U.S. CONSUMER PRODUCT SAFETY COMMISSION

4330 EAST WEST HIGHWAY
BETHESDA, MARYLAND 20814-4408

STATEMENT OF COMMISSIONER JOSEPH P. MOHOROVIC REGARDING THE COMMISSION'S PROVISIONAL ACCEPTANCE OF A SETTLEMENT AGREEMENT WITH GREE ELECTRIC

THURSDAY, MARCH 24, 2016

Today, the Commission voted to approve a settlement with Gree Electric regarding our charges that the company failed to report timely to the Commission a serious fire and burn hazard presented by a line of dehumidifiers.[1] We alleged not only that the company knowingly failed to report this hazard, but that it misrepresented – both to the public[2] and to the Commission[3] – the product's compliance with voluntary standards. These are serious allegations, and they have come with a serious penalty: Gree has agreed to pay $15.45 million in civil penalties, becoming the first alleged violator of our rules to reach the per-violation maximum imposed by the Consumer Product Safety Improvement Act of 2008 (CPSIA).[4]

I voted to accept this agreement because the underlying facts were particularly compelling, but I have reservations because too few of those compelling facts are reflected in the public-facing settlement agreement.

I recognize that both parties have at least some reasons to want – or need – to keep settlements ambiguous and details "need-to-know." Because of these realities, there are limits to how much we can or should disclose in a settlement agreement. However, I think we best serve the agency, the regulated community, and, ultimately, the consumer by pushing to provide as much information as we can, not as little as we must.

The purposes of our civil penalty authority are two-fold. The first goal, obviously, is to admonish an alleged violator for illegal acts that have exposed consumers to potential harm. The second

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[1] Under Section 15 of the Consumer Product Safety Act (CPSA), "[e]very manufacturer of a consumer product . . . who obtains information which reasonably supports the conclusion that such product . . . contains a defect which could create a substantial product hazard . . . or creates an unreasonable risk of death shall immediately inform the Commission of . . . such defect or of such risk." 15 U.S.C. § 2064(b).
[2] In violation of 15 U.S.C. § 2068(a)(12).
[3] In violation of 15 U.S.C. § 2068(a)(13).
[4] 15 U.S.C. § 2069(a)(1).

goal is to deter future illegal, harmful acts on the part of either the alleged violator or similar companies. This settlement certainly does the former, but I feel it falls short on the latter.

In 2008, "[a]ll proponents of [CPSIA's] increased [maximum] fine desire[d] a meaningful deterrent that will grab the attention of the manufacturers."[5] Without question, a $15.45 million penalty – particularly a $15.45 million *settlement* – will grab the attention of manufacturers, retailers, consumer groups, and the rest of the CPSC audience. But what are we going to *do* with that attention?

By itself, the number is virtually meaningless, just a very large trophy on the wall. What gives the number meaning and the power to change behavior is context. If other companies better understand the behavior that drew our ire in this instance, they can better understand what behavior they should avoid.

On its face, this settlement agreement looks like virtually any of the settlements for failure to report we have reached in recent years, with the added charge of certification misrepresentation. A conscientious reader will note that the maximum penalty for the misrepresentation charges is $100,000 per violation,[6] so the great bulk of the penalty is derived from the alleged failure to report. None of the sparse facts provided in the agreement, however, differentiates this $15 million from any of the other failure-to-report penalty settlements that have come before the Commission since I took office.

If part of the goal of a penalty is to make an example of a company for alleged bad acts, we need to let people know what the example is. Without some level of candor, the only effect on the CPSC community will be a few moments' fear and paranoia, with no lasting lessons learned. To fail to make more instructive use of the first post-CPSIA maximum penalty is a missed teachable moment, and an agency with the limited resources we have cannot afford to miss moments. I hope we can make better use of future moments.

Back to the case at hand, I do want to congratulate our Office of the General Counsel on a job very well done, including General Counsel Stephanie Tsacoumis, Deputy General Counsel Mary Boyle, Supervisory General Attorney for Compliance Mary Murphy, and Trial Attorney Daniel Vice, whose tireless work and keen investigatory instincts made this appropriately hefty penalty settlement possible.

[5] Russell Gips, *From China with Lead: The Hasty Reform of the Consumer Prod. Safety Comm'n*, 46 HOUS. L. REV. 545, 576 (Spring 2009).
[6] 15 U.S.C. § 2069(a)(1).