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PRODUCTS LIABILITY MASS TORTS & CLASS ACTION

The Products Liability Win-Win: Help Your Client and Prevent Future Tragedies

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Special to the Legal

Most civil cases are devoted to the particular facts and circumstances of that case, producing an outcome that affects only the parties to that litigation. But certain matters, especially in the products liability arena, lend themselves to the potential for a much wider impact, producing change that can save lives, prevent catastrophic injuries, and affect entire industries and thousands of consumers. In every products liability case that we handle, we consider whether it has the potential for a “win-win,” where we can achieve a just result for our client, while also protecting innocent people from falling victim to preventable tragedies. If you have a products liability practice, we respectfully offer some



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suggestions for how to move forward in your cases to achieve not only a result for your client, but also a broader impact.

Evaluate how the case can be an instrument for change. Large-scale positive change can take on many forms, including product recalls, safer product designs, the enactment of new laws and regulations, and campaigns to raise consumer awareness of a hazard. It is incumbent upon the attorney to assess what type of change the case

“While it is difficult to quantify the impact of lawsuits in helping to achieve an outcome that will save lives and prevent future harm, there is no doubt that we as products liability attorneys are uniquely positioned to help remove dangerous products from the market.”

can bring. In many cases, we advise clients to immediately report injuries to the Consumer Product Safety Commission (CPSC) through the [saferproducts.gov](https://www.saferproducts.gov) website. This allows for the CPSC to collect data,

which can often lead to recalls of defective and dangerous products.

For example, our firm has represented multiple families across the country whose young children died from tip-overs of IKEA MALM dressers. These dressers were unsafe and unstable by design and did not comport with the furniture industry's then-current voluntary safety standard for clothing storage units sold in the United States. IKEA was well-aware that its MALM dressers, as well as other models of its chests and dressers, failed to meet the industry's minimum stability requirements for tip-over prevention. It had received multiple reports over many years of deaths and injuries to young children from tip-over incidents. Nevertheless, IKEA continued to sell this defective product.

Our clients' cases helped bring about one of the largest recalls in U.S. history of about eight million IKEA MALM chests and dressers and 21 million additional children's and adult's chests and dressers. In addition to securing significant financial compensation for our clients, in 2016, as part of a global settlement of three wrongful death cases, we negotiated a provision whereby IKEA agreed to only sell chests and dressers in the United States that meet or exceed the furniture industry's voluntary safety standard for dresser stability. IKEA also agreed to donate a total \$150,000 to three children's hospi-

tals and \$100,000 to a child safety organization.

Partner with consumer advocates, government agencies and political leaders. While lawsuits may motivate a responsible company to recall its unsafe products or introduce new, safer designs, meaningful change more often requires collaboration with key players outside the judicial system, including nonprofit consumer groups, government agencies, and sympathetic elected officials. For example, in our IKEA dresser tip-over cases, parents who lost children to dresser tip-over tragedies (including several of our former clients) enlisted the help of lawmakers, child safety advocates and the CPSC. This coalition worked tirelessly for years to get a federal law passed that would provide a mandatory stability standard for dressers. Their efforts recently came to fruition in December 2022 when Congress passed the STURDY Act (Stop Tip-Overs of Unstable, Risky Dressers on Youth Act), which President Joe Biden signed into law.

Another example of collaboration to effect widespread change arose from our cases involving infant carriers known as "baby slings," in which the absence of targeted safety standards allowed Infantino to bring the product to market without a hazard analysis or any type of safety testing. The result, predictably, was an incredibly dangerous product that

could suffocate babies. We coordinated with consumer organizations, enlisted resources from the CPSC, and solicited support from legislators who shared our commitment to product safety. These efforts led to a recall of baby sling-type carriers.

Gather decisive evidence of unsafe product design. Products are created to maximize corporate profits. While a preponderance of the evidence is sufficient to win a case in most jurisdictions, our experience has been that it takes an immense amount of decisive evidence (often combined with negative publicity) to induce manufacturers to withdraw profitable, but unsafe, products from the marketplace, if they withdraw them at all.

For example, our firm represented two young children who were seriously injured by swallowing tiny magnets that became separated from Magnetix toy sets. The powerful attraction of these small magnets caused them to tear through the children's internal organs. Life-saving emergency surgical procedures were performed to remove the magnets and repair the multiple perforations they had caused. We pursued the manufacturer of the Magnetix toy sets and in combination with the CPSC and other safety advocates, helped to achieve a recall. Materials obtained through litigation revealed that the manufacturer had received about 1,500 complaints from consumers about

the magnets separating from the building pieces, and the CPSC had identified 27 instances of intestinal injuries to children from ingestion of the separated magnets.

A similar scenario has played out with inclined infant sleep products (often referred to as rockers, nappers or loungers). These products place babies at angles of up to 30 degrees, which allow them to adopt unsafe sleep positions that cause asphyxia. Moreover, the design of inclined sleepers disregards the guidelines of the American Academy of Pediatrics, which instruct that infants should be put to sleep on their backs, on a separate, flat and firm sleep surface. Our firm presently represents six families whose infants died in these dangerous products.

In 2009, Fisher-Price brought to market the first inclined sleeper, the Rock 'n Play, without clinical research as to whether it was safe. When the Rock 'n Play was a hit, other companies entered the market with similarly designed products. Ten years later, in April 2019, Fisher-Price finally recalled this dangerous product, after the CPSC accidentally disclosed, in violation of the laws protecting manufacturers, unredacted data to Consumer Reports about infant deaths associated with these products, and Consumer Reports indicated its intent to publish the information.

Other companies followed suit, leading to the recall of more than five million inclined sleepers from the marketplace.

Astoundingly, Fisher-Price executives admitted in June 2021 in testimony before the U.S. House of Representatives Committee on Oversight and Reform, which was investigating infant deaths in inclined sleepers and specifically in the Rock 'n Play, that the company had received 97 reports of infant deaths occurring in its product. By the time the Rock 'n Play was recalled, it had generated at least \$200 million in revenue for Fisher-Price, according to a staff report from the House committee titled "Infant Deaths in Inclined Sleepers: Fisher-Price's Rock 'n Play Reveals Dangerous Flaws in U.S. Product Safety." The report concluded that the Rock 'n Play might still be on the market if not for the data leak.

Eventually, the safety hazard was addressed through federal legislation. The Safe Sleep for Babies Act went into effect in November 2022. The act prohibits the manufacture or sale of inclined sleepers that place babies at angles of greater than 10 degrees. It also bans padded crib bumpers, which also put infants at risk for asphyxiation.

Don't forget to get your client's consent. Using a lawsuit as a means to achieve justice for your

clients while making a much wider impact on public safety can only be done with specific authority from your clients. While our professional obligation is first and foremost to obtain the best possible results for our clients, it is also possible to have a candid conversation with your clients about any corollary public interest objectives; this ensures that your client is onboard with a settlement demand that includes nonmonetary terms to improve product safety.

Fortunately, it has been our experience that most clients want to get dangerous products off the market and out of people's homes, and are motivated to spare other families from tragedies that are similar to their own.

FINAL THOUGHTS

While it is difficult to quantify the impact of lawsuits in helping to achieve an outcome that will save lives and prevent future harm, there is no doubt that we as products liability attorneys are uniquely positioned to help remove dangerous products from the market in order to make people, and particularly children, safer. Achieving a win-win that serves your client and promotes large-scale positive change can be incredibly satisfying for both you and your client. Indeed, it is one of our highest callings as plaintiffs products liability lawyers. ●