

BAY AREA WOODWORKERS ASSOCIATION

July 1986 - Vol. 5, Issue 7

Box 421195 San Francisco CA 94142

THIRD THURSDAY PREVIEW

The July 17th meeting will be held at Mike Laine's shop, 2200 Adeline St., Oakland at 7:30pm. 2200 is at the corner of Adeline and West Grand. From San Francisco, take the Grand ave. exit from 17 south, just as you come off the bridge. Our main event will be Howard Lazzorini, who will talk about Japanese lacquering and we'll see a 20 minute film on the subject. Also, Bob Greenberg, who recently returned from Nicaragua, will tell us about chairs and other woodworking in that part of the world. It promises to be a very interesting evening. There will be no regular executive meeting this month preceeding the general meeting.

HIGHLIGHTS FROM LAST MEETING

A new executive committee was elected at the last meeting. The roster of officers can be found elsewhere in this newsletter. We also had an outstanding talk with slides and sample pieces by Dean Santner, who has been a Bay Area furniture and modular system designer-craftsman for 17 years. It was very interesting and informative. Dean talked about his designs, marketing concepts, successes and failures. We hope to have Dean as our guest again in the future so that we can keep up with his exciting and active woodworking career.

FROM THE EDITOR

This month, BAWA begins a new program of expansion and improvement which, hopefully, will make us a larger, stronger organization which is more attractive to advertisers and more responsive to members and the woodworking community. In keeping with these goals, we strongly encourage suggestions and feedback from newsletter readers concerning newsletter content, organizational events, agenda and conduct of meetings and any other criticism or ideas about BAWA. If you want something out of this organization other than what is being delivered, let us know. Without such response, we have little choice but to work in a vacuum. It's also important that you tell us what you don't like about BAWA. For starters, we are working on improving the general meetings so that they are more interesting and informative and more tightly structured. We're also considering several field trips, important guest speakers and demonstrations to make meetings more meaningful. We also ask each member to tell their friends about BAWA so that we can increase our member base. Finally, we urge you to support our advertisers. They support us and help pay for this newsletter. Also, when you patronize our advertisers, let them know that you saw their ad in the BAWA newsletter. Thanks.

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PRODUCT LIABILITY: A CRISIS MADE IN AMERICA

By Rich Christianson

A lawsuit-happy nation feeds the product liability insurance crisis while manufacturers make a desperate plea to Congress for help.

Obtaining product liability insurance coverage used to be a routine matter for most businesses, but not anymore. Now it is just as routine for an insurance company to cancel a business's policy.

In the last 10 years, manufacturers of everything from ladders to panel saws have found it ever more difficult to find insurance companies that will underwrite their product liability risks as multi-million dollar court settlements have become more commonplace. Even when a willing carrier can be found, the quoted price is often five times greater or more than the company's last insurance premium. And in many cases, the manufacturer pays out a lot more money for a lot less coverage in the form of higher deductibles.

In the past decade, and especially within the last year, more and more manufacturers have fallen prey to what has quickly developed into one of the American business community's gravest challenges to date. In many industries, including that of the wood machinery manufacturers, even the concern of foreign competition—while still a formidable threat—has been overshadowed by the magnification of the national liability insurance crisis.

For many struggling enterprises, among them a handful of wood machinery manufacturers, the unavailability of affordable product liability insurance dealt the final blow that knocked them out of business.

Some manufacturers have met skyrocketing insurance rates by raising the prices of their products or have absorbed the added insurance costs at the expense of their research and development program budgets. Others have done a little of both. In any case, manufacturers claim the harsh economic realities of skyrocketing premiums have weakened their effectiveness to compete with their foreign counterparts either by driving up their product prices or by hindering their ability to innovate.

Going bare

Then there are those manufacturing executives who awake each morning with fingers crossed, hoping that the day does not bring another product liability lawsuit either because they have a policy with a high deductible or have no product liability insurance at all.

Don White, executive vice president of the Wood Machinery Manufacturers of America, said the cost of product liability insurance can represent up to 10 percent of a member's annual gross sales. He estimated that as many as one-third of the association's members are "going bare" by operating without insurance. In most cases, White said these companies wound up going bare after their policies were cancelled and they were unable to find insurance they could afford from an alternative source.

"For the most part, industrial states are the most worrisome for our members," White said. "About half the states have laws. Illinois' has a half-way decent statute of repose; California's is about the worst."

The feeling of vulnerability that accompanies going bare is what one insuranceless machinery supplier described as "utterly frightening." "It's terrible to walk into the office wondering if you're going to lose your business in court because someone was stupid enough to remove a guard and put his hand in the saw. I see guards off machines in almost every plant I enter, and still, if someone gets hurt, they say it's my fault."

Doug Brackett, executive vice president of the American Furniture Manufacturers Association, said a survey completed by 115 members indicated that a majority of their insurance premiums have increased between 50 and 200 percent in the past year. A few have experienced increases of up to 500 percent, he said.

Though the increases give cause for legitimate concern, Brackett said the prevailing product liability insurance scenario facing furniture makers is not as bleak as that of machine manufacturers because their premium rates were less to begin with. Nevertheless, AFMA's insurance committee, chaired by Robert Friedman of U.S. Furniture Industries, High Point, N.C., is expected to address soaring product liability insurance costs as part of its study of the total insurance problem when it meets this month.

"Our level of exposure is a lot different than the WMMA's," said Brackett. "Product liability insurance is a problem for furniture manufacturers, but it is just a part of the overall insurance package problem. Most of our members spend more money for workman's compensation than they do for product liability coverage."

"The courts in my opinion allow many people to file suits that are obviously without substance," Brackett said. "Ev-

PRODUCT LIABILITY

Everybody knows that dining room tables are not something to stand on. Yet, if someone falls off one trying to change a lightbulb, the table manufacturer gets sued.

"Defending lawsuits is expensive. You have to hire a lawyer and pay the expenses of expert witnesses. Even if you win some of these suits, you can easily wind up spending \$50,000 to \$100,000 defending them," Brackett said.

"Someone does not have to get hurt for one of our members to be sued," Brackett continued. "A person could file a lawsuit claiming that an irreplaceable 100-year-old family heirloom was damaged because it crashed through a china cabinet shelf."

The seller at risk

The defendant in a product liability suit does not necessarily have to be the one who manufactured the product. Dealers and distributors of woodworking machinery are frequently named in lawsuits, and are particularly held accountable in cases involving foreign-made products.

"It's a devastating situation," said, Edwin Bass, president of Holz Machinery Co., a distributor of American and European woodworking machinery based in Jersey City, N.J. "I see a lot of manufacturing companies and distributors going out of business because of this crisis."

"As middlemen, we are accused of all the things we don't do, like designing and manufacturing," Bass said. "How can we be held responsible? We don't change the machinery one iota. We sell it as we buy it and still we pay because ours is the deepest pocket."

"We've been in business for 65 years and have sold tens of thousands of machines. Because there is no statute of limitation, these machines are like guns ready to fire at us. We don't know which one will go off next," Bass said.

"There's no question that this is the most serious problem that the industry has ever faced," said R. Franklin Brown Jr., executive vice president of the Wood Machinery Distributors Association. "In the last year and a half, we've witnessed a wholesale cancellation of policies. Even member companies that have no histories of suits have had their policies cancelled. Some members have experienced back-to-back increases of 500 to 1,000 percent and some can't get product liability insurance at any price. They are going bare and are very scared."

"We had a case in which a worker lost part of his leg using a machine sold by one of our members. The plaintiff was fitted with an artificial leg, and was playing tennis two weeks before he showed up in court in a wheelchair. He sued both the manufacturer and the distributor and won a big settlement against both defendants," Brown said.

Supporting Bass's view, Brown said he thinks the distributor should not have been held accountable "because he didn't change the machine." Yet the constant threat of losing a multi-million dollar lawsuit without adequate insurance coverage has led many distributors to question why they stay in business, Brown said. Some distributors have already been forced out of business. Epps Machinery of Morristown, Tenn., and American Machinery and Motor of New York are among the business casualties of the national insurance crisis, Brown said.

Who's at fault?

Spokesmen for manufacturing groups, insurance companies and the American Trial Lawyers Association all agree that the U.S. is in the grips of a liability insurance crunch of unprecedented magnitude. But each has his own theory for why the crisis exists, who is to blame and what should be done about it.

"It appears that we've reached the point where the general attitude of the public is that there is no such thing as an accident anymore. Anytime a person gets hurt, somebody is at fault," Brackett said.

"I don't know that you can easily point your finger at anybody. It's a shared set of circumstances. Obviously the courts could be more careful of the cases they take on and use some type of mapping arrangement to limit the amount of money that can be awarded for pain and suffering. There needs to be a system for screening so-called frivolous suits from getting on court dockets," Brackett said.

"The plaintiff lawyers are the biggest problem," Brown said. "They'll sue everybody and anybody they can get their hands on."

U.S. distributors of imported machinery are placed in an especially precarious position when it comes to awarding judgements because the courts tend to go after the company that is the most accessible. "The distributor of foreign machinery is usually the more visible target," Brown said.

Bass concurred with Brown's opinion that trial lawyers have been the most responsible for fueling the insurance crisis.

"We're the only country in the world that has this problem," Bass said. "The contingency fees (whereby attorneys receive one-third of a court award as payment for handling a lawsuit) is the crux of the problem. Most of the suits come from major cities where lawyers promote lawsuits as a cure-all. It's a good gamble for a plaintiff because if he loses, he doesn't have to pay his lawyer any money. That makes filing a lawsuit a better gamble than going to Atlantic City."

"In all my years in this business, I have never seen an accident involving a defective machine. Most accidents occur because a safety guard is removed or because the operator is careless or is not adequately trained," Bass said.

White said the situation could be improved if the courts would follow two simple rules. "First of all the courts have to determine whose fault it was really that caused the accident," said White. "If the machinery manufacturer is at fault because of a machine defect, then he is willing to pay for his mistake. More frequently, though, the user is the one who is at fault."

"Second, the courts have to determine what compensation is

PRODUCT LIABILITY

reasonable to cover losses. Actual economic losses to cover future lost income is one thing that injured persons should be entitled to. Non-economic losses for pain and suffering and punitive damages are really questionable," White said.

In defense of plaintiff lawyers

The Assn. of Trial Lawyers of America believes the insurance industry created the crisis, not the legal profession.

"The insurance industry is claiming a crisis that it has caused by its own practices," said Deborah Stashower, an ATLA spokeswoman. "They cut premium interest rates when interest rates were high to increase their investment capital. Now that rates are low, they are trying to make up for it."

Stashower said the insurance industry is "claiming losses that don't really exist. How can they be losing money when their stocks are up 50 percent—way over the Dow Jones?" she said.

Stashower also disclaimed the theory that allowing lawyers to advertise has led to more court filings. "There is no litigation explosion. The nation's population is up 8 percent and the number of tort filings is up 9 percent. Most of the court claims have increased because economic losses and health care costs are up. Medium jury verdicts, when adjusted for inflation, have remained constant for 20 years," she said.

If reform is needed, it is not with the courts, but with the insurance industry, Stashower added. "The insurance companies should not be allowed to arbitrarily cancel policies and arbitrarily increase rates."

Gene Esposito, counsel for the American Insurance Association, composed of 171 property/casualty insurance companies, offered this version of how the crisis has evolved.

"Two or three things happened at once, all of them against the insurance industry. Premiums were dropping because of price competition for liability insurance in the marketplace. Investment income that was earning 21 percent interest quickly dropped below 10 percent. And the tort crisis, which was not readily recognized at first, was creeping and crawling; lawsuit awards were skyrocketing," Esposito said.

"I understand what a victim is entitled to. The problem faced by insurance companies is that compensation has gone astray. The unpredictability of the courts in

awarding judgements has created horrendous problems for the insurance industry. It's difficult to establish an adequate premium for insurance when we can't be sure of what the risks are," Esposito said.

Controlling the crisis

"To say that any one thing is going to solve the problem would be asinine," said Esposito. "We need many remedies. That's why our group has not supported any one piece of legislation. The Supreme Court said caps can be put on pain and suffering awards, but it's not an easy thing to do."

"Most of the losses that are claimed should be restricted to workman's compensation," Brackett said. "We think some tort reform is in order, especially a federal guideline to control pain and suffering awards. I personally believe that the Supreme Court will one day rule what a life is worth," he said.

"We wouldn't have this problem if Congress had taken the bull by the horns and done something about it," said Brown. "I don't think it can get much worse but I don't think it will get much better too soon either without federal reform. You're not going to change the average trial lawyer's mind."

Sheldon London, legislative counsel for the WMMA, said he thinks a bill drafted by President Reagan's administration stands a good chance of being adopted this year. Among other things, that bill would preempt state laws and contain provisions designed to:

- Hold a company liable only if it was negligent in designing, making or selling the product or if the product was defective and unreasonably dangerous.
- Eliminate joint-several liability (the "deep pocket theory") by requiring a defendant to pay only the portion of damages directly attributable to its pro-rata share of the responsibility for the injury, without regard for who has the most money to pay a suit.
- Limit non-economic damages—pain and suffering and punitive damages—to \$100,000.
- Limit a claimant's attorney's fee to 25 percent of the first \$100,000 of damages, plus 20 percent of the next \$100,000, plus 15 percent of the next \$100,000 and 10 percent of any damages in excess of \$300,000.

The administration's proposal does not include everything that the WMMA has fought for during the last 10 years. For example, it does not provide a statute of

repose. The WMMA had sought to limit product liability claims to machines six years old or less.

"It's disappointing that the bill does not include a statute of repose," London said. "But we realize that in politics there have to be some trade-offs and the bill still offers an improvement over the way things are."

"I think it has a good chance of passing the Senate and if it does, I think that the House will move speedily on it," London said. "The trial lawyers are our most potent opposition; they have more money to spend against this than we have and the greatest proportion of Congressman are lawyers."

"The one thing Congress cannot deny is the will of the American people. This has become a universal problem. Each month the voice of the people is getting more unified in saying, 'Give us some help; we have a problem.'"

Stashower said the ATLA opposes any federal legislation that would limit non-economic damages. "It would result in a drastic denial of rights of the victims."

Additionally, Stashower said her group opposes limiting attorney contingency fees. "That's an agreement that is arranged between the lawyer and his client. The contingency fee is what makes it possible for a victim to afford a competent lawyer."

Manufacturers not alone

Although the manufacturing community has hounded Congress to act on liability insurance for 10 years, it's only been within the last year or two that the general public has become aware of the problem.

Municipalities, school districts, park districts and other governmental agencies have experienced problems of their own obtaining liability coverage. The Chicago Park District, for example, recently removed slides and other types of playground equipment after losing a \$9.5 million lawsuit involving a youth who was paralyzed when he fell off of a slide.

Go-cart tracks, ice rinks, and day care centers are among private businesses that have become less attractive investments because of the crisis.

The popular press has picked up on the problem, including Time magazine, which devoted its March 24 issue to the national insurance crisis.

"That type of publicity can only be helpful," said White. "This is no longer just a manufacturers' problem, but one facing the entire nation."

"You have to realize that the personal injury lawyers are really the ones to lose we win. The injured party is not going to lose anything except maybe a crack at the product liability lottery jackpot. He will still get the economic benefits he deserves one way or another." ■

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years for an oak to reach the minimum size for harvesting but some species live up to 1,500 years.

More than 60 species of oak grow in the United States, over 200 worldwide. In general, this vast family of oak is divided into two groups, red oak and white oak. The most common and commercially important species in the red oak group include north-

ern red oak, scarlet oak, Shumard oak, pin oak, Nuttall oak, black oak, southern red oak, cherrybark oak, water oak, laurel oak and willow oak.

White oak includes the species white oak, chestnut oak, post oak, overcup oak, swamp chestnut oak, bur oak, chinkapin oak, and live oak.

Oak, botanically known as *Quercus*, has long been a favorite of furniture and flooring manufacturers here and in Europe. Some believe the heartwood of red oaks, which is light reddish brown in color and more coarsely grained than white oak, is considered commercially inferior to the white oak.

Red oak is one of the most popular North American oaks used in Europe and was first introduced in France and England in the early 18th Century.

White oak differs from its red counterparts because the pores of the heartwood are usually plugged with tyloses, a membranous growth which makes the wood waterproof. This feature and its good decay resistance power made it suitable for tight cooperage. White oak barrels were commonly used as nail kegs or for storing liquor and flour, among others. Red oaks, lacking tyloses and the durability of white oaks (with the exception of chestnut oak, which also lacks tyloses in many of its pores) were suitable for general millwork, boxes, pallets, crates, agricultural implements, caskets, and handles. White oak once was used extensively for ship timbers and is still sought after for planking and bent parts for shops and boats. Because of its decay resistance, it is used for mine timbers, fenceposts, and railroad ties. Red oak, however, must have a preservative treatment to be suitable for these uses.

Today, oak is in vogue and one of the most popular woods for furniture manufacturers here and in Europe. The Fine Hardwoods/American Walnut Association's survey of the fall and spring Southern Furniture Market at High Point, N.C., a semi-annual statistical analysis of styles and species shown in case goods for dining and bedroom suites (done since 1943), has shown oak as the leader of the pack for some 10 years.

Larry Frye, executive director of the association, points to many factors for oak's popularity. One is the basic supply-and-demand explanation. The woods that easily available oak replaced in popularity include walnut, cherry and mahogany. In addition to price and availability, these woods are associated with a style of furniture that is not as popular as oak, which is closely identified with the very popular Early American, Colonial, and Country styles.

Frye did note that oak, which is enjoying popularity virtually worldwide, is now more

OAK

expensive than a few grades of walnut, which is considered the aristocrat of fine hardwoods.

"The world is smaller these days because of our communications ability. When one country 'discovers' a specie and it takes off, the whole world copies creating a worldwide pressure on a specie. In some cases we can't make the lumber and veneer fast enough so the price is jacked up to slow the traffic down. This happened with cherry, mahogany, and walnut, once the clear favorites in the United States," Frye said. Frye also sees a correlation between style and wood. Colonial and Early American styles ascended in popularity as Danish modern, which uses walnut, declined.

Frye believes the declining industries of cooperage and railroad ties made oak lumber sales people look for other uses to fill the void.

Oak is found virtually everywhere in the U.S. east of the Mississippi, with most red oak lumber and other products coming from the Southern States, Southern mountain regions, Atlantic Coastal plains, and Central States. White oak lumber is most often from the South, South Atlantic and Central States, and southern Appalachia.

Oak, like other grainy woods, once posed special problems to craftsmen as tools dulled more quickly during turning and shaping. With today's modern machinery, power tools, and high technology mills, there is virtually no problem. Oak is considered an easy wood to work with. However, the manufacturer of rift-sawn oak lumber and rift-cut veneers necessitates correctly detailed specifications. These should be as complete as possible and special manufacturing techniques are required to assure a proper match. Rift-sawn lumber and rift-cut veneer are manufactured differently with special machinery and techniques. Differences in appearance due to inadequate specifications, especially when using long-length material, can cause cost overruns and manufacturing delays. True rift sawing is a specialized operation that involves more labor and generates more wood waste. The most practical way of achieving rift cut, also called comb grain, is by making a curvature in the cut, accomplished by producing rift oak on the half-round or staylog lathe.

Oak may begin life as a tiny acorn but along the way it becomes almost majestic, inspiring poets' folklore. The Druids, for instance, considered oak trees sacred, a symbol of strength which offered them protection.

For modern furniture manufacturers oak symbolizes dependable sales. These days, that too is a symbol of strength and protection.

25 Drakewood Lane
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June 15, 1986

Bay Area Woodworker's Association
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Dear Friends and Fellow Woodworkers of Herb:

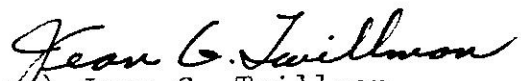
It is with a sad heart that I tell you that Herb was stricken with an abdominal aneurysm, hospitalized for 13 days in intensive care at Novato Community Hospital, and died on June 6.

He loved his woodshop and everyone who shared his enthusiasm for it and enjoyed the fellowship at your meetings.

Not only has his catastrophic illness and passing left us with deep grief, but with devastating medical bills. He needed more than 35 units of blood and most of that has been donated. If you feel so inclined, donations may be made to: Herb Twillman Memorial Fund to help toward medical and maintenance through this emergency. Not knowing how tax gifts work, should you choose to send to his family at the above address, we will be most grateful.

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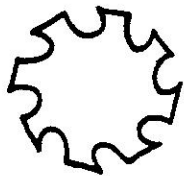
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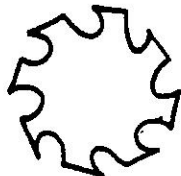
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BAWA DATA

The Bay Area Woodworkers' Association is an organization of woodworkers who have banded together to promote woodworking in both technical and aesthetic directions. This newsletter is a monthly publication intended to serve as a communications vehicle and a source directory for the membership of this Association.

Membership dues are \$20/year, for which any member may participate fully in the Association, in accordance with the guidelines set forth in the By-Laws. This includes voting power on any issue brought before the membership for a vote, notification of the monthly shop talks and demonstrations put on by the Association, receipt of this newsletter each month, and privilege of participation in any special discount programs sponsored by local businesses in conjunction with this Association.

Checks for membership dues may be made out to the Bay Area Woodworkers' Association and sent to P.O. Box 421195, San Francisco, CA 94142. Membership cards will be issued to all members in good standing.

Copies of the By-Laws are available at all monthly meetings, or can be requested by mail.

The monthly shop talks and demonstrations are held on the third Thursday of each month at 7:30 p.m., at a location announced both in the newsletter and at the previous meeting.

The monthly executive committee meetings are held on the fourth Thursday of every month, and are open to any interested members. To arrange attendance, contact any member of the executive committee by telephone or the address given above.