

Product liability lawsuits usually involve claims that a product is unreasonably dangerous, either in its design, manufacture, or its lack of a proper warning or instructions regarding use.

Historically, trial lawyers name the product manufacturer as well as each party that handled the product in the stream of commerce as a defendant. This includes the shipper of the product, as well as the store owner who sells the product. In most cases, the store owner is never liable for a design defect, manufacturing defect, or failure to warn. Why? Because these cases have nothing to do with the negligence of the store owner.

Doctors and pharmacists are similar to store owners. They have nothing to do with the design or manufacture of a product. Yet time and time again, doctors and other health care providers are named as parties to product liability lawsuits involving prescription drugs and medical devices. Why? Because class action lawyers are constantly looking for the best courtrooms to file their lawsuits. These lawyers routinely shop for venues that are known for siding with the patient who has been harmed. By bringing their cases in front of plaintiff-friendly judges and juries, these lawyers immeasurably enhance their probability of securing a jackpot jury award.

Judgments are virtually never entered against doctors and pharmacists in product liability lawsuits. Yet these health care professionals are often forced to spend thousands of dollars in legal costs and take valuable time off from work, time away from the patients who need them, to provide lawyers with rounds and rounds of depositions and to provide juries with testimony. This is completely ridiculous. We need doctors in our emergency rooms and family practice centers—not in the courtrooms when they have nothing to do with the product in question.

I want to tell you about a woman named Hilda Bankston. Hilda owned a pharmacy in Jefferson County, MS, and has been named as a defendant in so many lawsuits that she has lost count. In each instance, Hilda was sued for doing nothing more than filling legal prescriptions. In other words, she wasn't doing anything wrong. Nevertheless, Hilda has been dragged into court to testify in hundreds of national lawsuits brought in Jefferson County against the pharmacy and out-of-State manufacturers of drugs. Why is this? Because the party who initiated the lawsuit was shopping for a friendly court in order to file their national lawsuit in that county.

Does this bill we are considering today provide any protection to Hilda Bankston? No, it does not. Does the bill provide any protection to doctors and pharmacists with respect to product liability lawsuits? No. It doesn't do that either. The bill allows these health care providers to continue to be named in product liability cases. This is outrageous.

My amendment is simple. It prohibits a health care provider, including a doctor or a pharmacist, from being named in a product liability lawsuit or in a class action lawsuit merely because the health care provider prescribed or sold a drug or device that was approved by the Food and Drug Administration.

My amendment does not deprive patients of the right to sue a physician or a pharmacist who behaves in a negligent manner. It does not provide blanket immunity to a physician or pharmacist who behaves in a negligent manner. That would be a separate cause of action, which lies outside the scope of my amendment. What my amendment does say is that health care providers should not be dragged into a product lawsuit that they have no business being in. Doctors and pharmacists are routinely named in product liability lawsuits and are virtually always removed from these cases without having damages assessed against them. They are not responsible for the design or manufacture of drugs and devices and should not be dragged into these types of lawsuits.

Patients pay for product liability lawsuits in the form of higher health benefits and premiums.

I urge my colleagues to join me in taking action to curb this abuse of our legal system. Let's protect our health care providers from incurring frivolous unnecessary costs. Our health care providers should be focused on providing the best care possible to their patients, not on product liability lawsuits when they have nothing to do with the product in question.

I ask unanimous consent to have printed in the RECORD letters of support for my amendment from the American Medical Association and the American Osteopathic Association.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

AMERICAN MEDICAL ASSOCIATION,
Chicago, IL, May 3, 2007.

Hon. JOHN ENSIGN,
*U.S. Senate, Russell Senate Office Building,
Washington, DC.*

DEAR SENATOR ENSIGN: The physician and student members of the American Medical Association (AMA) commend you for introducing an amendment to S. 1082, the "Prescription Drug User Fee Amendments of 2007," that would clarify physician and other health care provider liability.

Specifically, the amendment would prevent physicians and other healthcare providers who prescribe or dispense a drug, biologic product, or medical device approved, licensed, or cleared by the Food and Drug Administration from being named in class action product liability lawsuits for forum-shopping purposes. The amendment would address situations in which a local physician or other health care provider is named as a defendant as a way to file a lawsuit in a legal jurisdiction more likely to award large damage awards, even though such jurisdiction has little or no connection to the local defendants. In such cases, the local physician or other health care provider is often dropped from the suit or not found liable for damages. Instead, liability attaches to the manufacturer, whose conduct is the real sub-

ject of the litigation. Nonetheless, physicians and other health care providers are exposed to the significant legal costs, distress, and time away from their patients.

The AMA is pleased to offer its support for this amendment and looks forward to continuing to work with you to bring about common sense liability reforms, such as this amendment.

Sincerely,

MICHAEL D. MAVES,
MD, MBA.

AMERICAN OSTEOPATHIC ASSOCIATION,
Washington, DC, May 3, 2007.

Hon. JOHN ENSIGN,
*U.S. Senate, Russell Senate Office Building,
Washington, DC.*

DEAR SENATOR ENSIGN: As President of the American Osteopathic Association (AOA), I am pleased to inform you of our support for your amendment to the "Prescription Drug User Fee Amendments of 2007" (S. 1082), which would provide clarification on physician liability.

Your amendment seeks to clarify that a physician who prescribes a drug, biological product, or medical device, which has cleared successfully the Food and Drug Administration's approval process, cannot be named as a party in a class action lawsuit. The AOA shares our concerns that physicians and other health care providers frequently are named as defendants in such cases as a means of securing a venue which is more likely to produce larger monetary awards. In most cases, physicians are dismissed from the lawsuit or found not liable for damages. Regardless of the ultimate outcome, physicians face significant legal costs and time away from their patients as a result of this practice.

We believe your amendment takes the appropriate steps to ensure that future class action lawsuits are targeted at those whose conduct is in question. Additionally, we believe your amendment rightfully prevents attorneys from using physicians as a means to pursue legal action in venues they deem more favorable. For these reasons, we are pleased to offer our support.

Sincerely,

JOHN A. STROSNIDER,
DO, President.

MORNING BUSINESS

Mr. BROWN. I ask unanimous consent that there now be a period of morning business with Senators permitted to speak for up to 10 minutes each.

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

ADDITIONAL STATEMENTS

REMEMBERING HAWAII'S DON HO

● Mr. AKAKA. Mr. President, I wish to pay tribute to a remarkable son of Hawaii, entertainment legend, Don Ho. Don's big heart gave out on April 14, in Waikiki. He was 76 years old. On Saturday, May 5, Hawaii bid a fond aloha to Don Ho, during a ceremony on Waikiki Beach in celebration of his life. Thousands of people attended his memorial.

Don didn't plan on a career in entertainment. After his college graduation, he served in the U.S. Air Force, attaining the rank of first lieutenant. When

he returned home, he began helping at his mother's quiet neighborhood bar, playing music with friends. That was the beginning of a show business career spanning more than four decades including hit records, motion pictures, television, and sold out performances world-wide.

Hawaii was still a young State when Don Ho became an international star, and in many ways he helped put Hawaii on the map. In my travels around the world, people always ask me about Don Ho. Don was a big star wherever he went. He even played in Washington, DC, when I was in the House. And I can tell you, it was a big show.

Despite his stature as an entertainment icon, Don was never too busy to spend a few minutes with his fans; young honeymooners, servicemen and women stationed in the islands, or senior citizens on a dream vacation. He had tremendous charisma and talent and because of that he touched many people. Hawaii has lost a beloved son and he will be sorely missed.●

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Ms. Evans, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

MESSAGE FROM THE HOUSE

At 2:15 p.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 1429. An act to reauthorize the Head Start Act, to improve program quality, to expand access, and for other purposes.

H.R. 1592. An act to provide Federal assistance to States, local jurisdictions, and Indian tribes to prosecute hate crimes, and for other purposes.

H.R. 1867. An act to authorize appropriations for fiscal years 2008, 2009, and 2010 for the National Science Foundation, and for other purposes.

H.R. 1868. An act to authorize appropriations for the National Institute of Standards and Technology for fiscal years 2008, 2009, and 2010, and for other purposes.

MEASURES REFERRED

The following bills were read the first and the second times by unanimous consent, and referred as indicated:

H.R. 1592. An act to provide Federal assistance to States, local jurisdictions, and Indian tribes to prosecute hate crimes, and for

other purposes; to the Committee on the Judiciary.

H.R. 1868. An act to authorize appropriations for the National Institute of Standards and Technology for fiscal years 2008, 2009, and 2010, and for other purposes; to the Committee on Commerce, Science, and Transportation.

MEASURES PLACED ON THE CALENDAR

The following bills were read the first and second times by unanimous consent, and placed on the calendar:

H.R. 1429. An act to reauthorize the Head Start Act, to improve program quality, to expand access, and for other purposes.

H.R. 1867. An act to authorize appropriations for fiscal years 2008, 2009, and 2010 for the National Science Foundation, and for other purposes.

MEASURES READ THE FIRST TIME

The following bill was read the first time:

S. 1312. A bill to amend the National Labor Relations Act to ensure the right of employees to a secret-ballot election conducted by the National Labor Relations Board.

EXECUTIVE AND OTHER COMMUNICATIONS

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, and were referred as indicated:

EC-1742. A communication from the Acting Administrator, Food Safety and Inspection Service, Department of Agriculture, transmitting, pursuant to law, the report of a rule entitled "Uniform Compliance Date for Food Labeling Regulations" (RIN0583-AD05) received on May 2, 2007; to the Committee on Agriculture, Nutrition, and Forestry.

EC-1743. A communication from the Under Secretary of Defense (Comptroller), transmitting, pursuant to law, the report of a violation of the Antideficiency Act by the Department of the Army, case number 04-12; to the Committee on Appropriations.

EC-1744. A communication from the Under Secretary of Defense (Comptroller), transmitting, pursuant to law, the report of a violation of the Antideficiency Act by the Department of the Army, case number 06-01; to the Committee on Appropriations.

EC-1745. A communication from the Under Secretary of Defense (Acquisition, Technology and Logistics), transmitting, pursuant to law, a report relative to a review of the Guided Multiple Launch Rocket System program; to the Committee on Armed Services.

EC-1746. A communication from the Under Secretary of Defense (Acquisition, Technology and Logistics), transmitting, pursuant to law, the annual report on the Department's Chemical and Biological Defense Program; to the Committee on Armed Services.

EC-1747. A communication from the Under Secretary of Defense (Personnel and Readiness), transmitting, pursuant to law, a report relative to the Secretary's plan for improving recruitment, placement, and retention within the Department of individuals who receive scholarships and fellowships; to the Committee on Armed Services.

EC-1748. A communication from the Director of Defense Research and Engineering, transmitting, a report relative to the management and adequacy of biometrics programs; to the Committee on Armed Services.

EC-1749. A communication from the Under Secretary of Defense (Acquisition, Technology and Logistics), transmitting, pursuant to law, a report relative to the funds expended during fiscal year 2006 and the funds that are expected to be expended during fiscal years 2007 and 2008; to the Committee on Armed Services.

EC-1750. A communication from the Principal Deputy, Office of the Under Secretary of Defense (Personnel and Readiness), transmitting, pursuant to law, a report relative to the effects of Aviation Continuation Pay on retention of qualified aviators during fiscal year 2006; to the Committee on Armed Services.

EC-1751. A communication from the Secretary of the Air Force, transmitting, pursuant to law, the report of a critical breach in Average Procurement Unit Cost for the Joint Air-to-Surface Standoff Missile; to the Committee on Armed Services.

EC-1752. A communication from the Secretary of the Treasury, transmitting, pursuant to law, a six-month periodic report on the national emergency relative to Syria that was declared in Executive Order 13338 of May 11, 2004; to the Committee on Banking, Housing, and Urban Affairs.

EC-1753. A communication from the Secretary of Commerce, transmitting, the report of a draft bill intended to "revise and extend the Export Administration Act of 1979, amended"; to the Committee on Banking, Housing, and Urban Affairs.

EC-1754. A communication from the Assistant Administrator for Fisheries, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled "Annual Management Measures for the 2007 Pacific Halibut Fisheries and Changes to the Catch Sharing Plan for Area 2A" (RIN0648-AV03) received on May 2, 2007; to the Committee on Commerce, Science, and Transportation.

EC-1755. A communication from the Deputy Assistant Administrator for Operations, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled "Atlantic Herring Fishery; 2007-2009 Specifications" (RIN0648-AT66) received on May 2, 2007; to the Committee on Commerce, Science, and Transportation.

EC-1756. A communication from the Director, Office of Sustainable Fisheries, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled "Closure of the Hook-and-Line Commercial Fishery for Gulf Group King Mackerel in the Southern Florida West Coast Subzone" (Docket No. 001005281-0369-02) received on May 2, 2007; to the Committee on Commerce, Science, and Transportation.

EC-1757. A communication from the Director, Office of Sustainable Fisheries, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled "Fisheries of the Exclusive Economic Zone Off Alaska; Reallocation of Pacific Cod in the Bering Sea and Aleutian Islands Management Area" (ID No. 040607A) received on May 2, 2007; to the Committee on Commerce, Science, and Transportation.

EC-1758. A communication from the Director, Office of Sustainable Fisheries, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled "Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher Vessels Using Trawl Gear in the Bering Sea and Aleutian Islands Management Area" (ID No. 040607B) received on May 2, 2007; to the Committee on Commerce, Science, and Transportation.

EC-1759. A communication from the Director, Office of Sustainable Fisheries, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled "Fisheries of the Exclusive Economic Zone Off