

Chapter 19

Keep It Out of the News!

Lavina and Chris Bowman of Rock Spring, Wyoming, bought Polly Pockets for their three-year-old daughter, Kelli, because the little dolls and accessories kept her happy; therefore, the Bowmans, like millions of other parents, kept Wal-Mart and Mattel happy, because as soon as a new Polly Pockets showed up on the shelves, the Bowmans would buy it for her.

"She saw them in the store aisle and right away she wanted them," Lavina Bowman says. "So I thought, well, buy them, it'll shut her up," says the jovial young mother, who worked with battered women. "She used to play with them all day long, play with them in the bathtub, even."

Kelli's six-year-old brother, Devlin, a first grader, wanted no part of the girls' toy. He was a Hot Wheels man, one of the millions of boys who played with the fast little cars from Mattel. Like Paige's family in

Indiana, the Bowmans of Wyoming were devoted to toys by Mattel—a company they trusted.

It was in December 2005, however, when their blind brand loyalty suddenly changed.

The Christmas tree was put up in the living room right after Thanksgiving, and the Bowmans had already done their holiday shopping, which included a few more Polly Pockets dolls for Kelli.

Shortly before midnight on the bitterly cold night of December 7, 2005, a night that will live in infamy for the family, Devlin Bowman awoke screaming in pain. “I thought it was going to be a really tough night,” says his mother, who was eight months pregnant at the time, “because it was flu season, and I thought we were going to be dealing with the flu.”

Devlin told his mom he had a really bad tummy ache and that he needed to throw up. She didn’t think anything was unusual when he vomited.

Kids get sick, they throw up. But I couldn’t take his temperature because he was writhing around on the floor, grabbing his lower stomach in pain. When he started doing that, I was pretty sure it wasn’t the flu, and just to make sure, I got him a drink that should have calmed his tummy down a bit and it didn’t.

When the drink came up, too, the frightened Lavina Bowman turned on the computer and went to WEBMD.com to “plug in his symptoms and get some advice.” It was too late to call the family doctor. When she rated the pain her son was experiencing, the computer’s advice was to take him to the hospital.

Because it was 30 degrees below zero outside, Bowman bundled up to face the frigid Wyoming night and warm up the family’s 1999 Chevy Suburban. “Thank the Lord,” she recalled thinking to herself, “the truck turned on right away. I had to heat it up for a half hour.”

Meanwhile, in the house, Devlin’s pain intensified.

He just kept on screaming, there was so, so much pain. I knew whatever was happening was over my head. I bundled him up and put him in the backseat. He was still writhing and gagging, and he had to hang his head out the window but there was nothing left to throw up. He stayed like that for the seven-mile trip to the emergency room.

At Memorial Hospital of Sweetwater County, the emergency room personnel gave Devlin priority over others waiting for treatment because the child was in agony. Placed in a bed, he was given a morphine drip. "The emergency room doctor was moving pretty fast, so I knew this was serious." An x-ray was inconclusive, so he was given a CTScan around 2 A.M. and the picture "showed something metallic in his intestines." The doctor suggested that maybe Devlin had swallowed a BB, but Lavina Bowman rejected that diagnosis because the Bowmans didn't own a BB gun.

Meanwhile, the morphine wasn't working to reduce the pain. "They could only give him so much, so he had to be in severe pain for 10 or 15 minutes before they could give him more, and that really sucked."

Around three o'clock in the morning, with no idea what was going on with the Bowman boy, and because there were no pediatric surgeons in Rock Springs, and no high-end hospitals in the state, the emergency room physician called for Life Flight, Wyoming's only emergency air transport service, to fly the severely ill child by helicopter to Primary Children's Hospital, in Salt Lake City.

Because of the severe cold, the helicopter was grounded. Around five o'clock, a call was placed for an ambulance, which had to be warmed up. "I had to wait while Devlin was on the morphine drip screaming with pain every once in a while."

It was around seven in the morning when the ambulance began the 185-mile, three-hour trip to Salt Lake City, with Chris Bowman, who worked on an oil-drilling rig, and daughter Kelli, following in the Suburban. "Devlin went from passing out from the morphine to waking up screaming." In the ambulance, he was given the highest dose possible of morphine to keep him from writhing around for fear his intestines might rupture and he'd bleed to death internally. "He was out cold and that was really scary. I spent the whole ride staring at his face."

In the ambulance with her was an EMT who could see how worried she was. He told her, "If your boy starts losing his stats, I have something that reverses the morphine."

The ambulance arrived at the hospital about 10 o'clock in the morning on December 8. The doctors, alerted that he was on the way, needed to let the boy's morphine wear off so they could better diagnose his system, which was a nightmare because Devlin's pain was even more severe. "By then I had to get a hold of myself and sort of put on

my mean mommy face and just make him calm down because you can't lose it. I had to tell him he'll be fine, that the doctors were going to fix it."

More time ticked by. The emergency room staff reexamined him, and the radiology staff took more x-rays and another CTScan. "I had the pictures with me from the first hospital. I told them to look at those, but they were like, no, we want new ones, and that just took all kinds of time. They needed to see for themselves what they needed to do for treatment."

By late afternoon on December 9, a huge team of surgeons had been assembled at the teaching hospital to deal with the frightening case. Suddenly, the boy's intestines began to swell and he had to be rushed into emergency exploratory surgery. Because he was barely dosed with morphine at that point, it took three nurses to put a breathing tube down his throat. "He was fighting them tooth and nail."

During the two-hour operation, the surgeons had to cut the boy wide-open, not knowing what they were faced with. Inside, they found two Mattel Polly Pockets magnets. Unlike little Paige Kostrzewski, Devlin Bowman's intestines fortunately had not been perforated, but the magnets had made him deathly ill.

Exhausted, Lavina Bowman was seated in the waiting room outside of the operating room when the surgeon rushed in. "Devlin's fine," he told her

... but he's like, you gotta see what we found. He had the magnets in a little jar with a lid on it and he took the lid off and said, "Hey, watch this," and he pulled the two magnets apart and they went skipping back together. He's like, this is amazing how powerful these little magnets are, and he was going off on that. He asked me if I knew what they were, and I knew they were from the Polly Pockets. Those were the only toys with magnets that we had. They're just itty bitty, smaller than a pencil eraser.

The surgeon had never seen them before and his reaction was he wanted to get my permission to write about them in a medical journal so that other doctors could read it and recognize the symptoms faster because swallowing them is an emergency

situation that can perforate the intestines and a child can bleed to death internally—not to mention the excruciating pain.

After surgery, Devlin was placed in a private room, kept on drugs intravenously to keep him from being nauseated, given a morphine drip and a catheter, and was not permitted anything to eat for several days, even intravenously. "It was no fun," says his mother. Devlin's parents stayed with him through the four-day hospital ordeal after the surgery.

Back at home, the Bowmans tossed all of the Polly Pockets play sets in the trash with the help of Kelli, who realized how the plastic toys with magnets almost killed her brother.

Lavina Bowman theorized that the magnets had come loose from the water in the tub, where Kelli played with her Polly Pockets. If there were any more loose ones in the house, she couldn't find them because they were so small.



While Lavina Bowman was in the hospital after giving birth to her baby in early January 2006, she heard that there were lawyers "who can sue to change things." The first one she called, from a big Salt Lake City firm, said he would not take on Mattel. Three others told her the same thing:

"Your boy didn't die, plus this is Mattel you're talking about. No way." They said they only take cases they know they can win, and they didn't think they could win against the very litigious giant of the toy industry. Mattel is so big that they're intimidating. I was thinking, "So people have to die before we can fix things."

Then she heard about an attorney in the state of Washington who had just won a big magnetic-toy case, similar to the one involving Devlin. "So I gave it one more chance and sent him a really terse e-mail," says Lavina Bowman. "I wrote, 'My son got wounded by magnets, too. It was from Polly Pockets from Mattel, and if you want to take the case here's my e-mail address.'"

Sim Osborn, headquartered in Seattle, responded within a day.

In the realm of product liability, in particular involving dangerous magnets in toys, Osborn was considered the go-to guy. When he went to the Toy Fair in New York in 2008 to nose around, the chief executive of one of the major companies called him the "anti-Christ."

Osborn earned a national reputation in October 2006 by winning a \$13.5 million settlement paid out to 13 families from a toy company called Mega Brands. In all, he represented 15 families in nine states whose children had been injured from swallowing tiny magnets that had fallen out of sets of the company's popular Magnetix brand, a building set of plastic pieces with magnets encased inside.

Tragically, one of the victims, 22-month-old Kenny Sweet Jr., of Redmond, Washington, died on Thanksgiving Day 2005—within the same timeframe that the Mattel magnets injured Paige Kostrzewski and Devlin Bowman. In the Sweet case, an autopsy showed that the magnets had pinched closed the toddler's small intestine, tearing a hole in the intestine wall, and leaking toxic bacteria into his bloodstream.

"It's been the hardest year of my life," said Kenneth Sweet Sr., the boy's father, at the time of the settlement. "The fact is we would much rather have our son. There's nothing that could ever replace him. I still walk by his picture everyday and even though I think it's weird, I kiss his picture and tell him I love him." His wife, Penny, said that having taken on a big toy company and won had given her "a sense of relief. I'm at peace with everything."

In agreeing to the settlement, Mega Brands did not admit any wrongdoing, but issued a statement saying, "We deeply regret these events and have taken proactive measures to ensure the safety of our products."

Mega Brands was forced into another recall in March 2008, because of magnets that could detach from the flexible parts of the company's toy animals, vehicles, and building sets. The recall occurred after 19 reports of magnets coming loose, including a case of a 3-year-old boy who required medical treatment to remove a magnet from his nasal cavity, and a case involving an 18-month-old boy who was found with a magnet in his mouth, which was not swallowed.

Following the first Polly Pockets recall by Mattel after the Paige Kostrzewski case was settled, Sim Osborn, representing the Bowmans,

filed a personal injury lawsuit against Mattel on November 21, 2006, seeking damages for medical bills and for the emotional harm caused the family from Devlin's ordeal.

Within a few weeks, an attorney with the law firm of Lynberg & Watkins, in Los Angeles, one of a number of outside firms that represent Mattel, appeared at Osborn's office. According to Osborn, "He was straight upfront. He said, 'Look, Mattel wants to settle this case. Let me go look at the child and let's talk.'"

As in the Kostrzewski case, Mattel wanted to avoid the public glare of a trial, Osborn believes. Moreover, he was a tough opponent.

"Frankly, I had a very good track record against Mega Brands, had done very well, and made a lot of headlines, so Mattel wanted to settle and avoid all of that," he says. "Look what happened to Mega Brands stock after we filed the lawsuit. It went from around \$27.00 to \$5.00. Right after the Sweet case was filed they had lost \$257 million in market cap, and it continued to go down as I kept filing cases."

Osborn recalls the lawyer saying,

"Mattel doesn't want to drag this out. Their toy hurt someone. They want to settle. They want to get this behind them." And it was good advice on Mattel's part, and on their lawyer's part, because we kept Magnetix in the press for so long and that raised awareness to the dangers of magnets. I think Mattel may have learned from what happened in those other [Mega Brands] cases. They may have been scared. They may have just felt it was better to handle these kind of cases expeditiously because the longer it drags out, the more time it's in the public eye, and the more press there is. So it went very quickly.

Mattel's agreement to settle with the Bowman family was announced on March 20, 2007, according to news accounts. This was some three months after Osborn filed suit, and before the big recalls started. The actual monetary settlement was kept confidential. Mattel did not admit liability. Osborn chuckles about how quickly the case was resolved. "They were scared shitless. They had to [settle quickly] because of what happened in the Magnetix case."



Among the scandalously enormous number of recalls of Mattel products during the toy terror summer of 2007 were more Polly Pockets and related accessories on August 14—Mattel's second recall in two weeks—involving more than 9 million “made in China” toys. Besides the 7.3 million Polly Pockets play sets recalled, other toys with magnets included 683,000 Barbie and Tanner play sets, 345,000 Batman Magnetic Action Figure sets, and one million Doggie Day Care magnetic toys.

Osborn closely followed the recalls, and later observes,

Mattel kind of hid the second Polly Pockets recall in with the lead paint, and the media jumped on the lead paint. Looking at it in the abstract, it was pretty good PR. on Mattel's part. Have you ever heard of a kid dying from lead poisoning from playing with a toy? Have you ever heard of a kid horribly injured from some lead paint? No. But you get two magnets in your belly and you can die.

In January 2008, Mattel's beleaguered Bob Eckert, in an interview with *Fortune*, was asked why the lead paint and magnet issues were put together in the same public recall announcement—even though the bigger recall was for the magnets. In the article, he did not seem to directly answer the question. Moreover, he didn't acknowledge Mattel's quick settlements with the children in Indiana and Wyoming. Instead, he mentioned that a child had “ingested a magnet from one of our competitor's toys,” and put a positive spin on the tiny magnets, declaring that they “allow toys to become quite magical for children. Unfortunately those magnets tried to find each other in the child's intestines, and that changed how the entire toy industry viewed these magnets.” He then went on to boast that Mattel had developed a system

... that permanently locks the magnet in place. We thought it was so much better than any other system that we said, we should tell parents if they have toys we made over the last five years that don't have the benefit of today's technology, we want them back. We started developing the new technology in January 2007 [after the Indiana and Wyoming cases were settled]

and it was the industry standard in May. The events dictated that August was the time to make the announcement.

(A number of attempts by the author to secure an interview with Eckert for this book were unsuccessful, either directly through his office, in telephone calls with his assistant, through e-mail correspondence with his office, or subsequently with a public relations representative for Mattel.)

In a series of interviews with the author in March 2008, Osborn expressed distrust that safeguards were in place as expressed by Eckert because

... there are still thousands of toys out there with millions of magnets from old sets. Somebody's going to bring their toddler over to the boss's house, and the boss's wife is going to bring down the can of Polly Pockets toys her daughter used to play with and there's going to be some loose magnets in there, and then another kid's going to play with them and the magnets are going to come out.

Hopefully, it will never happen again, and hopefully, there's enough public awareness about it. But we have had cases despite people knowing, and despite the huge publicity generated by all these lawsuits and recalls.



Under the rules of the Consumer Product Safety Commission, Mattel and other manufacturers are supposed to report within 24 hours any claims of products that might have hazardous defects.

But, as stated in Chapter 15, Mattel hasn't always followed that rule to the letter. Instead, the company takes its own good time, sometimes months, to make the required disclosure. The big recall in August 2007 of Polly Pockets and other Mattel toys with dangerous magnets fell into that category—one of at least “three major cases” since the late 1990s of late reporting, as the *Wall Street Journal* reported in a front-page story in September 2007 that was titled “Safety Agency, Mattel Clash Over Disclosures.”

According to the newspaper, Mattel "collected scores of complaints for months before disclosing them" to the CPSC. "At times, Mattel officials have considered possible remedies before making an initial report to the agency disclosing safety concerns."

The *Journal* story paraphrased Eckert as saying in an interview that "the company discloses problems on its own timetable because it believes both the law and the commission's enforcement practices are unreasonable. Mattel said it should be able to evaluate hazards internally before alerting any outsiders, regardless of what the law says."

Eckert maintained that the government and industry gadflies often take incident reports and blow them out of proportion, and he asserted, according to the *Journal*, that even if the reports numbered in the hundreds there still wasn't enough evidence to label a toy unsafe.

Eckert said the CPSC's 24-hour rule of reporting an incident that could possibly expose a hazard was a "standard [that] might apply to almost anything. It's very easy for anyone to apply the word 'could' backward."

Eckert emphasized that Mattel was not withholding information from the CPSC, and that the issue in question was whether the company reported a problem "in a timely manner. We are allowed to investigate" before turning over consumer complaints.

Mattel was fined by the CPSC at least twice since 2001 for "knowingly" hiding product problems that, according to the agency, "created an unreasonable risk of serious injury or death." Such fines are normally less than \$2 million per incident. The agency stated that the cases had been settled—without Mattel's acknowledging any wrongdoing or admitting there was a defect in the toys that were recalled. While the CPSC didn't identify the toys in question, the scenario of the outcome was strikingly similar to the Bowman and Kostrzewski cases, which were quickly settled by Mattel.

Eckert's comments to the *Journal* sparked outrage. Before a U.S. Senate committee, one of a number in both Houses that put Mattel and its chief executive on the hot seat in Washington during the recall summer of 2007, Sally Greenberg, the senior product safety counsel for the powerful Consumers Union, termed his assertions "disturbing" and "telling," coming from the head of the world's leading toy company.

Maureen Keene, writing on the website *Made (Deadly) In China*, said,

Oh, Mattel. I held such high hopes for you. You seemed to be different from other toymakers. Maybe I bought into the hype of Mattel setting the gold standard for doing business in China. Maybe it simply stems from my childhood love of all things Barbie. Either way, CEO Robert Eckert's attitude toward product safety tears it. . . . My only remaining hope where Mattel is concerned is that consumers will make a statement against the company's irresponsible business practices this holiday season and boycott Mattel and its subsidiary Fisher-Price. It's on consumers now—if we buy as usual, companies like Mattel will continue conducting (dangerous) business as usual.



Considering all of the heat and criticism Bob Eckert took, 2007 turned out to be a pretty good year for him. Not only did he stay in power during the scandal-riddled year of recalls with the support of Mattel's board of directors, but he received an enormous raise to boot—a whopping 68 percent more than 2006. His total compensation package was valued at more than \$12.2 million compared with \$7,278,178 the previous year.

In a filing with the Securities and Exchange Commission, Mattel stated that Eckert received a salary of \$1.25 million, and nonequity incentive plan compensation of \$7.1 million, of which \$5.7 million was earned at the end of what was termed a three-year "performance period" on December 31, 2007. He also received stock and option awards with an estimated value of \$3.4 million. Other compensation included \$213,350 for the personal use of Mattel aircraft and more than \$116,000 in company contributions to a deferred compensation plan.

Mattel didn't fare as well as the boss did in the first two quarters of 2008. Analysts were shocked and investors were spooked when Mattel reported a net loss of \$46.6 million in the first quarter—the company's first quarterly loss in three years—compared to net income of \$12 million a year earlier, much of it blamed on the recalls. Sales of the

flagship Barbie doll brand were flat. Eckert warned of price increases. The headline in *Playthings*, the industry trade magazine, blared, **MATTEL FUMBLES. . .** To make matters worse, Mattel's main competitor, Hasbro, the world's second biggest toymaker, beat expectations. In Mattel's second quarter, Barbie sales continued to fall as the 50th anniversary of the brand drew closer, and the company experienced a 48 percent decrease in profit.

The third quarter of 2008 wasn't good, either. And with the U.S. and world economy in a deep, horrific recession, Wall Street analysts were painting a bleak picture for 2008 Christmas toy sales. But CEO Eckert put up a brave face, telling analysts in a third quarter conference call, "There will be a Christmas and Mattel toys will be under the tree." Still, CNNMoney.com ran a headline declaring, **TOY MAKERS BRACE FOR TOUGH HOLIDAY SEASON . . . BATTLE FOR PARENTS' DOLLARS LIKELY TO BE TOUGH.**

Just a few weeks later, the optimistic Eckert morphed into the Scrooge of Christmas Past when Mattel announced in early November that 1,000 jobs worldwide—about 3 percent of the workforce internationally—were being cut in response to the economic turndown of 2008. Some 8 percent of the professional and management staff, many at the El Segundo world headquarters, also faced a bleak, jobless holiday as Mattel was preparing to celebrate Barbie's big 5-0.

(In mid-December, the company agreed to a \$12 million settlement with 39 states to settle the 2007 lead-tainted toys investigation, and also agreed to lower the acceptable level of lead in toys, and to keep better records of lead screenings. A company statement said its move "demonstrated its commitment to children's safety.")

In China, Mattel also faced serious, new economic problems. A major factory that made its toys, Smart Union Group (Holdings) Ltd., in Guangdong, had closed its doors in October 2008 because of the financial crisis in the United States. The company's 8,700 employees were left jobless. With the Chinese economy also in turmoil, some 3,600 toy factories were shuttered. As the Associated Press reported: "Economic upheaval in the U.S. is already changing and shrinking China's vast manufacturing hub in . . . Guangdong, long regarded as the world's factory floor. However, factory closures will not just be a China problem—shoppers will feel the effect in malls and stores across the U.S. and Europe."

If 2007 was the toy terror summer, Mattel's summer of 2008 was a knockdown, drag-out court battle between Barbie and Bratz.