

Legal Trends Impacting Manufacturing

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Presentation Overview:

- About the NAM and the MCLA
- Why Manufacturing and Global Trends Matter to Montana
- Issues and Case Studies of Legal Trends
- How We Are Fighting Back

WHO WE ARE



- The voice of 12 million men and women who make things in America
- Largest and most respected manufacturing trade association in the United States
- More than 14,000 members, representing every sector and size, \$6.8 trillion in total revenues and over 85% of U.S. industrial output



Manufacturers' Center for Legal Action

About us:

- MCLA is integrated with the NAM Policy Team
- If Congress won't legislate, we will litigate
- Utilize litigation as an advocacy tool
- Engage in party litigation and provide amicus support in key cases
- Provide compliance assistance and promote education about the legal issues that impact the vitality of the manufacturing sector
- Manufacturing-focused litigation strategy

MCLA Focus



**Environment
and Energy**



**Labor and
Employment**



**Product and
Civil Liability**



**Intellectual
Property**



**Corporate Governance
and Shareholder
Liability**



**International
Trade**

Why Manufacturing and Global Trends Matter to Montana: Manufacturing Facts

Manufacturing Output and Firms

Total Manufacturing Output (*\$billions, 2016*) \$3.62
(*Percent share of total gross state product*) 7.9%

Manufacturing Firms in Montana (*2015*) 1,250

Employment and Compensation

Manufacturing Employment (*2016*) 19,700
(*Percent share of nonfarm employment*) 4.2%

Average Annual Compensation
(*Manufacturing, 2016*) \$51,155
(*Nonfarm Businesses, 2016*) \$34,203

Sources: U.S. Bureau of Economic Analysis and the U.S. Census Bureau

Montana Export Facts

Manufactured Goods Exports (*\$billions, 2016*)
(*Percent share of total goods exports*)

\$1.05
78.2%

U.S. Jobs Supported by Goods Exports (2015)

12,085

Employment from Manufacturing Exports
(*Export share of manufacturing jobs, 2011*)

23.5%

Small Business Share of Total Exporters (2015)

84%

Manufactured Goods to Free Trade
Agreement Partners (*\$billions, 2016*)
(*Percent of total exports, 2016*)

\$0.65
61.6%

Total Manufactured Goods Exports
to Canada and Mexico (*\$billions, 2016*)
(*Percent of total exports, 2016*)

\$0.54
51.3%

Top Five Export Markets (*Percent of total
manufactured goods exports, 2016*)

73.32%

- Canada (48.44%)
- China (8.63%)
- South Korea (6.68%)
- Taiwan (5.13%)
- Japan (4.44%)

Sources: International Trade Administration, U.S. Census Bureau

Legal Trends: The Good

- The NAM's most recent quarterly outlook survey from the end of 2017 showed 94.6 percent of NAM's members said that they were positive about their own company's outlook—an all-time high in the survey's 20-year history
- Supreme Court Justice Neil Gorsuch
- Congress used the Congressional Review Act (CRA) to overturn 15 rules
- Executive Order 13771, often referred to as President Trump's "one-in, two-out" order

The Bad and the Ugly, and Everything in Between

- Global -> federal -> state issues
- Where global and federal institutions fail to act, or fail to act timely, states will act
- Perceived lack of regulatory action leads to more NGO lawsuits for product liability, public nuisance and public trust

Global Issues: Lack of Data Protections

- Canada's lack of intellectual property and patent protection, such as revoking over 22 pharmaceutical patents in 25 cases over the past decade
- *Microsoft v. Dep't of Justice*: search warrants for data stored abroad
- European debates over the appropriate amount of protection for confidential business information

Global Issues: What to Watch for Next

- General Data Protection Regulation (GDPR) goes into effect on May 25, 2018, and requires strengthened data protection for EU individuals
- Enforcement of data localization laws in China, effective in 2017, and Russia, effective in 2015, which require, for example, companies to store certain data locally within a jurisdiction
- Trade issues: NAFTA, Brexit, tariffs

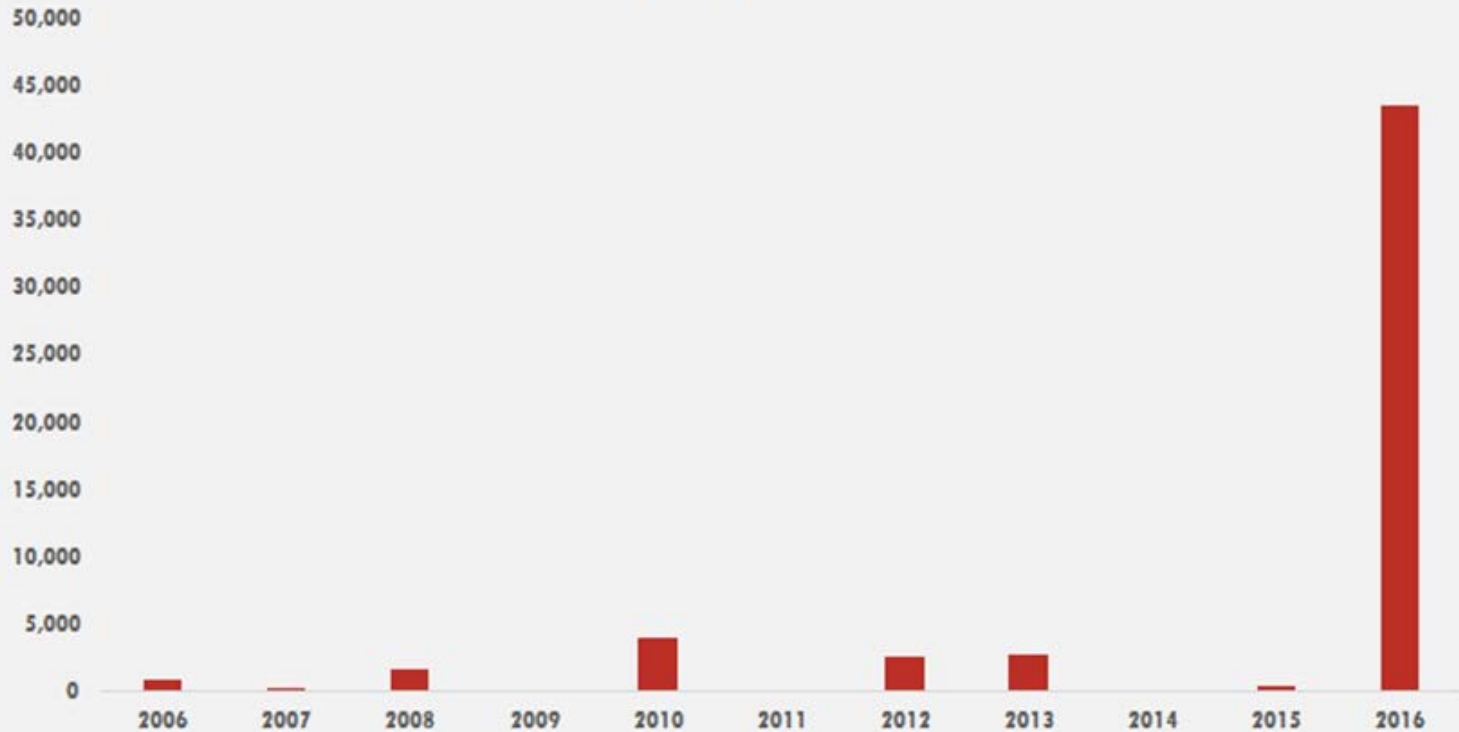
Federal Issues: Challenges to Agency Action and Inaction

- WOTUS: three NGO lawsuits filed in SDNY and DSC to challenge the Administration's extension of the applicability date to the rule
- Consumer Product Safety Commission's (CPSC) final rule on phthalates lawsuits
- Toxic Substances Control Act (TSCA): 5 lawsuits
- DOL/OSHA: many regulations are stayed, but lack of action by the agencies is causing uncertainty and more lawsuits

Labor Regulation Cost (10yr)

<u>Regulation</u>	<u>Annual Agency Costs</u>	<u>Industry Cost Estimates</u>	<u>Compliance & Paperwork Costs</u>	<u>Compliance Hours Required</u>
Blacklisting	\$400 million	<u>\$338 million</u>	\$3.2 billion	21.7 million
Overtime	\$304 million	<u>\$33 billion</u>	\$24 billion	25 million
Silica	\$1.1 billion	<u>\$5 billion</u>	\$25 billion	121.1 million
EEO-1	\$23 million	N/A	\$830 million	4.2 million
Union Boosting: Ambush and Joint Employer	N/A	N/A	\$17.5 billion	136 million
Injury and Illness Reporting	\$13 million	<u>\$1.1 billion</u>	\$10 billion	90 million
<u>Totals</u>	<u>\$1.5 Billion</u>	<u>\$39.4 Billion</u>	<u>\$80.5 Billion Ten Years</u>	<u>398 Million Hours</u>

DOL: New Regulatory Costs (in millions \$)



Federal Issues: What to Watch for Next

- More DOJ and EPA enforcement
- Superfund: Administrator is overseeing remedies > \$50 million, targeting 21 sites and adopting higher cost remedies
- Delegating some enforcement to the states
- Class action waivers and arbitration challenges

State Issues: More NGO Lawsuits

- Infrastructure attacks under: Clean Water Act, eminent domain, FERC/DOE approvals and for climate change impacts
- Product liability, public nuisance and public trust theories causes of action
- Sugar beverages and cell phones free speech cases
- Overtime and minimum wage laws

State Issues: What to Watch for Next

- Opposition groups are organized, well-funded and are promoting novel new arguments in the courts, particularly in California and New York
- Businesses need to comply with new warning labels based on California's Proposition 65 regulations by August 30, 2018
- Other states are copying California on Prop 65 and regulations on similar issues

How We Are Fighting Back

- Manufacturers' Center for Legal Action (MCLA)
- Manufacturers' Compliance Institute (MCI)
- Manufacturers' Accountability Project (MAP)

MCLA Offense and Defense

- Challenge regulations in court
- Defend regulations in court
- Amicus support for NAM members
- Education, networking and resources for manufacturing in-house counsel

MCLA 2017 Results and Major Wins

- Briefs filed: 62
- Cases where NAM was a party: 23
- Overtime Rule: overturned (est. compliance cost \$24B and 25 million hours of paperwork)
- WOTUS: *NAM v. Dep't of Defense* 9-0
Supreme Court decision

The NAM's Manufacturers' Compliance Institute

Bringing you exclusive, direct legal help from top-tier law firms—**free with membership**

Get Answers on Complex Issues:



Environmental



Global



Intellectual Property



Labor and Employment



Product Safety

- ▶ **FREE**—Prompt responses to your legal questions
- ▶ **FREE**—30-minute phone call with world-class legal counsel
- ▶ **FREE**—Guidance on local, federal, national and global legal issues
- ▶ **10% discount** on rates if members retain legal counsel

MCI by the Numbers

- People trained: 2,824
- Companies trained: 2,109.
- Inquiries handled: more than 160
- Cost to NAM members: \$0.00

Manufacturers' Accountability Project

- MAP is setting the record straight and uncovering activists who have sought to undermine and weaken manufacturers
- For several years, special interests have been using tort litigation and politically-motivated investigations by public officials
- Misguided and politically-motivated attacks serve only to undermine the legal system, manufacturing and our economy, leading down a slippery slope in which no sector of our economy is safe from attack

MAP: Nine Ongoing Lawsuits In CA and NY

- Marin County, City of Imperial Beach, City of Oakland, City of San Francisco, City of Santa Cruz, Santa Cruz County, San Mateo County, City of Richmond – all in California – and New York City
- The central argument here was rejected in *American Electric Power v. Connecticut*, where states sued manufacturers, trying to blame them for climate change based on the claim of public nuisance. The U.S. Supreme Court rejected the suit, in an 8–0 decision led by Justice Ginsburg
- Trial lawyers pushing these frivolous lawsuits stand to make huge sums of money, such as Hagens Berman’s contract with San Francisco, obtained by a recent public records request filing by the NAM, that stipulates a 23.5% contingency fee

MAP: Municipalities are Making a Big Mistake

- Oakland and San Mateo County are telling the courts one thing and their bond holders another
- New York City has paired their frivolous lawsuit with a politically-motivated divestments scheme that could hurt retirees
- If elected officials targeting manufacturers are genuinely concerned about the effects of climate change, they should address those concerns administratively, legislatively and personally, not through frivolous litigation or by playing politics

Questions?

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