

## CSLP Board of Directors

Special Meeting  
Conference Call  
Monday, August 14, 2006  
2:00 p.m. EDT

### Attending

Carol Baughman (KY), Mary Cameron (IA), Karen Drevo (NE), Cathy Howser (AK),  
Bonnie Kunzel (NJ), Ruth Metcalf (OH), Kim Patton (KS), Stephanie Stokes (CA),  
Julie Tomlianovich (KS)

Karen Day, Barb Shultz—Administrative Services Agency

Josh Johanningmeier and Melissa Scholz—CSLP attorneys

### Absent

Nancee Dahms-Stinson (MO), Jan Wall (ID)

Attributed speech is not necessarily quotation.

The purpose of the meeting was to discuss the problem of lead in the cat and dog bendable toys sold as summer reading incentives by Highsmith.

Drevo: Has received an e-mail from Matt Mulder including copy of a generic recall flyer for her approval. It contains pictures of the toys and a generic message that libraries may use to ask children and families to return the toys.

Scholz: Introduced Josh Johanningmeier, a litigation attorney with experience handling product recalls for a variety of companies.

Josh: Understands that Highsmith has done some testing of the bendables and has notified the Consumer Product Safety Commission (CPSC).

Drevo: Oriental Trading Company (OTC) was the importer of record.

Kunzel: OTC has refused to have the toys tested for lead since the recall.

Drevo: The figures were made in China. Prior to selling them to Highsmith, OTC tested a sample and verified that they were safe and lead free. Mulder received certification of safety from OTC prior to Highsmith's selling them. Apparently, OTC changed suppliers after this certification. Lead has been found in both the paint and the rubber of the toys. Several other companies have sold similar toys to libraries. They likely received their inventory from OTC.

Kunzel asked if Highsmith was “pushing back” from its responsibility.

Drevo: Said “no,” reported that Highsmith is “steamed” and that Mulder said OTC will be investigated by the government.

Stokes: Has had a report of a CPSC official who picked up bendables at the Orange County Public Library and said the investigation was initiated in California.

Josh: It is very important that CPSC is already involved.

Drevo: OTC is not owning up to any responsibility. Highsmith is pursuing this.

Josh: Let Highsmith “carry the water” because they are responsible for notifying the public and CPSC.

Drevo: Forwarded an e-mail message from Mulder to Scholz.

Metcalf: Question for Josh—Is Highsmith doing the recall?

Josh: Yes, and libraries are not doing the recall. It would be helpful if we could have communication with Highsmith’s lawyers. It’s good the CPSC is involved in order to coordinate the investigation across many states.

Drevo: From what we understand, no child has been reported ill. Many of the toys are not distributed yet. Concerned about frivolous lawsuits against public libraries. What should we be telling libraries? Also, many libraries purchased the toys from other companies. Josh, how do we help the libraries prepare?

Metcalf: If we post something on the CSLP web site, should it be a pass-through to Highsmith?

Josh: By passing on information through the web site, you are not passing on liability. But be careful to avoid libel, for example, defamation of companies that sold products that look the same but do not contain lead. The message must be carefully crafted so it contains pure information. Josh can review text of a notice to go up on the web site. CSLP liability is “almost zilch.” One would have to melt the toy and inhale the fumes or eat almost the whole toy to sustain harm. A claim of lead poisoning would be very difficult to fake for a frivolous suit.

Drevo: The Michigan Department of Community Health found 4.50 times the acceptable level of lead.

Kunzel: 0.06 is the allowed level of lead in a can of paint, but this is not the standard for toys. The New Jersey lead expert said the level in the toys was not as dangerous as initially thought. The New Jersey Library Association web site posted the announcement from Highsmith, a picture of the toys, and a link to Highsmith.

Stokes: Is CSLP liable or held responsible?

Josh: The law is different in each state. No libraries added lead to the toys or did anything to increase the level of exposure. There is a miniscule risk of litigation. Josh hasn't seen the Highsmith contract clause about product safety.

Drevo: Scholz has a copy of the Highsmith contract. From the contract—"vendor will certify all products lead free." Highsmith has this lead free certification on file from OTC.

Josh: Highsmith was obligated to insure that the products were lead free. Highsmith is in breach of contract. CSLP has the right of indemnity.

Drevo: Highsmith is refunding the cost of the toys. Highsmith is going after OTC.

Josh: How many toys were sold?

Kunzel: Highsmith sold 160,000 in 36 states.

Stokes: Have military bases been notified?

Discussion of notifying military bases around the world.

Kunzel: Highsmith has shared its record of sales, but we don't have information about overseas military bases.

Drevo: E-mails Mulder about overseas purchases.

Kunzel: What about libraries who bought from companies other than Highsmith?

Metcalf: We need something on the web site about other sources of the toys.

Discussion of companies, in addition to Highsmith, who provided the toys.

Cameron: Was told not to mention other companies for fear of libel. We didn't contract with them.

Josh: Let CPSC deal with other companies. Post only the pictures on the web site—no other company names. You can say something like: Highsmith says these toys contain lead. If you distributed toys that look like these, you may want to contact your vendor to determine the lead content of the toys you purchased.

Discussion

Josh: Soon Highsmith will have CPSC doing their work and investigating other companies.

Kunzel: Should we provide a brief statement about library liability?

Metcalf: Shared a statement by the Ohio Library Council stressing that the recall was not issued by public libraries, rather it was a recall by Highsmith.

Stokes: Do we need a similar statement for CSLP members?

Josh: We could craft this kind of communication better after getting updates from Highsmith's lawyers.

Tomlianovich: Wants all states to say exactly the same thing and put it on the web site.

Scholz: After talking to Highsmith, the lawyers will write a couple of paragraphs for the site.

Stokes: Will libraries be reimbursed for expenses they have incurred dealing with the recall? She has received questions from libraries that have spent heavily on staff, materials, and postage to send recall notices.

Metcalf: Cost recovery is another question for the lawyers.

Josh: Will take this up with the Highsmith lawyers.

Kunzel: From a public relations standpoint, could CSLP make a deal with Highsmith to keep everyone happy? Will Highsmith provide replacements?

Discussion of what various libraries are doing for replacements.

Metcalf: After speaking to Highsmith attorneys, could we post a statement on the web site that we're trying to recover costs on behalf of CSLP members?

Scholz: Perhaps you could post a statement of the CSLP position and say the board is monitoring developments in order to protect CSLP members over time.

Stokes: How many members are on the CSLP list? (127) The general membership needs to hear about board efforts on the list and on the web site.

Discussion of informing membership on many levels that the board is paying attention and communicating with the membership.

Drevo: Concerned about mechanism for Highsmith's providing replacement toys.

Discussion

Drevo: Will ask for clarification from Highsmith. Are they sending replacements to everyone?

Discussion about misinformation on the American Library Association web site, about the general invisibility of CSLP, and about the media's confusion of ALA, CSLP, and Highsmith.

Metcalf: Concerned about damage control. Asked lawyers for ideas about ways CSLP can provide a more cohesive message should similar issues arise in the future.

Stokes: Do we have directors and officers liability insurance?

Discussion. Nobody seemed to know, but Day will investigate.

Stokes: Was told that we do have this insurance. Requested that this be placed on the **agenda** for the September 5 meeting.

Metcalf: We need a chain of command to deal with this kind of thing in the future. We need protocols in place.

Discussion

Drevo: The issue of damage recovery should go into the new vendor RFP.

Scholz: We could put something about damage recovery in the vendor contract also.

Scholz: Asked for board authorization to speak to Matt Mulder and the Highsmith attorneys. CSLP board agreed.

Drevo: Bendables have been offered for three years. Mulder is having those tested also but hasn't heard about results yet. Lawyers could ask him about that too.

Scholz: Will communicate with Drevo after talking to Mulder. Will draft a statement for the web site immediately after talking to Mulder.

Drevo: Will not send any statements to the general membership without board approval

Metcalf: And after board approval to all CSLP lists and to the web site.

Tomlianovich: Don't post on PUBYAC

Drevo: Agreed

Scholz: Will share information on directors and officers liability insurance with Day in preparation for the next meeting. To purchase this, CSLP will have to find a local agent.

Metcalf: Should the poster be put on web site at the same time as the statement?

Scholz and Stokes: agreed

Scholz and Josh sign off

Drevo: Just received a message from Mulder saying there is no word yet on the testing of previous years' bendables. Bendable issue is consuming Highsmith. She reported that Mulder said it has permanently damaged the working relationship with OTC.

Drevo: This problem provides impetus to find a way to offer books as incentives—Nancee Dahms-Stinson offered this idea at the annual meeting.

Stokes: Nancee is writing an RFP for this for Missouri, and she will share it. Requested putting this on the **agenda** for the September meeting.

General discussion. Levity. All agreed that last year's problem with the sex line phone number on the order form was better than this year's lead recall.

Howser: Felt good about lawyers' experience with product recall.

Stokes: Would like to see CSLP get up and running on books as incentives to demonstrate that we're taking a responsive stance on the lead problem.

Tomlianovich: Had a long conversation with John Mason of Scholastic marketing about offering books.

Stokes: Does Scholastic have Harry Bliss? Do we need an RFP for a book vendor?

Drevo: Would Highsmith be a go-between with publisher?

Drevo: For 2009—2010, the RFP will go to many vendors. Wants CSLP board to help write it.

Metcalf: Has been talking to Kunzel about the RFP for web master. Thinks it is an insult to ask others to submit proposals if we plan to keep our current web master.

Discussion

Stokes: This kind of thing has to be decided at a regularly scheduled meeting.

Metcalf: Asked to have it placed on the **agenda**.

Metcalf: Is the requirement for RFP's in the bylaws?

Discussion

Sign-off