

PUBLIC HEARING TESTIMONY

BEFORE

PENNSYLVANIA HOUSE LABOR RELATIONS COMMITTEE

PENNSYLVANIA HOUSE JUDICIARY COMMITTEE

ON BEHALF OF

COALITION OF PENNSYLVANIA MANUFACTURERS

PAUL R. ROEDEL

CHAIRMAN AND CHIEF EXECUTIVE OFFICER

CARPENTER TECHNOLOGY CORPORATION

OCTOBER 26, 1989

GOOD MORNING MR. CHAIRMEN AND MEMBERS OF THE COMMITTEES.
MY NAME IS PAUL ROEDEL. I AM CHAIRMAN AND CHIEF EXECUTIVE OFFICER
OF CARPENTER TECHNOLOGY CORPORATION LOCATED IN READING, PA. WE
EMPLOY 3,600 PEOPLE, 2,900 OF WHOM ARE IN PENNSYLVANIA. WE PRODUCE
SPECIALTY STEELS FOR A WIDE VARIETY OF END USE MARKETS, INCLUDING
AUTOMOBILES, AIRPLANES, POWER PLANTS, THE DEFENSE INDUSTRY AND
MEDICAL IMPLANTS. WITH ME IS MR. HARVEY BRADLEY, PRESIDENT OF
BRADLEY LIFTING CO. OF YORK, PA.

WE ARE HERE TODAY ON BEHALF OF THE COALITION OF PENNSYLVANIA
MANUFACTURERS, REPRESENTING FIVE REGIONAL MANUFACTURERS ASSOCIATIONS
ACROSS PENNSYLVANIA WITH OVER 2,000 MEMBER COMPANIES EMPLOYING OVER
350,000 CITIZENS OF THIS COMMONWEALTH.

WE ARE HERE TODAY IN THE HOPES OF MOVING FORWARD HOUSE BILL 916,
CREATING A PRODUCT LIABILITY STATUTE TO GUIDE JUDICIAL DECISIONS IN
PRODUCT LIABILITY CASES.

WE SUPPORT A PRODUCT LIABILITY SYSTEM THAT REQUIRES MANU-
FACTURERS OF DEFECTIVE PRODUCTS TO PROVIDE COMPENSATION TO
INDIVIDUALS WHO HAVE BEEN INJURED BECAUSE OF THE PRODUCT DEFECT.
WHAT WE ASK YOU TO DO IS TO ESTABLISH THE PRINCIPLE AND GUIDELINE
THAT A PRODUCT MUST BE FOUND TO BE DEFECTIVE IN ORDER FOR LIABILITY
TO BE ASSESSED.

LET'S LOOK AT A FEW FACTS REGARDING PENNSYLVANIA PUBLIC LIABILITY CASE LEVELS. ACCORDING TO THE ADMINISTRATIVE OFFICE OF THE U.S. COURTS, MORE PRODUCT LIABILITY CASES HAVE BEEN FILED IN FEDERAL COURTS IN PENNSYLVANIA THAN IN ANY OTHER STATE DURING THE LAST YEAR. SINCE 1983, THE NUMBER OF AWARDS EXCEEDING \$1 MILLION INCREASED BY OVER 1500%, AND PENNSYLVANIA NOW RANKS SEVENTH IN THE NATION FOR THE TOTAL NUMBER OF SUCH JUDGEMENTS. PENNSYLVANIA IS ALSO WELL ABOVE THE NATIONAL AVERAGE IN AWARD SIZES.

AMONG OUR OWN MEMBERS IT IS EXTREMELY COMMON FOR A COMPANY TO HAVE SEVERAL LAW SUITS PENDING, WITH THE LIKELIHOOD THAT THE CASES WILL BE SETTLED OUT OF COURT, REGARDLESS OF WHETHER THE CASE HAS ANY MERIT. LEGAL COSTS AND LOST MAN-HOURS, WEIGHED AGAINST THE INCREASING UNCERTAINTY OF WINNING A PRODUCT LIABILITY CASE IN PENNSYLVANIA, PUTS HEAVY ECONOMIC PRESSURE ON COMPANIES TO SETTLE EVEN BASELESS LAWSUITS.

CHIEFLY THROUGH A SUCCESSION OF COURT CASES, PRODUCT LIABILITY FOR PERSONAL INJURY HAS EXPANDED FROM A FAULT-BASED STANDARD TO A STRICTLY LIABLE STANDARD AND IS RAPIDLY HEADED TO A STANDARD OF ABSOLUTE LIABILITY EVEN THOUGH THERE MAY BE NO WRONGFUL OR NEGLIGENT CONDUCT INVOLVED. MANUFACTURERS CAN BE HELD LIABLE FOR RISKS WHICH WERE SCIENTIFICALLY UNKNOWABLE AT THE TIME OF PRODUCTION. FURTHERMORE, THEY CAN BE FOUND LIABLE IF THE PLAINTIFF MISUSED THE PRODUCT, IF OTHER PARTIES CONTRIBUTED TO THE INJURY, AND EVEN IF NO CONNECTION WAS ESTABLISHED BETWEEN A DEFENDANT'S ACTIONS AND A PLAINTIFF'S INJURIES.

OFTEN, DAMAGES FOR HARM CAUSED BY A PRODUCT ARE PAID NOT BECAUSE OF WRONGFUL OR NEGLIGENT CONDUCT BY MANUFACTURERS OR SELLERS, BUT RATHER BECAUSE OF A SOCIAL POLICY JUDGEMENT ABOUT WHICH PARTY COULD BEAR THE FINANCIAL LOSS.

AT PRESENT, PENNSYLVANIA HAS NO STATUTORY GUIDELINES ON PRODUCT LIABILITY. ALL OF PENNSYLVANIA'S PRODUCT LIABILITY LAW IS CASE LAW, OR COMMON LAW, DEVELOPED ON A CASE-BY-CASE BASIS BY THE COURTS. WE ARE NOT ASKING YOU TO REWRITE ALL PRODUCT LIABILITY LAW, BUT TO ADDRESS SOME OF THE AREAS THAT ARE MORE ONEROUS. BY ENACTING HOUSE BILL 916, YOU WILL BE ESTABLISHING THE FOLLOWING GUIDELINES TO THE COURTS:

* THE PRIMARY FOCUS OF HB 916 IS TO ESTABLISH THE RULE THAT THE SUPPLIER OF A PRODUCT CANNOT BE HELD LIABLE FOR AN INJURY CAUSED BY A PRODUCT IF THERE WAS NOTHING WRONG WITH THE WAY THE PRODUCT WAS MANUFACTURED, DESIGNED OR MARKETED - PROOF OF A DEFECT IS A PREREQUISITE TO LIABILITY.

* RETAILERS AND WHOLESALERS WHO IN NO WAY CONTRIBUTED TO A DEFECT IN A PRODUCT WOULD BE EXCLUDED FROM LIABILITY, UNLESS THE MANUFACTURER CANNOT BE SUED OR CANNOT SATISFY THE JUDGEMENT.

* A DESIGN OF A PRODUCT SHALL NOT BE DEFECTIVE IF NO SAFER ALTERNATIVE DESIGN WAS AVAILABLE AND ECONOMICALLY FEASIBLE FOR MANUFACTURING USE AT THE TIME THE PRODUCT WAS MANUFACTURED.

* WITH REGARD TO THE ADEQUACY OF A WARNING OR INSTRUCTION FOR USE, THE STANDARD SHALL BE THAT IT IS NOT DEFECTIVE IF A REASONABLY PRUDENT PERSON IN THE SAME OR SIMILAR CIRCUMSTANCES WOULD NOT OR COULD NOT PROVIDE ANY DIFFERENT INFORMATION.

* A SUPPLIER SHALL NOT BE LIABLE FOR HARM CAUSED BY PRODUCTS THAT HAVE BEEN ALTERED OR MODIFIED, UNLESS THE SUPPLIER SHOULD HAVE FORESEEN SUCH ALTERATION OR MODIFICATION.

* A SUPPLIER SHALL NOT BE LIABLE FOR INJURY CAUSED BY MISUSE OF A PRODUCT, UNLESS THE MISUSE WAS FORESEEABLE BY THE SUPPLIER.

* A SUPPLIER SHALL NOT BE RESPONSIBLE FOR KNOWN RISKS ASSOCIATED WITH COMMON CONSUMER PRODUCTS, UNLESS THE HARM WAS CAUSED BY A DEFECT IN THE PRODUCT.

* TWO EVIDENTIARY RULES INCLUDED IN THE BILL INCLUDE:

JURIES MAY BE TOLD THAT THE PRODUCT WHICH ALLEGEDLY CAUSED INJURY COMPLIED WITH GOVERNMENTAL OR INDUSTRY-WIDE STANDARDS.

JURIES MAY NOT BE TOLD OF SUBSEQUENT IMPROVEMENTS AS PROOF THAT THE PRODUCT WAS DEFECTIVE. CURRENT RULES ARE COUNTERPRODUCTIVE TO THE GOAL OF ELIMINATING RISKS IN PRODUCTS.

* PRODUCTS IN COMPLIANCE WITH FDA STANDARDS PRECLUDES LIABILITY FOR PUNITIVE DAMAGES.

* AND FINALLY, THE BILL CALLS FOR A 15-YEAR TIME PERIOD FOR BRINGING A SUIT, WHICH IS CONSISTENT WITH EXISTING PENNSYLVANIA LAW LIMITING SUITS FOR DESIGN, PLANNING OR CONSTRUCTION OF IMPROVEMENTS TO REAL PROPERTY TO 12 YEARS.

WE AGREE THAT MANUFACTURERS SHOULD BE HELD LIABLE FOR DEFECTIVE PRODUCTS. WE DO NOT AGREE THAT MANUFACTURERS SHOULD BE HELD LIABLE IF THEY WERE NOT RESPONSIBLE FOR THE INJURY. THE PROVISIONS IN HOUSE BILL 916 ATTEMPT TO BRING THAT FAIRNESS BACK INTO OUR PRODUCT LIABILITY SYSTEM.

WE ARE HERE TODAY TO TELL YOU THAT WE CANNOT CONTINUE TO ABSORB THE COST OF OUR PRESENT LIABILITY SYSTEM AND REMAIN COMPETITIVE IN TODAY'S GLOBAL ECONOMY. THE COST OF LAWSUITS AND LIABILITY INSURANCE PREMIUMS ARE ONLY PART OF THE TOTAL COSTS OF THE LIABILITY SYSTEM. MUCH HARDER TO MEASURE ARE THE INDIRECT COSTS ASSOCIATED WITH THE LOSS OF PRODUCTIVITY, LOSS OF INTERNATIONAL COMPETITIVENESS, AND THE ECONOMIC LOSS RELATED TO GOODS AND SERVICES THAT ARE WITHDRAWN OR SIMPLY NOT PRODUCED BECAUSE THE RISKS OF LIABILITY OUTWEIGH THE POTENTIAL RETURNS IN TODAY'S PRODUCT LIABILITY ENVIRONMENT. MANY U.S. FIRMS INCUR MUCH GREATER PRODUCT LIABILITY COSTS THAN THEIR FOREIGN COMPETITORS. TOTAL U.S. LIABILITY INSURANCE COSTS, FOR EXAMPLE, EXCEED THOSE OF JAPAN BY A FACTOR OF 15.

IT IS ALSO INTERESTING TO NOTE THAT THE LIABILITY SYSTEM IS EXTREMELY INEFFICIENT. PLAINTIFFS RECEIVE ONLY A FRACTION OF THE TOTAL DOLLARS EXPENDED THROUGH THE TORT SYSTEM. ACCORDING TO THE RAND CORPORATION, OF THE \$19 BILLION SPENT ON NON-AUTO CASES IN 1985, \$11 BILLION WENT TO LITIGATION COSTS, INCLUDING ATTORNEY'S FEES AND TIME COST OF LITIGANTS, LEAVING ONLY \$8.2 BILLION IN COMPENSATION TO PLAINTIFFS. ON AVERAGE, THE LITIGATION PROCESS FOR NON-AUTO CASES ABSORBS ROUGHLY 57% OF TOTAL EXPENDITURES.

FINALLY, SEVERAL CURRENT COURT PRACTICES DETER IMPROVEMENTS AND INNOVATIONS IN PRODUCTS. FOR EXAMPLE, EVIDENCE OF SUBSEQUENT IMPROVEMENTS BEING OFFERED IN COURT AS EVIDENCE OF PREVIOUS DEFECTS DISCOURAGES SUCH IMPROVEMENTS. HOUSE BILL 916 WOULD REMOVE THAT BARRIER. THE STATE OF THE ART DEFENSE AND STATUTE OF REPOSE SUGGESTED IN THE BILL WOULD ALSO PREVENT THE RETROACTIVE APPLICATION OF NEW KNOWLEDGE AND NEW STANDARDS OF LIABILITY.

LET ME NOW CLOSE WITH A FEW COMMENTS REGARDING CARPENTER TECHNOLOGY CORPORATION.

CARPENTER IS A SPECIALTY STEEL PRODUCER AND PART OF THE AMERICAN IRON AND STEEL INDUSTRY. THE STEEL INDUSTRY HAS PLAYED A VITAL ROLE IN THE HISTORY OF THIS STATE. I KNOW YOU ARE AWARE OF THE SERIOUS ECONOMIC PROBLEMS IN MANY OF OUR PENNSYLVANIA COMMUNITIES CAUSED BY THE RESTRUCTURING OF OUR DOMESTIC STEEL INDUSTRY. MANY FORCES DROVE THAT RESTRUCTURING, NOT THE LEAST OF WHICH WAS THE NEED TO ACHIEVE INTERNATIONAL COMPETITIVENESS.

DURING 1989 CARPENTER CELEBRATED ITS CENTENNIAL YEAR. WE FELT VERY GOOD ABOUT OUR 100TH BIRTHDAY CELEBRATION BECAUSE WE ARE NOW SEEING THE RESULTS OF THE VERY DIFFICULT RESTRUCTURING WE, TOO, LIVED THROUGH DURING THE PAST FIVE YEARS. THE DRIVING FORCE OF OUR RESTRUCTURING WAS THE IMPERATIVE THAT WE BECOME GLOBALLY COMPETITIVE IN ORDER TO MAINTAIN OUR ECONOMIC STRENGTH. THAT MEANT WE RATIONALIZED FACILITIES, WE CLOSED DOWN A PLANT IN CONNECTICUT, WE REDUCED COSTS INCLUDING A 28% REDUCTION IN THE NUMBER OF PEOPLE EMPLOYED, AND WE REFOCUSED OUR STRATEGY TOWARD HIGH TECH PRODUCTS. OUR STRATEGY IS WORKING.

YOU NEED TO UNDERSTAND THAT CARPENTER MAKES CRITICAL STAINLESS, HIGH TEMPERATURE, HIGH NICKEL AND HIGH ALLOY STEELS THAT ULTIMATELY BECOME CRITICAL PARTS IN VERY COMPLEX SYSTEMS THAT SUPPORT THE QUALITY OF LIFE WE ENJOY IN THIS STATE AND IN THIS COUNTRY. WE MAKE:

- * STAINLESS AND COBALT BASED STEELS THAT OUR CUSTOMERS FABRICATE INTO HIP JOINTS, BONE SCREWS AND KNEE JOINTS FOR SURGICAL IMPLANTS.

- * HIGH STRENGTH AND NICKEL BASED STEELS THAT BECOME ROTATING PARTS IN JET ENGINES FOR MILITARY AND COMMERCIAL AIRPLANES.

- * STAINLESS STEELS THAT OUR CUSTOMERS FABRICATE INTO PUMPS, VALVES, FITTINGS AND FASTENERS FOR CRITICAL APPLICATIONS IN POWER PLANTS, OIL DRILLING RIGS AND CHEMICAL PROCESSING PLANTS.

- * CHROME SILICON STEELS THAT OUR CUSTOMERS FABRICATE INTO AUTOMOBILE ENGINE VALVES.

DURING OUR ENTIRE 100 YEARS, WE HAVE BEEN ON THE FOREFRONT OF THE DEVELOPMENT OF NEW SPECIALTY STEELS. WE AND OUR CUSTOMERS HAVE FOUND THE SCIENTIFIC AND ENGINEERING KEYS TO PRODUCING AND FABRICATING CRITICAL PARTS THAT SUPPORT OUR ABILITY TO DRIVE AUTOMOBILES, FLY IN JET PLANES, ENJOY RELIABLE ENERGY SOURCES AND OUR STEEL EVEN HELPS US ENJOY AN OCCASIONAL BEER.

YOU CAN SEE THAT CARPENTER AND ITS CUSTOMERS FABRICATE PRODUCTS WITH A HIGH PRODUCT LIABILITY RISK. WE HAVE ACCEPTED THAT RISK AND RIGOROUSLY ADMINISTER OUR PRODUCT QUALITY SYSTEMS

WITH FULL DOCUMENTATION OF OUR PROCESS AND TESTING RESULTS. AT THE SAME TIME, WE AND OUR CUSTOMERS ARE COMPETING AGAINST FOREIGN PRODUCERS OF AUTOMOBILES, AIRPLANES, FITTINGS, FASTENERS, SURGICAL IMPLANTS AND HUNDREDS OF CONSUMER PRODUCTS REQUIRING SPECIALTY STEEL PARTS.

IT IS IMPERATIVE THAT YOU RECOGNIZE THAT COMPANIES LIKE CARPENTER ACCEPT THE RISK ASSOCIATED WITH OUR PRODUCTS AND SIMULTANEOUSLY DRIVE TO STAY GLOBALLY COST COMPETITIVE AGAINST COMPANIES IN DIFFERENT COUNTRIES WITH DIFFERENT HUMAN AND SOCIAL VALUE SYSTEMS.

YOU CAN HELP US. YOU CAN SUPPORT H.B. 916 WHICH, IN OUR OPINION, WILL BRING A REASONABLE BALANCE INTO THE PRESENT SYSTEM OF DETERMINING WHETHER OR NOT A PRODUCT LIABILITY AWARD SHOULD BE ASSESSED AND AGAINST WHOM.

WE ARE NOT ASKING YOU TO DO AWAY WITH THE STRICT LIABILITY DOCTRINE.

WE ARE NOT ASKING YOU TO DO AWAY WITH THE RIGHT TO SUE.

WE ARE NOT ASKING YOU TO PUT LIMITS ON THE AMOUNT OF COMPENSATION AWARDED.

WE ARE NOT ASKING YOU TO REDUCE THE INCENTIVE ON THE MANUFACTURER TO MAKE THE PRODUCT SAFE.

WE ARE ASKING YOU TO ESTABLISH THE PRINCIPLE AND GUIDELINE
THAT A PRODUCT MUST BE FOUND TO BE DEFECTIVE IN ORDER FOR LIABILITY
TO BE ASSESSED.

WE STRONGLY SUPPORT THE PASSAGE OF H.B. 916.

THANK YOU.