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## CPSC Head Says Companies Should Share Penalty Info

By **Emily Field**

Law360, New York (June 17, 2016, 9:14 PM ET) -- Companies have to do their part and agree to release information during settlement negotiations with the U.S. Consumer Product Safety Commission, its head said recently, responding to attorneys' urging that the agency open up about its decision-making process for civil penalties.

CPSC Chairman Elliot Kaye said Wednesday that while he would "love" to release that information, the companies themselves are objecting to that release in settlement talks with the agency. His comments came during a hearing on the agency's priorities in the coming next two fiscal years.

Although a panel of defense attorneys who represent consumer products manufacturers called on the agency to be more transparent about how the CPSC comes up with a civil penalty figure, the commissioner said it is up to the companies to come forward.

"The companies control the information. They're the ones who object during these settlement negotiations," Kaye said. "If we read ... that a company has exchanged emails that say, 'Let's continue to sell ... and profit from it then report to the CPSC and pay a tiny penalty,' we can't release that information."

His staff is also blocked from releasing information "by the most anti-transparency piece of federal statute that I'm aware of — Section 6b of the Consumer Product Safety Act," Kaye said.

Attorneys in the panel urged the CPSC to take steps to improve its transparency regarding civil penalties and more discussion with regulated manufacturers, saying that vague guidance and law leaves companies uncertain of when to report possible defects to the agency.

"There's a huge hesitation to report because of the 20/20 hindsight of penalties," Charles Samuels of Mintz Levin Cohn Ferris Glovsky and Popeo PC. "It undermines the advice we've given for years — when in doubt, report."

One of the agency's own commissioners, Joseph P. Mohorovic, has frequently taken issue with the CPSC's penalty process, criticizing the way the agency calculates fines and explains decisions. He has said the agency could do a better job informing the public and the regulatory industry of its reasoning. Mohorovic has served on the commission since July 2014.

Most recently, **he voted against** a \$3.75 million civil penalty for Starbucks-owned tea retailer Teavana Corp. to end allegations that it failed to report complaints of exploding tea tumblers in early June.

Mohorovic said he did not think Teavana made a mistake and the agency did not spell out enough facts and evidence to justify fining the company. The CPSC, he said, does not go far enough to publicly justify such penalties and thereby creates distrust between the agency and its stakeholders.

Teavana received "numerous reports" of the tumblers exploding, shattering or breaking between 2010 and 2013, the CPSC's settlement agreement said, including six reports of consumers who

were cut by broken glass or burned by hot liquid while holding a tumbler when it exploded. Teavana issued a voluntary recall of 445,000 tumblers in May 2013.

According to Mohorovic, that timeline of events was not enough to prove that Teavana had a reporting obligation in the first place. The commission, he said, does not explain how the breakage happened, the extent of the injuries, the full number of reports, or the date that Teavana had enough information to realize it had a product safety problem.

--Editing by Edrienne Su.

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