



Colored balls of hydrogel. Credit: cipolina/Adobe Stock

EXPERT OPINION

When Fun Toys Kill: The Products Liability Case Against Water Beads

Since water bead tragedies can, and likely will, continue until these products are removed from the marketplace and are out of homes (and also child care centers, schools and camps), we offer an action plan for when a family contacts you about a potential water bead ingestion case.

December 17, 2024 at 02:15 PM

🕒 8 minute read

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In July 2023, 10-month-old Esther, from Wisconsin, died after swallowing a single water bead from a Chuckle & Roar Ultimate Water Beads Activity Kit purchased for an older sibling. Eight months earlier, 9-month-old Kennedy, from Maine, had to undergo multiple bowel surgeries and nearly died after swallowing a water bead from the same product.

These incidents were not “freak” occurrences. They were a predictable outcome for a product that is sold for children but is unsafe for what young children are known to do—that is, explore their world by putting objects in their mouths.

Water beads are marketed for children as toys, educational materials, art materials, sensory tools, and as projectiles for “gel blaster” guns. They are made of super-absorbent polymer crystals that can retain hundreds of times their weight in water. The beads start small (often the size of a sprinkle) and can increase their size by 150-1500 times after soaking in water. They are bright and colorful and have a candy-like appearance. The beads, especially when dry, will bounce, roll and scatter. Because they are so small, they will inevitably get lost in carpets, furniture, toys and other places where young children may eventually find and ingest them. Both Esther and Kennedy managed to find and ingest a water

bead even though their older sibling was supervised by a parent while playing with the beads, and the beads were put away after use.

If swallowed, water beads do not simply get digested and pass through a child's body. Instead, they absorb fluids and expand to many times their original size, potentially causing life-threatening intestinal and bowel obstructions and other serious injuries. The packaging for children's water bead products typically identifies water beads as a choking hazard for children under age 3, but makes no mention of the grave internal injuries associated with ingestion.

Water beads also expand when placed by children in their nose or ears and can cause nasal cavity injuries and hearing loss. In March 2024, the U.S. Consumer Product Safety Commission (CPSC) warned consumers to immediately stop using Jangostor Large Water Beads and Tuladuo Water Bead Sets because they were found to contain high levels of the toxic chemical acrylamide in violation of the Federal Hazardous Substances Act.

Nearly 7,000 water bead-related ingestion injuries were treated in U.S. hospital emergency departments from 2018 through 2022, according to the CPSC. A study published by The American Journal of Emergency Medicine found that the number of water bead-related emergency department visits in the U.S. increased 131% from 2021 to 2022, from 55 cases to 127. Fifty-five percent of cases involved children under age 5, and 46% involved ingestion.

In September 2023, Buffalo Games, the company behind the Chuckle & Roar Ultimate Water Beads Activity Kit, recalled this product. Shortly thereafter, several major retailers including Amazon, Target, Walmart and Michaels voluntarily stopped selling water beads marketed to children.

But because water beads remain in the marketplace this dangerous product may continue to be found in homes with children. According to the CPSC, more than 30 firms supply water bead toys in the United States alone. Water beads are marketed to adults as decorative, crafting

and gardening supplies. Online product reviews from retail sites that no longer sell water beads marketed to children, but still sell the beads for adults, show that consumers continue to purchase the beads for kids, even when they are not labeled as a toy.

Since water bead tragedies can, and likely will, continue until these products are removed from the marketplace and are out of homes (and also child care centers, schools and camps), we offer an action plan for when a family contacts you about a potential water bead ingestion case.

Initial Steps

Your initial steps in a water bead ingestion case are to gather some key data:

- Obtain all information about the water bead product, including where it was purchased and the receipt. Take possession of the product and its packaging. Determine whether the product came with any warnings on the packaging or instructional literature.
- Conduct an in-depth interview with the family or caregivers about the events leading up to the incident. Lines of inquiry should include why the product was purchased, history of use, whether and how children were supervised while using the product, and how the product was stored when not in use.
- Check the CPSC website to ascertain whether the product has been subject to a recall and collect all available CPSC data, including reports of prior incidents. Also consider filing a Freedom of Information Act request to the CPSC to obtain nonpublic documents related to safety concerns.
- Report the incident to the CPSC. If the CPSC desires an interview with your client, make certain that you are with your client (in person or virtually) when the interview is conducted to prevent any unfair or inappropriate questions.

Be aware that on Sept. 9, 2024, the CPSC published a Notice of Proposed Rulemaking to revise the existing safety standard for water bead toys and toys containing water beads.

Water bead safety is presently covered by standards organization ASTM International's toy safety standard ASTM F963 pursuant to the Consumer Product Safety Improvement Act of 2008. While the standard addresses expanding materials, it does not sufficiently address the hazards associated with water beads, according to the CPSC.

The proposed rule would add additional performance and labeling requirements for water beads and establish acrylamide level limits and testing. Water beads that expand to larger than 9.0 mm or to more than 50% greater than their original size in diameter when tested would be in violation of the proposed standard.

Retain Experts

Experts to consider in a water bead ingestion case include:

- Experts in infant and child product design.
- Human factors experts and experts that can establish inadequate product labels and warnings.
- Toxicologists (for toxic exposure cases).
- Forensic pathologists (for fatality cases).
- Medical experts for injury and fatality cases.
- Other damages experts including economists, psychologists and life care experts.

Documents, Records and Depositions to Seek in Discovery

Counsel should request the following information from the water bead manufacturer:

- Warnings and instructions supplied with the subject product and other water bead products sold by the manufacturer.

- Reports of all prior incidents involving the water bead product, regardless of whether they resulted in injury or death.
- History of internal testing.

After reviewing the information received from the manufacturer and other sources, notice the depositions of all persons involved in the design and compliance testing of the water bead product. A corporate designee involved in the receipt and documentation of consumer complaints and accidents should also be deposed.

Legal Claims Available

In general, possible legal claims include strict product liability, negligence, breach of express warranties, breach of implied warranties of merchantability, fraud, fraudulent concealment and misrepresentation. Punitive damages may be sought particularly whenever it is clear that manufacturers are well versed in the extreme dangers posed by children's water bead products, and yet have continued to sell water beads to unsuspecting consumers without adequate warnings, apparently putting profits over safety.

Possible Legislative Solution

In May 2024, a bipartisan group of U.S. senators introduced "Esther's Law," named after the child cited in this article. The federal legislation would direct the CPSC to establish a ban on the sale of water beads designed, intended, or marketed as a toy, educational material, art material or sensory tool for children. With respect to other water bead products, it would direct the CPSC to consider regulations on the colors of the beads to limit their attractiveness to children and to require warning labels on the packaging.

The legislation is presently before a Senate committee and is unlikely to be passed before the end of the 118th Congress. Hopefully, it will be reintroduced in the next legislative session.

Litigation That Saves Lives

As trial attorneys we know that product liability lawsuits help make the world a safer place. The publicity of water bead lawsuits coupled with financial accountability in litigation will, over time, inform consumers of the danger and incentivize manufacturers to remove water bead products from the marketplace.

In addition, it is our experience that parents who lose a child to a dangerous product, or who have a child seriously injured, want to spare other families from tragedies similar to their own and will consent to utilizing their case to accomplish this objective. When handling cases involving water bead products, be mindful that you can achieve a fair financial result for your clients, while also negotiating terms that promote recalls and raise public awareness to help keep other children safe.

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