

PERSPECTIVES

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Editorial: Product Recalls and Expectation Bias

Recalled products often become the focus of a fire investigation before a thorough origin and cause investigation is properly conducted. We represent a number of product manufacturers who have experienced the need to recall one or more of their products for potential fire hazards. This circumstance presents many issues for the recalling manufacturer when the recalled product is found at a fire scene. This editorial discusses several of these issues and provides guidance to the recalling manufacturer and to fire investigators.

On occasion, a product manufacturer determines that a product it has manufactured represents a potential fire hazard to the end user. The risk of fire may be slight and may only be present under certain well-defined and remote circumstances, however, the fact that the recall has been issued exposes the manufacturer to the risk that its recalled product will be unjustly accused of causing a fire. On many occasions... [Read more...](#)

"Malfunction Theory" of Products Liability: Unanimous Connecticut Decision Saves Manufacturer \$750,000

Recently, the Supreme Court of Connecticut heard the appeal of the well-known manufacturer, Deere and Company, from a trial court judgment of \$749,642.69 in favor of the plaintiff. *Metropolitan Property & Casualty Ins. Co. v. Deere & Co.*, 302 Conn. 123, 125, 25 A.3d 571 (2011). The Court held that, under the circumstances of the case, the plaintiff's evidence was insufficient to establish its products liability claim under the "malfunction theory."

The "malfunction theory," allows a "jury to infer the existence of a product defect that existed at the time of sale or distribution on the basis of circumstantial evidence alone." *Id.*, at 133. The "malfunction theory" may be used in cases where the plaintiff has presented sufficient evidence to support a finding that the product, and not some other cause, was more likely than not, the cause of the injury. *Id.*, at 140, n.9. A plaintiff relying on the "malfunction theory" must produce evidence that supports "a chain of inferences sufficient to link the plaintiff's injury to a product defect and to link the defect to the manufacturer." *Id.*, at 137. [Read more...](#)

Meaning of "Collapse" in Property Insurance Still Elusive After All These Years

From the time insurers started including coverage and exclusions for "collapse" in their policies over fifty years ago, courts nationwide have disagreed as to the interpretation of the term. The first consideration, of course, is the form of the clause, or the particular policy language and the extent to which the term "collapse" is defined by the policy. Insurers are cognizant of the perceived ambiguities in their policies that either cover or exclude coverage for collapse and have narrowly defined the nature of collapse in the policy to head off potential coverage or bad faith litigation. Despite changes to standard form policies, however, different interpretations



have emerged and the term collapse continues to remain elusive. Practitioners should make an extensive analysis when assessing "collapse" claims to fully understand the risks and obligations facing insurers.

The most longstanding view is that collapse is a plain and unambiguous term susceptible of only a single meaning such that coverage is triggered only where the structure has completely fallen down or physically collapsed. This, however, has become the diminishing minority view. See, e.g., *Beach v. Middlesex Mut. Assurance Co.*, 205 Conn. 246, 532 A.2d 1297, 1300 (1987) ("the cases . . . which hold that 'collapse' unmistakably connotes a sudden falling in, loss of shape, or flattening into a mass of rubble, have come to be in the distinct minority.") [Read more...](#)

ANNOUNCEMENT

On June 7, 2012, Attorney Ted Tedford will present on "Effective Fire Investigation and Testimony" for the International Association of Arson Investigators (IAAI). This program will identify and discuss the cutting edge issues faced by today's fire investigation professionals beginning with the fire scene investigation to the presentation of testimony in the courtroom. [Register online](#)

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A CASE STUDY

"The best fire case is one that ends at the fire scene." See our editorial on [Exculpating your Product at the Fire Scene.](#)