

Stevenson, Todd A.

From: Voss, Gerie [Gerie.Voss@atlahq.org]
Sent: Tuesday, October 03, 2006 10:25 AM
To: Stevenson, Todd A.
Subject: Product-Related Injuries
Attachments: Product-Related Injuries.pdf

Dear Sir or Madam:

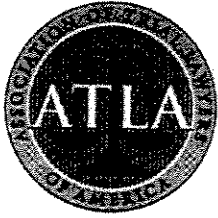
Attached is a copy of ATLA's comments in the above-referenced proceeding. Please let me know if you have any problems viewing this document.

Thank you.

Sincerely,
Gerie Voss

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10/3/2006



October 3, 2006

Office of the Secretary
Consumer Product Safety Commission
4330 East West Highway
Bethesda, Maryland 20814

Re: Product-Related Injuries

Dear Secretary:

The Association of Trial Lawyers of America (ATLA) hereby submits comments in response to the Consumer Product Safety Commission's (CPSC) Notice regarding a proposed extension of collection of information from persons who have been involved in or have witnessed incidents associated with consumer products. *See* 71 Fed. Reg. 30350.

ATLA, with 55,000 members in the United States, Canada and abroad, is the world's largest trial bar. It was established in 1946 to safeguard victims' rights, strengthen the civil justice system, promote injury prevention, and foster the disclosure of information critical to public health and safety. ATLA supports the proposed extension of this information collection, because it yields information necessary for the Commission to protect consumers. ATLA also supports the use of all available cost-effective steps to enhance the quality, utility, and clarity of the information to be collected. Further, ATLA believes that potential burdens caused by the information collection could be minimized by use of technological collection techniques, but suggests that the Commission be mindful of the possible downfalls associated with relying upon such techniques.

I. The CPSC Should Extend this Information Collection, Because the Information is Necessary for the Commission to Properly Perform its Functions

The information that the CPSC may collect from individuals who have been involved in or have witnessed a product-related injury is vital to the Commission's ability to protect consumers. The Consumer Product Safety Act (CPSA) states that the Commission has several goals including:

to protect the public against unreasonable risks of injury associated with consumer products; ... [and] to promote research and investigation into the causes and prevention of product-related deaths, illnesses, and injuries.

15 U.S.C. §§ 2051 (1), (4). The collection of witness information regarding product-related injuries is an important method for achieving these goals.

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A. The Information Collection Helps to Protect the Public Against Unreasonable Risks of Injury

The information collection helps to protect against unreasonable risks of injury associated with consumer products, because it is likely to yield data to explain all the ways a product might be used and cause harm. Further, this information is necessary to determine whether applicable voluntary standards for products are adequate to prevent harm or injury. Voluntary standards are commonly established by consumer industry manufacturers. They often represent the least common denominator of agreement among manufacturers rather than adequate safety standards. It is likely that a product could comply with a voluntary safety standard, yet a defect may exist which poses a risk to consumers. The purpose of this type of information collection is to shed light on inadequate voluntary standards. Both the CPSC and consumers must have this information as quickly as possible to protect the public against product-related harms.

This process is even more important given the CPSC's recent decision to amend its guidelines regarding compliance with Section 15(b) of the Consumer Product Safety Act, 15 U.S.C. 2064(b), which requires manufacturers, distributors, and retailers of consumer products to report potential hazards to the Commission. Substantial Product Hazard Reports, Final interpretative rule, 71 Fed. Reg. 42028 (2006). The Commission's new guidelines amend Section 1115.8 to provide that "compliance with applicable voluntary safety standards may be relevant to the Commission staff's preliminary determination of whether that product represents a substantial product hazard." 16 C.F.R. § 1115.8(a). This section is particularly troublesome because it can amount to a safe harbor for corporations, allowing those that comply with the voluntary standards to be more lenient about their decisions to issue a warning or product recall. With the addition of this new language, and the increased likelihood that corporations may delay or opt not to report potential product hazards, it is even more important to maintain the product-related injuries data collection from witnesses.

B. The Information Collection Advances the CPSC's Goal to Promote Research and Investigation of Product-Related Injuries

The compilation of these witness reports also promotes research and investigation into the causes and prevention of product-related injuries. This information collection process allows the CPSC to collect valuable, first-hand knowledge from individuals directly affected by a product-related injury. CPSC staffers and consumer interest groups can then conduct statistical analysis of these witness statements to find trends associated with certain products. This may allow researchers and product manufacturers to identify problems even before they injure a consumer.

II. The CPSC Should Take Steps to Enhance the Quality, Utility, and Clarity of the Information to Be Collected

The CPSC is obligated to take steps to enhance the quality, utility, and clarity of the information collected in order to identify important patterns associated with certain consumer products and to properly educate the public. Counsel for persons injured by defective consumer products use incident reports such as consumer complaints to obtain information regarding other similar incidents. Because these incident reports are generally inadmissible in court cases, counsel uses these reports to locate witnesses and arrange depositions. However, in some cases, CPSC staff has redacted the names and other identifying information from these reports, preventing counsel from arranging these depositions. While the manufacturers and their defense counsel may receive the *unredacted* information, counsel for persons injured by defective products are required to undergo the lengthy and expensive process of filing a discovery request and motion to compel the manufacturer to provide the identifying information. As a result, crucial information regarding the defective nature of a product and the culpability of a product manufacturer may be lost or delayed in reaching the public. The CPSC should resolve this disparity among plaintiff and defense counsel by adopting policies to ensure that such identifying information is not redacted or is otherwise readily attainable by both parties.

In addition, ATLA recommends that the CPSC continue to obtain and maintain witness reports on a variety of product-related incidents. ATLA members are concerned that the CPSC generally investigates only those incidents that result in very serious injuries or death and those that involve a new and unique product. For example, the CPSC relies upon its National Electronic Injury Surveillance System (NEISS) to obtain estimates of the number of injuries associated with specific consumer products. NEISS gathers information from the emergency room records of a nationally representative sample of hospitals. The CPSC also obtains fatality information through its purchase of a selected group of death certificates from the states and supplements the information with reports from individual consumers and from private organizations such as fire-prevention groups and poison control centers. *See, e.g., Consumer Product Safety Commission, Better Data Needed to Identify and Analyze Potential Hazards*, United States General Accounting Office, at 13 (1997). Less serious, product-related injuries which may result in treatment in an emergency room, in a physician's office or through an outpatient clinic, are underrepresented in CPSC's surveillance data. *Id.* In order to maintain its duty to consumers, the CPSC must formulate a policy that will require it to investigate a wider variety of product-related incidents, not simply those that result in fatalities or critical injuries.

III. Technological Collection Techniques Should Be Utilized But Should Not Be the Exclusive Method for Data Collection

ATLA supports the use of automated, electronic, or other technology to collect data for product-related injuries. Reliance on improved technology will minimize any burdens associated with this data collection. Technological innovations for data collection likely would reduce the time required to record a witness account. The use of computer databases also could lend itself to more

efficient use of the information by showing graphical depictions of incident data and provide more user-friendly information to consumers.

However, ATLA cautions the Commission regarding using such techniques as its sole method for data collection. Aside from the typical problems associated with maintaining the necessary electronic equipment, these techniques may not yield the same quality and quantity of information available from the Commission's current variety of data collection resources. The use of multiple resources allows the Commission to ascertain all pertinent details and to substantiate witness accounts that might have been initially unclear. If the CPSC was to rely upon enhanced technology to collect data, the Commission staff may not learn details of an incident generally revealed during in-depth telephone conversations or direct contact with state and local officials. A CPSC staffer should be trained to ask the questions necessary to elicit the required information, a skill that cannot be adequately replicated by a computer. A Web site dedicated to receiving witness accounts would lose the human emotions given by a telephone account that may convey the seriousness of the risk or hazard.

Reliance on technological collection techniques also may not result in the compilation of timely witness accounts. A witness may delay inputting his or her account into a database, which may impact the reliability of the statement. A witness also may be unable to access or properly utilize electronic collection technology if he or she is elderly, has a lower socioeconomic status, or is impeded by a language barrier. This problem would be compounded by the likelihood that older generations and those living in impoverished areas may purchase less expensive products. Less expensive products are more likely to be constructed poorly and, as a result, may be more harmful to consumers. The CPSC should not risk losing vital information from these consumers due to reliance on technological collection techniques. Therefore, while the use of technological innovations may ease the burden on CPSC staffers analyzing the data, such techniques should not be the sole methods that the CPSC uses to obtain witness statements regarding product-related injuries.

ATLA appreciates this opportunity to submit comments in support of the Commission's extension of this information collection. If you have any questions or comments, please contact Gerie Voss, ATLA's Regulatory Counsel at (202) 965-3500 ext. 748.

Sincerely,



Lewis S. "Mike" Eidson
President
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