

UNITED STATES OF AMERICA  
CONSUMER PRODUCT SAFETY COMMISSION

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In the Matter of )  
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LEACHCO, INC. ) CPSC DOCKET NO.: 22-1  
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Respondent. )  

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**ORDER AFFIRMING ADMINISTRATIVE LAW JUDGE’S  
DENIAL OF MOTION TO DISQUALIFY**

On February 9, 2022, at the Commission’s direction, Complaint Counsel from the Office of Compliance and Field Operations filed a Complaint alleging that the Podster infant lounging pillow manufactured by Respondent Leacho, Inc., poses a substantial product hazard under section 15 of the Consumer Product Safety Act. On March 2, 2022, Respondent filed its Answer to the Complaint.<sup>1</sup>

On March 16, 2022, the Consumer Product Safety Commission voted unanimously (4-0) to ratify Chair Alex Hoehn-Saric’s appointment of Michael Young, Administrative Law Judge (“ALJ”) with the Federal Mine Safety and Health Review Commission, in the above-captioned matter.

On August 17, 2022, Leachco filed a Motion to Disqualify the Presiding Officer and Stay the Proceeding, or in the Alternative, Motion to Stay Discovery (“Motion to Disqualify”). Leachco contended in its motion that: (1) ALJ Young lacks constitutional authority to oversee the administrative proceeding because he is insulated from being removed at the discretion of the President; (2) this Commission’s structure is unconstitutional because CPSC Commissioners themselves are insulated from removal at the discretion of the President; and (3) the administrative proceeding should be stayed while Leachco litigates these constitutional issues in a collateral action filed in federal court.

On August 29, 2022, Complaint Counsel filed its Opposition to Leachco, Inc.’s Motion to Disqualify the Presiding Officer and Stay the Proceeding or, in the Alternative, Motion to Stay

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<sup>1</sup> See the electronic docket for *In the Matter of Leachco, Inc.*, CPSC Docket 22-1, at <https://www.cpsc.gov/Recalls/Recall-Lawsuits-Adjudicative-Proceedings>.

Discovery. Complaint Counsel asserted that: (1) the Motion to Disqualify is procedurally defective because it does not request relief permitted under the Administrative Procedure Act (“APA”), 5 U.S.C. § 556(b), and the Commission’s Rules of Practice for Adjudicative Proceedings, 15 C.F.R. § 1025.42(e); (2) the motion must fail under the “rule of necessity;” (3) a declaration Leachco provided in support of its motion is inadequate; (4) the Motion to Disqualify is untimely; (5) a stay would inappropriately delay the resolution of this public-safety-related adjudication; and (6) discovery should not be stayed because there are no imminent deadlines.

On September 2, 2022, ALJ Young issued an Order in which he denied the request to disqualify himself and declined to stay the adjudicative proceeding. ALJ Young determined that the Motion to Disqualify required analysis of only two issues: whether ALJ Young lacks constitutional authority as an appointed ALJ, and whether the proceeding should be stayed. The ALJ found that Leachco’s arguments on the constitutionality of the Commission did not require his disqualification or a stay of the proceedings. He further determined that he was properly appointed by the Federal Mine Safety and Health Review Commission, under procedures that comply with Supreme Court precedent. See *Lucia v. SEC*, 138 S. Ct. 2044 (2018). ALJ Young noted that in accordance with *Lucia* he was appointed by the Chair of the CPSC and his appointment was ratified by a vote of the full Commission. The ALJ found that the proceeding should not be stayed because a stay would frustrate the CPSC’s statutory mission and his responsibility to conduct proceedings in furtherance of that mission.

### **PROCEDURAL POSTURE**

Pursuant to 16 C.F.R. § 1025.42(e)(2), if a Presiding Officer does not grant a motion to disqualify, “the Commission shall determine the validity of the grounds alleged, either directly or on the report of another Presiding Officer appointed to conduct a hearing for that purpose and, in the event of disqualification, shall take appropriate action by assigning another Presiding Officer or requesting loan of another Administrative Law Judge through the U.S. Office of Personnel Management.” Consistent with that rule, the Commission decides this issue based on the existing record as a matter of law. We do not address Respondent’s arguments regarding a stay of the proceeding, which are not before us under the rule.

## ORDER

WHEREAS the Commission has reviewed and considered Respondent's Motion to Disqualify the Presiding Officer and Stay the Proceeding or, in the Alternative, Motion to Stay Discovery; Complaint Counsel's Opposition to Leachco, Inc.'s Motion to Disqualify the Presiding Officer and Stay the Proceeding or, in the Alternative, Motion to Stay Discovery; and ALJ Young's Order Denying Motion to Disqualify;

WHEREAS the Commission has reviewed and considered the manner of ALJ Young's appointment by the Federal Mine Safety and Health Review Commission and this Commission and concludes that the appointment processes comport with the Consumer Product Safety Act and Article II, section 2 of the United States Constitution; and

WHEREAS the Commission finds valid grounds for the ALJ's factual and legal findings and conclusions in the Order denying disqualification;

IT IS HEREBY ORDERED THAT:

- (1) Respondent's motion to disqualify the Presiding Officer is DENIED; and
- (2) The Presiding Officer's Order Denying Disqualification is AFFIRMED.

SO ORDERED this 7th day of October, 2022.

BY THE COMMISSION,

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Alberta E. Mills  
Secretary  
Consumer Product Safety Commission