

Using the Consumer Product Safety Commission to Enhance Subrogation

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Background Concerning the CPSC



The Consumer Product Safety Act of 1972 & The Consumer Product Safety Improvement Act of 2008

- The Consumer Product Safety Act enacted 1972
 - CPSA authorized CPSC to develop standards and bans
 - Authority for Recalls
- The Consumer Safety Improvement Act of 2008
 - New Testing and Documentation Requirements



Purpose of the CPSC

- “Protect the public against unreasonable risks of injuries and deaths associated with consumer products”
 - CPSC works to reduce risk of injuries & deaths
 - Develop voluntary standards
 - Issuing and Enforcing Mandatory Standards
 - Banning Consumer Products if no standard could protect consumer
 - Recalls
 - Research
 - Education

CPSC Priorities under Federal Regulations

- Frequency and severity of injury
- Causality of injury
- Chronic illness and future injuries
- Cost and Benefit of CPSC action
- Unforeseen nature of the risk
- Vulnerability of population at risk
- Probability of exposure to the hazard

Jurisdiction of CPSC

- CPSC has jurisdiction over products sold in U.S.
- Manufacturers, importers, distributors and sellers
 - 80% of recalls annually involved products imported to U.S.
 - Under CPSC, importers of finished products manufactured outside U.S. must certify that the product complies with all rules, bans, standards or regulations applicable to the product



Products Subject to Regulation

- Consumer Product defined:
 - For sale to a consumer for use in or around a permanent or temporary household or residence, a school, in recreation....
 - For personal use
 - Does not apply to
 - Tobacco, Vehicles, Pesticides, Fire Arms, Aircraft, Boats, Medical Devices, Cosmetics & Foods
 - Areas covered by OSHA, Atomic Energy Act, Clean Air Act & Public Service Act

Developing Rules and Standards



Voluntary Consensus and Standards

- Voluntary Consensus Standards
 - Standards created by industry groups, government agency and consumer groups
 - Organizations ensure that standards created properly
 - ANSI, ASTM, CSA, UL and others
 - CPSC encourages modifications to standards where needed
 - Dryer Example

Types of Defects

- Manufacturing Defects
- Production Assembly Issues
- Design
- Materials
- Construction
- Finish
- Packaging
- Warnings
- Instructions & Failure to operate



When a Recall is Needed

- Product fails to comply with applicable standard
- Product, creates a substantial risk of injury, even if it complies with standard
 - Manufacturer required to bring these matters to the CPSC's attention
- Voluntary vs. involuntary recalls

Enforcement of CPSC Rules, Regulations and Recalls



Commissioners

Elliot F. Kaye
Chairman



Robert (Bob) S. Adler
Commissioner



Joseph Mohorovic
Commissioner



Ann Marie Buerkle
Commissioner

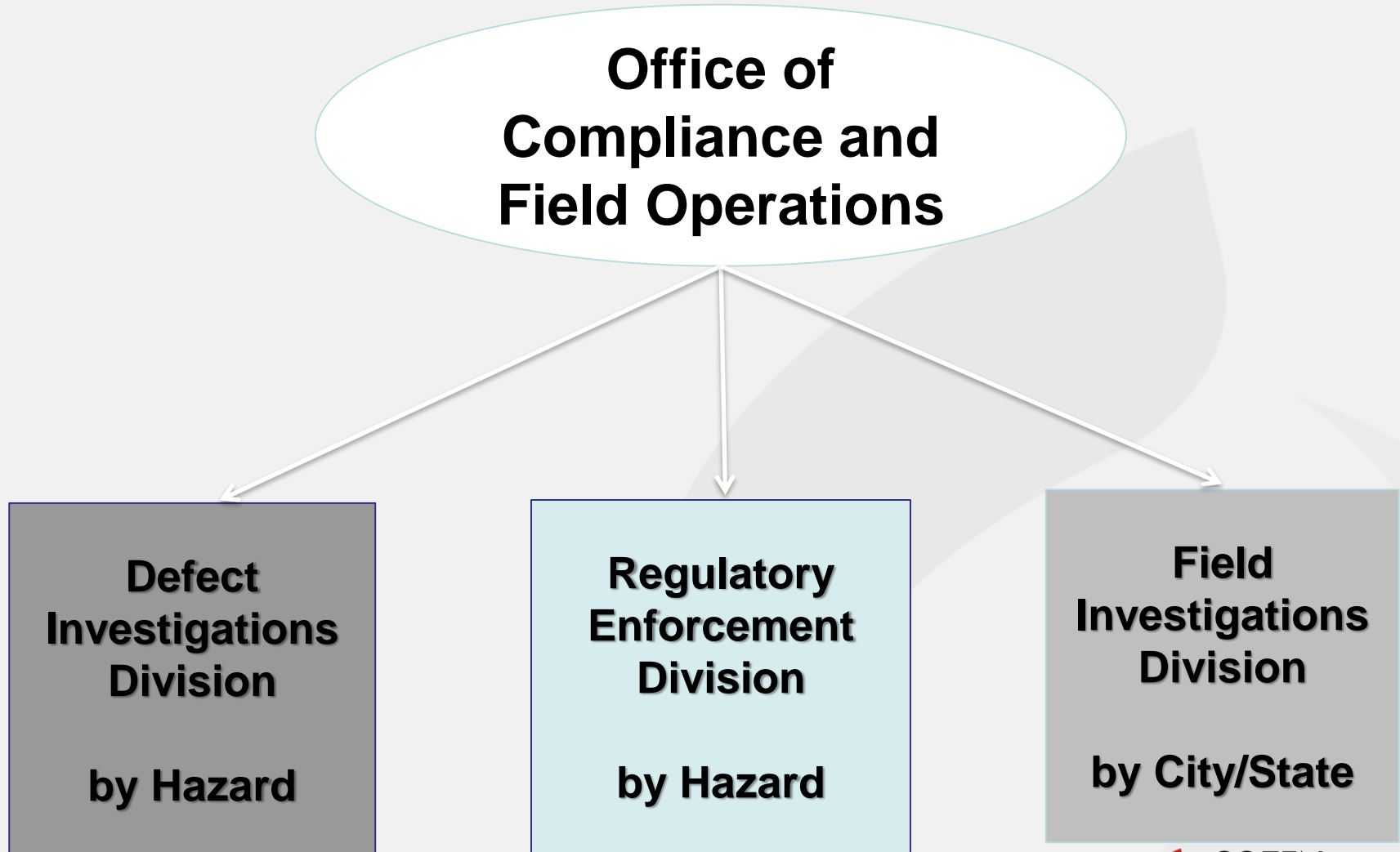


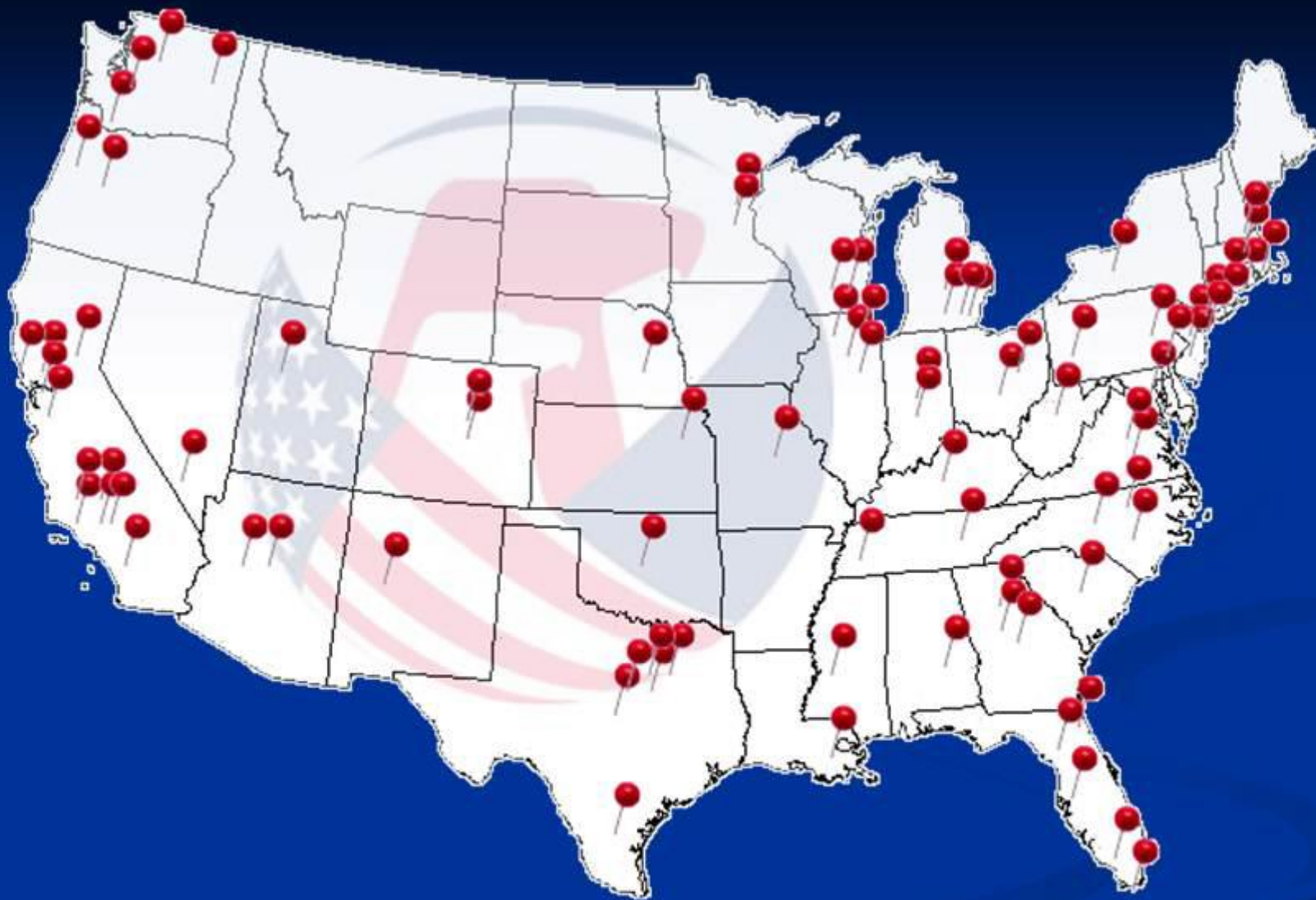
Marietta S. Robinson
Commissioner



- The President appoints one Commissioner as the Chairman, who acts as Principal Executive Officer

Office of Compliance and Field Operations Structure





Field Investigative Staff Locations

Not pictured: Hawaii and Puerto Rico¹⁵

Compliance Activities

**Market
Surveillance**

**Import
Surveillance**

**In-depth
Investigations**

Inspections

**Defect
Investigations**

**Enforcement of
Rules & Bans**

**Corrective
Actions/Recalls**

**Penalty
Referrals**

**Advice &
Guidance**

Source Data

- Hot Line reports
- Public Data base
- Civic groups
- Attorneys
- Retailers
- State death certificates
- Newspapers, radio, television, Internet, trade blogs, etc.
- Fire & police reports
- Non-MECAP coroners, hospitals
- MECAPS reports
- Consumers
- Internet surveillance
- Medical professionals
- CPSC Field Investigations

How does the CPSC Compliance Investigation process work?

- Field investigation conducted
- Compliance initiates contact with the firm
- Hazards Analysis conducts data search
- Engineering performs testing (both failure mode and performance testing)
- Preliminary Determination made (for non-Fast-Track cases)
- Negotiate recall
- Notification to consumers

Inspections



CPSC National Product Testing & Evaluation Center Testing Areas



Toy Test Lab



Children's Products Lab



Pool and Spa Products Lab



Impact Lab (Bike Helmets)



General Product Test Lab



Outdoor Power Sports Lab



Electrical Products Test Lab



Chemistry Lab



Combustion Products Test Lab



Modern Conference Space



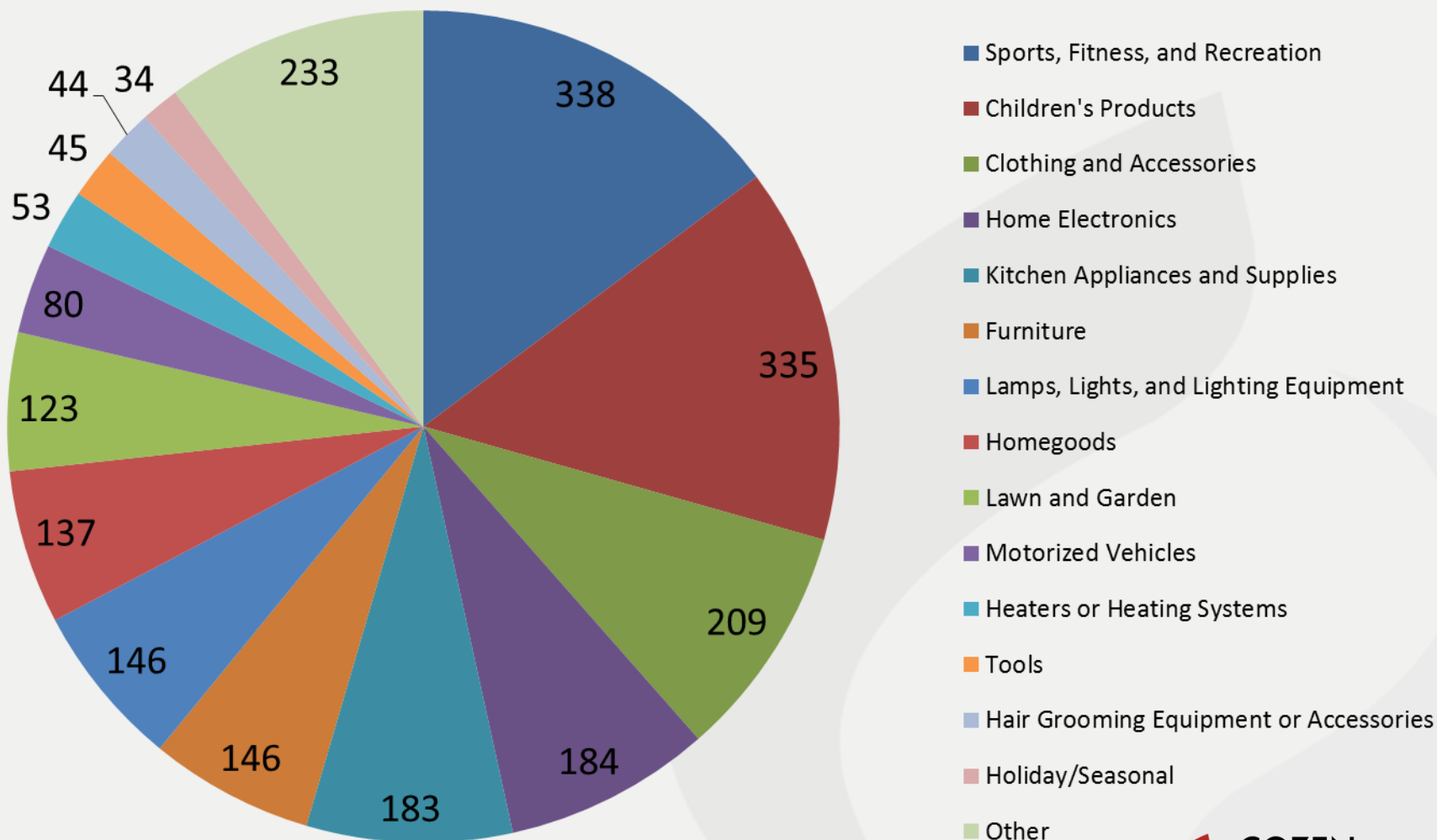
Machine Shop



Flammability of Materials Lab

Recalls by Category

FY10-FY15



Subrogation Litigation & the CPSC

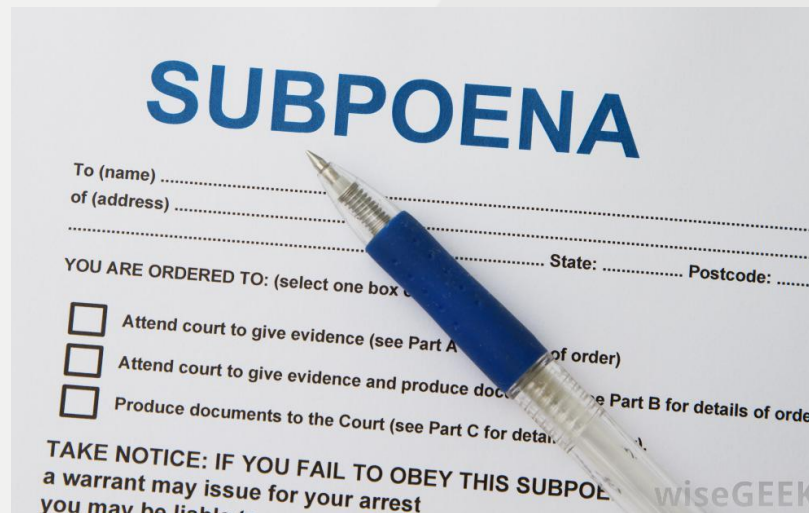
Rights of Manufacturers, Importers, Distributors and Sellers

- Manufacturers, importers, distributors and sellers are mandated to comply with CPSC request
- CPSA prohibits CPSC from disclosing trade secrets



Use of Subpoenas and Freedom of Information Requests

- CPSC is exempt from subpoena
- Not Exempt from FOIA Requests
 - FOIA Process
 - Strategic Discovery Requests and Protective Orders



The Effect of Recall

- Questions of Admissibility
 - Admission vs. subsequent remedial measure

Second Restatement of Torts

- Strict Liability
 - Defective and unreasonably dangerous
 - Jury decides what unreasonably dangerous means typically

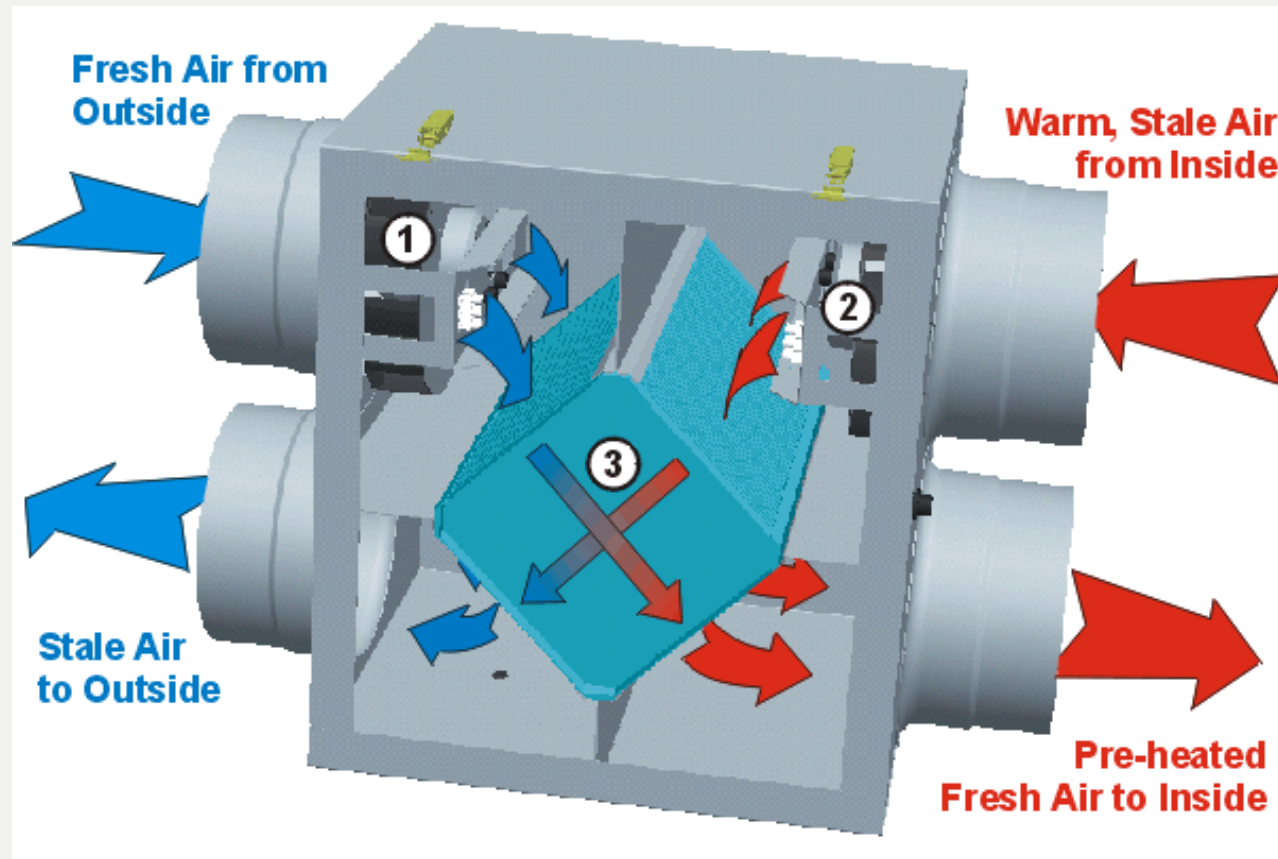
Third Restatement of Torts

- Risk Utility
 - Would a reasonable alternative design, at a reasonable cost, have reduced the risk of foreseeable risk of harm

Dishwasher Recall



Heat Recovery Ventilator Recall



Battery Charger Recall



Q & A

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