ORIGINAL

COMMONWEALTH OF PENNSYLVANIA
HOUSE OF REPRESENTATIVES
JUDICIARY COMMITTEE

In re: House Bills 751 and 752, Protective Court Orders

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Stenographic record of hearing held in Room 140, Main Capitol, Harrisburg, Pennsylvania

Tuesday, May 26, 1992, 10:00 a.m.

HON. THOMAS R. CALTAGIRONE, CHAIRMAN

MEMBERS OF COMMITTEE

Hon. Kevin Blaum
Hon. Michael R. Veon
Hon. Jerry Birmelin
Hon. James Gerlach
Hon. Robert D. Reber, Jr.
Hon. Chris R. Wogan

Also Present:

Mary Woolley, Esquire, Republican Counsel

Kenneth J. Suter, Esquire, Republican Counsel

David Krantz, Executive Director,
House Judiciary Committee

Galina Milahov, Research Analyst

Craig Lehman, Research Analyst
to Representative Veon

Katherine Em Manucci, Secretary

Reported by:
Emily R. Clark, RPR

1992-102

I N D E X

CHAIRMAN CALTAGIRONE: We're ready to start our Judiciary hearing on House Bills 751 and 752, and I would like for the members of the staff and guests that are present and members, if they would please introduce themselves for the record.

If you would like to start off, Galya?

MS. MILAHOV: Galena Milahov, research analyst for the Committee.

MR. LEHMAN: Craig Lehman, research analyst for Representative Veon.

REPRESENTATIVE VEON: Representative Veon.

CHAIRMAN CALTAGIRONE: Representative Caltagirone.

MR. SUTTER: Ken Sutter, Republican counsel.

MS. WOOLLEY: Mary Woolley, Republican counsel.

REPRESENTATIVE REBER: Representative Reber.

REPRESENTATIVE BIRMELIN: Representative Birmelin, Wayne County.

MR. KRANTZ: Dave Krantz, executive director of the Committee.

CHAIRMAN CALTAGIRONE: At this time I would like to start off with our first two testifants, if they'd like to identify themselves for the record.

MR. PHENICIE: My name is Mark Phenicie, Mr. Chairman. I'm legislative counsel for the Pennsylvania

Trial Lawyers.

To my left and your right is Larry Coben, who will be giving our testimony today.

MR. COBEN: Good afternoon. My name's Larry Coben.

Mr. Chairman, members of the House Judiciary Committee, I want to thank you for allowing me to appear here today and present testimony on behalf of House Bill 751 and 752.

I would like to take a moment so that you can understand my background and why I'm presenting the testimony I am today.

I am, first, an attorney practicing in Philadelphia, Pennsylvania. My practice is limited to civil litigation, primarily involving products liability cases, and primarily been exclusively representing people who have suffered catastrophic injury.

I am a founding member of an organization called the Attorneys Information Exchange Group, which is a subgroup of the American Trial Lawyers Association. We started our group, 10 lawyers from around the country, in 1977.

The purpose of this group was out of frustration of representing litigants in a specific type of litigation, that is, litigation involving the design of the Ford Pinto.

There were in 1976 and '77 approximately 10 lawyers in the country who were then representing persons or the families of persons who had either suffered severe burn injuries or died in Ford Pintos. Each of us individually were representing our clients and doing the best we could to acquire information from the Ford Motor Company, and as we shared information, or tried to, around the country, we realized that each of us was experiencing the same problem, and that problem was that individually we were not acquiring the information that we needed to represent the victims of this product.

We found that invariably orders referred to differently as confidential orders or confidentiality orders or secrecy orders, were being entered by courts around the country. These orders allowed for two circumstances to exist: First, that individual attorneys representing the victims of this product were unable to verify the accuracy of information being provided by the defendant; second, that each attorney was acquiring different sets of information upon answers to the same questions.

As a result of those frustrations, we organized a group to assist each other in the representation of victims of this product. Ultimately that led to a lawsuit and a trial in California, which is well known in which there was a very large verdict against the Ford Motor

Company. Of course, that verdict was ultimately compromised for substantially less than the outcome by the jury, but out of it came the outgrowth of the problem with confidentiality and secrecy in litigation.

From that, this organization of 10 lawyers now has 600 members around the country. Our purpose is to share information, free of charge, with other attorneys representing victims or the families of victims of different sorts of products. Its purpose is to defeat whenever we can the confidentiality or protective orders that are insisted upon by manufacturers all over the country.

I am also here on behalf of The Institute For Injury Reduction. The Institute For Injury Reduction is a nonprofit group that was founded in 1988 by five attorneys. We now have 400 members. We testified before a House Committee similar to this in 1988 for the United States House Committee overseeing the National Highway Traffic Safety Administration.

In 1988 I presented testimony to that House Committee regarding the dangers of rear seat lap belts in automobiles; dangers that I as an attorney have become aware of in litigation of cases; dangers that automobile manufacturers were aware of for over 20 years; dangers that the federal government was unaware of because the manufacturers were not obliged to provide the test

information to the federal government regarding the rear seat lap belt injuries and deaths.

However, in litigation and through The Institute For Injury Reduction, we were able to present both testimony and film presentation to the Committee about the dangers of rear seat lap belts. As a result of that testimony and other research conducted both by The Institute For Injury Reduction, Public Citizen and The Highway Institute For Insurance Safety, the federal government mandated that lap belts be outlawed in the rear seats of cars and that three-point shoulder belts and lap belts be included.

That testimony, that information, highlights the problem with secrecy in litigation. What we learned was not new. What we learned was old data, but unfortunately, because of the posture in civil litigation where data is only exchanged upon an agreement of confidentiality, the information was never made public. Instead, for years and years and years, consumers suffered the horrors of that danger.

Another very good example of these dangers that are hidden: In 1971, in April of 1971 a secret meeting took place in the Oval Office between John Ehrlichman, Richard Milhouse Nixon, Henry Ford and Lee Iacocca. In that meeting, the transcript of which we have, the president and chairman of the board for Ford Motor Company convinced

Richard Nixon to eliminate certain then-pending regulations. Those regulations would have required the installation of air bags for both the passenger and driver's seat in every American car starting in 1974. Those regulations would have required in 1974 that the rear seats of cars include both lap and shoulder belts, and there were dozens of other regulations then pending.

As a result of those secret meetings, and as a result of the auto industry being able to hide internal documents disclosing the predicted deaths and injuries by not putting air bags into cars, for 20 years 12 to 15,000 people a year died, for 20 years over 100,000 people suffered serious injuries.

If confidentiality agreements had not been imposed, if protective orders had not been required by courts for information that was clearly recognizing a public hazard, tens of thousands of peoples' lives would have been saved. I am here today, therefore, to discuss that topic with you, to explain to you why there is a strong necessity for the types of bills that are now pending.

This is not a request on behalf of trial lawyers, although I am here at their invitation. It is a request on behalf of the victims, the victims in the past and victims in the future. You see, you can't do anything with this legislation about those who have died, who have

been injured in the past, but with this legislation, you can make an effective change of the future.

Which of us would have chosen to purchase a Ford Pinto? A Suzuki Samari? Or other drugs that we've now learned hold so many dangers to our loved ones, if we had only had the information that the manufacturers had. But what occurs is that when a civil litigation, piece of civil litigation begins, the defendant manufacturers present an alternative to both the court system and the litigant. That alternative: If you would like our documents to assist you in your litigation, you must sign this secrecy agreement. And if the attorney representing the victim opposes that presentation, then the defendants then go to the court and say to the court, Your Honor, this is a very simple issue to be decided. Simply grant this protective order and we will turn over all of the documents that this attorney needs to represent their client. The court then turns to the attorney and says, why not? Why not simply sign this agreement, get your documents and get on with it and do not bother the court's time?

Most attorneys, particularly those that have not been involved in this type of litigation, comply. The dilemma is, you never know what you're giving up. You never know what you're missing. By signing a protective agreement, simply what happens is you accept at face value

the information that's been provided to you by the manufacturer. You have no means of verification. You have no means of ascertaining whether or not you're receiving the same documents that someone down the street has received.

The court in essence becomes a part of what has become too often a sham. In the materials that we will submit to you today, you will have a copy of a decision reached by a court in Texas involving the Bronco II, and if it's not there we will supplement it and provide it to you.

Texas has adopted a statute which is similar in many ways to the bills that are now pending. That statute presumes that information will be provided in litigation and freely disseminable to the public if the information pertains to a public hazard. Now, as a result of that statute, mechanisms were put in place that litigants could challenge the issue of full disclosure.

In a Ford case in Texas involving a roll-over of a Bronco II, the plaintiffs and the defendants went at it with the court for approximately three weeks on the basis that the information revealed to the federal government by Ford should be kept confidential, that the information sought in the case should be kept confidential, and that there was no public hazard.

After taking testimony for over three weeks, the court entered an order requiring the disclosure of virtually

all of the information that had been given to the federal government and deemed confidential by Ford, and had been produced in discovery because of its obvious public health concern.

The Ford documentation revealed that that product had a long history of danger, of causing roll-over after roll-over after roll-over. The court deemed this information particularly important for the public, not for other attorneys, but so that people would be able to make a wise decision about their purchases, about the purchases of safe products, so that the hospitals would not be filled with more quadriplegics involved in roll-overs, so that the rehabilitation institutions would not be filled with more brain-damaged victims because of the dangers of this particular product.

The Bronco II is just one example of hundreds of products and other types of risks which come into the court system every year, which individual attorneys learn about every year, from Halcion to breast implants, and the list goes on and on and on.

The problem is that the consuming public is left out of it. Our court system is intended to be open to the public. Our government is open to the public. Why then have the court systems remained closed?

You can find and hopefully you will read an

article that I had published recently in the Philadelphia legal paper in which I cite article after article after article, journal article upon journal article, court decision upon court decision, when the courts actually review the issue of confidentiality and spend the time, they reject confidentiality. They reject it as against public interest. They reject it on the basis that the data that's generally sought is not trade secret. The data generally sought is not so confidential that its disclosure to the public will cause any undue harm. They reject it because it is in the best interest of the litigants. To obtain fair resolution, you have to have all of the available relevant information.

The bills that you have in this Committee now go a long way towards making that dream a reality in litigation. Florida, Texas and other states, including Virginia, have passed similar litigation. It has not caused any dire consequences to litigants. What it has done, though, is made available to the public what we need, that is, knowledge.

How many of you, if you have a young man or even a young girl who would like to play football, would like to know that the football helmet that he or she is wearing is as safe as humanly possible? I'll bet all of you would. How do you find out? Is there any way?

I have litigated seven cases to date involving football helmet brain injuries and spinal cord injuries. In each of those cases, I have acquired the internal documents of the manufacturers which disclose the safety advantages and disadvantages of different football helmet models. I wish I could tell you about it. I can't. You can't order me to tell you about it. A judge can't order me to tell you about it. No one can order me to tell you which football helmet will provide the best level of safety for your child or your grandchild. The manufacturers won't tell you.

That's wrong. It can be eliminated with bills like this. With bills like this you can rectify a truly important public need, and that is for full disclosure.

I think I've essentially tried to summarize the reasons why the bills and this legislation are important. In summary, the best way to I guess look at this legislation is to remember that the court systems are a part of the democratic process. There is no need for secrecy. Only through the sharing of information with attorneys, with courts and with the public will there be a possibility of less litigation, of less harm, of less injury. Thank you.

CHAIRMAN CALTAGIRONE: Questions from the Committee?

REPRESENTATIVE VEON: Thank you for your testimony. One more of the recent and more controversial

item in the national press is this whole issue about breast implants and what was known and when it was known, et cetera. Do you have any comments on that?

MR. COBEN: Sure. The background of that is that, you know, the case in which most of the documentation surfaces was a case in California. That piece of litigation was going on for approximately three and a half years. However, the actual data was not revealed until the trial because there was a secrecy agreement. But what happened was much of the data was introduced into evidence at trial. Once it was introduced into evidence it became publicly known, and therefore, disseminable to others.

What's really horrible about that situation is the fact that it was not data revealed to the federal government, who presumably it was to supervise these types of devices, and yet, the industry was able legitimately to withhold this information from the federal government under the regulations then existing.

So obviously, what happened was that you have a federal agency that is given the task of supervising the safety of a particular product, but because of the nuances of the regulation, had no need for this information, according to the manufacturers, didn't have the information, and it took a piece of litigation to reveal the data.

We're talking about probably data that if it had

been revealed four or five years earlier, would have saved so many other women of the dilemma that they now face. So it's just one more example of a bad situation.

CHAIRMAN CALTAGIRONE: Mary?

MS. WOOLLEY: Pardon my ignorance in terms of civil ligitation. What is the existing legal authority for a court to enter a protective order right now? Is it in civil procedure?

MR. COBEN: Yes. In Pennsylvania there is a specific rule which allows for the court to impose a confidentiality or a protective order under certain circumstances, and it's well defined in some instances, that is, if the party asked to produce certain documents can demonstrate and can prove that it involves a trade secret or commercially sensitive information, the court can impose a confidentiality agreement or an order upon the litigant.

MS. WOOLLEY: So I would have a concern, which we frequently face on this Committee, is that we're proposing an amendment to the judicial code which would supersede I think or place further restrictions on a civil procedural rule governing protective orders. I guess one of my concerns would be with the court's authority to suspend procedural statutes that are inconsistent with court rules.

MR. COBEN: There's nothing inconsistent with what's being proposed here, actually. Many courts have

issued tremendously insightful orders in which they have ruled that the public good outweighs what is purportedly a trade secret, and in fact, in most instances, including a decision by Judge Wettick in Allegheny County, in the Brandom Arty case, Judge Wettick found that none of the information constituted true trade secret, and in fact, found that there was a very important need, public need, for the sharing of the information, and entered an excellent opinion on that subject.

MS. WOOLLEY: Has there been any attempt by the members of the trial bar to have the Civil Procedural Rules Committee expand the rule governing protective orders to incorporate some of these standards?

MR. COBEN: Not to my knowledge, no.

MR. PHENICIE: Not to my knowledge.

MS. WOOLLEY: Thank you.

CHAIRMAN CALTAGIRONE: Representive Gerlach?

REPRESENTATIVE GERLACH: Thank you. Mary was just getting to an area that I was going to inquire about, and that's the trade secret/commercially sensitive issue.

In a discovery proceeding I would imagine when it involves a product liability case and a particular product, let's say, the gas tank on a Pinto, during the course of that discovery proceeding I would imagine there would be information developed, if the discovery was adhered

to, that would lend itself to a definition of being a trade secret or a commercially sensitive piece of information, yet at the same time would not in and of itself constitute a public hazard or define when a public hazard is being part and parcel of that litigation.

Is there some way in your mind to separate out what the intent of this legislation is, that is, to allow for the disclosure of that information for public hazard situations, yet at the same time protect the confidentiality of business litigants to trade secrets and other commercially sensitive areas that ought not to be made public based on that litigation?

MR. COBEN: Yes. I think it's not as difficult as it may seem at first blush to do that. For instance, in the case in Texas, many of the documents dealt with design drawings of the Ford Bronco. Those drawings in and of themselves certainly would constitute a trade secret, and the court simply ruled that there was no need to disclose that information.

There was other data, including the testing of the product by Ford, which demonstrated its dangers, which should be disclosed. And so it was readily easy for the court to separate out what is trade secret and yet still assist in defining the public hazard.

I don't really foresee that as a problem with

most products or most other issues.

REPRESENTATIVE GERLACH: So that discretion would be up to the trial judge to decide what would be a public hazard and thereby warrant protection from confidentiality as proposed by the legislation, as to what would not be considered public hazard and, therefore, would be subject to a protective order?

MR. COBEN: I would think so. And I think in the same instance that the court would always, is always, if you will, empowered to determine what is a trade secret. So the same works that way. Because you see, some things are no longer trade secret by definition. Once a particular product is disclosed to the public, what was a trade secret really by definition is no longer a trade secret. So the discretion remains on both instances.

REPRESENTATIVE GERLACH: Okay. I guess I'm looking at House Bill 751, subsection A: No person shall seek and no court shall enter a protective order inconsistent with the provisions of this section, and thereby the scope, no person subject to a protective order shall be forbidden from making any document or other information furnished to that person, and then it describes the various entities that that information can be shared with.

Should that particular section be tightened up

to define really what information can and cannot be subject to that protective order? Or cannot be subject to that protective order, in line with what we've just been talking about? Because I just get a sense that if the trial court is going to have the discretion to make that determination, very broad language in this kind of legislation might make that very difficult. You see what I'm saying?

MR. COBEN: I see what you're saying. I really don't think it's necessary, and the reason I don't is quite frankly, this piece of legislation is more narrow than that adopted in Florida and Texas. Particularly if you look over on the second page in subsection 2, with regard to the disclosure of information to others and to attorneys, this piece of legislation requires that the producing party be placed on notice of to whom the data is being presented. Presumably that will accomplish a number of your concerns. Number one, that is, if there is a trade secret and if the court were to ascertain that a trade secret existed, the people who would be recipients of the information would be bound to an agreement which would require that disclosure be made only with knowledge of the defendant or the producing party.

Clearly, I don't think that any litigants would have an objection to, and I don't think a court would be in any way violating the provisions of this act by indicating a

trade secret that Ford Motor Company has should not be divulged to General Motors and vice versa. I don't think there's anything in this act which would preclude that kind of a court order. I think it would be consistent with it.

Subsection 2, in fact, does limit the sharing of information, much more than I would have hoped to have seen, which is the Florida and Texas law.

REPRESENTATIVE GERLACH: I guess what I'm getting at, as you read that scope section, no person subject to protective order shall be forbidden from making any document or other information, ostensibly secured through the discovery process, shall make that furnished to another person pursuant to that, remaining portions of that section.

Could you not have a situation thereby where a protective order is issued and as a result of that protective order there may be some materials in there that are both trade secret, commercially sensitive, some of that maybe involving public hazard but some of it not necessarily being a public hazard? Does this subsection really protect the other side of the litigation from the disclosure of nonpublic hazard trade secret and commercially sensitive information which is not what the intent of the legislation is for?

MR. COBEN: I do think it does. I think that if

you look at those two subsections that are controlling, one and two, it is very restrictive. This is not what I would consider a Sunshine bill, because it is very restrictive in who the disclosures can be made to.

This is not going to be publicly disseminated. This is to be disseminated to agencies that are responsible for the product and enforcing and being concerned with safety. It is restricted to other attorneys with similar types of cases. It is not an open free-for-all. So I think it is restrictive.

REPRESENTATIVE GERLACH: In the first subsection there on the top of page 2, if the information is disclosed to a federal, state or local regulatory or law enforcement agency or legislative or judicial body, and assuming that those entities hold proceedings in the public, should there be a further restriction that the information shared with those public entities is likewise confidential, although they're shared with those entities through this particular section?

MR. COBEN: I certainly think that the House Committee could consider that. I'm not quite sure that you would have the jurisdiction to make such a ruling upon a federal agency like the FDA. If the information was disclosed to the FDA and the FDA decided to conduct hearings on that subject, then certainly they would have the

authority to disclose the data at that point.

I think that the bill really does accomplish a lot of different things and it does a nice balancing act. You know, I'm a little bit concerned about it, quite frankly, because I'm not sure that it discloses to the public the information. It discloses to representatives of the public the information. I would, with all due respect, take fault with it in that regard.

REPRESENTATIVE GERLACH: Okay. Thanks.

MR. COBEN: You're welcome.

MS. WOOLLEY: Just to clarify further Representative Gerlach's questioning, to make sure that I understand this, my read of subsection one is that the judgment lies with the individual litigant, that if that person reasonably believes -- the standard is reasonable belief -- that the agency or regulatory body, yeah, reasonable belief, I don't know what the rest of the standard is.

So that getting back to Representative Gerlach's concern about trade secrets being embraced in a protective order when there's also a public hazard issue, so if I'm the litigant bound by the protective order but I have a reasonable belief that the legislature should have this information, does it make clear, does this law make clear that I may not convey the trade secret information to my

legislator? That I can only convey the public hazard information?

MR. COBEN: No, it does not.

MS. WOOLLEY: What's your judgment on what's appropriate in terms of what I should be able to convey, if I'm bound by the protective order with regard to the trade secrets?

MR. COBEN: My judgment is if you have information which is trade secret but constitutes a public hazard, then within the confines of this bill you should be permitted to disclose it to others.

MS. WOOLLEY: But the distinction Representative Gerlach made between a trade secret is separate and apart from the public hazard issue.

MR. COBEN: I accept that distinction. If, in fact, the trade secret information does not demonstrate the public hazard, then under the language of this bill there would be no basis to disclose it. So I agree with that distinction.

But with your example, your question was if the trade secret information evidences a public hazard, then what? Under that scenario I think you're obliged both morally and publicly and legally under this bill to disclose the information.

MS. WOOLLEY: But I don't see a standard. I see

the public hazard standard clearly enunciated in House Bill 752.

I don't see enunciated in House Bill 751 in terms of the standard for the litigant to apply when determining when he or she should release the information to a government agency.

MR. COBEN: You're correct.

MS. WOOLLEY: So there's no standard.

MR. COBEN: Other than the language that you read in subsection one, reasonable belief.

MS. WOOLLEY: Which is the reasonable belief. But reasonable belief of what? That a public hazard exists? Or that also it falls within the scope of the jurisdiction of the agency?

MR. COBEN: Yeah. It's basically that it's information that falls within the scope of the agency, without further definition.

MS. WOOLLEY: That's not clear, is it?

MR. COBEN: It does not define public hazard in any way.

MS. WOOLLEY: Thank you.

CHAIRMAN CALTAGIRONE: Questions of any other members or staff?

REPRESENTATIVE VEON: Another question. Is there any requirement by the courts to keep track of or come

up with an annual number of those protective orders or secrecy orders in place? Is that just an unknown quantity?

MR. COBEN: It's an unknown quantity. There have been a few textbooks written on the subject which tried to track the numbers, but there are just too many. And quite frankly, most litigation goes on with an agreed-upon confidentiality order because the attorneys and the litigants do not have time to fight it. We're talking about you could fight a piece of litigation over a question of confidentiality for a year, year and a half. So the most of them are entered without ever recording anywhere that it's been entered.

REPRESENTATIVE VEON: Thank you.

CHAIRMAN CALTAGIRONE: In your testimony, the written testimony, I was perusing through it, you had indicated that there were a number of qualifing organizations, corporations in Pennsylvania and the United States that are concerned about this type of legislation, opening the court records, responsible corporations. Would you care to name any of them?

MR. COBEN: Well, certainly Public Citizen is one such organization. It's a Washington-based nonprofit charitable corporation whose interest is in identifying and becoming involved with litigation which presents public hazards.

The Institute For Injury Reduction, the one that I mentioned that I am part of at this time, is involved in this issue.

The Sierra Club is another that comes to mind.

Those are three that immediately come to mind.

CHAIRMAN CALTAGIRONE: Some of the major corporations that would not like to see this legislation get on the books would be who?

MR. COBEN: Well, without any hesitation I would tell you that every automobile manufacturer throughout the world would be very unhappy and is very unhappy whenever confidentiality agreements are defeated.

Certainly various drug companies, pharmaceutical companies would be very concerned about this issue.

I would imagine, although I've not had any direct involvement with this litigation, that tobacco companies would be unhappy with the full disclosure of information concerning its products.

Those are some that come to mind.

We're really talking about companies that are involved with mass product distribution, that try to coordinate litigation so that what is disclosed in one case is not easily available in another, and to really, really compel every lawyer to reinvent the wheel for their particular client.

I must tell you that there can't be anything truly wrong coordinating the information-sharing by litigants. Defendants do it all the time. I mean, in every piece of litigation that I have with an automobile manufacturer, they know exactly what our witnesses testified to in the last case. They share information. There can't be anything wrong with it. It's to the benefit of their clients. It certainly should be to the benefit of the clients who are injured and bringing the lawsuit.

So those are the types of companies that would be in opposition to bills like this.

CHAIRMAN CALTAGIRONE: I share with you the concern and the belief that the public has a right to know of any dangerous product that has either been on the market or being marketed for the public consumption, and as I vaguely recall in the product liability area that we held some time in the last year or two, it's kind of ironical that many of the products that we've seen taken off the shelves for sale in this country end up being repackaged and marketed in many of the overseas countries, third world countries, as an example, that have no such prohibitions.

Any comment on that?

MR. COBEN: Well, the dilemma is that as you've mentioned, that it takes maybe five to ten years for the dangers of certain products to surface, like the breast

implants and Halcion and other types of products, and once its revealed, even the Ford Pinto, once it's revealed, the consumers have a way, even if the government won't, the consumers have a way of effecting safety of products. What's unfortunate is that then it's not sold here, and sometimes it's marketed elsewhere.

I have seen the opposite occur, too. There have been some instances where certain types of drugs are not marketed, for instance, in England, and are yet being marketed here.

So it's a problem. The problem is, one, because you have governmental agencies for the most part looking at the data rather than the public, so the public isn't given the choice. And some of the governmental agencies that are making the choices are making the choices with true conflicts in mind, that is, the business interest versus the interest of the consuming public. Why not let the consumer make the choice? That's what this kind of legislation would do.

CHAIRMAN CALTAGIRONE: It's interesting you noted in your testimony, also, about the asbestos situation and the case that happened in 1929, and how many years had to go by before that information was really exposed to let the public be ware that there was a definite danger.

MR. COBEN: You can look at the asbestos, you

can look at DDT as another example. I mean, for 20, 25, 30 years the manufacturers of the product were well aware of the dangers of working around and being involved with DDT, and yet, nothing happened. Nothing happened until a book was written called Silent Spring. Then something happened: DDT was removed from the marketplace.

CHAIRMAN CALTAGIRONE: Any other questions or comments?

(No audible response.)

CHAIRMAN CALTAGIRONE: Thank you. Thank you both for your testimony.

We'll conclude the hearing for today, and remind members that we do have two more days of hearings on two other issues that we're dealing with on Wednesday and Thursday. Thank you.

(Whereupon, the hearing was adjourned at 1:43 p.m.)

* * * * *

I hereby certify that the proceedings and evidence are contained fully and accurately in the notes taken by me on the within proceedings, and that this copy is a correct transcript of the same.

Emily Clark, CP, CM
Registered Professional Reporter

The foregoing certification does not apply to any reporduction of the same by any means unless under the direct control and/or supervision of the certifying reporter.

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