

...news, views and reviews from the Center for Justice & Democracy

CENTER FOR JUSTICE & DEMOCRACY
****NEWS****

Dear Friends,

We are commemorating our 10th Anniversary with some great new developments at CJ&D! First, our web site has a brand new look. We've made it easier to find things and all our functions are much more user-friendly.

We have two new important new law review articles, "The Racial Implications of Tort Reform", accompanied by several new fact sheets and new outreach to civil rights organizations on civil justice issues; and our second law review on the unconstitutionality of health courts (co-authored with the Center for Constitutional Litigation).

And here are some new areas that we'll be covering soon: unsafe drugs and devices, children's products, judges and juries, the insurance industry, crime victims and civil justice, medical malpractice, environmental justice, military and immunity, and class actions.

We're here because it's critical that the consumer voice be heard strongly arguing for a robust civil justice system, and to fight the attacks on injured victims and the attorneys who represent them!

Sincerely,

Joanne Doroshow
 Executive Director

IN THIS ISSUE: CHILDREN'S PRODUCTS
CONGRESS TO THE RESCUE ON CHILDREN'S PRODUCTS

In 2007, there were 448 recalls by the Consumer Product Safety Commission (CPSC), the federal agency whose mission is "to save lives and keep families safe by reducing the risk of injuries and deaths associated with consumer products." Of that number, 231 were for children's products (an all-time high), which accounted for more than 46 million items. This was the finding of the Kids In Danger report, 2007: *The Year of the Recall*. "These products together caused at least 657 injuries and 6 deaths," said Nancy Cowles, the non-profit's Executive Director. "And those incidents include only those already reported at the time of the recall."

In addition, the study revealed that during 2007 the CPSC averaged more than four children's product recalls a week, more than double the average rate in every year since 2001. Toys constituted the majority of children's product recalls with over 30 million units. There were over 100 recalls due to excessive levels of lead in nursery items, toys, jewelry and art supplies. 2007 also marked the year of the largest crib recall in history - one million.

Unfortunately, 2008 has turned out to be another dangerous year for our nation's children. Every month brings more news of unsafe toys and children's products from the CPSC. (See sidebar on p. 3 for some of the more disturbing recalls.)

A recent joint report by the Consumer Federation of America, Consumers Union,



Kids In Danger, National Research Center for Women & Families, Public Citizen and U.S. PIRG confirms that toy and children's product recalls are on the rise. According to their analysis of CPSC data, the number of

recalls of toys and children's products is up 22 percent over the first half of last year. More specifically, "in the first six months of 2008, 108 children's products were recalled, including 45 for lead contamination and 10 for hazardous magnets. Of those 108 prod-

ucts, 53 toys have been recalled this year already, totaling 6.2 million units. Last year by June, there had been only 84 children's product recalls, which included 31 toy recalls."

Why are so many hazardous toys and children's products on the market in the first place? The answer lies, in part, with the CPSC, which has not done its job under the current administration. For one thing, the agency has been without a chair since July 2006 because President Bush failed to fill the opening with an appropriate, pro-consumer nominee, leaving regulation at a standstill.

"In the first six months of 2008, 108 children's products were recalled . . ."

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Another problem is that the CPSC doesn't issue safety standards for every product, or have pre-market jurisdiction over any products it regulates. It only inspects manufacturing facilities or polices products once they are on the market. Instead, the agency relies on pledges from manufacturers that their products meet relevant safety standards. In addition, the CPSC can't alert the public to product dangers without prior industry approval. If an industry chooses to withhold crucial health and safety information, the agency has no choice but to remain silent as more consumers suffer avoidable injuries. Moreover, under the current system, the public must rely on the media to convey news of unsafe products.

Faced with a weak, ineffective CPSC and congressional inaction, some states have stepped in to fill these voids and take steps to protect their most vulnerable consumers. For example, Oregon enacted legislation in March 2008 that makes it unlawful for retailers to sell recalled children's products, directs the state attorney general to help retailers receive CPSC recall notices and requires retailers to subscribe to the CPSC's free e-mail subscription list. Similarly, since February 2008, it's been unlawful in New Jersey to knowingly remanufacture, retrofit or sell recalled children's products, or where there has been a safety warning. Under Illinois's law, retailers must remove recalled products from store shelves, program their cash registers to ensure that the items can't be sold and post any recall or warning notice in a prominent location for 120 days.



State attorneys general have also been working to safeguard children from harmful products. California Attorney General Jerry Brown is pursuing a lawsuit against 20 leading toymakers and national retailers, including Mattel, Fisher-Price, Toys R Us, Wal-Mart, Target, Sears and Kmart, who allegedly exposed children to dangerous amounts of lead in violation of state law. In 2007, then-California Attorney General Bill Lockyer and New York AG Andrew Cuomo settled similar lawsuits against U.S. retailers and distributors over lead levels in costume jewelry. Children and teenagers can suffer brain damage, kidney damage, hearing loss and impaired growth if they are exposed to lead.

Recognizing that consumers, especially children, need stronger federal protection, Congress overwhelmingly approved "The Consumer Product Safety Improvement Act" in July 2008. Under this landmark legislation: lead will be essentially eliminated from toys and children's products; toxic phthalates (plastic softeners) will be banned from children's products; children's products must meet rigorous mandatory standards and safety testing; the CPSC must establish new safety standards for all-terrain vehicles; Consumers will have access to a public database on unsafe products; Children's products will require tracking labels so officials can trace a recalled product back to its factory; CPSC will see substantial increases in funding, other resources, enhanced authority to conduct recalls and levy higher civil penalties; state attorneys general will have the necessary authority to enforce product safety laws; and whistleblowers, who alert authorities to unsafe products and practices, will be granted significant protections.

"It's important to note, in 2007, Consumers Union dubbed that as the 'Year of the Recall.' Well that's over," said U.S. House Speaker Nancy Pelosi (D-Cal.) when announcing congressional passage of the Act. "With this legislation, we will not only be recalling, we



will be removing those products from the shelves, but more importantly, we will be preventing them from getting to the shelves in the first place, products that are harmful to the well-being of our children."

"One of the roles of government is to get between kids and the sorts of hazards that are well beyond parents who aren't engineers and chemists with laboratories at their disposal," agreed House Commerce Committee Ranking Member Joe Barton (R-Tex.). "This reauthorization gives the CPSC more teeth and a deeper bite, and makes it dramatically more certain that toys aren't tested for safety by kids on the living room floor before they're tested in a lab by experts."

Consumer advocates are just as pleased by the bill's passage. "This week, Congress responded to the wishes of parents and children all across America and passed legislation that will help restore our confidence in the safety of our toys and everyday products," said Ami Gadhia, Policy Counsel for Consumers Union. "Congress passed today the strongest consumer product safety bill in 30 years," added Dr. Diana Zuckerman, President of the National Research Center for Women & Families. "Our children and grandchildren are the big winners because their toys will be safer."

President Bush is expected to sign this much-needed legislation into law. His signature can't come soon enough.



DANGEROUS SWIMMING POOLS

In July 2007, 6-year-old Zachary Cohn drowned after his arm was trapped in a pool suction drain. The drain cover had come loose a few weeks earlier, and the pool service technician, who was aware of the problem, never returned to fix it. The force of the suction was so strong that Zachary's father and another adult couldn't pry him away from the drain until the pool pump's power was cut off minutes later. By then it was too late - Zachary could not be resuscitated.

Zachary's parents filed a lawsuit against Shoreline Pools, the company that built the Cohns' pool and provided weekly cleaning and maintenance service, as well as the town of Greenwich and Aberdeen Properties in Greenwich, which built their home and hired Shoreline to build the pool, alleging that safety requirements were ignored.

"Nothing will ever bring our son back, but we hope that through these legal proceedings other families will be spared the horrible tragedy we have suffered," Brian and Karen Cohn said in a statement.

In July 2008, Shoreline Pools President David Lionetti was charged with second-degree manslaughter because his company did not install a mandated safety vacuum release system that would have prevented Zachary's death. The case is still pending.

Too many children have been killed or injured by pool and spa circulation/suction entrapments. According to a March 21, 2008 CPSC memorandum, from 1997-2007, there were 74 reported incidents associated with suction entrapment. Of that number, 54 involved children ages fourteen and younger. Moreover, 8 of the 9 deaths reported and 37 of the 63 injuries reported involved children ages five through fourteen.

Hopefully the recently enacted "Virginia Graeme Baker Pool and Spa Safety Act" will protect children from dangerous pool and spa drains. Named after former Secretary of State James Baker's 7-year-old granddaughter - who died in June 2002 after the suction from a spa drain entrapped her under the water - the 2007 law: 1) prohibits the manufacture, sale or distribution of drain covers that don't meet CPSC anti-entrapment safety standards; 2) creates an incentive grant program for states to adopt comprehensive pool and spa safety laws requiring certain safety devices in swimming pools and spas to protect children; 3) establishes a national drowning prevention education program within the CPSC; and 4) requires public pools to incorporate anti-entrapment drain covers and other layers of protection.

"This legislation helps give meaning to the tragic circumstances that took her life and the lives of many other chil-

dren," said Graeme's mother, Nancy Baker. "It is a tribute to these children and their grieving families that this bill will prevent injuries and death as a result of drowning."



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2008 CHILDREN'S PRODUCT RECALLS

January: 125,000 Magnabild magnetic building sets are recalled because small magnets can fall out and cause serious health risks if swallowed or aspirated.

February: A CPSC report shows that infant injuries in cribs, strollers, playpens, car seats and other nursery products are on the rise.

March: 2.4 million MEGA magnetic toys are recalled since small magnets

can fall out and pose life-threatening safety hazards if ingested or inhaled.

April: 300,000 plush insect toys sold at dollar stores are recalled because they contain small parts that pose a choking hazard.

May: One million Little Tikes toy cell phones are recalled because the plastic hinge cover can detach, posing a choking hazard.

June: 320,000 Jardine baby cribs are recalled because their slats and spindles can break, creating a gap and posing a risk of entrapment or strangulation.

July: 500,000 children's necklaces with ballet shoe charms are recalled because the solder on the charm may contain high levels of lead.

PLAYGROUND SAFETY

In contrast to the views of corporate lobbyists and "tort reform" groups, pediatricians, parents, governments and consumer advocates all agree that safety improvements to playgrounds are a win-win situation. Children are more



likely to survive falls when safer surfaces and lower equipment are used, and the new designs provide more imaginative playspaces. Lawsuits serve a crucial purpose by ensuring that guidelines are followed and equipment is well-made and well-maintained.

While playgrounds have been getting safer and more interesting, the number of playground injuries that still occur clearly highlight that regulations must be stronger to do what they were intended to do - keep kids safe. As a 2004 medical study published in the Archives of Disease in Childhood put

it: "The value of play to children's physical and mental development is not challenged; however, it must also be balanced with the child's right for minimal risk to disabling injury. Head injury or serious fractures with lifelong consequences should not be considered part of growing up."

For more information, see the Center for Justice & Democracy's study, Kids N' Safe Play: Regulation, Litigation and Playground Safety at our website: <http://centerjd.org>.



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