



[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] JOSEPH MOHOROVIC, CPSM

I, Joseph Mohorovic, CPSM, [REDACTED]

My name is Joseph Mohorovic, CPSM. I am an adult resident of *Glen Ellyn, IL* *DuPage County*. I am over 21 years of age and am competent to [REDACTED]

[REDACTED]

I personally maintain my CV, [REDACTED] Specifically, this record details my experience, education and training, [REDACTED]

[REDACTED] This report details my expert opinions for this case, the facts and reasoning constituting the bases for my opinions, and qualifications, and is incorporated as if set forth fully. [REDACTED]

[REDACTED]

[REDACTED]





4215 Campus Drive
Aurora, IL 60504

JOSEPH P. MOHOROVIC, CPSM SR. MANAGING CONSULTANT

Jpmohorovic@engsys.com

[Joe Mohorovic Demo Reel](#)

Joe Mohorovic has a distinguished background as an executive and public servant, operating at the intersection of business and government, culminating in his service as a Commissioner on the U.S. Consumer Product Safety Commission (CPSC). A board-certified product safety expert, Joe brings real world product safety experience and insider's knowledge in both the private and public sectors as a Senior Managing Consultant in ESi's Safety and Risk Assessment Practice Group. He specializes in adverse event analysis, regulatory compliance counseling, expert testimony and dispute resolution.

Areas of Specialization

- Consumer product safety regulatory compliance
- Government investigations including civil penalties
- CPSC mandatory reporting obligation
- CPSA "Substantial Product Hazard" analysis
- Recall effectiveness
- Consumer product safety management best practices
- Compliance with CPSC mandatory certification requirements

Professional Certifications

Certified Product Safety Manager (#488), IBFCSM

Education

B.A., The University of Texas at Austin, 1994

M.B.A., The University of New Mexico, Anderson School of Business Management, 2002

Honors

North Carolina State University, College of Textiles: Executive-in-Residence, 2017

Saint Louis University, John Cook School of Business, Honorary Certificate: Education Booster for Product Safety, 2017

The University of New Mexico, Young Alumni Award, 2005

New Mexico Association of Commerce and Industry, FOCUS Business Star, 2002

Americans for Tax Reform, Friend of the Taxpayer Award, 2002

John Baker Elementary School, Community Appreciation Award, 2002

Albuquerque Chamber of Commerce, Leader Award, 2001

New Mexico Business Weekly, "Top 40 Under 40" issue, 2000

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www.engsys.com

June 2020



Joseph P. Mohorovic
June 2020

NM Speech & Hearing Association, Community Appreciation Award, 1999

Positions Held

Troutman Sanders LLP, Chicago, Illinois

Senior Consultant, 2018 - 2019

Dentons US LLP, Chicago, Illinois

Principal, 2017 - 2018

United States Consumer Product Safety Commission, Bethesda, Maryland

Commissioner, 2014 - 2017

Intertek Testing Services, Oak Brook, Illinois

SVP and Business Line Leader, 2007 - 2014

United States Consumer Product Safety Commission, Bethesda, Maryland

Chief of Staff and Director of International Programs, 2002 - 2007

New Mexico Legislature, Santa Fe, New Mexico

State Representative (R-28), 1999 – 2002

Professional Affiliations

American Society of Safety Professionals

International Board for Certification of Safety Managers (CPSM)

Society of Product Safety Professionals

International Product Safety & Liability Prevention Association

International Consumer Product Health and Safety Organization

International Consumer Product Safety Caucus (now known as OECD Working Party on Consumer Product Safety), Chairman (2006-2007) (inactive)

ES 340, Federal Career Senior Executive Service (inactive)

Seminars, Speeches, Webinars and Workshops

“The Role of Misuse in Consumer Product Safety,” Technical Meeting, Speaker, IEEE Product Safety Engineering Society, Webinar, April 2020

“A Debate: What is the Consumer’s Role in Product Safety,” ICPHSO Annual Meeting and Training Symposium, Debate with CPSC Acting Chairman Robert Adler, International Consumer Product Health and Safety Organization, Orlando, Florida, February 2020

“Moderated Q & A with CPSC Commissioner Peter Feldman,” Product Liability Conference, DRI, Moderator, New Orleans, Louisiana, February 2020

“U.S. Federal Regulatory Updates,” Softlines Retail Roundtable Meeting, Speaker, Intertek, New York, New York, November 2019



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"An Insider's View on What's Ahead for the CPSC," Continuing Education Afternoon, Speaker, Illinois Defense Council, Chicago, Illinois, August 2019

"Changes in the CPSC Administration – What You Need to Know," PLAC Webinar, Speaker, Product Liability Advisory Council, July 2019

"An Insider's View on What's Ahead for the CPSC," Assuring Product Safety, Preventing Recalls and Product Liability Lawsuits, Speaker, International Product Safety & Liability Prevention Association, Milwaukee, Wisconsin, May 2019

Consumer Product Safety Professional Certification Program, Certification Candidate Panel Judge, Society of Product Safety Professionals, St. Louis, Missouri, May 2019

"Exploration of Foreign Body Hazards, Mitigation Strategies, Manufacturing and Quality Controls," ICPHSO Annual Meeting and Training Symposium, Moderator, International Consumer Product Health and Safety Organization: Annual Meeting, Washington, DC, February 2019

"Changing of the 'Guard' at the CPSC," DRI Product Liability Conference, Defense Research Institute, Austin, Texas, February 2019

"Will the CPSC Reformulate its Approach to Chemistry in Consumer Products?" DRI Product Liability Conference, Speaker, Defense Research Institute, Austin, Texas, February 2019

AHFA Regulatory Summit, Keynote Address, American Home Furnishings Alliance, Raleigh, North Carolina, October 2018

"Analyzing the 3D Printing Regulatory Landscape," Legal, Regulatory and Business Conference on 3D Printing, Speaker, Chicago, Illinois, June 2018

"Fireside Chat with Former CPSC Commissioner Joe Mohorovic," SFIA Risk Management Summit, Speaker, Sports and Fitness Industry Association, Indianapolis, Indiana, April 2018

"From Silenced to Strategic: What the Last 25 Years Tells Us About What Lies Ahead," ICPHSO Annual Meeting and Training Symposium, International Consumer Product Health and Safety Organization, Orlando, Florida, February 2018

Product Safety Seminar West, Keynote Address, American Apparel & Footwear Association, Long Beach, California, February 2018

"CPSC Picks, Predictions and Other Things That Won't Happen in 2018," Exponent, Webinar, December 2017

"Textile Innovations and CPSC Compliance Considerations," Standards & Regulatory Expectations, Panelist, Techtextil North America, Chicago, IL, June 2017

"Supply Chain Transparency and CPSC Compliance," eVolve User Conference, panelist, Amber Road, National Harbor, MD, May 2017

"Lithium Ion Batteries, Emerging Technologies and Test Burden Reduction Under the CPSA," Arent Fox Webinar, Washington, DC, May 2017



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"Q&A with Commissioner Mohorovic," CSPA Mid-Year Meeting, Speaker, Consumer Specialty Products Association, National Harbor, MD, May 2017

"Executive in Residence," NC State University College of Textiles, Guest Lecturer, North Carolina State University, Raleigh, NC, May 2017

"The CPSC in Transition: What to Expect from New Agency Leadership," RILA Product Safety Committee Meeting, Retail Industry Leaders Association, Orlando, FL, February 2017

"Tolerable Product Risk – The Challenge of Risk Management," ICPHSO Annual Meeting and Training Symposium, Speaker, International Consumer Product Health and Safety Organization, Orlando, FL, February 2017

"Discussion of Policy Views on Consumer Misuse of Products," ICPHSO Annual Meeting and Training Symposium, Speaker, International Consumer Product Health and Safety Organization, Orlando, FL, February 2017

"2017: A New President. A New Commission?," SFIA/DRI Legal Summit, Speaker, Sports and Fitness Industry Association & Defense Research Institute, Las Vegas, NV, February 2017

"2017: A New President. A New Commission?," TIA Annual Strategy Meeting, Toy Industry Association, Washington, DC, December 2016

"A New President. A New CPSC?," Plastic Shipping Container Institute, Speaker, Chicago, IL, November 2016

Product Safety Training Seminar, Presenter, Intertek, Oak Brook, IL, October 2016

"CPSC from A to Z," CSPA Seminar, Speaker, Consumer Specialty Products Association, Bethesda, MD, October 2016

PPAI Product Responsibility Summit, Luncheon Remarks, Promotional Products Association International, Washington, DC, September 2016

"Can't You Hear Them Knocking? – Government Regulations & Investigations," 13th Annual Corporate Counsel Symposium, Panelist, Federation of Defense and Corporate Counsel, Philadelphia, PA, September 2016

"CPSC as a 21st Century Chemical Regulator?," ACI Fall Meeting, Speaker, American Cleaning Institute, Remarks, Washington, DC, September 2016

"From Product Testing to Incident Reporting: Exploring the Full Spectrum of Internal Compliance Programs," Southeast Regional Workshop, Speaker, International Consumer Product Health and Safety Organization, Atlanta, GA, June 2016

"Is the Pen Cap Mightier...?," FMI Legal Conference, Speaker, Food Marketing Institute, Chicago, IL, June 2016

"The Leading Edge of Safety," Product Safety East Seminar, Keynote Address, American Apparel & Footwear Association, New York, NY, June 2016



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"Fighting Fire with Fire," Fire Science Program, Presenter, Goldberg Segalla, Chicago, IL, June 2016

"Chemical Regulation at CPSC," Regulatory and International Affairs Joint Committee Meeting, Speaker, Consumer Specialty Products Association, Washington, DC, May 2016

"Flammability Issues Before the CPSC," IABFLO Law Officials 2016 Conference, Speaker, International Association of Bedding and Furniture Law Officials, Philadelphia, PA, April 2016

OPEI Legal and Regulatory Compliance Committee, Keynote Address, Outdoor Power Equipment Institute, Alexandria, VA, March 2016

"Q&A with the Commissioner," AAFA Board of Directors Meeting, Speaker, American Apparel and Footwear Association, Washington, DC, March 2016

"Introduction of Senator Tom Udall," ICPHSO Annual Meeting and Training Symposium, Keynote Introduction, International Consumer Product Health and Safety Organization, Washington, DC, February 2016

"Q&A with Commissioner Mohorovic," DRI Children's Product Panel, Defense Research Institute, New Orleans, LA, February 2016

"The Latest Developments with the CPSC: What You Need to Know," DRI Product Liability Conference, Speaker, Defense Research Institute, New Orleans, LA, February 2016

"Ethics in Federal Government: A Commissioner's Perspective," Benedictine Flexible M.B.A. Program, Guest Lecturer, Benedictine University, Lisle, IL, February 2016

"Q&A with Commissioner Mohorovic," JPMA Annual Summit, Speaker, Juvenile Products Manufacturers Association, Washington, DC, February 2016

"Introduction to the CPSC & Regulatory Reform Opportunities," Mercatus Center, Guest Lecturer George Mason University, Arlington, VA, February 2016

Fall 2015 Client Conference, Closing Featured Speaker, USLaw Network, Inc., Boston, MA, September 2015

2015 SPLiCE Licensors Workshop, Keynote Address, Society of Product Licensors Committed to Excellence, Buffalo, NY, September 2015

"Mock Testimony Exercise and Closing Remarks," Closing Workshop, Presenter and Trainer, Product Safety Management Certificate Course, Saint Louis, MO, August 2015

"TV & Furniture Tip-over Perspectives," AHFA Joint Industry Summit, Speaker, American Home Furnishings Alliance & ASTM International, High Point, NC, August 2015



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“Import Surveillance and Trusted Trader Programs,” AAEI Annual Conference and Expo, Speaker, American Association of Exporters and Importers, Arlington, VA, June 2015

“Issues Facing the CPSC,” Young Lawyers Chapter, Republican National Lawyers Association, Washington, DC, May 2015

“Import Surveillance, Penalties and Hot Topics,” NRF Product Safety Committee Conference Call, Remarks, National Retail Federation, Washington, DC, May 2015

“From Innovation-Incubator to Force-Multiplier: The Key Roles Voluntary Standards Play in Achieving Mission-Critical Public Health and Safety Objectives,” Supply Chain Operations, Strategy, and Infrastructure Development in a Global Economy: An Industry-Academic Teaching Support Workshop, National Institute of Standards and Technology, Washington, DC, May 2015

CPSC State Designee Meeting, Welcoming Remarks, U.S. Consumer Product Safety Commission, Bethesda, MD, May 2015

Product Safety Seminar, Remarks, Greenberg Traurig, Washington, DC, April 2015

“Q&A with Commissioner Mohorovic,” Consumer Reports, Yonkers, NY, April 2015

“Ethics in Federal Government: A Commissioner’s Perspective,” Lewis University College of Business Ethic’s Week, Speaker, Lewis University, Romeoville, IL, March 2015

“Regulatory Rollercoaster: CPSC and IAAPA,” IAAPA Advocacy Day, Remarks, International Association of Amusement Parks and Attractions, Washington, DC, March 2015

“Risk-Based Decision-Making,” SFIA Litigation & Risk Management Summit, Keynote Address, Sports and Fitness Industry Association, Las Vegas, NV, February 2015

“The Future of Retailer Reporting,” ICPHSO Annual Meeting and Training Symposium, Panelist, International Consumer Product Health and Safety Organization, February 2015

DRI’s Women in Law Luncheon, Remarks, Defense Research Institute, Las Vegas, NV, February 2015

“Fundamental Regulatory Concepts at CPSC,” DRI Children’s Products Panel Counsel Meeting, Presenter, Defense Research Institute, Las Vegas, NV, February 2015

Product Safety Seminar West, Keynote Address, American Apparel and Footwear Association, Long Beach, CA, January 2015

“Commissioner Mohorovic’s Priorities and Agenda,” National Association of Manufacturers’ CPSC Coalition, Speaker, National Association of Manufacturers, Washington, DC, November 2014

AFSL General Membership Meeting, Keynote Address, American Fireworks Standard Laboratory Miami, FL, October 2014



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TIA 7th Annual Washington DC Fly-In, Keynote Address, Toy Industry Association, Washington, DC, September 2014

“Commissioner Mohorovic’ s Priorities and Agenda,” Product Safety and Liability Conference, Speaker, Association of Home Appliance Manufacturers, Arlington, VA, September 2014

CPSIA Testing and Certification Rule Seminar, Moderator and Presenter, Intertek, Chicago, Boston, March 2013

“New CPSC Testing and Certification Requirements,” CPSIA Training Seminars (U.S.), Moderator and Presenter, Intertek, Los Angeles, Newark, November 2012

“New CPSC Testing and Certification Requirements: How Far Have We Come?,” CPSIA Training Webinar, Presenter, American Apparel and Footwear Association & Intertek, Webinar, October 2012

“New CPSC Testing and Certification Requirements,” CPSIA Training Seminars (Asia), Moderator and Presenter, Intertek, Bangkok, Ho Chi Minh City, Shenzhen, Guangzhou, Taipei, Shanghai, Seoul, September 2012

“New CPSC Testing and Certification Requirements for Children’s Products,” TexProcess, Presenter Webinar, April 2012

“New CPSC Testing and Certification Requirements,” CPSIA Training Webinar, Presenter, American Apparel and Footwear Association & Intertek, Webinar, January 2012

“New CPSC Testing and Certification Requirements,” Intertek Customer Day, Speaker, Intertek Hong Kong, China, December 2011

“The Indispensable Role of Labs in Spreading the Word,” Education and Outreach Roundtable – Public Meeting, Speaker, U.S. Consumer Product Safety Commission, Bethesda, MD, October 2011

“How the New CPSIA Reform Bill Affects Your Business,” Intertek, Webinar, August 2011

“U.S. and Canada: Product Safety Update,” Presenter, Intertek & National Retail Federation, Webinar, May 2011

“CPSIA Past, Present and Future,” Global Supply Chain Summit, Presenter, National Retail Federation, Columbus, OH, April 2011

“U.S. and CPSC Regulatory Update 2011,” Walmart Vendor Seminar, Presenter, Walmart, Bentonville, AR, March 2011

“The Mother of All CPSC Regulations: What the Testing and Certification Rules Will Mean for Retailers,” NRF General Counsel’s Update, Presenter, National Retail Federation, Webinar, January 2011



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“Three New (and Complicated) Product Safety Rules to Watch,” Retail Compliance and the CPSC, Presenter, Mintz Levin, Cohn, Ferris, Glovsky and Popeo PC, Webinar, December 2010

“Q&A from the Breakout Groups,” ICPHSO 7th International Meeting and Training Symposium, Moderator, International Consumer Product Health and Safety Organization, London, UK, November 2010

“The Changing Face of Regulation and How You Can Best Prepare,” Merchandise Supplier Management Seminar, Speaker, Retail Value Chain Federation, Teaneck, NJ, June 2010

“CPSIA Update & Recent Trends in U.S. Toy Regulations,” Nuremburg Toy Fair, Nuremburg, Germany, February 2010

“Understanding New U.S. Product Safety Law Series – Europe,” Consumer Product Safety Improvement Act of 2008 Training, Moderator & Presenter, Intertek, London, Paris, Florence, Frankfurt, Istanbul, March 2009

“Comparing Toy Safety Certification Programs,” ICPHSO Annual Meeting and Training Symposium, International Consumer Product Health and Safety Organization, Orlando, FL, February 2009

“CPSIA Power Lunch Series – USA,” Consumer Product Safety Improvement Act of 2008 Training, Moderator & Presenter, Intertek, New York, Atlanta, Los Angeles, Seattle, Chicago, San Francisco, Dallas, December 2008

“The Consumer Product Safety Improvement Act: What You Don’t Know CAN Hurt You!,” HKTDC & Intertek Training Seminar, Speaker, Hong Kong Trade Development Council, Hong Kong, China, November 2008

“Comprehensive Risk Assessment Screening,” Product Liability Seminar, Presenter, Association of Home Appliance Manufacturers, Washington, DC, October 2007

“Creating a Culture of Safety in Each Company,” Safety Training Seminars (Asia), Speaker, U.S. Consumer Product Safety Commission and Underwriters Laboratories, Shanghai, Hong Kong, October 2006

“Product Safety Requirements for the U.S.,” CPSC Electro Safety Symposium (Asia), Speaker, U.S. Consumer Product Safety Commission, Guangzhou, Hangzhou, China, April 2006

“Hazard/Risk-Based Approach to Safety Workshop,” ICPHSO 2nd European Meeting and Training Symposium, Chair, International Consumer Product Health and Safety Organization, Arnhem, Netherlands, November 2005

“Chinese Imports and the Implementation of CPSC Regulations,” 1st Sino-U.S. Safety Summit, CPSC and AQSIQ, Beijing, China, August 2005



Joseph P. Mohorovic
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“Risk Assessment at the CPSC: The Preliminary Determination Process,” ICPHSO Annual Meeting and Training Symposium, Speaker, International Consumer Product Health and Safety Organization, Bethesda, MD, February 2005

“Reducing Technical Barriers to Trade,” International Leaders’ Summit, Speaker, World Development and Empowerment, Zagreb, Croatia, November 2004

“The Role of International Standards in Addressing Emerging Hazards,” ICPHSO 1st European Meeting and Training Symposium, Moderator & Chair, International Consumer Product Health and Safety Organization, London, UK, November 2004

“GHS Implementation,” CSPA International Regulatory Conference, Speaker, Consumer Specialty Products Association, Washington, DC, March 2004

TIA Regional Meeting, Remarks, Toy Industry Association, Chicago, IL, July 2003

“The Role of International Harmonization of Standards: the U.S. Perspective for Consumer Safety in a Global Market,” 4th European Convention in Safety Promotion and Injury Control, Keynote Address, European Consumer Safety Association, Paris, France, April 2003

Publications

“Are the Hazards Posed by Table Saws Reasonable?,” DRI Product Liability Conference, Defense Research Institute, Austin, Texas, February 2019

“Two Years into the Trump Presidency – Will the CPSC Reformulate its Approach to Chemistry in Consumer Products,” DRI Product Liability Conference, Speaker, Defense Research Institute, Austin, Texas, February 2019

“Statement on Final Rule Prohibiting Phthalates in Children’s Toys and Child Care Articles,” Public Comment Submitted for the Record, U.S. Consumer Product Safety Commission, Bethesda, MD, October 2017

“Statement from Commissioners Adler, Kaye, Robinson and Mohorovic Congratulating Ann Marie Buerkle,” Public Comment Submitted for the Record, U.S. Consumer Product Safety Commission, Bethesda, MD, July 2017

“Statement on the Proposed Mandatory Rule Regarding Table Saws,” Public Comment Submitted for the Record, U.S. Consumer Product Safety Commission, Bethesda, MD, April 2017

“Improving the Process of Making Rules at Independent Agencies,” Penn Program on Regulation, REG BLOG, Opinion, January 2017

“Improving Regulatory Analysis at Independent Agencies,” Penn Program on Regulation, REG BLOG, Opinion, January 2017



Joseph P. Mohorovic
June 2020

“Statement on the Commission’s Regulatory Flexibility Act Review of the Standard for the Flammability (Open Flame) of Mattress Sets,” Public Comment Submitted for the Record, U.S. Consumer Product Safety Commission, Bethesda, MD, December 2016

“Joint Statement of Commissioners Adler, Kaye, Robinson and Mohorovic Urging Parents to Stop Using Padded Crib Bumpers,” Public Comment Submitted for the Record, U.S. Consumer Product Safety Commission, Bethesda, MD, November 2016

“Reform the CPSC’s Civil Penalty Policies and Practices,” Public Comment Submitted for the Record, U.S. Consumer Product Safety Commission, Bethesda, MD, June 2016

“Taking the Red Tape Out of Apparel,” Apparel Magazine, June 2016

“Statement Regarding Civil Penalty Settlement with Sunbeam Products (Jarden),” Public Comment Submitted for the Record, U.S. Consumer Product Safety Commission, Bethesda, MD, June 2016

“Enforcement Gone Amok: The Many Faces of Over-Enforcement in the United States,” US Chamber Institute for Legal Reform, May 2016

“Statement Regarding Civil Penalty Settlement with Teavana Corporation,” Public Comment Submitted for the Record, U.S. Consumer Product Safety Commission, Bethesda, MD, May 2016

“Statement Regarding Civil Penalty Settlement with Gree Electric,” Public Comment Submitted for the Record, U.S. Consumer Product Safety Commission, Bethesda, MD, March 2016

“Statement on Commission’s Decision to Exercise Enforcement Discretion Regarding Certificates for Low-Risk Adult Apparel,” Public Comment Submitted for the Record, U.S. Consumer Product Safety Commission, Bethesda, MD, February 2016

“Statement Regarding Retrospective Review of Rulemaking,” Public Comment Submitted for the Record, U.S. Consumer Product Safety Commission, Bethesda, MD, December 2015

“Joint Statement of Commissioner Ann Marie Buerkle and Commissioner Joseph P. Mohorovic Regarding the Fall 2015 Regulatory Agenda,” Public Comment Submitted for the Record, U.S. Consumer Product Safety Commission, Bethesda, MD, September 2015

“THE BIG INTERVIEW: Joseph P. Mohorovic, CPSC Commissioner, “Brand Extensions & Licensing Worldwide, BEL Magazine, Autumn 2015

“Statement on the Limited Test Burden Relief Granted by CPSC,” Public Comment Submitted for the Record, U.S. Consumer Product Safety Commission, Bethesda, MD, July 2015

Congressional testimony before the US Senate Committee on Commerce, Science, and Transportation (Subcommittee on Consumer Protection, Product Safety, Insurance and Data Security), Comments Submitted for the Record, June 2015



Joseph P. Mohorovic
June 2020

Congressional testimony before the US House Committee on Energy & Commerce (Subcommittee on Commerce, Manufacturing, and Trade), Comments Submitted for the Record, May 2015.

“Statement Regarding Civil Penalty Settlement with Office Depot,” Public Comment Submitted for the Record, U.S. Consumer Product Safety Commission, Bethesda, MD, May 2015

“Languishing Test Burden Reduction Efforts at CPSC,” Letter to House and Senate Appropriations Leadership, Public Comment Submitted for the Record, U.S. Consumer Product Safety Commission, Bethesda, MD, March 2015

“Don’t Sign SB 258 Expanding ATV/ROV Use on Paved Roads,” Letter to Governor Gary Herbert of Utah, Public Comment Submitted for the Record, U.S. Consumer Product Safety Commission, Bethesda, MD, March 2015

“Don’t Authorize ATV/ROV Use on Paved Roads,” Letter to Chairperson Cathrynn N. Brown of the New Mexico House of Representatives, Public Comment Submitted for the Record, U.S. Consumer Product Safety Commission, Bethesda, MD, March 2015

“Ban Padded Crib Bumpers,” Letter to Chairperson Emily McAsey of the Illinois House of Representatives, Public Comment Submitted for the Record, U.S. Consumer Product Safety Commission, Bethesda, MD, March 2015

“Don’t Authorize ATV/ROV Use on Paved Roads,” Letter to Chairwoman Caddy McKeown of the Oregon House of Representatives, Public Comment Submitted for the Record, U.S. Consumer Product Safety Commission, Bethesda, MD, February 2015

“Regulatory Philosophy: Remarks to the DRI Children’s Products Panel Counsel,” Public Comment Submitted for the Record, U.S. Consumer Product Safety Commission, Bethesda, MD, February 2015

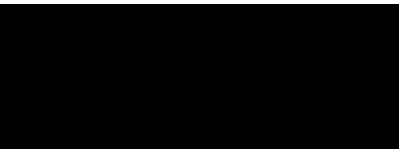
“Regulatory Philosophy: Remarks to the American Apparel & Footwear Association,” Public Comment Submitted for the Record, U.S. Consumer Product Safety Commission, Bethesda, MD, January 2015

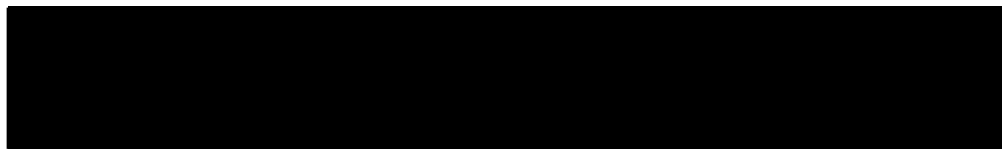
“Statement on the Commission’s Extension of the Stay of Enforcement of Requirements for Child-Resistant Packaging for Products Containing Imidazolines,” Public Comment Submitted for the Record, U.S. Consumer Product Safety Commission, Bethesda, MD, November 2014

“Statement on Proposed Mandatory Rule Regarding Recreational Off-Highway Vehicles,” Public Comment Submitted for the Record, U.S. Consumer Product Safety Commission, Bethesda, MD, October 2014

“Statement on Safety Standard for Magnet Sets,” Public Comment Submitted for the Record, U.S. Consumer Product Safety Commission, Bethesda, MD, September 2014

“The Indispensable Role of Labs in Spreading the Word,” Education and Outreach Roundtable – Public Meeting, Public Comments Submitted for the Record, U.S. Consumer Product Safety Commission, Bethesda, MD, October 2011



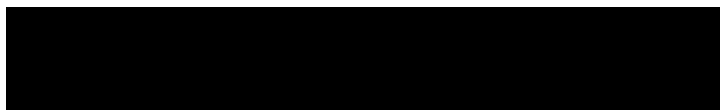


DEDIOS, ET AL. VS. EPOCH EVERLASTING PLAY, ET AL.

ESi Project No: 74316A



4215 Campus Drive
Aurora, IL 60504


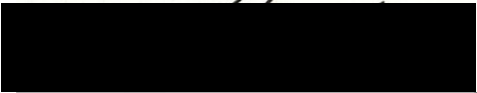


D. MARIA SCHMIDT as Personal Representative of the Estate of Dakotah Dedios, Deceased, and RICHALINE DEDIOS, Plaintiffs, v. INTERNATIONAL PLAYTHINGS LLC, EPOCH EVERASTING PLAY, LLC, WALMART, INC., and MARIE SHORT, EPOCH COMPANY, LTD, Defendants.

ESi Project No: 74316A



Mr. John F. (Jack) Walker III
Martin Walker, P.C.
121 N. Spring Ave.
Tyler Texas 75702



Joseph P. Mohorovic, CPSM
Senior Managing Consultant



Technical Review by:

Anne Mathias

Anne Mathias, P.E.
Senior Managing Consultant

7/27/2020

Date





Summary

Epoch Everlasting Play LLC (EEP) imported the subject toy, Yellow Labrador Twins, from the Calico Critters product line that contained a small pacifier accessory believed to have caused the death of Dakota Dedios and which nearly took the life of James Rencher.

The toy is labeled "3+" by the manufacturer and was tested and certified inappropriately as a toy intended for children over 3 years old in violation of U.S. Consumer Product Safety Commission (CPSC) regulations. The subject product was sold with a dangerous small part and is a banned hazardous substance pursuant to the Federal Hazardous Substances Act because it presents a choking, aspiration or ingestion hazard to children under 3 years of age and should be recalled.

EEP is in violation of the Consumer Product Safety Act (CPSA) by committing multiple prohibited acts due to their general failure to exercise the degree of care that a prudent and competent person engaged in the same line of business would exercise under similar circumstances.¹

[REDACTED]

[REDACTED]

All opinions are held to a reasonable degree of professional certainty in the field of consumer product safety. I reserve the right to modify my conclusions and supplement this report upon presentation of new facts in this matter.

Qualifications

I am a Senior Managing Consultant in the Safety and Risk Assessment practice group of Engineering Systems Inc. (ESi). My background includes work as an executive in the consumer product private sector and as a public servant. I was nominated by President Barack Obama and unanimously confirmed by the United States Senate to serve as a Commissioner on the United States Consumer Product Safety Commission (CPSC). In that role, I worked closely with consumer product manufacturers, retailers, industry associations and nongovernmental organizations, as well as with stakeholders in the federal executive and legislative branches.

I have a deep understanding of the CPSC, having previously served in a staff capacity as Chief of Staff and Director of International Programs under former Chairman Hal Stratton. I was unanimously elected Chairman of the International Consumer Product Safety Caucus by my international regulatory counterparts.³ Prior to joining the CPSC, I served two terms in the New Mexico Legislature as a State Representative.

In between my service as a CPSC staff member and my presidential appointment as a Commissioner, I spent seven years in the private sector. As a Senior Vice President with Intertek Group plc, a multinational inspection, product testing and certification company, I was responsible for all aspects of

¹ Definition of "Due Care" 16 CFR §1107.2.

[REDACTED]

³ This effort continues today under the umbrella of the OECD and is now called the "Working Party on Consumer Product Safety."



performance, growth and strategic management in the North American region. In this position, I led global teams in providing compliance and risk management services to some of the world's largest consumer brands and most complex supply chains.

The discipline of consumer product safety management was at its most formative stage in the 1970's. In 1967, Congress created the National Commission on Product Safety with a mandate to "conduct a comprehensive study and investigation of the scope and adequacy of measures now employed to protect consumers against unreasonable risks of injuries which may be caused by household products." The Commission submitted its final report to the President and Congress in 1970 which led to the formation of the CPSC through passage of the Consumer Product Safety Act in 1972. A systems-based approach to product safety management took hold in the 1970's with publication of the Guidelines for Organizing a Product Safety Program, published by the American National Standards Institute (ANSI) in 1972. The CPSC published the Handbook for the Manufacturing of Safer Consumer Products in 1975. The National Safety Council published the Product Safety Management Guidelines in 1989 describing the oft-cited "Safety Hierarchy" for hazards. While product safety management theory has been studied and published for over fifty years, key principles have withstood the test of time as evidenced by CPSC's republication of the Handbook in 2005 with relatively few changes.⁴ A somewhat recent notable publication in product safety management is the 2013 ISO standard Consumer Product Safety – Guidelines for Suppliers.⁵

I am a Certified Product Safety Manager with the International Board for Certification of Safety Managers (CPSM #0488). Established in 1980 to address a need for a comprehensive credential in product safety, the CPSM provides recognition and status to those meeting the educational, experience, and examination requirements using a multi-disciplinary approach. The CPSM exam addresses topics such as compliance requirements, voluntary standards, engineering, system methods, environmental science, behavioral science, ergonomics, human factors, law, economics, and management. I am a member in good standing of the American Society of Safety Professionals, the Society of Product Safety Professionals, the International Product Safety & Liability Prevention Association and the International Consumer Product Health and Safety Organization.

I am a frequent speaker on subjects of product safety having conducted over one hundred CPSC compliance trainings in more than forty cities spanning sixteen countries. I have been published in numerous governmental, trade and academic publications. I served as Executive-in-Residence for the North Carolina State University, College of Textiles and received the first ever Honorary Certificate as an "Education Booster for Product Safety" for my contributions to the training and certification programs offered in coordination with Saint Louis University.

My industry experience, board certification, and status as a former Commissioner on the CPSC (2014 – 2017) renders me qualified to evaluate and opine upon compliance and demonstration of product safety best practices related to obligations pursuant to the statutes and regulations administered by the CPSC. CPSC Commissioners, by statute, are selected by the President because of their background and expertise in areas related to consumer products and protection of the public from risks to safety.⁶ By regulation, a majority vote of Commissioners approves, rejects, or requires other action necessary to ensure that a proposed voluntary Corrective Action Plan (CAP -- often called a "recall") is adequate.⁷ The Commission delegated the authority to approve most lower risk voluntary

⁴ As Director of International Programs and Intergovernmental Affairs of the CPSC, I directed the reevaluation, revision and publication of the Handbook in 2005 in both English and Mandarin. The CPSC was confronted by an extraordinary number of defective products imported from overseas – primarily China. The Handbook satisfied the need to promote product safety management best practices beyond U.S. borders to better assure product safety for American consumers.

⁵ International Organization for Standardization, ISO 10377:2013

⁶ Consumer Product Safety Act, Section 4 (a).

⁷ [16 CFR §1115.20](#) (a)(3).



Corrective Action Plans for products which the CPSC staff has preliminarily determined present substantial product hazards. However, CPSC staff decisions of substantial product hazard are preliminary because Congress granted only Commissioners with the authority to make a formal determination that a product is defective and creates a substantial product hazard.⁸

As a Commissioner, I have testified before both the US Senate and the House of Representatives. I voted on proposed civil penalties to settle alleged violations of CPSC rules, authority to pursue criminal sanctions, substantial product hazard determinations, and the evaluation, formulation, negotiation and ultimate approval of corrective action plans (recalls). I apply the same methodology to evaluate compliance with the statutes and regulations administered by the CPSC in my current capacity that I applied as a Commissioner. This includes a foundational understanding of the statutes and regulations administered by the CPSC informed by case law, official agency guidance, publications and policy development.

A summary of my qualifications and a list of my publications are set forth in the curriculum vitae [REDACTED]. ESi charges \$450 per hour for my time on this matter.

Scope of Work

My scope of work was to evaluate the subject toy believed to have caused the death of Dakotah Dedios with respect to federal product safety law. I was also asked to evaluate defendants' conduct for knowing⁹ violations of federal product safety law and adherence or failure to exercise ordinary care of consumer product safety management practices the CPSC refers to as "Due Care¹⁰" by regulation.

Background

Epoch Co. Ltd. is the creator of Calico Critters. Established in 1958, Epoch Co. Ltd. is the third largest toy manufacturing company in Japan as of 2019. The Calico Critters line of miniature flocked animal figures was introduced in Japan in 1985 as Sylvanian Families and are distributed worldwide. In 1993, Tomy, who had been distributing the toys worldwide, lost the rights to the name Sylvanian Families in Canada and the USA. Tomy reintroduced the line under the new name Calico Critters of Cloverleaf Corners, now simply just called Calico Critters. In North America, the Calico Critters were released with different packaging. Tomy stopped selling Calico Critters, but a new company, International Playthings, LLC, picked up the line. International Playthings, LLC was sold to an affiliate of Epoch Company, Ltd. in November of 2008. International Playthings, LLC rebranded itself as Epoch Everlasting Play, LLC in around February of 2017. Epoch Everlasting Play, LLC is a subsidiary of Epoch Co., Ltd., a global toy company based in Japan. Epoch Everlasting Play, LLC has a listed address in Parsippany, New Jersey.

On May 5, 2018, Richaline Dedios purchased the subject Calico Critters "Yellow Labrador Twins" from Walmart in Bernalillo, New Mexico. On May 10, 2018, Dakotah Dedios died after choking on the small pacifier accessory included with the Yellow Labrador Twins. The attending pathologist was

⁸ United States Consumer Product Safety Commission, Directives System, Order #0310.14.

⁹ 16 CFR §1115.23(f): "A knowing violation of section 19(a) of the CPSA subjects the violator to a civil penalty in accordance with section 20(c) of the CPSA. 'Knowing,' as defined in section 20(c) of the CPSA means the having of actual knowledge or the presumed having of knowledge deemed to be possessed by a reasonable person who acts in the circumstances, including knowledge obtainable upon the exercise of due care to ascertain the truth of representations."

¹⁰ 16 CFR §1107.2 "Due care means the degree of care that a prudent and competent person engaged in the same line of business or endeavor would exercise under similar circumstances. Due care does not permit willful ignorance."



interviewed by a CPSC field investigator. When questioned if food was a factor or exacerbated the incident, she indicated, “No, this was an upper airway obstruction.”¹¹

The subject toy is a flocked¹² animal accompanied by accessories. The subject toy’s packaging is labelled “3+” with the mandatory warnings required for toys or games intended for use by children who are at least three years old but less than six years of age when the toy or game includes a small part as defined in [16 CFR §1501](#). See Figure 1.



Figure 1: Exemplar toy and packaging

Epoch Everlasting Play LLC (Epoch) issued a Children’s Product Certificate (CPC) certifying compliance of the subject product to applicable CPSC product safety regulations.¹³ Epoch’s CPC was based on third party testing conducted by SGS in Shenzhen, China. SGS test reports were issued to Epoch Everlasting Play LLC with “Requested Age Grading” of “3+.” SGS evaluated the subject products to the requirements for toys intended for children over three years of age.

¹¹ CPSC Epidemiologic Investigation Report, Epoch_000782.

¹² Flocking is the process of depositing small fiber particles onto a surface to produce a velvety texture to increase tactile sensation. “The (Calico) critters are fully poseable and are made using a unique soft-flocking process, which gives their ‘fur’ a smooth, velvety texture.” Calico Critters marketing “For Parents” page 1, deposition of Alyssa Masterson, exhibit X3.

¹³ Deposition of Alyssa Masterson, exhibit X8.



Analysis

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

¹⁸ ASTM F963-17, A1.4.3.1, [REDACTED]

[REDACTED]



[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



Additional Factors for Scope Consideration of 16 CFR Part 1501.2(b)

16 CFR §1501.2(b) identifies a three-prong method with which the Commission will determine if toys and other articles are intended for use by children under 3 years:

1. The manufacturer's stated intent (such as on a label) if it is a reasonable one;
2. The advertising, promotion, and marketing of the article;
3. And whether the article is commonly recognized as being intended for children under 3.

The Manufacturer's Stated Intent

The subject products were labelled "3+" and "Not for children under 3 years." This is the manufacturer's stated intent, but it is not reasonable based on application of the other relevant factors provided below.

*"Although small parts that present a hazard are clearly inappropriate for children under 3 years of age, the mere presence of small parts does not preclude the possibility that CPSC staff would determine that product is intended for children under the age of 3. Rather, when evaluating a product for age appropriateness, one ought to consider whether parents and others would purchase the product for children under 3 years of age, based on its characteristics and the characteristics of children of this age."*²⁷

Advertising, Promotion and Marketing

The following example clearly demonstrates that the subject products were intended by the manufacture to be used by children under 3. Perhaps more disturbing is the recognition by the manufacturer that the small parts in the products present choking hazards. It should be noted that in her deposition, EEP's corporate representative testifying on matters of CPSC compliance and product safety, Alyssa Masterson, testified that she "(is) involved in overseeing the website."²⁸ The manufacturer's website FAQs from 2014 to 2019 included the following:

"Q1: I want to buy my child Calico Critters. How old should she be to play with them?"

*Answer: Calico Critters have small parts so should only be given to children under 2 with adult supervision. Three years old is the best age to introduce Calico to your child, but maybe don't buy the sets with very small accessories."*²⁹

There is proof of this messaging by the manufacturer resonating in the public domain. In an article, Best Calico Critter Toys in 2020, the author echoed the FAQs with the following, "Babies under the age of 3 can also play with Calico Critters but under strict adult supervision."³⁰ Learning Express, a toy retailer and distributor of Calico Critters states, "Calico Critters have small parts so they should only be given to children under 2 with adult supervision. We recommend Calico Critters for children

²⁷ CPSC Age Determination Guidelines, January 2020, p. 6.

²⁸ Testimony of Alyssa Masterson, p. 36. "A. So with regard to Calico Critters.com, which is the brand website for Calico Critters, that website is managed by our parent organization, as well as a third-party agency that they have working on their behalf, and then also within EEP I am involved in overseeing the website."

²⁹ Exhibit X7, Deposition of Alyssa Masterson.

³⁰ Best Calico Critter Toys in 2020, <https://trivaltech.com/calico-critter-toys/>.



ages 3 and up.”³¹ Even the Today Show identified Calico Critters among The Best Toys for 2-Year-Olds 2020, “At 2 and 3, toddlers are often pretending to be Mommy or Daddy and working through ideas about separation. This one features little animal critters.” Finally, an article entitled, Very Best Toys for Toddlers: 2 and Up³², from the website “Chronicles of a Babywise Mom” features Calico Critters.

On the Calico Critters website, Epoch promotes the product as an award-winning product “for collectors of all ages.”³³ 16 CFR §1501.2(c) states “This regulation does not apply to toys or articles which are solely intended for use by children 3 years of age or older.”³⁴ Particular attention should be on the word “solely.” Since the manufacturer’s stated intent includes children “under 2” and “all ages,” the subject products were not “solely” intended for use by children 3 years of age or older. Therefore, the regulation does apply to Subject Products.

The marketing of the Subject Products on Walmart’s website is conflicting. A disclaimer indicates that the content is provided by “manufacturers, suppliers and others.” The marketing content in one section states that the age range is “3 years and up” while under “Specifications” the age range is listed as “2 years.”³⁵

A final point to make on the marketing of Calico Critters is that at least as early as 2010 observers recognized the conflicting messaging. The author of the article, Squinkies and Calico Critters – Two Hot Toys, Two Choking Hazards, summed up the public safety issues posed by Epoch’s marketing effectively:

“The Calico Critters website is no different. There are links to coloring pages, stories and interactive games. One interactive game allows the user to place stickers on a Calico Critter home. Both websites offer games aimed at a very young consumer, but the toys are tiny and not suitable for the age group being targeted...The trouble facing parents is marketing verses the manufacturer’s suggestions. Marketing is clearly aimed for the youngest crowd, but the toys are too small for the age group who will be most pulled into the hottest toys of Christmas 2010 craze. Parents need to leave the hottest toys of Christmas 2010 to older children this year. Marketing to the masses is a money making business with potentially harmful risks.”³⁶

Common Recognition

As stated above, the enumerated articles in §1501.2(a) identify those products commonly recognized as intended for children under 3. Included in that list are “stuffed, plush and flocked animals and other figures.” As stated by the Commission in the Federal Register notice:

*“The Commission made a special effort to define clearly the scope of the small parts proposed regulation. The scope section (1501.2) included a lengthy list of the types of **products that are definitely covered**.”³⁷*

³¹ Learning Express Gifts, <https://lexpblog.com/top-products/calico-critters/>.

³² <https://www.babywisemom.com/best-toys-for-toddler-2-and-up/>

³³ <https://calicocritters.com/parent/> “About” page, “Why Buy Calico Critters,” “Loveable and Collectible,” paragraph one.

³⁵ <https://www.walmart.com/ip/Calico-Critters-Yellow-Labrador-Twins/37463070>.

³⁶ “Squinkies and Calico Critters – Two Hot Toys, Two Choking Hazards,” <https://echoflam.com/squinkies-and-calico-critters-two-hot-toys-two-choking-hazards/>.

³⁷ Federal Register, Volume 44, No. 117, Friday, June 15, 1979, p. 34897.



CPSC chose a farm scene when developing a hypothetical example of toys intended for children under 3 and subject to the Small Parts Regulation:

“For those firms with products that still may not meet the requirements, the costs of eliminating small parts problems are expected to be small in most cases. Frequently, the necessary adjustments will involve little more than removing a small part which does not change the fundamental nature of the toy. For example, a miniature farm, including a barn, fence, and farm animals might fail only because one of the smaller figures, such as a chicken, might fit entirely within the test cylinder. Removal of this figure would allow this toy to meet the requirements of the regulation with no other changes. Of course, the manufacturer would also have the option of making the figure larger and meeting the requirements in that way.”³⁸

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

³⁸ “Final Report on Economic Assessment of the Small Parts Regulation,” David Pomeroy, Hazard Identification and Analysis, Division of Special Economic Studies, April, 1979, p. 8.

[REDACTED]

[REDACTED]



Failure to Comply with 16 CFR Part 1501

As identified above, Subject Products fall within the scope of 16 CFR 1501 because they are flocked animals identified in the list of products “definitely covered” by the regulation (§1501.2(a)). They are also subject to the regulation through an analysis of §1501.2(b) above. The Subject Products fail to comply with the small parts rule because the animals and accessories fit entirely within the Small Parts Test Cylinder identified in §1501.4 thereby presenting an unreasonable risk of injury to children.⁴¹ See Figure 2.



Figure 2: Exemplar parts fit entirely in Small Parts Test Cylinder

⁴¹ Under section 2(f)(1)(A) of the FHSA, the definition of “hazardous substance” includes “[a]ny toy or other article intended for use by children which the [Commission] by regulation determines...presents an electrical, mechanical, or thermal hazard.” Under Section 2(s) of the FHSA, “[a]n article may be determined to present a mechanical hazard if, in normal use or when subjected to reasonably foreseeable damage or abuse, its design or manufacture presents an unreasonable risk of personal injury or illness...because the article (or any part or accessory thereof) may be aspirated or ingested...or...because of any other aspect of the article’s design or manufacture.” Through the Small Parts Regulation (16 CFR Part 1501), the Commission defined as hazardous substances certain toys and other articles intended for use by children under 3 years of age, based on the small parts hazard they present. When the Commission issued the final regulation defining them as “hazardous substances,” they became automatically “banned hazardous substances” under section 2(q)(1)(A) of the FHSA, because they are “[toys] or other article[s] intended for use by children which [are] hazardous substance[s].”



Failure to Comply with the Small Parts Rule Creates a Substantial Risk of Injury to the Public

Mere failure to comply with a rule, regulation standard or ban does not necessarily create a substantial risk of injury to the public. However, the small parts of the Subject Products do create a substantial risk of injury to the public.

The Small Parts Rule was promulgated to protect children from unreasonable risks of choking, aspiration or ingestion from small parts. The pacifier accessory (Figure 3) that accompanied the Yellow Labrador Twins is particularly dangerous. The Pathologist who examined Dakotah Dedios identified that the cause of death was choking by the toy pacifier. The pacifier was aspirated and found in Dakotah's bronchus during the autopsy.⁴²



Figure 3: Exemplar toy pacifier accessory

Unfortunately, this is not the only serious incident caused by the toy pacifier accessory. On April 13, 2013, 22-month-old James Rencher aspirated the pacifier accessory of a Calico Critter toy.⁴³ First responders were able to push the toy into James' lungs – providing him with some precious air while he was rushed to the hospital and into surgery. James survived the episode, but experienced “posturing,” a symptom consistent with brain damage and doctors worried that James had been without oxygen for too long. Doctors told James' parents that he suffered brain trauma but does not appear to have permanent damage according to the news report.

Substantial Product Hazard Under Section 15(a)(2) of the CPSA

A product is a Substantial Product Hazard under Section 15(a)(2) of the CPSC if

- 1) The Subject Product contains a defect; and
- 2) Such defect, because of the pattern of defect, the number of defective products distributed in commerce, the severity of the risk, or otherwise, creates a substantial risk of injury to the public.

Defect Analysis

The starting point for any defect analysis must be 16 CFR §1115.4. The regulation provides in pertinent part: “[a]t a minimum, defect includes the dictionary or commonly accepted meaning of the word. Thus, a defect is a fault, flaw, or irregularity that causes weakness, failure, or inadequacy in form or function.”⁴⁴ A “design defect may also be present if the risk of injury occurs as a result of the

⁴² Epoch_000782-000784.

⁴³ https://www.standard.net/police-fire/farmington-mom-911-dispatcher-hailed-for-saving-chokingtoddler/article_fd79a84e-8d84-5767-992e-98e9f8df3337.html.

⁴⁴ 16 CFR §1115.4.



operation or use of the product..."⁴⁵ Importantly, the regulations specifically contemplate consideration of the role of reasonably foreseeable consumer use or misuse.⁴⁶

The Subject Products contain a defect because they pose a risk of injury as a result of their operation, use and reasonably foreseeable consumer use or misuse. The Subject Products are designed to contain small parts [REDACTED]. Children under 3, by virtue of their young age, are known to mouth objects and are subject to a choking risk of injury by small parts. The regulation makes clear that the design and materials used in a product may present a defect, even if manufactured in accordance with specifications: "a product may contain a defect even if the product is manufactured exactly in accordance with its design and specifications, if the design presents a risk of injury to the public."⁴⁷

Since the record supports a finding of defect, the next step of analysis considers whether the risk of injury arises out of the same product characteristics that provide utility of the Subject Products, i.e. a feature of the product which also serves a useful purpose. If the answer is yes, then consideration whether the risk of injury outweighs the product's utility is evaluated across a long series of factors enumerated in §1115.4. However, when the risk of injury does not arise from a product characteristic that is necessary for the product to function, balancing the risk of injury with the product's utility is not necessary. For the Subject Products, the manufacturer has already conceded that the small part accessories are not necessary as they have been discontinued⁴⁸ and replaced by a different accessory presenting a safer alternative design that is not a small part as defined in §1501.4. See Figure 4.



Figure 4: Replacement accessory

Defect Creates a Substantial Risk of Injury

The design defect of hazardous small parts in the Subject Products creates a substantial risk of injury to the public due to the pattern of defect, the number of defective products distributed in commerce and the severity of the risk. Because the hazardous small parts are present and available according

⁴⁵ [16 CFR §1115.4](#).

⁴⁶ [16 CFR §1115.4\(d\)](#).

⁴⁷ [16 CFR §1115.4](#).

⁴⁸ Deposition of Alyssa Masterson, p. 21: "Q. And so, for instance, there are specification records that are going to be available that you have of the specification changes on the twin line of products when they stopped making the pacifier and bottle, correct? A. Yes."

to manufacturer specifications (as opposed to becoming present due to reasonably foreseeable use and abuse) the pattern of defect applies to all Subject Products sold with the pacifier and bottle accessories. While my materials do not provide me with an accurate figure for the exact number of Yellow Labrador Twins and/or pacifier accessories distributed in the marketplace, one can expect the figure to be high as Epoch testified to sales of over \$65 million in 2018 alone.⁴⁹ As to severity, Dakota Dedios serves as a painful example and James Rencher's near fatality supports the finding that the design defect presents a lethal, substantial and unreasonable risk to our most vulnerable population.

Epoch Everlasting Play Falsely Certified Subject Products

Product certification is a significant responsibility that should not be taken lightly. In 2007, millions of imported toys were found in violation of CPSC regulations, and consumer product safety was front-page news. Congress reacted to the public safety crisis of violative imported toys and children's products by passing the landmark legislation, the Consumer Product Safety Improvement Act of 2008 (CPSIA). A fundamental element of CPSIA was the new certification requirements. Now, every U.S. importer or domestic manufacturer of children's products must certify that the product is compliant with all applicable rules, regulations, standards or bans enforced by the CPSC. Certification must be based upon testing performed by a CPSC-accredited third-party testing laboratory, but the CPSC makes clear that the importer or domestic manufacturer is "always legally responsible for issuing a Children's Product Certificate."

"Importers must have a "High Degree of Assurance" that the finished product complies with all applicable children's product safety rules to lawfully certify through a Children's Product Certificate."⁵⁰

"High Degree of Assurance means an evidence-based demonstration of consistent performance of a product regarding compliance based on knowledge of a product and its manufacture."⁵¹

Section 19(a)(6) of the CPSA entitled, "Prohibited Acts," states that issuing a false certificate is unlawful if "if such person in the exercise of due care has reason to know that the certificate is false or misleading in any material respect."

"Due Care means the degree of care that a prudent and competent person engaged in the same line of business or endeavor would exercise under similar circumstances. Due care does not permit willful ignorance."⁵²

"In fact, the entire third party testing regime set forth in 16 CFR parts 1107 and 1109 depends upon the exercise of "due care" by all certifiers."⁵³

EEP's False Children's Product Certificate

A valid Children's Product Certificate must accurately enumerate all the mandatory requirements that the product is subject to.

⁴⁹ Testimony of Anna Freeland.

⁵⁰ <https://cpsc.gov/Business--Manufacturing/Testing-Certification/Third-Party-Testing/Initial-Testing/>.

⁵¹ [16 CFR §1107.2](#).

⁵² [§1107.2](#).

⁵³ CPSC Preamble to Final Rule promulgating 16 CFR Part 1107, Federal Register, Vol 77, No. 234, Wednesday, December 5, 2012, Rules and Regulations, p. 72208.



“Specifically, the certificate shall identify separately each applicable consumer product safety rule under the Consumer Product Safety Act and any similar rule, ban, standard or regulation under any other Act enforced by the Commission that it applicable to the product.”⁵⁴

The Children’s Product Certificate issued by Epoch Everlasting Play LLC failed to cite 16 Part 1501, the Small Part Rule, as a regulation applicable to the Subject Products in violation of the implementing regulation, §1110.11(b), of CPSA Section 14(a). The third party test reports issued to EEP are unacceptable to determine if Subject Products are fully compliant with U.S. federal product safety law because the Subject Products were tested to the wrong criteria – testing based on a toy “3+” instead of testing to “Under 3.”

[REDACTED] The SGS test reports, issued to Epoch Everlasting Play LLC, state that the “Labeled Age Grading” for the testing was “3+,” the “Requested Age Grading” was “3+,” “Age Group Assessed by SGS as per Age Guideline” was “3+,” and the “Age Group Applied in Testing” was “OVER 3 YEARS.”⁵⁵ The subject products were tested accordingly, but inappropriately.

SGS’ test reports make mention of the flocking of the subject products. [REDACTED]

[REDACTED]. SGS offers Age Grading Evaluation, as a separate service, for product line review and consultancy on how to meet regulatory requirements with many of their customers being toy manufacturers.⁵⁶ Alyssa Masterson testified that EEP never age graded the Calico Critter toy line, but her “understanding is that age grading is a part of those testing requirements.”⁵⁷

It is the responsibility of EEP, as the Subject Product certifier, to exercise due care to ensure that when it “procures” testing for certification purposes, the correct test method is used by the third party conformity assessment body (laboratory – in this case, SGS). SGS did not use the proper method described in 16 CFR Part 1501.2(a) and (b) to determine if the Subject products were intended for children under 3. The test report, procured by and issued to EEP, indicates only the “Age Guidelines” which are insufficient to determine if a product is subject to the small parts rule. If EEP was exercising due care, they would have recognized that the SGS test method was flawed in a critical way. The regulation is clear on this point:

“§1109.5(d): Test method and sampling protocol.

Each certifier and testing party must exercise due care to ensure that when it procures a test for use in meeting the requirements of sections 14(a) or 14(i) of the CPSA:

- (1) All testing is done using required test methods, if any;*
- (2) Required sampling protocols are followed, if any; and*
- (3) Testing and certification follows the applicable requirements in sections 14(a) and 14(i) of the CPSA, and part 1107 of this chapter or any more specific rules, bans, standards, or regulations, used to assess compliance of the component part or finished product.”*

⁵⁴ §1110(b).

⁵⁵ Deposition of Alyssa Masterson, Exhibit X4.

⁵⁶ SGS Consumer Goods and Retail, Age Grading Evaluation. <https://www.sgs.com/en/consumer-goods-retail/toys-and-juvenile-products/toys/technical-assistance/age-grading-evaluation>.

⁵⁷ Deposition of Alyssa Masterson, p. 54.



Failure to Demonstrate a High Degree of Assurance

For EEP to have the required High Degree of Assurance that the subject products complied with all applicable children's product safety rules to lawfully certify through a Children's Product Certificate, they needed a proper age grade determination because of the criticality to safety and compliance. In her deposition, Alyssa Masterson first claims that she believed that age grading was a service included in the testing of the product, but she later testifies that she does not know whether or not SGS age graded the product. This evidence of vacillation does not constitute a High Degree of Assurance per §1107.2.

"Q. So you don't know whether SGS has ever performed any verification on the Calico Critter line of products to assure appropriate age grading, correct?"

*A. I don't know."*⁶³

CPSC regulations pertaining to Third Party Testing require that certifiers submit a sufficient number of samples, identical in all material respects to the total universe of product being certified, to a CPSC-accredited laboratory to ensure that the results of testing are representative of the population. Put plainly, the number of samples submitted for testing should take into consideration the size of the population and the manufacturing process' ability to manufacture product uniform in composition and quality. The regulation at §1107.20(a) mandates, "The number of samples selected must be sufficient to provide a High Degree of Assurance that the tests conducted for certification purposes accurately demonstrate the ability of the children's product to meet all applicable children's product safety rules."

*"Regarding the concern that conformity assessment bodies and retailers may require large numbers of samples for certification testing, under the proposed rule, the children's product certifier (not the conformity assessment body or retailer) specifies the number of samples to be tested."*⁶⁴

For EEP, as the Subject Product certifier, to demonstrate a High Degree of Assurance that they are submitting a sufficient number of samples for testing they would have to know how many samples they submit and the rationale for that decision. However, EEP's corporate representative testifying about the testing of the product doesn't even know who determines how many samples are submitted to be compliant with regulations.

"Q. Who picks the size of the lot that is sent to SGS?"

*A. I don't know."*⁶⁵

Failure to Ensure Undue Influence is Not Exercised by EEP Over Test Laboratories

When Congress wrote the certification and testing requirements in the Consumer Product Safety Act of 2008, they were aware of the concerning dynamic between testing laboratories and manufacturers who now were required to have their children's products third party tested. As a former testing executive with Intertek, I have first-hand knowledge of the competitive nature of the testing industry. Testing to standards is a commodity service. Manufacturers can switch with ease as a multitude of

⁶³ Deposition of Alyssa Masterson, p. 54 & p. 63.

⁶⁴ CPSC Memorandum from J. DeWane Ray and Randy Butturini to The Commission, "Draft Final Rule for Testing and Labeling Pertaining to Product Certification," September 20, 2011, p. 23.

⁶⁵ Deposition of Alyssa Masterson, p. 57.



accredited laboratories follow the means of consumer product production across the globe.

Congress was concerned that manufacturers would use their business relationship as leverage to compromise the integrity of CPSC-accredited third party test laboratories' results, jeopardizing the entire framework erected by statute to ensure children's products are tested and compliant with mandatory rules, regulations, standards and bans. Therefore, Congress mandated that CPSC establish protocols and standards for safeguarding against the exercise of undue influence on a third-party conformity assessment body by a manufacturer. Congress also made the exercise, or attempt to exercise, undue influence on a third-party conformity assessment body illegal and subject to civil and criminal penalties pursuant to the CPSA.⁶⁶

In §1107.24⁶⁷, CPSC fulfilled its Congressional mandate by requiring every children's product certifier to establish policies to safeguard against the exercise of undue influence by a manufacture over a testing laboratory. CPSC mandated that the policy be written by company officials, employees had to receive mandatory training, be informed of anonymous means of reporting examples of undue influence and statements attesting to adherence by appropriate staff members were to be kept on file by children's product certifiers for five years available immediately to the CPSC upon request.

In the subject case, the SGS test report is troubling. The test report was issued to EEP by SGS. EEP requested that SGS test the subject products to the requirements of a toy intended for children over 3. SGS is the world's largest testing laboratory⁶⁸. [REDACTED]

How SGS could miss such an obvious, prescriptive requirement is puzzling. What can be determined, based upon the testimony of Alyssa Masterson, is that EEP had no undue influence training to ensure EEP would not try and compromise the integrity of SGS or any of their other testing partners. Alyssa Masterson would assuredly be identified as an "appropriate staff member"⁶⁹ for undue influence training and a signed attestation given her managerial responsibilities over CPSC compliance. Nor did Alyssa Masterson demonstrate any knowledge of what constitutes the prohibited act of exercising undue influence over a third-party conformity assessment laboratory.

"Q. Ms. Masterson, do you know what undue influence training is under 16 CFR, Section 11?"

A. I don't know.

Q. Do you know if EEP has ever provided its staff members training on undue influence under the CPSC?"

A. I don't know."⁷⁰

Failure to Exercise Due Care: "Due Care Does Not Permit Willful Ignorance"

Alyssa Masterson was the corporate representative provided by EEP to testify on matters of CPSC compliance and product safety. Ms. Masterson manages the employee who oversees compliance

⁶⁶ CPSA, Section 19(a)(14).

⁶⁷ "Thus, under §1107.24 of the draft final rule, it is a domestic manufacturer or the importer that must establish procedures to safeguard against undue influence." CPSC Memorandum from J. DeWane Ray and Randy Butturini to The Commission, "Draft Final Rule for Testing and Labeling Pertaining to Product Certification," September 20, 2011, p. 64.

⁶⁸ Forbes, "The List: 2020 Global 2000."

⁶⁹ §1107.24(b)(1).

⁷⁰ Deposition of Alyssa Masterson, p. 74 – p. 75.



on a daily basis. Masterson demonstrated a lack of basic understanding of product safety and appears incapable of responsibly managing a product safety compliance team charged with overseeing high-risk products for distribution to the most vulnerable consumers.

As stated earlier in my qualifications section, I have conducted over one hundred CPSC compliance trainings in more than forty cities spanning sixteen countries. Many of those compliance training attendees were from the toy industry. I have also served as an examination judge for product safety certification candidates. I am well aware of the general education and competence of consumer product safety practitioners. Certifiers have a statutory obligation⁷¹ to exercise Due Care⁷² and CPSC Staff have emphasized this point:

“With respect to the commenter’s suggestion that the due care standard should be applied to all elements of the draft final rule, the definition of ‘due care’ in §1107.2 of the proposed rule refers to the actions of a prudent and competent person. The CPSC expects that prudence and competence will be exercised by all parties involved in the testing and certification of products.”⁷³

But Ms. Masterson’s testimony does not reflect the degree of care that a prudent and competent importer of toys regularly exercises. The following testimony provide examples of Ms. Masterson’s lack of depth or willful ignorance in matters of CPSC compliance and consumer product safety:

“Q: Do you have any background, education or training with regard to CPSC compliance?”

A: Formally, no.”⁷⁴

“Q: Now, you understand that EEP is the certifier of these products in North America? When I say these products, I’m talking about the Calico Critter line of products, including the Yellow Labrador Twins. Do you understand that?”

A: Can you clarify what you mean by ‘certifier?’

Q: Do you know what – do you know what a CPSC certifier is?”

A: I’m aware that our products comply to CPSC regulations.”⁷⁵

“Q: Identification of the U.S. importer or domestic manufacturer certifying compliance of the product. What name is that right there?”

A: Epoch Everlasting Play, LLC.

Q: Okay. So as the corporate representative, do you understand that Epoch Everlasting Play is the certifier of the Calico Critter line of products to the CPSC, who is certifying compliance with the CPSC? Do you understand that, or no?”

A: I don’t know.”⁷⁶

⁷¹ CPSA, Section 19(a)(6).

⁷² Due Care means the degree of care that a prudent and competent person engaged in the same line of business or endeavor would exercise under similar circumstances. Due Care does not permit willful ignorance. §1107.2.

⁷³ CPSC Memorandum from J. DeWane Ray and Randy Butturini to The Commission, “Draft Final Rule for Testing and Labeling Pertaining to Product Certification,” September 20, 2011, p. 20.

⁷⁴ Deposition of Alyssa Masterson, p. 37.

⁷⁵ Deposition of Alyssa Masterson, p. 39.

⁷⁶ Deposition of Alyssa Masterson, p. 53.



“Q. As the corporate representative for EEP, designated to testify with regard to CPSC compliance issues, would you agree that in order to be a safe product for children, the age labeling on the product must be accurate and in conformance with CPSC regulations?”

A. I don’t know.”⁷⁷

“Q. Do you understand that under the CPSC regulations if a toy is determined to be intended for use by children under 3, that toy is subject to the small parts regulation to the Federal Hazardous Substances Act?”

I don’t know.”⁷⁸

“Q: You’ve never heard of post sales surveillance?”

A: No, I have not.”⁷⁹

“Q. Ms. Masterson, we asked for EEP to designate a witness to testify with regard to toy design, testing and assessments, warnings and analysis. Do you understand that?”

A. Yes.

Q. And you have been designated as the person to testify with regard to that. Do you understand that?”

A. Yes.

Q. Do you know what a hazard analysis is?”

A. No.

Q. Do you know what a risk assessment is?”

A. No.”⁸⁰

“Q. Do you understand, as the appropriate representative for EEP, and the person who manages the CPSC compliance team, that it is a violation of the Consumer Product Safety Act to issue a false certificate of conformity and could lead to civil penalty and possible criminal penalties under the CPSC?”

A. I don’t know.”⁸¹

⁷⁷ Deposition of Alyssa Masterson, p. 63.

⁷⁸ Deposition of Alyssa Masterson, p. 65 – p. 66.

⁷⁹ Deposition of Alyssa Masterson, p. 29.

⁸⁰ Deposition of Alyssa Masterson, p. 66.

⁸¹ Deposition of Alyssa Masterson, p. 73 – p. 74.



Conclusion and Opinions

1. [REDACTED]
 2. [REDACTED]
 3. [REDACTED]
 4. Both Epoch Co. Ltd. and EEP were aware that the Calico Critters contain small parts hazardous to children under 3.
 5. [REDACTED]
 6. [REDACTED] present
an unreasonable risk of injury to children and caused the death of Dakotah Dedios.
 7. EEP is in violation of the Federal Hazardous Substances Act (FHSA) for the introduction and delivery for introduction into interstate commerce of a banned hazardous substance pursuant to Section 4(a) of the FHSA.
[REDACTED]
 9. The Subject Products present a substantial risk of injury due to the pacifier accessory that proximately caused the death of Dakotah Dedios and to have nearly caused the death of James Rencher.
 10. The Subject Products are Substantial Product Hazards under Section 15(a)(2) of the CPSA because they contain design defects which present a substantial risk of injury.
 11. The Subject Products are defectively designed because they constitute small parts [REDACTED]
 12. The defective design of Subject Products presents a substantial risk of injury to the public because of the pattern of the defect, the number of defective products distributed in commerce and the severity of the risk of injury. The defective design of Subject Products was the proximate cause of the death of Dakotah Dedios.
[REDACTED]
 15. EEP issued a false Children's Product Certificate (CPC) for Subject Products in violation of §1110.11(b).
 16. Based on the testimony of Ms. Masterson and the information contained in my report, EEP failed to exercise Due Care in the procurement of testing for certification purposes in violation of §1109.5(d) by failing to ensure the proper test method was applied for consideration of products subject to 16 CFR Part 1501.
 17. Based on the testimony of Ms. Masterson and the information contained in my report, EEP failed to demonstrate a High Degree of Assurance that the CPC cited each CPSC product safety regulation or statutory requirement to which the product was certified.
 18. Based on the testimony of Ms. Masterson and the information contained in my report, EEP failed to demonstrate a High Degree of Assurance that a sufficient number of samples were submitted
-
- [REDACTED]



for certification testing to accurately demonstrate the ability of the Subject Products to meet all applicable children's product safety rules.

19. Based on the testimony of Ms. Masterson and the information contained in my report, EEP failed to establish protocols and standards for safeguarding against the exercise of undue influence on the third-party conformity assessment bodies' testing of Subject Products by failing to provide a written policy statement, mandatory training and employee attestations in violation of §1107.24.
20. Based on testimony of Ms. Masterson and the information contained in my report, EEP failed to demonstrate due care in executing its obligations as a children's product certifier in violation of Section 14 of the CPSA.
21. Testimony of EEP's corporate representative designated for matters of CPSC compliance and product safety indicates willful ignorance of federal product safety law not permitted by children's product certifiers obligated to exercise due care.
22. EEP is subject to civil penalties pursuant to Section 20 of the CPSA for knowingly⁸³ committing unlawful acts prohibited by the CPSA including: the importation of consumer products not in conformity with an applicable consumer product safety rule under the CPSA⁸⁴; importing a banned hazardous substance within the meaning of section 2(q)(1) of the FHSA⁸⁵; failing to furnish information required by Section 15(b) of the CPSA⁸⁶; issuing a false certificate⁸⁷; and, failing to comply with regulations of Section 14.⁸⁸

Materials Received

Materials received and/or reviewed which contribute to the basis of the conclusions and opinions

1. Complaint and Plaintiff's Complaint for Wrongful Death, Loss of Consortium, Personal Injury and Punitive Damages.
2. Medical records (NMU School of Medicine, Jicarilla EMS, and San Juan Regional Medical Center).
3. Exemplar product photographs and autopsy photographs.
4. Epoch Bates documents: 000001-000821.
5. Plaintiff's First Set of Requests for Production and Interrogatories to Defendant, Epoch Everlasting Play, LLC.
6. Defendants Walmart, Inc. & Marie Short's Initial Disclosures.
7. Walmart, Inc.'s Answers and Responses to Plaintiff Maria Schmidt, as Personal Representative for the Estate of Dakotah Dedios, Deceased, and Richaline Dedios' First Set of Interrogatories and Request for Production to Defendant Walmart, Inc.
8. Wal-Mart Document Production; Bates numbered WM_Schmidt_00000001-WM_Schmidt_00000317.
9. CPSC In Depth Investigation (IDI).
10. Scheduling Order and Expert Deadline extension.
11. Depositions and exhibits of Danelle Renee Dedios, Richaline Jonelle Dedios, Anna Freeland and Alyssa Masterson.

Knowing,' as defined in section 20(c) of the CPSA means the having of actual knowledge or the presumed having of knowledge deemed to be possessed by a reasonable person who acts in the circumstances, including knowledge obtainable upon the exercise of due care to ascertain the truth of representations."

⁸⁴ CPSA Section 19(a)(1).

⁸⁵ CPSA Section 19(a)(2)(D).

⁸⁶ CPSA Section 19(a)(4).

⁸⁷ CPSA Section 19(a)(6).

⁸⁸ CPSA Section 19(a)(6).



12. Title 16 Code of Federal Regulations §§ 1107, 1109, 1110, 1115 & 1501.
13. International Organization for Standardization, ISO 10377:2013.
14. Consumer Product Safety Act.
15. Federal Hazardous Substances Act
16. CPSC Memorandum from Dave Pomeroy, HICS, to Elaine Besson, EX-P, "Comments on the Proposed Small Parts Regulation," January 15, 1979, p. 1.
17. CPSC's Press Release June 8, 1979.
18. Federal Register, Volume 43, No. 200, Monday, October 16, 1978, p. 47685.
19. Federal Register, Volume 43, No. 200, Monday, October 16, 1978, p. 47687.
20. www.calicocritters.com/parent.
21. CPSC Memorandum from David W. Thome, CERM to Elaine Besson, OPM, "Small Parts Regulation," February 1, 1979, p. 1-2.
22. CPSC Age Determination Guidelines, January 2020, p. 6.
23. Best Calico Critter Toys in 2020, <https://trivaltech.com/calico-critter-toys/>.
24. Learning Express Gifts, <https://lexpblog.com/top-products/calico-critters/>.
25. <https://www.babywisemom.com/best-toys-for-toddler-2-and-up/>
26. <https://www.walmart.com/ip/Calico-Critters-Yellow-Labrador-Twins/37463070>.
27. "Squinkies and Calico Critters – Two Hot Toys, Two Choking Hazards," <https://echoflam.com/squinkies-and-calico-critters-two-hot-toys-two-choking-hazards/>.
28. Federal Register, Volume 44, No. 117, Friday, June 15, 1979, p. 34897.
29. "Final Report on Economic Assessment of the Small Parts Regulation," David Pomeroy, Hazard Identification and Analysis, Division of Special Economic Studies, April, 1979, p. 8.
30. https://www.standard.net/police-fire/farmington-mom-911-dispatcher-hailed-for-saving-chokingtoddler/article_fd79a84e-8d84-5767-992e-98e9f8df3337.html.
31. <https://cpsc.gov/Business--Manufacturing/Testing-Certification/Third-Party-Testing/Initial-Testing/>.
32. <https://www.sgs.com/en/consumer-goods-retail/toys-and-juvenile-products/toys/technical-assistance/age-grading-evaluation>.
33. <https://cpsc.gov/Business--Manufacturing/Business-Education/Business-Guidance/Small-Parts-for-Toys-and-Childrens-Products>.
34. <https://cpsc.gov/Business--Manufacturing/Testing-Certification/Childrens-Product-Certificate/>.
35. Forbes, "The List: 2020 Global 2000."
36. Federal Register, Vol 77, No. 234, Wednesday, December 5, 2012, Rules and Regulations, p. 72208.
37. CPSC Memorandum from J. DeWane Ray and Randy Butturini to The Commission, "Draft Final Rule for Testing and Labeling Pertaining to Product Certification," September 20, 2011.
38. Federal Register, Vol 76, No. 216, Tuesday, November 8, 2011, Rules and Regulations.
39. Consumer Product Safety Improvement Act of 2008.
40. Causation UJI.

<<< End of Report Text >>>



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Joe Mohorovic has a distinguished background as an executive and public servant, operating at the intersection of business and government, culminating in his service as a Commissioner on the U.S. Consumer Product Safety Commission (CPSC). A board-certified product safety expert, Joe brings real world product safety experience and insider's knowledge in both the private and public sectors as a Senior Managing Consultant in ESi's Safety and Risk Assessment Practice Group. He specializes in adverse event analysis, regulatory compliance counseling, expert testimony and dispute resolution.

Areas of Specialization

- Consumer product safety regulatory compliance
- Government investigations including civil penalties
- CPSC mandatory reporting obligation
- CPSA "Substantial Product Hazard" analysis
- Recall effectiveness
- Consumer product safety management best practices
- Compliance with CPSC mandatory certification requirements

Professional Certifications

Certified Product Safety Manager (#488), IBFCSM

Education

B.A., The University of Texas at Austin, 1994

M.B.A., The University of New Mexico, Anderson School of Business Management, 2002

Honors

North Carolina State University, College of Textiles: Executive-in-Residence, 2017

Saint Louis University, John Cook School of Business, Honorary Certificate: Education Booster for Product Safety, 2017

The University of New Mexico, Young Alumni Award, 2005

New Mexico Association of Commerce and Industry, FOCUS Business Star, 2002

Americans for Tax Reform, Friend of the Taxpayer Award, 2002

John Baker Elementary School, Community Appreciation Award, 2002

Albuquerque Chamber of Commerce, Leader Award, 2001

New Mexico Business Weekly, "Top 40 Under 40" issue, 2000





NM Speech & Hearing Association, Community Appreciation Award, 1999

Positions Held

Troutman Sanders LLP, Chicago, Illinois

Senior Consultant, 2018 - 2019

Dentons US LLP, Chicago, Illinois

Principal, 2017 - 2018

United States Consumer Product Safety Commission, Bethesda, Maryland

Commissioner, 2014 - 2017

Intertek Testing Services, Oak Brook, Illinois

SVP and Business Line Leader, 2007 - 2014

United States Consumer Product Safety Commission, Bethesda, Maryland

Chief of Staff and Director of International Programs, 2002 - 2007

New Mexico Legislature, Santa Fe, New Mexico

State Representative (R-28), 1999 – 2002

Professional Affiliations

American Society of Safety Professionals

International Board for Certification of Safety Managers (CPSM)

Society of Product Safety Professionals

International Product Safety & Liability Prevention Association

International Consumer Product Health and Safety Organization

International Consumer Product Safety Caucus (now known as OECD Working Party on Consumer Product Safety), Chairman (2006-2007) (inactive)

ES 340, Federal Career Senior Executive Service (inactive)

Seminars, Speeches, Webinars and Workshops

"The Role of Misuse in Consumer Product Safety," Technical Meeting, Speaker, IEEE Product Safety Engineering Society, Webinar, April 2020

"A Debate: What is the Consumer's Role in Product Safety," ICPHSO Annual Meeting and Training Symposium, Debate with CPSC Acting Chairman Robert Adler, International Consumer Product Health and Safety Organization, Orlando, Florida, February 2020

"Moderated Q & A with CPSC Commissioner Peter Feldman," Product Liability Conference, DRI, Moderator, New Orleans, Louisiana, February 2020

"U.S. Federal Regulatory Updates," Softlines Retail Roundtable Meeting, Speaker, Intertek, New York, New York, November 2019





Joseph P. Mohorovic
[REDACTED]

"An Insider's View on What's Ahead for the CPSC," Continuing Education Afternoon, Speaker, Illinois Defense Council, Chicago, Illinois, August 2019

"Changes in the CPSC Administration – What You Need to Know," PLAC Webinar, Speaker, Product Liability Advisory Council, July 2019

"An Insider's View on What's Ahead for the CPSC," Assuring Product Safety, Preventing Recalls and Product Liability Lawsuits, Speaker, International Product Safety & Liability Prevention Association, Milwaukee, Wisconsin, May 2019

Consumer Product Safety Professional Certification Program, Certification Candidate Panel Judge, Society of Product Safety Professionals, St. Louis, Missouri, May 2019

"Exploration of Foreign Body Hazards, Mitigation Strategies, Manufacturing and Quality Controls," ICPHSO Annual Meeting and Training Symposium, Moderator, International Consumer Product Health and Safety Organization: Annual Meeting, Washington, DC, February 2019

"Changing of the 'Guard' at the CPSC," DRI Product Liability Conference, Defense Research Institute, Austin, Texas, February 2019

"Will the CPSC Reformulate its Approach to Chemistry in Consumer Products?" DRI Product Liability Conference, Speaker, Defense Research Institute, Austin, Texas, February 2019

AHFA Regulatory Summit, Keynote Address, American Home Furnishings Alliance, Raleigh, North Carolina, October 2018

"Analyzing the 3D Printing Regulatory Landscape," Legal, Regulatory and Business Conference on 3D Printing, Speaker, Chicago, Illinois, June 2018

"Fireside Chat with Former CPSC Commissioner Joe Mohorovic," SFIA Risk Management Summit, Speaker, Sports and Fitness Industry Association, Indianapolis, Indiana, April 2018

"From Silenced to Strategic: What the Last 25 Years Tells Us About What Lies Ahead," ICPHSO Annual Meeting and Training Symposium, International Consumer Product Health and Safety Organization, Orlando, Florida, February 2018

Product Safety Seminar West, Keynote Address, American Apparel & Footwear Association, Long Beach, California, February 2018

"CPSC Picks, Predictions and Other Things That Won't Happen in 2018," Exponent, Webinar, December 2017

"Textile Innovations and CPSC Compliance Considerations," Standards & Regulatory Expectations, Panelist, Techtextil North America, Chicago, IL, June 2017

"Supply Chain Transparency and CPSC Compliance," eVolve User Conference, panelist, Amber Road, National Harbor, MD, May 2017

"Lithium Ion Batteries, Emerging Technologies and Test Burden Reduction Under the CPSA," Arent Fox Webinar, Washington, DC, May 2017

[REDACTED]



Joseph P. Mohorovic
[REDACTED]

"Q&A with Commissioner Mohorovic," CSPA Mid-Year Meeting, Speaker, Consumer Specialty Products Association, National Harbor, MD, May 2017

"Executive in Residence," NC State University College of Textiles, Guest Lecturer, North Carolina State University, Raleigh, NC, May 2017

"The CPSC in Transition: What to Expect from New Agency Leadership," RILA Product Safety Committee Meeting, Retail Industry Leaders Association, Orlando, FL, February 2017

"Tolerable Product Risk – The Challenge of Risk Management," ICPHSO Annual Meeting and Training Symposium, Speaker, International Consumer Product Health and Safety Organization, Orlando, FL, February 2017

"Discussion of Policy Views on Consumer Misuse of Products," ICPHSO Annual Meeting and Training Symposium, Speaker, International Consumer Product Health and Safety Organization, Orlando, FL, February 2017

"2017: A New President. A New Commission?," SFIA/DRI Legal Summit, Speaker, Sports and Fitness Industry Association & Defense Research Institute, Las Vegas, NV, February 2017

"2017: A New President. A New Commission?," TIA Annual Strategy Meeting, Toy Industry Association, Washington, DC, December 2016

"A New President. A New CPSC?," Plastic Shipping Container Institute, Speaker, Chicago, IL, November 2016

Product Safety Training Seminar, Presenter, Intertek, Oak Brook, IL, October 2016

"CPSC from A to Z," CSPA Seminar, Speaker, Consumer Specialty Products Association, Bethesda, MD, October 2016

PPAI Product Responsibility Summit, Luncheon Remarks, Promotional Products Association International, Washington, DC, September 2016

"Can't You Hear Them Knocking? – Government Regulations & Investigations," 13th Annual Corporate Counsel Symposium, Panelist, Federation of Defense and Corporate Counsel, Philadelphia, PA, September 2016

"CPSC as a 21st Century Chemical Regulator?," ACI Fall Meeting, Speaker, American Cleaning Institute, Remarks, Washington, DC, September 2016

"From Product Testing to Incident Reporting: Exploring the Full Spectrum of Internal Compliance Programs," Southeast Regional Workshop, Speaker, International Consumer Product Health and Safety Organization, Atlanta, GA, June 2016

"Is the Pen Cap Mightier...?," FMI Legal Conference, Speaker, Food Marketing Institute, Chicago, IL, June 2016

"The Leading Edge of Safety," Product Safety East Seminar, Keynote Address, American Apparel & Footwear Association, New York, NY, June 2016





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[REDACTED]

"Fighting Fire with Fire," Fire Science Program, Presenter, Goldberg Segalla, Chicago, IL, June 2016

"Chemical Regulation at CPSC," Regulatory and International Affairs Joint Committee Meeting, Speaker, Consumer Specialty Products Association, Washington, DC, May 2016

"Flammability Issues Before the CPSC," IABFLO Law Officials 2016 Conference, Speaker, International Association of Bedding and Furniture Law Officials, Philadelphia, PA, April 2016

OPEI Legal and Regulatory Compliance Committee, Keynote Address, Outdoor Power Equipment Institute, Alexandria, VA, March 2016

"Q&A with the Commissioner," AAFA Board of Directors Meeting, Speaker, American Apparel and Footwear Association, Washington, DC, March 2016

"Introduction of Senator Tom Udall," ICPHSO Annual Meeting and Training Symposium, Keynote Introduction, International Consumer Product Health and Safety Organization, Washington, DC, February 2016

"Q&A with Commissioner Mohorovic," DRI Children's Product Panel, Defense Research Institute, New Orleans, LA, February 2016

"The Latest Developments with the CPSC: What You Need to Know," DRI Product Liability Conference, Speaker, Defense Research Institute, New Orleans, LA, February 2016

"Ethics in Federal Government: A Commissioner's Perspective," Benedictine Flexible M.B.A. Program, Guest Lecturer, Benedictine University, Lisle, IL, February 2016

"Q&A with Commissioner Mohorovic," JPMA Annual Summit, Speaker, Juvenile Products Manufacturers Association, Washington, DC, February 2016

"Introduction to the CPSC & Regulatory Reform Opportunities," Mercatus Center, Guest Lecturer George Mason University, Arlington, VA, February 2016

Fall 2015 Client Conference, Closing Featured Speaker, USLaw Network, Inc., Boston, MA, September 2015

2015 SPLiCE Licensors Workshop, Keynote Address, Society of Product Licensors Committed to Excellence, Buffalo, NY, September 2015

"Mock Testimony Exercise and Closing Remarks," Closing Workshop, Presenter and Trainer, Product Safety Management Certificate Course, Saint Louis, MO, August 2015

"TV & Furniture Tip-over Perspectives," AHFA Joint Industry Summit, Speaker, American Home Furnishings Alliance & ASTM International, High Point, NC, August 2015

[REDACTED]



Joseph P. Mohorovic
[REDACTED]

"Import Surveillance and Trusted Trader Programs," AAEI Annual Conference and Expo, Speaker, American Association of Exporters and Importers, Arlington, VA, June 2015

"Issues Facing the CPSC," Young Lawyers Chapter, Republican National Lawyers Association, Washington, DC, May 2015

"Import Surveillance, Penalties and Hot Topics," NRF Product Safety Committee Conference Call, Remarks, National Retail Federation, Washington, DC, May 2015

"From Innovation-Incubator to Force-Multiplier: The Key Roles Voluntary Standards Play in Achieving Mission-Critical Public Health and Safety Objectives," Supply Chain Operations, Strategy, and Infrastructure Development in a Global Economy: An Industry-Academic Teaching Support Workshop, National Institute of Standards and Technology, Washington, DC, May 2015

CPSC State Designee Meeting, Welcoming Remarks, U.S. Consumer Product Safety Commission, Bethesda, MD, May 2015

Product Safety Seminar, Remarks, Greenberg Traurig, Washington, DC, April 2015

"Q&A with Commissioner Mohorovic," Consumer Reports, Yonkers, NY, April 2015

"Ethics in Federal Government: A Commissioner's Perspective," Lewis University College of Business Ethic's Week, Speaker, Lewis University, Romeoville, IL, March 2015

"Regulatory Rollercoaster: CPSC and IAAPA," IAAPA Advocacy Day, Remarks, International Association of Amusement Parks and Attractions, Washington, DC, March 2015

"Risk-Based Decision-Making," SFIA Litigation & Risk Management Summit, Keynote Address, Sports and Fitness Industry Association, Las Vegas, NV, February 2015

"The Future of Retailer Reporting," ICPHSO Annual Meeting and Training Symposium, Panelist, International Consumer Product Health and Safety Organization, February 2015

DRI's Women in Law Luncheon, Remarks, Defense Research Institute, Las Vegas, NV, February 2015

"Fundamental Regulatory Concepts at CPSC," DRI Children's Products Panel Counsel Meeting, Presenter, Defense Research Institute, Las Vegas, NV, February 2015

Product Safety Seminar West, Keynote Address, American Apparel and Footwear Association, Long Beach, CA, January 2015

"Commissioner Mohorovic's Priorities and Agenda," National Association of Manufacturers' CPSC Coalition, Speaker, National Association of Manufacturers, Washington, DC, November 2014

AFSL General Membership Meeting, Keynote Address, American Fireworks Standard Laboratory Miami, FL, October 2014





Joseph P. Mohorovic
[REDACTED]

TIA 7th Annual Washington DC Fly-In, Keynote Address, Toy Industry Association, Washington, DC, September 2014

“Commissioner Mohorovic’ s Priorities and Agenda,” Product Safety and Liability Conference, Speaker, Association of Home Appliance Manufacturers, Arlington, VA, September 2014

CPSIA Testing and Certification Rule Seminar, Moderator and Presenter, Intertek, Chicago, Boston, March 2013

“New CPSC Testing and Certification Requirements,” CPSIA Training Seminars (U.S.), Moderator and Presenter, Intertek, Los Angeles, Newark, November 2012

“New CPSC Testing and Certification Requirements: How Far Have We Come?,” CPSIA Training Webinar, Presenter, American Apparel and Footwear Association & Intertek, Webinar, October 2012

“New CPSC Testing and Certification Requirements,” CPSIA Training Seminars (Asia), Moderator and Presenter, Intertek, Bangkok, Ho Chi Minh City, Shenzhen, Guangzhou, Taipei, Shanghai, Seoul, September 2012

“New CPSC Testing and Certification Requirements for Children’s Products,” TexProcess, Presenter Webinar, April 2012

“New CPSC Testing and Certification Requirements,” CPSIA Training Webinar, Presenter, American Apparel and Footwear Association & Intertek, Webinar, January 2012

“New CPSC Testing and Certification Requirements,” Intertek Customer Day, Speaker, Intertek Hong Kong, China, December 2011

“The Indispensable Role of Labs in Spreading the Word,” Education and Outreach Roundtable – Public Meeting, Speaker, U.S. Consumer Product Safety Commission, Bethesda, MD, October 2011

“How the New CPSIA Reform Bill Affects Your Business,” Intertek, Webinar, August 2011

“U.S. and Canada: Product Safety Update,” Presenter, Intertek & National Retail Federation, Webinar, May 2011

“CPSIA Past, Present and Future,” Global Supply Chain Summit, Presenter, National Retail Federation, Columbus, OH, April 2011

“U.S. and CPSC Regulatory Update 2011,” Walmart Vendor Seminar, Presenter, Walmart, Bentonville, AR, March 2011

“The Mother of All CPSC Regulations: What the Testing and Certification Rules Will Mean for Retailers,” NRF General Counsel’s Update, Presenter, National Retail Federation, Webinar, January 2011



Joseph P. Mohorovic

“Three New (and Complicated) Product Safety Rules to Watch,” Retail Compliance and the CPSC, Presenter, Mintz Levin, Cohn, Ferris, Glovsky and Popeo PC, Webinar, December 2010

“Q&A from the Breakout Groups,” ICPHSO 7th International Meeting and Training Symposium, Moderator, International Consumer Product Health and Safety Organization, London, UK, November 2010

“The Changing Face of Regulation and How You Can Best Prepare,” Merchandise Supplier Management Seminar, Speaker, Retail Value Chain Federation, Teaneck, NJ, June 2010

“CPSIA Update & Recent Trends in U.S. Toy Regulations,” Nuremburg Toy Fair, Nuremburg, Germany, February 2010

“Understanding New U.S. Product Safety Law Series – Europe,” Consumer Product Safety Improvement Act of 2008 Training, Moderator & Presenter, Intertek, London, Paris, Florence, Frankfurt, Istanbul, March 2009

“Comparing Toy Safety Certification Programs,” ICPHSO Annual Meeting and Training Symposium, International Consumer Product Health and Safety Organization, Orlando, FL, February 2009

“CPSIA Power Lunch Series – USA,” Consumer Product Safety Improvement Act of 2008 Training, Moderator & Presenter, Intertek, New York, Atlanta, Los Angeles, Seattle, Chicago, San Francisco, Dallas, December 2008

“The Consumer Product Safety Improvement Act: What You Don’t Know CAN Hurt You!,” HKTDC & Intertek Training Seminar, Speaker, Hong Kong Trade Development Council, Hong Kong, China, November 2008

“Comprehensive Risk Assessment Screening,” Product Liability Seminar, Presenter, Association of Home Appliance Manufacturers, Washington, DC, October 2007

“Creating a Culture of Safety in Each Company,” Safety Training Seminars (Asia), Speaker, U.S. Consumer Product Safety Commission and Underwriters Laboratories, Shanghai, Hong Kong, October 2006

“Product Safety Requirements for the U.S.,” CPSC Electro Safety Symposium (Asia), Speaker, U.S. Consumer Product Safety Commission, Guangzhou, Hangzhou, China, April 2006

“Hazard/Risk-Based Approach to Safety Workshop,” ICPHSO 2nd European Meeting and Training Symposium, Chair, International Consumer Product Health and Safety Organization, Arnhem, Netherlands, November 2005

“Chinese Imports and the Implementation of CPSC Regulations,” 1st Sino-U.S. Safety Summit, CPSC and AQSIQ, Beijing, China, August 2005





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[REDACTED]

“Risk Assessment at the CPSC: The Preliminary Determination Process,” ICPHSO Annual Meeting and Training Symposium, Speaker, International Consumer Product Health and Safety Organization, Bethesda, MD, February 2005

“Reducing Technical Barriers to Trade,” International Leaders’ Summit, Speaker, World Development and Empowerment, Zagreb, Croatia, November 2004

“The Role of International Standards in Addressing Emerging Hazards,” ICPHSO 1st European Meeting and Training Symposium, Moderator & Chair, International Consumer Product Health and Safety Organization, London, UK, November 2004

“GHS Implementation,” CSPA International Regulatory Conference, Speaker, Consumer Specialty Products Association, Washington, DC, March 2004

TIA Regional Meeting, Remarks, Toy Industry Association, Chicago, IL, July 2003

“The Role of International Harmonization of Standards: the U.S. Perspective for Consumer Safety in a Global Market,” 4th European Convention in Safety Promotion and Injury Control, Keynote Address, European Consumer Safety Association, Paris, France, April 2003

Publications

“Are the Hazards Posed by Table Saws Reasonable?,” DRI Product Liability Conference, Defense Research Institute, Austin, Texas, February 2019

“Two Years into the Trump Presidency – Will the CPSC Reformulate its Approach to Chemistry in Consumer Products,” DRI Product Liability Conference, Speaker, Defense Research Institute, Austin, Texas, February 2019

“Statement on Final Rule Prohibiting Phthalates in Children’s Toys and Child Care Articles,” Public Comment Submitted for the Record, U.S. Consumer Product Safety Commission, Bethesda, MD, October 2017

“Statement from Commissioners Adler, Kaye, Robinson and Mohorovic Congratulating Ann Marie Buerkle,” Public Comment Submitted for the Record, U.S. Consumer Product Safety Commission, Bethesda, MD, July 2017

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“Improving the Process of Making Rules at Independent Agencies,” Penn Program on Regulation, REG BLOG, Opinion, January 2017

“Improving Regulatory Analysis at Independent Agencies,” Penn Program on Regulation, REG BLOG, Opinion, January 2017

[REDACTED]



Joseph P. Mohorovic
[REDACTED]

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"Statement on Commission's Decision to Exercise Enforcement Discretion Regarding Certificates for Low-Risk Adult Apparel," Public Comment Submitted for the Record, U.S. Consumer Product Safety Commission, Bethesda, MD, February 2016

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Joseph P. Mohorovic
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“Ban Padded Crib Bumpers,” Letter to Chairperson Emily McAsey of the Illinois House of Representatives, Public Comment Submitted for the Record, U.S. Consumer Product Safety Commission, Bethesda, MD, March 2015

“Don’t Authorize ATV/ROV Use on Paved Roads,” Letter to Chairwoman Caddy McKeown of the Oregon House of Representatives, Public Comment Submitted for the Record, U.S. Consumer Product Safety Commission, Bethesda, MD, February 2015

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“Regulatory Philosophy: Remarks to the American Apparel & Footwear Association,” Public Comment Submitted for the Record, U.S. Consumer Product Safety Commission, Bethesda, MD, January 2015

“Statement on the Commission’s Extension of the Stay of Enforcement of Requirements for Child-Resistant Packaging for Products Containing Imidazolines,” Public Comment Submitted for the Record, U.S. Consumer Product Safety Commission, Bethesda, MD, November 2014

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PROJECT	STATE
<u>2020</u>	
Penn v. Baby Matters, LLC. Et. Al. CASE NO.: PAS-L-1016-16 Superior Court of New Jersey Law Division: Passaic County	NJ (deposition)
<u>2019</u>	
Penn v. Baby Matters, LLC. Et. Al. CASE NO.: PAS-L-1016-16 Superior Court of New Jersey Law Division: Passaic County	NJ (deposition)
In Re:- Portas v. Emerson Tool Company CASE NO.: 6:18-CV-881-ORL-18-DCI Middle District of Florida Orlando Division	FL (deposition)
<u>2018</u>	
Cassandra Carter v. Louisiana- Pacific Corporation, et al. v. Apoleia, LLC. No. CV16-01547 Second Judicial District Court of the State of Nevada in and for the County of Washoe	NV (deposition)
<u>2017</u>	
<u>2016</u>	