

Engineers and liability

I always enjoy MACHINE DESIGN with its mix of great content and rants about American manufacturing and engineering going down the drain. But I realized that a real culprit can be found in Mr. Lanny Berke, who dedicates his engineering expertise to finding flaws in American machines and manuals that permit big lawsuits.

Mr. Berke, who I am certain is a good, honest fellow who genuinely cares about other people, spends his days checking to see if extension cords were repaired properly, instead of noticing that the user of said cord waded into water without unplugging it first. Or he is considering the case of illegal migrant workers who drank fertilizer sold in the U.S. despite the warning labels because they

couldn't read English and ignored the poison symbols.

Manufactured items are never without flaws, and labels and manuals are never perfect no matter how hard everyone tries. The unexpected and unanticipated happen, and we all share genuine grief when there is a tragedy.

But the American system of tort and liability is a huge problem. We have juries awarding other people's money to injured parties on the basis of expert testimony instead of applying common sense first.

Is it ever "too" safe?

A handful of readers seem to believe the decline in U.S. manufacturing is because of overzealous and perhaps greedy lawyers and the expert witnesses willing to say any product design is faulty or defective.

McDonald's coffee-temperature control and warning labels on lawnmowers telling consumers not to hold them like hedge trimmers while inebriated are just the tip of the iceberg. The Amer-



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ican light-aircraft industry was virtually wiped out by lawsuits. Now all you can buy is a kit or a 40-year-old used aircraft from a defunct manufacturer, each of which tiptoes the line of limited liability.

I guarantee if the jurors had to contribute to awards, even 1%, verdicts would be different.

Mr. Berke is guaranteed excellent lifetime employment. Once all our manufacturing deep pockets are gone, his industry will switch to lawsuits against American distributors of Chinese equipment. There's plenty of opportunity there, as any reader of a Chinglish manual can attest.

Brian Winter

Just as a starter, let me discuss the two examples you presented.

1. In the McDonalds case, the

jury found for the plaintiff against McDonalds because it had a "bottomless-cup program" at its restaurants and instructed these restaurants to heat the coffee to just below boiling so that customers would only drink one cup of coffee. The jury decided this practice was dangerously negligent and decided to send McDonalds a message. On appeal, the courts lowered the dollar amount drastically.

2. A student at the University of Wisconsin (Madison) who was using this "lawnmower as a hedge trimmer" anecdote as part of a Masters Degree thesis couldn't find any substantiation for this "old-wives tale." He contacted all manufacturers of lawnmowers, all insurance companies, the National Trial Lawyers Association (the plaintiff lawyers organization), and the Defense Lawyers organization. In

every answer, the response was that they had heard of the case, but knew nothing more about the details. The student finally decided to change the thesis of his masters program.

I am sure you are a person who cares about the safety and well being of the working person, and agree with the mandate of OSHA, and yet you throw stones at them for stopping serious safety issues such as stopping the use of extension cords that are possibly repaired improperly and could cause serious injury or death.

If manufactured items have flaws that could be detected by a good hazard analysis, and if someone is seriously injured or killed by this defective product, why do you believe the manufacturer should not be held responsible?

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an industry that turns out one of the safest products available and which has one of the best owner's manual that all industries should follow is the automobile industry. Automakers continually do hazard analysis and safety testing, and their manuals are well thought out. The one problem they have is when one of their products show a defect after it is introduced to the public. On rare occasions, they do not admit the problem. But in most cases, they are responsible and have recalls to correct the problem. The main reason this is not recognized is that the rare lawsuits that become public are big-dollar lawsuits. In most cases, plaintiff attorneys are afraid to sue the auto industry because it keeps records that prove the safety of its vehicles and the attorneys know they will probably lose. I

have found that when automakers manufacture other products, such as ATVs, lawnmowers, or water vehicles, some are not as demanding with these products as they are with automobiles.

There are other manufacturers that are recognized as poor targets by plaintiff attorneys, also. That is because they approach safety properly and have the records to prove it to juries.

In closing, it is not the lawyers that are the problem, it is irresponsible manufacturers who cannot spell safety, much less put out safe products. Especially in this economy, they are being thinned out. — Lanny Berke

Lanny Burke's suggestion that, "designers should have foreseen it (a platform) was a bad place to stand," is akin to installing land-

mines to prevent people from slipping in the mud ("Lack of foresight concrete factor in fall," Dec. 9). Blocking equipment from unauthorized entry during normal operation is one thing, but purposefully making it unfriendly for maintenance tasks is bad design. The platform in question is obviously there to protect the hydraulic lines when somebody does try to stand there. Most likely the original design also included a handle to provide some stability to the poor guy who has to go up there in the rain. After a "safety" review indicated it would have to be modified into an OSHA approved work platform, the handle was removed and the "platform" was renamed to "pipe cover." This is not safety it is aversion to liability.

Eric Hutchenreuther



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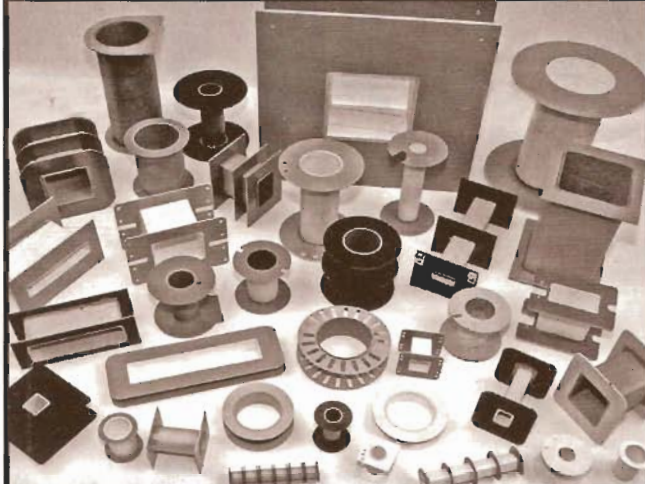
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