



**TESTIMONY OF
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**U.S. HOUSE OF REPRESENTATIVES
Committee on Small Business**

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Madame Chairwoman and members of the Committee, thank you for holding this hearing today and for giving me the opportunity to be here and participate.

My name is Paul Freedenberg. I am Vice President of Government Relations at AMT - The Association For Manufacturing Technology.

Before I speak, and pursuant to House Rule XI, I am obliged to report that AMT received \$225,100 from the Commerce Department's Market Co-operator Development Program for a technical center in China -- \$207,254 of which was disbursed in 2005 and \$17,846 in 2006.

AMT is a trade association whose membership represents over 400 manufacturing technology providers located throughout the United States, almost the entire universe of machine tool builders who operate in our country. Most of these companies are small -- an estimated 78 percent of them have less than 50 employees. But what they contribute is huge.

They are the ones who build the machines that make things work. In fact, everything in this hearing room except the people, of course, was either made by a machine tool or made by a machine made by a machine tool.

We are an essential part of America's manufacturing base, providing a wide range of industries the manufacturing technology they need to produce -- from cutting,

grinding, forming and assembly machines to inspection and measuring machines and automated manufacturing systems.

AMT has testified many times over the years before this and other Committees on the need for product liability reform – and that’s what I would like to again address today. For most small American businesses – and specifically for our members – product liability is not a distant issue but one that can literally make or break our companies.

Several AMT members have been forced to close their doors because of product liability lawsuits. Others are in danger of closing because litigation costs are strangling them. They are spending money *not* on hiring more workers or improving productivity but rather on defending against lawsuits involving machines that are often older than anyone in this room. These lawsuits also significantly impact their ability to survive in a globally competitive world.

The cost of litigation is significant because our industry is very cyclical. Price pressures are very strong, and profitability is relatively low – even in good years. U.S. consumption of machine tools is 12 percent higher than a year ago, outpacing 11 percent growth in U.S. production.

Where our industry is most vulnerable in terms of product liability is in over-age machine tools. AMT estimates that the average age of machine tools has climbed from 10 years in 1998 to nearly 13 years in 2005. The reason largely is because, when a

factory decides to invest in new capital equipment, the old machinery is usually not disposed of. When companies can't afford new machines they purchase these over-age machines, often altering them to fit their needs. This process is repeated, as newer machines are acquired and older ones resold. The result is a big overhang of over-age machine tools in the U.S. market. And this exposes the manufacturers of the old equipment to costly litigation.

One reform that could significantly help reduce those crippling costs, Madame Chairwoman, would be creation of a statute-of-repose for workplace durable goods.

A statute-of-repose measures the time limitation from the date of the initial sale of the capital equipment. Statutes of limitations, by contrast, typically impose a time limit measured from the time of the injury or the discovery of its cause.

In many states today, thanks to product liability law, the potential liability for my industry's products is endless – literally "forever." Many of these machines – built before OSHA was created, before Neil Armstrong walked on the moon and before the Beatles came to America – are still in use today.

Although these machines were built decades ago to safety standards of their day and although they are likely to have passed through several owners – each of whom likely made modifications to accommodate their needs – they are still the subject of

four-fifths of our industry's lawsuits. Safety features built into the original equipment have sometimes been negligently or intentionally disabled by employers or workers in an effort to increase production or avoid the "nuisance" of dealing with guards, lock-out mechanisms, and other safety features. But proving such circumstances is extremely difficult, leaving the original machine tool manufacturer facing litigation because of circumstances completely beyond their control.

Madame Chairwoman, I think under circumstances in which our machine tool makers have not exercised control over a product for a long time, it is unreasonable and unfair to hold them accountable for the product's performance.

This kind of litigation is disproportionately expensive and socially unproductive. It is a drain on financial resources, not only from the adverse verdicts, but from the costs of successful defense. The reality is, most cases involving over-age machines never go to trial, and if they do, a jury almost always finds for the defendant. And, in those cases that do go to trial in which the jury finds for the claimant, the judgment can force a company to close its doors. In 1996, a \$7.5 million verdict involving a machine built in 1948 against Mattison Technologies, a 100-year-old Illinois machine-tool builder, led to the company's bankruptcy.

However, even when these lawsuits are "won," the litigation nevertheless results in unnecessarily high legal and transaction costs. No matter how frivolous the actual facts, the claimant's pleadings must be answered, depositions taken, design experts consulted, and historical records, if any, unearthed and evaluated. The result is a

substantial expenditure of funds, additional litigation in our courts, and the diversion of resources that could be invested in greater competitiveness. Insurers know this and factor it into insurance premiums.

This type of open liability also tends to feed legal extortion, in which baseless suits are filed by entrepreneurial lawyers who are banking on the fact that many companies and/or their insurers will pay an out-of-court settlement rather than accept the risk and high cost of going to trial.

Madame Chairwoman, most of our machine tool builders – particularly our small ones – just cannot afford this type of unfair liability at a time when they are facing serious and increased competition from foreign companies.

The incursion by foreign machine tool builders into the U.S. market is fairly recent (within the past 25 years). As a result, these foreign competitors do not bear the significant long-tail exposure of U.S. builders.

American companies that have been in business for many years must factor into their prices the risk of litigation involving thousands of over-age machines. Our Japanese and European competitors don't have those risks and those costs. Their liability exposure is relatively small (both Europe and Japan have 10-year statutes-of-repose, if they are sued in their home markets).

Enactment of a statute-of-repose for workplace durable goods would significantly level the playing field for U.S. manufacturers and achieve the uniformity and certainty necessary to produce the state-of-the-art products for which we are noted.

Madame Chairwoman, some years ago the Reagan and first Bush Administrations, at the urging of more than 250 Members of Congress, provided temporary import relief for our machine tool industry, based on the threat posed to our national security from Asian machine tool imports. They did so because they recognized that a strong machine tool industry is vital to America's military and economic security.

The same is as true, if not more so, today in terms of the importance of maintaining a strong, American-based machine tool sector. But our current product liability system has cost the manufacturing technology industry jobs, money and time. Advances in high-tech products are slowed as a result, and resources that could have gone toward the development of new technology, expanded jobs and higher productivity for America have been expended on wasteful litigation costs, a significant amount of which never actually benefits an injured worker.

Enactment of meaningful reform, including a statute-of-repose, could significantly improve the competitiveness of U.S. companies – particularly our small companies – and still ensure that no injured worker goes uncompensated – as opposed to meritless lawsuits.

I appreciate the Committee's attention to this issue and would again like to thank the Chairwoman and Congressman Chabot for allowing me to testify – and for Congressman Chabot's perseverance in pursuing product liability reform.

Thank you.