



TRANSCRIPT:

CPSC Chairman Elliot F. Kaye's Media Call on Lumber Liquidators

Coordinator: Welcome and thank you for standing by. At this time all participants will be on a listen only mode until the question and answer session of today's call. At that time you can press star 1 to ask a question from the phone lines.

I'd also like to inform the parties that today's call is being recorded. If you have any objections you may disconnect at this time. I'd now like to turn the call over to Mr. Scott Wolfson. Thank you.

Scott Wolfson: Thank you very much. Good morning everybody. I want to thank all of you personally for your patience. I know there's been a high interest in the subject matter and we've worked to get to this point for couple of days now. So thanks for everybody's patience and your availability.

I do want to make sure everybody has the proper spelling for our chairman. It's Elliot, E-L-L-I-O-T, middle initial F, last name K-A-Y-E. The chairman will make opening statements and then, as indicated in my email last night, we'll open the line up for questions and answers.

Please indicate to the operator your name and media organization. And then you will be put through to the chairman. So I'll turn it over now to Chairman Kaye.

Elliot Kaye: Good morning everyone. Thanks for joining us. I want to make a prefacing comment about today before I get into the substance. And that's - I'm going to try to answer all the questions that you have. If I'm not able to answer a question, it's not because I'm trying to be evasive.

I'm not that kind of person. It's because of Section 6B of the Consumer Product Safety Act. It is an anti-consumer safety and anti-transparency legal limiter on how quickly we can go public with information and it's the reason

unfortunately that we had to wait until today to have this conversation. So I wanted to make that point right up front.

Now to the substance - I'll make three key points about where we are and then I'm happy to open it up to the questions that you have. I'm a parent, first and foremost.

As a parent of young children, I completely understand and share the strong desire that parents and other consumers have to know as soon as possible whether these products present a health risk.

We're taking it very seriously and we are moving aggressively to get the answers that consumers, especially parents of young children, deserve to have. We're actively investigating laminate foreign products from the Lumber Liquidators.

The company is being cooperative to date in our investigation and has pledged to fully cooperate throughout. Our work will take some time, and often the science does not provide the clarity we all wish it would.

Our work will involve testing of samples as well as consideration of home-based exposure scenarios to consider risks. The science is well-developed, but not fully developed, on the risks associated with formaldehyde exposure, especially long-term.

On the long-term exposure, in particular, we will need to rely on the expertise of our federal partners with jurisdiction and experience in that area but we are already coordinating closely with our federal partners so consumers can have answers as quickly as possible. I'm happy now to take any questions that you have.

Coordinator: If you would like to ask a question from the phone lines, please press star 1. You will be prompted to unmute your phone and record your name and media organization. Again, that's star 1. One moment please for the first question. Michael, with Associated Press, your line is open.

Michael: Good morning. Thank you Chairman. I wanted to see if you could provide a little bit more detail on what exactly this investigation will include and sort of a timeline for what consumers should expect.

Elliot Kaye: Good morning, Michael. The investigation is going to involve, and already is involving, first collecting samples. So we have gone out and try to collect samples that replicate as closely as possible the products that are already in consumer's homes.

So we've been able to go back, I believe, and get samples that were still interestingly on store shelves that were manufactured back in June 2012 and then going forward.

So, again, we've tried to get a sample collection that replicates what's in the market and in homes. Next we have to contract out with certain labs. There're only a certain number of labs that actually do this kind of work. We don't have that expertise and equipment.

We have the expertise but we don't have the equipment in-house so it's faster for us to go out and contract this out. So we're working through the federal procurement process to finish off those contracts, get the samples that we've collected to those labs and then the testing method that we're using which is an ASTM small scale chamber method, I think it takes about seven to ten days of the materials being tested.

That material will then have to be processed. That data will come back to us and it'll take us another number of weeks to cross-reference the testing data with the exposure scenarios and the exposure levels that exist in the scientific literature.

So from a timeline perspective I think we're looking at months, unfortunately, not weeks until we can have some sense of the answers. But I want to reiterate, Michael, something I said in the beginning which is the way the science works is it's not going to say if you have it at point - this number, you're great and if it's above that, you've got a problem.

The science usually is presented more in a risk assessment and levels of risk, so there would be potentially greater risk and a certain threshold. But it's not going to provide the clarity, or it often unfortunately, does not provide the clarity where consumers will know immediately, "hey, I need to take action."

And the other thing that's tricky about it is it's hard to isolate in any particular consumer's home at what their formaldehyde exposure is since formaldehyde is in so many different products and is produced in so many different ways.

So we're going to try to do the best we can to get answers and replicate home-based exposure scenarios that we think are representative of the market but there are some uncertainties built into that.

Michael: Thanks.

Coordinator: Rachel Abrams, New York Times, your line is open.

Rachel Abrams: Hi there. I have a couple of questions for you. First is, can you talk a little bit about what kind of collaboration you've had with EPA and whether they are helping you at all with this?

And also just going back to sort of the thresholds that you guys are going to be using, when it comes to a recall, and correct me if I'm wrong, but if you have to - if you guys have to prove that there's sort of a real reas- significant risk to human health, is there anything more you can say about what kind of science you're looking at that would help you if, in fact, you decided that a recall was the best option?

Eliot Kaye: Sure. Good morning, Rachel. So the first thing is I'll mention not only EPA whom we have spoken with and we are coordinating with. We're also coordinating with the Agency for Toxic Substances and Disease Registry which goes by the acronym ATSDR, Centers for Disease Control and Prevention which is obviously CDC, EPA, and the Federal Trade Commission (FTC).

And we've also spoken with the National Institute for Environmental Health Sciences which coordinates and runs the National Toxicology Program. They're part of NIH and they're located down in North Carolina.

We've had good coordination with everybody including EPA. Everybody wants to get answers and everyone understands that we all have a role to play in this. So I see, from the federal perspective, a sense of collaboration and cooperation to try to provide consumers the answers they deserve as quickly as possible.

On the recall question, I think it's just too early to tell, Rachel. So our threshold is whether it's a substantial product hazard. That's what the statute requires.

And we'll just have to see what our health scientists come up with in terms of exposure levels and what are the recommended levels that they see and compare that with the test data to get a sense of it. I don't know if we know that at this point.

Coordinator: Michelle, New York Post, your line is open.

Michelle: Thank you. Thank you for taking my call, my questions. I have a couple of questions. One of them is, you said you're going to be looking at laminates. You didn't mention specifically whether you're just going to be looking at the Chinese made laminates which were the subject of the CBS report.

And I wondered if you would also be looking at any other products. There have been some questions about the engineered wood and I'm just wondering how broad you're going to be looking at that.

And I also was curious about the threshold, could you explain what federal laws you're using on this because I understand that the California, you know, CARB has a limit but I'm uncertain about what's going on with, you know, the federal levels because I thought that had not been put into place yet.

Eliot Kaye: Sure. So on the first question we're starting with the Chinese-based laminate products because that is obviously what is of most concern to consumers based on a 60 Minutes report as well as us.

If we feel like there's a reason to go beyond that, we won't hesitate to do that. I'm not sure, at this point, that we know that there's enough but, again, that's an easy thing to do. If we feel like we need to expand it, we absolutely will.

To reiterate what I said in the beginning, consumers deserve to know answers, especially parents. And if there is a legitimate concern that consumers, particularly parents of young children, have about these products or other products that are associated with them, we'll take a look at it.

On the thresholds, you're correct. So EPA has not finalized its rule that would nationalize the CARB standard. But my understanding of the CARB standard is it's not necessarily based on specific scientific literature of health exposures for that particular level. That it is, they have a different mandate basically than we do.

And so what we're looking at is the cumulative knowledge that exists in the scientific literature for both human exposure and probably even animal exposure as to what are the acute and chronic exposure levels that we need to be concerned about?

I just don't know how well, Michelle, they correlate to what CARB has come up with and we're not going to dwell on what CARB's done. We're just going to be driven by what our health scientists tells us - tell us about the rate numbers to focus on.

Michelle: And could I ask just a follow-up question? There has been a lot of debate about the type of testing that's been used. I don't know - there's a deconstructive test is the best one or not. I mean, as you know, Lumber Liquidators says that's not right. You should be looking at use in the home.

What kind of tests will you be using? Will you be using the deconstructive testing?

Elliot Kaye: We are not. So we're looking at testing in a method that most closely replicates the way that the products are used in the home. And I totally understand why CARB would require that kind of testing, but that's not what we're going to be doing.

Michelle: Thank you.

Elliot Kaye: Sure.

Coordinator: And as a reminder, to ask the question from the phone lines, please press star 1. You will be prompted to unmute your phone and record your name. Matt Townsend, Bloomberg News, your line is open.

Matt Townsend: Hi. I was just wondering if you could paint a picture of the level of interest you have seen on this issue, calls into your agency or anything of that nature versus other sort of similar situations.

Elliot Kaye: Sure. So I can't - it's difficult to compare with other situations because I haven't looked at it closely. I think that's an interesting question. I know that right after the 60 Minutes piece, not surprisingly, we received a number of calls. I think it was probably fewer than 100 or so, in the 100 range but it's dropped precipitously since then. I think maybe by 80% since that initial week.

Coordinator: Rachel Abrams, New York Times, your line is open.

Rachel Abrams: Hey, sorry. Just a couple more questions. I'm wondering if you can tell us, the subject in the investigation, the actual Lumber Liquidators products that

you're testing, is the subject of your testing mainly synthetic laminates or wood laminates? Can you tell us that?

Elliot Kaye: So, Rachel, my understanding, and I'm definitely not a floor specialist, my understanding is that the laminates themselves are not wood but don't hold me to that. I think, again, to my earlier point, we're trying to replicate the same type of sample pull that that 60 Minutes pulled and anything else that we feel that will help this investigation. And so that should cover the range of the products that are of concern.

Rachel Adams: OK, and just one other question for you. Do you have any sense at this point, given all the guidelines that are in place to sort of make sure that safe products get into the US, the third-party certification, the deconstructive testing that's involved, et cetera, do you have any sense of where a breakdown could have occurred that could've allowed this kind of product to get into the US?

Elliot Kaye: I don't and I don't know at this point we know that there actually was a breakdown. And so we hope, if it turns out that there was a breakdown, we always, in any investigation try to go in as far as possible and to isolate that.

That's a key aspect of what we try to do to make sure clearly that something like that doesn't happen again. But I just don't know, Rachel, that we've reached that conclusion yet.

Rachel Adams: And if there wasn't a breakdown, then it could mean that there's something not in the current regulation that could've allowed this to happen. Is that right? Because either an absence of the federal standard or something in the CARB standard.

Elliot Kaye: So when you say the absence of a regulation that allowed this to happen, meaning that there wasn't something on point that would have prevented something from happening?

Rachel Adams: Yes, essentially that, if something - if Lumber Liquidators didn't have a lab somewhere then it's the other explanation that there is not some kind of regulation in place to prevent this from happening. Is that the other alternative?

Elliot Kaye: I guess that's an alternative. For us, though, that doesn't really matter in the sense that we pursue both regulated products and then, if we don't have a regulation or a standard on a product, we pursue it under a defect area which is what we're pursuing this one under. But clearly if EPA finalizes its rule making then there will at least be some federal standard associated with it.

Coordinator: Matt Townsend, Bloomberg News. Your line is open.

Matt Townsend: Yes, so you said you're doing both testing of - you went out and bought Lumber Liquidators products and you test those and you're also doing in-home testing. So is that testing of people who have called in complaining of formaldehyde in their homes or how do you find those people?

And I guess you kind of mentioned this earlier, just the idea of formaldehyde, one of the points Lumber Liquidators have made is formaldehyde comes from a lot of different products so just because there might be a level of formaldehyde in a home doesn't mean it's coming from their flooring. It could be from something else. So how do you sort of differentiate on that front? So, I guess, two questions there.

Elliot Kaye: Yes. Yes, and thanks, Matt. So let me clarify. So we're definitely testing samples of the flooring products but we're not going to test and specific

homes. What we do is we try to replicate and model home-based exposure scenarios.

So, for instance, what are the typical home exposure scenarios that a consumer might face? But we're not going to actually go into specific homes and do testing in those homes. Does that help?

Matt Townsend: Yes, yes. Gotcha. Thanks.

Elliot Kaye: Sure.

Coordinator: Sean Oberle, Product Safety Letter. Your line is open.

Sean Oberle: Thank you. Good morning Chairman. Your investigation, your focus right now, is it exclusively on products sold at Lumber Liquidators or is it involving potentially or definitely product sold at other similar retailers and might that expand their?

Elliot Kaye: Good morning, Sean. So right now, it's exclusive to Lumber Liquidators but as I mentioned earlier, if there's a reason to expand it, we will.

Sean Oberle: Thank you.

Coordinator: Michelle, New York Post, your line is open.

Michelle: Hi. Thanks. I have one other question. You mentioned at the beginning, something about an anti-consumer safety provision in the law. Could you explain what that is?

Elliot Kaye: Sure. So 6B, Section 6B of the Consumer Product Safety Act, requires the commission, if it's going to release information that might be able to identify an individual manufacturer company, we are required actually to provide the company with prior notice of the information we seek to release and to give them up to 15 days to object to what we might release.

And then if they do object, and we still will go forward with it, we have to give them an additional five days to seek court relief to prevent us from issuing a statement. We're the only federal public health and safety agency that has that kind of legal restriction on us.

And that's why I said that it's anti-consumer safety and anti-transparency, because if the Food and Drug Administration wants to come out with a statement based on its investigation or even the fact that it's investigating a pharmaceutical company, they can just go out and say it.

We cannot do that unfortunately. And that's why I mentioned, also, it's the reason for this delay. I promise you, Michelle, it's highly frustrating to sit here and to know information that we think would empower consumers and to have a clock tell us by law that we have to wait and negotiate some type of statement with the company. I just don't think from a public policy matter, that that furthers consumer safety.

Michelle: Oh. So presumably they did not - they haven't filed a lawsuit because I don't think it's been 20 days.

Elliot Kaye: Correct, they have not filed a lawsuit that we know to date.

Michelle: Thank you so much.

Elliot Kaye: Sure.

Coordinator: Gerri Willis, Fox Business, your line is open.

Gerri Willis: Gerri Willis, hello. Hello Chairman. What are the recourses, what are the remedies that your organization would seek if you did find an issue with Lumber Liquidators products?

Elliot Kaye: Good morning, Gerri. So I don't love to deal with hypotheticals but I'll say that normally what will happen is that if we find out that we believe that there is a substantial product hazard, we will work with the company to seek a recall.

In 99% of the cases, we can reach an accommodation that we think is fair to consumers, provides the relief they deserve and the type of remedy that's sufficient and will be able to go forward with the company to issue that recall.

In the event -- and this has happened on occasion. It happened most recently with high-powered magnets that you may have seen -- we will not be able to work out a recall and we will have to sue the companies to force them to try to provide the relief to consumers that we think consumers deserve.

Gerri Willis: Thank you.

Elliot Kaye: Sure.

Coordinator: I'm currently showing no question in queue.

Scott Wolfson: OK, we'll give it one more minute for any last minute questions.

Coordinator: And once again ask the question from the phone lines, please press star 1. You will be prompted to unmute your phone and record your name and also your media organization.

Elliot Kaye: OK, so hearing no more questions I'm just going to reiterate a point I made at the beginning. And, of course, thank you everybody for your interest. And if you find later that you have any follow-ups and you want to run them through Scott Wolfson we'll try to be as available as possible.

I approach this job again as a parent, first and foremost, especially of young children. And so everything that I do is to try to provide parents with the clarity that they need in this situation.

Often, there's a lot of uncertainty and I referenced that in the beginning and I promise you I'm extremely frustrated when that uncertainty exists. And so we are committed to try to move as quickly as possible and use all the authorities that we have and all the resources we have. And, in conjunction with our federal partners, to get answers to consumers, especially to parents of young children.

Scott Wolfson: Great. Thank you for everybody's time today. That's going to be the end of the conference call and please do reach out to my office if you have any follow-up questions. Hope this was helpful today. Thanks so much.

END