THE WHITE HOUSE

WASHINGTON

May 5, 2000

MEMORANDUM FOR HILLARY RODHAM CLINTON

FROM: HEATHER HOWARD
ANN O'LEARY
ERIC MORSE

CC: MELANNE VERVEER
SHIRLEY SAGAWA
LISSA MUSCATINE

SUBJECT: CHILDREN'S PRODUCTS SAFETY EVENT

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A *USA Today* investigation recently found that at least 17 manufacturers of children's toys failed to warn the government or the toy owners of complaints about the safety of their products. According to *USA Today*, "an analysis of government documents shows that problems with 75% of the most dangerous children's products recalled during the past three years were not reported to the government until the Consumer Product Safety Commission, often alerted by consumers, got involved." For example, the Commission recently announced a $400,000 penalty against Hasbro, which waited until it had 12 reports of handles unlatching on infant carriers (resulting in seven skull fractures) before telling the Commission about the problem.

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Monday, April 3, 2000

THE NATION'S NEWSPAPER

USA TODAY

NO. 1 IN THE USA . . . FIRST IN DAILY READERS

Child dangers ignored

17 firms kept problems quiet

By Jayne O'Donnell
USA TODAY

Since 1997, at least 17 companies kept quiet about products that were seriously injuring children until the government stepped in, a USA TODAY investigation finds.

The makers of cribs, infant carriers and other children's products heard complaints — sometimes thousands — from parents. They conducted internal investigations but never told the owners of the products or the government.

In fact, an analysis of government documents shows that problems with 75% of the most dangerous children's products recalled during the past three years were not reported to the government until the Consumer Product Safety Commission, often alerted by consumers, got involved.

▶ When safety is delayed. Special report, 1B

Today, the commission plans to announce a $400,000 civil penalty against Hasbro for waiting until it had 12 reports of handles unlatching on infant carriers — causing seven skull fractures — before telling the agency about the problem. The carriers were recalled in 1996. Hasbro denies wrongdoing and says it settled the matter to avoid prolonged legal proceedings.

Cosco, a maker of children's products, also might wind up in court on charges it ignored reports about four products, including a crib mattress that the safety commission says trapped 12 babies, killing one. If negotiations fail, the commission could sue Cosco.

Cosco says its recent recalls have involved "complex legal and interpretative issues" and often didn't involve serious injuries.

Hasbro is the sixth children's product company to face civil penalties since early 1998 because regulators say they waited too long to report safety hazards — or never told the government at all.

www.usatoday.com
USA TODAY
Money
SECTION B
Monday, April 3, 2000

Special report

78 children hurt

Century TraveLite Sport stroller
CPSC says:
- 1,400 reports of collapsing strollers
- 78 injuries
- Century had 560 reports and 29 injuries, before reporting the problem
- Recalled in April 1997

7 skull fractures

Playskool Fold N' Travel infant carrier
CPSC says:
- Seven skull fractures; one infant fell on face
- Hasbro waited four years to tell government
- Recalled in July 1996

200 children hurt

Cosco Geoby Two Ways tandem stroller
CPSC says:
- 3,000 lock failures
- More than 200 children injured, including fractures and head injuries
- Cosco never voluntarily reported problem
- Recalled in February 1999

Photos by Tim Dillon, USA TODAY

Suffering in silence

From unsafe strollers to cribs, companies fail to report flaws that amputate fingers, fracture skulls

USA Today, April 3, 2000, 1B

By Jayne O'Donnell
USA TODAY

Alexia Weber was pushing her two children along a South Lyon, Mich., street two years ago when the stroller they were riding in collapsed. Weber, relieved that the 3-year-old girl and 1-year-old boy were not hurt, assumed that she had done something wrong.

Only later did she learn that hundreds of other parents had experienced the same problem with their Cosco strollers — and many were not so lucky. Their children suffered head injuries, broken bones and cut fingers.

To Weber, the most disturbing news was that the Consumer Product Safety Commission says Cosco knew about those incidents but hadn't alerted parents to the potential danger. Cosco didn't tell CPSC about the problem until the agency learned of it on its own. And it didn't recall the stroller until February 1999 — at least a year after it began receiving what turned out to be 3,000 complaints about stroller locks failing and more than 200 injury reports.

This is a pervasive problem in a wide range of products used by children, a USA TODAY investigation shows. Product manufacturers frequently conduct internal investigations but remain publicly silent as complaints about alleged defects pile up. In the past three years, 75% of the most dangerous problems that led to recalls were never voluntarily reported to the government. During that period, there were at least 17 cases in which products stayed on the market while the company gathered reports of children suffering everything from lost fingers to brain injuries, an analysis of CPSC data shows.

"If I had known what happened to the other kids, I wouldn't have bought the thing," says Kristine Kwiecinski, whose 5-week-old son was dumped out of a Playskool carrier four years after CPSC says Hasbro began collecting reports of skull fractures. A lock on the handle could fail, turning the carrier upside down.

CPSC will announce today that Hasbro will pay the government $400,000 in civil penalties because, the agency says, it delayed reporting the carrier problem. Hasbro denies any wrongdoing and says it settled the matter to avoid prolonged legal proceedings.

Lawyers for Cosco and other child-product makers blame vague CPSC reporting rules and say it's difficult to know when complaints stem from a defect or owner misuse.

Federal law says a company must notify CPSC if it receives information that "reasonably supports the conclusion that its product creates an unreasonable risk of serious injury or death."

In the Cosco case, the company didn't think it

By John Galloway for USA TODAY

Unsuspecting parent: Weber was pushing Katelynn, left, and Nicholas in a stroller when it collapsed. She was pregnant with Meghan, front, at the time.

Please see SPECIAL REPORT next page ▶

2B · MONDAY, APRIL 3, 2000 · USA TODAY

Some product makers kept mum for years

Continued from 1B

was obligated to report the stroller problems to CPSC "due to the minimal number of reports and the minor nature of the injuries reported," says Cosco General Counsel Jonathan Reynolds.

The 3,000 complaints Cosco received represented 5% of 57,000 stroller owners.

"If someone has thousands of complaints, that's a pretty strong message about the quality or safety of their products," says R. David Pittle, a former CPSC commissioner and now vice president of Consumers Union. "That's not something you can say, 'We didn't know.' That's consumers telling you something."

Every year, more than 70,000 children are injured and about 60 die from injuries suffered in cribs, infant carriers and other non-toy items made just for kids, CPSC says.

"When you're talking about time with dangerous products, you're talking about deaths and injuries," says CPSC Chairman Ann Brown.

The companies put not only their customers but themselves at risk when they dawdle on reporting complaints. Since early 1998, manufacturers of six recalled children's products have agreed to pay the government civil penalties because they waited too long or never reported problems to CPSC. In addition to Hasbro, cited for the Playskool "Fold N' Travel" carrier:

▸ Baby's Dream Furniture in Georgia agreed to pay $200,000 in civil penalties in January. CPSC said the company waited until it had eight reports of children having their fingers amputated, cut or crushed in its "Generation" oak model cribs before it reported the problem to CPSC. The cribs were recalled in 1998. Baby's Dream President David Felfeli says the company didn't think it was late on reporting the injuries, but settled the matter to avoid court costs.

Special report

▸ Century Products paid $225,000 in civil penalties in 1998. CPSC said Century was told one child died and five became trapped in its Okla Homer Smith cribs before it reported the problem. The cribs were recalled in 1997. CPSC also said Century had 560 reports of collapsing "TraveLite Sport" strollers — including 29 injuries — before reporting. The strollers were recalled in 1997. Century had no comment.

▸ Safety 1st paid civil penalties of $175,000 in 1998. CPSC said Safety 1st had 27 injury complaints before it reported toddler bed support rails were breaking and children were dropping to the floor. The rails were recalled in 1995. Safety 1st denied its product was defective and that it knowingly violated reporting rules.

▸ Coaster paid $300,000 in civil penalties in 1998. CPSC said it failed to report defects or unreasonable risks in its full-size metal cribs despite independent lab test results showing the defect. Although no injuries were reported, the tests showed that crib slats and scrolls could strangle children and that children could choke on plastic end caps on the scrolls. The

▸ Binky-Griptight paid $150,000 in civil penalties in 1998. CPSC said it failed to report defects in Binky's Newborn Orthodontic Pacifiers. The company had six reports of pacifiers separating from the knob, creating a choking hazard, although no injuries were reported. The pacifiers were recalled in 1996. The company denied that it knowingly violated reporting rules.

Ongoing negotiations

In the case of the Cosco stroller, CPSC has been discussing possible civil penalties with the company for about a year. CPSC levies higher penalties for companies that are repeat offenders, and Cosco agreed to pay the government $725,000 in civil penalties in 1996 after the government sued it for failing to notify CPSC about hazardous toddler beds. If those negotiations fail, CPSC can take the company to court.

Cosco said in a statement to USA TODAY that it analyzed the product design and tested the strollers to ensure that any issues identified were corrected after it received complaints from consumers and retailers. The company also developed a repair kit.

Cosco, along with Kolcraft and Evenflo, has recalled an infant car seat that doubles as a baby carrier over the last two years because the handles released and babies fell to the ground. None of the three reported complaints or injuries until they were asked by the National Highway Traffic Safety Administration and CPSC, the government says.

By the time it recalled its carriers in December, Kolcraft had 3,000 reports of handle problems with 42 injuries, including a skull fracture and concussions, CPSC says. The agency says Cosco had 151 complaints the handles released, leading to 29 injuries, including skull fractures, and Evenflo knew of 176 carriers with handles that released, resulting in 89 injuries.

Evenflo spokesman Brian Bloom says the company made managerial changes and implemented an "ag-

USA Today, April 3, 2000, 2B

By Tim Dillon, USA TODAY

On the lookout: CPSC Chairman Ann Brown, director of recalls Marc Schoem, left, and his brother Alan, director of compliance, amid several of the products that the agency discovered on its own were unsafe.

gressive" quality-assurance program after the recall. The company "takes each recall very seriously because the safety of our customers and their families is our top priority," Bloom says.

Cosco blamed most of the carrier injuries on misuse and says federal tests for handles were not approved until after the carrier went on sale.

Kolcraft General Counsel Eileen Lysaught said the handle-related complaints it had in the fall of 1997 — when regulators asked for information — did not suggest a recall was needed. Along with injury reports, some of the handle complaints related to non-safety issues, such as color and smell.

Fuzzy rules?

"I don't think there's any excuse if a company knows something is causing harm to a child to not let CPSC know to help get the word out to parents," says Karen Sheehan, assistant professor of pediatrics at Northwestern University Medical School.

Lawyers who represent juvenile-product manufacturers blame CPSC regulations and methods for many of the delay problems:

▶ Peter Winik, an attorney with Latham & Watkins who represents Cosco and other manufacturers, says CPSC's reporting requirements are vaguely written, making it easy to see how companies might not think they need to report a hazard.

"The regulations leave plenty of gray areas for all different interpretations," Winik says. "In an awful lot of cases, the answer isn't clear. I suspect CPSC likes the regs just the way they are."

But Alan Schoem, CPSC's director of compliance, says the regulations are "pretty clear," and that companies simply prefer not to report. He says there is "no magic number" of injuries or complaints that suggests when a company should notify CPSC. But the agency

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gives companies from 24 hours to 10 days to investigate complaints and decide if a product hazard, rather than misuse, led to the complaint. He urges any company that is unsure of its reporting responsibility to call CPSC — anonymously, if necessary — to get a reading of the agency's position.

▶ Former CPSC general counsel Jeffrey Bromme, now a defense lawyer with Arnold & Porter, says CPSC's zeal in areas affecting children can catch some companies off guard.

"If your product has been involved in a child's death or in a horrible injury to a child, the staff is likely to move heaven and earth to get a recall," he told a child-safety conference recently.

Frederick Locker, legal counsel to the Juvenile Products Manufacturers Association and the Toy Manufacturers Association, says CPSC sets out to find a defect — and nearly always does — when it is investigating consumer complaints.

"It has to have chilling effect" on companies across the board, Locker says. "They want to encourage people to report insignificant or minor problems, but people think they'll all wind up being treated the same way" as those with deadly problems.

▶ Michael Brown, a former CPSC general counsel, now a defense lawyer with Brown & Freeston, says some firms complain it's difficult to predict how consumers might misuse a product and don't think they should be blamed for consumers' mistakes.

For instance, the handles on the combination car seat-infant carriers were unlocking when people propped them against their hips, CPSC says.

The companies considered it improper use of their products. But CPSC says the manufacturers should have known people would do that. The agency considered the lock failure in that position a defect.

"Say you make 3 million of something, and four people complain. Does that mean the design of the whole product is wrong?" asks Brown. "The government's answer is you should always come talk to us, but most of the time it's just a customer-satisfaction issue."

Alexia Weber disagrees.

When she called Cosco about the stroller that collapsed with her children in it, the company told her there was nothing wrong with it. But when she returned the stroller to the store, it wasn't being sold there anymore because management decided it was unsafe — even though it hadn't yet been recalled.

"It's scary that parents can have kids that have been injured after the company knew it was a problem, but decided, 'It's so rare,'" says Weber. "It's scary that companies can get away with it."

Web sites offer data on products' safety

Even the most diligent parent would have trouble keeping up with the children's product recalls announced every year. Here are the best bets for getting information:

▶ www.cpsc.gov: Includes all the recalls of infant and children's products, toys, household products and other consumer items announced since 19[illegible]. Recalls can be searched by name of product, company or product category. You can also sign up to be on CPSC's mailing list to get recall notices faxed or mailed. CPSC's hotline can be reached at 800-638-2772.

▶ www.nhtsa.gov: Has everything you need to know about child safety seats. You can search the National Highway Traffic Safety Administration's Web site for recalls, complaints and investigations related to any brand or model of child seat. (CPSC's site has only child seats that double as infant carriers.) Also includes tips on proper use of child safety seats. Information can also be obtained by calling 800-424-9393.

▶ www.registrationvillage.com: Allows consumers to register all their products in exchange for recall updates through e-mail or letters. Consumers also can search for historical recall data on any new purchases they make.

▶ www.parentsoup.com: Offers a "Consumer Retorts" board in the "Around the House" center, which is designed for parents who have found products they "can't live without" and ones they "want everyone to avoid."

▶ www.momsonline.com: Check "Product Watch" board in the "Homespace" area for information on recalls and other information moms want to share about their children's products.

By Jayne O'Donnell

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Millions of weed trimmer heads recalled for dangerous chain flaw

By Jayne O'Donnell
USA TODAY

About 3.5 million weed trimmer heads are being recalled today because the metal chain links can fly off at speeds up to 240 miles an hour and injure or kill people.

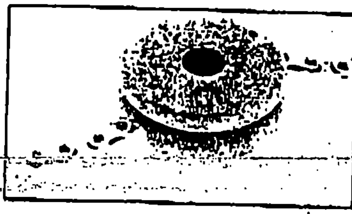
A 3-year-old girl was killed and 40 others have been injured when they were hit by the flying metal from Weed Wizard trimmer heads with metal chains.

In August 1997, Peyton Pytlewicz of Dothan, Ala., was playing when she was hit in the skull by a metal link as her grandfather was trimming weeds 35 feet away.

"The metal link becomes a deadly piece of shrapnel," Consumer Product Safety Commission Chairman Ann Brown says.

Weed Wizard Acquisition of Bradley, Mich., which acquired the product after the child's death, settled a lawsuit by her family for $7.35 million last year.

Spokesman Kevin McGrath says an engineering consultant concluded that the incidents wouldn't have occurred if the product had been used according to instructions.



Weed Wizard: Chain links have become deadly projectiles.

There were at least 12 reported accidents before the death, according to family attorney Sam Cherry of Cochran, Cherry, Givens and Smith. Most of those injuries were flesh wounds.

The company never reported the death or injuries to the agency, which is investigating whether Weed Wizard Acquisition should face civil penalties.

"It's a case that illustrates what can happen when a company is not reporting their accident histories," Cherry says. "The public is at peril for potentially dangerous products."

A USA TODAY analysis last month showed that 75% of the most dangerous child product problems that led to recalls never were voluntarily reported to the government. That percentage is believed to apply to all products.

The Weed Wizard being recalled has a metal chain trimmer head that replaces the string trimmer head on gas-powered trimmers.

The Weed Wizards with metal chains were sold from May 1987 through April of this year for $19 to $25. The replacement chain kits were sold from January 1992 through April of this year for $8. They were sold in stores and on TV.

Consumers should stop using the Weed Wizards with metal chains immediately and contact the firm to obtain free plastic replacement blades and installation instructions. For a free replacement kit, call Weed Wizard at 888-810-7536 or check www.weedwizard.com.

GE Faces Lawsuits on Dishwasher-Recall Plan

By MATT MURRAY
Staff Reporter of THE WALL STREET JOURNAL

General Electric Co. is coming under increasing heat for a dishwasher-recall plan.

New York state's attorney general, Eliot Spitzer, said he formally notified GE he intends to file within days a lawsuit over its October recall of 3.1 million dishwashers containing a defective energy switch that could spark fires. In a statement, Mr. Spitzer said GE "deceived consumers in New York and across the country so they could sell more dishwashers."

Terry Dunn, a spokesman at GE Appliances, Louisville, Ky., called the action "grandstanding." Pointing out that the rebate program was implemented in conjunction with the federal Consumer Products Safety Commission, he said, "This has been, is and will continue to be about consumer safety and removing these hazards from the consumer marketplace. We are working very hard to communicate effectively with and to satisfy all our consumers during this recall."

Separately, a lawsuit accusing GE of attempting "to turn the CPSC procedures into a marketing program for the sale of new GE dishwashers" and seeking class-action status was filed yesterday in U.S. District Court in St. Petersburg, Fla. An earlier suit filed in Florida state court accuses GE of intentionally concealing the design defect in its dishwashers from the late 1980s until it notified the commission in November 1998.

GE has denied these allegations. But the commission said yesterday that it is investigating whether GE should have reported the problem sooner.

The recall concerns GE and Hotpoint brand dishwashers made from April 1983 to January 1989. GE and the commission said 50 fires caused by a defective energy switch on the dishwashers had been reported. Seven spread beyond the machines themselves. No injuries were reported.

The big question is how practical it is to repair the machines. GE offered individual owners rebates of $75 to $125 toward new GE replacements, or $25 toward a non-GE dishwasher. But it refused to pay for repairing them, citing the costs and the age of the appliances, and warns on its Web site, "If you choose to repair it independent of GE, you do so at your own cost and risk."

Yesterday, Mr. Dunn went further, insisting that the appliance cannot be repaired, but can only be altered to deactivate the switch, thus denying users a choice between heated drying and air drying of dishes. "There is no fix," he said. "You can disable the feature, but you cannot repair it to its original condition." The cost of such an action, Mr. Dunn said, is $75 to $100, but "it makes no economic sense for the consumer to spend this money to make an old dishwasher that's past its useful life not do something." The average dishwasher lasts nine to [illegible] years.

At the same time, GE has offered some big-volume customers, such as apartment managers, instructions and tools to correct the problems on existing dishwashers "if they have a financial hardship." Mr. Dunn said. "They can do this because they have qualified service technicians to safely do this." GE also offers such customers rebates on replacements, which run from $200 to $500 a unit.

GE had a choice under the law to offer a recall, a rebate or repairs, said Alan Schoem, director of compliance at the CPSC. He said the agency had urged GE to offer repairs to individual consumers but "they flat out refused."

Moreover, he said: "They might be splitting hairs or playing a semantic game when they talk about a repair. The hazard can be repaired from the dishwasher by rewiring the switch." He conceded that doing so wouldn't permit users to choose between heat drying and air drying their dishes.

He also said that since the recall was announced, the commission has gotten "many more complaints than we would normally get about a recall program."

GE said it has received mostly positive responses.

NEWS from CPSC

U.S. Consumer Product Safety Commission

Office of Information and Public Affairs Washington, DC 20207

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Hasbro Pays $400,000 Civil Penalty for Delay in Reporting Infant Carrier Defect

WASHINGTON, D.C. - The U.S. Consumer Product Safety Commission (CPSC) announced today that Hasbro Inc., of Pawtucket, R.I., paid a $400,000 civil penalty to settle allegations that it violated the Consumer Product Safety Act by failing to timely report defects with its "PLAYSKOOL baby FOLD'N TRAVEL" infant carriers. Playskool Baby is a division of Hasbro.

CPSC alleges that Hasbro failed to report in a timely manner that the carrier's handle locking mechanism could fail, causing the seat to flip forward and infants to fall to the ground. Hasbro received nine injury reports, including seven serious head injuries, before it reported to CPSC. In agreeing to settle this matter, Hasbro denies that the product contained a defect and that Hasbro violated any law.

About 38,500 of these carriers were sold nationwide from 1991 to June 1993 for approximately $35. The infant carrier has a sleeping, sitting and rocking position and a handle for carrying baby out and about. Each carrier has the words "PLAYSKOOL baby FOLD'N TRAVEL" on a label where the handle connects to the seat.

Hasbro recalled the "PLAYSKOOL baby FOLD'N TRAVEL" carriers in 1996. Consumers still can participate in the recall by calling Hasbro toll-free at (800) 752-9755 anytime to receive a full $35 refund.

APRIL 13, 2000

MEMORANDUM FOR BRUCE REED AND MELANNE VERVEER

FROM: HEATHER HOWARD

CC: ANN O'LEARY

SUBJECT: TOY SAFETY INITIATIVE

BACKGROUND

A USA Today investigation recently found that at least 17 manufacturers of children's toys failed to warn the government or owners of toys of complaints about the safety of their products. "[A]n analysis of government documents shows that problems with 75% of the most dangerous children's products recalled during the past three years were not reported to the government until the Consumer Product Safety Commission, often alerted by consumers, got involved." In addition, the Commission recently announced a $400,000 penalty against Hasbro, which waited until it had 12 reports of handles unlatching on infant carriers (resulting in seven skull fractures) before telling the Commission about the problem. Just today, the Commission announced the recall of 7 million infant swings, after 6 children died after becoming tangled in the waist belts and strangling.

THE PROBLEM

The Commission needs tougher penalties to deter companies from withholding complaints about their products. Currently, the Commission's penalty authority includes 1) civil penalties, which are capped at $1.6 million (the total fine is $7,000 per product, multiplied by the number of products sold, up to $1.6 million), and 2) criminal misdemeanor penalties, including imprisonment of up to one year and fines capped at $50,000.

The civil penalties are adjusted for inflation every five years, and were last adjusted in 1999. Even so, the cap is absurdly low. It is triggered when the number of products sold exceeds 228; the majority of cases the Commission handles involve, at a minimum, thousands of products sold.

Under the criminal provisions of the statute, the Commission may charge anyone who "knowingly and willfully" violates the law, including the reporting requirements, "after having received notice of noncompliance." Thus, in effect, the criminal provisions only apply on a second offense. Given the high standard of the statute (knowledge of the law and willful violation), the Commission argues that the second offense requirement is unnecessary and hampers their ability to enforce the statute and protect consumer safety.

RESPONSE

I recommend proposing legislation to strengthen the penalty authority of the Commission. Increased penalties would provide obvious incentives for companies to avoid manufacturing defective products, as well as to come forward earlier when problems are detected, thus preventing harm to consumers. Tougher penalties would also generate more news coverage of Commission actions, which is important to making consumers aware of dangerous products.

Proposed legislation would:

1) <u>Lift the overall cap on civil penalties</u>. Even if the $7,000 per product cap remains (of course, we could raise that as well, but the Commission feels the overall cap is most important), this would result in significantly larger fines in most cases.

2) <u>Make criminal violations a felony</u>. This would send a strong message to corporations. It probably would also encourage the Department of Justice, which the Commission believes is reluctant to pursue misdemeanors, to prosecute violations. In addition to making violations a felony, we could remove the second offense requirement.