



The Voice

Consumer Product Safety Information Database Five Years Later: Trends in Complaints, Recalls, and Litigation

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According to our [research](#) into the U.S. Consumer Product Safety Commission (CPSC) public Consumer Product Safety Information Database, which went live in 2011, (SaferProducts.gov), and Westlaw’s “Dockets,” the total number of product recalls has increased and more consumers have filed consumer product lawsuits since the government launched the public database. This article analyzes these trends and attempts to explain why five companies with the highest number of complaints reported to Saferproducts.gov between 2011 and 2015 (the top five) have experienced only one. Specifically, why have the top five experienced increased litigation when their product recalls have decreased? This article hypothesizes that robust compliance programs are helping the top five companies avoid costly and time-consuming recalls.

Do Large Amounts of Complaints Lead to More Litigation?

Looking at incident reports on SaferProducts.gov, we identified the five companies with the highest number of complaints reported to SaferProducts.gov for each year between 2011 and 2015. Again, we will refer to these as the “top five.” Incidentally these companies remained mostly consistent. By identifying the total number of tort cases filed against each company in Westlaw’s “Dockets” and then filtering by “Key Nature of Suit,” specifically for tort/negligence cases, we were able to calculate the average increase of tort cases filed between 2011 and 2015. Among the top five, a high number of incident reports were associated with an increase in the number of tort cases [by an average of 61.7 percent](#).

Before its inception, many hypothesized that SaferProducts.gov would lead to increased litigation. It appears that they were right. There is no shortage of potential reasons explaining the uptick in litigation. Possible explanations include (1) plaintiffs’ lawyers mining SaferProducts.gov to identify trends in complaints; (2) plaintiffs’ lawyers reaching out to those consumers who submitted complaints; and (3) consumers conducting their own trend analysis. We can surmise that a consumer who sees similar complaints about a product is much more likely to contact a lawyer than a consumer who believes that he or she experienced an isolated incident. Consumers and plaintiffs’ lawyers alike no longer need to wait for a recall to be announced or for a response to a FOIA request to determine whether other consumers experienced a similar incident; they need only open their browser.

Do Increased Complaints Lead to More Recalls?

In looking at the number of recalls before SaferProducts.gov existed, it appears that [the total number of product recalls between 1973 and 2010](#) totaled 5,081, or roughly 169 recalls per year. Since the launch of SaferProducts.gov, however, the number of product recalls per year has nearly doubled, reaching approximately 300 per year.

To get an up-close look at the increase in recalls, we used the “Recalls” section of SaferProducts.gov to determine the number of recalls made by or for each top five company for each year between 2011 and 2015 and for the preceding five years (2006–2010). Based on the premise that the number of product recalls has almost doubled since the launch of SaferProducts.gov in 2011, we expected to see an association between a high number of incident reports and the number of recalls. What we found did not entirely match our expectations. Interestingly, it appears that the companies with the most product complaints in the last five years have been able to avoid the increased recall trend. In fact, the number of recalls among [the top five, on average, was down by 64.8 percent between 2011 and 2015, compared with the 2006 to 2010 time period](#).

Why were recalls down for the top five? It is likely that the top five have robust compliance programs and individuals devoted to ensuring product compliance with the latest regulations and standards, including added requirements for product testing and certification. They also have members of their compliance teams monitoring social media and Saferproducts.gov to identify trends in the complaints filed. Smaller companies may not have the resources for robust compliance programs and quality controls, therefore resulting in a higher number of recalled products.

Regardless of size, a compliance program is something that all companies should have, and the policies and procedures of the compliance program should be reduced to writing. We recommend establishing an interdisciplinary compliance team with members from all appropriate departments of the company, such as marketing, public relations, engineering, legal, and any other department that may have an interest in how a given company responds to various complaints. Finally, having the team in place will help assist in the timeliness and efficiency of investigations when an issue arises. The benefits of having a compliance program go beyond regulatory and legal compliance and lead to improved overall business.

Implications

So what can companies of all sizes do to position themselves the best in a day of increased product complaints and increased litigation? Companies should ensure that they are monitoring Saferproducts.gov and all social media platforms to watch for trends in comments. In addition, companies should establish a robust compliance program that addresses complaints monitoring, and they should have a system to keep current on changes in regulations and standards, reporting obligations, and recall strategies.



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