

Dresser Dangers

When Craig Dudek entered his two-year-old son Jozef's bedroom on May 24, 2017, he saw something no parent should ever see. A three-drawer dresser had fallen and pinned Jozef between its drawers. The incident happened shortly after Jozef had been put down for a nap. No sound alerted Craig to what had happened because Jozef's body cushioned the dresser's fall, causing him to suffocate in silence. Jozef died later that day.

This tragic experience is unfortunately playing out in homes, and particularly in children's bedrooms, throughout the United States at a startling frequency. According to the U.S. Consumer Product Safety Commission (CPSC), a child in the United States is injured by a furniture, television, or appliance tip-over approximately every 30 minutes.¹ In 2016, 2,800 children under age six were injured in tip-overs involving dressers (referred to in the furniture industry as "clothing storage units"), a 33% increase over the previous year.² And between 2000 and 2017, 542 people died from furniture tip-overs, 83% of whom were children.³

Why are so many young children getting hurt? Many furniture tip-over incidents occur when children wake up and are alone in their bedrooms. Starting at about age two, curious toddlers may open dresser drawers to climb to the top or retrieve something in an upper drawer. Unfortunately, young children do not have the strength to catch a falling dresser or to lift one that has tipped over. Too often, the outcome is catastrophic.

The problem is probably worse than what the CPSC statistics reflect. The injury data does not capture "near misses"—for example, when an adult catches the dresser, the dresser falls onto a wall or bed, or a child pulls out all the drawers but leaves the area before the unstable dresser crashes down. Because nobody was hurt, parents may misperceive these situations as "freak" occurrences and not file a report with the CPSC, the furniture maker, or the retailer.

But avoidance of injury because of luck or happenstance should not provide solace to designers of unstable dressers. Furniture should be designed to be safe and secure for all intended and foreseeable uses and should be sold with easily installable anchoring or fixation

Dressers are tipping over, killing and injuring children in their own bedrooms. Here's what to know about handling these cases and preventing further tragedies.

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devices. Since these tragedies continue to occur with alarming frequency, here is what you need to know when a potential client comes to you with a tip-over case.

Initial Steps

First, you must gather some crucial information from the scene, from the manufacturer, and from the child's parents.

Hire experts. You will need at least three types of liability experts, including

- an expert who is familiar with techniques and methods of secure wall attachment of furniture, as well as conditions that interfere with wall attachment
- an expert who is knowledgeable about furniture design safety and stability, optimally with experience in furniture products intended to be used by and for children
- a regulatory expert who is familiar with the CPSC's requirements and procedures
- an expert who can conduct tests of dresser exemplars to demonstrate the instability of your client's dresser.

Retain your expert witnesses as soon as possible to avoid conflicts and other problems later in the litigation.

Document the incident. Visit the scene immediately and take photos and videos of the room where the incident

occurred, the dresser or other furniture involved in the incident, the wall and baseboard surface behind the dresser, and the type of flooring (carpet, tile, hardwood) the furniture sat on.

Was the dresser secured to a wall, and if so, with what hardware? Examine the type of wall material (drywall, masonry, plaster) and its suitability for secure wall attachment. Check whether baseboard heaters or heating and air conditioning vents made wall fixation difficult or impossible. Bring an engineering expert, or even an experienced carpenter, with you to the scene to help evaluate the feasibility of secure wall attachment in the room where the tip-over occurred. Also check whether dressers and bookcases are attached to walls in other rooms.

Leave everything in place until your experts have inspected the scene and the furniture. Consider inviting the manufacturer or retailer to conduct an inspection before altering the appearance or location of the room's contents. Promptly request any photos police or first responders took at the scene, and issue subpoenas for them if necessary. After documenting the dresser's position and other features of the room, take possession of the dresser and its contents and store them in a secure facility. Separately store and label the dresser's contents so that your experts can evaluate the weight distribution of the dresser drawers. To avoid a spoliation defense, do not change, adjust, or repair any portion of the furniture.

Dresser information. Gather all available information about the make or model, the specifications and dimensions, the instruction manual, where and when the dresser was purchased, and the receipt. Parents or other purchasers of the furniture can provide some of this data, but you probably will need to obtain specific details about the product from the manufacturer or retailer. If you cannot locate a copy of the instruction

manual, search online. See whether the manual includes any warnings, and document the existence of any warning labels on the dresser itself or on the box in which it was sold and delivered, if still available.

Check the CPSC website to see if the dresser or any similar products from the same manufacturer have been subject to a recall or other product advisory. If a dresser has been the subject of a voluntary recall (usually in conjunction with the CPSC), the manufacturer has already recognized a safety deficiency. While a recall alone does not establish liability, it is much more difficult for a manufacturer to defend the safety of a product that is so dangerous that it must be taken off the market.

Working with parents. Meet with the parents or caregivers about the events leading up to the tip-over and how they discovered it. Sensitivity and delicacy are important: In my experience, parents of tip-over victims tend to unfairly blame themselves for the tragic and shattering death of a child in their own home. Unaware that many dressers are unsafely designed and lack adequate warnings, parents may not initially attribute responsibility to the dresser manufacturer, where it belongs. They need reassurance that they could not reasonably be expected to know about the unfortunate history and frequency of tip-over incidents, which are well-known within the industry,⁴ and that tip-overs occur even when parents are otherwise safety conscious.

While manufacturers often argue that restraint devices (such as wall attachment hardware) should be used to reduce the frequency of tip-overs, they know very well that even the most alert and aware parents often do not attempt to bolt a dresser to a wall for many reasons. A Consumer Reports investigation in 2018 found that only 27% of Americans have anchored furniture in

their homes.⁵ Survey respondents gave the following reasons for not attempting wall attachment:

- Their children are not left alone in the house or apartment.
- They thought the furniture was stable enough.
- They didn't want to put holes in their walls or furniture.
- They weren't sure what hardware to buy.
- They have never heard of anchoring furniture.⁶

Advise your parent clients that the defendants likely will bring up the wall attachment issue throughout the case and that you will help them prepare for this questionable line of defense.⁷ Always remember that furniture can and should be designed to be stable and safe for how young children may be expected to interact with the dressers in their bedrooms. Wall attachment is a useful supplement, but dressers should be built to be safe for their intended and foreseeable *freestanding* use.

Reporting to the CPSC

After you have obtained initial information about the incident, report it to the CPSC, which tracks dresser and other furniture tip-overs.⁸ Be aware that the CPSC will contact the manufacturer if you have not already notified it about the incident.

The CPSC may also conduct what is referred to as an "in-depth investigation" (IDI) that will include interviewing your clients. An IDI contains summaries of product-related injury and incident event inquiry reports. Based on victim and witness interviews, the reports provide details about incident sequence, human behavior, and product involvement. Be present for the interviews of your clients to ensure the questions are appropriate and not adversarial. Questions such as "why didn't you screw your dresser to the wall?" are improper and unconnected



Store and label the dresser's contents so that your **experts can evaluate the weight distribution.**

to the CPSC's fact-finding mission. If the CPSC was already notified of the incident by the parents, police, medical examiner, or the manufacturer before you were retained, your clients may have been interviewed already, and you will need to request the transcripts.

Submit a Freedom of Information Act (FOIA) request to the CPSC for any prior tip-over claims and reports associated with the make and model of the dresser involved in your case.⁹ The FOIA request can and should be made before litigation begins and as soon as you have sufficient identifying information about the product involved in the tip-over. The records furnished often are highly redacted but may contain useful information about the product, previously reported incidents, and recall considerations.

Legal Claims

Dresser tip-over cases involve claims that the defendant manufacturer unsafely designed the dresser and failed to provide warnings about its safe use. Retailers and distributors also may have exposure, especially when the dresser or other type of furniture failed to comply with recognized standards. The failure to meet industry safety standards violates the standard of care, and these claims can be asserted under products liability or negligence theories.

Product not safe for intended use. In most states, products liability design defect claims are based on the

manufacturer's failure to assure that the product is safe for its intended and expected use.¹⁰ Many states, such as Pennsylvania where the Dudeks' case was filed,¹¹ evaluate these claims based on a risk-utility test or a consumer expectation test.¹²

Under a risk-utility test, a product is in a defective condition if a "reasonable person" would conclude that the probability and seriousness of harm caused by the product outweigh the burden or costs of taking precautions. A consumer expectations test defines a "defective condition" as one that, upon normal use, is dangerous beyond a reasonable consumer's contemplations.

Failure to warn. Tip-over cases often give rise to failure-to-warn claims based on the absence of clear instructions and adequate warnings about the product's safe use and latent dangers. These claims also may arise from the manufacturer's failure to include anchors, wall attachments, and related hardware, even when wall attachment is recommended. And manufacturers (as well as retailers and distributors) often don't even include a warning about the consequences of failing to secure furniture to a wall, which is particularly necessary when the product is not tip-resistant as a freestanding unit.

Failure to meet ASTM or other industry standards. Whether a dresser or other piece of furniture is reasonably safe may be based, in part,

on its conformity to industry standards applicable at the time of manufacture. Depending on the jurisdiction, the failure to meet standards may be characterized as a negligence or products liability design defect claim.

Until this year, ASTM F2057-17, "Standard Safety Specification for Clothing Storage Units," was the voluntary industry safety standard for dressers sold in the United States.¹³ This standard, originally adopted in 2000, contained two separate stability tests, required a permanent warning label, and required provision of tip-over restraints. One of the tests involves placing a 50-pound weight over the lip of a fully opened drawer to replicate the weight of a small child climbing on the furniture; to comply with the standard, the dresser may not tip over.

In August, a revised ASTM standard, F2057-19, was adopted—it reduces the minimum height requirement of covered units to 27 inches.¹⁴ This new, stricter standard eliminates manufacturers' use of the defense that they need not perform stability testing on shorter dressers. The ASTM subcommittee dealing with furniture safety is also considering an increase in the weight used in the testing process to address dresser safety and stability for older, heavier children, but this proposal has not yet been formally adopted.

When a manufacturer has knowingly ignored ASTM standards and testing

procedures and the result is a design that fails to meet ASTM minimum requirements for stability, some jurisdictions also allow a claim for punitive damages.¹⁵ Even when a dresser complies with industry standards, a claim may be based on the real-world foreseeable use of the dresser by children and the failure to employ recognized design and build techniques that substantially enhance dresser safety and stability.

Discovery & Depositions

Request the following documents from the dresser manufacturer:

- history of compliance (or noncompliance) with voluntary industry standards
- history and results of internal testing
- warnings and instructions included with the dresser and other furniture the manufacturer sold
- samples of attachment hardware, if offered by the manufacturer
- all prior tip-overs reported by consumers, whether or not they resulted in injury or death.

You also should request all memoranda arising from representatives of the manufacturers attending meetings of the ASTM Subcommittee on Furniture Safety (F15.42), which is charged with compiling information about furniture tip-overs, procedures for preventing or reducing tip-overs, and consideration of revisions to the ASTM voluntary standard.


Consider deposing employees and subcontractors involved in the design and compliance testing of the subject dresser. You also should depose the corporate designee most familiar with the company's procedure for documenting consumer complaints and incidents.

Settlements That Save Lives

Preventing future tragedies is an important motivation for many clients settling cases involving catastrophic injuries or

deaths—especially when their children have been victims. For example, in 2016, when my firm settled three wrongful death cases involving IKEA dressers, the global settlement included two key provisions intended to help protect other children from future tip-over incidents.

Specifically, IKEA agreed to sell only chests and dressers in the United States that met or exceeded the then-current voluntary ASTM F2057 safety standard. It also promised to increase funding for its “Secure It” program to raise awareness of the risk of tip-overs, including national television advertisements, internet and digital communications, and in-store warnings. In addition, IKEA agreed to donate \$200,000 to children's hospitals in the states where the families resided and to Shane's Foundation NFP, a children's safety organization with a focus on furniture tip-over prevention and education.

When litigating a furniture tip-over case, remember that you should not only obtain a fair result for your client but also seek settlement terms promoting awareness and design practices that will help keep other children safe. 



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NOTES

1. U.S. Consumer Prod. Safety Comm'n, *Anchor It!: Why Anchor It*, <https://www.anchorit.gov>; see also Rachel Rabkin Peachman, *Furniture Tip-Over: A Hidden Hazard in Your Home*, Consumer Rep. (Mar. 22, 2018), <https://www.consumerreports.org/furniture/furniture-tip-overs-hidden-hazard-in-your-home/>.
2. Peachman, *supra* note 1.

3. Adam Suchy, U.S. Consumer Prod. Safety Comm'n, *Product Instability or Tip-Over Injuries and Fatalities Associated With Televisions, Furniture, and Appliances: 2018 Report 2* (Oct. 2018), <https://tinyurl.com/y4a382uw>.
4. The American Home Furnishings Alliance established its first tip-over standards nearly 20 years ago. See Am. Home Furnishings Alliance, *Furniture Stability*, www.ahfa.us/furniture-stability/.
5. Rachel Rabkin Peachman, *Furniture Anchors Not an Easy Fix, as Child Tip-Over Deaths Persist*, Consumer Rep. (Nov. 5, 2018), <https://www.consumerreports.org/furniture/furniture-anchors-not-an-easy-fix-as-child-tip-over-deaths-persist/>.
6. *Id.*
7. Advise grieving parents to seek support from child-safety organizations whose members include other parents who have endured similar tragedies. These organizations include Parents Against Tip-Over, Shane's Foundation, Conner's Legacy Foundation, HarperSmiles.org, and KidsinDanger.org. The founding members of several of these organizations include parents who each lost a young child when a dresser tipped over in the child's bedroom.
8. Unsafe products can be reported to the CPSC at <https://saferproducts.gov>.
9. For more information on Freedom of Information Act requests, see Adam J. Blank & Zachary J. Phillips, *Make the Most of FOIA*, Trial 45 (March 2019); Austin Evers, *Crafting Federal FOIA Requests*, Trial 48 (March 2019).
10. See *Tincher v. Omega Flex, Inc.*, 104 A.3d 328 (Pa. 2014).
11. IKEA, the manufacturer of the dresser involved in the Dudes' case, has its U.S. headquarters in Pennsylvania.
12. *Tincher*, 104 A.3d 328; see also *Barker v. Lull Eng'g Co.*, 573 P.2d 443 (Cal. 1978); *Calles v. Scripto-Tokai Corp.*, 864 N.E. 2d 249 (Ill. 2007); *Branham v. Ford Motor Co.*, 701 S.E.2d 5, 14 n.11 (S.C. 2010).
13. See Am. Home Furnishings Alliance, *supra* note 4.
14. Am. Home Furnishings Alliance, *Standard Update*, www.ahfa.us/astm-updates-stability-std/. ASTM F2057-19 (Standard Safety Specification for Clothing Storage Units) is available for a fee on ASTM's website. See <https://www.astm.org/Standards/F2057.htm>.
15. “Punitive damages may be awarded for conduct that is outrageous, because of the defendant's evil motive or his reckless indifference to the rights of others.” See *Hutchison v. Luddy*, 870 A.2d 766, 770 (Pa. 2005) (quoting Restatement (Second) of Torts §908(2) (1979)).