

Child Safety

by Leslie M. Kroeger, Adam J. Langino, and Diana L. Martin

The field of child safety is always evolving. With changing federal standards, advances in technology, and frequent safety recalls, it is hard for parents to stay informed. Recently, the U.S. Consumer Product Safety Commission recalled more than 5 million infant inclined sleepers. This article details the companies that sold the defective products, the breadth of the recalls, the underlying safety defects that led to the recalls, and a few practice tips on how to successfully handle a product defect infant death claim.

Kids II Rocking Sleeper

On April 26, 2019, the Consumer Product Safety Commission (“CPSC”) ordered Kids II, Inc., to recall approximately 694,000 of its Rocking Sleepers. As of 2012, five infants died while using the product, some as a result of rolling from a back-lying position to a stomach-lying position while unrestrained.¹ The product, which retailed in the \$40 to \$80 range, was sold from March, 2012, through April, 2019, online and at major retailers nationwide, including Walmart, Target, and Toys “R” Us.²

Kids II, Inc., is a private domestic for-profit corporation headquartered in Atlanta, Georgia. It has approximately 500 employees worldwide in 15 offices. Its annual revenue hovers around \$300 million.³

Fisher-Price Rock ’n Play Sleeper

On April 12, 2019, the CPSC ordered Fisher-Price, Inc., to recall approximately 4.7 million infant sleepers. As of 2009, more than 30 infant fatalities have occurred in its Rock ’n Play Sleepers.⁴ As with the Kids II Rocking Sleeper, some of these deaths occurred after the infants rolled over, from back to front, while unrestrained.⁵ The product was sold at major retailers for approximately \$40 to \$149. Fisher-Price knew how consumers used its sleeper — Instagram has thousands of images of babies, unrestrained, free of harness, and surrounded by blankets and stuffed animals while in a sleeper.⁶ Fisher-Price’s marketing materials made claims that its inclined sleeper allowed babies to sleep comfy all night long.⁷ It emphasized the product’s soft padding and angled positions, which safety experts say are dangerous characteristics.⁸

Fisher-Price, Inc., is a domestic for-profit corporation headquartered in East Aurora, New York. It is a subsidiary of Mattel, sells products worldwide, and has an annual revenue average of about \$1.1 billion.⁹



Why Are Children Dying in Infant Sleepers?

The CPSC has received more than 700 reports since 2005 about injuries associated with infant inclined sleepers.¹⁰ As reported by the *New York Times*, prior to 2019 there have been at least eight recalls linking inclined sleep products to concerns about strangulation, suffocation, falls, and entrapment.¹¹ The supplementary information in an April 7, 2017, Proposed Rule by the CPSC noted that a total of 657 incidents (14 fatal and 643 nonfatal) related to infant inclined sleepers occurred from the beginning of 2005 through September 30, 2016.¹²

According to an April 9, 2019, American Academy of Pediatrics (AAP) position statement, the cause of death for some of the infants who die in inclined sleepers is listed as asphyxia, or the inability to breathe caused by the infant’s position.¹³

From a child safety product design perspective, the Kids II Rocking Sleeper and Fisher-Price Rock ’n Play Sleeper share at least two dangerous characteristics: 1) they place the infant at an incline; and 2) they recess the infant between deep, soft fabric.

Deep, soft fabric is dangerous for infants who lack the neck control to keep their head from falling into a compromised, suffocating position. According to an April 22, 2019, study published in *Pediatrics*, which analyzed five years of infant death data, most infant suffocation deaths are attributed to soft bedding.¹⁴

According to the AAP, infants should always sleep on their back, on a separate, flat and firm sleep surface without any bumpers or bedding.¹⁵ It advises parents against using sleepers, such as those sold by Kids II and Fisher-Price, because of the risk that an infant can turn or roll into an unsafe position and suffocate.¹⁶

A May 31, 2018, letter sent to the CPSC by the AAP, Kids in Danger, Consumer Federation of America, Consumers Union, and Consumer Reports, expressed concern about many of the safety issues that led to the CPSC's recent recalls of more than 5 million sleepers.¹⁷ In that letter, the authors characterized inclined infant sleepers as "dangerous," "inherently unsafe," and not in alignment with "safe sleep recommendations." They noted that while parents may consider using inclined sleep products out of a desire to prevent their infants from experiencing gastroesophageal reflux, spitting-up, or gagging, the scientific medical research indicates inclined sleepers are ineffective at doing so.¹⁸ Worse, they explained that inclined sleep positions increase the risk of an infant sliding into a position that could have the opposite effect of compromising respiration.¹⁹ Due to the safety concerns above, other countries, such as Canada, already ban Fisher-Price and Kids II from marketing their infant inclined products as sleep products for infants.

Handling an Infant Death Product Liability Safety Claim

As with any product liability claim, the inclined sleeper product and packaging should be preserved. An evaluation of the product will uncover its angle of incline, which may or may not fall within the manufacturer's incline specification. It will also allow your expert to examine the depth of the recess and softness of fabric and determine whether the inclined sleeper's restraint buckle was functional. The packaging will be helpful in explaining to a jury what information (or lack thereof) was available to the parents in guiding their purchase decision. The manual will also be helpful in showing how the company instructed parents on how to use its product and how it communicated its warnings. A warnings expert will be helpful in finding any deficiencies in how the information was communicated.

Typically, the child product manufacturer will look to blame the parents for their child's death. Therefore, at the outset, any pictures the family has (or has posted on social media) of the infant should be preserved. The pictures will help show that the family's use of the product was either proper or a foreseeable misuse that should have been guarded against by the manufacturer. Early interviews with the infant's pediatrician and mother's OB-GYN will also be helpful in understanding any correlating conditions that may have increased or decreased the child's risk for suffocation. For instance, was the

mother's pregnancy healthy, was the birth without complication, was the infant's growth or development normal? These are all issues that the defendants will explore, and it is best to get ahead of any possible defense or issue.

Conclusion

Infant deaths are tragic. Many are preventable. The dangers of inclined sleepers are well known to the industry, but not to parents who expect companies to sell products that are safe. When faced with an inclined sleeper infant injury, the above information will help you hold the companies that profit from their sale accountable for the injuries they create. ■



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¹ www.cpsc.gov/Recalls/2019/Kids-II-Recalls-All-Rocking-Sleepers-Due-to-Reports-of-Deaths

² <https://kids2rockingsleeper.expertinquiry.com>

³ www.ajc.com/business/innovation-keeps-atlanta-toy-company-growing/Zw8UNEqR6gpy3S3FNx1o9l

⁴ www.cpsc.gov/Recalls/2019/fisher-price-recalls-rock-n-play-sleepers-due-to-reports-of-deaths

⁵ www.cpsc.gov/Recalls/2019/fisher-price-recalls-rock-n-play-sleepers-due-to-reports-of-deaths

⁶ www.nytimes.com/2019/04/19/business/fisher-price-recall.html

⁷ www.nytimes.com/2019/04/19/business/fisher-price-recall.html

⁸ www.nytimes.com/2019/04/19/business/fisher-price-recall.html

⁹ <https://mattel.gcs-web.com/static-files/d231da34-60d7-44f0-83df-933c52b5d688>

¹⁰ www.nytimes.com/2019/04/19/business/fisher-price-recall.html

¹¹ www.nytimes.com/2019/04/19/business/fisher-price-recall.html

¹² www.regulations.gov/docket?D=CPSC-2017-0020

¹³ www.aap.org/en-us/about-the-aap/aap-press-room/Pages/AAP-Urges-U-S-Consumer-Product-Safety-Commission-to-Recall-Fisher-Price-Rock-n-Play-Sleeper.aspx

¹⁴ Lambert, Alexa B. Erck, et al. "Sleep-Related Infant Suffocation Deaths Attributable to Soft Bedding, Overlay, and Wedging." *Pediatrics*, 2019, doi:10.1542/peds.2018-3408.

¹⁵ www.aap.org/en-us/about-the-aap/aap-press-room/Pages/AAP-Urges-U-S-Consumer-Product-Safety-Commission-to-Recall-Fisher-Price-Rock-n-Play-Sleeper.aspx

¹⁶ www.aap.org/en-us/about-the-aap/aap-press-room/Pages/AAP-Urges-U-S-Consumer-Product-Safety-Commission-to-Recall-Fisher-Price-Rock-n-Play-Sleeper.aspx

¹⁷ <https://kidsindanger.org/docs/pdfs/Inclined%20Sleep%20Products%20CPSC%20June%202013%202018.pdf>

¹⁸ <https://kidsindanger.org/docs/pdfs/Inclined%20Sleep%20Products%20CPSC%20June%202013%202018.pdf>

¹⁹ <https://kidsindanger.org/docs/pdfs/Inclined%20Sleep%20Products%20CPSC%20June%202013%202018.pdf>