

DANGEROUS TOYS

by Adam J. Langino and Leslie M. Kroeger

Every year, the U.S. Consumer Product Safety Commission releases its report on toy-related death and injuries. Fortunately, fatalities are not common. However, as practitioners, we must continue to be mindful of injuries to children. Even the closest watched child is susceptible to injury from a faulty toy, infant sling, crib, or stroller. And as we know from experience, many manufacturers do not promote recalls, leaving parents and consumers unaware that a dangerous product could be in the home.

The most recent reporting by the CPSC captures the 2015 toy-related deaths and injuries. While fatality information is often delayed due to death certificate reporting, there were a total of 11 reports identified as toy-related deaths among children younger than 15 years old. Riding toys encompassed the majority of those deaths, all of which were due to motor vehicle involvement. In addition in 2015, we know that an estimated 254,200 toy-related injuries were significant enough to require treatment in emergency rooms. Of those, 41% were classified as lacerations, contusions, or abrasions, with males more often injured than females accounting for 58% of the ER related injuries; 3% of the ER related injuries were severe enough to require hospital stays.

The CPSC noted no statistically significant trend in the number of toy related injuries from 2011 to 2015. Nonetheless, non-motorized scooters continue to be associated with causing the most injuries in children younger than 15 years old. The number of toy recalls initiated by the CPSC has decreased dramatically since 2008, which saw 172 recalls, 19 of which involved lead. In 2009, only 50 toys were recalled, 14 due to lead. From 2010 through 2016 the number of recalled toys has averaged fewer than 30 a year. Lead related recalls also dropped dramatically to about two a year.

The CPSC credits the decrease in unsafe toys due to its global system of toy safety, which started in 2009 and requires toys to be tested by independent, third party testing laboratories. According to the CPSC, the system has been instrumental in stopping dangerous toys at our ports. From 2008 -2013, the CPSC and the U.S. Customs and Border Protection worked together in stopping more than 9.8 million units of about 3,000 different toys that violated U.S. safety standards.

Prior to 2009, toy safety standards were voluntary in the United States; however, that year the Consumer Product Safety Improvement Act of 2008 (CPSIA) was enacted and mandated that previously existing voluntary safety standards become a nationwide mandatory children's product safety rule. At the time, ASTM International's Standard Consumer Safety Specification for Toy Safety F-963 was considered the "gold" standard for the safety of toys. The CPSIA mandated that all toys meet the F963 safety standard. F-963 is continually revised, reviewed, and updated by an ASTM Committee known as "F-15." Committee F15 was formed in 1973 and is comprised of approximately 900 participants thought to represent consumers, the government, and those in the industry. There are a variety of subcommittees, each of which looks at a different product area and is charged with continually updating safety standards. Presently, Richard Rosati of Bureau Veritas is chairman. Bureau Veritas, S.A. is an international testing, inspection, and certification service providing agency.

In 2016, ASTM F-963 was updated to address ride-on toy safety with a new curb impact requirement. It also added new labelling requirements for toys with small coin/button batteries; temperature and current-limiting requirements for toys with lithium-ion batteries; and new requirements for toys that could expand if accidentally swallowed.

Florida has no specific rule, standard, or law pertaining to toy safety. For practitioners, though, federal preemption is not a concern. By its own terms, the Consumer Product Safety Initiative Act prohibits its regulations from preempting any cause of action under state or local common law or state statutory law regarding damages claims.

Independent of the CPSC, the first comprehensive epidemiological study of toy-related injuries was published in 2014. Despite recent advances in toy-safety, the study found that the annual injury rate per 10,000 children increased by 39.9% from 18.88 kids in 1990 to 26.42 in 2011. The number and rate of injuries peaked at 2 years old. Similar to the CPSC findings, males accounted for a larger percentage of injuries (63.4%) and ride-on toys accounted for the most injuries and hospital admissions.

So far in 2017, only a few toys have been recalled. Just in April, Horizon Hobby recalled its remote controlled vehicles due to a fire hazard; Razor recalled its RipStik motorized caster boards due to a fall hazard; and Target recalled its Hatch & Grow Easter toys because it expands when accidentally ingested, causing potentially life-threatening intestinal obstructions.

As many parents are aware, toys are not the only products intended for children. In recent years, infant slings have become very popular. According to the CPSC, between January 2003 and September 2016, 159 incidents were reported; 17 were fatal and 142 were nonfatal. Of the 142 nonfatal incidents, 67 reports involved an injury to the infant during use of the product. Among the 67 reported nonfatal injuries, 10 involved hospitalizations.

Earlier this year, on January 11, 2017, the Commission on product safety voted 3-2 in favor of a new federal mandatory standard intended to improve the safety of infant sling carriers. The new standard incorporated much of the prior voluntary ASTM standard (ASTM F2907-15). The new Federal Standard has a loading requirement to ensure that the sling can carry up to three times the manufacturer's maximum recommended weight; a structural integrity requirement to ensure that after all testing, there are no seam separations, fabric tears, breakage, etc., and an occupant retention requirement to prevent the child being carried from falling out of the sling during normal use.

The standard also has new warning and instruction requirements, including photographs, to show the proper position of a child in the sling; a warning statement about the suffocation hazard posed by slings and prevention measures; warning statements about children falling out of slings; and a reminder for caregivers to check the buckles, snaps, rings and other hardware to make sure no parts are broken.

As public safety advocates, we must continue to evaluate products intended for children, and hold manufacturers accountable for unsafe products when appropriate to do so. This will help ensure the safety of the youngest, most vulnerable members of our communities. ■



ADAM J. LANGINO

is an Attorney with Cohen Milstein Sellers & Toll PLLC, and a member of their Catastrophic Injury & Wrongful Death, Managed Care Abuse, and Unsafe & Defective Products practice groups. Prior to joining Cohen Milstein, Mr. Langino was an Associate at Leopold Law and served as an Assistant Public Defender in West Palm Beach for three years. Mr. Langino attended the University of Maryland, graduating *magna cum laude* with Honors in Government and Politics, and earned a J.D., *cum laude*, from the University of Minnesota School of Law. Mr. Langino is a member of the Palm Beach County Bar Association, the Florida Justice Association Young Lawyer Section, and the American Association of Justice. In 2015, Mr. Langino was appointed to a six year term to the governing body of the Pound Civil Justice Institute, a national legal "think tank" dedicated to ensuring access to justice for ordinary citizens.



LESLIE M. KROEGER

is a Partner at Cohen Milstein Sellers & Toll PLLC, and a member of the firm's Catastrophic Injury & Wrongful Death, Managed Care Abuse, and Unsafe & Defective Products practice groups. Ms. Kroeger currently serves as the Secretary of the Florida Justice Association. She serves on the Florida Bar Professional Ethics Committee and is past President and Founder of the Martin County Chapter of the Florida Association for Women Lawyers. Ms. Kroeger has achieved an AV rating from Martindale-Hubbell, and has been recognized by The Best Lawyers in America; Florida Super Lawyers; and Florida Legal Elite. She serves on Law360's Product Liability Editorial Advisory Board and speaks frequently on strategies and tactics for litigation.

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