "product liability is directly linked to product reliability." Dr. Sidney Wolfe, director of the Health Resource Group, a consumer organization founded by Ralph Nader, told the New York Times that "there is absolutely no reason to let a negligent company off the hook." Nader himself expressed his disapproval of similar state legislation pending in Pennsylvania. "To take away the rights of the most vulnerable is abominable," said Nader. "The only [product liability] crisis is that too few people are able to get their day in court."

Recording Industry to Provide Warning Labels

Labels warning of "Explicit Lyrics - Parental Advisory" have begun appearing on record albums, cassettes and CDs because of recent action taken by the Recording Industry Association of America ("RIA"). The RIA is beginning to use these warning labels in order to head off legislation recently introduced in a number of state legislatures.

Since the RIA announced its intentions earlier this year, legislative labeling efforts in Arizona, Florida, Iowa, Maryland, Missouri, Oklahoma, Rhode Island, Tennessee, and Vermont, have come to a halt. Bills are, however, still pending in New York, New Jersey and Pennsylvania. A bill intro-

duced in Louisiana was recently passed by the legislature, only to be vetoed by Governor Buddy Roemer. Roemer stated that his decision to veto the bill was based on concern about the financial impact such a law would have on the state. If the Louisiana bill became law, a number of musicians, including Elton John, Ray Charles, Randy Newman and Patti LaBelle, had threatened to cancel concerts there. A number of recording executives also had threatened boycotts.

"Octane Cheaters"

According to American Automobile Association spokesman William Berman, many Americans currently have little chance of getting what they pay for at the gas pump. A study by the General Accounting Office ("GAO") discovered that as much as nine percent of gasoline sold in this country is mislabeled by a half octane or more. The practice has been dubbed "octane cheating" by the Associated Press. Rep. Charles Schumer (D-NY), who contributed to the study, has described octane cheating as a "quiet but dangerous shell game for consumers."

Consumers desire higher octane gasoline because it increases engine efficiency and improves mileage. The octane level also determines the extent of emissions in many engines. The difference in retail price between low and high octane gasolines can be as much as twenty cents a gallon. According to the GAO, octane cheating costs consumers approximately \$150 million each year. The economic impact could be as much as \$600 million annually, according to Rep. Philip R. Sharp (D-Ind.), who, with Rep. Schumer, released the GAO report.

Federal law requires that gasoline octane ratings be displayed at

gas pumps on uniform black and yellow labels. Fines of up to \$10,000 may be ordered for each violation. The Federal Trade Commission and the Environmental Protection Agency are responsible for enforcing compliance with federal law in this area, but neither agency has conducted testing since 1981. Both agencies cited insufficient staffing as reason for their failure to police the market more thoroughly.

Among the seven sample states studied by the GAO, frequent mislabeling problems were found in Michigan, Missouri, Oregon and Tennessee. The GAO found that 51.9 percent of Michigan service stations, primarily in the Detroit area, had inflated octane ratings an average of 2.3 points. In St. Louis, 52.6 percent of the stations had mislabeled by an average of 2.2 points. 21.8 percent of the stations in Oregon and 22.2 percent in Tennessee were also mislabeled, the GAO found. In states that conduct their own octane testing, the GAO found fewer mislabeling problems.

Following the study's release, Mark Green, New York Consumer Affairs Director, made a surprise visit to a service station in New York where, citing it as one of the city's worst offenders, he ordered the pumps padlocked. New York has six inspectors assigned to inspect approximately 1700 stations in the city. Similar man-power problems exist in Washington state where Mike Willis, Assistant Director at the State Department of Agriculture, said that "the cost of testing . . . is rather expensive." However, he added, the state will conduct random testing and respond to complaints as part of a pilot project.

Congress Studying "Infomercials"

"Infomercials," or program-length television commercials that are staged as "special reports" or talk-show format programs, are being investigated by a House of Representatives subcommittee. According to Rep. Wyden (D-

Ore.), the trouble with these news-style commercials is that "for millions of Americans watching television, it's getting harder and harder to distinguish between commercials and talk shows and news programs." Wyden made these remarks during a Small Business subcommittee hearing on the subject. "The snake oil has been flowing in rivers and the federal government has been very slow to get to the levee," he said.

Harold A. Shoup, Vice President of the American Association of Advertising Agencies, told the subcommittee that infomercials are a "violation of our standards both in terms of the claims that are made as well as the format that masks the commercial purpose of the program itself."

Rader Hayes, an assistant professor at the University of Wisconsin, told the subcommittee that she believed an internationally recognizable symbol should be adopted, which infomercial producers would be required to display during the entirety of each broadcast. Many newspaper and magazine publishers voluntarily use such symbols to distinguish advertising from other text.

Since the subcommittee began its investigation, the National Infomercial Marketing Association has been created to lobby on behalf of "infomercials." "It gives us legitimacy in the eyes of Capitol Hill and consumers, and it establishes us as a long-term industry," infomercialist Greg Renker told the Los Angeles Times.

SLAPP Suits Used to Quell Public Protest

State Senator Bill Lockyer (D-San Leandro) recently introduced a bill in California (S.B. 2313) to protect people from being hit with retaliatory lawsuits for speaking out on public issues. The bill is aimed at undermining the effectiveness of so-called SLAPP suits (Strategic Lawsuits Against Public Participation), which real estate developers and some agencies use to deter public protest or criticism. The bill would require SLAPP suit

plaintiffs to file a series of affidavits before being permitted to file suit, and would allow SLAPP suit defendants to recover court costs and attorneys' fees if they are otherwise successful in court.

By threatening individuals and small groups with SLAPP suits, businesses inhibit protesters from going forward with their complaints. SLAPP suits have been used to quell such movement as protest against airport noise and overcrowding, complaints about housing conditions, and ballot initiatives. Frequently cited causes of action include defamation, nuisance, and tortious interference with business opportunity.

One apparently successful SLAPP suit in Illinois was recently filed against homeowners in the Crystal Lake area. There, protesters of a Zale Group subdivision were pressured into a court agreement enjoining them from picketing, using posters, or making "false statements" to people near the subdivision. "Picketing in some cases goes beyond free speech," Zale attorney Brian Meltzer told the Chicago Tribune. "In this case, it was used to intimidate prospective purchasers. It was done to damage Zale's business."

Approximately 400 residents who protested the development of a Burbank-Glendale-Pasadena airport in California also were recently hit by SLAPP suits. The Los Angeles County Bar Association, the Attorney General's Office in California and a local homeowners group have become involved in defending the residents. Margie Gee, a member of the homeowners group, told the Los Angeles Times that "it takes time and money to counter such claims. . . . It's taking democracy away."

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