



United States
Consumer Product Safety Commission

Record of Commission Action
Commissioners Voting by Ballot*

Commissioners Voting: Chair Alex Hoehn-Saric
 Commissioner Dana Baiocco
 Commissioner Peter A. Feldman
 Commissioner Rich Trumka Jr.
 Commissioner Mary Boyle

ITEM:

Vornado Air, LLC
Recommendation to accept \$7.5 million settlement for alleged violations of the Consumer Product Safety Act
(Briefing package dated June 1, 2022, OS No. 0129)

DECISION:

The Commission voted (4-0-1) to provisionally accept under 16 C.F.R. § 1118.20(d), the Settlement Agreement and Order, which orders Vornado Air, LLC to pay a civil penalty of \$7.5 million. The provisional Settlement Agreement and Final Order will be announced in the *Federal Register*. The Division of Enforcement and Litigation (CEL) in the Office of Compliance and Field Operations negotiated the proposed settlement agreement. The agreement resolves staff allegations that Vornado knowingly violated section 19(a)(4) of the Consumer Product Safety Act ("CPSA"), 15 U.S.C. § 2068(a)(4), by failing to timely report under section 15(b) of the CPSA that its VH101 Personal Vortex Heaters contained a defect which could create a substantial product hazard or created an unreasonable risk of serious injury or death.

Chair Hoehn-Saric, Commissioners Baiocco, Trumka and Boyle voted to provisionally accept the Settlement Agreement and Order.

Commissioner Feldman voted to take other action as follows:

"Staff is directed to continue negotiations with Vornado Air, LLC (Vornado) seeking a civil penalty of no less than \$13.625 million; and



United States

Consumer Product Safety Commission

a. If Vornado agrees to the new penalty, staff shall present a new Consent Order Agreement and Order to the Commission for review and provisional acceptance under 16 C.F.R. § 1118.20(d); or

b. If Vornado does not agree to the new penalty, staff is authorized to refer the matter to the Department of Justice for litigation.”

Chair Hoehn-Saric, Commissioners Feldman and Trumka issued respective statements with their votes.

For the Commission:

Alberta E. Mills
Secretary

*Ballot vote due July 5, 2022

(On June 7, 2022, Commissioner Feldman extended the vote date under the Decision-Making Procedures from June 7 to June 10, 2022. On June 9, 2022, the Commission voted 3-0-1 to approve the poll to hold a closed compliance meeting on June 22, 2022 at 2 p.m., with a vote deadline of June 29, 2022 at 5 p.m. (Chair Hoehn-Saric, Commissioners Feldman and Trumka voted to approve the poll. Commissioner Baiocco did not vote.). On June 28, 2022, Commissioner Feldman extended the vote due date under the Decision-Making Procedures from June 29 to July 5, 2022 at 5p.m.).

Attachments: Statement by Chair Hoehn-Saric
Statement by Commissioner Feldman
Statement by Commissioner Trumka



UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
BETHESDA, MD 20814

CHAIR ALEX D. HOEHN-SARIC

Statement of Chair Alex Hoehn-Saric Regarding Vote to Approve \$7.5M Settlement Agreement with Vornado Air, LLC

July 5, 2022

Today, the U.S. Consumer Product Safety Commission (CPSC) voted 4-0-1 to approve a proposed settlement agreement with Vornado Air, LLC ("Vornado") after the company failed to report that its VH101 Personal Vortex Heaters ("heaters") contained a defect which created an unreasonable risk of serious injury or death or could create a substantial product hazard. The settlement would require Vornado to pay a civil penalty of \$7.5 million and to take other remedial actions.

For more than three years after Vornado learned that its heaters were susceptible to fire, the company stayed silent and did not reveal the risks to CPSC or to the consumers who had purchased the product. During that time, one of the defective heaters caught fire, resulting in the death of a 90-year-old man. This death was avoidable.

While the penalty announced today is significant, companies should be on notice that the agency will be even more aggressive in the future. The entire consumer product industry – including manufacturers, importers, and retailers – have an obligation to immediately report potential defects which could create an unreasonable risk of serious injury or death. Failure to report in a timely fashion will result in an investigation and CPSC will pursue significant civil and potentially criminal penalties. The CPSC will not hesitate to use all of the tools at our disposal to hold firms responsible who choose to put anything other than safety first when selling consumer products.

I thank the Commissioners and CPSC staff who continue to work hard to ensure that consumer products are safe for individuals and families to use. In the meantime, I encourage consumers to report hazards to CPSC so that we can uncover defects and save lives. Let us know what you are seeing at saferproducts.gov.



UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
BETHESDA, MD 20814

COMMISSIONER PETER A. FELDMAN

**STATEMENT OF COMMISSIONER PETER A. FELDMAN ON
“WOEFULLY INADEQUATE” PENALTY AGREEMENT WITH
VORNADO AIR, LLC**

JULY 7, 2022

This week, the Commission approved a woefully inadequate settlement with Vornado Air, LLC (Vornado) regarding some of the most serious charges I have seen during my time as a commissioner. The company’s conduct included failing – not for the first time – to report a serious fire hazard arising from its space heaters. Had the firm made a timely report, as it is required to do under federal law, it is possible that the gruesome death of a 90-year-old man, [reported](#) to be a World War II veteran living in an assisted living facility, could have been avoided.

The fine the Commission has levied against Vornado does not reflect the seriousness of the conduct at issue. As a result, I oppose the decision to accept the provisional settlement agreement. Moreover, I fear our actions here not only fail to provide just punishment but also fail to promote respect for our reporting requirements or to deter future violations.

This agreement is fundamentally flawed for three key reasons: the underlying facts in this case are particularly egregious; there is no adequate explanation for how staff arrived at this penalty amount; and this settlement fails to take advantage of an opportunity to send an important message – not just to Vornado, but to the entire product safety community – that when companies endanger consumers and fail to report, they will pay a steep price.

Vornado is a [repeat offender](#), and its defective product resulted in at least 19 fires and the [horrific death of an elderly man](#). The firm kept this product on the market for almost 9 years, between 2009 to 2018, before initiating a recall. There is evidence that corporate leadership at Vornado knew about the defect as early as 2014 and may have actively concealed this information from the Commission. Nevertheless, the firm continued to sell the product for years, declining to provide notice to its regulator or to American consumers.

These facts put this civil penalty case almost in a league of its own, with similarly situated cases few and far between. Two failure-to-report cases come to my mind when considering the instant case: *Polaris* and *Gree*, both involving fire hazards. In the [first case](#), Polaris, a repeat offender, sold off-road vehicles that caused one death and less than a dozen burn injuries. The company failed to report for two years. In the [second case](#), Gree, a first-time offender, sold dehumidifiers

that caused only property damage with no deaths or injuries. That firm failed to report for about a year. The facts in *Vornado*, in my view, are at least as bad, if not worse than these cases. In both, the Commission initially sought, and ultimately agreed to, significantly higher civil penalties at or near the maximum. The *Polaris* and *Gree* settlements could and should have guided the Commission here. Inexplicably, the Commission is letting *Vornado* walk away with a penalty even less stringent than our [most recent failure-to-report case](#), *Cybex*, which involved a first-time offense with no fatalities. The product at issue in *Cybex* didn't even catch fire; it involved a handle separation. Yet the Commission saw fit to settle that case for \$7.95 million.

The \$7.5 million *Vornado* settlement, less than half of what we could have justifiably sought, will only contribute to the incoherent manner the Commission has applied its civil penalty authority. Have a death? Face a lower penalty. Report late but within 14 months? Face a higher penalty. I cannot identify an underlying doctrine or principle. I anticipate that the product safety community will be confused about the expectations the Commission is setting going forward for how we will deal with similar conduct. Who can blame them? This settlement will be a major cause of that confusion. Regrettably, I never received an adequate explanation for how we reached this amount. But whatever the origin of the settlement, *this* Commission approved it. It is ours to own and defend.

Rather than support this inadequate fine, I offered an alternative option that would have instructed staff to seek a significantly higher penalty, either through continued negotiation or litigation. I believe such a penalty would have demonstrated that this Commission, with its new membership, is taking violations seriously.

If we fail to adequately punish egregious behavior, as I fear we have done here, we are signaling that we are not willing to use the full authority granted to us by Congress. This will embolden companies to continue to ignore their reporting obligations and jeopardize our ability as a Commission to fulfill our mission to keep consumers safe.

We had the opportunity here to seek true accountability and to signal to other companies that behavior like *Vornado's* is entirely unacceptable. I believe we missed that opportunity. In the meantime, I will continue to support higher penalties for the worst conduct. I will also support other forms of relief when our monetary civil penalty authority isn't enough. Every tool at CPSC's disposal should be on the table as the Commission negotiates and approves settlement agreements going forward. We can, and must, do better.



UNITED STATES
CONSUMER PRODUCT SAFETY COMMISSION
4330 EAST WEST HIGHWAY
BETHESDA, MD 20814

COMMISSIONER RICH TRUMKA JR.

**ACCOUNTABILITY FOR SELLING DEFECTIVE SPACE HEATERS THAT
KILLED A 90-YEAR-OLD MAN REQUIRES CRIMINAL INVESTIGATION
OF VORNADO AND ITS OFFICIALS**

JULY 7, 2022

Today's \$7.5 million fine is a meaningful step in holding Vornado fully accountable for knowingly selling defective space heaters that caught on fire, one burning a 90-year-old man to his death. The evidence collected by CPSC staff indicates that Vornado knew just how dangerous their product was in 2014 and chose to hide it from the public and from CPSC. I support today's civil penalty with the understanding that we are a new Commission with new priorities. The work to get to today's \$7.5 million penalty began years ago, following the guidance of past Commissioners. But going forward, no company that behaves as Vornado has should expect to get away with a \$7.5 million fine. As a new Commission, we must seek penalties that are high enough to deter bad actors in the first place and we will reject penalties that can be written off as a cost of business. I expect that our penalties will be multiples higher than they have been in the past. We are wiping the slate clean and writing the next chapter in CPSC's work to keep companies from hiding dangerous products in our homes.

Real accountability, though, must include a criminal investigation of Vornado and its company officials. Public records show that Vornado's leadership at the time included CEO Randy Brillhart, CFO Kay Reed, and CDO Drew Jones. A dead man deserves justice. If it's proven that they knew about the defect and chose to hide safety information from CPSC, that is a crime for which they deserve to be punished to the full extent of the law. I call on the Department of Justice to criminally investigate Vornado and its responsible officials.