



Will your store end up taking the heat for the anti-tipping device that you didn't install on stoves you delivered?

The tipping point

A REPORT BY ED WINN III

It is as sad a story as can occur in the rental business. A curious toddler left unattended in the kitchen. A tantalizing aroma from the top of the stove and a novel bubbling sound. The toddler uses the oven door as a step to probe the mysteries of the stovetop. The stove tips over and disaster ensues. Such tragedies do not occur often. Most parents know better than to leave hot food simmering on a stove with unattended toddlers in the house. But such accidents do occur from time to time, and one such accident occurred recently in a house where a rental company had delivered the stove.

The rental company and the manufacturer have both been sued and the exposure is considerable. In other cases where children have been severely burned from stepping on an oven door and tipping over a stove, settlements have ranged from the mid-six figures to more than \$20 million.

There are complicated legal issues in such cases involving contributory negligence, assumption of the risk, statutes of limitation, products liability and calculating damages that are beyond the scope of this article. It is not necessarily the case that every time a stove tips over and a child gets burned, the stove

stoves has been on the market for a number of years. The device is separate from the stove itself so that the stove can be pulled out to allow for cleaning or repair and then the stove can be pushed back so that the leg fits into the device.

Years ago, Sears—after it had settled a stove tipping case of its own— instructed all of its appliance repair people to offer a free inspection of all stoves on all service calls and if a stove did not have an anti-tipping device, to offer to install one for \$3. Installation of an anti-tipping device requires screwing two screws either into the floor or into a stud on the rear wall. Rental dealers who are installing them report that the job takes about 10 minutes. When the stove is returned, the anti-tipping

If they want to help their customers feel like first-class citizens, then they must give them first-class service. That means hooking up the icemaker, at the very least.

As for stove anti-tipping devices, the issue goes beyond quality of service to one of public safety. When rental dealers deliver a stove, they may be assuming a non-delegable duty to install it properly, which will mean installing the anti-tipping device. Manufacturers have attempted to pass their duty to make a safe product down the stream of commerce to retailers, rental dealers and to end users by providing the bracket and by posting warnings in several prominent places on the stove to alert everyone to the tipping danger and the necessity of installing the anti-tipping device.

There are no statutes requiring that stoves be equipped with anti-tipping devices. Underwriter Laboratories requires that stoves have such devices in order to receive that group's approval. Consumer advocates have lobbied to get the stove industry to make all stoves with fall-away doors that simply disconnect and fall to the floor when too much weight is put on them, but the industry has resisted this design change, arguing that the anti-tipping devices solve the tipping problem. However, the stove manufacturers must rely on retailers, rental dealers and others to install the device and when it is not installed and someone gets hurt, the manufacturers regularly get sued and pay at least a portion of the award.

Some rental dealers have attempted to shift liability away from the rental company onto the customer by giving the customer additional notice of the tipping danger and the need for installing the anti-tipping device and by getting the customer to sign an agreement to install the device or to have it installed before using the stove. These agreements usually add disclaimer and indemnity language.

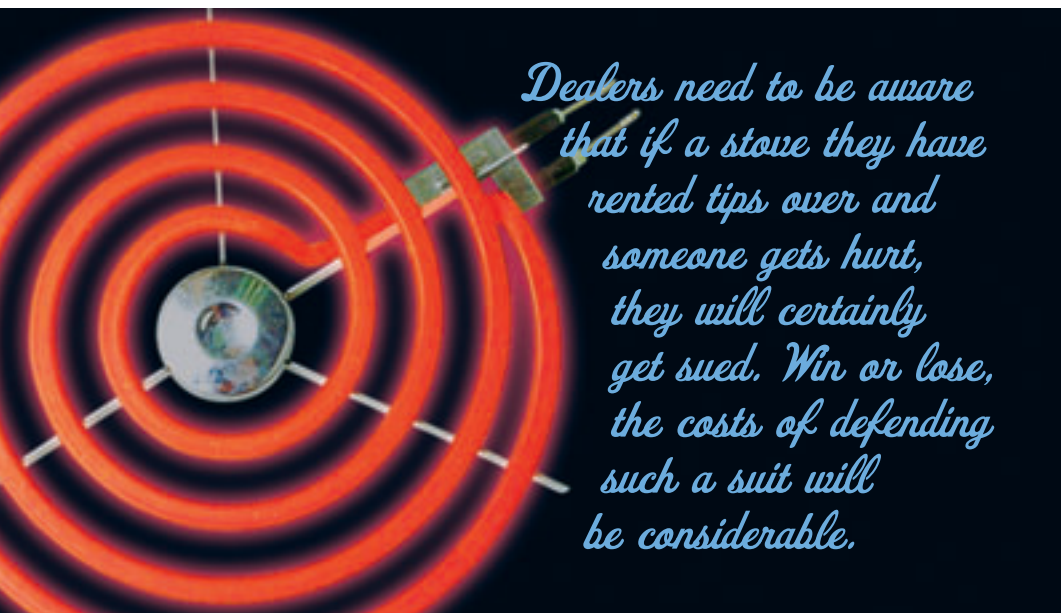
It is an open legal question whether such agreements will work. One of the defenses to enforcement of a contract is that the agreement or some of its provisions is void because it violates public policy. A contract to pay a gambling

debt in a state that disallows gambling is an example. Whether a rental dealer's attempt to shift the duty to install a stove anti-tipping device is enforceable may ultimately depend on the facts. If the dealer is renting a stove to a handyman, the agreement may work because the device will likely be properly installed and the public safety is therefore adequately protected. If the rental dealer, on the other hand, is renting to a mother with an apartment full of kids under 5, then—as between the burly delivery guy with a screwdriver in his hip pocket and the mom nursing twin infants—the legal question will be who is better able to protect the public safety by installing the device. On such facts, if the stove tips and a baby gets burned, it will not be hard for a court to declare an attempt by the rental company to shift the installation obligation onto the customer to be void as against public policy.

The recent accident in the industry has called rental dealers' attention to stove anti-tipping devices. Some rental dealers have been regularly installing the devices all along. Others have not paid much attention to how stoves were getting installed in their stores. Now all rental dealers must confront the issue and make careful business judgments about how to proceed.

Dealers need to be aware that if a stove they have rented tips over and someone gets hurt, they will certainly get sued. Win or lose, the costs of defending such a suit will be considerable. Some installations will be problematic—what should a dealer do when the stove is being delivered to a basement apartment with a concrete floor and concrete walls, for example? Dealers should review insurance policies to verify that they are covered for such kinds of accidents and in adequate amounts. And, finally, unless there are good business reasons for not doing so, dealers should consider adding a training module to their operations to teach their delivery people about stove anti-tipping devices and how to install them properly. ■

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manufacturer and the retailer, rental company, landlord or other installer are all automatically liable for ruinous damages. But the possibility for such legal exposure definitely exists.

Stove manufacturers have been aware of the tipping issue since the 1960s, when they began using lighter-weight materials in stove fabrication. Since then, stoves have come with warning labels and anti-tipping devices that are designed to anchor one of the rear legs of the stove to the floor or to the rear wall. A universal anti-tipping bracket designed to fit the rear leg of all

device is typically left attached to the floor or wall for the next stove.

Rental dealers might prefer not to be bothered with installing anti-tipping devices, much like some of them prefer not hooking up icemakers in refrigerators, or electrical connections for dryers. There are legitimate reasons for not wanting to perform these kinds of tasks, although one might fairly ask whether retailers leave ice machines unconnected when they sell and deliver refrigerators. If rental dealers want to get a premium for the rental service they provide, then they must provide it.

An advertisement for American Red Cross CPR training. It features a photograph of Ed Winn III, a man in a dark suit and blue tie, sitting at a desk in an office setting. The text overlaid on the image reads: "I MAY NOT KNOW YOU. I MAY NOT WORK WHERE YOU DO. BUT I WILL GIVE YOU CPR." Below the photo, the text says: "WHEN YOU HELP THE AMERICAN RED CROSS, YOU HELP AMERICA. WE ALL HAVE TO LOOK OUT FOR EACH OTHER. AND WITH FIRST AID AND CPR TRAINING FROM THE AMERICAN RED CROSS, YOU CAN BE READY TO SAVE A LIFE TODAY. CONTACT YOUR LOCAL CHAPTER OR VISIT REDCROSS.ORG". At the bottom right is the American Red Cross logo, which consists of a red cross on a white background next to the text "American Red Cross".

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