



News & Updates

COURT RULING FAVORING CPSC COULD LEAD TO HEIGHTENED REPORTING REQUIREMENTS AND MORE ENFORCEMENT

A recent win for the Consumer Product Safety Commission (CPSC) may give teeth to a heightened “report at the first indication of a hazard” standard for manufacturers, and it could strengthen the agency’s enforcement authority in the eyes of the courts.

On November 17, 2016, a federal district court in Wisconsin held that Spectrum Brands Inc. failed to timely report a defect in certain Black & Decker coffee makers under Section 15(b) of the Consumer Product Safety Act. The decision could indicate a trend toward increased reporting requirements for manufacturers, as well as a more deferential approach by courts when assessing the CPSC’s decision-making process in justifying whether to seek civil penalties.

In June 2015, the CPSC filed suit against Spectrum and its former subsidiary, applica Consumer Products, alleging the company failed to timely report a hazardous defect in certain coffee makers. The government claimed that between early 2009 and April 2012 there were 1,600 reports by consumers of coffee pot handles detaching and causing the glass pot to shatter while filled with hot coffee. The government also claimed that the defective coffee makers were still being sold after a recall in June 2012.

Spectrum responded with several arguments including assertions that: the CPSC’s claims were time-barred under the *Gabelli* doctrine; the reporting requirements are unconstitutionally vague; the CPSC failed to provide fair notice that a report was required; the CPSC’s determination of late reporting was arbitrary and capricious; Spectrum had no duty to report because the CPSC had already been “adequately informed” of the defect; and the CPSC was not authorized to seek certain forms of injunctive relief, including the establishment of a compliance program and prospective liquidated damages in the event of noncompliance.

Each of these arguments was rejected by the court, which found almost entirely for the CPSC. Of note, the court reasoned there is no indication that Congress intended to demand a transparent, deliberative process before the CPSC can file suit. Furthermore, the court held that the CPSC’s regulations do not require consideration of the factors for seeking a civil penalty to be reduced to a formal writing.

Given that CPSC litigation has been limited in the past, but is becoming increasingly more common, this is a case to keep an eye on moving forward, especially if there is an appeal in the works. In the meantime, our attorneys can provide tailored guidance on how these rulings could affect your procedures and ongoing legal matters. For further information, please contact:

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