

SENATE JUDICIARY SUBCOMMITTEE
ON CIVIL PROCESS

Hearing Room
Tapes - 16

MEMBERS PRESENT:

Rep. Del Parks, Chair
Sen. Neil Bryant, Vice-Chair
Rep. Kate Brown
Rep. Bryan Johnston
Rep. Bob Tiernan
Sen. Ken Baker
Sen. Randy Miller
Sen. Peter Sorenson

MEMBER EXCUSED:

Rep. Leslie Lewis

STAFF PRESENT:

Holly Robinson, Committee Counsel
Max Williams, Committee Counsel
Sarah May, Committee Assistant

MEASURES HEARD:

SB 93 - Relating to intrauterine devices
SB 447 - Relating to statutes of limitations

These minutes contain materials which paraphrase and/or summarize statements made during this session. Only text enclosed in quotation marks

report a speaker's exact words. For complete contents of the proceedings, please refer to the tapes.

TAPE , SIDE A

004 CHAIR BRYANT: Calls the hearing to order at 3:40 pm.

PUBLIC HEARING ON SB 93

(SB 93 extends statute of ultimate repose for bringing action against manufacturer of intrauterine device.)

Witnesses: Diana Godwin, Williams & Troutwine, PC
Scott Gallant, Oregon Medical Association
Tom Burns, Searle Pharmaceuticals

010 DIANA GODWIN, WILLIAMS & TROUTWINE, PC.: Testifies and submits testimony in support of SB 93. (EXHIBITS A-1, A-2, A-3) Discusses cases on visual aide chart.

205 SEN. BAKER: Is that because it is beyond the eight years?

206 GODWIN: Yes, explains. Continues with testimony.

244 CHAIR BRYANT: If you haven't filed a claim by now under the bankruptcy resolution, are you precluded?

247 GODWIN: Yes, you have to file with them by July 31, 1991. All of the women in Oregon have complied with that.

250 CHAIR BRYANT: This wouldn't include any new claims, just the final resolution of those that are pending?

251 GODWIN: Exactly.

253 REP. BROWN: If we put the year 2000 on the time limit, are we going to run out of time again?

256 GODWIN: I don't think so. My clients feel that this is adequate

because no new claims are coming into the trust, where they were before July 31, 1991.

266 REP. BROWN: The legislature exempted IUDs in '87 and breast implants in '93. What year was aSB estos exempted?

268 GODWIN: Later in the '87 session. Cites language in EXHIBIT A-3.

296 SEN. SORENSON: What legislative policy could we enact that would protect manufacturers from claims when many years have elapsed, but at the same time protect the rights of persons injured by products? Why do we keep getting all of these exemptions?

317 GODWIN: Answers questions by citing and discusses ultimate repose on products. Oregon is in the minority of doing this. Not all products and injuries are the same. Only two states have a shorter ultimate repose than Oregon.

352 SEN. BAKER: We are not opening this up to another class of people, we are just giving them an extension for a remedy that was already in place?

360 GODWIN: Yes.

364 CHAIR BRYANT: If we put in a date certain of July 1, 1995, would that solve your problem?

368 GODWIN: I would have to check that with Legislative Counsel.

372 CHAIR BRYANT: The cause of action only goes against the manufacturer?

374 GODWIN: That is correct.

375 CHAIR BRYANT: Why would a doctor be joined in a lawsuit involving an IUD since there is no cause of action? Explains that in a case like this the doctors then have to go through a process to get the charges dismissed, which wasn't the intent of the legislature.

394 GODWIN: The bill we passed in '87 specifically says a product liability civil action against the manufacturer. We specifically exempted "doctors".

406 CHAIR BRYANT: I know that wasn't the intent, but I heard from one doctor that this happened.

409 GODWIN: That may have been for jurisdiction purposes.

410 CHAIR BRYANT: The only thing he could think of was jurisdiction. Because there was no cause of action.

414 GODWIN: We clearly said in the statute that they don't have a cause, but sometimes those cases are from inappropriate pleadings.

427 SCOTT GALLANT, OREGON MEDICAL ASSOCIATION: Testifies and submits amendment in support of SB 93. (EXHIBIT B)

TAPE 16, SIDE A

025 TOM BURNS, SEARLE PHARMACEUTICALS: Testifies in opposition to SB 93.

041 SEN. SORENSON: Is there a way to protect the victims and at the same time give the business community some protection?

050 BURNS: I do not have an answer, but I will get you one by the end of the week.

056 CHAIR BRYANT: Would you have any objection if the bill was limited to the Robins firm?

059 GODWIN: No, that is what we intended to do. Cites Section 1, lines 6-8 of bill. All we are doing is extending the time period for filing claims under Section 5, Ch. 4. Cites specific language. This is for actions filed in cases of bankruptcy that we are extending the time limit for. We don't intend to open this up for any other cases.

090 REP. JOHNSTON: Can you respond to the OMA concern about contributing tort users? If one of these plaintiffs is successful, their concern is

that a physician who authorized use of this device in '87 could get sued?

100 CHAIR BRYANT: The way to fix that is to add an amendment to the bill that specifically says there won't be a right to contribution for these claims.

PUBLIC HEARING ON SB 447

(SB 447 allows civil action against manufacturer of pickup trucks for injury or damages resulting from fire caused by rupture of sidesaddle gas tank in vehicle collision to be brought within two years after injury or damage occurs.)

Witnesses: Brad Higbee, Justice Ran, Kirkwood Committee
Annette Hausinger, Self
Jocelyn Tureck, Self
Clarence Ditlow, Center for Auto Safety

108 BRAD HIGBEE, JUSTICE RAN, KIRKWOOD COMMITTEE: Testifies and submits written testimony in support to SB 447. (EXHIBITS C-1, C-2)

133 REP. TIERNAN: Are you talking about the GMC pickup trucks?

135 HIGBEE: We are talking specifically about those trucks that were designed with sidesaddle gas tank. The only products, that I am aware of, are the GMC pickup trucks, model years 1973- 1987.

145 REP. TIERNAN: Many trucks provide sidesaddle gas tanks as options. Is this bill going to be limited only to the GMC products?

149 HIGBEE: Any pickup truck manufactured with a sidesaddle gas tank would be covered by the provisions. To my knowledge there are no other manufacturers of these gas tanks other than GMC. Sidesaddle gas tanks cause 600-300 percent more accidents.

161 REP. TIERNAN: Is this bill also going to effect those commercial, or semi-commercial vehicles?

170 HIGBEE: No, cites page 1, line 13 of bill which clearly says "pickup trucks".

173 SEN. BAKER: What is the legal definition of "pickup truck"?

174 CHAIR BRYANT: I don't know, we could define it in this bill though. The intent of the bill is to limit it to the GMC model pickup trucks. We can further narrow that to make sure that those are the only ones included.

182 HIGBEE: Continues with testimony.

195 ANNETTE HAUSINGER, SELF: Testifies and submits testimony in support of SB 447. (EXHIBIT D)

315 JOCELYN TURECK, SELF: Testifies in support of SB 447.

TAPE 15, SIDE B

018 Tape of recorded testimony by CLARENCE DITLOW, CENTER FOR AUTO SAFETY: Testifies and submits written testimony in support of SB 447. (EXHIBITS E-1, E-2)

191 HIGBEE: We are asking for a narrow exemption to SB 447. We are not asking you to punish GMC, we are not asking you to agree that there is a design defect, we just want an opportunity to seek access to justice.

201 CHAIR BRYANT: We couldn't be as specific as to say GMC pickups between certain years, because that would provide for a legal defense in a lawsuit against GMC. We can still define pickup so that it is clear.

210 REP. TIERNAN: Does this also include the Blazer model by GMC?

213 HIGBEE: It would be specifically for the '73-'87 C, which are the pickup trucks and the K which are the 4 wheel drive trucks. We can make it more clear though.

220 REP. TIERNAN: Does this exception apply to owners of the trucks if they were injured?

223 HIGBEE: I believe that it would.

224 REP. TIERNAN: If an owner is made aware that their truck could be dangerous, but continue to drive it and become injured, I think that is different than someone being injured by a truck hitting the vehicle they were in. Can't we make a law for the drivers to modify the truck to make it safe for the roads in Oregon?

235 SEN. BAKER: There are federal problems with the interstate commerce laws.

239 REP. TIERNAN: There are no safety precautions that we can require for the truck?

240 SEN. BAKER: Those are all regulated by federal statute.

241 HIGBEE: I will look into that for you.

242 REP. TIERNAN: I would be interested to know what we can do in the proactive, instead of waiting for more accidents to occur. If the state can solve a problem by requiring a change on these trucks before accidents happen, then they should. How many trucks are we talking about?

248 HIGBEE: There are at least 8,500 of these pickup trucks that are at least ten years or older.

250 REP. TIERNAN: We would be talking about \$85,000 in which to equip all of the trucks to non-sidesaddle gas tanks?

253 CHAIR PARKS: That cost would be for GMC to do it. Is that cost for individual owners to take their trucks to GMC to fix them?

255 CHAIR BRYANT: It would probably be more expensive for an individual to fix them.

256 HIGBEE: It cost this family \$600 to move the gas tank.

263 REP. TIERNAN: Is there something else we can do besides waiting for another bomb to go off? Should the owner of the truck who continues to drive it, knowing that there is a problem, be under the same exemptions that we are creating?

270 CHAIR BRYANT: Discusses that the bill was drafted specifically directed toward the manufacturer rather than at the owner. I decided to concentrate on the manufacturer who knew of the design problems.

289 SEN. SORENSON: I'm troubled with making exemptions for particular products. The idea of equal justice under the law would tend to dictate a statute of ultimate repose to have it apply across the board. We might need to push interstate commerce laws to require safety.

316 CHAIR BRYANT: I will have counsel look into that. The statute of ultimate repose would not have an effect after the two year time limit.

326 SEN. SORENSON: What was the liability policy of the driver of the other vehicle?

331 HIGBEE: I don't know.

334 SEN. SORENSON: That may be a place to find some compensation if the claim is filed within the two year period.

338 HIGBEE: They are pursuing all of the options available to them, but there is a larger party responsible for what happened.

349 CHAIR BRYANT: Everyone understands that monetary value cannot replace what this family has lost.

353 REP. JOHNSTON: Suggest that we break the bill into two pieces, explains. We ought to move to protect the citizens of Oregon.

371 REP. BROWN: Have there been people in other states who have suffered similar types of injuries who have brought suits against GMC and have or have not been successful?

379 HIGBEE: Yes, people have been successful in bringing lawsuits. Many of them have been in the form of settlements.

389 REP. TIERNAN: Was the individual who turned in front of the car cited for a moving violation?

393 HIGBEE: Yes, she was cited.

394 REP. TIERNAN: Was she burned or injured at all?

395 HIGBEE: She escaped almost immediately because the collision happened on the passenger side where the car hit and she escaped out the driver's door.

401 REP. TIERNAN: If the person who drove the truck was burned as well, but knew their truck had the danger, do you think that person should be able to recover for their burn injuries?

411 HIGBEE: In my personal view yes, because it is a problem of the design.

418 REP. TIERNAN: If we are going to create an exception of people who are victims of this, should we also extend it to the person who knows the danger of the truck, but continues to drive it anyway?

424 HIGBEE: I don't know how you establish if people "know" about the truck, or when they "know" about it's dangers.

430 CHAIR BRYANT: The plaintiff would have cause of action against the driver and owner of the truck without the need of that in this bill.

437 REP. TIERNAN: I'm concerned of the persons, if they had knowledge of their truck being dangerous, but were hurt themselves. If we are creating an exception for someone who knows they are driving a dangerous truck, gets

in a serious accident and becomes burned, what is the rationale to let that person recover under this exception?

446 CHAIR BRYANT: In that situation, GMC could allege contributory negligence on the person who owned and drove the truck.

TAPE 16, SIDE B

010 REP. TIERNAN: I have a problem with extending this to an individual who knew of the danger yet continued to drive and then was burned because of it.

WORK SESSION ON SB 447

014 CHAIR BRYANT: Discusses definition of "pickup".

019 REP. BROWN: We need to move this bill.

025 CHAIR BRYANT: Rep. Tiernan, you were concerned about the "pick-up truck", would you like that definition in the bill?

029 REP. TIERNAN: I do not want to hang this bill up. I am willing to rely upon the testimony that it is only intended for that model, class, and specific years of trucks.

033 SEN. SORENSON: Pickups are already regulated by the DMV and there is some statutory definition available.

040 CHAIR BRYANT: If there is a problem with the definition, we can bring it back to committee.

044 MOTION: REP. BROWN: Moves SB 447 TO THE SENATE JUDICIARY FULL with a DO PASS recommendation.

COMMITTEE

047 SEN. MILLER: I don't see an emergency clause in this bill. I don't want to rush this bill and over look issues that need to be taken care of.

057 HOLLY ROBINSON, COMMITTEE COUNSEL: (inaudible)

059 SEN. MILLER: It could also apply to a person who was driving with the knowledge that their pickup could be dangerous.

060 HOLLY ROBINSON, COMMITTEE COUNSEL: (inaudible)

061 SEN. MILLER: I would like to make sure that the driver with knowledge

can't be included.

064 REP. BROWN: Couldn't that be raised in affirmative defense in any event?

066 CHAIR BRYANT: With my understanding of comparative negligence, yes, they could raise that as an issue of negligence and compare the negligence of the manufacturer vs. the driver.

068 MAX WILLIAMS, COMMITTEE COUNSEL: The conceptual problem is that in order to raise that as an affirmative defense, the manufacturer is putting the nail in their own coffin and that is a position they are not going to take.

075 CHAIR BRYANT: To assert that as a defense, they would have to agree that their pickups are dangerous.

078 SEN. SORENSON: How can we preserve our rights to address the issue of statute of ultimate repose? Because there isn't an emergency clause on the

bill, doesn't that cause some problems to the Kirkwood family? They wouldn't be certain of this enactment until after the legislature had adjourned.

097 REP. TIERNAN: Motion to have conceptual amendment to exclude those "drivers that have knowledge" of the defect of their truck.

106 REP. BROWN: Withdraws motion.

108 MOTION: REP. TIERNAN: Moves CONCEPTUAL AMENDMENT of excluding THAT HAVE KNOWLEDGE" from SB 447.

"DRIVERS

112 REP. JOHNSTON: These trucks are anywhere from 10-18 years old. People that drive these trucks possibly haven't chosen to drive and own them. We unfairly pick on a segment of society that may not have a choice. I don't think we need to extend any protection to GMC.

124 SEN. SORENSON: Wants to have more detail of "knowledge". What does that include? Compares the knowledge of the manufacturer to the driver/owners knowledge. There is a difference.

138 VOTE: 3-1 MOTION FAILS
AYE: Tiernan
NO: Brown, Johnston, Parks

148 MOTION: REP. BROWN: Moves to include an EMERGENCY CLAUSE TO SB 447.

152 SEN. SORENSON: What are the different ways to include that? Discusses possibilities.

161 CHAIR BRYANT: The backdating isn't necessary as far as someone losing their right, the only advantage of the emergency clause would be so they could file the claim sooner.

171 REP. BROWN: I just want to make sure that we don't preclude anyone and that these people can take action as soon as possible.

174 CHAIR BRYANT: Suggests a date of certain on this bill of July 1, 1995.

179 HOLLY ROBINSON, COMMITTEE COUNSEL: Cites problem if legislature adjourns late.

187 REP. JOHNSTON: These people didn't ask for an emergency clause and if it impairs this bill from passing, I will vote no.

190 REP. BROWN: Withdraws amendment motion.

191 MOTION: REP. TIERNAN: Moves SB 447 TO THE SENATE JUDICIARY FULL COMMITTEE with a DO PASS recommendation.

VOTE: Hearing no objections the bill is moved. Rep. Lewis, Sen. Baker are excused.

198 CHAIR BRYANT: Adjourns hearing at 5:18 pm.

Submitted by, Reviewed by,

Sarah May Debra Johnson
Committee Assistant Committee Coordinator

EXHIBIT SUMMARY:

A-1 Testimony on SB 93 - Diana Godwin - 2 pages
A-2 Testimony on SB 93 - Diana Godwin - 1 page
A-3 Testimony on SB 93 - Diana Godwin - 4 pages
B. Testimony on SB 93 - Scott Gallant - 2 pages
C-1 Testimony on SB 447 - Brad Higbee - 4 pages
C-2 Testimony on SB 447 - Brad Higbee - 21 pages
D. Testimony on SB 447 - Annette Hausinger - 1 page
E-1 Testimony on SB 447 - Clarence Ditlow - 4 pages
E-2 Testimony on SB 447 - Clarence Ditlow - Video tape
F. Testimony on SB 447 - Todd Unger - 1 page