PLAINTIFF'S EXHIBIT
BOND-324

File Asbestos Correspondence

General Policy

STATES ARE NOT PREEMPTED FROM BANNING TOYS IN CPSC VOTE ON SHARP POINT RULE

States will not be preempted from automatically banning toys that fail the technical criteria of the regulation for sharp points, the Consumer Product Safety Commission voted December 15.

The CPSC voted 2-0 with Chairman S. John Byington abstaining, to publish the final sharp point regulation preempting the use of differing technical criteria by states and localities. However, states will not be preempted from taking their own remedial action against toys that fail the sharp point regulation, but which the commission has decided are not to be banned.

The preemption issue was the major source of discussion at the voting session, and Chairman Byington adamantly opposed letting the states take banning actions against toys that could contradict CPSC decisions. His position coincided with that of the CPSC technical staff that absolute preemption was essential to the regulation (Current Report, December 9, 1977, p. 883).

However, Byington said that rather than delay the promulgation of the sharp point regulation, he would abstain from voting and let the other commissioners have their way. Byington said he would issue a concurring opinion, with a disagreement on the preemption provision of the regulation.

Commissioners R. David Pittle and Barbara Franklin essentially took the position of the office of general counsel that since only the technical criteria are written into the text of the requirements and not the procedural regulatory two-stage approach, then only the technical criteria are preemptive.

Case-By-Case Basis

Under the regulations as approved by CPSC, products will be considered on a case-by-case basis. Toys that do not meet the technical criteria are not automatically banned. They will be given individual consideration by CPSC. In some cases, because the requirements of the criteria are stringent, a toy may fail, but the commission could find extenuating circumstances for not banning it. For example, a toy may have a sharp point that could cause a puncture, but the point may be inaccessible to a child playing with it.

Nevertheless, a state or locality may now take individual remedial action, and that same toy could be banned in that state or locality. Toy manufacturers have argued that taking such a course will cause severe economic disruption and confusion.

The CPSC voted 3-0 to exempt from the regulation only baby cribs, bicycles, and toys with functional sharp points. The final rule will be published in the *Federal Register* and incorporated in the PSLR Reference File shortly.

Other Decisions

In other actions the CPSC voted 3-0 to close possible substantial product hazard cases against Texas Instruments electric fry pans and electric fry pan control cord sets manufactured for Hoover Company, because they do not present substantial product hazards.

The CPSC voted 3-0 to accept corrective action plans submitted by the following firms:

(1) DeVilbiss Company for certain airless paint spray guns.

(2) Howmet Aluminum Corporation for patio cover components.

(3) Century Products for potential defect in certain high chairs.

(4) Frohock-Stewart for bath stools.

The commission voted 3-0 to reimburse Barry Castleman, an environmental consultant, for certain expenses he incurred in participating in a rulemaking proceeding for asbestos containing products. However, the CPSC said this payment in no way establishes a precedent.

Hazardous Products

BAN ON ASBESTOS-CONTAINING PRODUCTS ISSUED BY PRODUCT SAFETY COMMISSION

Bans on consumer patching compounds and artificial emberizing materials containing respirable free-form asbestos were published by the Consumer Product Safety Commission December 15 (42 FR 63354, December 15, 1977).

Specifically, the bans, which were issued under the provisions of the Consumer Product Safety Act, cover:

(1) Consumer patching compounds used to join or repair interior walls and ceilings (mixing of the product before it is applied, sanding of the product after it is dried, and cleanup after completion of the process, release asbestos fibers that can be inhaled); and

(2) Artificial emberizing materials (embers and ash) used in fireplaces to simulate live embers and ash (ordinary air currents in the household move asbestos fibers that can be inhaled).

The commission said that it was issuing the bans to reduce or eliminate the unreasonable risk of injury from certain types of cancer that may result from inhaling asbestos fibers released during the use of these products.

For consumer patching compounds containing respirable free-form asbestos, the ban applies to products manufactured or initially introduced into commerce on or after January 16, 1978. Compounds manufactured or introduced into commerce prior to that date are banned as of June 12, 1978.

Artificial emberizing materials containing respirable free-form asbestos were banned as of December 15, 1977.

The banning regulations will be incorporated into the PSLR Reference File shortly.

Descriptions of the bans and the commission's findings are carried in the Text Section of this issue on p. 911.

Packaging

AQUEOUS SOLUTIONS OF SODIUM FLUORIDE EXEMPTED FROM PACKAGING RULES BY CPSC

An exemption from safety packaging regulations for certain aqueous solutions containing no more than 264 milligrams of sodium fluoride was published by the Consumer Product Safety Commission December 12 (42 FR 62363, December 12, 1977).

The CPSC granted the exemption to the packaging regulations under the Poison Prevention Packaging Act

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