

ONE HUNDRED FIFTEENTH CONGRESS
Congress of the United States
House of Representatives

COMMITTEE ON ENERGY AND COMMERCE

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October 31, 2017

The Honorable John Thune
Chairman
Committee on Commerce, Science,
and Transportation
United States Senate
Washington, DC 20510

The Honorable Bill Nelson
Ranking Member
Committee on Commerce, Science,
and Transportation
United States Senate
Washington, DC 20510

Dear Chairman Thune and Ranking Member Nelson,

As Ranking Members of the House Committee and Subcommittee with jurisdiction over the Consumer Product Safety Commission (CPSC), we write to express our concern regarding the nomination of Ms. Dana Baiocco to serve as a CPSC Commissioner. Given her long track record of defending corporations in consumer product liability lawsuits, we are skeptical of her commitment to looking out for the safety of American consumers. We are further worried that her ethics pledge is inadequate to prevent conflicts of interest if she joins the Commission.

Ms. Baiocco has no history of protecting consumers. Instead, she has spent much of her career defending corporations against consumer protection lawsuits. Her client list includes several corporations with business before the CPSC. She represented Mattel in lawsuits tied to toy recalls. She also defended Yamaha against product liability claims involving its Rhino off-road vehicle.¹ As a CPSC Commissioner, Ms. Baiocco could not only have a vote on penalties against those companies but also shape the rules around their products to reduce potential liability.

The work of Andrew Susko, Ms. Baiocco's husband, presents further opportunity for conflicts of interest. Mr. Susko has defended Ikea in a product liability lawsuit concerning

¹ "Dana Baiocco Partner." Jones Day | Dana Baiocco. Accessed October 31, 2017.
<http://www.jonesday.com/dbaiocco/>.

dresser tip-overs.² The CPSC is currently overseeing a recall of 29 million Ikea dressers due to tip-over hazard, and Acting Chair Ann Marie Buerkle has said the Commission is considering further action on furniture stability standards in the coming year.³ We agree with Richard Painter, chief ethics officer under President George W. Bush, that Ms. Baiocco has “got to recuse herself” from matters concerning Ikea, given her husband’s involvement.⁴

In her ethics pledge, Ms. Baiocco stated that she would not participate in matters that involve her firm, Jones Day, or its clients for one year unless she receives a waiver. She further stated, “I also will not participate personally and substantially in any particular matter involving specific parties in which I know a client of my spouse is a party or represents a party, unless I am first authorized pursuant to 5 C.F.R. § 2635.502(d).”⁵ Her ethics pledge is woefully insufficient to guard against real or perceived conflicts of interest tied to her or her husband’s work.

Consumers deserve to know their interests will be protected if Ms. Baiocco joins the Commission. During the confirmation process, the Committee should insist that Ms. Baiocco recuse herself from matters involving former clients for the duration of her service on the Commission, not just the first year. The Committee should clarify whether the pledge regarding her husband’s work covers his previous clients or only clients Mr. Susko is actively representing. In addition, the Committee should ask under which circumstances Ms. Baiocco would seek a waiver to participate in matters where she or her husband have a previous or current interest. Evaluating her intended use of waivers is especially important given that the Trump

² Nadolny, Tricia L. "Judge blasts Ikea for ignoring order in deadly dresser lawsuit." Philly.com. September 14, 2016. Accessed October 31, 2017.
http://www.philly.com/philly/news/20160915_Judge_blasts_Ikea_for_ignoring_order_in_deadly_dresser_lawsuit.html.

³ "CPSC Chairman Buerkle addresses AHFA Regulatory Summit." CPSC Chairman Buerkle addresses AHFA Regulatory Summit | Furniture Today. Accessed October 31, 2017.
<http://www.furnituretoday.com/article/547514-cpsc-chairman-ann-marie-buerkle-addresses-ahfa-regulatory-summit/>.

⁴ Nadolny, Tricia L. "Ethics experts: Trump's pick for safety commission has conflict." Philly.com. October 19, 2017. Accessed October 31, 2017.
<http://www.philly.com/philly/news/politics/presidential/ethics-experts-trumps-pick-for-safety-commission-has-conflict-20171019.html>.


⁵ Dana Baiocco to Mary Boyle. September 29, 2017. Accessed October 31, 2017.
<https://assets.documentcloud.org/documents/4109571/Baiocco-Dana-finalEA.pdf>


The Honorable John Thune
The Honorable Bill Nelson
October 31, 2017
Page 3

Administration has provided blanket waivers to other Jones Day lawyers to work on matters concerning their former law firm.⁶

Unless Ms. Baiocco strengthens her ethics pledge and demonstrates a clear commitment to consumer protection after her years of defending corporations against product liability lawsuits, we must oppose her nomination. We urge you to put consumers first as the confirmation process for Ms. Baiocco proceeds.

Sincerely,


Frank Pallone, Jr.
Ranking Member


Jan Schakowsky
Ranking Member
Subcommittee on Digital Commerce
and Consumer Protection

⁶ Polantz, Katelyn. "Jones Day Lawyers in Trump Administration Get Pass to Work With Former Colleagues." National Law Journal. May 31, 2017. Accessed October 31, 2017. <http://www.law.com/nationallawjournal/almID/1202788055838/>.