

Westinghouse Building 1556
272-3891
September 12, 1985

Westinghouse Building 1558 - Frank S. Beal
Westinghouse Building 1740 - Allen Wuchenich

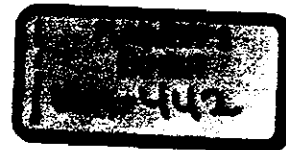
Attached is the meeting agenda for the next NEMA Products Liability Committee. Your input on these subjects would be appreciated.

DEA
Donald E. Ayers
Director, Product Safety
Environmental Affairs

DEA/353J/18

Attachment

Record Date



3946300-1004
IN RE: ABRAMS

DECEMBER 1992



AGENDA

ABRAMS

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1985

NEMA PRODUCT LIABILITY COMMITTEE

Meeting Agenda
September 23, 1985 - 9:00 a.m.

NEMA Headquarters
Washington, D.C.

I. FEDERAL LEGISLATION

The Senate Commerce Committee has under consideration Staff Draft #1 of a bill that includes both tort reform and a victims' compensation scheme. Committee members have noted that Draft #1 does not correlate well with NEMA's position on Product Liability Reform.

Comments were submitted to the Commerce Committee in mid-August, and Staff Draft #2 should be available by mid- to late September. If so, copies will be available at the meeting.

Martin Connor, Washington Corporate Counsel for General Electric Company, will be available to bring the Committee up to date on Washington legislative activities on product liability.

Among the issues the Committee needs to address are:

- whether to support the Senate bill and/or modify the NEMA position statement;
- whether to take any position on victims' compensation schemes; and
- whether to engage in lobbying on product liability during the last quarter of 1985.

II. NATIONAL COALITION FOR LITIGATION COST CONTAINMENT

Attached are documents related to the newly-formed National Coalition. Mr. Steinmetz has been active in forming the Coalition and will discuss its importance to NEMA and NEMA members.

III. USING NEMA PUBLICATIONS IN PRODUCT SAFETY PROGRAMS

NEMA has recently issued Standards Publication No. ICS 1.1, Safety Guidelines for the Application, Installation and Maintenance of Solid State Control. Mr. Steinmetz will discuss how this Publication and others can be effectively used in a company's product safety program through reprints and references.

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Committee members should study the attached list of possible topics for talks or breakout sessions. All Committee members should fill out and return the attached pink form.

V. EUROPEAN ECONOMIC COMMUNITY DIRECTIVE

Also attached are six questions that were posed to a NEMA member company from a friend in an English company. The Secretary's proposed anecdotal responses are included. Members should offer whatever insights they have on the subject, in advance of the meeting, if possible.

Members of the Committee are no doubt familiar with the insurance crisis industry is currently facing. Reports reaching NEMA include both steeply increasing premiums and the strong possibility that some companies will not be able to purchase insurance coverage.

VII. PRECAUTIONARY INFORMATION - ANSI Z535

Mr. Steinmetz will discuss certain problems NEMA members, and NEMA itself, may face in trying to adjust to a three-tier system.

VIII. RECENT DECISIONS

All members are urged to be prepared to discuss important decisions they have found since the last meeting.

IX. TIME AND PLACE OF NEXT MEETING

X. ADJOURNMENT

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The members of the Coalition will come from the defense trial bar, insurance companies, trade associations and industry; all working to reduce unnecessary civil litigation costs.

The Coalition firmly believe in the American system of justice and the right to trial by jury. However, excessive and irrational verdicts and the high cost of litigation have reached a level which threatens the continued existence of our system of civil justice. Furthermore, the economic impact of these excesses, in turn, may provoke undesirable changes in basic institutions of our society.

Because of their profound concern about the roots of the problem, the members of the Coalition have combined their resources to mount a broadscale campaign to educate the public, the judiciary, and legislators at all levels about special problem areas which are in drastic need of reform. Among others, these problem areas include discovery abuse, joint and several liability, punitive damages, inappropriate liability determinations and irrational damage awards, inefficient case management and litigation practices, and a need to continue to improve the quality and compensation for judges.

We are fully aware that such an ambitious undertaking will not be quickly nor easily achieved. However, we are committed to informing the public about these problems. An

preserve the essential rights to fair recovery for injured persons, promote the public good and, yet, be reasonably cost effective so as to preserve the American system of civil justice.

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1. Seek wide public awareness of the cost to all Americans of the ever expanding expense of tort litigation and to seek public support for elimination of existing abuses.

2. Limit discovery abuse.

The Coalition will bring to the attention of the courts, legislators and the public the costly damage done by excessive delays, endless

financial protection rather than proven liability of the defendant.

In addition, arbitrarily inflated and unwarranted punitive verdicts are a major cause of cost escalation in our legal system. New rules and legislation are needed to limit punitive damages to its proper and traditional role in malicious actions.

4. Improve the quality of judicial education and selection and increase judicial compensation.

The Coalition is committed to improving the quality of judicial selection. It believes that the more knowledgeable, well prepared, and experienced a judge is, the better he is able to rule on pleadings and to manage cases in ways that balance the desire for justice with the need to contain the cost and delay of litigation. Increase in judicial compensation is essential to achieve this end. The Coalition is prepared to work through national state and local bar associations, legislatures and all those interested in the quality of justice to see this goal achieved.

5. Seek the cooperation of the judiciary in taking a more active role in case management. Also, seek

"reinvent the wheel" in similar cases or to duplicate efforts where cost savings can be made without jeopardizing the defense of the case.

6. Pursue and encourage the use of Alternative Dispute Resolution techniques as appropriate.

The Coalition, while supporting the traditional adversary jury system, is cooperating in the search for other means of dispute resolution. Wherever arbitration and mediation are reasonably adequate methods to deal with such disputes, the Coalition will work to promote their use. These methods can be important tools with which to achieve legal cost containment.

7. Establish rules to limit contingent attorney fees to reasonable amounts.

The contingent fee serves a useful purpose. It enables persons with limited means to seek redress and affords them access to our courts. However, the volume of tort litigation and the explosion in the size of awards, particularly in large cases, have resulted in grossly disproportionate compensation to plaintiffs' attorneys. Furthermore, the client rarely has anything approaching an equal bargaining position in setting such fees. It is imperative that these

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NEWS RELEASE

For Release:

For More Information Contact:

Immediate

Dan Larson

NEW SAFETY GUIDELINES DEVELOPED FOR SOLID STATE CONTROLS

WASHINGTON, D.C. -- The National Electrical Manufacturers Association (NEMA) has just released a new standards publication on solid state controls. It is entitled Safety Guidelines for the Application, Installation and Maintenance of Solid State Control.

Solid state controls are now found in nearly every category of electrical equipment. In many cases they are virtual substitutes for electro-mechanical controls, which perform similar control functions.

It is the considerable knowledge and familiarity in the manufacturer and user industries with electromechanical control which becomes the base line for this Guideline. The Guideline points out those particular characteristics of solid state devices which differ from electromechanical for application, installation and maintenance.

The APPLICATION GUIDELINES range from the unique off-state current, present in some solid state devices, to circuit considerations and special application considerations such as converting ladder diagrams. Other factors covered include unique environmental considerations.

The INSTALLATION GUIDELINES include factors such as wiring practices, enclosure cooling and ventilating and

more...

NATIONAL
ELECTRICAL
MANUFACTURERS
ASSOCIATION

2101 L Street NW
Washington, D.C. 20037
Phone (202) 457-8400
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COUNCIL DIRECTIVE

of 25 July 1985

on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products

(115/374/EEC)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 100 thereof,

Having regard to the proposal from the Commission⁽¹⁾,

Having regard to the opinion of the European Parliament⁽²⁾,

Having regard to the opinion of the Economic and Social Committee⁽³⁾,

Whereas approximation of the laws of the Member States concerning the liability of the producer for damage caused by the defectiveness of his products is necessary because the existing divergences may distort competition and affect the movement of goods within the common market and entail a differing degree of protection of the consumer against damage caused by a defective product to his health or property;

Whereas liability without fault on the part of the producer is the sole means of adequately solving the problem, peculiar to our age of increasing technicality, of a fair apportionment of the risks inherent in modern technological production;

Whereas liability without fault should apply only to movables which have been industrially produced; whereas, as a result, it is appropriate to exclude liability for agricultural products and game, except where they have undergone a processing of an industrial nature which could cause a defect in these products; whereas the liability provided for in this Directive should also apply to movables which are used in the construction of immovables or are installed in immovables;

Whereas protection of the consumer requires that all producers involved in the production process should be made liable, in so far as their finished product, component part or any raw material supplied by them

was defective; whereas, for the same reason, liability should extend to importers of products into the Community and to persons who present themselves as producers by affixing their name, trade mark or other distinguishing feature or who supply a product the producer of which cannot be identified;

Whereas, in situations where several persons are liable for the same damage, the protection of the consumer requires that the injured person should be able to claim full compensation for the damage from any one of them;

whereas, to protect the physical well-being and property of the consumer, the defectiveness of the product should be determined by reference not to its fitness for use but to the lack of the safety which the public at large is entitled to expect; whereas the safety is assessed by excluding any misuse of the product not reasonable under the circumstances;

Whereas a fair apportionment of risk between the injured person and the producer implies that the producer should be able to free himself from liability if he furnishes proof as to the existence of certain exonerating circumstances;

Whereas the protection of the consumer requires that the liability of the producer remains unaffected by acts or omissions of other persons having contributed to cause the damage; whereas, however, the contributory negligence of the injured person may be taken into account to reduce or disallow such liability;

Whereas the protection of the consumer requires compensation for death and personal injury as well as compensation for damage to property; whereas the latter should nevertheless be limited to goods for private use or consumption and be subject to a deduction of a lower threshold of a fixed amount in order to avoid litigation in an excessive number of cases; whereas this Directive should not prejudice compensation for pain and suffering and other non-material damages payable, where appropriate, under the law applicable to the case;

Whereas a uniform period of limitation for the bringing of action for compensation is in the interests both of the injured person and of the producer;

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(1) OJ No C 241, 14. 10. 1974, p. 9 and OJ No C 271, 24. 10. 1979, p. 1.

(2) OJ No C 127, 21. 5. 1979, p. 61.

(3) OJ No C 114, 7. 5. 1979, p. 15.

2. Without prejudice to the liability of the producer, any person who imports into the Community a product for sale, hire, leasing or any form of distribution in the course of his business shall be deemed to be a producer within the meaning of this Directive and shall be responsible as a producer.

3. Where the producer of the product cannot be identified, each supplier of the product shall be treated as its producer unless he informs the injured person, within a reasonable time, of the identity of the producer or of the person who supplied him with the product. The same shall apply, in the case of an imported product, if this product does not indicate the identity of the importer referred to in paragraph 2, even if the name of the producer is indicated.

Article 4

The injured person shall be required to prove the damage, the defect and the causal relationship between defect and damage.

Article 5

Where, as a result of the provisions of this Directive, two or more persons are liable for the same damage, they shall be liable jointly and severally, without prejudice to the provisions of national law concerning the rights of contribution or recourse.

Article 6

1. A product is defective when it does not provide the safety which a person is entitled to expect, taking all circumstances into account, including:

- (a) the presentation of the product;
- (b) the use to which it could reasonably be expected that the product would be put;
- (c) the time when the product was put into circulation.

2. A product shall not be considered defective for the sole reason that a better product is subsequently put into circulation.

Article 7

The producer shall not be liable as a result of this Directive if he proves:

- (a) that he did not put the product into circulation; or
- (b) that, having regard to the circumstances, it is probable that the defect which caused the damage did not exist at the time when the product was put into circulation by him or that this defect came into being afterwards; or
- (c) that the product was neither manufactured by him for sale or any form of distribution for economic

purpose nor manufactured or distributed by him in the course of his business; or

- (d) that the defect is due to compliance of the product with mandatory regulations issued by the public authorities; or
- (e) that the state of scientific and technical knowledge at the time when he put the product into circulation was not such as to enable the existence of the defect to be discovered; or
- (f) in the case of a manufacturer of a component, that the defect is attributable to the design of the product in which the component has been fitted or to the instructions given by the manufacturer of the product.

Article 8

1. Without prejudice to the provisions of national law concerning the right of contribution or recourse, the liability of the producer shall not be reduced when the damage is caused both by a defect in product and by the act or omission of a third party.

2. The liability of the producer may be reduced or disallowed when, having regard to all the circumstances, the damage is caused both by a defect in the product and by the fault of the injured person or any person for whom the injured person is responsible.

Article 9

For the purpose of Article 1, 'damage' means:

- (a) damage caused by death or by personal injuries;
- (b) damage to, or destruction of, any item of property other than the defective product itself, with a lower threshold of 500 ECU, provided that the item of property:
 - (i) is of a type ordinarily intended for private use or consumption, and
 - (ii) was used by the injured person mainly for his own private use or consumption.

This Article shall be without prejudice to national provisions relating to non-material damage.

Article 10

1. Member States shall provide in their legislation that a limitation period of three years shall apply to proceedings for the recovery of damages as provided for in this Directive. The limitation period shall begin to run from the day on which the plaintiff became aware, or should reasonably have become aware, of the damage, the defect and the identity of the producer.

2. The laws of Member States regulating suspension or interruption of the limitation period shall not be affected by this Directive.

Article 19

1. Member States shall bring into force, not later than three years from the date of notification of this Directive, the laws, regulations and administrative provisions necessary to comply with this Directive. They shall forthwith inform the Commission thereof⁽¹⁾.

2. The procedure set out in Article 15 (2) shall apply from the date of notification of this Directive.

Article 20

Member States shall communicate to the Commission the texts of the main provisions of national law which they subsequently adopt in the field governed by this Directive.

Article 21

Every five years the Commission shall present a report to the Council on the application of this Directive and, if necessary, shall submit appropriate proposals to it.

Article 22

This Directive is addressed to the Member States.

Done at Brussels, 25 July 1985.

For the Council

The President

J. FOOS

⁽¹⁾ This Directive was notified to the Member States on 30 July 1985.

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EUROPEAN ECONOMIC COMMUNITY DIRECTIVE
ON PRODUCT LIABILITY
QUESTIONS REGARDING INSURANCE COVERAGE

1. Is it possible to indicate how much the insurance cover [coverage?] costs you to provide against product liability claims as a percentage of turnover [sales?]

Answer: Statistics should be available on the subject, with considerable variation from industry segment to industry segment.

2. Is there a limit in the policy as to the amount of liability that the insurance company will pay?

Answer: Most policies are limited by the amount of coverage per incident and per policy. It is also possible that a carrier will cancel the policy if it deems loss experience excessive.

3. Is there a limit to the number of claims the insurance company will accept during the term of the policy?

Answer: This limit is also related to the overall policy limits. The insurance carrier can accept many small claims or a few large claims.

4. What is the normal term of a policy before the insurance company renegotiates?

Answer: Policies are normally written for three renewable one-year terms.

5. What is the situation is [if?] an insurance company refuses to accept an application for a policy to provide cover [coverage] against product liability claims and thus a company, in effect, bears its own risk?

Answer: Because of the steep increases in premium for insurance coverage, some companies will be forced to do just this.

6. What is the rate of increase, if any, in the cost of premiums over a period [period] of say 5 years?

Answer: [Could the Committee supply me with any articles or other statistics?]

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