



Department of Justice

STATEMENT

13 MAY 1986

OF

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ATTORNEY GENERAL OF THE UNITED STATES
UNITED STATES DEPARTMENT OF JUSTICE

BEFORE

THE

SUBCOMMITTEE ON CONSUMER
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION
UNITED STATES SENATE

CONCERNING

THE ADMINISTRATION'S PRODUCT LIABILITY
REFORM MEASURE AND RELATED PROPOSALS

ON

MAY 20, 1986

It is a pleasure to appear today to speak in support of Senator Kasten's substitute amendment to S.100, the Product Liability Reform Act of 1986.

In the last year, the problems facing our civil justice system have increased at a frightening pace. Theories of liability are expanding and awards to plaintiffs have skyrocketed. These factors, especially in the product liability area, have helped to cause an explosion in tort liability litigation.

The result has been a crisis in the availability and affordability of liability insurance. This crisis seriously threatens the economy by reducing the availability of goods and services to the American consumer, while at the same time increasing prices dramatically. The very existence of whole industries and tens of thousands of jobs are at risk.

As you know Mr. Chairman, the Administration has been actively involved in finding the sources of the insurance crisis and proposing sound and workable solutions to the problem. Last fall, I created the Tort Policy Working Group, chaired by my Assistant Attorney General Richard K. Willard, who is with me today. This inter-agency task force examined all aspects of the liability insurance crisis, and in February of this year, issued a report with findings and recommendations for reform. The Working Group found that although other factors have contributed

to the crisis, a major and fundamental cause is the explosion of tort liability in our courts. More specifically, the Working Group found four specific problems areas in tort law that needed to be addressed:

- o The movement toward no-fault liability, which increasingly results in companies and individuals being found liable even in the absence of any wrongdoing on their part.
- o The undermining of causation through a variety of questionable practices and doctrines that shift liability to "deep pocket" defendants even though they did not cause the underlying injury or had only a limited or tangential involvement.
- o The explosive growth in the damages awarded in tort lawsuits, particularly with regard to non-economic awards such as pain and suffering or punitive damages. And,
- o The excessive transaction costs of the tort system, in which virtually two-thirds of every dollar paid out through the system is lost to attorney fees and litigation expenses.

The need for reform of our tort system has become quite clear. The public now recognizes that excessive jury verdicts

and escalating insurance rates must be paid by someone, and that someone is us.

Last month, Secretary Malcolm Baldrige and I, on behalf of the President, submitted three pieces of legislation designed to address the tort problem. One important part of this legislative package is the Product Liability Reform Act of 1986, which Senator Kasten has offered as a substitute to S.100. The provisions of the three bills are based on the recommendations of the Tort Policy Working Group, contained in its February report, and are strongly supported by the Administration. These efforts are just a beginning, and to be effective, they must be followed by similar undertakings at the state level.

The Product Liability Reform Act of 1986 contains provisions that will:

- o require liability to be based on fault,
- o limit application of the doctrine of joint liability to those situations where the defendants have acted in concert,
- o place a cap of \$100,000 on the amount of non-economic damages -- such as pain and suffering, mental anguish, and punitive damages -- that can be awarded,
- o provide for future economic damages to be paid in periodic installments,

- o modify collateral compensation doctrines to eliminate double recoveries by plaintiffs,
- o encourage states to develop and use alternative dispute resolution mechanisms that will help alleviate burgeoning caseloads in the court and allow injured parties to receive a greater share of any award in a more timely fashion and,
- o alleviate the excessive transaction costs of our tort system by placing reasonable limits on contingency fees charged by attorneys.

S.100, as amended, will assist those American businesses, particularly small businesses, that are unable to obtain reasonably affordable insurance because of the high costs of the current liability system.

This bill, along with The Government Contractor Liability Reform Act of 1986 and the Federal Tort Claims Reform Act of 1986, will begin to correct the worst abuses of our present liability system. The Product Liability Reform Act of 1986, unlike some earlier proposals, does not totally preempt or supersede state legislation in this area, but rather, provides specific modifications in only those areas that conflict with the specified reforms. Enactment of this bill will return our civil liability doctrines to fair and fault-based standards designed to compensate the injured party. It will also provide an

extraordinarily beneficial impact not only for the business community, but more importantly for consumers.

I would like to thank Senator Kasten for his continued leadership in the area of product liability reform and for his strong commitment to the meaningful reforms set out in his substitute ammendment.

Thank you Mr. Chairman, that concludes my testimony.