

Furthering the difficulties of defendant-manufacturers is a decision by a California court of appeals holding that the producer has the burden of proving that the benefits of the design of its product outweigh its risks. In one case, a plaintiff's motorcycle collided with a pickup truck. The motorcycle's leg was caught in the space between the bumper and the fender of the pickup, and was severed. As frequently happens, the plaintiff looked for the "deep pocket" to sue—not the driver of the truck but its manufacturer. Given that the injuries occurred, the court reasoned that the burden is automatically placed on the defendant to justify the construction of the pickup.

Laws on liability and available defense vary widely among the states, creating significant burdens on interstate commerce. Manufacturers of products sold nationwide cannot determine the standards of conduct to which they will be held. Governors in Kansas and Connecticut have vetoed state product-liability legislation, noting that individual state efforts make little difference in resolving the problem. Officials in each state have a political incentive to keep it easier to prove liability, since most products consumed by its residents are produced elsewhere.

The proposed federal standard would attempt to restrain the excesses of judges and juries that have destroyed the common-law ideal of a normative standard of conduct regulating the behavior of producers and consumers. Rather than allowing the courts to decide that an alternate design was possible and would have mitigated a particular injury in a particular case, a reasonable-prudence standard is needed. Under Sen. Kasten's bill, a product would be held to be unreasonably dangerous if "the manufacturer knew, or, through the exercise of reasonable prudence, should have known about the danger which allegedly caused the claimant's harm" and if "a reasonably prudent person in the same or similar circumstances would not have manufactured the product or used the design or formulation that the manufacturer used." The proposed law also would require the courts to consider whether "the benefits and usefulness of the product to the public outweighed the likelihood and probable seriousness of the harm."

THE CARDOZO STANDARD

According to the opponents of this legislation, the above represents a Neandertal standard. But the truth is far from that, for such a standard is very similar to the one devised by "enlightened" jurists such as Benjamin Cardozo (while a New York appellate judge): It was called strict liability.

One sometimes wonders if the negative reaction by trial lawyers to a Cardozo-like standard has anything to do with a concern about the possibility of less gainful employment—since the most outlandish product-liability cases would be precluded. The fact is, the current product-liability system benefits litigators more than litigants, as was made clear in a Rand Corp. study released last year. During the decade of the 1970s, \$1 billion was expended on asbestos-exposure litigation alone. In the average case, the plaintiff received \$35,000, while \$60,000 was spent by the plaintiffs and defendants litigating the matter.

The proposed federal legislation will not necessarily affect this seemingly perverse ratio, but it will serve to establish a clearer standard in product-liability cases and thus to eliminate much of the random element present in court decisions.

Mr. KASTEN. Mr. President, I once more thank my friend and colleague from Wisconsin.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The Assistant Secretary of the Senate proceeded to call the roll.

Mr. DOLE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. KASTEN). Without objection, it is so ordered.

VICTIM COMPENSATION

Mr. MITCHELL. Mr. President, yesterday the Senate Committee on Environment and Public Works held its first hearing of 1984 on the reauthorization of the Superfund law.

The hearing focused on the issue of compensation for victims of toxic chemicals. This is not a new issue. The Congress has been struggling for over 5 years to devise a method to provide some sort of compensation to persons injured by exposure to chemicals in the environment. We have not yet been successful.

This morning, six people told the members of the Environment Committee how our failure to act has affected each of them.

Each of the witnesses has lived in Woburn or Lowell, Mass., near a hazardous waste site or a contaminated water supply.

Anne Anderson told us about her son, Jimmie, who died of leukemia in 1981 after 7 years of treatment.

Janet Brand told us about her daughter, who suffers from musculoskeletal disorders and her other children who suffer from chronic upper respiratory infections.

Patricia Kane told us about her son, Kevin, who contracted childhood leukemia at the age of 2 and how after 7 years of chemotherapy his illness went into remission.

Rita Pinard told us about her children's chronic respiratory and ear infections, which disappeared when her family moved away from the Silresim hazardous waste site.

Donna Robbins told us about her son who died of acute lymphocytic leukemia after a 5-year illness, and about her second son who now needs psychiatric counseling to deal with his fear of getting leukemia.

Richard Toomey told us about the death of his son, Patrick, of leukemia after a 2-year illness.

These witnesses spoke in a straightforward yet eloquent way of their problems. They told us about the high medical expenses they face, and the additional difficulty of even paying monthly expenses such as heat and electricity as a result of the cost of their children's illnesses. They related

the difficulty of commuting to and from the Massachusetts General Hospital in Boston with sick children and the associated expenses. They spoke of their futile efforts to get information, cleanup action, or compensation from public officials.

They spoke of the lawsuit they filed 2 years ago, which has not yet come to trial.

The witnesses asked us what we were going to do. Are we going to go on with business as usual, put their testimony in the back of our minds, and let another year go by without action on victim compensation legislation? I hope and pray that the answer is "No."

I remind every Member of this body that the Superfund law we enacted in 1980 permits recovery from the fund for damage to Federal and State natural resources, but it makes no provision for recovery of even medical expenses from the fund for damage to people.

I said at the time we passed the Superfund law that as to this issue, the bill rested on a misguided set of priorities which placed damage to property above damage to people. Almost 4 years have passed since then, and the victim compensation provisions, which were dropped, are even more necessary today than they were in 1980.

The guiding principle of the authors of the Superfund law was that those responsible for harm caused by chemical contamination should pay the costs of that harm. That principle was abandoned in 1980 with respect to personal injury. As to such damages, the status quo obtains. Society at large continues to pay for the human health damage caused by hazardous substances.

This represents an unacceptable set of priorities by any standard of logic, commonsense, and basic decency. In my view, the question before us is not whether we should provide victim compensation but rather how we should accomplish it. I fail to understand how anyone could disagree with this very basic notion.

I regret very much that all Senators could not hear the testimony I heard yesterday, about tragedy in American families, and about the utter failure of government at all levels. Then perhaps those who in 1980 opposed victim compensation because it cost too much, or because it was alleged that the insurance industry would be crippled by claims, or because it was alleged that the judicial system would be overloaded with spurious suits, would change their focus to the real issue: the crying need for victim compensation.

I know that differences of opinion on this issue persist and that, notwithstanding the pleas of ordinary people for help, we face an uphill battle.

The opposition is formidable. It is led by the President. An official of his Office of Management and Budget, Michael Horowitz, stated last month that with respect to victim compensation, "the battle must be fought now, at the front end, over matters of principle," and that "we must have the political courage to say 'no' to victims' compensation."

I hope that every Member will in fact evaluate the issue of victim compensation as a matter of principle and with a measure of political courage to say "no" to the interests that threatened to kill the comprehensive Superfund bill in 1980. By these standards, the passage of victim compensation legislation could be assured.

I urge all Senators to think about the need for action now, so that next year we can look at the victims of toxic chemicals who come before us and tell them we listened, learned, and acted to help them.

A TRIBUTE TO JUDGE ROY MAYHALL

Mr. HEFLIN. Mr. President, it is with a great deal of sadness that I note the death of Judge Roy Mayhall of Jasper, Ala. Judge Mayhall was one Alabama's most outstanding citizens, as well as one of its leading jurists. Judge Mayhall was also a concerned civic leader, as well as being a dedicated public servant.

Judge Mayhall was a native of Haleyville, Ala., and it was to that hometown that he returned after completing the study of law at the University of Alabama in 1923. While practicing law in Haleyville, located in the predominantly Republican county of Winston, Mayhall became the first Democrat elected to represent that county in the Alabama House of Representatives since the Civil War.

In 1943, Roy Mayhall was appointed to serve as a State Circuit Judge in Walker County, where the city of Jasper is located. For the next 22 years, until 1965, Judge Mayhall continued to serve Alabama's judicial system as a supernumerary judge. He served in that capacity for 8 years in Mobile, 5 years in Huntsville, and 1 year in Gadsden.

In addition to his many other activities, Judge Mayhall was a member of the Alabama Democratic Executive Committee for 36 years, and was a delegate to the 1960 Democratic National Convention.

From both my years as a trial attorney and my service on the Alabama Supreme Court, I can testify from first-hand experience that Judge Roy Mayhall was a dedicated and distinguished legal scholar, a true credit to his chosen profession.

Mr. President, I wish to extend my most sincere sympathy to Judge Mayhall's lovely wife, Mrs. Louise Mayhall;

his children, Dr. Travis Mayhall, Reba Brown, and Doris Roberts; and his brother, Carlton Mayhall.

Judge Mayhall will be sorely missed. Alabama has lost a great citizen. I have lost a close friend.

Thank you, Mr. President.

CHARLESTON NAVAL SHIPYARD RECEIVES 1983 PRODUCTIVITY

Mr. HOLLINGS. Mr. President, the Charleston, S.C. Naval Shipyard has been selected by the Chief of Naval Material (CNM) to receive the CNM Productivity Excellence Award for fiscal year 1983. This award establishes Charleston as the leading naval shipyard in the United States.

This only confirms what has been evident for a long period of time. When it comes to excellence—and a standard of performance that well exceeds their competition—the workers at Charleston stand alone. The award is a fitting tribute to the skills, reliability, and loyalty of every employee in the yard, from nuclear engineer to pipefitter to laborer. I believe that they all richly deserve this award. In my view, the Charleston team has consistently outperformed any shipyard—be it public or private—in the world.

I call to your attention the many areas of competition where the Charleston workers excelled: Ship overhaul durations, total savings or cost avoidances resulting from productivity improvements, customer satisfaction on the quality of work accomplished, overhauls completed within cost, quality of worklife, quality circles, employee suggestion program, worker motivation seminars, relationships with community, local, and State organizations, and a record contribution of \$417,000 to the Combined Federal Campaign.

During fiscal year 1983, Charleston completed all 14 availabilities on time or early, returning over 155 operating days to the fleet. This fantastic record, along with the development of a corporate management plan, and winning the National Safety Council Award for job safety were the most outstanding accomplishments cited in the CNM Award.

The people of Charleston are justifiably proud of all their accomplishments. They are equally proud that they can serve the Navy and their country so well. Excellence is a tradition at Charleston. I am very proud for every worker in the navy yard for the recognition of a job well done. I anticipate that this may become an annual event.

Mr. President, I ask unanimous consent that the Charleston Shipyard's press release on the award be inserted in the Record.

There being no objection, the press release was ordered to be printed in the Record, as follows:

[News release, Jan. 30, 1984]

CHARLESTON NAVAL SHIPYARD—PRESS RELEASE

Charleston Naval Shipyard, one of South Carolina's largest employers, has been selected to receive the Chief of Naval Material (CNM) Productivity Excellence Award for Fiscal Year 1983. This award establishes Charleston as the leading Naval shipyard in the United States.

In a message to Captain R. G. Camacho, Shipyard Commander, Admiral S. A. White, Chief of Naval Material, stated: "It is my pleasure to personally congratulate you and your command for having been selected as the winner of the 1983 Productivity Excellence Award within your competitive category. The extraordinary efforts invested in improvements to both productivity and quality of work life are reflected in the superior level of performance of your command. The results have been evident in the outstanding, creative, quality-oriented results you have achieved this year. I applaud your accomplishments. Please pass my thanks to all hands. Well done."

Charleston Naval Shipyard competed in the areas of ship overhaul scheduled durations, total savings or cost avoidance resulting from productivity improvements, customer satisfaction on the quality of work accomplished, overhauls completed within cost, quality of work life, Quality Circles, Employee Suggestion Program, worker motivation seminars, relationships with community, local and state organizations, and record contributions to the Combined Federal Campaign. During the last Fiscal Year, Charleston completed all fourteen availabilities on time or early, returning over 155 operating days to the fleet. Cited as outstanding accomplishments were the early ship completions, the development of a Corporate Management Plan, and winning the National Safety Council award for job safety.

Because employee involvement and dedication are recognized by NAVMAT as essential to productivity improvement, the award contains provisions for the special recognition of selected employees who will be recognized as CNM Productivity "Fellows". The fellowship awards are presented to individuals who made a substantial contribution to productivity excellence within the organization. The employees selected will be recognized at an award ceremony and they will be presented a special lapel pin by Admiral White. Additionally, every shipyard employee will be awarded a wallet-sized card citing their contribution.

Commenting on the award, Captain R. G. Camacho stated: "This is the premier award and means that we have been recognized as the number one shipyard by two higher echelons of command. I always believed that our people were the best, and NAVSEA and NAVMAT have confirmed that belief. Our people have worked hard; their efforts have paid off; and now they are being recognized. I am indeed proud to serve as Commander of Charleston Naval Shipyard."

The award, which consists of an engraved plaque and a flag for public display, will be presented next month in Charleston by the Chief of Naval Material, Admiral S. A. White.