#153

UNITED STATES GOVERNMENT

# Memorandum

U.S. CONSUMER PRODUCT SAFETY COMMISSION
WASHINGTON, D.C. 20207

TO : Charles H. Boehne, OFC
THRU : Frederick Barrett, EX
THRU : Michael A. Brown, OGC
FROM : Susan Ness, OGC

DATE: NOV 13 1974

6(b) CLEARED: 6/4/80
No Mfrs Identified
Excepted
Mfrs Notified
Comments Processed

SUBJECT: Jurisdiction over Amusement Rides

This is in response to your memorandum of September 24 in which you asked whether the Commission has jurisdiction over amusement rides. Your memorandum was prompted by a letter from Robert W. McAfee, Acting Area Director of the Denver Office.

In our opinion, amusement rides fall within the jurisdiction of the Commission, and are subject to regulation under the Consumer Product Safety Act.

Section 3(a)(1) of the Consumer Product Safety Act (CPSA) 15 U.S.C. 2052(a)(1), defines consumer product as follows:

> ...any article or component part thereof, produced or distributed...(ii) for the personal <u>use</u>, consumption or enjoyment of a consumer in or around a permanent or temporary household or residence, a school, in <u>recreation</u>, or otherwise... (emphasis added).

It can be said that consumers "use" amusement rides when they ride on them (payment for the ride is immaterial). Since that use is considered "recreation", amusement rides fall within the above statutory definition.

The legislative history of the Act supports this conclusion.

*U.S. GOVERNMENT PRINTING OFFICE: 1974 733-533/3604 1-3

ADVISORY OPINION

> "It is not necessary that a product be actually sold to a consumer, but only that it be produced or distributed for his use.... Also products which are primarily or exclusively sold to industrial or institutional buyers would be included within the definition of consumer product as long as they were produced or distributed for use of consumers." [H.R. Rep. No. 1153, 92d Cong. 2d Sess. 27 (1972)]

Certain types of products, however, have been excluded from the broad definition of consumer product. Section 3(a)(1)(C) of the CPSA, 15 U.S.C. 2052(a)(1)(C), excludes "motor vehicles" and "motor vehicle equipment," as defined by sections 102(3) and 102(4) of the National Traffic and Motor Vehicle Safety Act of 1966, (NTMVSA) 15 U.S.C. 1391. In our opinion, amusement rides do not fall within the definition of motor vehicle or motor vehicle equipment, since the rides are not manufactured primarily for use on the public streets, roads and highways.

What is less clear is whether amusement rides are to be regulated under the Federal Hazardous Substances Act, (FHSA) or under the CPSA. Section 30 of the CPSA, 15 U.S.C. 2079, provides that if the risk of injury associated with a product could be eliminated or sufficiently reduced by action under FHSA, then the Commission must regulate only in accordance with the provisions of that act.

Section 2(f)(1)(D) of FHSA, 15 U.S.C. 1262, added by amendment in 1969, defines hazardous substances as including "...any toy or other article intended for use by children which...presents an electrical, mechanical or thermal hazard." There is no comparable provision in FHSA for "adult products" which present similar hazards. The House Report on the 1969 amendment, [H. R. Rep. No. 398, 91st Cong., 1st Sess. 9 (1969)] listed swings, seesaws, and other playground equipment as examples of products subject to the expanded FHSA jurisdiction. It is clear that playground equipment was designed for and is used primarily by younger children. Similarly, "kiddie rides" are limited to younger children and would be regulated by the FHSA. Amusement rides, however, which include the roller coaster and ferris wheel, are patronized by adults as well as children. In fact, the NEISS data for the month of July 1974 show that over half of the reported injuries from amusement rides involved persons 15 and over. Unless a

regulation is limited to kiddie rides, it is arguable that FHSA is inadequate to effectively regulate all amusement rides. Therefore, regulatory proceedings should be conducted pursuant to the provisions of the CPSA.

In your memorandum, you question whether the theory of assumption of the risk bars the Commission from jurisdiction over amusement rides. Assumption of the risk is a legal theory used by defendants in product liability cases between private parties. In no way does it affect our jurisdiction over defective consumer products.

We are forwarding a copy of your memorandum and the accompanying letter from the Denver Area Office to the Section 15B for further action.

# MEMORANDUM

CONSUMER PRODUCT SAFETY COMMISSION

ATE: September 4, 1974

TO : Michael Brown, GC
Through: Frederick Barrett, EX

FROM: Charles H. Boehne, OFC

SUBJECT: CPSC Jurisdiction of Amusement Rides

The question has been raised by our Denver Area Office as to whether or not the Commission has a basis to exercise jurisdiction over amusement rides. The issue has been raised because of injuries linked to amusement rides (see attached).

Dave Wolfson tells me there is a clear case to argue against jurisdiction on the theory of assumption of the risk. On the other side of the coin, we could say that the consumer is purchasing the ride, and the ride itself represents a consumer product; therefore the ride is subject to our jurisdiction. From this position, we could argue that, as a consumer product, the ride would be subject to our jurisdiction if it presented an unreasonable source of risk to the consumer.

Would you let me know so I can respond to our Denver Office, and refer any potential action to the appropriate PSOC Office?

Attachment

RECEIVED
SEP 5 1974
Consumer Product Safety Commission
Office of the General Counsel

CONSUMER PRODUCT SAFETY COMMISSION

Denver Area Office
Suite 938, Guaranty Bank Bldg.
817 17th Street
Denver, Colorado 80202
*August 27, 1974*

*Mr. Charles Boehne, Director*
*Office of Field Coordination*
*Consumer Product Safety Commission*
*5401 Westbard Avenue*
*Washington, D.C. 20207*

*Dear Chuck:*

*Here's another area we may need clarification and a decision. Is recreational rides in amusement parks our jurisdiction, or to whom?*

*In the past I have seen several news clippings on injuries from amusement rides, some, if not most were the failure of the certain components on the rides or failure of the structure as the enclosed.*

*May we hear from you in the near future.*

*Sincerely,*

*Robert W. McAfee*
*Acting Area Director*
*Denver Area Office*
*303-837-2904*

*Attachment*

# Five hurt in Elitch ride fall

153

...e persons were injured, none seriously, ...n an amusement ride collapsed at Elitch Gardens Wednesday, flinging the five to the ground.

A park spokesman said one of five steel arms on a popular ride called the Octopus snapped at its base.

Spokesmen at Denver General and St. Anthony Hospitals said all five were in good condition, suffering cuts and bruises.

At Denver General, Mrs. Diana Vanderweg, 26, of 1695 Quay Way, and her daughter, Marlene, 6, were to remain for observation, although neither complained of serious pain, a hospital spokesman said. Identity of a 23-year-old woman taken to DGH was withheld pending notification of relatives in Utah.

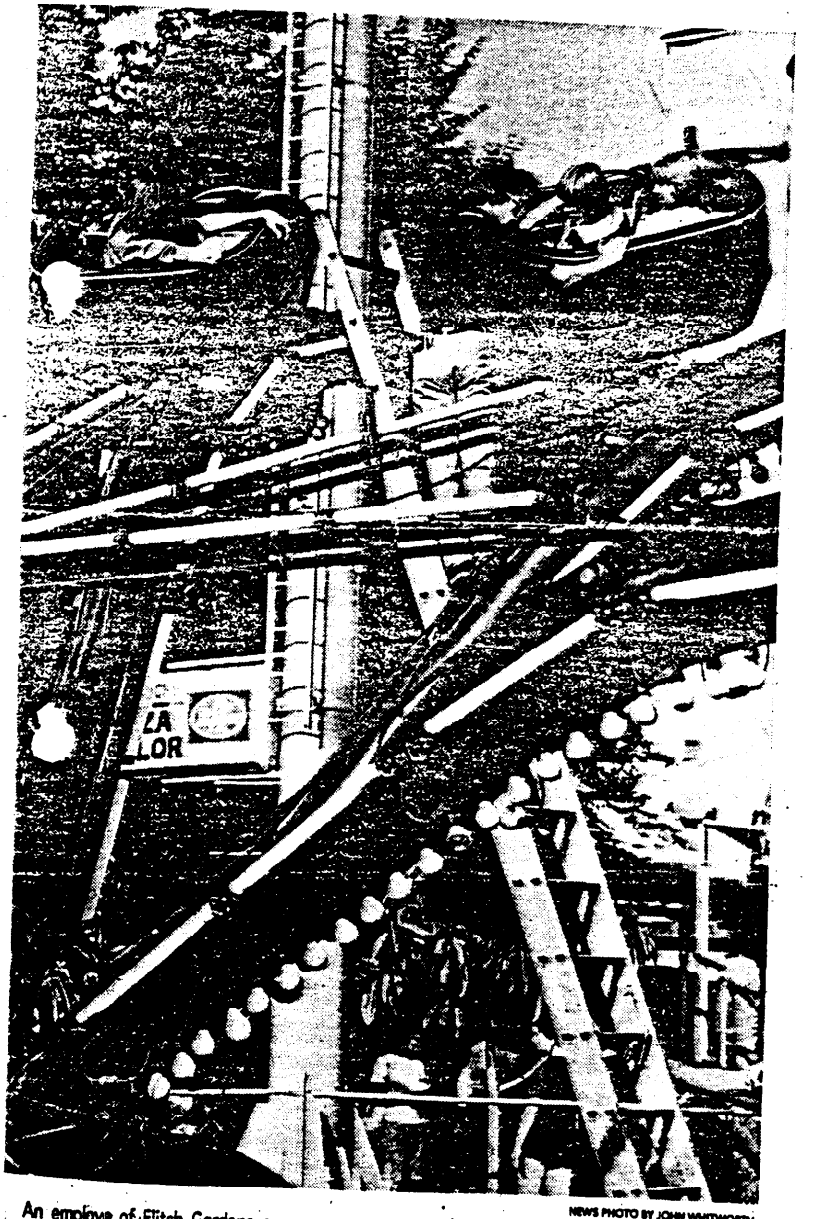
Carey Keena, 11, and his brother, Patrick, 14, of Steamboat Springs, were expected to remain overnight for observation, a St. Anthony spokesman said.

In addition to cuts and bruises, Carey suffered two broken fingers. Stitches were required to close cuts on Patrick's head and ear lobe.

The accident occurred about 4:30 p.m. at the far west end of the amusement park. A spokesman said the ride had been inspected and declared safe Wednesday morning by a park maintenence crew.

The ride consists of five metal cylinders attached to a revolving base at one end and 10 passenger compartments at the other.

The cylinder which snapped is about a foot in diameter and hollow at its center.




NEWS PHOTO BY JOHN WHITWORTH

An employe of Elitch Gardens amusement park helps stranded passengers to ground after a part of a ride collapsed Wednesday, injuring five persons. One arm of a ride which lifted the [redacted] snapped, sending occupants in its passenger compartment to the ground. Power was turned off immediately, leaving other passengers in midair. All of the injured were in fair condition in two local hospitals.