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CONSUMER NEWS

by Charles R. Whitt

New Hampshire high court okays air bag suit

The New Hampshire Supreme Court will allow the trial court to determine if a car was unreasonably dangerous because it did not have an air bag, even though it was not required to have one installed at the time it was manufactured. *Jo-Ann Tebbetts v. Ford Motor Company* may open the door for claims against auto makers for not equipping cars with air bags on cars, despite meeting federal safety standards which did not mandate air bags. The case also impacts how far the Federal Government can go in preempting state statutes.

In 1991, nineteen-year-old Rebecca Tebbetts was killed in a car

accident when her car struck a tree in Holderness, N.H. She was wearing a seat and shoulder belt at the time of the accident. Her mother, Jo-Ann Tebbetts, suing on behalf of her daughter's estate, contends that an air bag might have saved Rebecca's life. Air bags were required by the Federal Government in all cars since 1990. Tebbetts, however, was driving a Ford Escort manufactured in 1988. Although the automobile complied with federal standards, the New Hampshire Supreme Court ruled unanimously that the family was still entitled to a civil trial against Ford Motor Company.

Ford argued that the company could not be held negligent because it met the federal standards which required only automatic shoulder belts and manual seat belts, and that the case should not go to trial. Ford maintains that the National Vehicle Safety Act of 1966, which created the National Highway Traffic Safety Administration to set minimum federal vehicle-safety standards, bars Tebbetts from filing a suit. Furthermore a provision of the act expressly prohibits states from establishing their own safety standards.

Mrs. Tebbetts alleged that the car was unreasonably dangerous

Cigarette billboards can be limited in order

A federal appeals court upheld a Baltimore city ordinance that bans most cigarette billboards in areas frequented by children. The decision is considered a big boost to the Food and Drug Administration's war against cigarette companies and cigarette advertisements.

The Fourth Circuit Court of Appeals in Richmond, Va. is the first federal appellate court to allow restrictions on cigarette billboards. The court also upheld a Baltimore ordinance banning most billboard ads for alcohol in areas where minors are likely to see them. The court found the ordinances permissible because they advanced a legitimate government interest—reducing the demand for alcohol and cigarettes by minors—and were no more restrictive than necessary. The case could have an impact in other cities such as Cincinnati, Ohio where an identical billboard ban is

being challenged.

The court determined that the Baltimore City Council did not need empirical proof that the restriction would achieve their intended goal in order to enact the ordinances. Furthermore, as long as local elected officials "reasonably could have believed" that restricting billboard advertising will reduce the attraction of cigarettes and alcohol to minors, the ordinances can withstand a constitutional challenge.

Penn Advertising of Baltimore and the billboard industry who challenged the ordinance were outraged by the decision. They argued that such grand deference to local governments when considering the constitutionality of restrictions on commercial speech runs counter to U.S. Supreme Court precedence.

"This decision is so manifestly defective that it

despite meeting the federal safety standards. According to the New Hampshire Supreme Court, the provision of the 1966 Safety Act should be interpreted in the context of the entire act. The court also pointed to a clause stipulating that compliance with the minimum safety standards "does not exempt any person from any liability under common law." The court avoided ruling on the issue of the car's safety and determined that the lawsuit warranted a trial.

According to the plaintiff's attorney, this is the first decision of its kind in any state high court. In

addition, Arthur Bryant of the Trial Lawyers for Public Justice in Washington, D.C., said the ruling removes a shield that automobile makers have been using.

"Ford's basic presumption was to do the bare minimum that the Federal Government required," Bryant said. "Automobile manufacturers have a duty to do more than the bare minimum." Bryant filed a friend-of-the court brief on behalf of Tebbetts. Consequently, Tebbetts asked Bryant to argue before the state supreme court.

Ford, which currently installs air bags in all its models,

interprets the ruling and its impact differently. According to Malcolm E. Wheeler, Ford's national counsel, the case was "not precedent setting; it's one in a long line of cases."

Wheeler estimated that there had been 160 cases around the country with similar issues that have been ruled on in favor of the car makers. Ford lawyers point to cases in Pennsylvania and Texas with similar issues and the juries sided with the manufacturers and found no liability. Ford's lawyers must now decide whether to appeal to the U.S. Supreme Court or whether to take the case to trial in the lower court.

to protect minors

is not going to be upheld," said Penn Advertising's attorney Eric M. Rubin. Rubin says the Supreme Court has ruled that commercial speech cannot be restricted without hard evidence that the restriction will significantly advance a government goal. Penn Advertising will seek review by the U.S. Supreme Court and is expected to be joined by the American Advertising Federation.

A coalition of Baltimore community groups and elected officials that support the ban said the ads target low-income youths. A majority of the billboards are reportedly in the city's predominately African-American neighborhoods. The ordinances ban ads on billboards, sides of buildings, and on freestanding signs "in publicly visible location(s)," but provide a number of exceptions, including city buses, taxi cabs, commercial and industrial zoned sections of the city, and sports

stadiums.

The Supreme Court is currently reviewing a case from Rhode Island that could have an impact on the Baltimore advertising restriction. The Rhode Island case focuses on a 40-year old ban on advertising liquor prices. The case could determine how far state and local governments can restrict advertising of socially harmful products. If similar bans are upheld by the Supreme Court, the Food and Drug Administration ("FDA") would have some strong legal support for its more sweeping efforts to restrict a wide range of cigarette advertising aimed at minors, such as a proposed ban on cigarette advertising within 1,000 feet of schools and playgrounds. Other FDA proposals are more stringent, such as bans on free samples, promotional giveaways, and brand name sponsorship at sporting events, as well as restrictions on advertising content.

Clinton plans to ease export of advanced computers

President Clinton has relaxed restrictions on the export of high performance computers, a move praised by U.S. technological companies. Opposition to the proposal fear that powerful American computers will be diverted for military use; like designing missiles or nuclear weapons. However, administration officials say the decision recognizes that computer manufacturers are turning out vastly more powerful machines each year and that what the government once defined as a supercomputer requiring government approval for sale abroad is now used widely as desktop computers in banks, movie studios, and other high-tech industries around the world. The White House predicted that the move will increase the business of U.S. technology firms by \$1 billion to \$2 billion.

In addition, officials said the President's decision will help American manufacturers sell billions of dollars of powerful computers to civilian customers in countries such as China, Russia, Israel, Pakistan, and India. Officials expect exports to military customers in these countries to remain under tight restrictions and supervision. Although President Clinton has not formally approved the proposal, which was worked out between the

Defense, State Energy, and Commerce Departments, Clinton told Israeli officials that he intended to liberalize the rules that made it difficult for Israel and other countries to buy advanced computers from the United States.

Members of Congress have already expressed concerns about the announcement, including Representative Floyd Spence, Republican Chairman of the House National Security Committee. In a letter to President Clinton he noted that India, China, Pakistan, and other countries with "major nuclear and other advanced weapons programs," are of particular concern and might obtain computers powerful enough to design highly sophisticated weapons.

The computer industry has heavily lobbied the Clinton Administration, emphasizing the industry's importance to California, Texas, and Massachusetts. Under current regulations, computer manufacturers are required to apply for Commerce Department licenses to export any computer more powerful than 1,500 MTOPs (million theoretical operations per second) The MTOP is a standard which measures how fast a computer operates. Industry officials complain that proposed sales are sometimes delayed for months while the government reviews whether the

buyer is involved in illegal weapons activities. Federal officials will allow the sale only if the manufacturers take expensive security precautions like monitoring the machines 24-hours a day.

The new plan is expected to create a multi-level system that would determine sale to a country based on its history, the state of its nuclear missiles program, and the identity of the customer. A ban will remain on exports of supercomputers to Iran, Iraq, North Korea, and Libya. Most remaining restrictions on sales to allies like Britain and France would be removed. Countries considered friendly to the U.S. without nuclear weapons, like Mexico, would be allowed to import machines up to 10,000 MTOPs for civilian use. More powerful computers would still require an export license. Under the proposal, the ban on selling powerful computers to anyone using them to make nuclear weapons would remain in effect.

Some computer industry executives are arguing for an end to all controls saying that countries already evade the rules by buying smaller computers and linking them together with software allowing them to work in conjunction or inter-linking them in larger computer networks.

Congress passes bill to tighten economic embargo of Cuba; President threatens veto

Despite the threat of a veto by President Clinton, the House overwhelmingly agreed to tighten the trade embargo against Cuba. The House voted 294 to 130 in support of a bill that attempts to discourage foreign investment in Cuba. The Senate passed a similar bill by a 74 to 24 vote. Supporters of the bill say that foreign investment provides much-needed hard currency that aids the Cuban economy and strengthens Cuban President Fidel Castro's political and economic control in Cuba.

"Castro is increasingly desperate for foreign currency...our bill is the tool that will deny him his last hope for keeping his regime in power," said Dan Burton (R-IN) who sponsored the bill.

Secretary of State Warren Christopher, in a letter to House Speaker Newt Gingrich, said he would recommend a presidential veto and that the bill damages prospects for peaceful transition in Cuba and would jeopardize a number of key interests around the world.

The bill, which still awaits Senate action, would require the Federal Government to deny visas to foreigners who own or benefit from the use of property confiscated after the 1959 revolution in Cuba. It would also allow Cuban-Americans to file lawsuits in American courts to seek damages from foreign companies that buy or use "expropriated properties," such as rum distilleries. Senator Jesse Helms (R-N.C.), Chairman of the Foreign Relations Committee, is sponsoring an identical bill that he hopes to attach to a larger appro-

priations bill.

Administration officials are afraid that the embargo would for the first time allow Cuban-Americans who were not American citizens at the time of the 1959 revolution to sue foreign investors in Cuba for damages in federal courts. This provision, officials say, would clog American courts, offend American allies, and violate international laws by giving American courts jurisdiction over disputes in another country. The administration is also concerned that the increased economic pressure on Cuba also increases the likelihood of a violent explosion rather than a more peaceful transition.

The House Bill deleted a provision, also opposed by the administration, that prohibited sugar imports from countries with companies that purchased Cuban sugar. The bill also requires the United States to reduce its contributions to the World Bank or other international financial institutions if they provide aid to Cuba.

"These provisions would create tensions in our relations with our allies," said Secretary Christopher in his letter. "We know that this provision allowing lawsuits is already being used by the Castro regime to play on fears of ordinary citizens that their homes and work places would be seized by Cuban-Americans if the regime were to fail."

A House-Senate compromise version of the bill is expected to have enough votes to withstand a Presidential veto.

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National Automobile Dealers Association settles federal antitrust suit

The National Automobile Dealers Association ("Association"), which represents 84 percent of the dealers of American cars and accounts for \$375 billion dollars in annual sales of cars and auto products, has settled an antitrust lawsuit brought by the U.S. Justice Department alleging that the Association illegally urged dealers to limit price competition in sales to consumers.

Federal prosecutors said the actions of the Association dated back to 1989 and included persuading car dealers to reduce or boycott their purchases from manufacturers that offered rebates to consumers, and persuaded members to stop advertising retail prices in ads that included information on wholesale costs because the Association believed that this type of

advertising lowered retail prices.

Justice Department officials were unable to say specifically how much money the Association's activities cost consumers, but considered the costs "substantial" and said it would have led to higher consumer prices on new cars. No fines were issued in the settlement and the Association did not admit any wrongdoing. The Association agreed to a 10-year consent decree prohibiting it from urging dealers to adopt pricing policies or advertising programs that restrict competition, and bars the Association from encouraging boycotts or punishing dealers for their pricing policies. The decree still must be approved by a federal judge.

Patent received for new check design to help consumers

Patent number 5,433,483 does not mean anything now, but it may eventually make keeping track of your budget and expenses more convenient come tax time. Mason K. Yu, Jr., a retired engineer in Birmingham, Mich., recently patented a checking system which has separate categories on the lower left corner divided into selections for items such as food, entertainment, medical, etc. The purpose is to get a more accurate account each month on exactly where your money is going without having to retrieve old receipts or finding canceled checks.

According to Yu, when the consumer writes a check, she would mark the appropriate category, and

as the check is processed by the bank, a scanner could read the selected category, and at the end of the month, a chart or bar graph showing the total amount spent in each area or a percentage of total expenses could be produced for the customer. Many banks currently use a scanning device which reads the checking account number.

"Americans write 60 billion checks a year," according to Yu. "The average person doesn't want to have a computer jockey figure out their expenses." Yu also suggests that with his system, banks could easily create databases of consumer information.

Eleven accuse NationsBank of bias in mortgages

Eleven African-American residents in Washington, D.C. filed a lawsuit in U.S. District Court against NationsBank Corp. alleging mortgage-lending discrimination. The group, represented by the Washington Lawyers Committee for Civil Rights and Urban Affairs, filed a class-action suit alleging a "pattern

Commerce Department on chopping block

The Commerce Department moved a little closer to oblivion as the House Ways and Means Committee voted to abolish the department and create a new agency to handle its trade function. The committee, voting along party lines (22 Republicans voting yes and 14 Democrats voting no), called for a new agency, the U.S. Trade Administration. This new agency would be separate from the U.S. Trade Representative's office, but would

not be a cabinet-level position. The Commerce Department, which oversees a host of government agencies—including the Patent and Trademark Office, Census Bureau, International Trade Administration, Minority Business Development, U.S. Travel and Tourism Administration, and National Oceanic and Atmospheric Administration—is a long way from extinction since all the committees with authorization over the Commerce Department

would have to vote on eliminating the agency. The final measure would have to clear both the House and Senate before a final compromise is sent to the President. Commerce Secretary Ron Brown has stated that President Clinton will veto any legislation to abolish the Commerce Department. The total 1994 budget for the Commerce Department was 5.3 billion, representing approximately 0.3 percent of the national budget.

or practice of racial discrimination” by requiring African-Americans to meet higher standards than Caucasians to qualify for home-mortgage loans. The lawsuit details attempts by the eleven plaintiffs to obtain home-mortgage loans from the bank.

NationsBank officials deny the allegations and stand by their record of increased loans to African-American applicants since 1992, and its public support of the Community Reinvestment Act, a community-lending statute that has been under attack by Republicans. In most cases, the Department of Justice's civil rights division will bring a mortgage-lending discrimination suit. So far there has been no action by the Justice Department.

Let the bidding begin: FCC auction goes forward

A United States court of appeals recently cleared the way for the Federal Communications Commission (“FCC”) to begin its next wave of auctions for radio frequencies considered for “personal communications services.” The court lifted an injunction imposed on the agency several months ago when a small telecommunications company, Omnipoint Communications, sued the Commission saying the agency made it too easy for large corporations to win control over the bids.

The auction will cover 500 licensees and is expected to generate billions of dollars in bids. The frequencies for sale cover a block reserved for wireless telephones, hand-held computers, and similar electronic devices. The auction, which was originally scheduled to begin last August, was to give preference to companies owned by women and minorities by reducing the cost of their bidding. The preference was challenged by a rural telephone company; and the court of appeals halted the auction until the court decided the issue. The court resolved the suit by giving preference to all small businesses. The Omnipoint lawsuit, however, delayed the auctions. Neither the FCC nor the courts expect any further delays.