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 introduced 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
According to Rep. Wyden
Representatives subcommittee.
ing investigated
ing "Infomercials," or program-
length television commercials that
are staged as "special reports" or
talk-show format programs, are be-
ing a House of
Representatives subcommittee.
According to Rep. Wyden (D-
Ore.), the trouble with these news-
style commercials is that "for mil-
ions of Americans watching televi-
sion, it's getting harder and harder
to distinguish between commer-
cials and talk shows and news
programs." Wyden made these re-
marks during a Small Business
subcommittee hearing on the sub-
ject. "The snake oil has been flow-
ing in rivers and the federal gov-
ernment has been very slow to get
to the levee," he said.

Harold A. Shoup, Vice Presi-
dent 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 pro-
fessor at the University of Wiscon-
sin, told the subcommittee that she
believed an internationally recog-
nizable symbol should be adopted,
which infomercial producers
would be required to display dur-
ing 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 Info-
cmercial Marketing Association has
been created to lobby on behalf of
"infomercants." "It gives us legit-
imacy in the eyes of Capitol Hill
and consumers, and it establishes
us as a long-term industry," infom-
ercant 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 effect-
civeness 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 affida-
vits before being permitted to file
suit, and would allow SLAPP suit
defendants to recover court costs
and attorneys' fees if they are oth-
erwise successful in court.

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

One apparently successful
SLAPP suit in Illinois was recently
filed against homeowners in the
Crystal Lake area. There, protest-
ers of a Zale Group subdivision
were pressured into a court agree-
ment enjoining them from picket-
ing, 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 prospec-
tive purchasers. It was done to
damage Zale's business."

Approximately 400 residents
who protested the development of
a Burbank-Glendale-Pasadena air-
port in California also were recent-
lly 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 homeown-
ers group, told the Los Angeles
Times that "it takes time and
money to counter such claims. . . .
It's taking democracy away."