

WHAT IS THE DANGER?

Defective household appliances cause thousands of house fires and other losses each year, resulting in millions of dollars in property damage. Virtually every appliance in the home can cause a major property loss. In the last few years, the Consumer Product Safety Commission has issued recall notices due to fire hazards for certain models of dryers, refrigerators, washers, toasters, oven ranges and coffee makers.

Successful subrogation recoveries depend on early and proactive investigation. The property adjuster is usually in the best position to ensure that the necessary steps are taken to protect a company's subrogation rights. This brochure is intended to serve as a guide to assist the adjuster through this process.



COZEN O'CONNOR'S NATIONAL HOUSEHOLD APPLIANCE TASK FORCE

Member Contact Information By Region

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Don't Get Burned!

FIELD ADJUSTER'S HANDBOOK Subrogating Against Product Manufacturers



Prepared by the
National Household Appliance Task Force
Subrogation and Recovery Department



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FIELD ADJUSTER'S CHECKLIST:

What to do if you have a loss that was caused by a household product.

Notify a Cozen O'Connor Household Appliance Task Force Member in your area (see back cover) to handle the tasks below for you, or take the following steps:

1. **For fire losses, make sure that the fire cause and origin expert and electrical engineer can eliminate all other potential ignition sources within the area of origin.** In a lawsuit, product manufacturers may argue that something else caused the fire.



An example of a fire caused by a dryer malfunction.

2. **Preserve the fire scene to give the manufacturer and other potentially responsible parties ("PRPs") an opportunity to inspect it.** The parties may allege "spoliation" and try to get the case dismissed because the plaintiff failed to preserve the scene so the defendants could conduct their own inspection.
3. **Notify the manufacturer and other PRPs that their product may have caused a fire.** If your experts cannot isolate a single product as the cause, you may have to place several manufacturers on notice.
4. **Set up a joint inspection of the fire scene with your experts and the experts for the PRPs.**
5. **Ask the PRPs for a written list of the fire scene evidence they want preserved.** A written list prevents the manufacturer from later claiming spoliation because you failed to preserve a critical piece of evidence.
6. **Preserve critical fire scene evidence.** Make sure that you preserve not only the evidence you will need to prove your case, but also the evidence that eliminates other potential causes.
7. **Learn as much about the product as possible.** Search the CPSC website and other on-line data sources to find out the history of the product and if it has caused any other losses. You may also be able to get a copy of the

product manual off the manufacturer's website.

8. **Analyze and evaluate the loss site evidence at your expert's laboratory.** This will often result in the destruction of evidence, so make sure that the PRPs are present. Consider having your expert purchase and disassemble an exemplar of the product beforehand so that the expert fully understands the product's design before disassembling the actual product suspected of causing the loss.
9. **Identify the specific actions that led to the product causing the loss.** If you believe the loss started because the product is defectively designed, ask if your expert has an alternative design that is both safer and feasible. This evidence may be necessary to sustain your burden of proof at trial.
10. **Identify all potentially applicable time bars, including statute of limitations and repose.** Also, consider the potential applicability of legal defenses, such as the economic loss rule and contractual suit limitations.

