MINUTES OF THE HOUSE COMMITTEE ON JUDICIARY

Held in Room 522, at the Statehouse at 3:30 p. m., on February 9, 19 78.

All members were present except: Representatives Foster, Hayes, Heinemann, Hoagland, Hurley, Mills and Stites, who were excused.

The next meeting of the Committee will be held at 11:00 a. m./p. m., on February 10, 19 78. at 11:00 A.M.

These minutes of the meeting held on _____, 19___ were considered, corrected and approved.

Chairman

The conferees appearing before the Committee were:

Mr. Homer Cowan, Western Insurance, Ft. Scott, Kansas
Mr. John Sevart, Wichita
Ms. Kathleen Sebelius, KTLA
Mr. Don Vasos, KTLA
Mr. Dudley Smith, KBA

The meeting was called to order by the Chairman, who reminded members that Mr. Homer Cowan had been promised an opportunity to address the committee because he had been out of the state at the time proponents were heard on the package of product liability bills.

Mr. Cowan testified that he had been asked to clarify an apparent discrepancy between his testimony in the interim committee this summer, and testimony he had presented to the Missouri legislature later. He explained the apparent discrepancy was in the questions asked and not in his answer. In Kansas he had been asked if the bill (the one large bill considered previously) would reduce premiums, and he had expressed the opinion that it might not have an immediate effect, but had explained if other states enacted similar legislation, it would have an effect on claims and would indeed have an effect on premium rates. He explained that the questions asked in Missouri took all of these things into consideration, and his answer had been an immediate affirmative answer. Mr. Cowan displayed computer print-outs which were bound into book form and explained how the records have been maintained, with no specific breakdown with regard to liability. He stated his company had been prepared to comply with the law that was passed in 1977, at great cost, because it would mean going manually through all of the print-outs and pulling out and pulling out all of the product liability cases. Further, he explained it would take a trained person--not a clerical person who had little knowledge of how the system worked, and that the volumes would be enormous--eight or ten feet high in measurement. In larger companies, he explained there would be no way they could comply because their business is magnified many times.. He, therefore, urged enactment of legislation which would postpone the production of the desired records. He explained how they are all programming a new

all programming a new issue into the computers, and stated the desired information will be available within a given period of time. (See charts and exhibits.)
Mr. Cowan explained that because of the records kept in the past, there is no way they can anticipate what may happen in the future, and suggested that in the cases where people relate the enormous increase in premiums, the base had been set too low in the beginning, but he reiterated they will be able to predict a trend rather soon because of the new information fed into the computers. He stressed that they are making every effort to cooperate in this matter because they are concerned about the problem and also they want to retain their clients. He explained further that he served on a board which has been attempting to get coverage for clients on an "assigned risk" basis, although he agreed that some manufacturers who have never had a claim filed against them had experienced large premium increases.

Mr. John Sevart, an engineer from Wichita, stated he appeared on his own behalf, and in opposition to the package of bills. He stated that the bills in pieces are no more palatable than the one large bill which was presented at the previous session. He testified that he feels the bills do not address the real problem, and especially will not help the small manufacturer. In addition, he stated he feels that it will set up a system whereby the consumer pays for everything, although he did agree that this is about what has been happening all the time. He suggested the sponsors of the bills must have some vested interest in such legislation. (See printed statement.)

Rep. Whitaker, one of the sponsors of the bills, stated he was offended that anyone would think his motives were something other than concern for the high premium rates and the plight of the manufacturer.

The Chairman inquired if Mr. Sevart had any suggestions to provide the needed stability, and Mr. Severt stated that insurors should survey the product before trying to write a policy; also that several manufacturers could be pooled and spread the risk.

Rep. Foster called attention to page 3 of the printed statement regarding special interest groups getting legislation introduced, and Mr. Severt stated that anyone writing such legislation does not have the best interests of the people in mind. Members of the committee expressed indignation that a conferee would suggest that sponsors were "bought" or were acting in some "self-serving" manner by the introduction of this legislation. After considerable dialogue, the Chairman suggested that the conferee might want to reconsider his statements and write a letter to that effect. He noted that some kinds of testimony are not entirely appropriate, and tend to alienate the people who are attempting to work together to alleviate a problem.

Kathleen Sebelius, Registered Lobbyist for the Kansas Trial Lawyers Association, introduced Mr. Don Vasos, who appeared in opposition to the various proposals.

Mr. Vasos stated he is a practicing attorney in Kansas City, Kansas, and appears at the request of KTLA. He testified that his position is essentially the same as it was when he appeared previously. He stated they are opposed to the entire package of bills, and suggested that product liability lawsuits promote safety in the various products. He suggested that tort reform means cutting back on safety to the consumer, although he agreed he had nothing up on which to base his feelings. He pointed out the problems insofar as the Kansas products being sent out of state, and the many out of state products being imported into Kansas, and suggested that such a package of bills would do nothing to enhance the situation of the Kansas consumer, at least until there is uniformity among the states. He pointed out further, that Mr. Cowan agreed there is nothing reliable upon which to base the assumptions, and suggested it would be well to wait on legislation until some firm statistics are at hand.

Mr. Vasos explained Kansas City, Kansas, has a jury survey service, and in Kansas City, Kansas, it indicates that in cases where there were 65 to 75 plaintiffs suing only about thirty-six percent were on products cases with verdicts of an average of $9,000.00, most of which were on property and not injuries. He expressed the opinion that this is probably not any different throughout the state. He noted there have been instances of testimony where insurance premiums have increased as much as eight hundred percent over a period of one year or over a short period of time, and agreed this is very high, but suggested that there must be some reason for the exhorbitant rise. In particular, he suggested it had little to do with the experience of the manufacturers, but rather a defect in the original insurance coverage.

Mr. Vasos suggested there must be some alternatives and mentioned a captive company out of Bermuda by Massachusetts hospitals where the experience has been so good the insurance rate has been reduced by 40%. Also, he pointed out the City of Kansas City, Missouri, has begun to self-insure and their experience has caused a significant decrease in expense.

Mr. Dudley Smith, representing the Kansas Bar Association, testified that this attempt to codify the law is a misnomer. He discussed the bills by number and pointed out what he felt were defects, and stated he felt the efforts were useless. He expressed the opinion that there must be some other effort to relieve the problems which manufacturers have testified to.

In particular he urged members to look at HB 2896 dealing with latent defects, and suggested this would cause more problems than it would cure because of the numerous wholesale houses selling products in Kansas.

Rep. Stites noted that this is the position of the Kansas Bar Association, and yet, he stated he has no recollection of getting a questionnaire or having anyone survey him. He stated that it was his understanding that this position is also supported by the unions. Mr. Jack Euler, representing the AFL-CIO stated he knew of no opposition to the position of the KBA.

Rep. Stites inquired if that is the avowed position of the unions, and Mr. Euler stated that he feels it is the concensus of an eight to ten member group but there might be some dissents.

Mr. Ivan Wyatt of the Kansas Farmers Union appeared in opposition to the package of bills, explaining that they have heard many things on both sides of the question but feel they must oppose the bills. (See printed statement.)

Mr. Wyatt expressed the opinion that the passage of these bills might encourage "less than safe" manufacturers to flood Kansas with their products. He stated he felt the bills are anti-consumer.

The Chairman distributed a copy of HB 2163, along with a commentary from Rep. Matlack, Chairman of the House Federal and State Affairs Committee, and noted she had asked the Committee to look at it in regard to technicalities, and report back before they report the bill favorably. He noted the FSA committee had felt there might be some technical difficulties with the bill.

The Chairman appointed a subcommittee to review all of the product liability bills, as follows: Rep. Brewster, Chairman, and Representatives Hayes, Whitaker, Gastl, Hurley.

With regard to HB 2717, Rep. Ferguson noted the homebuilders wish to be heard in the subcommittee and the hearing will be held immediately.

The Chairman reminded members that February 27 is the deadline for getting House bills out of the House, and reminded members this means they must be out of committee well ahead of that deadline. He urged that any members who have important matters in committee, get those matters scheduled rather quickly. Also, he urged that if anyone has suggestions for interim studies, they get their requests in writing to the secretary forthwith.

The meeting was adjourned.

Opponents

JUDICIARY

2-9-78

NAME	ADDRESS	ORGANIZATION
Ed Johnson	Topeka	Kans Assn of Property & Casualty Ins. Cos
Jack Swartz	Topeka	KACI
John B Rust	6510 Cordman Dr Merriam Ks	Kans Assn of Wholesaler-Distributors
MARK RIVARD	SHAWNEE MISSION KS	"
MAX E Hubbard	WICHITA, KANSAS	"
TOM STANION	LAWRENCE KS	"
Ralph Nagel	TOPEKA	KS AFL-CIO
Jack R Euler	Troy Ks	KCSBHA Assn
Dudley Smith	Topeka	Kan Bar Assn
Robert Hartsock	Topeka	KTLA
LYNN R. JOHNSON	K.C KAN.	KTLA
J. B. SEVART	WICHITA, KS.	SELF
DON VASOS	KC KS	KTLA
Mike Heynewick	Topeka	Ks Savings & Loan League
Sam Foster	Topeka	Martin Tractor

2-9-78

POSITION MEMORANDUM

OF

THE WESTERN CASUALTY AND SURETY COMPANY

THE WESTERN FIRE INSURANCE COMPANY

THE WESTERN INDEMNITY COMPANY

ALL OF

FORT SCOTT, KANSAS

SUBJECT: TORT REFORM IN RESPECT TO PRODUCT LIABILITY

THE EFFECT UPON RATES:

Last year while testifying in support of product liability tort reform, I was asked.

"If we passed this legislation, would your company (Industry) reduce its rates?"

My reply was -- "No."

This remark has been quoted several times since and while the quote was accurate, there were additional comments made as follows:

(1) "That, as other jurisdictions adopted similar tort reforms, it would have an impact on rates."

(2) "That my company would support an automatic rate reduction in states that adopted meaningful tort reform."

COST OF CLAIMS MAKE THE RATES:

All rates predicated upon the following formula:

Acquisition Cost: (Cost of producing the policy, servicing, agents commissions, etc.)

Cost of Claims: (Actual losses paid.)

Claim Expense: (Adjusting - legal expense.)

Taxes and Fees: (Premium Tax, etc.)

Profit Contingency: (Usually 3.5%)

Acquisition costs, taxes and profit percentage are defined and stay reasonably constant.

Cost of Claims and Expense are predicated upon the past. Over-simplified, if we took in $100.00 in premiums and paid out $110.00 (costs and expense), new rates would demand a 10% increase.

This procedure is viable only when losses of the future track with losses of the past.

Thus, with a stable economy and stable legal climate, insurance companies can predict with reasonable accuracy the number of claims and the approximate cost of claims for each increment of premium earned.

When a given line of insurance becomes unpredictable, then loss experience of the past is worthless and a company can only make an educated "guess" as to the number of claims and the cost of claims of the future.

As it became popular to "sue your doctor", our loss experience of the past became worthless.

As "products exploded" with more and more publicity, products being declared unsafe day after day, our loss experience of the past became worthless.

As inflation made the cost of everything insurance is supposed to pay for go up, then the premium collected yesterday was insufficient for the losses paid tomorrow.

Serious product lawsuits are often pending for 3 to 6 years. What will be the cost of a hospital room 4 years from now? What will be the cost of medicine 4 years from now? What will a wage earner make 4 years from now?

Thus the question of whether rates will be reduced depends upon too many unknowns.

If the number and size of claims stabilized and inflation ceased, the industry would level out in a wink of an eye.

This, I know, is an unsatisfactory answer to the problem before this legislature, but any other answer would be inaccurate and dishonest.

THE REAL QUESTION:

Will the proposed legislation, in respect to product liability, reduce the number of claims or the size of claims?

If the answer is yes, then such reform will automatically have an impact upon rates.

If the Statute of Limitations was one day, you couldn't give the insurance policy away.

If the Statute of Limitations was cut in half, it would reduce the number of claims presented.

Thus any change in the law that would reduce the exposure would ultimately be reflected in the premium charged. Legal stabilization that allows carriers to predict with reasonable accuracy the probabilities of legal liability, even if liberal, is better than the uncertainties of our present legal climate.

The present legislative proposals are an attempt to balance the equities between consumer and manufacturer. If such reform did balance those equities, the number of claims would be reduced.

AVAILABILITY: Availability is as much a problem as affordability. There must be a reasonable anticipation of making a profit to create availability.

POSITION OF THE WESTERN: It is our opinion that tort reform would tend to reduce the number of claims made against the product premium. If this is true, there would be an impact upon rates that would be more favorable to the public than rate levels without such tort reform.

RESPECTFULLY SUBMITTED,

THE WESTERN CASUALTY AND SURETY COMPANY
THE WESTERN FIRE INSURANCE COMPANY
THE WESTERN INDEMNITY COMPANY

BY _____
Homer H. Cowan, Jr.
Assistant Vice President

*Registered Lobbyist

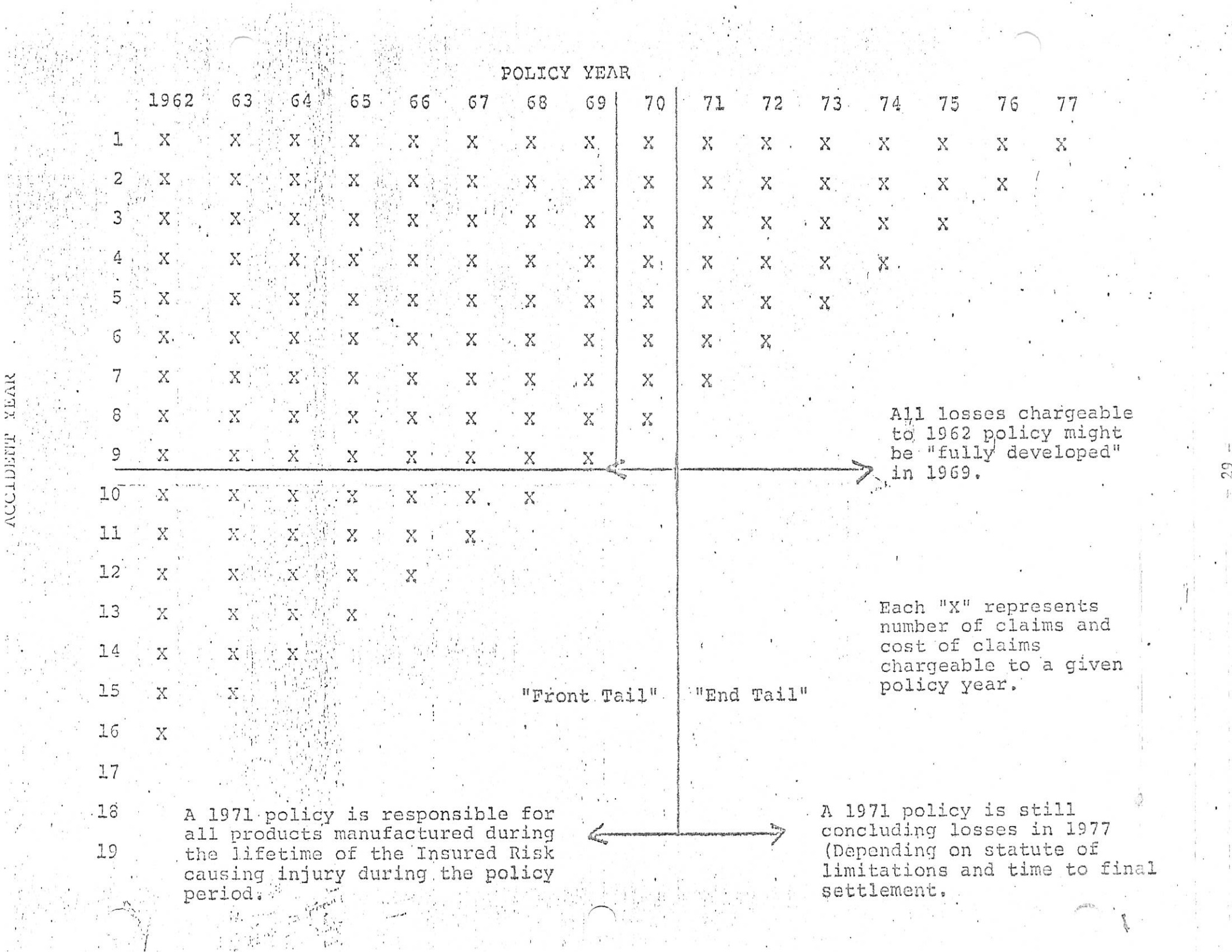

POLICY YEAR
1962 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77
ACCIDENT YEAR
1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19
All losses chargeable to 1962 policy might be "fully developed" in 1969.
Each "X" represents number of claims and cost of claims chargeable to a given policy year.
"Front Tail"
"End Tail"
A 1971 policy is responsible for all products manufactured during the lifetime of the Insured Risk causing injury during the policy period.
A 1971 policy is still concluding losses in 1977 (Depending on statute of limitations and time to final settlement.

Table 2-1 (Continued)

State *	Total Payment	Average Payment	# of Claims w/ Payment
District of Columbia	1,711,546	43,886	39
Florida	6,805,525	14,238	478
Georgia	1,256,286	7,951	158
Hawaii	148,269	10,591	14
Idaho	56,535	5,654	10
Illinois	18,134,785	51,084	355
Indiana	2,960,961	29,029	102
Iowa	618,223	10,135	61
Kansas	517,383	10,145	51
Kentucky	156,023	1,678	93
Louisiana	1,375,417	7,860	175
Maine	233,601	9,344	25
Maryland	406,480	2,589	157
Massachusetts	3,363,336	14,948	225
Michigan	7,689,367	26,792	287
Minnesota	905,619	5,768	157
Mississippi	34,476	1,379	25
Missouri	1,794,515	7,905	227
Montana	24,552	2,046	12
Nebraska	2,387,346	28,421	84
Nevada	19,982	952	21
New Hampshire	2,098,523	43,719	48
New Jersey	5,963,006	15,135	394
New Mexico	331,529	16,576	20
New York	$ 13,247,880	$18,926	700
North Carolina	513,568	5,582	92
North Dakota	62,725	3,920	16
Ohio	2,359,709	4,645	508
Oklahoma	1,113,684	18,561	60
Oregon	576,656	8,737	66
Pennsylvania	7,713,114	14,363	537
Rhode Island	58,036	1,488	39
South Carolina	1,010,175	17,122	59
South Dakota	56,071	7,009	8
Tennessee	769,101	4,868	158
Texas	3,861,538	9,382	403
Utah	142,121	10,152	14
Vermont	122,693	6,816	18
Virginia	1,022,305	6,350	161
Washington	921,889	8,458	109
West Virginia	313,221	13,051	24
Wisconsin	2,953,475	12,154	243
Wyoming	11,388	1,265	9
Puerto Rico	29,100	9,700	3
Countrywide Total	$113,685,985	$14,181	8,017
Unknown	$ 2,210,184	$ 7,039	314

*State whose law applied in the disposition of the claim, not the state where the insured was domiciled.

Table 2-2: PD Only (Trended for Severity)

DISTRIBUTION OF PAYMENT BY STATE

State*	Total Payment	Average Payment	# of Claims w/ Payment
Alabama	$ 84,337	$ 2,162	39
Alaska	37,834	3,783	10
Arizona	128,004	1,280	100
Arkansas	114,267	3,265	35
California	2,790,712	4,248	657
Colorado	119,635	927	129
Connecticut	194,562	2,236	87
Delaware	13,961	1,994	7
District of Columbia	6,586	823	8
Florida	416,202	1,749	238
Georgia	231,641	2,438	95
Hawaii	118,854	6,991	17
Idaho	639,602	23,689	27
Illinois	966,555	5,523	175
Indiana	481,442	3,566	135
Iowa	581,137	6,530	89
Kansas	334,633	4,032	83
Kentucky	114,370	1,906	60
Louisiana	154,073	1,792	86
Maine	48,444	1,309	37
Maryland	458,308	6,365	72
Massachusetts	877,034	7,248	121
Michigan	662,958	4,042	164
Minnesota	231,508	2,205	105
Mississippi	80,334	1,516	53
Missouri	241,377	2,136	113
Montana	251,417	8,381	30
Nebraska	189,389	3,865	49
Nevada	30,803	1,540	20
New Hampshire	29,004	1,611	18
New Jersey	218,549	1,806	121
New Mexico	94,213	2,416	39
New York	$ 2,169,883	$ 6,718	323
North Carolina	482,021	4,051	119
North Dakota	19,349	1,612	12
Ohio	370,743	1,901	195
Oklahoma	190,581	2,141	89
Oregon	224,601	3,403	66
Pennsylvania	1,081,698	5,879	184
Rhode Island	3,223	248	13
South Carolina	63,060	1,659	38
South Dakota	20,151	1,185	17
Tennessee	733,730	5,823	126
Texas	792,704	2,154	368
Utah	393,820	10,098	39
Vermont	5,150	1,717	3
Virginia	119,979	1,846	65
Washington	826,652	6,359	130

Table 2-2 (Continued)

State*	Total Payment	Average Payment	# of Claims w/ Payment
West Virginia	127,591	4,907	26
Wisconsin	519,000	3,992	130
Wyoming	10,229	852	12
Puerto Rico	395	395	1
Countrywide Total	$19,096,305	$ 3,838	4,975
Unknown	$ 530,983	$ 2,751	193

*State whose law applied in the disposition of the claim, not the state where the insured was domiciled.

Table 2-3: BI Only (Trended for Severity)

AVERAGE CLAIM AGE BY STATE

State*	Total # of Claims	% Closed with Payment	Average Time (in years) from Occurrence to Closing **
ıama	126	57.1%	2.5
Alaska	11	72.7	3.5
Arizona	203	70.0	2.5
Arkansas	50	66.0	3.0
California	1,513	68.2	3.5
Colorado	134	61.2	3.5
Connecticut	289	63.3	4.0
Delaware	29	69.0	3.5
District of Columbia	62	62.9	7.0
Florida	717	66.7	3.0
Georgia	260	60.8	2.0
Hawaii	24	58.3	5.5
Idaho	12	83.3	1.5
Illinois	544	65.3	7.5
Indiana	163	62.6	4.5
Iowa	97	62.9	3.5
Kansas	88	58.0	2.5
Kentucky	150	62.0	3.0
Louisiana	231	75.8	3.5
Maine	45	55.6	5.5
Maryland	234	67.1	3.5
Massachusetts	317	71.0	4.0
Michigan	447	64.2	4.5
Minnesota	229	68.6	3.0
Mississippi	43	58.1	1.5
Missouri	373	60.9	3.0
Montana	19	63.2	3.0
Nebraska	102	82.4	6.0
Nevada	33	63.6	3.0
New Hampshire	59	81.4	5.5
New Jersey	602	65.4	3.5
New Mexico	42	47.6	3.0
New York	1,004	69.7%	7.0
North Carolina	136	67.6	3.0
North Dakota	21	76.2	2.0
Ohio	755	67.3	3.0
Oklahoma	106	56.6	2.0
Oregon	115	57.4	2.5
Pennsylvania	813	66.1	4.5
Rhode Island	52	75.0	1.5
South Carolina	107	55.1	4.5
South Dakota	12	66.7	3.0
T essee	246	64.2	2.0
T s	605	66.6	3.5
Utah	34	41.2	3.0
Vermont	25	72.0	4.0
Virginia	260	61.9	4.0
Washington	167	65.3	3.5

Table 2-3 (Continued)

State*	Total # of Claims	% Closed with Payment	Average Time (in years) from Occurrence to Closing **
West Virginia	46	52.2	3.0
Wisconsin	372	65.3	3.0
Wyoming	10	90.0	2.0
Puerto Rico	9	33.3	1.5
Countrywide Total	12,143	66.0%	4.5
Unknown	481	65.3%	3.5

*The state whose laws applied in the disposition of the claim, not the state where the insured was domiciled.

**Time lag for the average payment dollar. As observed in Report 12, the average claim is closed within a much shorter period of time (17 months for BI) than the claim represented by the average payment dollar due to the fact that larger claims tend to take longer to close than smaller claims.

Table 2-4: PD Only (Trended for Severity)

AVERAGE CLAIM AGE BY STATE

State*	Total # of Claims	% Closed with Payment	Average Time (in years) from Occurrence to Closing**
Alabama	68	57.4%	2.0
Alaska	16	62.5	3.0
Arizona	139	71.9	1.5
Arkansas	59	59.3	1.5
California	941	69.8	2.5
Colorado	175	73.7	2.5
Connecticut	142	61.3	2.5
Delaware	10	70.0	3.5
District of Columbia	12	66.7	0.5
Florida	345	69.0	3.0
Georgia	141	67.4	2.5
Hawaii	22	77.3	4.5
Idaho	44	61.4	6.5
Illinois	261	67.0	2.5
Indiana	211	64.0	2.5
Iowa	134	66.4	3.5
Kansas	124	66.9	4.0
Kentucky	93	64.5	2.0
Louisiana	114	75.4	1.5
Maine	46	80.4	0.5
Maryland	108	66.7	5.5
Massachusetts	170	71.2	6.5
Michigan	250	65.6	4.0
Minnesota	164	64.0	1.5
Mississippi	64	82.8	0.5
Missouri	163	69.3	2.5
Montana	41	73.2	2.0
Nebraska	75	65.3	5.0

Table 2-4 (Continued)

State*	Total # of Claims	% Closed with Payment	Average Time (in years) from Occurrence to Closing**
[illegible]ja	39	51.3	1.0
New Hampshire	22	81.8	3.5
New Jersey	193	62.7	2.5
New Mexico	52	75.0	1.5
New York	495	65.3	6.5
North Carolina	163	73.0	4.0
North Dakota	24	50.0	1.0
Ohio	314	62.1	2.0
Oklahoma	127	70.1	2.0
Oregon	107	61.7	3.0
Pennsylvania	330	55.8	4.5
Rhode Island	19	68.4	0.5
South Carolina	66	57.6	2.0
South Dakota	23	73.9	3.0
Tennessee	194	64.9	4.0
Texas	533	69.0	1.5
Utah	49	79.6	5.0
Vermont	12	25.0	2.0
Virginia	116	56.0	1.5
Washington	171	76.0	3.5
West Virginia	36	72.2	1.0
Wisconsin	223	58.3	4.0
Wyoming	16	75.0	1.0
Puerto Rico	4	25.0	0.5
Countrywide Total	7,460	66.7%	3.5
Unknown	282	68.4%	2.5

*The state whose laws applied in the disposition of the claim, not the state where the insured was domiciled.

**Time lag for the average payment dollar. As observed in Report 12, the average claim is closed within a much shorter period of time (13 months for PD) than the claim represented by the average payment dollar due to the fact that larger claims tend to take longer to close than smaller claims.

12.6 Purchase to Occurrence

Table 12-6, below, shows the cumulative distribution of the number of incidents and the amount of payment for up to a 72 month interval from the date of purchase of the product to the date of occurrence.

Table 12-6: (Trended for Severity)

TIME FROM PURCHASE TO OCCURRENCE

	BI Only		PD Only	
Time Interval	% of Injured Parties	% of Payment	% of Damaged Parties	% of Payment
0 months	72.6%	21.8%	57.9%	30.6%
Up to 6 months	85.0	45.7	81.7	61.3
Up to 12 months	89.0	63.6	88.5	83.1
Up to 18 months	91.3	68.7	91.1	87.3
Up to 24 months	93.0	75.1	93.2	89.7
Up to 30 months	94.3	78.9	94.3	92.3
Up to 36 months	95.0	81.5	95.4	93.3
Up to 42 months	95.6	86.0	96.2	93.7
Up to 48 months	96.2	86.8	96.7	94.0
Up to 54 months	96.7	88.3	97.2	94.6
Up to 60 months	96.9	88.5	97.6	96.6
Up to 66 months	97.2	89.7	98.0	96.7
Up to 72 months	97.4	90.5	98.2	96.7
Number of Incidents	9,562		5,342	
Average Payment	$21,293		$6,703	

This shows that, numberwise, 73% of BI and 58% of PD incidents occur within the month of purchase of the product, but that about 3% of BI and 2% of PD incidents occur more than six years after purchase. Dollarwise, only about 22% of BI and 31% of PD payment amounts represent incidents which occur within the month the product is purchased, while 9% of BI and 3% of PD amounts are for incidents which occur more than six years after purchase.

12.8 Occurrence to Suit

Table 12-8, below, shows the cumulative distribution of the number of incidents and the amount of payment for up to a 72 month interval from the date of occurrence to the date of first known suit filed against anyone in the products distribution chain in cases where a suit is filed.

Table 12-8: (Trended for Severity)
TIME FROM OCCURRENCE TO SUIT

	BI Only		PD Only	
Time Interval	% of Injured Parties	% of Payment	% of Damaged Parties	% of Payment
0 months	3.8%	1.2%	4.0%	1.5%
Up to 6 months	21.6	18.4	24.3	7.6
Up to 12 months	46.1	39.4	46.1	39.2
Up to 18 months	61.9	56.0	62.2	46.6
Up to 24 months	80.8	73.1	75.4	63.2
Up to 30 months	88.0	80.2	82.4	70.4
Up to 36 months	93.0	86.2	91.3	90.4
Up to 42 months	95.4	87.5	93.7	92.9
Up to 48 months	96.4	88.7	95.8	94.2
Up to 54 months	97.2	91.7	98.3	97.2
Up to 60 months	98.0	92.0	98.9	97.3
Up to 66 months	98.4	92.3	99.4	98.1
Up to 72 months	98.7	97.3	99.6	98.1
Number of Incidents	3,350		1,258	
Average Payment	$78,854		$28,938	

This shows that, of the incidents where a suit is filed, in only about 22% of the BI and 24% of the PD cases, numberwise, is suit filed within six months after the occurrence. In fact, 19% of the BI suits and 25% of the PD suits are not filed until over two years after the occurrence. The cumulative payment and number of incident percentages are roughly equal, indicating that the amount of payment bears little, if any, relation to the time lapse between the occurrence and the filing of suit.

2-9

HOUSE SUBSTITUTE FOR HOUSE BILL No. 2717

K.S.A. 60-1101 is hereby amended to read as follows:

60-1101(a) Except as provided in paragraph (b) hereunder any person furnishing labor, equipment, material, or supplies used or consumed for the improvement of real property, under a contract with the owner or with the trustee, agent or spouse of the owner, shall have a lien upon the property for the labor, equipment, material or supplies furnished, and for the cost of transporting the same, and the lien shall be preferred to all other liens or encumbrances which are subsequent to the commencement of the furnishing of such labor, equipment, material or supplies at the site of the property subject to the lien. When two or more such contracts are entered into applicable to the same improvement, the liens of all claimsts shall be similarly preferred to the date of the earliest lien of any of them. [L. 1963, ch. 303, 60-1101; L. 1965, ch. 335, §5; L. 1972, ch. 223, §1; July 1.]

(b) any person furnishing labor, equipment, material, or supplies used or consumed for the improvement of real property, used or to be used as a single family residence, under a contract with the owner or with the trustee, agent or spouse of the owner, shall have a lien as provided in (a) only if such person shall first provide to the owner or the trustee, agent or spouse of the owner a written notice which shall include the following disclosure language in ten point bold type.

FAILURE OF THIS CONTRACTOR TO PAY THOSE PERSONS SUPPLYING MATERIAL OR SERVICES TO COMPLETE THIS CONTRACT CAN RESULT IN THE FILING OF A MECHANIC'S LIEN ON THE PROPERTY WHICH IS THE SUBJECT OF

OF THIS CONTRACT PURSUANT TO K.S.A. 60-1103. UPON REQUEST, THIS CONTRACTOR SHALL PROVIDE YOU WITH "LIEN WAIVERS" FROM ALL PERSONS SUPPLYING MATERIAL OR SERVICES FOR THE WORK DESCRIBED IN THIS CONTRACT. FAILURE TO SECURE LIEN WAIVERS MAY RESULT IN YOUR PAYING FOR LABOR AND MATERIALS TWICE.

This notice shall be provided prior to receiving payment in any form or kind from said person (a) either at the time of the execution of the contract, (b) when the materials are delivered, (c) when the work is commenced, or, (d) delivered with first invoice.

(c) Any person who fails to provide the written notice set out in section (b) hereof shall be liable to the owner for all damages sustained by said owner as a result of perfected mechanic's lien or liens including attorney fees incurred by said owner, and further such failure to provide notice which results in said damages to the owner shall be prima facie evidence of fraud by any such person failing to provide said notice.

(d) Any person or lending institution which shall lend funds for the construction, alteration, repair or remodeling of any real property used or to be used as a single family residence, and who shall further take a mortgage of any nature on such property and who shall further manage the disbursement of said loan proceeds either with or without the approval of the owner of said real estate for the payment of services and materials used in the improvement of said real estate, shall obtain lien waivers from all persons supplying materials or services for such construction, alteration, repair or remodeling of such real property, prior to making final payment from such loan proceeds. Any mechanic's liens perfected as a result of

the failure of such person or lending institution to obtain lien waivers as herein provided shall render such person or lending institution liable to the owner of said real estate in the amount or amounts necessary to satisfy said mechanic's lien or liens.

An Act

HOUSE BILL NO. 1536. BY REPRESENTATIVES Eckelberry, Barnhill, Bledsoe, Burford, Cantrell, DeMoulin, DeNier, Frank, Gorsuch, Gustafson, Hamlin, Hefley, Hinman, Hume, Jones, Lloyd, McElderry, Neale, Schaeffer, Sears, Showalter, Strahle, Winkler, Witherspoon, and Zakhem; also SENATORS Woodard, Anderson, Comer, Hatcher, Kadlecek, Kinnie, MacManus, Meiklejohn, Plock, Schieffelin, Smedley, and Wham.

CONCERNING CIVIL ACTIONS, AND MAKING PROVISION FOR PRODUCT LIABILITY ACTIONS AND FOR EXEMPLARY DAMAGES IN ALL CIVIL ACTIONS.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. Article 80 of title 13, Colorado Revised Statutes 1973, as amended, is amended BY THE ADDITION OF A NEW SECTION to read:

13-80-127.5. Limitation of actions against manufacturers or sellers of products. (1) Notwithstanding any other statutory provisions to the contrary, all actions except those governed by section 4-2-725, C.R.S. 1973, brought against a manufacturer or seller of a product, regardless of the substantive legal theory or theories upon which the action is brought, for or on account of personal injury, death, or property damage caused by or resulting from the manufacture, construction, design, formula, installation, preparation, assembly, testing, packaging, labeling, or sale of any product, or the failure to warn or protect against a danger or hazard in the use, misuse, or unintended use of any product, or the failure to provide proper instructions for the use of any product shall be brought within three years after the claim for relief arises and not thereafter.

(2) If any person entitled to bring any action mentioned in

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

B-Engrossed

House Bill 3039

Ordered by the House June 6
(Including Amendments by House May 24 and June 6)

Sponsored by Representatives MAGRUDER, GILMOUR, KULONGOSKI, MARKHAM, MARTIN, VAN VLIET, WHALLON

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Defines "product liability civil action" to be action against manufacturers, distributors [*or*] , sellers **or lessors** of product for damages due to defects in product or failure to warn or instruct regarding product. Creates disputable presumption that product as manufactured and sold **or leased** is not unreasonably dangerous for its intended use.

Sets time limit for bringing of action to be within eight years after date of purchase and within two years from date of damages. Prescribes defenses to action.

NOTE: Matter in **bold face** in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted; complete new sections begin with **SECTION.**

this section is under the age of eighteen years, mentally incompetent, imprisoned, or absent from the United States at the time the cause of action accrues, such person may bring said action within the time limit specified in this section after the disability is removed.

SECTION 2. Article 21 of title 13, Colorado Revised Statutes 1973, as amended, is amended BY THE ADDITION OF A NEW PART to read:

PART 4

PRODUCT LIABILITY ACTIONS - GENERAL PROVISIONS

13-21-401. Definitions. As used in this part 4, unless the context otherwise requires:

(1) "Manufacturer" means a person or entity who designs, assembles, fabricates, produces, constructs, or otherwise prepares a product or a component part of a product prior to the sale of the product to a user or consumer. The term includes any seller who has actual knowledge of a defect in a product or a seller of a product who creates and furnishes a manufacturer with specifications relevant to the alleged defect for producing the product or who otherwise exercises some significant control over all or a portion of the manufacturing process or who alters or modifies a product in any significant manner after the product comes into his possession and before it is sold to the ultimate user or consumer. The term also includes any seller of a product who is owned in whole or significant part by the manufacturer or who owns, in whole or significant part, the manufacturer. A seller not otherwise a manufacturer shall not be deemed to be a manufacturer merely because he places or has placed a private label on a product if he did not otherwise specify how the product shall be produced or controlled, in some significant manner, the manufacturing process of the product and the seller discloses who the actual manufacturer is.

(2) "Product liability action" means any action brought against a manufacturer or seller of a product, regardless of the substantive legal theory or theories upon which the action is brought, for or on account of personal injury, death, or property damage caused by or resulting from the manufacture, construction, design, formula, installation, preparation, assembly, testing, packaging, labeling, or sale of any product, or the failure to warn or protect against a danger or hazard in the use, misuse, or unintended use of any product, or the failure to provide proper instructions for the use of any product.

(3) "Seller" means any individual or entity, including a manufacturer, wholesaler, distributor, or retailer, who is engaged in the business of selling or leasing any product for resale, use, or consumption.

13-21-402. Strict liability. (1) No product liability action based on the doctrine of strict liability in tort shall be commenced or maintained against any seller of a product which is alleged to contain or possess a defective condition unreasonably dangerous to the buyer, user, or consumer unless said seller is also the manufacturer of said product or the manufacturer of the part thereof claimed to be defective. Nothing in this part 4 shall be construed to limit any other action from being brought against any seller of a product.

(2) If jurisdiction cannot be obtained over a particular manufacturer of a product or a part of a product alleged to be defective, then that manufacturer's principal distributor or seller over whom jurisdiction can be obtained shall be deemed, for the purposes of this section, the manufacturer of the product.

13-21-403. Presumptions. (1) In any product liability action, it shall be rebuttably presumed that the product which caused the injury, death, or property damage was not defective and that the manufacturer or seller thereof was not negligent if the product:

(a) Prior to sale by the manufacturer, conformed to the state of the art, as distinguished from industry standards, applicable to such product in existence at the time of sale; or

(b) Complied with, at the time of sale by the manufacturer, any applicable code, standard, or regulation adopted or promulgated by the United States or by this state, or by any agency of the United States or of this state.

(2) In like manner, noncompliance with a government code, standard, or regulation existing and in effect at the time of sale of the product by the manufacturer which contributed to the claim or injury shall create a rebuttable presumption that the product was defective or negligently manufactured.

(3) Ten years after a product is first sold for use or consumption, it shall be rebuttably presumed that the product was not defective and that the manufacturer or seller thereof was not negligent and that all warnings and instructions were proper and adequate.

13-21-404. Inadmissible evidence. In any product liability action, evidence of any scientific advancements in technical or other knowledge or techniques, or in design theory or philosophy, or in manufacturing or testing knowledge, techniques, or processes, or in labeling, warnings of risks or hazards, or instructions for the use of such product, where such advancements were discovered subsequent to the time the product in issue was sold by the manufacturer shall not be admissible for any purpose other than to show a duty to warn.

13-21-405. Report to general assembly. The insurance commissioner shall, on May 1, 1978, report to the general assembly any changes of rates on product liability insurance which are made subsequent to June 1, 1977, and annually thereafter the commissioner shall report any changes after the prior report.

SECTION 3. Effective date - applicability. This act shall take effect July 1, 1977, and shall apply to causes of action which accrued on or after said date.

SECTION 4. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Ronald H. Strahle
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Fred E. Anderson
PRESIDENT OF
THE SENATE

Lorraine F. Lombardi
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

Marjorie L. Rutenbeck
SECRETARY OF
THE SENATE

APPROVED _____

Richard D. Lamm
GOVERNOR OF THE STATE OF COLORADO

A BILL FOR AN ACT

Relating to product liability actions; and prescribing an effective date.

Be It Enacted by the People of the State of Oregon:

SECTION 1. As used in this Act, "product liability civil action" means a civil action brought against a manufacturer, distributor, seller or lessor of a product for damages for personal injury, death or property damage arising out of:

(1) Any design, inspection, testing, manufacturing or other defect in a product;

(2) Any failure to warn regarding a product; or

(3) Any failure to properly instruct in the use of a product.

SECTION 2. It is a disputable presumption in a products liability civil action that a product as manufactured and sold or leased is not unreasonably dangerous for its intended use.

SECTION 3. (1) Notwithstanding ORS 12.115 or 12.140 and except as provided in subsection (2) of this section, a product liability civil action shall be commenced not later than eight years after the date on which the product was first purchased for use or consumption.

(2) A product liability civil action shall be commenced not later than two years after the date on which the death, injury, or damage complained of occurs.

SECTION 4. It shall be a defense to a product liability civil action that an alteration or modification of a product occurred under the following circumstances:

(1) The alteration or modification was made without the consent of or was made not in accordance with the instructions or specifications of the manufacturer, distributor, seller or lessor;

(2) The alteration or modification was a substantial contributing factor to the personal injury, death or property damage; and

(3) If the alteration or modification was reasonably foreseeable, the manufacturer, distributor, seller or lessor gave adequate warning.

SECTION 5. This Act takes effect on January 1, 1978, and applies only to causes of action, claims, rights or liabilities accruing after December 31, 1977.

UTAH PRODUCT LIABILITY ACT

1977

GENERAL SESSION

Enrolled Copy

S. B. No. 158

By Fred W. Finlinson

Omar B. Bunnell

AN ACT ENACTING SECTIONS 78-15-1 THROUGH 78-15-6, UTAH CODE ANNOTATED 1953; RELATING TO PRODUCT LIABILITY; CREATING A UTAH PRODUCT LIABILITY ACT; SETTING FORTH THE PURPOSE AND INTENT OF THE ACT; ESTABLISHING A STATUTE OF LIMITATIONS FOR PRODUCT LIABILITY CASES; PROVIDING FOR EXCEPTIONS TO THE STATUTE; GRANTING LIMITED IMMUNITY TO MANUFACTURERS OR SELLERS OF PRODUCTS AGAINST ACTIONS BASED ON PERSONAL INJURY, DEATH OR DAMAGE TO PROPERTY RESULTING FROM THE USE OF PRODUCTS; PROVIDING TESTS FOR DETERMINING WHETHER OR NOT THE PRODUCT SHALL BE DEEMED TO BE DEFECTIVE OR UNREASONABLY DANGEROUS; ESTABLISHING REBUTTABLE PRESUMPTIONS OF FREEDOM FROM DEFECTS; AND PRECLUDING CERTAIN EVIDENCE FROM ADMISSION IN CIVIL ACTIONS.

Be it enacted by the Legislature of the State of Utah:

Section 1. Section 78-15-1, Utah Code Annotated 1953, is enacted to read:

78-15-1. This act shall be known and may be cited as the "Utah Product Liability Act."

Section 2. Section 78-15-2, Utah Code Annotated 1953, is enacted to read:

78-15-2. (1) The legislature finds and declares that the number of suits and claims for damages and the amount of judgments and settlements arising from defective products has increased greatly in recent years. Because of these increases, the insurance industry has substantially increased the cost of product liability insurance. The effect of increased insurance premiums and increased claims has increased product cost through

manufacturers, wholesalers and retailers passing the cost of premiums to the consumer. Further, certain product manufacturers are discouraged from continuing to provide and manufacture such products because of the high cost and possible unavailability of product liability insurance.

(2) In view of these recent trends, and for the purpose of alleviating the adverse effects which these trends are producing in the manufacturing industry, it is necessary to protect the public interest by enacting measures designed to encourage private insurance companies to continue to provide product liability insurance.

(3) In enacting this act, it is the purpose of the legislature to provide a reasonable time within which actions may be commenced against manufacturers, while limiting the time to a specific period for which product liability insurance premiums can be reasonably and accurately calculated; and to provide other procedural changes to expedite early evaluation and settlement of claims.

Section 3. Section 78-15-3, Utah Code Annotated 1953, is enacted to read:

78-15-3. (1) No action shall be brought for the recovery of damages for personal injury, death or damage to property more than six years after the date of initial purchase for use or consumption, or ten years after the date of manufacture, of a product, where that action is based upon, or arises out of, any of the following:

(a) Breach of any implied warranties;

(b) Defects in design, inspection, testing or manufacture;

(c) Failure to warn;

(d) Failure to properly instruct in the use of a product; or

(e) Any other alleged defect or failure of whatsoever kind or nature in relation to a product.

(2) The provisions of this section shall apply to all persons, regardless of minority or other legal disability, but shall not apply to any cause of action where the personal injury, death or damage to property occurs within two years after the effective date of this act.

Section 4. Section 78-15-4, Utah Code Annotated 1953, is enacted to read:

78-15-4. No dollar amount shall be specified in the prayer of a complaint filed in a product liability action against a product manufacturer, wholesaler or retailer. The complaint shall merely pray for such damages as are reasonable in the premises.

Section 5. Section 78-15-5, Utah Code Annotated 1953, is enacted to read:

78-15-5. No manufacturer or seller of a product shall be held liable for any injury, death or damage to property sustained as a result of an alleged defect, failure to warn or protect or failure to properly instruct, in the use or misuse of that product, where a substantial contributing cause of the injury, death or damage to property was an alteration or modification of the product, which occurred subsequent to the sale by the manufacturer or seller to the initial user or consumer, and which changed the purpose, use, function, design or intended use or manner of use of the product from that for which the product was originally designed, tested or intended.

Section 6. Section 78-15-6, Utah Code Annotated 1953, is enacted to read:

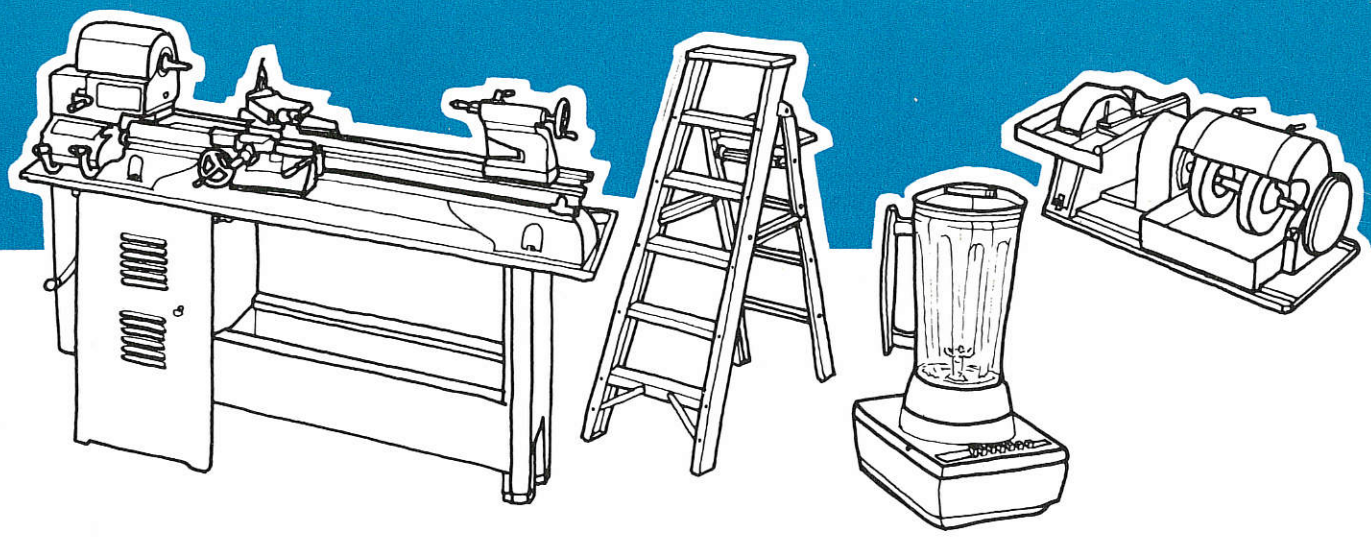
78-15-6. In any action for damages for personal injury, death, or property damage allegedly caused by a defect in a product:

(1) No product shall be considered to have a defect or to be in a defective condition, unless at the time the product was sold by the manufacturer or other initial seller, there was a

defect or defective condition in the product which made the product unreasonably dangerous to the user or consumer.

(2) As used in this act, "unreasonably dangerous" means that the product was dangerous to an extent beyond which would be contemplated by the ordinary and prudent buyer, consumer or user of that product in that community considering the product's characteristics, propensities, risks, dangers and uses together with any actual knowledge, training, or experience possessed by that particular buyer, user or consumer.

(3) There is a rebuttable presumption that a product is free from any defect or defective condition where the alleged defect in the plans or designs for the product or the methods and techniques of manufacturing, inspecting and testing the product were in conformity with government standards established for that industry which were in existence at the time the plans or designs for the product or the methods and techniques of manufacturing, inspecting and testing the product were adopted.



Product Liability:

Profile of the Big Cases

An Alliance study of large-loss claims indicates legal reforms could substantially reduce costs.

A random walk through the insurance files on big-league product liability cases is like touring the set used to film "The Perils of Pauline." It is a world of buckling metal and people in jeopardy, a world where boats sink and fires break out and machines maim their human operators.

The results of one such random walk are now available in a Large-Loss Products Liability Study conducted by the American Mutual Insurance Alliance, a national insurance trade association. The study deals, not with the incidents themselves, but with their financial consequences—the large sums paid out to compensate for injuries and property damage caused by product-related mishaps.

The study reports on 79 incidents, each of which produced insurance losses of more than $100,000 during 1975, representing all large-loss product liability claims settled by eight participating AMIA companies. In the aggregate, these 79 incidents produced 104 injuries or deaths and generated insurance costs exceeding $22.7 million.

Claims exceeding $100,000 account for about 1 percent of all product liability claims, but absorb 25 percent or more of all the dollars paid. The increasing number and size of these jumbo cases is believed to be a major factor in the rapidly rising cost of product liability to manufacturers and their insurers.

A surprising variety of products turned up in the study. Some were consumer products—lawnmowers, TV sets, sports equipment. But the majority—56 out of the 79 incidents—involved products used for industrial purposes. Seven of the incidents produced damage to property only, including the breakdown of a turbine engine, an agricultural chemical that failed to perform, and some wallboard that peeled and had to be replaced.

The remaining 72 incidents produced human injury including 13 multiple-injury accidents.

On the basis of its small study, the Alliance offered several tentative conclusions, cautioning that they should be "subject to verification by more comprehensive studies such as the large closed claim study currently underway by the Insurance Services Office." These conclusions include:

1. Problems afflicting product liability seem to stem primarily from bodily injuries rather than from property damage.

2. Industrial products appear to be encountering more large-loss claims than consumer products, and should be given high priority by those attempting to develop solutions to product liability problems.

3. Legal reforms being advocated by various in-

surance and manufacturer groups could produce substantial reductions in product liability losses. Legal changes that appear particularly promising include a statute of limitations running from the time that a product was first sold or put in use; a defense against manufacturer liability for misuse or hazardous alteration of the product by the purchaser or user; and a defense based on the "state of the art" at the time the product was made. (See accompanying article on page 21.)

4. Most people in this sample received relatively generous payment for their injuries. On average, settlements made for bodily injury provided injury victims and their survivors with $9.02 in tax-free cash payments for every $1 of economic loss sustained up to the time of settlement. When estimated future economic losses are taken into account, claimants received $1.47 in tax-free payments for every $1 of past and estimated future economic losses.

5. Workers compensation subrogation is involved in about 35 percent of the large-loss claims, but is not usually responsible for initiating the product liability claim. The insurance company claims people who reviewed the files indicated that subrogation (i.e, a legal demand for reimbursement of the workers compensation carrier from the proceeds of the liability suit) was responsible for the filing of 3 percent of the product liability claims, and was partly responsible for the filing of an additional 8 percent.

The total dollar amount of all workers' compensation subrogation liens was equal to about 5% of the total payments of $22.7 million. These liens represent about 10 percent of the payments made to claimants in *work-related* incidents up to the date of settlement.

Statistical analysis of the cases provides a revealing profile of the typical large-loss product liability claim.

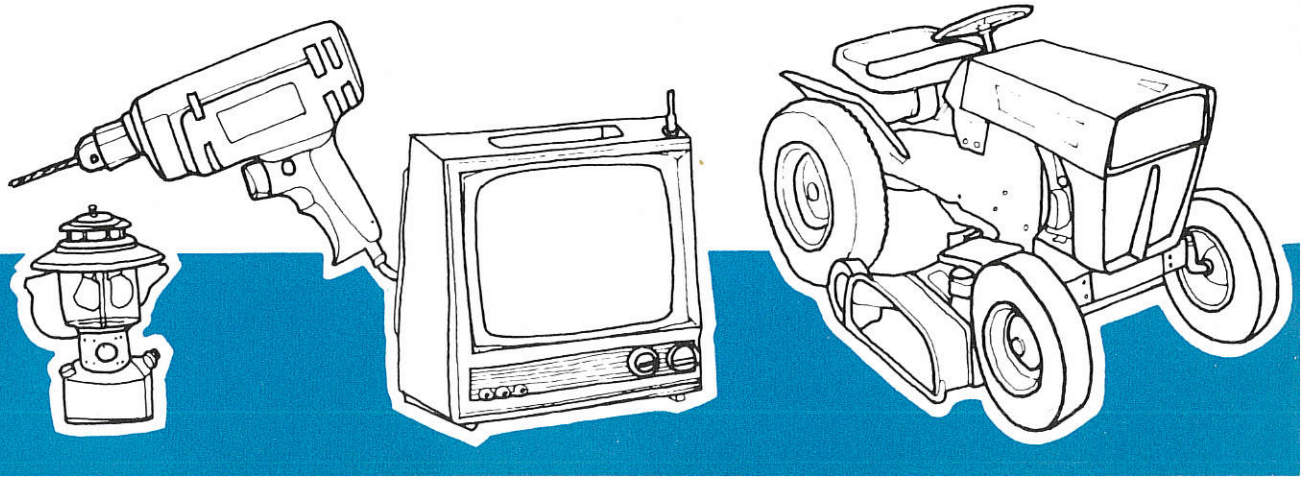
For example, the 79 large-loss incidents produced payments and loss adjustment costs averaging $287,964 per incident. This figure includes an average of $20,680 per incident in legal expenses on behalf of the product manufacturer.

Additional amounts were spent for expert witnesses or other outside defense costs in 60 of the 79 cases, or an average of $5,888 per incident in those cases where such services were required. Expressed in percentages, the money was distributed as follows:

Where the Money Went

Direct Payments to Claimants for Injuries and Property Damage	92%
Defendant Legal Expenses	7%
Other Defense Costs	1%

The largest payment for bodily injury was $808,000, paid to a workman who lost most of both hands in a punch press, and the largest payment for damage to property was $500,000, exclusive of loss adjustment expenses.



About 60 percent of the 104 persons who sustained bodily injuries were at work at the time of the mishap.

Status of Persons Injured

Injured on Job	60%
Purchaser of Product	10%
User of Product, Non Purchaser	29%
Bystander	1%

Many of these cases involved multiple defendants, which adds to the complexity and expense of handling the claim. However, in this study the manufacturer of the finished product was the party most often held liable, frequently with contributions to the settlement from other defendants.

Defendants Held Liable

Manufacturer of Finished Product	71%
Manufacturer of Component Part	19%
Wholesaler or Retailer	10%

All but one of the 79 incidents involved plaintiff attorneys, and all but four involved lawsuits. However, most were settled out of court.

How Claims Were Handled

Settled Before Trial	66%
Settled During Trial	11%
Tried to Verdict	23%

As might be expected, the persons involved in these large-loss claims incurred severe injuries. Out of the 104 individuals involved, there were 41 deaths, 14 cases of permanent and total impairment, and 45 injuries that resulted in partial impairment or disfigurement. The remaining 4 persons sustained less serious injuries.

Those who sustained fatal or nonfatal injuries incurred substantial out-of-pocket economic losses up to the time of settlement—about $19,769, on the average. In addition, file reviewers were asked to estimate future wage losses and medical expenses for impaired individuals and for the survivors of those killed. Adding the two, the average claimant was estimated to have sustained past and future economic losses totaling $121,670.

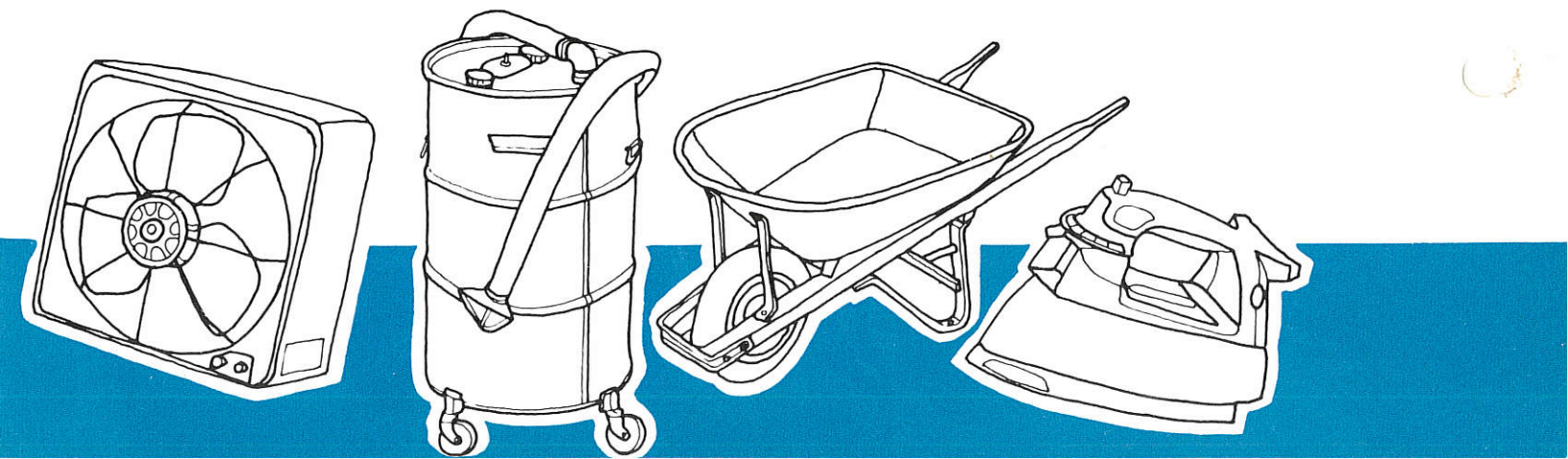
Past and Future Economic Losses

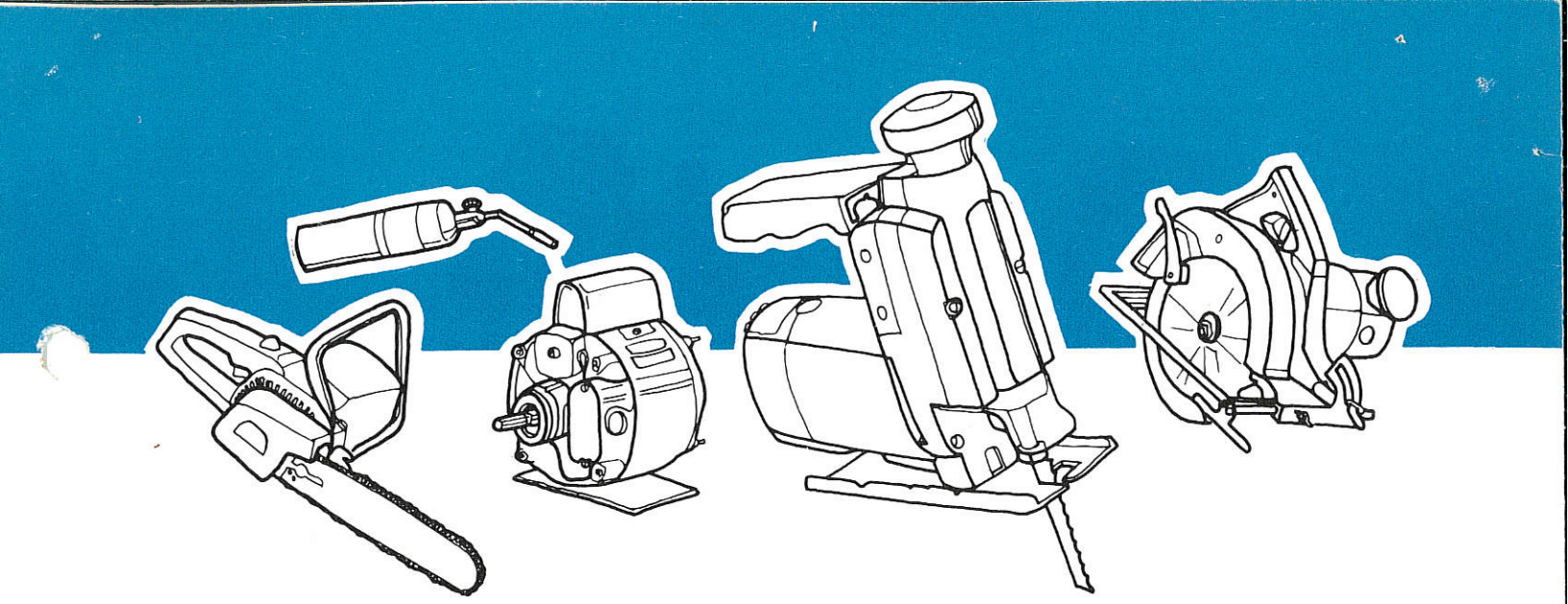
	Past	Future (Est.)	Total
Medical Expense	$ 9,077	$ 6,650	$ 15,726
Wage Lossess	$10,520	$ 92,040	$102,561
Misc. Expenses	$ 171	$ 3,212	$ 3,383
	$19,768	$101,902	$121,670

To compensate for these past and estimated future economic losses, and to compensate for general damages ("pain and suffering"), the 104 individuals involved in these 79 large-loss claims received an average of $178,288 per person in product liability payments, or $1.47 for every dollar of economic loss projected. In addition, most claimants presumably recovered additional sums from other benefit sources, including workers compensation, health insurance, paid sick leave, and the social security disability and survivors' benefit programs.

In assessing the results of this study, it is necessary to deal with two different questions, both of them involving value judgments. One is whether the liability for product injuries is being brought to bear on the right party or parties. The other is whether the amounts being paid are appropriate, considering both the needs of the injured individuals and the ability of society to pay.

Intensive study is being devoted to these two questions by groups within government, the business community and the insurance industry. There is a growing consensus that some of the legal rules governing product liability cases have been stretched beyond reasonable bounds, and that reform legislation is needed to restore a better balance between the rights of consumers and the rights of producers of products. Some of the reforms being discussed and their effect on the settlement of the cases involved in this large-loss study are reported in the accompanying article on page 21. □





Four Legal Reforms Would Have Reduced Costs of These Large Claims About 50%

Claims executives reviewing the claims included in the Alliance's study of large-loss products liability cases were asked to evaluate the probable effect of various proposed legal reforms on the settlements actually made in the 79 incidents. Their replies led to the following report:

1. Statute of Limitations—The claims arising from about 19 percent of the bodily injury incidents, involving 12.6 percent of the payments to claimants, would have been eliminated had there been in effect a six-year statute of limitations that ran from the time the product was first sold or put in use. (Under current rules, lawsuits often are filed against manufacturers of products made 20, 50, or even 100 years previously, a situation which the manufacturers feel places an unfair burden on them.)

2. Alteration or misuse of the product—Manufacturers increasingly are being held liable for injuries that result from misuse or hazardous alteration of the product by the purchaser or user. In reviewing these large-loss claims, file reviewers judged 34 percent of the incidents to have resulted from such misuse or alteration. Had the manufacturer been shielded from liability in these cases, the total payments to claimants would have been reduced 35 percent.

3. Prohibit retroactive "state of the art" judgments—File reviewers reported that if courts and juries were prohibited from applying current "state of the art" judgments to products made years ago, the claims arising from 18 percent of the incidents in the AMIA study would have been barred by that defense. Elimination of those claims would have resulted in a 17 percent reduction in total payments to claimants.

4. Eliminate the ad damnum—File reviewers judged that in 5 percent of the incidents, an excessive ad damnum (demand for a specific dollar amount of damages) had the effect of increasing the ultimate payout. The increased payments were estimated at about 5 percent of total payments to claimants.

Because of overlaps, the percentage reductions shown above cannot be directly added to determine what the decrease would be for the cases in this large-loss sample if more than one reform were adopted. For example, the reductions shown above for a "six-year statute of limitations" plus a defense based on "alteration or misuse of the product" total 47.6 percent. However, both of these defenses would apply to some individual cases in the sample. Elimination of the overlap changes the projected reduction for the combination to 41.2 percent.

Following is a summary of the estimated reductions in payments to bodily injury claimants in the large-loss sample if all four legal reforms were adopted. Column 1 shows the estimated reductions for each reform individually, and column 2 shows the *cumulative* reduction that would be obtained by adding the second, third and fourth reforms, with overlaps eliminated.

	Reduction of Payments for Each Individual Reform	Cumulative Reductions with Overlaps Removed
Statute of Limitations	12.6%	12.6%
Alteration or Misuse	35.0%	41.2%
State of the Art	17.0%	50.0%
Ad Damnum	5.0%	50.0%

Thus, payments for bodily injury in this large-loss sample would have been reduced 50 percent if all four proposed legal reforms had been in effect, and if they were held to be a complete defense against liability on the part of the manufacturer.

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by St. Paul Fire and Marine Insurance Company

25768 Ed. 2-77 Printed in U.S.A.

AN ENGINEER'S COMMENTS ON
PRODUCTS LIABILITY LEGISLATION

2-9

Professor J.B. Sevart, P.E. February 8, 1978

As a professional engineer, by education, experience and test, and as one versed in machine design theory with a broad knowledge of the design process, of manufacturing techniques and of design safety, and most of all, as a native Kansan and tax paying citizen of this fine state, I am embarrassed and a bit nauseated to know that such anti-public bills have been introduced in this Legislature. I am about to decide that fighting these anti-public bills is about like killing snakes and the similarity may be even greater than realized.

Let me first note that I am well aware of the nature of products liability litigation having been involved as an expert witness in the case of Brooks vs. Dietz which established strict liability as the law in Kansas. Further, I have provided consultation in this regard to numerous manufacturers, trade organizations and to government agencies. I have presented papers and spoken at seminars on the topic and have twice taught a class on products liability at Wichita State University. I understand the problems.

There is products litigation because people are being injured. I have yet to see a products liability action where there was not an injured party. For the most part, these people have been injured by a product that was either of faulty design or faulty manufacture . There are an infinitude of cases which could be cited but all of you are well aware of these.

Those manufacturers and insurance companies who come before you requesting special interest legislation such as this are like children caught violating school rules so try to change the rules. They don't believe in our system of justice since it does not fit their purposes. Surely no manufacturer could come before your committee and make a justifiable claim of being denied a fair hearing in this state. The excesses they claim are never proven and seldom have anything to do with a case in Kansas. Why? Because there are none!

The problem, from the manufacturers side, is an economic problem. They are faced with a cost that may not have been considered in pricing the product, and are being squeezed by the insurance industry. If the problem is the cost and availability of insurance, then let them introduce a bill addressed to that problem. To deny the basic rights of the citizen to a fair and impartial hearing to determine if he is to be compensated for his damages, is no equitable solution. Someone must pay. We do not shoot the disabled. Either relatives, the tax payer or the manufacturer must pay, and only the latter has it in his power to correct the deficiency which caused the injury.

No one in his right mind would go to a non-degreed lawyer or doctor, yet hundreds of products that have been designed by experimental mechanics, tool builders, salesmen and similar inadequately trained personnel are placed into the hands of the unsuspecting public. The layman does not seem to understand the difference between the skills required to fabricate a product and the technology required to design and test a product prior to placing it into production. I could cite a hundred examples of machinery designed in this manner which eventually injured some innocent user or bystander.

The second category of products cases are generated where the manufacturer has the technical know-how but decides to gamble with the health and life of the user. If you doubt this occurs, consider the Pinto gas tank, the Ford disintegrating fan, the Chevrolet engine mount problem, and on and on. When one gambles, he wins some and he loses some which is exactly as it is in the courtroom. Why should a group of people so assembled as you are, by a vote of the people, even consider a bill to protect manufacturers who take the public welfare so lightly? These abuses have occurred! They are well documented in court proceedings all over the United States.

As to the specific content of these House Bills, No. 2892 through No. 2903, I have yet to see a valid need for any of this proposed legislation. These bills will do nothing of significance for the manufacturer, since they will pertain only to products sold in Kansas, which represents less than ten percent of what is manufactured in the state. On the other hand, they will apply to one hundred percent of the products purchased by Kansans. The sponsors of these bills have some nerve to be asking for such a high-priced subsidy to manufacturers at the expense of the public.

Time limits comment on each specific bill. However, I see No. 2895 as an infringement on the rights of the injured party. For the most part, the injured party was not injured on the installment plan so why should he be compensated in that manner. This bill would serve no purpose except as a delaying action, and provides loop holes for avoiding payment at a later date.

House Bill No. 2896 is the worst piece of proposed legislation I have ever seen. What does it cost for a special interest group to get such a bill introduced? Why isn't there a clause that states that the user or consumer shall have the option of returning the product with appropriate refund of money upon discovery of the danger or hazard? Laws may not be just but they should at least be equitable.

House Bill No. 2897 will be used as a shield for the grossly negligent manufacturer at the expense of the public and the conscientious manufacturer. For example, deadman controls which could be incorporated by the lawn mower industry, would reduce the number of blade contact injuries by 25000 a year. Patents have existed for twenty years and the devices have been offered for sale by component part manufacturers who sell to the mower industry. It is irresponsible to protect this industry from the consequences of its anti-safety position. Are thieves not prosecuted because they quit stealing?

House Bill No. 2898 is also ridiculous. According to this bill, there would be no need to guard saws, lawn mowers, electrical equipment, etc. since the hazard is obvious. This bill ignores the highly developed technical discipline of Human Factors which is so important in the design of machines to be used by or around humans.

House Bill No. 2901 is not needed. Modification of a machine is appropriate evidence to prove assumption of the risk which is a defense to strict liability. Modification should be a jury question. If the modification was required to allow the machine to function as intended, then it should be no defense. On the other hand if the modification is done for ulterior motives of the user and especially if against the expressed instructions and warnings of the manufacturer, it should be a defense.

House Bill No. 2902 is also not required. Compliance with standards as a defense should be a jury question. When an industry adheres to an industry controlled standard, and where that industry does not provide for the input of non-industry groups, callously ignores badly needed safety requirements which have been demonstrated to be technically and economically feasible and primarily uses that standard for their own benefit, compliance should not be an acceptable defense. This bill would simply encourage an entire industry to remain negligent.

House Bill No. 2903 would limit the required life of a design to eight years. Products are so diverse that any specific time limitation is impossible. Should a coke bottle be required to have the same liability life as a thirty million dollar airplane? Is the person any less injured because the machine was nine years old? What is needed is to properly defend on the basis of compliance to the then state-of-the-art, assumption of the risk, misuse of the product, etc. This bill has no technical basis.

It was long ago stated that the government which governs least governs best. I urge you not to enact this grossly unfair legislation which would put so much burden on the public for so little benefit to the manufacturers of this state. In the past, Kansas has been a leader in people oriented legislation. Let us not take a giant step backwards by letting this obviously special interest effort become law.

Thank you!!!

STATEMENT OF
IVAN W. WYATT, VICE-PRESIDENT
KANSAS FARMERS UNION
ON
PRODUCTS LIABILITY
BEFORE
THE HOUSE COMMITTEE
ON
JUDICIARY
FEBRUARY 9, 1978

Mr. Chairman, Members of the Committee:

I am Ivan Wyatt, vice-president of the Kansas Farmers Union.

Last year we opposed SB-176, SB-209 and HB-2007. This group of bills covers virtually the same issues of products liability which we also oppose.

The membership of Farmers Union, representing nearly 6,000 farm families, adopted the following policy on products liability legislation at their convention held in Topeka last month.

We are opposed to legislation that would restrict or prevent citizens of the state of Kansas, to use the court systems to seek reimbursement for property damage or injury resulting from faulty design or manufacturing of products of goods sold in Kansas.

The major reason for their position is obvious. Farmers use more machinery manufactured for more specific purposes than do people employed in most industries in the nation.

Farm machinery is by and large dangerous to operate even when it is in good condition and of good quality. Personal injury, death, or property damage as a result of poor quality machinery is a fact of life on every farm in this country.

Poor quality parts, sloppy assembly, poor engineering and incompetent instructions by manufacturers and retailers on the operation of farm machinery is so common and extensive that it is one of the most common topics of conversation when farmers get together.

It's common knowledge that most new machinery won't operate properly without major field trials and modifications. It takes as much as two crop seasons to get a machine to perform properly under field conditions.

There has been cases of possible malfunction of machines that the owners were not warned of by the manufacturer, supposedly hoping that many of the machines would not fall apart or malfunction until the warranties had expired, gambling on the possibility that some unsuspecting operator might suffer injury or death.

These sort of actions is what causes the accidental death rate of farmers to be five times that of industrial workers. The ratio is 40 per 100,000 for farmers compared to 7.9 per 100,000 for all industrial workers.

We now have before us these bills that will protect to a greater extent, such actions of irresponsible manufacturers from products liability suits.

Many manufacturers, no doubt attempt to build safe machinery, but the passage of these bills might very well encourage less scrupulous manufacturer to market their less safe products in Kansas.

These bills are anti-consumer and do little to protect the Kansas manufacturer. They restrict access to the courts of the Kansas farmer and other consumers in their attempts to receive just compensation for death, injury or property damage, regardless of what state it was manufactured in and offers no protection for the Kansas manufacturers marketing products in other states. Figures indicate that 90% to 95% of Kansas manufactured products are marketed outside of the state.

I can sympathize with some of the smaller manufacturing companies who may be being victimized as much as a consumer would be if these bills should become law.

When we look at the problem of products liability, we should be certain it's placed in the proper prospective. Perhaps we're looking down the wrong end of the barrel.

During the last year's hearings, we heard stories of highly inflated insurance rates for products liability insurance to many manufacturers who had suffered no claims or losses.

Last year, we saw legislation that called for the reporting by insurance companies on claims, losses, rates, etc. As of yet, there is not enough history or information available to rationalize the increased rates being charged for products liability insurance or to be used as a basis to make judgement on this proposed legislation.

I believe there is good reason to suspect the insurance industry of victimizing both the consumer and the manufacturer.

The insurance industry may in fact be perpetuating "a product liability" syndrome.

The insurance industry is reported to have widely distributed the so called "Lawn Mower Story" of a man who is reported to have picked up a lawn mower to use to trim a hedge. This resulted in his injury and a following successful suit against the manufacturer.

The story, to my knowledge, has never been verified and is suspected to be a fabricated story.

Other insurance spokesmen have used scare tactics claiming a jump from 50,000 products liability law suits in 1960, to 500,000 suits in 1970, to a million products liability law suits now.

Reports from the government and industry relations at the Insurance Services office estimated recently the figure of incurred claims for all U.S. insurers of products liability written in 1976, may be more in the range of 60,000 to 70,000.

An ad entitled "There isn't a product made that can't be misused" was to illustrate that the misuse of products is one of the causes of the large increases in premiums for products liability insurance and an attempt to stampede manufacturers into buying products liability insurance of any price and to cause a confrontation between consumer and manufacturer.

I recently read an article in a farm publication that used the unconfirmed "horror story"of the lawn mower incident. In the same article, it was also stated "more and more law suits are being filed." Estimates vary but apparently one to 1.5 million products liability claims now take place annually.

The inference of the entire story was that products liability suits was contributing greatly to the selling price of machinery.

The real problem of high insurance rates may be the lack of competition instead of the loss-rate ratio.

In closing, we oppose these bills in total and believe there should be a thorough investigation into products liability insurance rates, claims and losses.

We are also adamatly opposed to any attempt by the Kansas Legislature to limit access to the courts by the people for compensation for death, injury or property loss caused by faulty products and goods. The Legislature should have no part of granting a legal cop-out of the responsibilities of either the manufacturer or the insurance industry.

Thank You

REPORT OF SUBCOMMITTEE ON HB 2717

The subcommittee for the lien bill recommends that the following approach be taken, rather than the approach suggested in HB 2717.

First, The present lien law, as it relates to real estate not used as a residence by the owner of the real estate, should have one change. That change should provide that when a subcontractor or materialmen files a lien statement, the lien claimant must give notice of filing the lien statement to one of the owners of the real estate upon which the lien is claimed. Present law requires the notice be served on all owners. The following suggestions will apply only to liens on real property where an owner of the real property would or does reside on such real property. 2-9

Second, The contractor, rather than a subcontractor or materialman, should give a warning statement of the law. The warning statement needs to be given to any one owner of the real estate.

Third, Provide for a class A misdemeanor if:

(1) The contractor fails to give a warning statement and a landowner thereafter has to pay twice for the same material or services, or

(2) the contractor fails to name all subcontractors and materialmen after a request therefor by a landowner and a landowner thereafter has to pay twice for the same material or services.

Fourth, If a contractor commits either of the crimes provided for in the Third provision above it shall be presumed to be an act of omission with intent to defraud and if landowner has to make duplicative payments he may sue the contractor for the extra expense incurred by the landowner in making the duplicative payment and for punitive damages. If the contract absconds, is bankrupt or has no assets upon which a landowner can enforce a

judgment rendered for duplicative payments, then the landowner would bear the loss.

Fifth, Certain minor changes are suggested as to the form of the warning statement to include the fact that the subcontractor's lien may be paid direct by landowner and amount credited to the amount and principal contractor (in words of statute).

Sixth, The subcommittee would like to see the lender lose the priority of his liens if he makes payment direct to the contractor without protecting the owner from subcontracts by lien waiver or notice of the law and of the lender's proposed actions, but we do not at this time feel the bill will pass with this incorporated into it.

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DONALD W. VASOS

SUMMARY OF TESTIMONY ON PRODUCTS LIABILITY

HOUSE JUDICIARY COMMITTEE

2-9-78

I. No significant developments since interim when virtually same package of bills was reported unfavorably.

A. Final report IATF more widely distributed.

B. "Sunshine Law", K.S. A. 40-1130 eff. 7-1-77.

C. Public disclosure of proponent's exaggerated claims.

II. KTLA POSITION ESSENTIALLY SAME.

A. Proposals are represented as reform, but all of us know that what this reform means is elimination of the right of Kansas consumers. The bills would not control or eliminate human destruction. They would simply legalize it.

B. Real issue is one of safety and product liability lawsuit serves as a powerful incentive for development of safety and product efficacy.

C. Still no reliable data to suggest that substantive law of products liability has created a crisis in Kansas.

D. Proposed Kansas legislation would not protect overwhelming majority of Kansas manufacturers or consumers, and would have no effect on insurance premium.

1. 85% products shipped out of Kansas where law of place of injury will generally govern.

2. Kansas manufacturers loss rated on nationwide experience, not on what occurs in Kansas.

E. No claim or testimony Kansas law is unfair, that Kansas judges or juries are awarding exhorbitant damages, or that Kansas lawyers are filing unwarranted claims.

K. C. Smith Jury Verdict Service

(1967-75)

(a) plaintiff successful 36%
(b) Average verdict $9,850
(c) 50% verdicts for property damage

(1977)

(a) plaintiff successful 29%
(b) average verdict $17,838
(c) 14 cases tried

F. Premiums may have risen, but for reasons unrelated to substantive law of products liability, and which may be corrected by means other than alleged "tort reform" proposals.

1. REAL COMPLAINT OF MANUFACTURERS IS HIGH PRICE INSURANCE COMPANIES CHARGE FOR THEIR INSURANCE PRODUCT.

a. Gilmore-Tatge Mfg. Co.

(1) 76-77 $54 M

77-78 $488 M (800% increase)

(2) While only 3% sales, does seem high for manufacturer with one claim

b. If insurance companies are charging exhorbitant premiums to Kansas insureds, then something wrong either with underwriting or ratemaking, not product liability law.

2. IATF FINAL REPORT (EXECUTIVE SUMMARY)

Although specific tort doctrines adopted by some courts can be considered inequitable to either

plaintiffs or defendants in specific cases, the total impact of such rules on product liability claims is insufficient directly to cause an insurance crisis of the magnitude claimed even though certain indirect connections between the two can be hypothesized. In short, even immediate changes in existing tort law would likely have little if any immediate impact on the availability or affordability of product liability insurance.

3. REASONS FOR INCREASE.

a. Can't be based on claims experience for carriers have told us data not available.

b. Based upon other consideration.

(1) Imprudent equity investment with massive losses in stock market.

(2) Panic pricing of insurors.

(3) Inadequate rate structure based on lack of data.

(4) Inflation.

(5) More people and products.

c. Investment bankers v. risk mgrs.

(1) Aetna acquired by Con. Gen.

(2) Hartford acquired by ITT

(3) Interest of stockholders preferred over policy holders.

III. SUGGESTED REMEDIES.

A. Require rates to be set on reliable data base rather than conjecture on exaggerated estimate of claims.

1. EXAGGERATED CLAIMS.

(a) Number of claims in 1976 60-70M rather than 1 million. IATF: "Absolutely no basis for estimates that appeared in some trade industry press stating that 1 million claims filed."

(b) Ads Withdrawn: AETNA, claiming 1 million claims; Crum & Forster, infamous ad of lawnmower used as a hedge trimmer.

2. "Sunshine Law" (40-1130 eff. 7-1-77)

(a) Burden of proof is on those who propose wholesale overhaul.

(b) No disclosure to date.

(c) S.811 backed by insurance industry would further defer disclosure of facts needed to make a determination.

3. Investigate reasonableness of insuror's reserve allocations for losses "incurred but not reported" (INBR's)

B. PUT COMPETITION BACK INTO INSURANCE BUSINESS.

1. Captive insurance companies (wholly owned subsidiary that insures parent) or self-insurance.

(a) Advantages:

(1) Stimulates self policing, loss prevention, and quality control to minimize injuries

(2) Corporate management input in developing contract.

(3) No broker commissions.

(4) Reduced claims adjusting expense.

(5) Familiarity with industry facilitates reasonable rates.

(b) Correctible disadvantages.

Self insurance needs same tax benefits as commercial carriers. (Federal: H.R. 10272; S1611; S527)

2. Government backed reinsurance (Federal S. 527)

3. Establish a state reinsurance fund or JUA to permit self insurors, captives, mutuals, and reciprocals established by industry or trade association to co-insure its risks. IATF favors voluntary JUA with self insurance similar to Florida MED MAL solution.

4. Establish placement facilities for manufacturers unable to obtain similar to an assigned risk plan.

5. Promote the formation of reciprocal or mutual insurance companies by a group of manufacturers, or trade association. These have been highly successful in the medical malpractice field and have resulted in better risk management and substantial premium decreases. Members more interested in risk management than investment banking.

6. These Concepts Work.

(a) Beech has an off shore Bermuda captive.

(b) Colorado has passed legislation permitting creation of domestic captives.

(c) IATF reports Bermuda captive of Massachusetts hospital group effected savings of 40% of JUA.

(d) Kansas med mal JUA. Recent report says Fund has $3.2 million with $10 million anticipated at end of FY. Surcharge expected to be reduced below 40%.

(e) The City of Kansas City, Missouri was recently faced with a premium increase from $276,000 to $409,000. The city elected to self insure. In the first six months OF 1977, the city paid $29,000 in claims and saved the city $176,000 during the first six months of 1977.