

American Conference Institute's

# CONSUMER PRODUCTS

## REGULATION & LITIGATION

*Essential strategies for overcoming regulatory and litigation hurdles in consumer products*

June 26 – 27, 2013 | Chicago-Mart Plaza (Riverview) Hotel, Chicago, IL

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**Sean Beckstrom**

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Graco Children's Products  
Newell Rubbermaid (Atlanta, GA)

**Donald Moffett**

Director of Global Compliance  
& Quality Assurance  
Wilton Brands (Woodridge, IL)

**When product issues arise, the price of recalls and litigation can be significant both in actual costs and reputational harm. Protect your company's name and bottom line with crucial strategies and updates on:**

- UNDERSTANDING the standards and requirements under the CPSC – what to report, what not to report, how to respond to an investigation, the changes under the CPSIA and current trends toward aggressive actions
- MEETING safety testing requirements
- DECIDING when to include a warning label, what constitutes a misleading statement, how to fix them and what is required
- PROTECTING your company from no-injury class action litigation, class certification, and private plaintiff class actions
- MAXIMIZING the benefits of pre-litigation counseling
- PREPARING for state enforcement under state consumer products safety statutes including California and Washington
- PROVEN TECHNIQUES for crisis management and minimizing reputational harm

### Regulatory Insights from:

**Commissioner Robert S. Adler**

U.S. Consumer Product Safety Commission

**Hon. Anne M. Northup**

Former U.S. Congresswoman  
Former Commissioner  
U.S. Consumer Product Safety Commission

**Jason K. Levine**

Chief Counsel to Commissioner Robert S. Adler  
U.S. Consumer Product Safety Commission

**Daniel Kaufman**

Deputy Director, Bureau of Consumer  
Protection, Federal Trade Commission

**Marc J. Schoem (Invited)**

Acting Director, Office of Compliance  
and Field Operations  
U.S. Consumer Product Safety Commission

**Dennis Blasius (Invited)**

Director of Field Investigations  
U.S. Consumer Product Safety Commission

**Carol Kraege**

Reducing Toxic Threats Initiative Coordinator  
Washington Department of Ecology

**Bryan H. Benesch (by video conference)**

Special Assistant to the Director and CDRH  
Device, Determination Expert  
Office of Compliance, Center for Devices  
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*There is no other conference available that not only addresses pressing changes in the industry impacting litigation, but also provides practical information to bolster your practice, cutting-edge information about emerging areas of concern, and an opportunity to hear insights from esteemed jurists.*

As the CPSC ratchets up its enforcement activities, any hint of product issues send companies over a tightrope of decision making where they have to balance the risks and expense of reporting, recalls, and possible civil penalties. At the same time, manufacturers are the subject of increased exposure to reputational harms and lawsuits from the wildfire nature of internet reporting.

ACI has developed **Consumer Products Regulation and Litigation** as a safety net for companies to help them balance regulatory compliance and litigation risks, weaving together judicial insights, regulatory perspective, and the advice of industry leading counsel to give consumer products professionals the most up-to-date, expert tested advice possible on navigating this terse terrain now and in the future. This is the only event which will provide:

- Feedback on dealing with aggressive actions from the counsel for *In the Matter of Maxfield and Oberton Holdings, LLC*
- Strategies for managing reputational backlash from a brain trust of in-house counsel, outside counsel, and public relations professionals
- Proven practice tips on the regulatory nuances to exploit when performing a recall including how to gracefully negotiate when you do not agree with the CPSC
- Trends and management tips with respect to class action litigation from jurists and industry leading litigators
- A structured approach to understanding and meeting overlapping regulatory requirements at the federal and state law levels



## WHO YOU WILL MEET

### Representatives from Consumer Goods companies including or specializing in

- General Counsel
- Litigation Counsel
- Quality Assurance
- Government Relations
- Product Safety Directors

### Law firm attorneys specializing in

- Product and Consumer Safety
- Recalls
- Litigation
- Products Liability

## PRE-CONFERENCE WORKSHOP

Tuesday, June 25, 2013

1:00 pm – 4:00 pm (Registration begins at 12:00 pm)

A

### Consumer Product Safety Act Primer & Consumer Product Safety Improvement Act Update



**Rebecca Mond** (Invited)

Director, Federal Government Relations  
Toy Industry Association (Washington, DC)



**Stephen P. Murphy**

Partner  
Edwards Wildman Palmer LLP (Washington, DC)

Section 15(b) of the Consumer Product Safety Act (CPSA) has long imposed the obligation to report certain product problems to the Consumer Product Safety Commission (CPSC). The passage of the Consumer Product Safety Improvement Act of 2008 (CPSIA) has fundamentally affected the enforcement of the CPSA. Prepare for the higher level discussions of the main conference with this up-to-date primer course on Section 15 reporting and recently implemented CPSIA requirements.

- Defining a substantial product hazard
- Pre-reporting actions by company
  - when to hire outside testing
- Weighing when to report and when not to
- Practical practice tips for compliance with the reporting requirements
  - choosing between a fast track approach or traditional review
- Voluntary standards vis-à-vis product failures
- What is a defect that “could create” a substantial product hazard?
  - pattern of the defect
  - total number of products in commerce
  - severity of the risk
  - likelihood of injuries, particularly injuries to vulnerable population groups such as children, the elderly and the disabled
- Understanding when a full report under 16 CFR 1115.13(d) is needed
- Streamlining internal processes in order to meet tight CPSC deadlines should the need arise
- Disclosure of reports as “investigations” by the CPSC
  - Rule 6(b)
  - when and how to craft requests for confidentiality
- Ramifications when the CPSC opens a case file without a company report
- Expansion of Section 15(b) under the CPSIA
  - CPSC authority
  - civil penalties
- Complying with the new CPSIA testing & certification requirements

Day 1 – Wednesday, June 26, 2013

7:30 Conference Registration and Continental Breakfast

8:30 Co-Chairs’ Opening Remarks



**Cheryl A. Falvey**

Partner  
Crowell & Moring (Washington, DC)



**Eric A. Rubel**

Partner  
Arnold & Porter LLP (Washington, DC)

8:45 Managing Company Risk of Administrative Actions, Working Around the CPSC Database, and Responding to Aggressive Investigations



**Hon. Anne M. Northup**

Former U.S. Congresswoman; Former Commissioner  
U.S. Consumer Product Safety Commission



**Paul M. Laurenza**

Member  
Dykema Gossett PLLC (Washington, DC)



**Charles A. Samuels**

Partner  
Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.  
(Washington, DC)

- Navigating the changed atmosphere of administrative action against manufacturers
  - factors leading to mandatory recalls
  - steps to avoid penalties
  - how agency enforcement activity relates to class actions and the interest of state Attorney Generals
  - what does it mean for your company to be hit with an administrative action
- [www.saferproducts.gov](http://www.saferproducts.gov)
  - review of the Database by the CPSC
  - managing the privacy implications of reporting
  - use of the Database by plaintiff’s attorneys
- Pre-emptive measures
  - having company personnel monitor consumer websites
  - factoring the impact that the ubiquitous availability of information plays on risk calculations
- Analyzing the culpability implications of settlement with the CPSC
- Handling warranty experiences in a litigation/regulatory situation
- Lessons from recent enforcement actions
  - *In the Matter of Maxfield and Oberton Holdings, LLC*
  - *In the Matter of Baby Matters, LLC*
  - Drawstrings

10:00 **Total Recalls: Agency Perspective on the Recall Process and Investigations**

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**Marc J. Schoem** (Invited)

Acting Director, Office of Compliance and Field Operations  
U.S. Consumer Product Safety Commission



**Dennis Blasius** (Invited)

Director of Field Investigations  
U.S. Consumer Product Safety Commission

10:45 Morning Coffee Break

11:00 **Total Recalls: Counsel Perspective on Processes for Streamlining the Response to Product Issues and Effectively Working with the CPSC**

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**Timothy L. Mullin, Jr.**

Partner, Author of *Product Safety Blog*  
Miles & Stockbridge P.C. (Baltimore, MD)



**Harley V. Ratliff**

Partner  
Shook, Hardy & Bacon L.L.P. (Kansas City, MO)



**Linda Lane**

Partner  
Morrison & Foerster LLP (San Diego, CA)



**Christie Grymes Thompson**

Partner  
Kelley Drye (Washington, DC)

**Moderator**



**Sean Beckstrom**

North American General Counsel, Graco Children's Products  
Newell Rubbermaid (Atlanta, GA)

- Pre-engagement determinations when it comes to light a product is not meeting a standard
  - what to do if the allegation regarding the product is untrue
  - when to conduct testing
  - obtaining certificates of compliance
  - navigating the vague reporting standard to determine if and how to report to CPSC
  - responding to a CPSC alert of a product report
  - limiting exposure
- Initial engagement with the CPSC
- Putting a detailed recall action plan in place ahead of time given the short timeframes for response once you have actionable information
  - what are your options if you cannot agree with the CPSC
  - choosing a stop sale over a recall
- What the CPSC expects from companies
- How the CPSC uses social media and the ramifications it could have on your company
- Global approaches to recall notifications

- Canada
- Europe
- Japan
- Australia
- Proven strategies for settling with the CPSC
- Measures you can take while waiting for your recall to close

12:15 **Networking Lunch for Speakers and Delegates**

1:45 **Minimizing Company Harm from "No Injury" Class Actions**

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**Cheryl A. Falvey**

Partner  
Crowell & Moring (Washington, DC)



**Francis A. Citera**

Shareholder  
Co-Chair of Products Liability and Mass Torts Practice  
Greenberg Traurig, LLP (Chicago, IL)



**Christopher Young**

Partner  
DLA Piper (San Diego, CA)

It's a vicious cycle. A company manages an enforcement action or database listing only to find themselves in the crosshairs of plaintiff's attorneys. No injury class actions are the dreaded new scourge plaguing manufacturers. In this session, find out the best ways to prevent and defend against this destructive threat.

- How enforcement fuels class actions
  - exploring primary jurisdiction reasoning and when the regulatory argument may be available
  - does failure to comply with regulators provide the basis for lawsuits?
- Standing issues
  - defeating class certification
- Successful defense strategies
  - addressing allegations of insufficient scientific substantiation
  - supporting fair disclosure arguments
- Evading pressure to broker an early settlement
  - which factors to prioritize when weighing the desire to settle against the possibility of making your company a target for other lawsuits
- Risk management tactics to keep a lawsuit from happening
- Understanding the shared risk of labeling lawsuits to manufacturers and distributors
  - contractual indemnity
- Possibilities for coverage given the landscape of insurer battles
  - the advent of subrogation
  - what to expect given aggregate lawsuits
- Strategies for limiting the case early on to reduce discovery costs
- Analysis of three paradigms of consumer protection

- California
  - creating a plan ahead of time to take advantage of the cure period if needed
- New York
- Illinois

3:00 **Warning! Follow These Best Practices for Crafting Warning Labels to Mitigate Litigation Risks**



**Jeffrey J. White**  
Partner  
Robinson & Cole LLP (Hartford, CT)



**Raina J. Shah, M.S.E., C.P.S.M., CPE**  
Senior Consultant  
Human Factors and Product Safety Group  
Applied Safety & Ergonomics (Chicago, IL)



**Rob Harrington**  
Regulatory and Safety Consultant  
Blyth, Inc (Batavia, IL)

Although often diminutive in size, a product's warning label has the potential to create massive exposure for a company. This panel of experts will examine several hypothetical products and walk through the decision-making process of where and why to include warnings using audience feedback.

4:15 **Afternoon Refreshment Break**

4:30 **Who is Regulating My Product? Delineating CPSC, FDA, EPA, and FTC Boundaries to Understand Compliance Responsibilities and Redundancies**



**Jason K. Levine**  
Chief Counsel to Commissioner Robert S. Adler  
U.S. Consumer Product Safety Commission



**Daniel Kaufman**  
Deputy Director, Bureau of Consumer Protection  
U.S. Federal Trade Commission

**Bryan H. Benesch (by video conference)**  
Special Assistant to the Director and CDRH Device Determination Expert  
Office of Compliance, Center for Devices and Radiological Health  
U.S. Food and Drug Administration

**Moderator**



**Eric Stone**  
Principal  
Law Office of Eric Stone, LLC (Washington, DC)

This roundtable of government officials will discuss enforcement priorities, new initiatives, and investigative practices particular to companies with multi-product offerings.

- Food and Drug Administration
  - in-between products like bed rails: consumer product or medical device?

- products with anti-microbial treatment
- making health claims without changing the jurisdictional landscape
- Environmental Protection Agency
  - Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)
  - "treated article" claims
- Federal Trade Commission
  - deceptive advertising and marketing claims
  - working with the FTC to cure issues
- Differences between retailer and manufacturer obligations
  - how the responsibilities work together
  - where duties may clash
- Enforcement and litigation risks

5:30 **Crisis Management: Controlling the Corporate Message and Limiting Negative Exposure**



**Cary W. Mergele (Invited)**  
Vice President and Deputy General Counsel  
Sears Holdings Corporation (Hoffman Estates, IL)



**Christopher F. Dekker**  
Associate General Counsel, Litigation and Employment  
Brunswick Corporation (Lake Forest, IL)



**John Weber**  
President  
Dezenhall Resources (Washington, DC)

**Moderator**



**Erin McCloskey Maus**  
Partner  
Baker & McKenzie (Chicago, IL)

When dealing with class actions, recalls, or even product fixes, the cost of reputational damage can far exceed those of attorney's fees. This panel will share strategies on crisis management and working with PR firms.

- What outside counsel recommends for carriers and insurers to evaluate and manage potential risks
  - corporate risk management
  - insurer risk management
- Emerging trends in crisis response
- Handling the media coverage
  - the costs of the inability to communicate with the right audience
- Mitigating the effect of real-time, widespread communications on litigation and product problems
  - blogs
  - Facebook pages
- Implementing tactics and policies to deal with negative PR and the media
  - working with the media
  - selecting the right spokesperson
  - research and message testing
  - communications planning
- Accounting for privilege issues to balance legal concerns and brand protection

- Taking proactive measures about brand communications moving forward
- How to use social media to the company's advantage
  - creating a detailed plan to protect the company's image
  - deciding on the most effective social media strategies
  - methods to recover positive opinion

6:30 Conference Adjourns to Day Two

## Day 2 – Thursday, June 27, 2013

7:45 Conference Registration and Continental Breakfast

8:15 Co-Chairs' Recap of Day One

8:30 CPSC Spotlight Address



**Robert (Bob) S. Adler**

Commissioner

U.S. Consumer Product Safety Commission

Commissioner Adler will comment on recent enforcement trends and what companies can do to proactively comply with CPSC requirements.

9:15 View from the Bench: The Judicial Perspective on Trying a Products Liability Case from Administering Multi-District Litigation, Controlling Discovery, and Motion Practice to the Trail Phase and Settlement



**Hon. Robert L. Miller, Jr.**

U.S. Dist. Ct., N.D. Ind.



**Hon. Richard A. Kramer**

Calif. Super. Ct., San Francisco Co.

### Moderator



**Cheryl A. Falvey**

Partner

Crowell & Moring (Washington, DC)

10:45 Networking Coffee Break

11:00 Hazardous Propositions? Accounting for the Impact of Prop 65 and other State Initiatives on Compliance Needs and Potential Causes of Action



**Carol Kraege**

Reducing Toxic Threats Initiative Coordinator

Washington Department of Ecology (Olympia, WA)



**Elizabeth V. McNulty**

Partner

Hewitt Wolensky LLP (Long Beach, CA)



**Jeffrey Brian Margulies**

Partner

Fulbright & Jaworski L.L.P. (Los Angeles, CA)



**Howard Berman**

Co-President

E4 Strategic Solutions, Inc. (Washington, DC)

While Congress considers revisions to the Toxic Substances Control Act (TSCA), states are creating a patchwork of regulations with their own initiatives. In this session, our panel of experts will provide specific guidance on how to account for pending and inconsistent state initiatives.

- California
  - Where the CPSC and California meet and diverge in terms of hazardous substances labeling
  - What to expect and how to prepare for the implementation of Prop 65
    - candidate chemical list
    - targeted chemical/product combinations
    - allocating responsibility and liability in the supply chain for conducting alternatives analysis
    - litigation risks and proposed Shield Bill
    - enforcement emphasis on increasing accountability in the system
  - Ramification of the Memorandum of Understanding between the Environmental Protection Agency and the Department of Toxic Substances Control
  - Causes of action arising from the California Business and Professions Code §17200
  - Implications of the Consumer Remedies Act in California and Texas
- Pending initiatives in other states
  - understanding the newly enacted notification requirements in Maine and Washington
  - Minnesota
  - Illinois Lead Act
- What additional states are considering similar legislation?
- Pre-emption: How do you accommodate the needs of the states while at the same time meeting federal requirements?
- Ways to stay abreast of developments

12:30 Conference concludes

*Networking Lunch for Workshop B Participants*

## POST-CONFERENCE WORKSHOP

Thursday, June 27, 2013

1:30 pm – 4:30 pm

(Registration begins at 1:00 pm)

B

### Product in Crisis: Interactive Product Life Cycle Management Workshop

#### Jennifer Yelle

Executive Director, Global Product Safety, Quality and Compliance  
Toys“R”Us (Wayne, NJ)



#### Eric A. Rubel

Partner  
Arnold & Porter LLP (Washington, DC)



#### Donald Moffett

Director of Global Compliance & Quality Assurance  
Wilton Brands (Woodridge, IL)

This comprehensive session will incorporate the topics of the main conference into a real-time fact pattern with workshop participants weighing in on the decision-making. The workshop will provide a holistic understanding of the product life cycle through analysis of the long term ramifications of considerations at each stage. Topics will include:

- Incorporating safety regulations into product development without sacrificing creativity
  - critical design considerations
- Instilling best practices into your marketing department
  - communicating how consumer fraud suits target label claims
- Creating monitoring programs to stay apprised of retailer and consumer complaints and other sources of safety information while the product is on-market
- Evaluating section 15 notification obligations as information evolves over time
- Managing litigation risk



## Continuing Legal Education Credits



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#### Wendy Tyler

Head of Sales, American Conference Institute

Tel: 212-352-3220 x5242

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# CONSUMER PRODUCTS

## REGULATION & LITIGATION

*Essential strategies for overcoming regulatory and litigation hurdles in consumer products*

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### Hear from representatives from:

- U.S. Consumer Product Safety Commission
- U.S. Federal Trade Commission
- Washington Department of Ecology
- U.S. Food and Drug Administration
- Toy Industry Association
- Sears Holdings Corporation
- Toys "R" Us
- Brunswick Corporation
- Newell Rubbermaid
- Wilton Brands
- Blyth, Inc.
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