

Slowing The Tide Of Detergent Pod Litigation

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Convenient, brightly colored and playfully packaged, laundry detergent pods have become increasingly popular among consumers looking for a faster and easier way to do laundry. However these innovative pods, containing concentrated laundry detergent that can be directly handled, have stirred up a storm of controversy in the last two years. Following an article published in December of 2014 in *Pediatrics* discussing the potential health hazards for young children, legislators and litigators alike have taken a closer look at these laundry detergent pods.

"Pediatric Exposure to Laundry Detergent Pods" December 2014 Article in Pediatrics

In December of 2014, authors Dr. Marcel J. Casavant, chief of toxicology at Nationwide Children's Hospital and medical director of the Central Ohio Poison Center, and Dr. Gary Smith, director of the Center for Injury Research and Policy at Nationwide Children's Hospital in Columbus, Ohio, along with Amanda L. Valdez, Henry A. Spiller, Thiphak Chounthirath and Huiyun Xiang published an article entitled "Pediatric Exposure to Laundry Detergent Pods" in *Pediatrics*. The article analyzed 2013-2014 data from the National Poison Data System concerning the number of calls made to poison centers that involved exposure to detergents among children under the age of six. The study indicated that laundry detergent pods accounted for 60 percent of the 62,254 detergent-related calls concerning young children made to U.S. poison centers. The study also reported that the laundry detergent pod-related calls involving children under six increased by 17 percent from 2013 to 2014.

Data from the American Association of Poison Control Centers (AAPCC) suggests that more than 35,000 children under the age of five have had accidents or exposures involving laundry detergent pods since the pods became widely available in 2012. According to the AAPCC, common health hazards from exposure to an ingestion of laundry detergent pods include choking, wheezing, gasping, coughing and vomiting, as well as respiratory illness and arrest. Of the 17,230 calls in the National Poison Data System from 2013 to 2014, 769 required hospitalizations and two resulted in death.

Consumer groups and the plaintiffs bar have argued that the increase in incidence of injury from detergent is linked to the packaging of laundry detergent pods. Manufacturers have come under scrutiny for allegedly packaging the detergent pods in such a way that may be appealing to children. The pods are brightly colored and squishy. They are roughly candy sized and were originally packaged in a clear, round, plastic jar that some alleged resembled the look of a candy jar. The container housing the



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pods also originally lacked special child proof lids to prevent a minor from accessing the pods.

Regulation and Proposed Legislation

Regulators have already begun to take steps that will impact manufacturers. The Consumer Product Safety Commission issued a safety alert warning that laundry detergent pods may be harmful to children. The alert advised that “liquid laundry packets are attractive to children as play items because they are soft and colorful and they resemble familiar items like candy, toys and teething products,” and “Because these packets dissolve quickly and release highly concentrated toxic chemicals when contacted with water, wet hands or saliva, consumers are strongly urged to always handle laundry packets carefully and with dry hands.” The CPSC recommended that consumers, especially parents, keep the laundry detergent pods out of the reach of children and to call poison control immediately if a child is exposed.

On the legislative front, Rep. Jackie Speier, D-Calif., and Sen. Dick Durbin, D-Ill., have spearheaded the legislative movement for tougher packaging standards for the laundry detergent pods. The proposed legislation, named the Detergent Poisoning and Child Safety Act (H.R. 1139) was introduced in February 2015 and would require the CPSC to issue and implement safety standards to protect children under five years of age from the risks of injury or illness caused by exposure to liquid detergent packets.

If passed, the legislation would require CPSC standards to include child-resistant packaging on the outer container, as well as design and color restrictions to reduce their appeal to children. The legislation would also require the CPSC to address the composition of the pods so that warning labels are clear and set forth the potential hazards of exposure.

Litigation

In 2015, several widely publicized lawsuits were filed against Proctor & Gamble Co. regarding injuries allegedly sustained by plaintiffs due to laundry detergent pods. A wrongful death suit was filed in Ohio by the estate of an elderly adult male with diminished mental capacity. (Cynthia Lawrence v. The Proctor & Gamble Distributing LLC, Case No. A1406858, Hamilton County (Ohio) Court of Common Pleas). Another laundry detergent pod-related class action suit was filed by the parents or guardians of 13 children under the age of six who reported “serious personal injuries” from ingesting laundry detergent pods. (Darlene Powers v. The Proctor & Gamble Distributing LLC, Case No. A1500868, Hamilton County (Ohio) Court of Common Pleas). The suits alleged that Proctor & Gamble was negligent for failing to anticipate the injuries and set forth design defect claims related to the product’s packaging. Proctor & Gamble denied all of the allegations in the suits. While both cases were among the very first lawsuits brought against laundry detergent pod manufactures, neither remained in active litigation long. Both cases were voluntarily dismissed in September, less than a year after being filed.

ASTM Standard

In September 2015, the American Society for Testing and Materials (ASTM) approved “F3159-15 Consumer Safety Specification for Liquid Laundry Packets” — the first safety standard for packaging and labeling laundry detergent pods. The ASTM recommendations were the result of year long negotiations between the CPSC, interested public parties and industry leaders, including Proctor & Gamble. The new standards call for manufacturers to add a bitter taste to the soluble film that forms the outside of the pod and to strengthen the film so that it takes longer to dissolve and is more difficult to burst when squeezed. The idea being that the bitter taste will keep children from ingesting the detergent, and the

longer dissolving period will give children more time to remove the item from their mouth after noticing its bitter taste or allow parents more time to remove the item from their mouth, if noticed. The standards also suggest modifying the container lids in such a manner that make them child-resistant, adding features that require the dexterity or strength of an adult to open. ASTM also recommended that manufacturers use opaque containers and place warning labels on the outside of the canister. As with all ASTM standards, compliance is not mandatory.

Detergent manufacturers including Tide Pods maker Procter & Gamble Co., Purex manufacturer Henkel AG, and All detergent manufacturer Sun Products Corp., have already started changing their packaging and adding warning labels. Proctor & Gamble, for example, modified its Tide packaging to be more opaque and to incorporate a child-resistant lid. Consumer Reports also placed Proctor & Gamble on the “nice” side of its 2015 “Naughty or Nice” list for actively leading the industry in setting new standards to reduce the detergent pod risks to young children.

Conclusion

For the time being, the focus on the laundry detergent pod safety concerns appears to remain with prevention of further injuries through regulation and legislation rather than through litigation. Industry leaders and laundry detergent pod manufacturers have taken significant steps towards stemming the surge of litigation by supporting and leading the charge on voluntary safety standards and redesigning the exterior packaging of the pods to make them less tempting and harder for children to access. As consumer groups and legislators continue to focus on detergent pod safety standards, by staying at the forefront of voluntary standards and actively involved in the standards setting process, manufacturers can avoid the costs of potential litigation. If the Detergent Poisoning and Child Safety Act is enacted, manufacturers should keep an eye out for additional safety standards set forth by the CPSC requiring packaging and formula changes before the laundry detergent pods hit the shelves. By complying with ASTM’s voluntary standards, manufacturers will find themselves close to complying with most CPSC regulations, if and when they are required, as well as better protected against subsequent litigation.

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