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Products Liability Law Update

Recent Federal Court Decision Provides New Guidance On Civil Penalties For Late Reporting Under the Consumer Products Safety Act.

On September 29, 2017, the United States District Court for the Western District of Wisconsin issued a significant new decision concerning penalties for late reporting under the Consumer Product Safety Act ("CPSA"). *United States of America v. Spectrum Brands, Inc.*, 2017 WL 4339677 (W.D. Wis. Sept. 29, 2017). This is one of the very few court decisions to quantify the appropriate civil penalties for CPSA violations and it would appear to run counter to the recent dramatic escalation of civil penalty settlements that have been obtained by the Consumer Product Safety Commission in recent years.

In this case the government sought the maximum $15 million for each of the two series of alleged violations: one for late reporting and one for selling product subject to a recall, in connection with coffee pot carafe handle separations. The amounts sought against Spectrum Brands were consistent with recent civil penalty settlements obtained by the Consumer Product Safety Commission ("CPSC"). In 2016, the CPSC approved the largest civil penalty settlements in the CPSC's history relating to late reporting (combined with other violations) in the following cases:

a. Gree Electric Appliances, Inc. - $15.45 million
b. Keurig Green Mountain - $5.8 million
c. Goodman Company - $5.55 million
d. Sunbeam Products - $4.5 million
e. PetSmart - $4.25 million
f. Teavana - $3.750 million

Although the government sought the maximums against Spectrum Brands, the Court imposed a $1,936,675 total civil penalty that included $821,675 for late reporting and $1,115, 000 for selling product subject to a recall. The Court did not appear to embrace the view of some CPSC members that large firms automatically require sizable penalties for deterrence purposes. This has been a major point of contention on the Commission for two years as a justification for seeking significantly higher penalties. In considering the size of the regulated entity, the Court stated:

> The last specific § 2069(b) factor -- "the appropriateness of such penalty in relation to the size of the business" -- is largely neutral. . . . Spectrum is a large, global company with approximately 15,000 employees in 53 countries that had net sales of $5 billion in fiscal year 2016 (id. at ¶ 3), and as the government noted at the civil penalty hearing, a total shareholder equity value of $1.8 billion. On the other hand, it appears that Spectrum sold the coffeemakers at a fairly modest profit margin. Accordingly, this factor does not weigh heavily in either direction with respect to imposing a substantial civil penalty.

The Court also noted that good product engineering and good product quality reporting systems are not sufficient if the two systems are not coordinated.

> As the government emphasized at the civil penalty hearing and defendant's counsel also conceded, one of the most significant problems in Spectrum's program, which certainly contributed to defendant's failure to report timely, was a disconnect between the information being gathered about the potentially defective carafe handles by Applica and Spectrum's engineers versus the information being gathered by individuals receiving actual consumer complaints. Although defendant demonstrated adequately that its engineers applied stringent safety standards in designing, testing and manufacturing the carafes, defendant's post-sale safety compliance programs were not robust enough to raise red flags that the failing carafes presented a safety issue, rather than a "quality," issue on the street requiring notification to the CPSC.

The case was aggressively litigated by both sides. There is an early summary judgment ruling finding liability on the part of Spectrum Brands for the CPSA violations. *United States of America v. Spectrum Brands*, 2016 WL 6835371 (W.D. Wis. Nov. 17, 2016).

The decision is very significant to companies who may be required to enter into negotiations with CPSC staff regarding civil settlements for alleged CPSA violations.

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