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A PUBLICATION DEDICATED TO THE ART OF RECOVERY BY NATIONAL ASSOCIATION OF SUBROGATION PROFESSIONALS ► FALL 2015

## Ethics in Subrogation

**44** Ethical  
Pitfalls

**78** An Expert  
Divided



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## Case Summaries

### Documenting Installation During Product Liability Investigations

BY MICHAEL DEHARDE, P.E., U.S. FORENSIC

**As a means of controlling costs, product liability investigations often involve engineering experts inspecting evidence shipped to them without benefit of a site inspection.**

Recently, U.S. Forensic had a case which demonstrated why documenting the in situ condition during the initial site visit can prove to be equally valuable.

Our firm was asked to pick up and retain a water heater from the 10th floor of a new condo building. We were asked to retain the water heater until the manufacturer was put on notice and a joint inspection was scheduled. While on site, we obtained permission to document the installation of the water heater.

The joint inspection of the water heater was scheduled several months later at our laboratory. The manufacturer's representative and I measured the flow of the leak with a flow meter and photos documenting the testing were taken. After confirming the leak, we stripped the outer shell and insulation off the water heater to find a leak at the seam weld of the tank. We cut a segment out and then sectionalized it. The manufacturer's representative obtained one section for further analysis of the weld, and U.S. Forensic

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The site visit and photos proved extremely valuable. The photos and documentation provided evidence that the installation had been completed correctly and did not contribute to the loss. Our written report addressed those facts.

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kept the other section along with the water heater. The evidence indicated that the weld did not fuse both ends of the tank's steel, which indicated a defect in the manufacturing process. Both experts were in agreement. I provided our client a verbal report that a clear defect was present, and the manufacturer's expert agreed. Two months later, the client called stating that the manufacturer accepted responsibility for the defect, but was only going to offer 50% of the value of the claim. The manufacturer's position: if the water heater had been

properly installed, the leak would not have caused the damage.

The site visit and photos proved extremely valuable. The photos and documentation provided evidence that the installation had been completed correctly and did not contribute to the loss. Our written report addressed those facts. The client called a few weeks later saying the manufacturer changed their position and paid 95% of the total claim. In this case, a thorough site inspection was worth 45% of the claim's value, a number in the tens of thousands of dollars.

OHIO?



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