

RETAILER LIABILITY

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Consumer Product Safety Act Overview

- Section 15(b)'s Reporting Obligations Apply to Manufacturers, Distributors, and Retailers.
- Section 15(d) Provides Commission With Authority to Order a Retailer to Take Corrective Action.
- Until Recently, No Actions For Failure To Report Product Hazards Brought Against Retailers, and No Settlements With Retailers For Violating Reporting Requirements.

Allocating The Burden Between Retailer and Manufacturer

- Typically, retailer by agreement or operation of law or both, is indemnified by the manufacturer for products liability claims.
- Typically, no agreement as to obligation to report to CPSC.
- Private agreement between retailer and manufacturer does not alter Section 15(b) in any case.

Pre-Wal-Mart Lawsuit

- Retailers typically pass complaints on to manufacturers.
- Extent to which complaints were subject to analysis unclear.
- Generally, CPSC dealt with manufacturers in connection with product defect investigations.
- Threat of “going around” manufacturer and working with retailer always present and sometimes brandished.

Pre-Wal-Mart Lawsuit

- Different analysis where manufacturer not available, or in private label situations.
- Recalls: manufacturer typically performs, with retailer cooperation.

Wal-Mart Lawsuit

- Filed May 2001 vs. Wal-Mart and product manufacturer.
- Suit alleged \$9 million in reporting violations.
- Suit alleged in-store complaints of injuries, and reports of injuries from consumers' post-sale home use.
- Number of incidents that occurred in stores (30); number of consumers who informed retailer that medical attention was needed (30); number of consumers who were taken directly to the hospital from the store (4).

Wal-Mart Lawsuit

- Relevance of quantity and severity of incidents and injuries to determination of existence of hazardous defect
- Govt view: knowledge of 11 collapses (9 which occurred in retail stores) and 11 injuries (5 with medical attention and 1 to hospital directly from the store) supported the conclusion that a hazardous defect existed;
- Duty to report arose *no later* than this time.
- Case settled April 2003. Wal-Mart paid \$750,000.

After Wal-Mart And Mirama Case

- Questions for our panelists: Extent to which retailers have altered the way they do business.