

# Manufacturers hit product liability rules

By Tim Richard  
staff writer

Several Michigan manufacturers say they're cutting product lines, laying off workers and getting beaten by foreign competition because of product liability insurance costs and lawsuits.

"The (courtroom) environment is hostile to manufacturing," a Warren manufacturer told the Senate Commerce Committee Wednesday in a public hearing in Southfield.

But spokesmen for organized labor, the State Bar Association and injured plaintiffs blamed rising costs on the insurance industry.

And a lobbyist for the United Auto Workers said "manufacturers seek wholesale changes (in their) desire to limit lawsuits by the deserving. They don't seek ways to improve products."

THE HEARING was on a draft bill to change rules of evidence to give manufacturers better defenses against product liability lawsuits (see outline below).

"It's a shame to have to limit people's right to recovery," Commerce Committee chairman Richard Posthumus, R-Lowell, said in an interview, "but with so many lawsuits..."

This week's public hearing in Southfield followed an earlier hearing in Grand Rapids. When the Legislature returns to Lansing next week, action will shift to the committee room, Posthumus said.

Posthumus was joined by Sens. Doug Cruce, R-Troy, who appeared to like the reform measure; Jack Faxon, D-Farmington Hills, who talked about stricter regulation of insurance companies and even a state insurance program; and Richard Fessler, R-West Bloomfield, an attorney, who urged the panel to focus on a couple of limited reforms rather than wholesale changes.

C. WAYNE GIBSON, vice president and general manager of Detroit Hoist and Crane in Warren, said soaring liability insurance premiums can't be passed on to buyers through higher prices because of competition from Canada, Germany, Sweden and Japan and a soft market.

"Insurance premiums have skyrocketed at a rate that has virtually eliminated our profit," Gibson said. But he blamed a hostile courtroom environment, not insurers.

Richard Donahy, of United Brass Manufacturers in Romulus, said his firm has discontinued some products — such as scuba diving equipment — because of the liability expense.

Donahy told of a customer who misused a fire extinguisher as an air compressor. When the tank exploded and injured him, he collected damages from the manufacturer.

"Industry, insurance, the consumer — everybody's at fault," said Donahy. "You can't regulate the insurance industry or you'll drive them out."

Jerry Mercer, Pontiac businessman representing aviation businesses, was puzzled by "sensational" jury awards against it. "It's baffling to an industry whose safety record has shown consistent improvement," said Mercer, adding that propeller makers are uninsurable.

THE UNITED Auto Workers and the State Bar urged lawmakers to study and publish data about product liability payoffs which the state Insurance Bureau is supposed to collect under a 1978 law.

## SB 435 tightens legal rules

The product liability reform measure before the Michigan Senate is embodied in a much-marked up Senate Bill 435. It would amend the Revised Judicature Act by giving manufacturers stronger courtroom defenses. Key ingredients:

- The product would be presumed good if it complied with certain standards. (Currently, this factor is merely admissible as evidence.) The presumption could be rebutted only by "clear and convincing evidence."

- A statute of limitations is contemplated of 10 or 15 years. The death or injury resulting from using the product would have to occur within a decade after the manufacturer's last contact with it.

- A manufacturer fighting a lawsuit would have an "absolute defense" if the buyer had altered or modified the product.

- Jury awards for non-economic damages would be limited to \$225,000 except in cases of death, damage to reproductive organs or other serious bodily damage.

- Plaintiffs' attorneys' fees would be limited.

- "Expert witnesses" would have to meet standards — such as spending a substantial amount of time in active practice and not spending more than 25 percent of their time as "professional witnesses" in court cases.

The bill is before the Senate Commerce Committee. Action is expected in the September special session.



Sen. Richard Posthumus  
"It's a shame"

Posthumus called an offense. All that does is isolate the parties. I'm sorry you brought that up." Cruce, too, was filed. "I go door-to-door. I wonder why I do it — it gets boring. But now I'll go out with much more vigor," he told the UAW spokesman.

Cruce said courts seem to look at "the severity of the injury rather than the responsibility of the manufacturer" in awarding damage.

Masseron replied, "If a lawnmower blade files off and hits my child..."

"Wait a minute," Cruce said. "Suppose you installed the blade yourself and failed to tighten the bolts. That's not a design defect. That's an operator fault."

State Bar vice president Eugene Masseron urged lawmakers not to "rush" in to "precipitous" action without analyzing all product liability claims collected by the Insurance Bureau in the last eight years.

ALAN JAY KAUFMAN, a Farmington Hills attorney who defends manufacturers, endorsed many key points of SB 435. Kaufman liked the provisions to 1)

limit the number of years after a sale during which a manufacturer could be sued and 2) provide an absolute defense where the buyer has altered the machinery. "A punch press could be 40 years old, sold, resold and altered to improve productivity by removal of a safety device," he said.

"We have noticed increased verdicts in cases across the state," said Kaufman. Cases which defense lawyers estimate will result in \$25,000 awards are costing 10 times as much. "A number of insurance companies have left the state or gone under," he said.

Asked by Sen. Faxon how many unfavorable jury verdicts are modified on appeal, Kaufman said, "On

appeal, most have not been modified. Many appeals are filed so judgments are negotiated downward, but

not by much; most interest payments, which are 12 percent compounded."

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