

BB REVIEW

Product Liability and Casualty Update

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CONSUMER PRODUCT SAFETY COMMISSION GRANTS ONE-YEAR STAY OF TESTING AND CERTIFICATION FOR CERTAIN PRODUCTS

As a follow-up to the January 2009 Product Liability and Casualty Update, last week the Consumer Product Safety Commission (the “CPSC”) issued a one-year stay of enforcement for certain testing and certification requirements for regulated products as required by the Consumer Product Safety Improvement Act (the “Act”).

The stay provides limited relief from the new requirements of the Act. All businesses still must meet the new total lead content limits (600 ppm), phthalates limits for certain products (1000 ppm), and mandatory toy standards, but will not need to test for or certify compliance with these requirements.

The Act requires testing and issuance of certificates of compliance by manufacturers and importers of products subject to an applicable consumer product safety rule as defined by the Act or a similar rule, ban, standard or regulations under any other law enforced by the CPSC. The CPSC has stayed enforcement of these requirements except for the following requirements that are still effective on February 10, 2009 (or their noted effective date):

- Four requirements for third-party testing and certification of certain children’s products subject to:
 - The ban on lead in paint and other surface coatings on products made after December 21, 2008;
 - The standards for full-size and non full-size cribs and pacifiers made after January 20, 2009;
 - The ban on small parts for products made after February 15, 2009; and
 - The limits on lead content of metal components of children’s jewelry effective for products made after March 23, 2009.
- Certification requirements applicable to all-terrain vehicles (ATVs) manufactured after April 13, 2009.



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- Pre-Act testing and certification requirements, including for the following: automatic residential garage door openers; bike helmets; candles with metal core wicks; lawnmowers; lighters; mattresses; and swimming pool slides.
- Pool drain cover requirements of the Virginia Graeme Baker Pool & Spa Safety Act.

The stay of all other testing and certification requirements of the Act is effective until February 10, 2010, at which time the CPSC will decide whether to terminate the stay.

Balch & Bingham, LLP – Product Liability and Casualty Litigation Practice Group

The attorneys in Balch & Bingham LLP's Product Liability and Casualty Litigation Practice Group have extensive experience in individual, mass, and class action environmental and toxic tort litigation, with specific experience in cases related to children's products or toys. They have litigated personal injury, property damage, and wrongful death claims relating to alleged exposures to and/or releases of lead-based paint, agricultural herbicides and pesticides, asbestos, benzene, boron trifluoride (BF₃), chlorinated solvents, formaldehyde, industrial waste water, carbon black, carbon dioxide, isocyanate compounds (MDI and TDI), Illemitic dust, maleic anhydride mercury, mixed-dust, polychlorinated biphenyls (PCBs), particulate matter, perlite, petroleum hydrocarbons, radioactive material and waste, rutile dust, silica, trimelletic anhydride Tordon, and welding fumes. Balch & Bingham LLP's Product Liability and Casualty Litigation Practice Group also has extensive experience in insurance coverage matters related to such exposures and releases.

Balch & Bingham attorneys enjoy membership in a number of professional associations, including the highly-selective American College of Trial Lawyers, the International Association of Defense Counsel (IADC), the Federation of Defense and Corporate Counsel (FDCC), Defense Research Institute (DRI), and the Alabama Defense Lawyers Association (ADLA), including one partner currently serving as President and two partners serving on its Board of Directors. A number of Balch & Bingham litigators are listed in *The Best Lawyers in America*, with several included in the new category of "Bet The Company" litigators. Balch & Bingham's more than 250 attorneys serve our clients from offices in Alabama, Georgia, Mississippi and Washington, D.C.