

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

STYRENE INFORMATION AND RESEARCH CENTER, *et al.*)

Plaintiffs,)

v.)

KATHLEEN SEBELIUS, *et al.*)

Defendants.)

Civil Action No. 1:11-cv-01079-RBW

DECLARATION OF MICHAEL LEVY

I, Michael Levy, declare as follows:

1. I am Director of the Plastics Foodservice Packaging Group and the Expandable Polystyrene Resin Suppliers Group, which are part of the Plastics Division of the American Chemistry Council. I have been in the chemical industry for 31 years and have managed these groups for 17 years.

2. My responsibilities include understanding the economic, ecological, and health benefits of certain products made from styrene, as well as understanding the businesses that use them. My responsibilities also include understanding how regulatory actions affect businesses that use styrene and styrenic products.

3. I have personal knowledge of the following facts, and, if called, would competently testify to their truth.

4. Styrene is used to make polymerized styrene, plastics, and other products. The key features of many styrenic products are that they are lightweight, strong, and easy to clean. Businesses use styrene to make products that promote health, safety, and a higher standard of living, including:

- a. bicycle helmets
- b. transport equipment for vaccines, transplant organs, and blood supplies
- c. blood-analysis and dialysis machines
- d. refrigerators, microwave ovens, and small kitchen appliances
- e. countertops and shower surrounds
- f. insulating food-service containers
- g. shipping and storage containers for produce, dairy, eggs, and other agricultural products
- h. computers, televisions and video-game consoles
- i. automotive tires
- j. trucks, cars and boats
- k. carpets and furniture
- l. traffic-safety equipment

5. For many products styrene is necessary to make the material of choice for the specific application. For example, no reasonably available material has the unique combination of strength and pliability to replace styrenic plastic in bicycle helmets.

6. For other uses, styrene is only one option among several. For example, styrenic plastic used to store and ship milk, eggs, fruit, and other produce are lighter and stronger than their alternatives, but they could be replaced with coated paper board or glass. Food-service containers for quick-serve restaurants that are made from styrene provide outstanding insulation and cleanliness, but they could be replaced with other plastic containers or with coated paper

board. Styrenic plastics for shower surrounds and countertops are affordable and inexpensive to transport, but they could be replaced with granite or tile.

7. Food packaging and foodservice are highly competitive industries. Because these industries offer products that come into contact with food that is ingested, or that are visibly present in the home, they are vulnerable to consumer perceptions of possible toxicity. In my years of experience, I have received many inquiries from consumers, schools, government agencies, and purchasing bodies about the safety and health of polystyrene for food-contact uses, including questions about the possible migration of styrene from packaging to food.

8. I am responsible for providing extensive regulatory support to the styrenics industry on regulatory issues, including federal matters relating to the Report on Carcinogens (“RoC”). Based on my years of experience, styrene’s inclusion on the RoC as a chemical reasonably anticipated to be a human carcinogen will cause businesses in food packaging and foodservice to be overwhelmed with calls from customers concerned about toxicity and to begin an immediate assessment of their inventories of packaging. Experience shows that many businesses in this industry will elect to deselect styrenic products.

9. Styrene’s listing on the RoC will be widely and immediately known and disseminated throughout the trade media and trade press. It will precipitate immediate deselection of styrenics from a portion of the market which will not wait for warnings to appear. This statement is based on 30 years of experience in the foodservice plastics market. In fact, this is what happened during a similar listing issue in Japan. In my experience deselections like these are nearly impossible to reverse because they involve redesigning large systems of packaging,

printing, loading and marketing. Naturally, the scale and scope of deselection will increase should warning statements be required.

10. The disruptions in the food packaging and foodservice industries from the RoC listing of styrene will affect the nation's agricultural economy. According to the California Department of Food and Agriculture's most recent statistics, the state's \$37-billion agricultural economy accounts for half of the nation's supply of fruits, nuts and vegetables, and 22% of the nation's milk. Among the California fruits that rely on styrenic plastics for transportation and sale are strawberries (\$1.3 billion), raspberries (\$285 million), and blueberries (\$30 million). This is reported in the Agricultural Statistical Review, 2007 Overview, which is available at http://www.cdffa.ca.gov/statistics/files/CDFFA_Sec2.pdf.

11. According to the National Restaurant Association's statistics, food-service containers affect billions of dollars in the American economy.

12. Deselection of products derived from styrene will harm not only those who produce and use styrenic packaging, but also the environment, consumers, and the public health.

a. Styrenic containers reduce consumption of fossil fuels and greenhouse gas emissions because they can be transported more efficiently than heavier materials such as wooden crates or glass milk bottles. Styrenic containers can be rinsed and recycled.

Porous materials, such as coated paper board foodservice cartons or paper berry baskets, are seldom separated and cleaned of food waste and commercially recycled.

b. Styrenic containers make fruits, vegetables, and dairy products more affordable. In addition to being less expensive to transport, styrene containers reduce waste and spoilage.

c. Styrenic containers help prevent food-borne illness because they reduce contamination from bruising and breakage.

13. Styrene's listing on the RoC will disrupt the nation's economy, beginning with inefficiencies in foodservice and food container markets and then exponentially expanding its unintended effects. Styrene's inclusion on the RoC also will create a long-lasting misperception about the potential human health impacts of styrenic containers.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated: June 13, 2011



Michael Levy