Product liability lawsuits usually involve claims that a product is unreasonably dangerous, either in its design, manufacture, or its lack of a proper warning or instructions regarding use.

Historically, trial lawyers name the product manufacturer as well as any party that handled the product in the stream of commerce as a defendant. This includes the shipper of the product, as well as the store owner who sells it. In most cases, the store owner is never liable for a design defect, manufacturing defect, or failure to warn. Why? Because these cases have nothing to do with the negligence of the store owner.

Doctors and pharmacists are similar to store owners. They have nothing to do with the design or manufacture of a product. Yet time and time again, doctors and other health care providers are named as parties to product liability lawsuits involving prescription drugs and medical devices. Why? Because class action lawyers are constantly looking for the best courtrooms to file their lawsuits. These lawyers are known for siding with the patient who has been harmed. By bringing their cases in front of plaintiff-friendly judges and juries, these lawyers immeasurably enhance their probability of securing jury awards.

Judgments are virtually never entered against doctors and pharmacists in product liability lawsuits. Yet these health care professionals are often forced to spend thousands of dollars in legal costs and take valuable time off from work, time away from the patients who need them, to provide lawyers with rounds and rounds of depositions and to provide juries with testimony. This is completely ridiculous. We need doctors in our emergency rooms and family practice centers—not in the courtrooms when they have nothing to do with the product in question.

I want to tell you about a woman named Hilda Bankston. Hilda owned a pharmacy in Jefferson County, MS, and has been named as a defendant in so many lawsuits that she has lost count. In each instance, Hilda was sued for doing nothing more than filling legal prescriptions. In other words, she wasn’t doing anything wrong. Nevertheless, Hilda has been dragged into a product lawsuit that they have no business being in. Doctors and pharmacists are routinely named in product liability lawsuits and are virtually always removed from these cases without having damages assessed against them. They aren’t liable for the design or manufacture of drugs and devices and should not be dragged into these types of lawsuits.

Patients pay for product liability lawsuits in the form of higher health benefits and premiums.

I urge my colleagues to join me in taking action to curb this abuse of our legal system. Let’s protect our health care providers from incurring frivolous unnecessary costs. Our health care providers should be focused on providing the best care possible to their patients, not on product liability lawsuits when they have nothing to do with the product in question.

I am pleased to inform you of our support for my amendment to the ‘Prescription Drug User Fee Amendments of 2007’ (S. 1082), which would provide clarification on physician liability.

Your amendment seeks to clarify that a physician who prescribes a drug, biological product, or medical device, which has been cleared successfully by the Food and Drug Administration’s approval process, cannot be named as a party in a class action lawsuit. The AOA shares our concerns that physicians and other healthcare providers frequently are named as defendants in such cases as a means of securing a venue which is more likely to produce larger monetary awards. In most cases, physicians are dismissed from the lawsuit or found not liable for damages. Regardless of the ultimate outcome, physicians face significant legal costs and time away from their patients as a result of this practice.

We believe your amendment takes the appropriate steps to ensure that future class action lawsuits are targeted at those whose conduct is in question. Additionally, we believe your amendment rightfully prevents attorneys from using physicians as a means to pursue legal action in venues they deem more favorable. For these reasons, we are pleased to offer our support.

Sincerely,

DO, President.

MORNING BUSINESS

Mr. BROWN. I ask unanimous consent that there now be a period of morning business with Senators permitted to speak for up to 10 minutes each.

The PRESIDING OFFICER (Mr. WHITEHOUSE). Without objection, it is so ordered.

ADDITIONAL STATEMENTS

REMEMBERING HAWAII’S DON HO

Mr. AKAKA. Mr. President. I wish to pay tribute to a remarkable son of Hawai‘i and the entertainment legend, Don Ho. Don’s big heart gave out on April 14, in Waikiki. He was 76 years old. On Saturday, May 5, Hawaii bid a fond aloha to Don Ho, during a ceremony on Waikiki Beach in celebration of his life. Thousands of people attended his memorial. Don didn’t plan on a career in entertainment. After his college graduation, he served in the U.S. Air Force, attaining the rank of first lieutenant. When
he returned home, he began helping at his mother’s quiet neighborhood bar, playing music with friends. That was the beginning of a show business career spanning more than four decades including hit records, motion pictures, television, and sold out performances worldwide.

Hawaii was still a young State when Don Ho became an international star, and in many ways he helped put Hawaii on the map. In my travels around the world, people always ask me about Don Ho. Don was a big star wherever he went. He even played in Washington, DC, when I was in the House. And I can tell you, it was a big show.

Despite his stature as an entertainment icon, Don was never too busy to spend a few minutes with his fans; young honeymooners, servicemen and women stationed in the islands, or senior citizens on a dream vacation. He had tremendous charisma and talent and because of that he touched many people. Hawaii has lost a beloved son and he will be sorely missed.

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Ms. Evans, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer read the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

MESSAGE FROM THE HOUSE

At 2:15 p.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, was read aloud. The following bills were referred as indicated:

H.R. 1592. An act to provide Federal assistance to States, local jurisdictions, and Indian tribes to prosecute hate crimes, and for other purposes; to the Committee on the Judiciary.

H.R. 1592. An act to authorize appropriations for the National Institute of Standards and Technology for fiscal years 2009, 2010, and 2011, and for other purposes; to the Committee on Commerce, Science, and Transportation.

EXECUTIVE MESSAGES REFERRED

The following communications were laid before the Senate, together with accompanying papers, reports, and documents, and were referred as indicated:

EC–1752. A communication from the Under Secretary of Defense (Acquisition, Technology and Logistics), transmitting, pursuant to law, the report of a rule entitled “Uniform Compliance Date for Food Labeling Regulations” (RIN0583–AD05) received on May 2, 2007, to the Committee on Commerce, Science, and Transportation.

EC–1753. A communication from the Secretary of Commerce, transmitting, pursuant to law, the report of a draft bill intended to “revise and extend the Export Administration Act of 1979, as amended”; to the Committee on Banking, Housing, and Urban Affairs.

EC–1754. A communication from the Assistant Administrator for Fisheries, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled “Atlantic Herring Fishery; 2007–2009 Specifications” (RIN0648–AT96) received on May 2, 2007, to the Committee on Commerce, Science, and Transportation.

EC–1755. A communication from the Secretary of Commerce, transmitting, pursuant to law, the report of a rule entitled “Annual Management Measures for the 2007 Pacific Halibut Fishery; and Catch Sharing Plan for Area 2A” (RIN0648–AV03) received on May 2, 2007, to the Committee on Commerce, Science, and Transportation.

EC–1756. A communication from the Secretary of Commerce, transmitting, pursuant to law, the report of a rule entitled “Closure of the Hook-and-Line Commercial Fishery for Pacific Tuna in the Southeastern Florida West Coast Subzone” (Docket No. 01003528–0369–02) received on May 2, 2007, to the Committee on Commerce, Science, and Transportation.

EC–1757. A communication from the Office of Sustainable Fisheries, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled “Fisheries of the Exclusive Economic Zone Off Alaska; Reallocation of Pacific Cod in the Bering Sea and Aleutian Islands Management Area” (ID No. 190607B) received on May 2, 2007, to the Committee on Commerce, Science, and Transportation.

EC–1758. A communication from the Office of Sustainable Fisheries, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled “Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher Vessels Using Trawl Gear in the Bering Sea and Aleutian Islands Management Area” (ID No. 040607B) received on May 2, 2007, to the Committee on Commerce, Science, and Transportation.

EC–1759. A communication from the Under Secretary of Defense (Acquisition, Technology, and Logistics), transmitting, pursuant to law, a report relative to the effects of Aviation Continuation Pay on retention of qualified aviators during fiscal year 2006; to the Committee on Armed Services.

EC–1760. A communication from the Principal Deputy, Office of the Under Secretary of Defense (Personnel and Readiness), transmitting, pursuant to law, a report relative to the effects of Aviation Continuation Pay on retention of qualified aviators during fiscal years 2007 and 2008; to the Committee on Armed Services.

EC–1751. A communication from the Secretary of the Air Force, transmitting, pursuant to law, the report of a critical breach in Average Procurement Unit Cost for the Joint Air-to-Surface Standoff Missile; to the Committee on Armed Services.

EC–1752. A communication from the Secretary of the Treasury, transmitting, pursuant to law, a six-month periodic report on the national emergency relative to Syria that was declared in Executive Order 13388 of May 11, 2004; to the Committee on Banking, Housing, and Urban Affairs.

EC–1753. A communication from the Secretary of Commerce, transmitting, the report of a draft bill intended to “revise and extend the Export Administration Act of 1979, as amended”; to the Committee on Banking, Housing, and Urban Affairs.

EC–1754. A communication from the Assistant Administrator for Fisheries, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled “Atlantic Herring Fishery; 2007–2009 Specifications” (RIN0648–AT96) received on May 2, 2007, to the Committee on Commerce, Science, and Transportation.

EC–1755. A communication from the Secretary of Commerce, transmitting, pursuant to law, the report of a rule entitled “Annual Management Measures for the 2007 Pacific Halibut Fishery; and Catch Sharing Plan for Area 2A” (RIN0648–AV03) received on May 2, 2007, to the Committee on Commerce, Science, and Transportation.

EC–1756. A communication from the Office of Sustainable Fisheries, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled “Closure of the Hook-and-Line Commercial Fishery for Pacific Tuna in the Southeastern Florida West Coast Subzone” (Docket No. 01003528–0369–02) received on May 2, 2007, to the Committee on Commerce, Science, and Transportation.

EC–1757. A communication from the Office of Sustainable Fisheries, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled “Fisheries of the Exclusive Economic Zone Off Alaska; Reallocation of Pacific Cod in the Bering Sea and Aleutian Islands Management Area” (ID No. 190607B) received on May 2, 2007, to the Committee on Commerce, Science, and Transportation.

EC–1758. A communication from the Office of Sustainable Fisheries, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled “Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher Vessels Using Trawl Gear in the Bering Sea and Aleutian Islands Management Area” (ID No. 040607B) received on May 2, 2007, to the Committee on Commerce, Science, and Transportation.

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EC–1760. A communication from the Principal Deputy, Office of the Under Secretary of Defense (Personnel and Readiness), transmitting, pursuant to law, the report of a critical breach in Average Procurement Unit Cost for the Joint Air-to-Surface Standoff Missile; to the Committee on Armed Services.

EC–1761. A communication from the Secretary of the Air Force, transmitting, pursuant to law, the report of a critical breach in Average Procurement Unit Cost for the Joint Air-to-Surface Standoff Missile; to the Committee on Armed Services.

EC–1762. A communication from the Secretary of the Treasury, transmitting, pursuant to law, a six-month periodic report on the national emergency relative to Syria that was declared in Executive Order 13388 of May 11, 2004; to the Committee on Banking, Housing, and Urban Affairs.

EC–1763. A communication from the Secretary of Commerce, transmitting, the report of a draft bill intended to “revise and extend the Export Administration Act of 1979, as amended”; to the Committee on Banking, Housing, and Urban Affairs.

EC–1764. A communication from the Assistant Administrator for Fisheries, National Marine Fisheries Service, Department of Commerce, transmitting, pursuant to law, the report of a rule entitled “Atlantic Herring Fishery; 2007–2009 Specifications” (RIN0648–AT96) received on May 2, 2007, to the Committee on Commerce, Science, and Transportation.

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