

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT PADUCAH
CIVIL ACTION NO. 5:16-CV-153-TBR-LLK

STATE FARM FIRE AND CASUALTY COMPANY
and MICHAEL MAXWELL,

PLAINTIFF

v.

HAMILTON BEACH BRANDS, INC.,

DEFENDANTS

MEMORANDUM OPINION AND ORDER

This matter comes before the Court on Defendant Hamilton Beach Brands, Inc.’s, (“Hamilton Beach”), Motion to Dismiss the Litigation as a Sanction for Plaintiff’s Spoliation. [R. 24.] Plaintiff State Farm Fire and Casualty Company, (“State Farm”), responded, [R. 28], and Hamilton Beach replied, [R. 29]. Fully briefed, this matter is now ripe for adjudication. For the reasons stated herein, Hamilton Beach’s Motion to Dismiss the Litigation as a Sanction for Plaintiff’s Spoliation, [R. 24], is **GRANTED IN PART AND DENIED IN PART**.

BACKGROUND

On September 6, 2014, a fire started in the laundry room of Maxwell’s home in Almo, Kentucky. [R. 1-1 at 5 (Complaint).] After learning of the fire, Maxwell contacted State Farm, his homeowner’s insurance carrier. [R. 28-2 at 9 (Maxwell Depo.).] State Farm then contacted SERVPRO of Paducah about restoring the property. [*Id.* at 10.] Two days later, State Farm retained Origin & Cause Investigative Resources, LLC, (“Origin”), to conduct an origin and cause investigation of the fire at Maxwell’s home. [R. 24-3 at 2 (Origin and Cause Summary Letter).] On September 9, 2014, State Farm hired EFI Global, Inc., (“EFI”), to perform an engineering evaluation of the house fire. [R. 24-4 at 2 (EFI Summary Report).]

James Jennings, a certified fire investigator, conducted an investigation at Maxwell's home on September 9, 2014. [R. 24-3 at 2.] In a letter to Merle Gambrill of State Farm, he explained that the fire originated in the laundry room. [*Id.*] He noted that two items that were plugged into the receptacle on the north wall of the laundry room, a clothing iron and a garment steamer, were collected by Matt Forbes of EFI for further examination. [*Id.*] He concluded that "[t]he classification of the fire based on current evidence is *Undetermined*. This classification may change, pending the results of the examination of evidence to be conducted by Matt Forbes PE." [*Id.*]

Matt Forbes performed an evaluation at Maxwell's home on September 12, 2014, and summarized his findings in a report dated November 17, 2014. [R. 24-4 at 2.] Forbes stated that the fire patterns in the laundry room indicated that the origin of the fire was placed around the outlet and items surmised by Jennings. [*Id.*] He noted that he collected the outlet, iron, garment steamer, and circuit breaker from Maxwell's home for laboratory analysis. [*Id.*] Ultimately, Forbes concluded that "[t]he fire patterns and electrical activity show an ignition internal to the [garment steamer]. The fire progressed from that point and spread up the wall of the laundry room to consume ordinary combustible material." [*Id.* at 4.]

On September 18, 2014, SERVPRO began restoring the property. [R. 24-2 at 29-30 (State Farm File Notes).] On June 30, 2015, State Farm sent a letter to Sunbeam Products, Inc., to inform them of "a loss caused by a faulty iron made by [their] company," and asking for reimbursement for the loss to the insured, Maxwell. [R. 28-8 at 1 (Letter to Sunbeam).] According to State Farm's claim notes, a representative from Walmart Stores, Inc.—the retailer of the garment steamer—informed State Farm on August 13, 2015 that the company Hamilton Beach manufactured the garment steamer at issue. [R. 28-9 at 1 (State Farm Aug. 13 Note).] The

next day, State Farm sent notice of the fire and damages to Hamilton Beach. [R. 28-10 at 1 (Letter to Hamilton Beach).] On August 24, 2014, Hamilton Beach requested to conduct a non-destructive examination of the evidence collected by State Farm. [R. 28-11 at 2 (Fax to State Farm).] The evidence was received by Hamilton Beach in time for a senior staff engineer, Michael Sandford, to inspect it and write a report dated October 27, 2017. [R. 24-9 at 2 (Sandford Report).] Sandford concluded that “the Maxwell garment steamer did not have a defect that would have caused ignition of the thermoplastic housing and/or surrounding combustibles.” [*Id.* at 19.] He also lamented that the

lack of recorded analysis or documentation as to the cause of the other 5 circuit breakers in a tripped OFF position, a lack of recorded analysis or documentation of the clothes washer or dryer, and a lack of preservation of any other evidence from the determined area of origin . . . makes identifying and/or ruling out other possible causes for his fire nearly impossible.

[*Id.*]

On September 29, 2016, this matter was removed to federal court by Hamilton Beach. [R. 1.] On December 24, 2017, Hamilton Beach filed this Motion to Dismiss Litigation as a Sanction for Plaintiff’s Spoliation. [R. 24.]

STANDARD

In deciding whether to assess sanctions for spoliation, the Court conducts a two-step inquiry. *In re Black Diamond Min. Co.*, 514 B.R. 230, 237 (E.D. Ky. 2014). First, the Court must determine whether sanctions are appropriate at all. *Id.* A spoliation sanction is warranted where the moving party establishes:

(1) that the party having control over the evidence had an obligation to preserve it at the time it was destroyed; (2) that the [evidence was] destroyed “with a culpable state of mind”; and (3) that the destroyed evidence was “relevant” to the party’s claim or defense such that a reasonable trier of fact could find that it would support that claim or defense.

Beaven v. U.S. Dep't of Justice, 622 F.3d 540, 553 (6th Cir. 2010) (quoting *Residential Funding Corp. v. DeGeorge Fin. Corp.*, 306 F.3d 99, 107 (2d Cir. 2002)); see also *Adkins v. Wolever*, 692 F.3d 499, 504 (6th Cir. 2012) (holding all three-factors must be satisfied before spoliation sanction is permitted). Second, upon finding that sanctions are warranted, the Court enjoys considerable discretion in fashioning a suitable remedy. See *Adkins v. Wolever*, 554 F.3d 650, 652–53 (6th Cir. 2009) (en banc); *Flagg v. City of Detroit*, 715 F.3d 165, 177–78 (6th Cir. 2013).

DISCUSSION

Hamilton Beach moves to dismiss this litigation as a sanction for State Farm’s spoliation of evidence. Specifically, Hamilton Beach asserts that State Farm destroyed the scene of the fire without preserving relevant evidence or contacting Hamilton Beach so it could send its own experts to investigate the scene. [R. 24 at 5-8.] State Farm responds that it fulfilled its duty to preserve relevant evidence by collecting and retaining what its experts determined caused the fire, as well as other artifacts discovered in that area of the house. [R. 28 at 4-5.]

Ultimately, this is an argument over what is to be considered *relevant* evidence in this case. According to State Farm’s theory of the case, Maxwell’s steamer, supplied by Hamilton Beach, caused the fire in the home. [R. 1-1 at 4, ¶ 16.] Hamilton Beach disagrees. [R. 24 at 8.] The parties’ disagreement over what is relevant evidence surfaces in each of the three prongs to be established when considering a spoliation sanction.

A. Sanctions are Warranted

The first prong requires the moving party to show that “the party having control over the evidence had an obligation to preserve it at the time it was destroyed.” *Beaven*, 622 F.3d at 553. Hamilton Beach argues that a sophisticated insurance company such as State Farm should have known of its duty to preserve evidence in case of future litigation, and, therefore, should have preserved the scene of the fire until Hamilton Beach’s experts could inspect it. [R. 24 at 5-6.] In

its Reply, Hamilton Beach lists specific items, like the clothes dryer and other circuit breakers, that it argues State Farm should have preserved. [R. 29 at 6.] State Farm concedes that it had a duty to preserve evidence once it knew litigation was probable, but it states that it satisfied this duty by preserving the evidence located around the area where its experts determined the fire started. [R. 28 at 4.]

In considering a motion for sanctions involving an oven that was evidence of a fire, the Sixth Circuit stated:

An obligation to preserve may arise when a party should have known that the evidence may be relevant to future litigation . . . Whether [the nonmovant] *in fact* knew that the oven had legal relevance is beside the point. We apply an objective, not subjective standard. Because [the nonmovant] “*should have known* that the evidence may be relevant to future litigation, the first element of spoliation is met.”

Byrd v. Alpha All. Ins. Corp., 518 F. App'x 380, 384 (6th Cir. 2013) (quoting *Beaven*, 622 F.3d at 553–54 (citation omitted)). Here, State Farm concedes that it realized its duty to preserve evidence relevant to litigation. [R. 28 at 4.] Although State Farm retained items the investigators it hired deemed to be relevant to the fire, it should have known that other items in the room, such as the dryer, could have been relevant to future litigation. At the very least, State Farm should have realized that forcing Hamilton Beach to rely on the evidence collected by State Farm’s experts instead of what it could have collected on its own would result in unfair prejudice to Hamilton Beach. *See Silvestri v. Gen. Motors Corp.*, 271 F.3d 583, 594 (4th Cir. 2001)¹ (“To require General Motors to rely on the evidence collected by Silvestri's experts in lieu of what it could have collected would

¹ The Court notes that the Sixth Circuit has favorably cited to *Silvestri*. *See, e.g., Byrd*, 518 F. App'x at 386; *Beaven*, 622 F.3d at 555.

result in irreparable prejudice.”); *Barton Brands, Ltd. v. O'Brien & Gere, Inc. of N. Am.*, No. 307-CV-78-H, 2009 WL 1767386, at *3 (W.D. Ky. June 22, 2009) (Heyburn, J.) (“However, the absolute responsibility of a party in these circumstances is to notify opposing counsel in a timely fashion of the intended destruction. Failure of such notice created the potential for unfair prejudice . . .”). Thus, Hamilton Beach has established the first prong.

The second prong to be considered requires the moving party to show that “the [evidence was] destroyed ‘with a culpable state of mind.’” *Beaven*, 622 F.3d at 553. Hamilton Beach asserts that State Farm knowingly, or at least negligently, destroyed evidence by permitting SERVPRO to restore the property before Hamilton Beach could inspect the scene of the fire. [R. 24 at 7.] State Farm claims that it did not possess a culpable state of mind when it failed to preserve the scene of the fire because it preserved the objects discovered around what it determined to be the source of the fire. [R. 28 at 5-6.]

In relation to the second prong, the Sixth Circuit has stated that “the ‘culpable state of mind’ factor is satisfied by a showing that the evidence was destroyed ‘knowingly, even if without intent to [breach a duty to preserve it], or negligently.’” *Beaven*, 622 F.3d at 554 (citing *Residential Funding Corp. v. DeGeorge Fin. Corp.*, 306 F.3d 99, 108 (2d Cir. 2002)). Three years later, the Sixth Circuit stated that “[d]estroying evidence known to have some importance to the determination of a fire's cause satisfies the requisite culpability for evidence spoliation.” *Byrd*, 518 F. App'x at 385. In *Beaven*, the Sixth Circuit affirmed the district court’s finding that the nonmovants intentionally destroyed a folder containing documents that they knew were relevant to the case. *See id.*

In comparison, the Eastern District of Kentucky found that the nonmovant was negligent in *Arch Insurance v. Broan-Nutone, LLC* when it trusted a piece of evidence to a nonparty who had it destroyed in order to avoid incurring storage fees. *See Arch Ins. v. Broan-Nutone, LLC*, No. 09-319-JBC, 2011 WL 3880514, at *2 (E.D. Ky. Aug. 31, 2011), *aff'd* 509 F. App'x 453 (6th Cir. 2012). Like the case at hand, *Arch Insurance* also involved a subrogation action after a fire. However, in *Arch Insurance*, both sides were able to send investigators to the scene of the fire. *See Arch Ins.*, No. 09-319-JBC, 2011 WL 3880514, at *1. Here, the Court is at a severe disadvantage in determining whether the evidence destroyed was “known to have some importance to the determination of a fire's cause” because it only has one side’s investigation of the scene before it. *Byrd*, 518 F. App'x at 385. The Court finds that State Farm was at least negligent in destroying the other objects in the laundry room when it should have known that it could be considered relevant evidence in the future, especially by Hamilton Beach.

The third, and final, prong instructs the movant to establish “that the destroyed evidence was ‘relevant’ to the party's claim or defense such that a reasonable trier of fact could find that it would support that claim or defense.” *Beaven*, 622 F.3d at 553. Hamilton Beach argues that the evidence destroyed by State Farm when it allowed the restoration of the laundry room was relevant in that at least one of the other items in the room, now lost, might have proven a theory for an alternate cause of the fire. [R. 24 at 8.] In response, State Farm cites Maxwell’s testimony that, “other than minor issues with a sump pump and fault board on the air conditioning unit,” the home did not have any electrical issues, including the dryer, and the steamer was the only new appliance. [R. 28 at 6-7 (citing R. 28-2 at 22-24; 31).] Furthermore, State Farm points out that Hamilton

Beach's engineer was able to conclude that the steamer was not responsible for the fire based on the evidence State Farm preserved from the scene. [*Id.* at 7.]

As previously mentioned, the Eastern District of Kentucky encountered a similar situation in *Arch Insurance* when the nonmovant negligently trusted an important object in the case, a fan/light assembly, to a nonparty who had it destroyed. No. 09-319-JBC, 2011 WL 3880514, at *2. The district court stated that "under these circumstances, a reasonable plaintiff, foreseeing and intending litigation, would have taken an affirmative step to ensure that the evidence around which its theory of liability is centered would be preserved until trial." *Id.* at *3. In affirming the district court, the Sixth Circuit stated that the sanction of a permissive adverse-inference instruction was adequate because without access to the fan/light assembly, the movant was "unable to definitively refute Plaintiff's causation theory." *Arch Insurance*, 509 F. App'x at 458.

Here, State Farm's theory of liability is that the steamer supplied by Hamilton Beach was the ignition source of the fire. [R. 1-1 at 4, ¶ 16.] This means that the steamer itself is the most relevant piece of evidence in the case. But it does not mean that it is the only relevant piece of evidence.² The Court finds that a reasonable trier of fact could find that an examination of other appliances in the laundry room, such as the dryer, would support the defense as an alternate source of the fire. *See Arch Insurance*, 509 F. App'x at 458; *see also Barton Brands, Ltd.*, No. CIV. A. 307-CV-78-H, 2009 WL 1767386, at *3 (finding prejudice to the movants when they did not receive notice to examine the scene of the fire and, thus, could not form a determination of the cause). Hamilton Beach will be able to present its engineer's findings that the steamer was not the cause of the fire to a

² Furthermore, the Court notes that Hamilton Beach's engineer found that significant components of the steamer, such as the metal pump motor housing, were not provided to Hamilton Beach by State Farm. [R. 24-9 at 13.]

jury,³ but it will not be able to “definitively refute” State Farm’s causation theory if it cannot present evidence supporting alternative causes. In sum, the Court finds that Hamilton Beach has established the three prongs required for a spoliation sanction.

B. The Sanctions

Under the Court’s “inherent power to control the judicial process,” it may impose sanctions for spoliated evidence that “serve both fairness and punitive functions.” *Adkins*, 554 F.3d at 652. “Because failures to produce relevant evidence fall ‘along a continuum of fault—ranging from innocence through the degrees of negligence to intentionality,’ the severity of a sanction may, depending on the circumstances of the case, correspond to the party’s fault.” *Id.* at 652–53. This creates a range of sanctions available to the district court, from dismissing a case to “instructing a jury that it may infer a fact based on lost or destroyed evidence.” *Id.*

In the matter at hand, where there is nothing in the record to support the notion that the other potential evidence was “purposely or knowingly destroyed by the plaintiffs, the extreme sanction of [dismissal] is inappropriate.” *Arch Ins.*, No. 09-319-JBC, 2011 WL 3880514, at *2 (citing *Silvestri*, 271 F.3d at 590). Also, as previously explained through the findings of Hamilton Beach’s engineer, dismissal is inappropriate because Hamilton Beach is not “unable to construct a defense because the evidence has been destroyed.” *Id.* at *4. Furthermore, an irrebuttable adverse inference that further investigation of the scene would have undermined State Farm’s theory of causation is not warranted here “because no evidence supports a conclusion that the plaintiff[] purposely or knowingly caused it to be destroyed to avoid further study.” *Id.* (citing *Beaven*., 622

³ The Court notes that Hamilton Beach has presented evidence through Sandford’s report suggesting that, at the very least, the dryer “coupled with the multiple tripped double pole circuit breakers in the electrical panel” indicates it was a potential ignition source. [R. 24-9 at 19.]

F.3d at 554; *Vodusek v. Bayliner Marine Corp.*, 71 F.3d 148, 156 (4th Cir.1995) (“An adverse inference about a party's consciousness of the weakness of his case, however, cannot be drawn merely from his negligent loss or destruction of evidence; the inference requires a showing that the party knew the evidence was relevant to some issue at trial and that his willful conduct resulted in its loss or destruction.”) Thus, the Court finds that the proper sanction for State Farm’s negligent destruction of evidence is a permissive adverse-inference instruction to the jury that will allow but not require it to infer that Hamilton Beach was denied a chance to investigate the scene of the fire after State Farm’s experts finalized their ignition theory and that such an investigation could have either confirmed or denied that theory. This sanction will serve both fairness and punitive functions by providing a remedy for the prejudice to Hamilton Beach when it was forced to depend on the opposing side in this litigation for evidence that could support its case. *See Arch Ins.*, 509 F. App’x at 458-49 (citing *Residential Funding Corp.*, 306 F.3d at 108) (“[The] sanction [of an adverse inference] should be available even for the negligent destruction of documents if that is necessary to further the remedial purpose of the inference.”) (internal quotation and citation omitted)).

CONCLUSION

For the foregoing reasons, **IT IS HEREBY ORDERED:**

Hamilton Beach’s Motion to Dismiss the Litigation as a Sanction for Plaintiff’s Spoliation, [R. 24], is **GRANTED IN PART AND DENIED IN PART**. Hamilton Beach’s Motion to Dismiss the Litigation as a Sanction is **DENIED**. However, the Court will issue a sanction in the form of a permissive adverse-inference instruction to the jury that will allow, but not require, it to infer that Hamilton Beach was denied a chance to investigate the scene of the

fire after State Farm's experts finalized their ignition theory and that such an investigation could have either confirmed or denied that theory.

IT IS SO ORDERED.

cc: Counsel of Record

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
PADUCAH DIVISION

ELECTRONICALLY FILED

STATE FARM FIRE AND CASUALTY)
COMPANY and MICHAEL MAXWELL)

PLAINTIFFS)

v.)

HAMILTON BEACH BRANDS, INC., et al)

DEFENDANTS.)

Civil Action No.: 5:16-cv-00153

**DEFENDANT HAMILTON BEACH BRANDS, INC.’S MOTION TO DISMISS THIS
LITIGATION AS A SANCTION FOR PLAINTIFFS’ SPOILIATION**

Defendant, Hamilton Breach Brands, Inc. (“Hamilton Beach”), by counsel, and for its Motion to Dismiss this Litigation as a Sanction for Plaintiffs’, State Farm Fire and Casualty Company and Michael Maxwell (“Maxwell”; collectively, “State Farm”), Spoliation (“Motion”), states as follows:

INTRODUCTION

This is a subrogation action brought by State Farm to recover payments made to its insured, Maxwell, for property damage resulting from a fire at Maxwell’s home on September 6, 2014 (the “Fire”). In its Complaint, State Farm alleges that a Rival S05 Garment Steamer (the “Steamer”) supplied by Hamilton Beach was defectively designed or manufactured and, therefore, caused the Fire. Unfortunately, before initiating this litigation, State Farm took deliberate actions that have significantly hindered Hamilton Beach’s ability to defend these claims. Specifically, State Farm—a large, sophisticated insurance company with years of

experience pursuing claims such as this—unilaterally inspected and then destroyed the scene of the Fire, despite its legal obligation to preserve relevant evidence. Moreover, State Farm destroyed the scene before Hamilton Beach had any knowledge of the Fire or an opportunity to inspect the scene.

Based on the foregoing, Hamilton Beach requests that the Court remedy State Farm's spoliation and rebalance the evidentiary scales. Given the nature of State Farm's actions, the sanctions should be severe. This is not a case involving an innocent plaintiff that had little control over the evidence at issue. State Farm deliberately destroyed concrete evidence at the Fire scene, despite knowing that the evidence would be relevant to future litigation. Compounding this error, State Farm elected not to notify Hamilton Beach of the Fire until well-after the scene was demolished. Based on State Farm's sophistication and experience, its intentional destruction of critical evidence, and the prejudice suffered by Hamilton Beach, the Court should dismiss State Farm's claims. At an absolute minimum, the Court should instruct the jury to presume that the missing evidence would have been favorable to Hamilton Beach.

BACKGROUND

On September 6, 2014, the Fire occurred in the laundry room of Maxwell's home located at 160 Wells Purdom Drive, Almo, Kentucky 42020 (the "Property").¹ Later that day, Maxwell filed an insurance claim with State Farm, who immediately contacted SERVPRO of Paducah ("SERVPRO") regarding restoration services to be performed at Property.² Two days later, on September 8, 2014, State Farm retained Origin & Cause Investigative Services, LLC ("Origin &

¹ See generally, Complaint.

² Deposition of Michael Maxwell ("M. Maxwell Depo."), August 3, 2017, pp. 35-37, a copy of the relevant portions of the M. Maxwell Depo. is attached as Exhibit A; State Farm File Notes, p. 31, a copy of State Farm's File Notes is attached as Exhibit B.

Cause”) to conduct an investigation of the scene.³ On September 9, 2014, State Farm hired another expert, EFI Global, Inc. (“EFI”), to perform an engineering evaluation of the scene.⁴ On September 12, 2014, Origin & Cause and EFI conducted an on-site investigation of the Fire scene.⁵ After the inspection, Hamilton Beach State Farm’s experts selectively removed certain limited evidence from the scene: an outlet, an iron, a circuit breaker, and the Steamer.⁶

After EFI and Origin & Cause were provided an opportunity to inspect the scene, SERVPRO began to restore the Property on September 18, 2014.⁷ On October 6, 2017, Origin & Cause tendered a letter to State Farm summarizing its investigation and stating, in part, that the classification of the Fire was undetermined.⁸ Two weeks later, EFI performed a non-destructive laboratory exam in which it noted that “[t]he [Steamer] and iron are still plugged into the outlet” and that “the power cord has severed at a location in the handle or very close to that point.”⁹ Subsequently, on November 17, 2014, EFI sent State Farm a summary report (“EFI Report”), concluding that “[t]he fire patterns and electrical activity show an ignition internal to the [Steamer]. The fire progressed from that point and spread up the wall of the laundry room to consume ordinary combustible material.”¹⁰ Despite being notified that the Steamer was the alleged cause of the Fire, State Farm permitted SERVPRO to continue its restoration.¹¹ To make

³ October 6, 2014 Origin & Cause Summary Letter (“Summary Letter”), a copy of the Summary Letter is attached as Exhibit C.

⁴ November 17, 2014 EFI Summary Report (“EFI Report”), p. 1, a copy of the EFI Report is attached as Exhibit D.

⁵ EFI Report, Exhibit D, p. 1.

⁶ EFI Report, Exhibit D, p. 1.

⁷ State Farm’s File Notes, Exhibit B, pp. 29-30.

⁸ Summary Letter, Exhibit C.

⁹ EFI Report, Exhibit D, p. 2.

¹⁰ EFI Report, Exhibit D, p. 3.

¹¹ State Farm File Notes, Exhibit B, pp 20-24.

matters worse, State Farm remained silent and failed to notify Hamilton Beach of the Fire until August 14, 2015—well after the scene had been entirely destroyed.¹²

SPOILIATION AND SANCTION STANDARDS

Spoliation is defined as “the destruction or material alteration of evidence or to the failure to preserve property for another’s use as evidence in pending or reasonably foreseeable litigation.” *First Tech. Capital, Inc. v. JPMorgan Chase Bank, N.A.*, No. 5:12-CV-289-REW, 2014 WL 12648548 at *3 (E.D. Ky. Aug. 21, 2014) (quoting *Silvestri v. General Motors Corp.*, 271 F.3d 583, 590 (4th Cir. 2011)).¹³ A district court may sanction a litigant for spoliation if three conditions are met: (1) the party having control over the evidence had an obligation to preserve it at the time it was destroyed; (2) the evidence was destroyed with a culpable state of mind; and (3) the destroyed evidence was relevant. *Beaven v. U.S. Dept. of Justice*, 622 F.3d 540, 554 (6th Cir. 2010) (internal citations omitted).

Upon a finding that sanctions are warranted, a court must then determine the appropriate penalty. *In re Black Diamond Min. Co., LLC*, 514 B.R. 230, 237 (E.D. Ky. 2014) (citing *Adkins*, 554 F.3d at 650). District courts possess “broad discretion in choosing an appropriate sanction for established spoliation and should mold any sanction ‘to serve the prophylactic, punitive, and remedial rationales’ underlying the spoliation doctrine.” *First Tech. Capital, Inc.*, 2014 WL 12648548 at *3 (quoting *Silvestri*, 271 F.3d at 590). Indeed, spoliation sanctions “should serve both fairness and punitive functions.” *Adkins*, 554 F.3d at 652. Because failures to provide relevant evidence “fall along a continuum of fault—ranging from innocence through the degrees of negligence to intentionality, the severity of a sanction may, depending on the circumstances of the case, correspond to the party’s fault.” *Id.* (internal citations omitted). After such an analysis,

¹² August 14, 2015 Notification Letter (“Notice”), a copy of the Notice is attached as Exhibit E.

¹³ When a case is litigated in federal court, federal law of spoliation applies. *Adkins v. Wolever*, 554 F.3d 650, 652 (6th Cir. 2009).

assessing the spoliator's "state of mind is important because the [c]ourt can impose different spoliation sanctions, calibrating the severity of the remedy on the party's degree of fault under the circumstances." *In re Black Diamond*, 514 B.R. at 239 (citing *Adkins*, 692 F.3d at 504). Therefore, "a district court could impose many different kinds of sanctions for spoliated evidence, including dismissing a case, granting summary judgment, or instructing a jury that it may infer a fact based on lost or destroyed evidence." *Adkins*, 554 F.3d at 652. In this case, the Court should find that State Farm's intentional behavior warrants the dismissal of this litigation.

ARGUMENT

I. STATE FARM COMMITTED SPOLIATION WHEN IT DESTROYED THE SCENE OF THE FIRE.

There is no question that all three elements of spoliation are present under the circumstances presented by this Motion. First, State Farm had an obligation to preserve evidence. *See Beaven*, 622 F.3d at 554 (the first element of a spoliation analysis is whether the party had an obligation to preserve evidence). A party's obligation arises when it "has notice that the evidence is relevant to litigation or ... should have known that the evidence [might] be relevant to future litigation." *In re Black Diamond*, 514 B.R. at 237 (internal citation omitted); *see John B. v. Goetz*, 531 F.3d 448, 459 (6th Cir. 2008) (internal citation omitted) ("As a general matter, it is beyond question that a party to civil litigation has a duty to preserve relevant information . . . when that party has notice that the evidence is relevant to litigation or ... should have known that the evidence may be relevant to future litigation."). This obligation to preserve evidence often arises "earlier than when the actual lawsuit is filed." *In re Black Diamond*, 514 B.R. at 237 (internal citation omitted).

The facts demonstrate that State Farm knew or should have known that the Fire scene would be relevant to future litigation. State Farm has been in business for almost 100 years and

is currently ranked number 33 on Fortune 500's list of largest companies.¹⁴ Additionally, State Farm employs nearly 19,000 agents and processes approximately 39,000 claims a day.¹⁵ Moreover, as of last year, State Farm had over 84 million existing policies and accounts, over 28 million of which were for fire insurance.¹⁶ In short, State Farm is a large, sophisticated company that purportedly takes its "value of integrity very seriously" and invites the Court to hold it to the "highest of standards."¹⁷

In addition, State Farm acknowledged that it assesses potential subrogation claims based on its experts' investigative reports.¹⁸ Therefore, State Farm should have known of the Fire scene's relevance to potential litigation when it retained EFI and Origin & Cause. In fact, when asked to produce copies of file notes and/or communications related to the Property, State Farm refused to turn over responsive information because it was protected by the work product doctrine, which necessarily means that State Farm claims these documents were prepared in anticipation of litigation.¹⁹ Likewise, State Farm made this same objection when asked to produce copies of file notes and/or communications with the Maxwells.²⁰ Tellingly, State Farm's claim of work product dates back as early as September 8, 2014.²¹ Clearly, State Farm was aware of the Fire scene's significance to this litigation, which it was admittedly anticipating at

¹⁴ State Farm's Company Profile located at www.statefarm.com, a copy of the relevant portions of which is attached as Exhibit F.

¹⁵ State Farm's Company Profile, Exhibit F.

¹⁶ State Farm's Company Profile, Exhibit F.

¹⁷ State Farm's Company Profile, Exhibit F.

¹⁸ See 30(B)(6) Deposition of State Farm ("State Farm Depo."), August 4, 2017, pp. 40-43, a copy of the relevant portions of the State Farm Depo. is attached as Exhibit G.

¹⁹ State Farm's Response to Hamilton Beach's Request for Production of Documents ("Discovery Responses"), a copy of the relevant portions of the Discovery Responses is attached as Exhibit H.

²⁰ Discovery Responses, Exhibit H.

²¹ State Farm File Notes, Exhibit B, pp. 30-31. At the very latest, State Farm was contemplating a subrogation proceeding by November 18, 2014. State Farm File Notes, Exhibit B, p. 24.

the outset of its investigation mere days after the Fire. Therefore, State Farm had an obligation to preserve the scene for Hamilton Beach's inspection.

Second, State Farm exhibited a sufficiently culpable state of mind when it destroyed the scene. A culpable state of mind exists when a party destroys evidence knowingly or negligently. *In re Black Diamond*, 514 B.R. at 239 (internal citation omitted). For purposes of spoliation, a "culpable state of mind can result if a party destroys evidence . . . even if without intent to breach a duty to preserve it . . ." *Beaven*, 622 F.3d at 553. After State Farm retained two experts and gave them an opportunity to inspect the un-altered scene, State Farm instructed SERVPRO to begin its restoration services at the Property.²² Moreover, after being formally notified that Steamer allegedly caused the Fire, State Farm chose not to preserve what was left of the scene for Hamilton Beach's inspection. Despite initiating "subrogation" discussions on November 18, 2014,²³ State Farm did not even attempt to notify Hamilton Beach until nine months later.²⁴ Instead, State Farm proceeded to facilitate the destruction of evidence through SERVPRO. These facts demonstrate that State Farm knowingly and willfully destroyed evidence, over which it had control, with full awareness that litigation might ensue. At a minimum, as discussed below, State Farm negligently failed to preserve the scene of the Fire. Simply stated, State Farm exhibited a high degree of culpability and cannot contend that it is not responsible for the loss of evidence.

Finally, the evidence destroyed by State Farm was extremely relevant. Missing evidence is relevant if "a reasonable trier of fact could find that it would support [a] claim or defense." *Beaven*, 622 F.3d at 553. The party moving for spoliation sanctions must make "some showing indicating that the destroyed evidence would have been relevant to the contested issue . . . such

²² State Farm File Notes, Exhibit B, pp. 29-30.

²³ State Farm File Notes, Exhibit B, p. 24.

²⁴ Notice, Exhibit E.

that ‘a reasonable trier of fact could find that it would support’” its claim or defense. *Id.* at 554-55 (internal citations omitted). In product liability cases such as this, “evidence which might itself have been, or shed light upon, an alternative cause of [the Fire]” is highly relevant. *See Allstate Ins. Co. v. Sunbeam Corp.*, 53 F.3d 804, 807 (7th Cir. 1995).

Here, State Farm has stripped Hamilton Beach of any access to potentially exculpatory or otherwise favorable evidence. Based on examination and testing, Hamilton Beach is certain that the Steamer did not cause the Fire.²⁵ Nevertheless, without having the opportunity to conduct an inspection of the unaltered Fire site and collect other items, it is nearly impossible to determine or postulate about what the alternative cause of the Fire might have been.²⁶ As such, the evidence destroyed by State Farm was unquestionably relevant. Because the three elements are met, State Farm committed spoliation and sanctions are warranted.

II. THE COURT SHOULD DISMISS THIS LITIGATION AS AN APPROPRIATE SANCTION AGAINST STATE FARM

In exercising its discretion to issue sanctions, the Court should dismiss this case in light of State Farm’s willful destruction of the Fire scene and the prejudice to Hamilton Beach. Federal courts across the country have determined that dismissal is appropriate in a case such as this. *See Rhodes Risinger Bros. Transfer, Inc. v. Intermodal Repair Services, Inc.*, 312CV00863CRSCHL, 2016 WL 4536443, at *5 (W.D. Ky. Aug. 30, 2016) (citing *Silvestri*) (both cases resulted in the dismissal of plaintiff’s claims); *see Allstate*, 53 F.3d at 807 (Seventh circuit opinion affirming a dismissal); *see State Farm Fire & Cas. Co. v. Broan Mfg. Co.*, 523 F. Supp. 2d 992 (D. Ariz. 2007) (dismissing litigation). The Court needs to look no further than the

²⁵ Expert Report of Michael G. Sandford (“Sandford Report”), p. 18, a copy of the Sandford Report is attached as Exhibit I.

²⁶ Sandford Report, Exhibit I, p. 18.

dismissal of State Farm's claims in the nearly identical case of *Broan* to reach the conclusion that dismissing this case is the appropriate sanction.

In *Broan*, State Farm brought a subrogation action for damages it paid to its insureds as the result of a fire allegedly caused by an exhaust fan manufactured by Broan Manufacturing Company ("Broan"). *Id.* at 995. Four days after the fire, State Farm directed a fire investigator to examine the scene. *Id.* Less than three weeks later, State Farm advised the insureds that they could begin repairing the laundry room. *Id.* A month later, State Farm notified Broan of the fire and of its belief that the fan was the cause. *Id.* State Farm also offered Broan an opportunity to inspect the scene, but repairs had already begun and the scene had not been preserved. *Id.* As a result, Broan could inspect only the evidence selectively removed by State Farm, but was not afforded an opportunity to inspect a preserved scene. *Id.* The court in *Broan* held that based on these facts, dismissal was the only sanction that would properly address the prejudice to the defendants. *Id.* at 998.

This Court merely needs to exchange the name Hamilton Beach for Broan to appreciate the similarities between the cases, the extent of prejudice caused by State Farm, and the reason why dismissal is appropriate. To illustrate, although the origin and causes of the Fire at Maxwell's home will be determined through use of expert witnesses, "[Hamilton Beach's] experts have been deprived of the ability to determine whether the evidence would have supported their theory of the case." *Id.* at 997. Instead, "the destruction of the [F]ire scene forces [Hamilton Beach] to rely on the evidence preserved by [State Farm]." *Id.* This selectively retained evidence is insufficient because "the evidence which might have supported [Hamilton Beach's] theories of causation were destroyed, and the secondary photographic evidence is incomplete." *Id.* And although "[Hamilton Beach's] expert was able to create a detailed report

based on the evidence preserved from the [F]ire scene, the spoliation in this case forces [Hamilton Beach] to rely on incomplete and spotty evidence.” *Id.* Quite simply, “[n]ot only is the evidence incomplete, but it is also limited to that which [State Farm] chose to preserve, and [Hamilton Beach] cannot conduct an independent investigation of the [F]ire scene. The spoliation therefore threatens to interfere with the rightful decision of the case by preventing full development of the alternative theories of causation.” *Id.* (internal citations omitted).

Although this Court need look no further than the *Broan* analysis, support for the dismissal of this litigation can be found elsewhere. For instance, in *Sunbeam*, an insurance company (“Allstate”) sent an adjuster and an engineer to a fire scene. 53 F.3d at 805. After the experts investigated the fire scene, but before they had identified the cause of the fire, they selectively removed evidence that they deemed significant, including a grill and a propane tank. *Id.* Allstate then destroyed the fire scene, including a second propane tank. *Id.* Later, Allstate sued the grill manufacturer, alleging that the grill was defective and caused the fire. *Id.* The manufacturer filed a spoliation motion requesting dismissal, which the trial court granted. *Id.* at 806-07. The trial court concluded that Allstate and its experts should have known the second propane tank was a possible alternative cause and that “Sunbeam was irremediably prejudiced because it was deprived of what might have been convincing evidence” of an alternative cause. *Id.* at 806.

The Seventh Circuit affirmed the trial court’s decision on appeal, reasoning that because Allstate destroyed the fire scene, the manufacturer was “deprived of the ability to establish its case.” *Id.* at 807. The Seventh Circuit further discussed the importance of the missing evidence: “Allstate failed to preserve evidence, some of which was part of the alleged defective product itself and some of which was evidence which might itself have been, or shed light upon, an

alternative cause of the fire.” *Id.* Additionally, the court noted that as an insurance company that had not yet determined the actual cause of the fire, Allstate had a duty to preserve all evidence of alternate causes. *Id.* The facts in *Allstate*, just like *Broan*, are analogous to this case and the holding dismissing the litigation is persuasive.

This Court should conclude, as the *Broan* and *Allstate* courts did, that State Farm willfully destroyed the Fire scene.²⁷ State Farm “is a large insurance company” and “is a sophisticated litigant aware of its obligations to preserve relevant evidence.” *Broan Mfg. Co.*, 523 F. Supp. 2d at 996. Furthermore, according to State Farm, it was actually anticipating the possibility of litigation two days after the Fire occurred²⁸ and initiated subrogation discussions, at the latest, on November 18, 2014.²⁹ Consequently, there can be no dispute that State Farm was “fully aware that the [F]ire scene would be the central focus of litigation.” *Id.* Astoundingly, despite State Farm’s sophistication, experience with subrogation claims, and knowledge of the scene’s relevance to future litigation, it did not take any steps to ensure that any evidence was preserved other than the items that its experts collected. In fact, State Farm does not even have a policy requiring the preservation of evidence, even when facing possible litigation.³⁰ Instead, according to State Farm, it may move forward and restore a Fire scene once its expert has collected whatever said expert determines is relevant, without any regard for potential defendants.³¹ Unfortunately for Hamilton Beach, this is exactly what happened. After retaining two experts who inspected the scene and selectively removed evidence, State Farm

²⁷ In issuing sanctions against State Farm, the *Broan* court applied federal spoliation law. *Id.* at 995-96. Accordingly, while the holding in *Broan* is not binding on this Court, the analysis in *Broan* provides important persuasive authority.

²⁸ Discovery Responses, Exhibit H; State Farm File Notes, Exhibit B, pp. 30-31.

²⁹ State Farm File Notes, Exhibit B, p. 24.

³⁰ See State Farm Depo., Exhibit G, pp. 28-35.

³¹ State Farm Depo., Exhibit G, pp. 28-31.

immediately allowed SERVPRO to begin restoring the Property. These actions deprived Hamilton Beach of the ability to observe a preserved scene and constitute willfulness.

State Farm's willfulness is further demonstrated by its delay in providing notice to Hamilton Beach. After receiving the EFI Report, State Farm did not even attempt to contact Hamilton Beach, despite knowing that SERVPRO would continue to repair the scene. Instead, State Farm inexplicably failed to notify Hamilton Beach until August 14, 2015—eleven months after the Fire occurred, over eight months after receiving the EFI Report, and months after the scene had been completely destroyed.³² Even more egregious than its behavior in *Broan*, State Farm gave Hamilton Beach no opportunity to inspect the scene and waited eleven months to inform Hamilton Beach about either the Fire or its belief that the Steamer was the cause, notwithstanding its “[clear] understanding that delay would materially compromise the scene and the evidence.” *Id.* In short, State Farm's “delay in notifying [Hamilton Beach], combined with its clear notice of the [F]ire scene's importance, qualifies as willful spoliation under these circumstances.” *Id.* at 997 (internal citations omitted).

Further supporting dismissal, is the readily apparent prejudice to Hamilton Beach. State Farm had access to all evidence from the time of the Fire until the time of disposal. State Farm was in a position to hire two experts who both examined the scene and authored reports.³³ Thus, State Farm had the benefit of inspecting and testing the evidence during its investigation of the cause of the Fire. Hamilton Beach was denied that same opportunity by virtue of the spoliation. As a result, State Farm's experts will have an inherent credibility advantage with the jury: they will be able testify about the evidence observed with their own eyes, whereas Hamilton Beach has only seen pictures of the Fire scene and the four items preserved by EFI.

³² Notification Letter, Exhibit E.

³³ Summary Letter, Exhibits C; EFI Report, Exhibit D.

Perhaps most harmful to Hamilton Beach's defense, Hamilton Beach cannot tell the jury what other items likely caused the Fire.³⁴ Although State Farm's expert will testify that the Fire started in the Steamer, Hamilton Beach can only refute this contention and cannot point to or identify the actual source. Moreover, the items available to Hamilton Beach are not an adequate substitute for a first-hand inspection.³⁵ The only remaining evidence of the Fire scene is the evidence that State Farm's experts chose to keep or record to support their opinions.³⁶ State Farm has failed to produce sufficiently detailed photographs.³⁷ The pictures that were produced do not capture all the evidence necessary for Hamilton Beach to identify the cause of the Fire. For instance, none of the photographs provided indicate the orientation or location of the iron and Steamer.³⁸ Furthermore, State Farm failed to preserve adequate documentation or items, such as the dryer and other circuit breakers, which could have enabled Hamilton Beach's expert to identify potential alternative sources of the Fire.³⁹ Even the Steamer, the most critical piece of evidence, is missing significant components such as the metal pump motor housing.⁴⁰ Without this destroyed evidence, Hamilton Beach is left to fight an uphill battle to establish what caused the Fire.

Finally, other available sanctions will not fully remedy the effect of State Farm's spoliation. As the *Broan* court noted, State Farm's destruction of the scene prevented Broan from fully developing its alternative causation theories. *Id.* at 998. Just like in that case, although the exclusion of evidence based on a first-hand inspection might help level the evidentiary playing field, it could not account for the fact that the scene potentially contained

³⁴ Sandford Report, Exhibit I, pp.14, 18.

³⁵ Sandford Report, Exhibit I, p. 12.

³⁶ Sandford Report, Exhibit I, pp. 1-2.

³⁷ E-mail string dated June 9, 2017 to September 28, 2017, a copy of which is attached as Exhibit J.

³⁸ Sandford Report, Exhibit I, p. 12.

³⁹ Sandford Report, Exhibit I, p. 18.

⁴⁰ Sandford Report, Exhibit I, p. 12.

additional evidence to support a defendant's alternative theory of causation. *Id.* An adverse jury instruction coupled with exclusion of evidence could help offset the risk that exculpatory evidence was lost, but this would still not cure the fact that a defendant was limited to the evidence that State Farm preserved. *Id.* Likewise, instead of having the opportunity to obtain other evidence to support Hamilton Beach's theory of the case, Hamilton Beach's expert has been forced to rely on the evidence selectively preserved by EFI.⁴¹ The pictures and items, however, do not provide Hamilton Beach with the necessary detail, information, or context such that Hamilton Beach can determine what happened.⁴² Accordingly, dismissal is warranted because it is the only sanction that adequately addresses the prejudicial impact of State Farm's spoliation. *Id.*

In summation, State Farm destroyed the Fire scene while cognizant that this litigation was probable. Moreover, State Farm did so before Hamilton Beach had any knowledge of the Fire or an opportunity to inspect the scene. State Farm has irreparably prejudiced Hamilton Beach in this litigation by preventing Hamilton Beach from investigating the scene and ascertaining an alternative cause of the Fire. Much worse, this is not the first time that State Farm has engaged in such tactics. The facts are overwhelming and case law is clear: State Farm's claims should be dismissed.

III. IF THE COURT DOES NOT DISMISS THIS LITIGATION, THEN THE COURT SHOULD IMPOSE OTHER SANCTIONS AGAINST STATE FARM.

The facts of this case demonstrate that State Farm: (1) is an experienced and sophisticated litigant; (2) had complete control of the Fire scene; and (3) knew of the importance of preserving the scene before ordering its destruction. State Farm's claims were dismissed in a previous action for identical behavior. Clearly, State Farm still has not learned its lesson. In fact, despite

⁴¹ Sandford Report, Exhibit I, pp. 1-2.

⁴² Sandford Report, Exhibit I, p. 12.

the dismissal of its claims in *Broan*, State Farm does not even have a policy in place to prevent such systematic spoliation.⁴³ These facts unequivocally prove that State Farm's spoliation was willful, justifying dismissal of this action. If the Court determines that dismissal is not appropriate, however, the Court should alternatively preclude State Farm from eliciting expert testimony as to the cause of the Fire. Additionally, the Court should issue a jury instruction that the missing evidence is favorable to Hamilton Beach.

A. THE COURT SHOULD PRECLUDE STATE FARM'S EXPERTS FROM TESTIFYING AS TO CAUSATION.

Even if the Court finds that dismissal of this case is not justified by the facts, which it is, then the Court should consider alternative sanctions. These sanctions can be granted individually, or in combination, in order to achieve the punitive and remedial objectives behind the spoliation sanctions. *West v. Goodyear Tire & Rubber Co.*, 167 F.3d 776, 779 (2d Cir. 1999). Examples of these alternative sanctions may include exclusion of expert testimony concerning the spoliated evidence or a jury instruction on the spoliation of evidence that raises a negative inference or presumption against the spoliator. *Id.* If this case is not dismissed, the Court should exclude the testimony of State Farm's experts regarding causation. *See Barton Brands, Ltd. v. O'Brien & Gere, Inc. of North America*, Civ. A. 307-CV-78-H, 2009 WL 1767386, at *3 (W.D. Ky. June 22, 2009) (finding that it was appropriate to prevent plaintiff "from introducing expert testimony regarding the cause of the particular fire in question.").⁴⁴

⁴³ State Farm Depo., Exhibit G, pp. 28-35.

⁴⁴ The reason that this court found that a complete dismissal of this action was not warranted was because: (1) the crux of the litigation stemmed from the design, construction, and operation of the commercial property; (2) the cause of the fire was only an important element of the claim and not dispositive; and (2) the plaintiff gave some notice of the forthcoming destruction of the commercial property. *Barton Brands*, 2009 WL 1767386 at *2. None of these mitigating factors are available in this case and the most severe sanction, dismissal, is warranted.

State Farm's actions reflect an intentional disregard for its duty to preserve relevant evidence. State Farm's willful, or at least grossly negligent, destruction of the Fire scene before notifying Hamilton Beach has permanently disadvantaged Hamilton Beach and hindered its ability to defend itself in this litigation. State Farm and its experts had an opportunity to inspect the Fire scene, Hamilton Beach and its expert did not. The playing field is unquestionably uneven. Although excluding these experts will not completely cure the unfair prejudice to Hamilton Beach, it will, at a minimum, prevent State Farm from benefiting from the willful destruction of evidence and utter disregard for a fair playing field, as required by the Federal Rules of Civil Procedure.

B. THE COURT SHOULD ALSO ISSUE A NON-REBUTTABLE JURY INSTRUCTION THAT THE MISSING EVIDENCE IS FAVORABLE TO HAMILTON BEACH.

If the Court does not dismiss this case then, in addition to excluding the testimony of State Farm's experts, the Court should also issue an adverse inference jury instruction. An adverse inference instruction tells the jury to assume that the wrongdoing party "fears [producing the evidence]; and this fear is some evidence that the . . . [evidence] . . . would have exposed facts unfavorable to the party." *Flagg v. City of Detroit*, 715 F.3d 165, 177 (6th Cir. 2013). A non-rebuttable, mandatory adverse inference jury instruction is considered proper if the Court finds that a party's destruction of evidence was intentional. *In re Black Diamond*, 514 B.R. at 242 (internal citations omitted). These rules, however, are not fixed and "whether an adverse inference should be permissive or mandatory must be determined on a case-by-case basis, corresponding in part to the sanctioned party's degree of fault." *Id.*

For the reasons set forth above, State Farm exhibited the requisite culpability that warrants a non-rebuttable adverse inference: willfulness. Consequently, the Court should address State Farm's spoliation by ordering that the strongest allowable inference be drawn in

favor of Hamilton Beach. Specifically, if State Farm's claims are not dismissed, then Hamilton Beach respectfully requests that the Court instruct the jury as follows:

INSTRUCTION: Because State Farm destroyed the fire scene before Hamilton Beach had an opportunity to inspect the scene of the fire, you **must** infer that the fire scene, if preserved, would have provided evidence that was favorable to Hamilton Beach, including a presumption that the fire was caused by something other than the Hamilton Beach steamer at issue in this case.

This may be helpful, but for the reasons stated above, it will not fully remedy the prejudice caused by State Farm's spoliation, nor will it adequately punish State Farm for its willful behavior. Nevertheless, if this case moves forward, such an irrefutable instruction coupled with the exclusion of State Farm's experts is clearly warranted.

C. AT THE VERY LEAST, THE COURT SHOULD ISSUE A REBUTTABLE JURY INSTRUCTION THAT THE MISSING EVIDENCE IS FAVORABLE TO HAMILTON BEACH.

Generally, a permissive or rebuttable adverse inference instruction is adequate punishment for negligent spoliation. *Id.* When a party is "unable to provide an essential element of [its] case due to the negligent loss or destruction of evidence by an opposing party, ... it is proper for the trial court to create a rebuttable presumption that establishes the missing elements of the [party's] case that could only have been proved by the availability of the missing evidence." *Rogers v. T.J. Samson Cmty. Hosp.*, 276 F.3d 228, 232 (6th Cir. 2002) (internal citations omitted).

Despite that this sanction is insufficient given the circumstances, if the Court determines that State Farm's destruction of evidence was negligent, then it should issue the following rebuttable or permissive jury instruction:

INSTRUCTION: Because State Farm destroyed the fire scene before Hamilton Beach had an opportunity to inspect it, you **may** infer that the fire scene, if preserved, would have provided evidence that was favorable to Hamilton Beach, including evidence that the fire was caused by something other than the Hamilton Beach steamer at issue in this case.

This minimal sanction will not serve the purpose behind spoliation nor will it resolve the prejudice to State Farm, but if the Court finds that the other sanctions are too severe, this sanction will certainly be warranted.

CONCLUSION

The Court should impose spoliation sanctions against State Farm. While the “minimal sanction” of an adverse jury instruction may be appropriate in cases with lesser culpability or prejudice, a sanction of dismissal is required here. For these reasons, the Court should grant Hamilton Beach’s Motion.

Respectfully submitted,

/s/ Emma R. Wolfe

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CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of December, 2017, I electronically filed the foregoing with the clerk of the Court by using the CM/ECF which will send notice of filing to the following counsel of record:

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LEXINGTON 38442-30 58657v6

EXHIBIT I

Report of Michael G. Sandford
In the matter of
State Farm Fire and Casualty Company
and Michael Maxwell
v.
Hamilton Beach Brands, Inc.

October 27, 2017

Introduction:

As a Senior Staff Engineer at Hamilton Beach Brands, Inc. (Hamilton Beach), I am familiar with the design, manufacture and testing of garment steamers at Hamilton Beach. The subject garment steamer in this matter (the Maxwell garment steamer) was sold by Wal-Mart. The purpose of this report is to summarize my observations and opinions regarding the Maxwell garment steamer. These opinions are based upon the results of a systematic investigation that utilizes the scientific method.

The preserved remains of the Maxwell garment steamer, iron, and duplex receptacle were inspected at Hamilton Beach on September 4, 2015. This nondestructive examination included visual inspection, radiography and photography.

In addition to the examination of the physical evidence, I also reviewed the following items prior to issuing this report:

- 28 scanned copies of scene photographs in pdf format provided by State Farm
- 14 scanned copies of photographs in pdf format from Plaintiff's Expert Disclosure
- Calloway County Fire-Rescue incident report number 2014383
- American National Standards Institute/Underwriters Laboratory (ANSI/UL) Standard for Safety for Garment Finishing Appliances, UL 141, Eighth Edition
- Canadian Standard for Domestic Ironing Machines, C22.2 No. 99-1954
- Intertek Listing Constructional Data Report, SH10111298-001
- National Fire Protection Agency (NFPA) 921: Guide for Fire and Explosion Investigations, 2017 Edition
- De Haan, John D. (2002) Kirk's Fire Investigation, Fifth Edition
- Babrauskas, Vytenis (2003) Ignition Handbook
- Deposition of Michael Maxwell on August 3, 2017
- Deposition of Rebecca Maxwell on August 3, 2017
- Deposition of William Brown on August 4, 2017
- The Use & Care Manual for the Model 11570 garment steamer
- My personal knowledge and experience working as an engineer for Hamilton Beach.

Recognition of Need:

A fire allegedly occurred at the Maxwell residence, 160 Wells Purdom Dr, Almo, KY, on September 6, 2014. The fire resulted in litigation against Hamilton Beach. The Calloway County Fire-Rescue report placed the area of origin in the laundry room, electrical arcing as a heat source and the first item ignited as undetermined. The report also stated that the exterior sidewall covering contributed most to the flame spread.

In his October 6, 2014 report the Plaintiff's cause and origin investigator James Jennings, of Origin & Cause Investigative Resources, also placed the area of origin in the laundry room, and classified the fire as undetermined.

The Plaintiff's engineering investigator, Matt Forbes of EFI Global, Inc., stated in his November 17, 2014 report:

...internal wiring displays electrical activity at the head. This shows that an internal failure occurred at the device head and ignited the plastic.

The Mr. Forbes concluded:

The fire patterns and electrical activity show an ignition internal to the steam shark. The fire progressed from that point and spread up the wall of the laundry room to consume ordinary combustible material

Definition of the Problem:

The purpose of the investigation is to evaluate the evidence collected from the Maxwell residence and the conclusions reached by EFI Global, Inc. regarding the Maxwell steamer.

Collection of Data:

Time Line (Based on the deposition of Michael Maxwell):

- September 4, 2014 - The iron and steamer were used to press a shirt and steam a suit jacket, respectively, for work that day. This was reportedly the last time the iron and steamer had been used.
- September 5, 2014 - Mr. & Mrs. Maxwell traveled to Louisville, KY leaving the house between 4:30 pm and 5:00 pm.
- September 6, 2014 - Between 1:00 pm and 2:00 pm, Mrs. Maxwell received a phone call from the authorities informing them of the fire at their residence.
 - Between 3:00 pm and 4:00 pm, the Maxwells checked out of their hotel and traveled the 225 miles from the Galt House to 160 Wells Purdom Dr.
 - Between 9:00 pm and 10:00 pm, the Maxwells arrived at 160 Wells Purdom Dr.

Time Line (Based on the Calloway County Fire-Rescue incident report):

Incident Date: 09/06/2014
Alarm: 17:38 (5:38 pm)
Arrival: 17:42 (5:42 pm)
Cleared: 19:22 (7:22 pm)

Examinations Prior to Hamilton Beach's Notification

On September 12, 2014, James Jennings of Origin & Cause Investigative Resources, LLC and Matt Forbes of EFI Global, Inc. conducted an investigation of the fire scene at 160 Wells Purdom Drive, Almo, Kentucky. From this onsite examination, the remains of the Maxwell garment steamer, an iron, and duplex receptacle were reportedly collected for further examination in a laboratory. According to the deposition of Michael Maxwell, during this onsite examination, he was asked to purchase an exemplar garment steamer. The exemplar garment steamer was photographed at the scene and identified as a Rival model 11570 garment steamer distributed by Wal-Mart. Matt Forbes of EFI Global, Inc. conducted an examination of the collected evidence on October 20, 2014.

At no time did anyone acting on behalf of State Farm or the Maxwells notify Hamilton Beach of the fire while the scene was available for examination. As a result, Hamilton Beach was never permitted to examine the fire scene.

Evidence Examination at Hamilton Beach

A bag containing various items was provided for examination and a nondestructive examination was conducted on September 4, 2015. Contained within the bag were the remains of a receptacle, the remains of an iron, the Maxwell garment steamer, a circuit breaker, and an exemplar of the Maxwell garment steamer.

The circuit breaker was a Siemens 20A, single pole, Type OP. The circuit breaker was received in the tripped position. No signs of resistive heating or abnormal electrical activity were observed. None of the provided fire scene photographs indicate which circuit breaker had been preserved. The scanned copies of scene photographs indicate five circuit breakers in a tripped position, including a 30A double pole circuit breaker marked "Heater", an unmarked 40A double pole circuit breaker, and two 20A circuit breakers marked "Washer", and "Living Room" and another 20A circuit breaker that is unidentifiable due to the low resolution of the scanned copy provided. Additionally, there was an unmarked 30A circuit breaker in the off position. None of these circuit breakers were available at the time of the examination.

The duplex receptacle had been removed from the receptacle box prior to being provided for this examination. The front of the receptacle box displayed the greatest heat-affect. The

two branch circuit lines appear to have been connected to the receptacle correctly. The neutral (white) leads are connected to the same side as the ground connection.

The remains of two power cords were observed connected to the duplex receptacle. The power cord in the lower position was connected to some re-solidified white plastic and retained some sections of insulation. The ends of this power cord showed signs of melting (blue circles) and potential beading (red circles), this was downstream of crimped connections to the power cord. The remains of the power cord in the upper position of the receptacle retained a small section of insulation and it was connected to the iron.

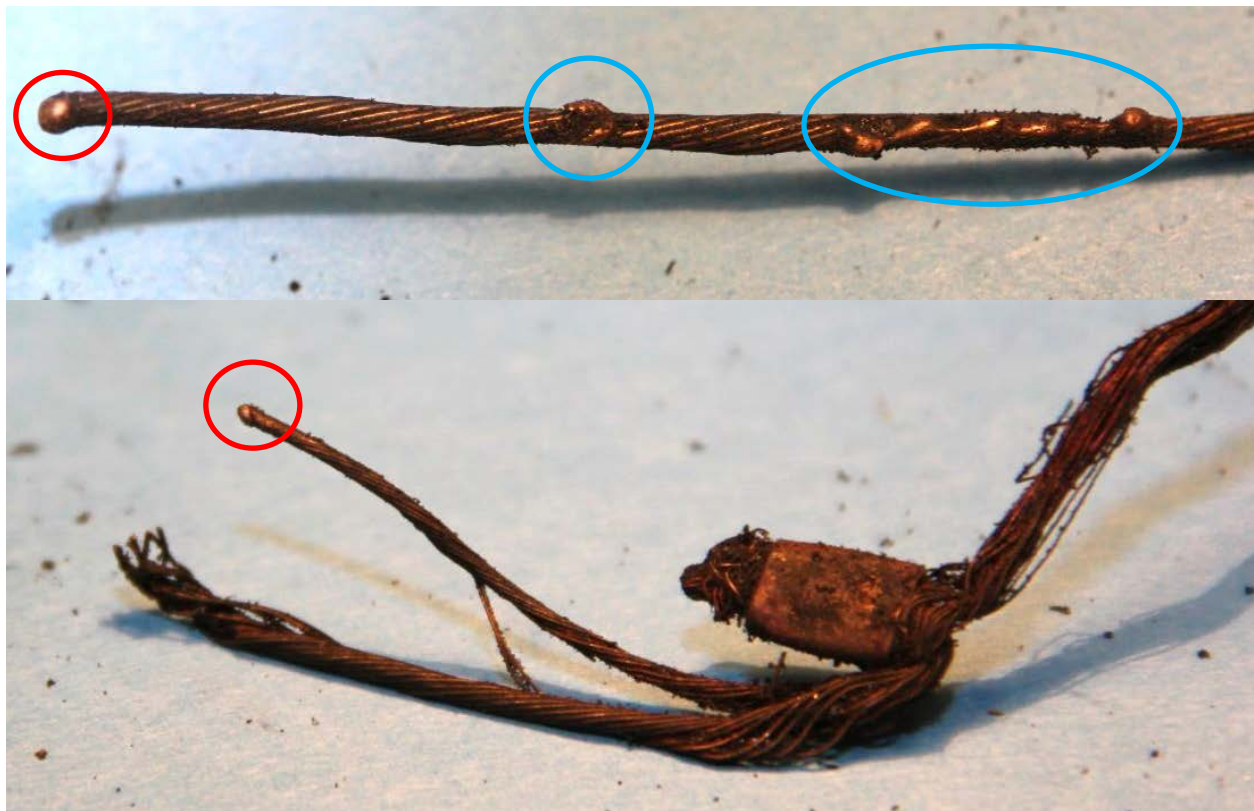


Figure 1 - Power cord connected to the lower position of the receptacle.

The remains of the iron were heat-affected. A mass of charred and re-solidified plastic covered the top surface of the metal sole plate. Using a multi-meter, the TCO of the iron was measured to be open. X-ray imaging did not reveal any breaks in the heating element. No abnormal electrical activity was observed on the exposed conductors of the iron.

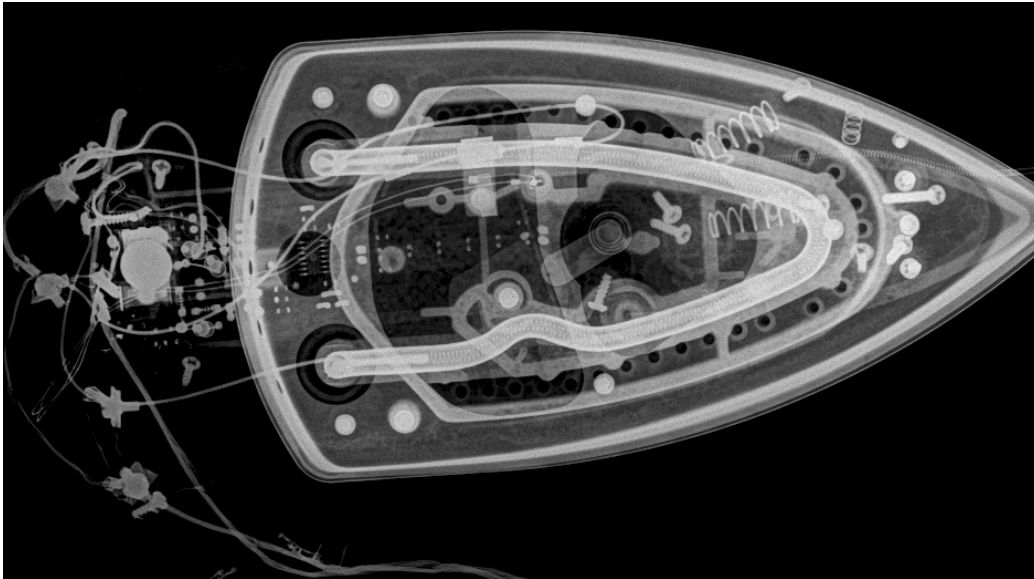


Figure 2 - X-ray image of the Iron.

The remains of the Maxwell garment steamer were heat-affected. The aluminum component of the sole plate assembly was heat-affected and deformed around the perimeter. The TCO and heating element of the Maxwell garment steamer were electrically open. This was measured with a multi-meter and confirmed with x-ray imaging. The red circle in figure 3, indicates the break in the heating element, which was fully contained within the insulation of the heating element. No conductivity was measured between either end of the heating element and the exposed metal of the housing.



Figure 3 - X-ray image of the subject steamer.

The thermostat was observed to be set to the highest heat setting. This position was confirmed using the exemplar. Pictures 1 & 2 (figure 4) show the thermostat of the exemplar set to the lowest temperature setting, and the position of the rotational stop.

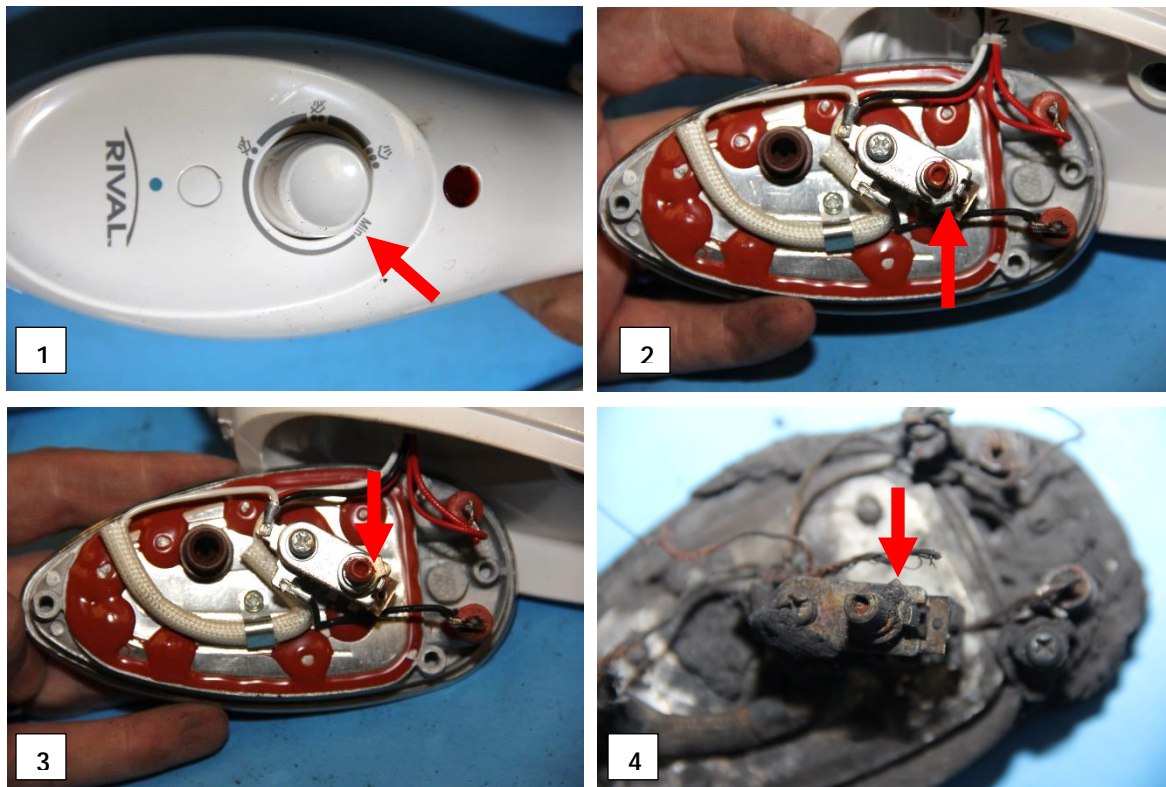


Figure 4 – Confirmation of thermostat position.

The picture 3 of figure 4 shows the exemplar thermostat rotated to the opposite extent of travel. This position matches the thermostat position in the remains of the subject garment steamer shown in picture 4 of figure 4. This indicates that the subject garment steamer was set to the highest heat setting.

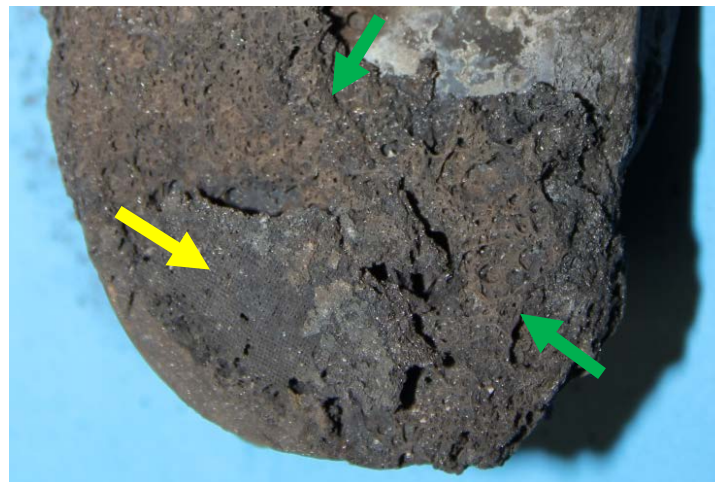


Figure 5 – Material on the sole plate of the subject steamer.

The greatest heat exposure to this piece of the subject steamer was observed on the front edge of the die cast aluminum. A porous cellular material (green arrow in figure 5) and a woven material (yellow arrow in figure 5) were observed to be stuck to the sole plate toward the

heel of the plate. This observation was supported by the deposition testimony of Michael Maxwell where he stated that the brush attachment would have been assembled to the subject steamer.

Melting was observed on the conductors attached to the remains of the Maxwell garment steamer sole plate (figure 6). Additionally, three pieces of conductor were found in the loose debris of the bag. One of the pieces showed signs of melting on one end (figure 6). The other two pieces showed no signs of melting or abnormal electrical activity.

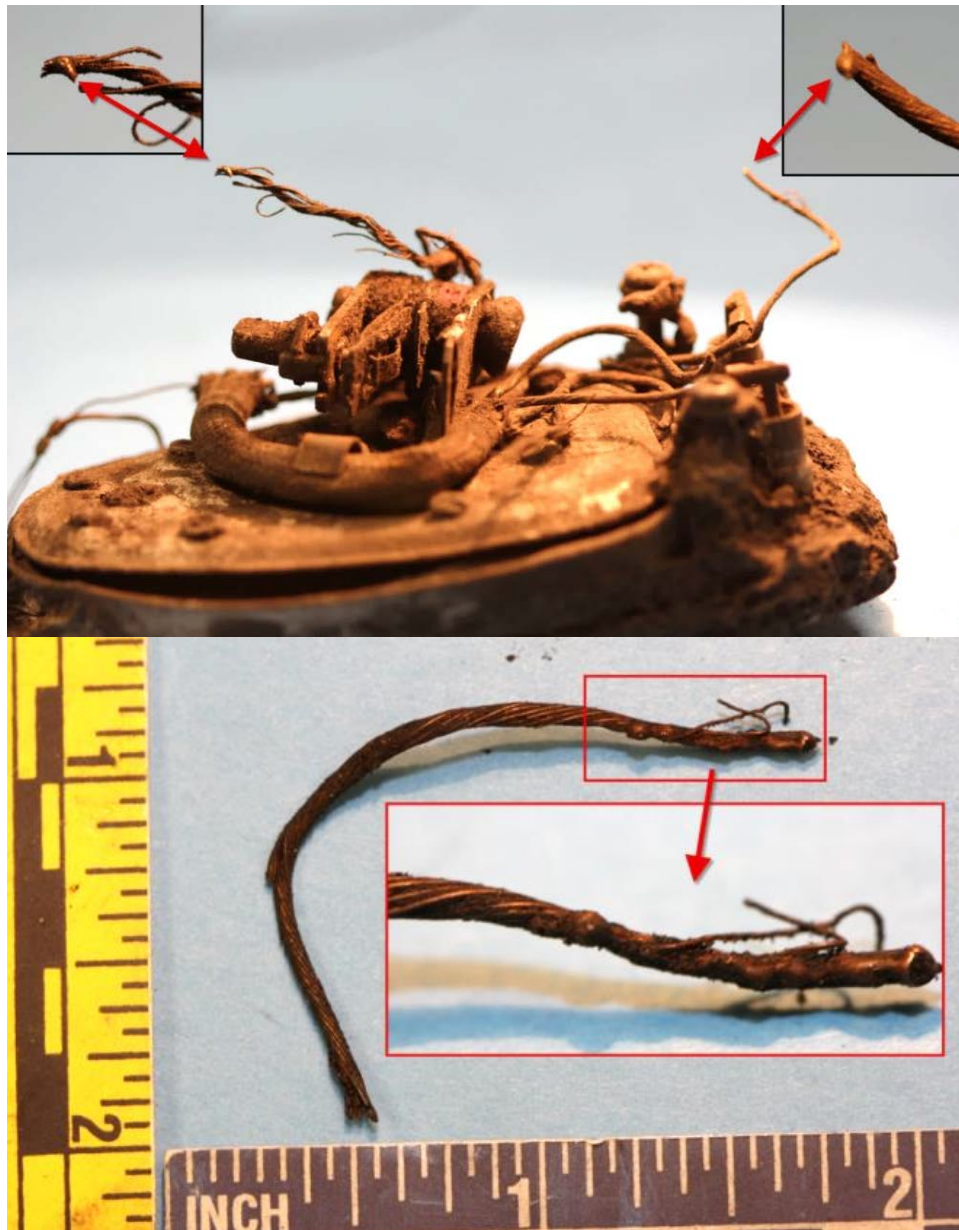


Figure 6 – Melted conductors on the remains of the subject steamer.

Data collected from documentary evidence:

1. Intertek Report Number SH10111298-001 indicated that the independent testing agency determined the design and manufacturing of model 11570 garment steamer complied with ANSI/UL 141. The following is a subset of the required tests:
 - a. Abnormal Operation – The appliance is placed on white tissue paper on a softwood surface, and operated continuously until a final result is achieved. When operated under abnormal conditions, the appliance shall not emit flame or molten metal, and there shall be no glowing or flaming of the wood or tissue paper.
 - b. Flame Resistance Test – The appliance is exposed to a specified flame in two 30-s applications without supporting combustion, or exposing uninsulated live components.

2. Ignition Handbook, Chapter 7 – Common Solids:

Hot bodies, in general, include both substances with finite amount of heat (e.g., a piece of welding slag) and those that are continuously heated, such as an electrical heating coil. A hot body placed in contact with combustible material may lead to its ignition. Two possibilities must be considered:

(1) the combustible material is capable of smoldering; or

(2) the combustible material is not smolderable.

If the material does not smolder, then it can only be ignited if the hot body creates sufficient pyrolysis gases, and the gases then ignite either by autoignition or by the surface of the hot body. Most non-porous plastics are not susceptible to smoldering, and it is generally hard to ignite them with hot bodies. When presented with a hot body, thermoplastics melt, gasify, and typically retract from the heated surface. Unless very flammable gases are copiously liberated, the sequence is likely to lead to a non-ignition with the remaining material separated from the hot body by a gap. (pages 287-288)

3. The Use & Care states under item 7 & 8 of the "Important Safeguards":

7. Do not allow cord to touch hot surfaces. Let appliance cool completely before putting away. Loop cord loosely around appliance when storing.
8. Always disconnect appliance from electrical outlet...when not in use.

IMPORTANT SAFETY INSTRUCTIONS

When using your appliance, basic precautions should always be followed, including the following:

1. Read all instructions.
2. Close supervision is necessary for any appliance being used by or near children. Do not leave appliance unattended while connected.
3. To reduce the risk of contact with hot water emitting from steam vents, check appliance before each use by holding it away from body and operating steam button.
4. Use appliance only for its intended use.
5. To reduce the risk of electric shock, do not immerse the appliance in water or other liquids.
6. Never yank cord to disconnect from outlet; instead, grasp plug and pull to disconnect.
7. Do not allow cord to touch hot surfaces. Let appliance cool completely before putting away. Loop cord loosely around appliance when storing.
8. Always disconnect appliance from electrical outlet when filling with water or emptying, and when not in use.
9. Do not operate appliance with a damaged cord, or if the appliance has been dropped or damaged. To reduce the risk of electric shock, do not disassemble or attempt to repair the appliance. Take it to a qualified service person for examination and repair. Incorrect reassembly or repair could cause a risk of fire, electric shock, or injury to persons when the appliance is used.
10. Burns could occur from touching hot metal parts, hot water, or steam. Use care when you turn a steam appliance upside down—there may be hot water in the reservoir.
11. To avoid a circuit overload, do not operate another high-wattage appliance on the same circuit.
12. If an extension cord is absolutely necessary, a 15-ampere cord should be used. Cords rated for less amperage may overheat. Care should be taken to arrange the cord so that it cannot be pulled or tripped over.
13. **WARNING! Shock Hazard:** This appliance has a polarized plug (one wide blade) that reduces the risk of electric shock. The plug fits only one way into a polarized outlet. Do not defeat the safety purpose of the plug by modifying the plug in any way or by using an adapter. If the plug does not fit, reverse the plug. If it still does not fit, have an electrician replace the outlet.

SAVE THESE INSTRUCTIONS!

OTHER CONSUMER SAFETY INFORMATION

This product is intended for household use only.

Direct steam at clothing only. Directing steam toward any other surface may damage that surface.

- Do not steam clothes that are being worn.
- Do not use steam in the direction of people or pets.

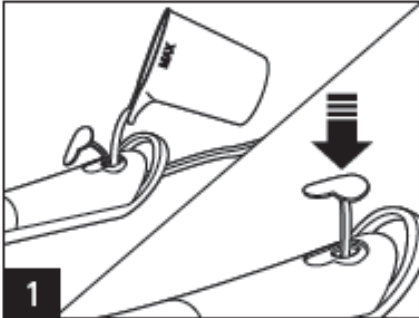
Figure 9 - "Important Safeguards" section of the Use & Care.

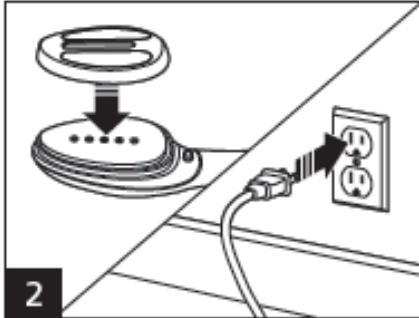
4. The Use & Care states in the "How to Steam" section:


Step 5 to "Turn to MIN and unplug."

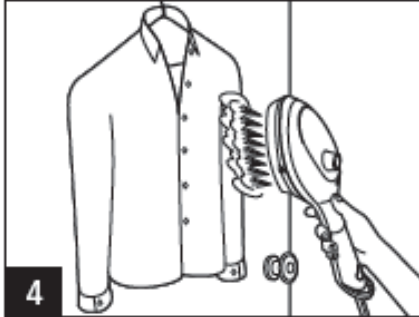
HOW TO STEAM

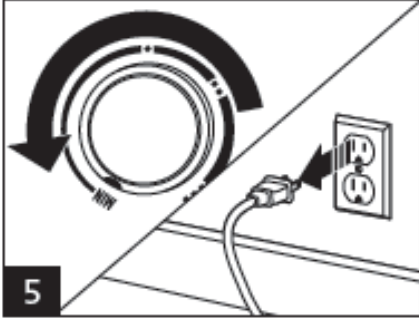
▲ WARNING BURN HAZARD.
Steam is hot. When plugged in, unit is ON. Unit cannot be turned OFF. Make sure unit is unplugged when assembling attachments.

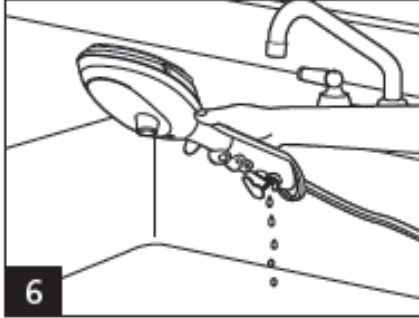
1  Add water to fill cup up to the MAX line. Remove water plug and pour water into reservoir. The reservoir can be filled to capacity. Replace water plug.

2  Attach Steaming Attachment. Plug in steamer. The steamer is ready after 15 seconds.

3  Always set Temperature Control Dial to Maximum while steaming.

4  Squeeze steam button for a blast of steam or hold for powerful steam performance.

5  Turn to MIN and unplug.

6  Once unit has completely cooled, empty remaining water from tank over sink. Replace water plug.


4


Figure 10 - "How to Steam" section of the Use & Care.


5. The Use & Care states in the "Care and Cleaning" section Step 8 & 9:
8. Unplug steamer. Allow to cool.

9. Loop cord loosely around appliance when storing.

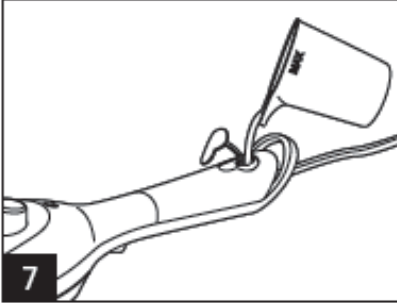
CARE AND CLEANING (cont.)



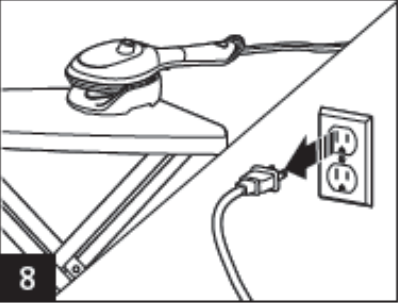
5 Plug in steamer. Set the Temperature Control Dial to  (Steam).



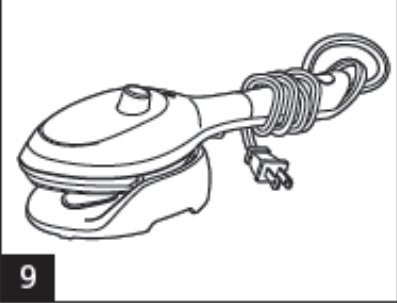
6 Let the liquid solution steam out of the steamer.



7 Repeat this process with clean water until vinegar odor is no longer present.



8 Unplug steamer. Allow to cool.



9 Loop cord loosely around appliance when storing.

NOTICE: To avoid damage to the steamer soleplate:

- Never iron over zippers, pins, metal rivets, or snaps.
- Wipe with a soapy cloth to clean occasional buildup on the soleplate. Never use abrasive cleansers or metal scouring pads, since they may scratch the surface.

7

Figure 11 - "Care and Cleaning" section of the Use & Care.

Analysis of Data:

Based on the deposition of Mr. Maxwell, he last used the Maxwell garment steamer before work on the morning of September 4th, two and a half days prior to the date of loss. Mr. Maxwell also believed that the Maxwell garment steamer had an auto-off function, which it did not. Had Mr. Maxwell read the Use and Care guide, which he stated that he did not, he would have observed the steps which instruct the user to unplug the unit after using, and to store the product with the cord wrapped loosely around the handle.

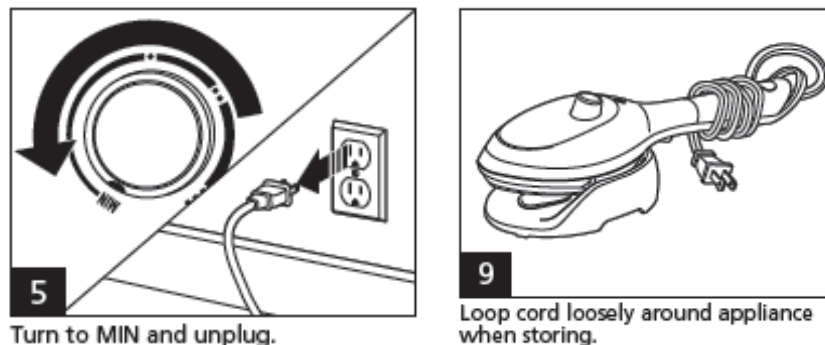


Figure 12 – Examples from the Use & Care

The design was tested for continuous operation in the abnormal operation testing conducted to obtain the independent third party agency listing from Intertek, and found not to pose a fire or electric shock hazard. Continuous operation would cause the filament of the heating element in the subject garment steamer to reach its end of life sooner, much like the filament in an incandescent light bulb quits working over time. The filament in the Maxwell garment steamer heating element simply opened. The element did not short to the housing or rupture the steel element sheath. This means that when the element broke the energy of the break was fully contained within the steel sheath of the heating element, and at that point the Maxwell garment steamer was no longer able to generate heat.

The minimal evidence collected by State Farm, coupled with the provided scanned copies of photographs fail to adequately provide sufficient detail to permit one not actually present at the scene to understand what occurred at the scene. For example, none of the photographs provided document the orientation and location of the iron and steamer as they were discovered and collected. Additionally, components of the subject steamer that would have survived the fire, such as the metal pump motor housing, which should have been in close proximity to the sole plate, were not collected. The collection of the 20A tripped circuit breaker was not documented. It is unknown which circuit breaker this is. No documented analysis of the four other tripped circuits has been provided. Accordingly, there is no documented explanation for the 30A observed to be in the OFF position.

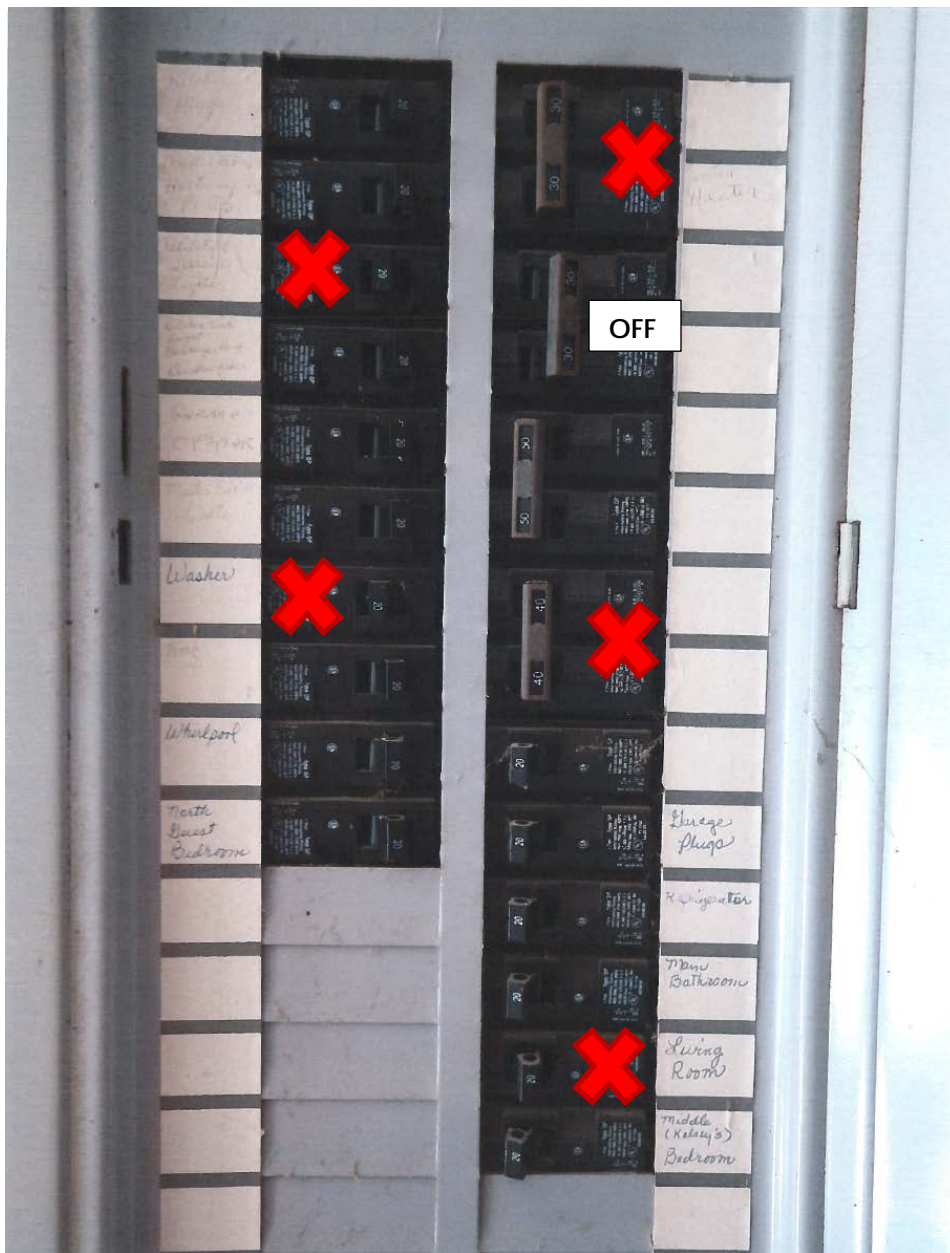


Figure 13 – Electrical panel photograph from Expert Disclosure.

NFPA 921, Guide for Fire and Explosion Investigations, states the following regarding the collection and documentation of evidence:

17.5.2.1 Physical evidence should be thoroughly documented before it is moved...

17.5.2.2 ...First the documentation should assist the fire investigator in establishing the origin of the physical evidence, including not only its location at the time of discovery, but also its condition and relationship to the fire investigation. Second, the documentation should assist the fire investigator in establishing that the physical evidence has not been contaminated or altered. (see 16.2.8.8)

16.2.8.8 *Evidence Photographs.* Items of evidentiary value should be photographed at the scene and can be re-photographed at the investigator's office or laboratory if a more detailed view is needed. During the excavation of the debris strata, articles in the debris may or may not be recognized as evidence. If photographs are taken in an archaeological manner, the location and position of evidence that can be of vital importance will be documented permanently. Photographs orient the articles of evidence in their original location as well as show their condition when found. In an evidentiary photograph, a ruler can be used to identify the relative size of the evidence. Other items can also be used to identify the size of evidence as long as the item is readily identifiable and of constant size (e.g., a penny). A photograph should be taken of the evidence without the ruler or marker prior to taking a photograph with the marker.

Documenting and collecting information and evidence from the fire scene in accordance with NFPA 921 would have made it possible for parties that were not provided access to the scene to have context when reviewing the evidence. Additionally, if NFPA 921 had been complied with, there would be greater likelihood of complete recovery of evidentiary remains.

Contrary to the statement made by Mr. Forbes, the power cord was not severed in the handle. The closed-end splice connections to the power cord occur in the upper housing above the sole plate in proximity to the pump housing. The presence of electrical activity observed on the power cord remains do not indicate a defect, rather the electrical activity indicates that there was electrical power supplied to the power cord when it was attacked by the heat of the fire.

After examining the data and evidence, I have formed the following hypothesis:

The Maxwell steamer did not have a defect that would have caused ignition of the thermoplastic housing and/or surrounding combustibles.

Testing of Hypotheses:

To test the hypothesis, that a defect which would have caused ignition of the thermoplastic housing and/or surrounding combustibles was not present in the Maxwell garment steamer, two separate tests were conducted to simulate the occurrence of an electrical event within the housing. (Based on the scenario outlined in the deposition of Mr. Maxwell, the brush attachment was attached to an exemplar garment steamer for both tests.)

1. A 3" section of line conductor was replaced after the crimp connection to the power cord with nichrome resistance wire. This section of conductor was bundled with the rest of the conductors and routed alongside the pump and into the lower most housing adjacent to the thermostat. The nichrome wire simulated localized overheating. An exemplar unit was connected to 120VAC and operated, the nichrome wire reached a temperature of approximately 1,300°F, before sparking and distributed molten metal particles against the interior surfaces of the housing. Superficial charring of the plastic surface was observed at each point of impact. Where the nichrome wire came into contact with the wire passage in the lower housing the housing material melted and retracted away from the wire. No ignition of the housing occurred.

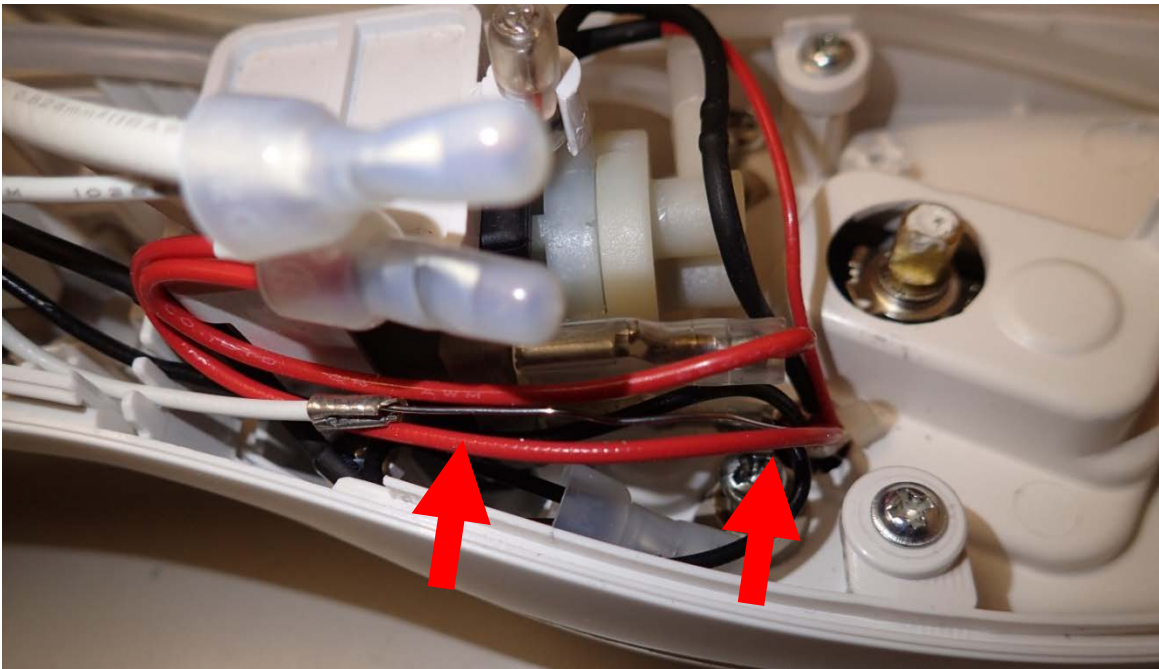


Figure 13 – Position of the nichrome wire and the results of the test.

- The removed section of line conductor was replaced and stripped of its insulation where it was in closest proximity to the other conductors entering the lower most housing. The insulation of the neutral conductor was cut in proximity to the line conductor in an attempt to promote arcing. This failed to produce arcing; therefore, the cut insulation was stripped. The unit was again connected to 120VAC. After each arc/spark the wires were manually repositioned and the unit was reenergized until the line and neutral conductors fused together. This totaled four electrical events in close proximity to the same area of the plastic housing. Vaporized copper was observed transferred to the interior surfaces of the plastic housing. All products of the multiple electrical events were contained within the housing. As with the previous test, ignition of the housing was not achieved.

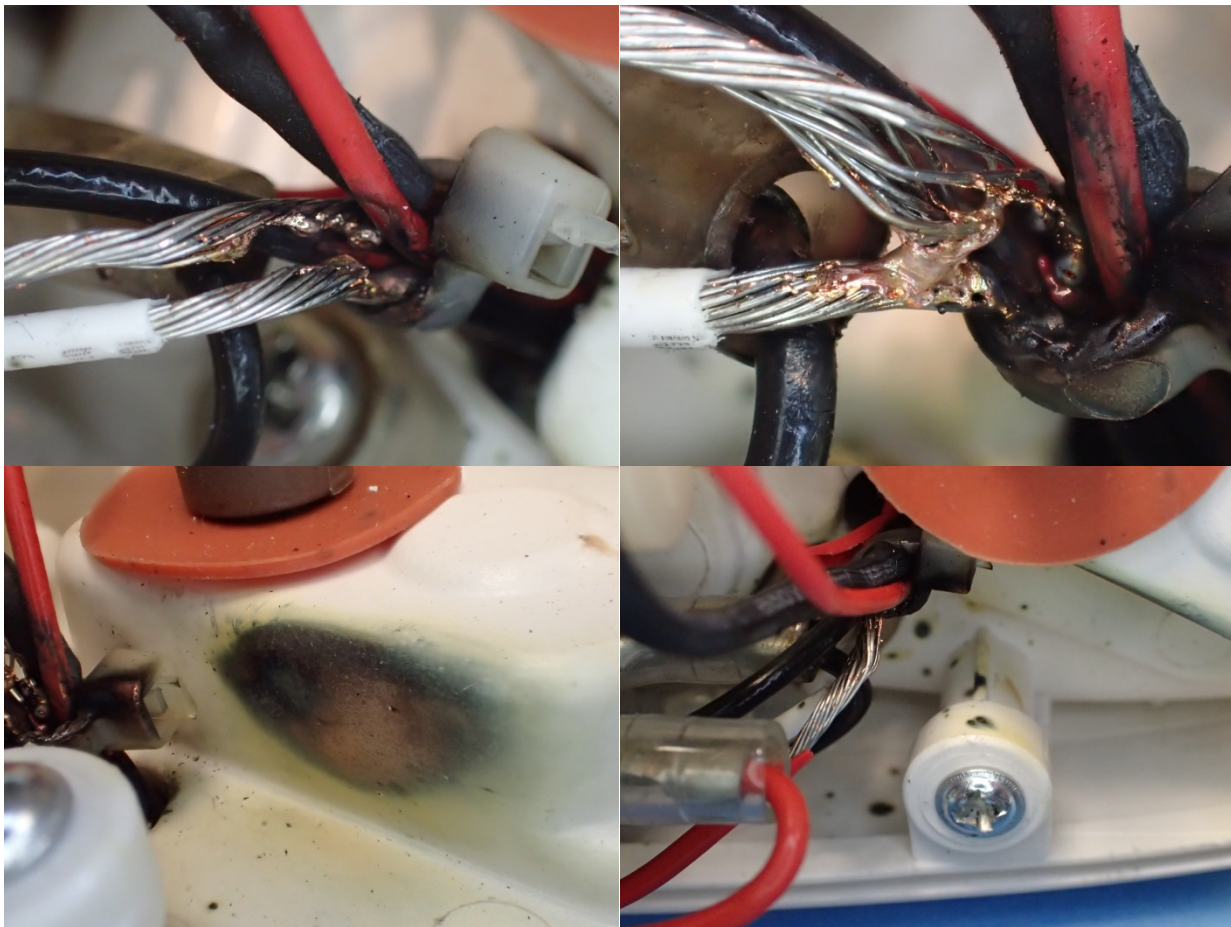


Figure 14 – Results of conductor arcing testing.

The results of the testing are in contrast to the statement of Mr. Forbes that an internal failure occurred causing the ignition of the housing. The results of the testing are supported by the statements regarding the competency of arcs and sparks to pilot the ignition of materials within Ignition Handbook, Kirk's Fire investigation, and NFPA 921:

NFPA 921

9.9.4.4 ...At 120/240 V ac, a parting arc is not sustained and will quickly be quenched. Ordinary parting arcs in electrical systems are usually so brief and of low enough energy that only combustible gasses, vapors, and dusts can be ignited.

Kirk's Fire Investigation, Chapter 10 - Electrical Causes of Fire:

While the temperature of gases/plasma in the arc may be thousands of degrees, the duration of the typical arc in an overcurrent protected circuit will usually be so brief that ignition of solid fuels is nearly impossible. Exceptions will be when fuel is finely divided (cotton waste or fine sawdust) and in direct contact with the arc, or when the over protection fails to interrupt the circuit. (page 335)

Electrical Failures. When energized wires make contact and the contact is not a secure connection, such as two bare wires touching without any mechanical pressure, an electrical arc is usually formed. Its magnitude and duration will depend on the over current protection (fuses or breakers) and the physical conditions under which the wires contact each other. If the resulting arc is not confined inside a suitable enclosure the high temperature of the arc may ignite very thin or finely divided combustible materials in contact. (page 345)

Ignition Handbook, Chapter 7 – Common Solids:

Most non-porous plastics are not susceptible to smoldering, and it is generally hard to ignite them with hot bodies. When presented with a hot body, thermoplastics melt, gasify, and typically retract from the heated surface. Unless very flammable gases are copiously liberated, the sequence is likely to lead to a non-ignition with the remaining material separated from the hot body by a gap. (pages 288)

The plastic housing of the subject garment steamer was not a porous plastic or a finely divided material, and would not have produced copious amounts of flammable gases when contacted by a hot body from an electrical spark. Regarding products with plastic housings, NFPA 921 also cautions:

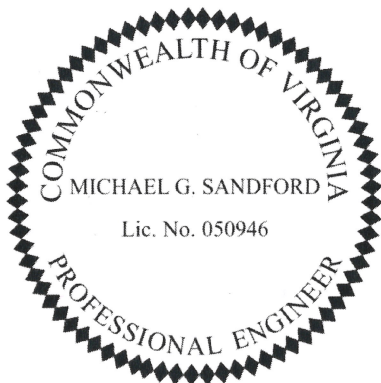
26.5.1.5.2 *When a fire is severe, all plastics might be consumed. Total consumption of the plastic does not by itself indicate that the fire started in the appliance.*

Conclusions & Opinions:

Based on my knowledge and experience as well as the engineering investigation performed, this writer has previously set forth in this report the basis for the following opinions:

1. The lack of evidence of thermal or electrical energy sufficient to support ignition supports the hypothesis that the Maxwell garment steamer did not have a defect that would have caused ignition of the thermoplastic housing and/or surrounding combustibles.
2. In the summary of the fire scene investigation, the Plaintiff's cause and origin investigator, James Jennings stated his cause of the fire to be undetermined, and did not narrow the focus of the area of origin beyond the laundry room. The only evidence collected was a single circuit breaker, duplex receptacle (including two power cords), the remains of an iron and the remains of a garment steamer. There is a lack of recorded analysis or documentation as to the cause of the other 5 circuit breakers in a tripped or OFF position, a lack of recorded analysis or documentation of the clothes washer or dryer, and a lack of preservation of any other evidence from the determined area of origin (the laundry room). This makes identifying and/or ruling out other possible causes for this fire nearly impossible. For example the clothes dryer is a substantial heat source in the Plaintiff's identified area of origin. The pattern of damage to the clothes dryer, coupled with the multiple tripped double pole circuit breakers in the electrical panel indicates this is a potential ignition source; however, it was not collected and preserved for analysis.
3. Hamilton Beach was not provided the opportunity to examine an undisturbed fire scene. The exemplar garment steamer photographed at the fire scene on September 12, 2014, clearly identified the brand, model number and distributor. Hamilton Beach was first notified of the loss on August 14, 2015, eleven months after the scene examination.

These opinions are limited by the evidence examined and the information provided regarding the fire scene, and examination of the evidence collected from the scene. If more information becomes available that has not been previously disclosed, additional examination of evidence and testing may be required, my opinions may be modified, or I may have additional opinions.



Michael G. Sandford
Senior Staff Engineer

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
PADUCAH DIVISION

ELECTRONICALLY FILED

STATE FARM FIRE & CASUALTY)	Civil Action No. 5:16-cv-153-TBR
COMPANY, <i>et al.</i>)	
)	
Plaintiffs)	
)	
v.)	<u>PLAINTIFFS’ RESPONSE TO</u>
)	<u>DEFENDANT HAMILTON</u>
)	<u>BEACH BRANDS, INC.’S</u>
)	<u>MOTION TO DISMISS</u>
HAMILTON BEACH BRANDS, INC., <i>et al.</i>)	
)	
Defendants)	
_____)	

Come the Plaintiffs, State Farm Fire and Casualty Company (hereinafter “State Farm”) and Michael Maxwell (hereinafter “Maxwell”), by counsel, and submit the following Response in Opposition to the Motion to Dismiss filed by Defendant, Hamilton Beach Brands, Inc. (hereinafter “Hamilton Beach”). For the reasons set forth below, State Farm respectfully requests that the Court deny Hamilton Beach’s Motion to Dismiss.

FACTUAL BACKGROUND

The initial factual predicate for this case does not seem to be in dispute. On September 6, 2014, a fire started in the laundry room of Maxwell’s residence, located at 160 Wells Purdom Drive, in Almo, Kentucky, causing considerable damage to the home and most of its contents.¹ Maxwell

¹ See Complaint; See also Defendant Hamilton Beach Brands, Inc.’s Motion to Dismiss this Litigation as a Sanction for Plaintiff’s Spoliation; See also Summary of Loss, a copy of which is attached hereto as Exhibit A.

contacted State Farm upon learning of the fire, and ultimately elected to have the damage repaired through his policy of homeowner's insurance with State Farm.²

On September 8, 2014, State Farm enlisted the services of Jimmy Jennings, a certified Fire Investigator with Origin & Cause Investigative Resources, LLC.³ Jimmy Jennings inspected the Maxwell home on September 9, 2014, and determined that the fire originated in the laundry room area.⁴ However, without further investigation, he was unable to determine the cause of the fire, and as such, labeled the classification of the fire at that time, as "undetermined."⁵ He noted that Matt Forbes, PE, a consulting engineer with EFI Global, also enlisted by State Farm, collected items that were plugged in on the north wall of the laundry room, a clothing iron and a garment steamer, as well as the receptacle, and further notes that no other ignition sources were identified within the area of origin.⁶

Matt Forbes submitted a more detailed report of his findings to State Farm on November 17, 2014.⁷ In his report, Mr. Forbes indicated that "the origin of the fire was placed around an outlet and the items powered by that outlet by Mr. Jimmy Jennings of Origin & Cause Investigative Resources"⁸. He further remarked that the fire patterns clearly identified this location as the origin point of the fire, and collected all of the items from this identified area for laboratory analysis, namely, the outlet, iron, steam shark (garment steamer), and circuit breaker, for further analysis.⁹ Ultimately, Mr. Forbes concluded that "the fire patterns and electrical activity show an ignition

² See Deposition of Michael Maxwell, August 3, 2017 (hereinafter "Maxwell Depo"), pp. 36. A copy of the relevant portions of the deposition of Michael Maxwell is attached hereto as Exhibit B; See also Complaint.

³ See Origin & Cause Investigative Resources, LLC October 6, 2014 Letter to State Farm (hereinafter "Origin & Cause Letter"), attached hereto as Exhibit C. See also CV of Jimmy Jennings, attached hereto as Exhibit D.

⁴ Origin & Cause Letter.

⁵ *Id.*

⁶ *Id.*

⁷ EFI Global November 17, 2014 Letter to State Farm (hereinafter "EFI Global Letter"), attached hereto as Exhibit E. See also CV of Matt Forbes, attached hereto as Exhibit F.

⁸ EFI Global Letter, p. 1.

⁹ *Id.* at 1.

internal to the [garment steamer]. The fire progressed from that point and spread up the wall of the laundry room to consume ordinary combustible material”¹⁰

The garment steamer at issue was labeled with the “Rival” brand name.¹¹ Upon investigation, State Farm learned that the Rival brand name is a trademark of Sunbeam Products, Inc., used under license by Wal-Mart Stores, Inc.¹² As such, State Farm sent a letter to Sunbeam Products, Inc. on June 30, 2015, providing notice of the loss and associated damages.¹³ On August 13, 2015, a representative of Walmart Stores, Inc., the retailer that sold the garment steamer at issue, informed State Farm that the garment steamer was actually manufactured by Hamilton Beach.¹⁴ State Farm subsequently sent notice to Hamilton Beach on August 14, 2015.¹⁵ On August 24, 2015, Hamilton Beach requested to conduct a non-destructive examination of the evidence collected by Mr. Forbes, and as a result of this request, State Farm sent the collected evidence to Hamilton Beach.¹⁶

ARGUMENT

I. THE ELEMENTS OF SPOILIATION ARE NOT MET.

The Sixth Circuit defines spoliation as “the intentional destruction of evidence that is presumed to be unfavorable to the party responsible for the destruction.” *Louisville Gas and Electric Company v. Continental Field Systems, Inc.*, 420 F.Supp.2d 764, 767 (W.D. Ky. 2005), (quoting *Beck v. Haik*, 377 F.3d 624, 641 (6th Circuit, 2004)). Further, the Sixth Circuit has developed a two-step inquiry to (1) determine if spoliation has occurred, and (2) upon a finding that sanctions are

¹⁰ *Id.* at 3.

¹¹ EFI Global Letter p. 2.

¹² See Rival Garment Steamer Instruction Manual, attached hereto as Exhibit G, at page 10.

¹³ June 30, 2015 Letter to Sunbeam Products, Inc., attached hereto as Exhibit H.

¹⁴ August 13, 2015 claim note from State Farm claim file, attached hereto as Exhibit I.

¹⁵ August 14, 2015 Letter to Hamilton Beach Brands, Inc., attached hereto as Exhibit J.

¹⁶ August 24, 2015 Facsimile to State Farm from Hamilton Beach, attached hereto as Exhibit K.

warranted, to develop the appropriate sanction. *In re: Black Diamond Mining Company, LLC, et al. v. Ira J. Genser, et al.*, 514 B.R. 235, 237 (E.D. Ky. 2014).

The first step of the inquiry, to determine whether spoliation has occurred, involves a three-prong assessment: (1) was there a duty to preserve evidence at the time the party having control over the evidence destroyed it?; (2) did the party destroying the evidence do so with a culpable state of mind?; and (3) could a reasonable trier of fact have found that the lost evidence was relevant to a claim or defense in the litigation? *Beaven v. U.S. Dep't of Justice*, 622 F.3d 540, 554 (6th Cir. 2010). Only if the Court can affirmatively answer all three questions should the inquiry move to the second step of the inquiry. *In Re: Black Diamond* 514 B.R. at 237.

a. State Farm satisfied its duty to preserve evidence.

Thus, the Court must first establish that State Farm had a duty to preserve evidence at the time that it was destroyed. Indeed, a party acquires a duty to preserve evidence when it “should have known that the evidence may be relevant to future litigation.” *In Re: Black Diamond* 514 B.R. at 238 (quoting *John B. v. Goetz*, 531 F.3d 448, 459 (6th Cir. 2008)). State Farm concedes that it had a duty to preserve evidence once it knew that litigation was probable. However, State Farm satisfied that duty when its experts preserved all of the evidence located near the receptacle where the fire originated.

Additionally, with regard to any duty imposed upon State Farm to preserve evidence, one must ask where that duty ends. Was State Farm obligated to preserve the evidence in the entire laundry room, including the washer and dryer? Or, would the duty extend to the adjoining kitchen, and all the associated appliances? Would State Farm be under an obligation to preserve all of the wiring in the house, in case potential future litigants requested to analyze each wire to dispute State Farm’s allegations regarding causation? Here, State Farm preserved not only evidence that it found

to be relevant to its theory of causation. It also collected and retained an iron that was determined, by State Farm's expert, to not have contributed to the fire.¹⁷

Simply stated, it would not make sense for State Farm to neglect to preserve, or worse, intentionally fail to preserve evidence of causation. For, no matter who the evidence inculpated, State Farm would stand to gain from the knowledge of and preservation of that evidence. If there were to have been an alternate theory as to causation, State Farm would certainly have explored that theory, and, if plausible, pursued this subrogation claim against the responsible entity or entities.

b. State Farm did not fail to preserve the evidence with a culpable state of mind.

Even if the Court finds that State Farm remained under a duty to preserve evidence in addition to that which was secured by its experts, the Court must then move to the second assessment of the inquiry: whether State Farm destroyed, or in this case, failed to preserve the evidence, with a culpable state of mind. This factor is fulfilled if the Court determines that a reasonable trier of fact could conclude that evidence was destroyed "knowingly, even if without intent to [breach a duty to preserve it], or negligently." *In Re: Black Diamond* 514 B.R. at 239 (quoting *Residential Funding*, 306 F.3d 99 (2d Cir. 2002)).

With regard to the loss at issue herein, State Farm hired a fire investigator and an engineer, who both narrowed the origin of the fire to a small area around an outlet in Maxwell's laundry room.¹⁸ The items found in that location were collected and stored for further examination.¹⁹ The fire investigator specifically determined that "no other ignition sources were identified within the area of origin"²⁰. Thus, State Farm, through its hired experts, narrowed the origin of the fire to one

¹⁷ EFI Global Letter.

¹⁸ EFI Global Letter and Cause and Origin & Cause Letter.

¹⁹ EFI Global Letter.

²⁰ Origin & Cause Letter.

wall of the laundry room, and collected all of the objects that were found there. It seems that a trier of fact would find State Farm's actions reasonable.

Further consideration that is important to determine State Farm's "state of mind" is to contemplate why State Farm would intentionally or negligently fail to preserve evidence that could be of use to it if litigation were to ensue. Here, if there was any evidence that there was any other source for the fire, such as the dryer, as offhandedly suggested in Defendant's Motion, what would motivate State Farm to destroy and/or fail to preserve that evidence? Why would State Farm not endeavor to explore additional subrogation opportunities, and essentially enhance its probability for success in recovering the sums it would ultimately expend?

c. There is nothing to suggest that any additional evidence would've been relevant to Hamilton Beach's defense.

Lastly, if the Court finds that State Farm had a duty to preserve additional evidence, and that it failed to maintain and/or destroyed such evidence with a culpable state of mind, the Court must analyze whether a reasonable jury could have found that the evidence was relevant to Hamilton Beach's defense.

"The party seeking the [spoliation] sanction must show sufficient evidence from which a reasonable trier of fact could infer that the unavailable [evidence is] 'of the nature' that the non-spoliating party alleges [it] to be." *In Re: Black Diamond* 514 B.R. 241 (citing *Automated Solutions Corp. v. Paragon Data Sys.*, 756 F. 3d 504, 513-14 (6th Cir. 2014)). Here, Maxwell testified that, other than minor issues with a sump pump plug and a fault board on the air conditioning unit, the home didn't have any electrical issues in the nearly ten years that he owned the home.²¹ Further, Maxwell testified that no other repairs of any nature were done on his home.²² Maxwell also

²¹ Maxwell Depo, pages 22-24.

²² *Id.*

indicated that he did not have any issues with the dryer prior to the fire.²³ In fact, the only new appliance was the garment steamer he had purchased a few days prior to the fire,²⁴ and used, maybe, two times.²⁵

Hamilton Beach admits that its expert was able to create a detailed report based on the evidence preserved from the scene.²⁶ And that expert was, from the evidence analyzed, able to form an opinion that the garment steamer was not responsible for the fire. It is not the Defendant's burden to prove what caused the fire in this case, it is the Plaintiffs'.

**II. EVEN IF THE COURT FINDS THAT SPOLIATION HAS OCCURRED,
DISMISSAL IS NOT THE APPROPRIATE SANCTION.**

Because a party's failure to preserve relevant evidence falls "along a continuum of fault—ranging from innocence through the degrees of negligence to intentionality," the Sixth Circuit has held that the severity of a Court's sanction for spoliation must also vary. *In Re: Black Diamond*, 514 B.R. 242. Additionally, the goal in imposing sanctions is to punish the spoliating party and to put the other party in the position it would have been in without the spoliation. *Id.*

Dismissal of the Plaintiff's claim is "the most severe sanction possible," and the Sixth Circuit disfavors imposing this ultimate sanction. *Id.* Indeed, "dismissal sanctions are rarely considered appropriate and are generally only justified in circumstances where the responsible party exhibits bad faith." *Id.* In the *Black Diamond* case, the Court found that even though the responsible parties intentionally shredded numerous documents, "the sheer absence of any evidence indicating that the parties knew they were destroying important evidence for the litigation...counsels against finding bad faith on the part of any defendants." *Id.* at 241.

²³ *Id.* at 58.

²⁴ *Id.* at 31.

²⁵ *Id.* at 44.

²⁶ See Defendant's Motion to Dismiss, at page 10.

The Defendant points to a Ninth Circuit case involving State Farm to support its Motion for the sanction of dismissal. The Defendant admits that the cited authority is not binding. And it is not binding on this Court for good reason. The decision was based on law and established precedent from a completely separate jurisdiction.

Further to this point, even in Defendant's Motion to Dismiss, it cites how large an organization State Farm is. Indeed, State Farm is an enormous company, employing nearly 70,000 employees and handling nearly 39,000 claims a day.²⁷ Here, however, its sheer size works to its disadvantage. It would seem that a smaller entity would be more capable of disseminating information throughout its entire organization, while a massive company such as State Farm, may not as easily circulate knowledge and information. The case cited in the Defendant's Motion to Dismiss involves a house fire that occurred in 2005 in Arizona, involving different employees, different agents and different experts.

**III. IF THE COURT DETERMINES THAT A SANCTION IS NECESSARY, A
REBUTTABLE INSTRUCTION TO THE JURY IS APPROPRIATE.**

In *Louisville Gas & Electric Company v. Continental Field Systems, Inc.*, the Court found that LG&E breached a duty to preserve evidence. 420 F.Supp.2d 764 at 768. LG&E collected two pieces of a broken fan shaft (the component at issue in the case), and delivered one piece to its expert, who, after completing its testing, misplaced the evidence. *Id.* at 766. The other piece was left outside to rust. *Id.* Even here, where the other party did not even have the opportunity to inspect and/or test the product at issue, the Court found that dismissal of LG&E's case would be too severe a sanction, noting that the "acts were not purposeful and [had] uncertain importance to the case." *Id.* at 768. Instead, the Court determined that a rebuttable jury instruction was appropriate. *Id.*

²⁷ State Farm Company Profile, attached to Defendant's Motion to Dismiss as Exhibit F, attached hereto as Exhibit L.

In the *Black Diamond* case, the Court found that a permissive adverse inference jury instruction was an appropriate sanction. It further held that the sanction of permissive adverse jury instruction is “fair to both parties because it leaves the ultimate determination of the merits of each claim to the jury. The jury is equipped to reason whether the absence of [evidence] reveals, more likely than not, that [the evidence would’ve been relevant to the other party’s defense].” *In Re: Black Diamond*, 514 B.R. at 243.

IV. IF THE COURT DETERMINES THAT DISMISSAL OF STATE FARM’S CLAIM IS WARRANTED, THE CLAIM OF MAXWELL FOR HIS DEDUCTIBLE SHOULD REMAIN.

The Defendants have presented no evidence that would prove, or even suggest, that Maxwell contributed to any alleged spoliation of evidence. As such, State Farm would, at the very minimum, urge the Court to deny the Defendant’s Motion in its entirety as it pertains to Maxwell.

CONCLUSION

For the foregoing reasons, the Plaintiffs respectfully request that the Court deny the Defendant’s Motion to Dismiss in its entirety.

Respectfully submitted,

DILBECK & MYERS, PLLC

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Counsel for Plaintiffs, State Farm Fire and Casualty Company and Michael Maxwell

CERTIFICATE

I hereby certify that on the 9th day of January, 2018, I filed the foregoing using the Court's CM/ECF filing system, which will send notice to the following counsel of record:

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/s/ Aletha N. Thomas
ALETHA N. THOMAS

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
PADUCAH DIVISION

ELECTRONICALLY FILED

STATE FARM FIRE AND CASUALTY)
COMPANY and MICHAEL MAXWELL)

PLAINTIFFS)

v.)

HAMILTON BEACH BRANDS, INC., et al)

DEFENDANTS.)

Civil Action No.: 5:16-cv-00153

**DEFENDANT HAMILTON BEACH BRANDS, INC.’S REPLY MEMORANDUM IN
FURTHER SUPPORT OF ITS MOTION TO DISMISS THIS LITIGATION AS A
SANCTION FOR PLAINTIFFS’ SPOILIATION**

Defendant, Hamilton Beach Brands, Inc. (“Hamilton Beach”), by counsel, and for its Reply Memorandum in Further Support of Its Motion to Dismiss this Litigation as a Sanction for Plaintiffs’, State Farm Fire and Casualty Company and Michael Maxwell (“Maxwell”; collectively, “State Farm”), Spoliation (“Motion”), states as follows:

ARGUMENT

I. STATE FARM COMMITTED SPOILIATION

Spoliation is “the destruction or material alteration of evidence or . . . the failure to preserve property for another’s use as evidence in pending or reasonably foreseeable litigation.” *First Tech. Capital, Inc. v. JPMorgan Chase Bank, N.A.*, No. 5:12-CV-289-REW, 2014 WL 12648548 at *3 (E.D. Ky. Aug. 21, 2014) (quoting *Silvestri v. General Motors Corp.*, 271 F.3d 583, 590 (4th Cir. 2011)). A district court may sanction a litigant for spoliation if three conditions are met: (1) the party having control over the evidence had an obligation to preserve it

at the time it was destroyed; (2) the evidence was destroyed with a culpable state of mind; and (3) the destroyed evidence was relevant. *Beaven v. U.S. Dept. of Justice*, 622 F.3d 540, 554 (6th Cir. 2010) (internal citations omitted). Since “State Farm concedes that it had a duty to preserve evidence” only the second and third elements are discussed below.¹

A. STATE FARM HAD A CULPABLE STATE OF MIND.

The evidence establishes that State Farm “destroyed the evidence knowingly. . . .” *See Byrd v. Alpha All. Ins. Corp.*, 518 Fed. Appx. 380, 384 (6th Cir. 2013). State Farm’s attempt to deflect blame only highlights its culpability. In its effort to defend its actions, State Farm agrees that immediately upon learning about the Fire,² it hired two experts to examine the Fire scene in order to determine causation.³ In the initial report, the cause of the Fire remained “undertermined.”⁴ Nevertheless, State Farm claims that its experts were still able to collect all present items that could have been the cause of the Fire.⁵ Notwithstanding that the foregoing two statements appear contradictory; State Farm cleared the scene for destruction. State Farm argues that because it “narrowed the origin of the fire to one wall of the laundry room, and collected all of the objects that were found there” the destroyed evidence is irrelevant. According to State Farm, “[i]f there were to have been an alternate theory as to causation, State Farm would certainly have explored that theory.” Thus, State Farm claims that it did not knowingly or negligently destroy evidence.⁶

¹ Plaintiffs’ Response to Defendant Hamilton Beach Brands, Inc.’s Motion to Dismiss (“Response”), PageID #212.

² All capitalized terms not otherwise defined here shall take on the definitions included in the Motion.

³ *See* Response at PageID #210

⁴ Response at PageID #210

⁵ *See* Response at PageID #210.

⁶ Response at PageID #214.

The fallacy of State Farm’s argument is that discovery and spoliation exist to “preserve the integrity of the judicial process in order to retain confidence that the process works to uncover the truth.” *Projects Management Co. v. Dyncorp Intern. LLC*, 734 F.3d 366, 376 (4th Cir. 2013) (quoting *Silvestri*, 271 F.3d at 590) (internal quotations omitted). None of the determinations State Farm allegedly made by viewing the Fire, can be independently verified by Hamilton Beach – not through video, photographic,⁷ or physical evidence. Instead, the only remaining evidence of the Fire is the items that State Farm deemed important.⁸ By destroying potentially exculpatory evidence, State Farm increases the likelihood of recovering from its target. As the target defendant in this case, Hamilton Beach should not be required to rely on State Farm to preserve only that evidence that State Farm deems determinative of causation. In fact, “[t]o require [Hamilton Beach] to rely on the evidence collected by [State Farm’s] experts in lieu of what it could have collected would” be improper. *Silvestri*, 271 F.3d at 594.⁹

Additionally, State Farm is a party, not the arbiter of fact or the final decision maker regarding causation. State Farm was only able to assess potential subrogation claims and allegedly eliminate theories of causation because it had a chance to examine the undisturbed Fire scene.¹⁰ During that investigation, State Farm was not a disinterested entity but, rather, knew that it was going to pay money to its insured as required by its policy of insurance. State Farm has every economic incentive to attempt to recover these funds from any entity against whom it

⁷ The pictures State Farm produced do not capture all the evidence necessary for Hamilton Beach to identify the cause of the Fire and are not sufficiently detailed for Hamilton Beach to independently verify many of State Farm’s claims.

⁸ Expert Report of Michael G. Sandford (“Sandford Report”) at pp. 1-2, attached as Exhibit I to the Motion.

⁹ This District Court has previously cited to *Silvestri* as support for the dismissal of plaintiff’s claims as a sanction for spoliation. *Rhodes Risinger Bros.*, 2016 WL 4536443 at *5 (quoting *Silvestri*).

¹⁰ See 30(B)(6) Deposition of State Farm (“State Farm Depo.”), August 4, 2017, pp. 40-43, a copy of the relevant portions of the State Farm Depo. is attached as Exhibit G.

might make a colorable claim.¹¹ Meanwhile, Hamilton Beach has a specific and focused interest in making sure that it is not blamed or found liable for a fire and consequent damages for which it was not responsible. Likewise, for any additional causes that would not give rise to a subrogation claim, State Farm would also be disinterested in exploring those theories of causation.

State Farm's slippery slope argument is also erroneous.¹² Here, State Farm claims that its experts focused on the steamer on the very day that they examined the Fire scene. Nothing prevented State Farm from contacting the potential defendant without hours of product identification. All of these alleged problems could have been alleviated if State Farm completed one simple step – provided Hamilton Beach with proper and timely notice of the Fire and potential litigation. Here, notwithstanding that State Farm knew the product it believed was at fault, it did not provide any notice until approximately six months after the evidence was destroyed. *See Silvestri*, 271 F.3d at 594 (finding that the delay in sending notice to an opposing party of the claim may reveal an additional level of culpability). Even if State Farm could not have kept the fire scene intact indefinitely, State Farm still “should have notified [Hamilton Beach] and given [it] a time certain within which to complete [its] own investigation.”¹³ *Barton Brands, Ltd. v. O'Brien & Gere, Inc. of North America*, CIV. A. 307-CV-78-H, 2009 WL 1767386, at *3 (W.D. Ky. June 22, 2009); *see Silvestri*, 271 F.3d at 591 (“If a party cannot fulfill this duty to preserve [evidence] ... he still has an obligation to give the opposing party notice of

¹¹ Response at PageID #213 (State Farm certainly would have explored any other responsible entity or entities).

¹² *See* Response at PageID #4 (“one must ask where that duty ends.”).

¹³ Regardless of whether State Farm believed the product was a Sunbeam, Wal-Mart or Hamilton Beach product, State Farm did not attempt to notify any entity until over eight months after the Fire. Response at PageID #211.

access to the evidence or of the possible destruction of the evidence”). Unfortunately, Hamilton Beach was never provided this opportunity.

Hamilton Beach should be provided with a fair opportunity to defend itself against State Farm’s claims. State Farm is economically motivated to solely protect its own interests and State Farm clearly needs a harsh disincentive from further destroying evidence in its possession. State Farm prevented Hamilton Beach from examining the scene of the Fire, including multiple potential alternative causes, simply because State Farm decided that it could not be bothered to preserve the relevant evidence. There is no question that State Farm was aware of the Fire scene’s significance to this litigation and destruction of any evidence of the “fire’s cause . . . satisfies the requisite culpabil[e]” state of mind to satisfy this element of spoliation. *Byrd*, 518 Fed. Appx. at 385.

B. THE FIRE SCENE, AND ITEMS CONTAINED THEREIN, WERE RELEVANT.

State Farm’s argument that the evidence it destroyed is not relevant is unpersuasive. Missing evidence is relevant if “a reasonable trier of fact could find that it would support [a] claim or defense.” *Beaven*, 622 F.3d at 553. In product liability cases such as this, “evidence which might itself have been, or shed light upon, an alternative cause of [the Fire]” is highly relevant. *Allstate Ins. Co. v. Sunbeam Corp.*, 53 F.3d 804, 807 (7th Cir. 1995). Although the degree to which the destroyed evidence may have been useful to Hamilton Beach “can now never be known with certainty . . . evidence that would tend to prove or disprove [State Farm’s] theories of causation” was important to Hamilton Beach’s ability to defend State Farm’s claims. *See Arch Ins. Co. v. Broan-Nutone, LLC*, CIV.A. 09-319-JBC, 2011 WL 3880514, at *4 (E.D. Ky. Aug. 31, 2011); *see Barton Brands*, 2009 WL 1767386 at *3 (evidence was relevant if it would assist the defendant’s ability “to determine the cause of the fire and to put on a defense”); *see Rhodes Risinger Bros. Transfer, Inc. v. Intermodal Repair Services, Inc.*,

312CV00863CRSCHL, 2016 WL 4536443, at *5 (W.D. Ky. Aug. 30, 2016) (the evidence is relevant because if defendant had access to all parts of the vehicle “it could use the evidence to strengthen its defense”).

Without having the opportunity to conduct an inspection of the unaltered Fire site and collect other items, it is nearly impossible to determine or postulate about what the alternative cause of the Fire might have been.¹⁴ State Farm failed to adequately document the Fire scene or preserve items, such as the dryer and other circuit breakers, which could have enabled Hamilton Beach’s expert to identify potential alternative causes of the Fire.¹⁵ Even the Steamer, the most critical piece of evidence, is missing significant components such as the metal pump motor housing.¹⁶ Moreover, none of State Farm’s photographs of the Fire adequately depict the scene or show the orientation or location of the items contained in the laundry room.¹⁷ Hamilton Beach will, therefore, be unable to point to or identify other potential sources of the Fire, which significantly limits Hamilton Beach’s ability to defend itself. *See Silvestri*, 271 F.3d at 594 (finding that an opposing party’s expert’s testing and conclusions do not eliminate the importance that a defendant is able to do its own evaluation or testing).

State Farm responds to this argument by posing certain questions to the Court to attack the alleged overbreadth of the Motion. Specifically, State Farm asks: did the obligation run to “the entire laundry room, including the washer and dryer”, did “the duty extend to . . . all associated appliances”, or was “State Farm . . . under an obligation to preserve all of the wiring in the house?” These questions are not hypotheticals that should be asked in the middle of litigation. Instead, the clear answer to all of these questions is yes. To the extent State Farm

¹⁴ Sandford Report at p. 18, attached as Exhibit I to the Motion.

¹⁵ Sandford Report at p. 18, attached as Exhibit I to the Motion.

¹⁶ Sandford Report at p. 12, attached as Exhibit I to the Motion.

¹⁷ Sandford Report at p. 12, attached as Exhibit I to the Motion.

contemplated litigation related to this Fire, any items relevant to that Fire, including the scene and all potential sources or causes of the Fire, should have been preserved. State Farm, however, clearly views its obligation as only requiring it to maintain evidence that supports its version of causation. This is an inaccurate view of relevance and State Farm's obligation to preserve evidence.

II. DISMISSAL IS THE APPROPRIATE SANCTION FOR STATE FARM'S ACTIONS

Dismissal of this litigation as the sanction for State Farm's actions "serve[s] both fairness and punitive functions." *See Byrd*, 518 Fed. Appx. at 385 (quoting *Broan-Nutone*, 509 Fed. Appx. at 453) (internal quotations omitted). This dismissal will (1) deter State Farm from engaging in spoliation in the future; (2) eliminate the risk of an erroneous judgment; and (3) is the only way to restore the prejudiced party, Hamilton Beach, to the position it should have "been in absent the wrongful destruction of evidence by the opposing party." *BancorpSouth Bank v. Herter*, 643 F. Supp. 2d 1041, 1059–60 (W.D. Tenn. 2009). Courts have stated that because "physical evidence often is the most eloquent impartial 'witness' to what really occurred" and "the resulting unfairness inherent in allowing a party to destroy evidence and then to benefit from that conduct or omission" is high, a lower threshold of culpability will justify the dismissal of litigation under these circumstances. *Silvestri*, 271 F.3d at 593 (quoting *Kirkland v. New York City Housing Auth.*, 236 A.D.2d 170, 173 (N.Y. App. Div. 1997)) (internal quotations omitted); *see Rhodes Risinger Bros.*, 2016 WL 4536443 at *5 ("the Court finds that the substantial prejudice . . . resulting from [the party's] failure to keep critical evidence provides additional and alternative grounds for a grant of summary judgment."). Under the facts presented in this case, the appropriate sanction is dismissal. *See Ohio Cas. Co. v. Cox*, CIV.A. 11-334-HRW, 2014 WL 5106333, at *6 (E.D. Ky. Sept. 25, 2014) (quoting *Adkins v. Wolever*,

554 F.3d 650, 652 (6th Cir. 2009)) (“A district court has discretion in fashioning an appropriate spoliation remedy, ‘including dismissing a case’”).

The prejudice suffered by Hamilton Beach is only emphasized by State Farm’s Response, wherein State Farm defends its actions by referring to information that State Farm discovered by viewing the Fire scene; information that Hamilton Beach has no way of independently verifying because it was not given the same opportunity. *King v. American Power Conversion Corp.*, 181 Fed. Appx. 373, 378 (4th Cir. 2006) (finding dismissal was appropriate because the defendant was “left without any physical evidence and must rely primarily on [plaintiff’s expert] report which itself indicated that further testing was required before any definitive conclusion could be formed.”). Quite simply, “[n]ot only is the evidence incomplete, but it is also limited to that which [State Farm] chose to preserve, and [Hamilton Beach] cannot conduct an independent investigation of the [F]ire scene. The spoliation therefore threatens to interfere with the rightful decision of the case by preventing full development of the alternative theories of causation.” *State Farm Fire & Cas. Co. v. Broan Mfg. Co.*, 523 F. Supp. 2d 992, 997 (D. Ariz. 2007); see *Allstate*, 53 F.3d at 807 (because Allstate destroyed the fire scene, the manufacturer was “deprived of the ability to establish its case.”). In this case, Hamilton Beach has been significantly obstructed in its ability to defend this litigation because State Farm did not uphold its obligations and destroyed relevant and potentially exculpatory evidence.

Additionally, State Farm does not appear to take its obligations seriously. State Farm has no remorse and refuses to accept any culpability for its behavior. State Farm claims innocence because it is a large company and “its sheer size works to its disadvantage.”¹⁸ It also uses the fact that it has no policy to govern its employees’ retention obligation as a sword for why it

¹⁸ Response at PageID #216.

should not be sanctioned for its behavior. State Farm's conclusion, however, motivates all of the wrong results. If a company that handles 39,000 claims a day believes that it is under no obligation to maintain evidence that does not support its theory of causation, what is the purpose of the theory of spoliation. If anything, it is a company like State Farm that should have a policy in place for this type of subrogation case as it encounters this situation on a regular basis. *See Meany v. American Casualty Company of Reading, Pennsylvania*, 3:11-CV-401-S, 2014 WL 12725815, at *6 (W.D. Ky. Mar. 24, 2014) (certain behavior should be deterred when the party "is an international company" and it "is not the first time it has been sued, and probably will not be the last."). Rather than decrease State Farm's culpability, the foregoing merely shows that State Farm has an utter disregard for the manner in which litigation and discovery are supposed to proceed. Accordingly, dismissal of this litigation serves the appropriate deterrent and punitive functions. *See Klipsch Group, Inc. v. ePRO E-Commerce Limited*, 16-3637-CV, 2018 WL 542338, at *7 (2d Cir. Jan. 25, 2018) ("the integrity of our civil litigation process requires that the parties before us, although adversarial to one another, carry out their duties to maintain and disclose the relevant information in their possession in good faith.").

The conclusion that the dismissal of this litigation is warranted should not be altered by the opinion of *Louisville Gas and Elec. Co. v. Continental Field Systems, Inc.*, 420 F. Supp. 2d 764, 766 (W.D. Ky. 2005).¹⁹ In this case, plaintiff's expert "accidentally discarded" certain relevant evidence. *Id.* The court found, therefore, that because the party could not be held responsible for its expert's accidental loss, the dismissal of the case was inappropriate. *Id.* at 768. State Farm's behavior is much more culpable than that of the plaintiff in *Louisville Gas* where a third-party expert failed to retain certain relevant evidence. In the present case, State

¹⁹ Response at PageID #216.

Farm: (1) approved of the destruction of the Fire scene; (2) admits that it has no retention policy; (3) failed to give Hamilton Beach notice of the potential claim until the scene was destroyed; (4) has been sanctioned previously for similar behavior; and (5) does not appear to plan to alter its future behavior. These facts make this case distinct from the singular mistake that occurred in *Louisville Gas*. Instead, the Court should follow the logic of the courts in *Silvestri*, *Broan* and *Allstate* and grant Hamilton Beach's request for dismissal.

CONCLUSION

For the foregoing reasons, the Court should grant Hamilton Beach's Motion to impose spoliation sanctions against State Farm and dismiss this litigation.

Respectfully submitted,

/s/ Emma R. Wolfe

David A. Owen

Emma R. Wolfe

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COUNSEL FOR DEFENDANT

HAMILTON BEACH BRANDS, INC.

CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of January, 2018, I electronically filed the foregoing with the clerk of the Court by using the CM/ECF which will send notice of filing to the following counsel of record:

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/s/ Emma R. Wolfe
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LEXINGTON 38442-30 61549v6

COMMONWEALTH OF KENTUCKY
CALLOWAY CIRCUIT COURT
NO. 16-CI-00289

STATE FARM FIRE AND CASUALTY COMPANY, and
MICHAEL MAXWELL

PLAINTIFFS

v.

COMPLAINT

SUNBEAM PRODUCTS, INC.
2381 EXECUTIVE CENTER DRIVE
BOCA RATON, FL 33431

DEFENDANTS

Registered Agent: CT CORPORATION SYSTEM
1200 S. PINE ISLAND ROAD
PLANTATION, FL 33324

FILE AND NOTED OF RECORD
THIS 9-16 20 16
CALLOWAY CIRCUIT/DISTRICT
BY: OSK D.C.

HAMILTON BEACH BRANDS, INC.
4421 WATERFRONT DRIVE
GLEN ALLEN, VA 23060

Registered Agent: CORPORATION SERVICE COMPANY
BANK OF AMERICA CENTER
16TH FLOOR, 1111 EAST MAIN STREET
RICHMOND, VA 23219

WALMART STORES, INC.
702 SW 8TH STREET
BENTONVILLE, AR 72716

Registered Agent: CT CORPORATION SYSTEM
306 W MAIN STREET
SUITE 512
FRANKFORT, KY 40601

A TRUE COPY ATTEST:
LINDA AVERY, CLERK
CALLOWAY CIRCUIT COURT
BY: [Signature] D.C.

* * * * *

The Plaintiffs, State Farm Fire and Casualty Company (hereinafter "State Farm") and Michael Maxwell (hereinafter "Maxwell") by and through counsel, for their Complaint against the Defendants, Sunbeam Products, Inc. (hereinafter "Sunbeam"), Hamilton Beach Brands, Inc. (hereinafter "Hamilton Beach") and Walmart Stores, Inc. (hereinafter "Walmart") state as follows:

1. At all times material hereto, State Farm is and was a corporation existing and doing business pursuant to the laws of the Commonwealth of Kentucky and was engaged in, among other things, providing homeowners insurance to its customers.

2. At all times material hereto, State Farm had a policy of homeowners insurance in force with Maxwell, insuring his residence and contents located at the aforesaid address against certain losses and damages.

3. At all times material hereto, Maxwell is and was a resident of Calloway County, Kentucky and, at all times pertinent herein, was the owner and resident of a house and realty located at 160 Wells Purdom Drive, Almo, Kentucky 42020-9240.

4. At all times material hereto, Sunbeam is and was a corporation organized pursuant to the laws of the State of Florida, having its principal place of business located at 2381 Executive Center Drive, Boca Raton, Florida 33431, and is a business engaged in, among other things, the design, manufacture, and sale of household appliances. Sunbeam's registered agent is CT Corporation System, 1200 S. Pine Island Road, Plantation, Florida 33324. Summons should issue upon Sunbeams' registered agent via the Kentucky Secretary of State.

5. At all times material hereto, Sunbeam was, within the meaning of KRS § 454.210, transacting business in the Commonwealth of Kentucky so as to make it amenable to service of process by service upon the Secretary of State in accordance with the provisions of KRS § 454.210. This Court therefore has personal jurisdiction over Sunbeam.

6. At all times material hereto, Hamilton Beach is and was a corporation organized pursuant to the laws of the State of Virginia, having its principal place of business located at 4421 Waterfront Drive, Glen Allen, Virginia 23060, and is a business engaged in, among other things, the design, manufacture, and sale of household appliances. Hamilton Beach's registered

agent is Corporation Service Company, Bank of America Center, 16th Floor, 1111 East Main Street, Richmond, VA 23219. Summons should issue upon Hamilton Beach's registered agent via the Kentucky Secretary of State.

7. At all times material hereto, Hamilton Beach was, within the meaning of KRS § 454.210, transacting business in the Commonwealth of Kentucky so as to make it amenable to service of process by service upon the Secretary of State in accordance with the provisions of KRS § 454.210. This Court therefore has personal jurisdiction over Hamilton Beach.

8. At all times material hereto, Walmart is and was a corporation organized pursuant to the laws of the State of Arkansas, having its principal place of business located at 702 SW 8th Street, Bentonville, AR 72716, and is a business engaged in, among other things, the sale of retail merchandise, including small household appliances. Walmart's registered agent is CT Corporation System, 306 W Main Street, Suite 512, Frankfort, Kentucky 40601. Summons should issue upon Walmart's registered agent via U.S. Certified Mail, Return Receipt Requested.

9. At all times material hereto, Walmart was, within the meaning of KRS § 454.210, transacting business in the Commonwealth of Kentucky and this Court therefore has personal jurisdiction over Walmart.

10. In the course of their business, Sunbeam and/or Hamilton Beach placed into the stream of commerce a Rival Brand hand held garment steamer, Model 11570, (hereinafter "subject steamer") which they expected and intended to be purchased by consumers, such as Maxwell.

11. There is contention as to which company manufactured and distributed the subject steamer.

12. Maxwell, while residing in the Commonwealth of Kentucky, purchased the subject steamer from a local Walmart on or about August 25, 2014.

13. The "Rival" brand name is licensed by Walmart for some of their store brand appliances, including the subject steamer.

14. The subject steamer was purchased by Maxwell from Walmart in an undamaged condition.

15. Maxwell used the subject steamer for two weeks in a reasonably foreseeable and anticipated manner.

16. On or about September 6, 2014, while the steamer was shut off, it was energized and connected to an electrical outlet in Maxwell's home when it caught on fire, filling the home with smoke and damaging several areas in and around the laundry room where the electrical socket was placed.

17. As a direct and proximate result of the aforementioned fire, Maxwell's real property and/or personal property was damaged.

18. As a direct and proximate result of the aforementioned fire, State Farm was required by the terms of the aforementioned policy to pay for repair, restoration, debris removal, replacement, demolition and/or other expenses for the losses sustained to Maxwell's real and personal property caused by the aforementioned fire.

19. As a direct and proximate result of the aforementioned fire, State Farm was required by the terms of its policy of insurance with Maxwell to pay to or on behalf of Maxwell, \$114,575.22.

20. As a direct and proximate result of the aforementioned fire, Maxwell incurred \$4,587.00 in deductible expenses.

COUNT I – STRICT LIABILITY / DEFECTIVE DESIGN AND MANUFACTURE

21. The Plaintiffs incorporate by reference Paragraphs 1 through 20 as if restated fully herein.

22. At all times material hereto, the subject steamer manufactured by Sunbeam and/or Hamilton Beach and purchased at Walmart was in a defective condition and because of its defect was unreasonably dangerous to persons and/or property of persons, including Maxwell, who might reasonably expect to use, or be affected by it.

23. At all times material hereto, the subject steamer was expected to and did reach the consumer without substantial change and/or alteration and was used in accordance with the purpose for which it was intended.

24. Sunbeam and/or Hamilton Beach are strictly liable for the damages caused by the subject steamer and incurred by the Plaintiffs.

25. As a direct and proximate result of the defective and unreasonably dangerous subject steamer, the Plaintiffs sustained damages, as more fully set forth above.

COUNT II – STRICT LIABILITY – FAILURE TO WARN

26. The Plaintiffs incorporate by reference Paragraphs 1 through 25 as if restated fully herein.

27. At all times material hereto, the subject steamer was unreasonably dangerous at the time of sale when used as reasonably anticipated without knowledge of its characteristics.

28. At all times material hereto, the Defendants failed to give adequate warning of the dangerous condition of the subject steamer.

29. At all times material hereto, the subject steamer was used by Maxwell in a reasonably foreseeable manner.

30. As a direct and proximate result of the Defendants' failure to adequately warn and the resulting fire, the Plaintiff sustained damages, as more fully set forth above, and the Defendants are strictly liable for same.

COUNT III – BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY

31. The Plaintiffs incorporate by reference Paragraphs 1 through 30 as if restated fully herein.

32. At all times material hereto, when the subject steamer was manufactured by Sunbeam and/or Hamilton Beach and sold by Walmart, it was not fit for one of its ordinary uses and intended purposes.

33. At all times material hereto, Maxwell used the subject steamer for such a purpose.

34. The Defendants breached their implied warranties of merchantability and said breaches were the proximate cause of the Plaintiffs' damages as described more fully above.

COUNT IV – BREACH OF IMPLIED WARRANTY OF FITNESS

35. The Plaintiffs incorporate by reference Paragraphs 1 through 34 as if restated fully herein.

36. At all times material hereto the Defendants knew or should have known of the use for which the subject steamer was purchased by Maxwell.

37. Maxwell or someone working on his behalf or with similarly situated end user in mind relied on the Defendants' judgments that the subject steamer was fit for such use.

38. When the subject steamer was manufactured by Sunbeam and/or Hamilton Beach, and sold by Walmart, it was not fit for such use.

39. At all times material hereto the Defendants breached their implied warranties of fitness for a particular purpose and said breaches were the direct and proximate cause of the Plaintiffs' damages as described more fully above.

COUNT V – NEGLIGENT DESIGN, MANUFACTURE, AND FAILURE TO WARN

40. The Plaintiffs incorporate by reference Paragraphs 1 through 39 as if restated fully herein.

41. At all times material hereto, Sunbeam and/or Hamilton Beach designed and manufactured the subject steamer in such a negligent fashion as to make it unsafe, defective, and prone to cause a fire.

42. At all times material hereto, Sunbeam and/or Hamilton Beach failed to use ordinary care to design and manufacture the subject furnace to be reasonably safe, and failed to adequately warn of the risk of harm from the defects contained within the subject steamer or the hazards posed by the subject steamer.

43. As a direct and proximate result of the aforementioned failures, the Plaintiffs sustained damages, as more fully set forth above.

COUNT VI – BREACH OF EXPRESS WARRANTY

44. The Plaintiffs incorporate by reference Paragraphs 1 through 43 as if restated fully herein.

45. At all times material hereto, the subject steamer was manufactured by Sunbeam and/or Hamilton Beach.

46. At all times material hereto, the subject steamer, manufactured by Sunbeam and/or Hamilton Beach, was defective and because of its defect was unreasonably dangerous to persons and/or property of persons, including Maxwell, who might reasonably expect to use or

be affected by it.

47. At all times material hereto, the subject steamer was expected to and did reach the consumer without substantial change and/or alteration and was used in accordance with the purpose for which it was intended.

48. Sunbeam and/or Hamilton Beach are strictly liable for the damage to and caused by the subject steamer, as a direct and proximate result of the aforementioned fire and paid by State Farm to or on behalf of Maxwell.

49. As a direct and proximate result of the defective and unreasonably dangerous manufacture of the subject hand steamer, the Plaintiff sustained the aforesaid damages.

50. The subject hand steamer, manufactured by Sunbeam and/or Hamilton Beach, at the time of the manufacture, use, and resulting damages, was not merchantable and was not fit or safe for its ordinary use and intended purpose.

51. At all times material hereto, Sunbeam and/or Hamilton Beach breached the warranties of merchantability and fitness for the particular purpose for which this product was intended and said breach was the proximate cause of the aforementioned damages of the Plaintiffs.

52. As a direct and proximate result of one or more of the aforementioned breaches of duty, warranty, or statute, the Plaintiffs suffered damages as described more fully above.

53. As the aforementioned fire occurred in Calloway County, Kentucky, this Court is the proper venue to hear this claim.

54. Pursuant to its equitable right of subrogation, State Farm is entitled to recover from the Defendants \$114,575.22, an amount in excess of the minimum jurisdiction of this Court.

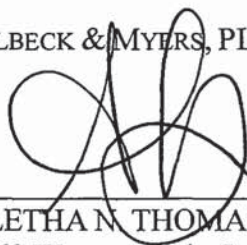
55. Maxwell is entitled to recover \$4,587.00 from the Defendants.

WHEREFORE, the Plaintiffs, State Farm Fire and Casualty Company and Michael Maxwell, respectfully demand as follows:

1. Judgment for State Farm against the Defendants in the amount of \$114,575.22;
2. Judgment for Michael Maxwell against the Defendants in the amount of \$4,587.00;
3. Plaintiffs' costs herein expended, including a reasonable attorney's fee; and
4. Any and all other relief to which the Plaintiffs may be deemed entitled.

Respectfully submitted,

DILBECK & MYERS, PLLC



ALETHA N. THOMAS
4169 Westport Rd., Ste. 103
Louisville, KY 40207
Telephone: (502) 595-6500
Facsimile: (502) 595-6504
E-mail: aletha@dilbeckandmyers.com
Counsel for Plaintiffs



Alison Lundergan Grimes
Secretary of State

**Commonwealth of Kentucky
Office of the Secretary of State**

Summons Division
PO BOX 718
FRANKFORT, KY 40602-0718

August 24, 2016

HAMILTON BEACH BRANDS, INC.
SERVE: CORPORATION SERVICE COMPANY/
BANK OF AMERICA CENTER
1111 EAST MAIN STREET, 16TH FLOOR
RICHMOND, VA 23219

FROM: SUMMONS DIVISION
SECRETARY OF STATE

RE: CASE NO: 16-CI-00289

COURT: Circuit Court Clerk
Calloway County
312 N. 4th St.
Murray, KY 42071
Phone: (270) 753-2714

Legal action has been filed against you in the captioned case. As provided under Kentucky law, the legal documents are enclosed.

Questions regarding this action should be addressed to:

- (1) Your attorney, or**
- (2) The attorney filing this suit whose name should appear on the last page of the complaint, or**
- (3) The court or administrative agency in which the suit is filed at the clerk's number printed above.**

The Kentucky Secretary of State has NO POWER to make a legal disposition of this case. Your responsive pleadings should be filed with the clerk of the court or agency where the suit is filed and served directly on your opposing party.

No copy of future pleadings need be sent to this office unless you wish us to serve the pleading under a particular statute or rule and pay for said service.

AOC-105 Rev. 1-07 Page 1 of 1 Commonwealth of Kentucky Court of Justice www.courts.ky.gov CR 4.02; CR Official Form 1	 CIVIL SUMMONS	Case No. <u>16-CI-00289</u> Court <input checked="" type="checkbox"/> Circuit <input type="checkbox"/> District County <u>Calloway</u>
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PLAINTIFF

STATE FARM FIRE AND CASUALTY COMPANY
AND
MICHAEL MAXWELL

RECEIVED

AUG 19 2016

VS.

DEFENDANT

HAMILTON BEACH BRANDS, INC.
serve: CORPORATION SERVICE COMPANY/BANK OF AMERICA CENTER
1111 East Main Street, 16th Floor
Richmond Virginia 23219

SECRETARY OF STATE

Service of Process Agent for Defendant:
KENTUCKY SECRETARY OF STATE

THE COMMONWEALTH OF KENTUCKY
TO THE ABOVE-NAMED DEFENDANT(S):

You are hereby notified a legal action has been filed against you in this Court demanding relief as shown on the document delivered to you with this Summons. Unless a written defense is made by you or by an attorney on your behalf within 20 days following the day this paper is delivered to you, judgment by default may be taken against you for the relief demanded in the attached Complaint.

The name(s) and address(es) of the party or parties demanding relief against you are shown on the document delivered to you with this Summons.

Date: 8-16, 2 16 By: [Signature] Clerk
[Signature] D.C.

Proof of Service	
This Summons was served by delivering a true copy and the Complaint (or other initiating document) to:	

this ____ day of _____, 2 ____.	
Served by: _____	_____ Title



Alison Lundergan Grimes
Secretary of State

Commonwealth of Kentucky
Office of the Secretary of State

Summons Division
PO BOX 718
FRANKFORT, KY 40602-0718

August 24, 2016

SUNBEAM PRODUCTS, INC
SERVE: CT CORPORATION SYSTEM
1200 SOUTH PINE ISLAND ROAD
PLANTATION, FL 33324

FROM: SUMMONS DIVISION
SECRETARY OF STATE

RE: CASE NO: 16-CI-00289

COURT: Circuit Court Clerk
Calloway County
312 N. 4th St.
Murray, KY 42071
Phone: (270) 753-2714

Legal action has been filed against you in the captioned case. As provided under Kentucky law, the legal documents are enclosed.

Questions regarding this action should be addressed to:

- (1) Your attorney, or**
- (2) The attorney filing this suit whose name should appear on the last page of the complaint, or**
- (3) The court or administrative agency in which the suit is filed at the clerk's number printed above.**

The Kentucky Secretary of State has NO POWER to make a legal disposition of this case. Your responsive pleadings should be filed with the clerk of the court or agency where the suit is filed and served directly on your opposing party.

No copy of future pleadings need be sent to this office unless you wish us to serve the pleading under a particular statute or rule and pay for said service.

AOC-105 Rev. 1-07 Page 1 of 1 Commonwealth of Kentucky Court of Justice www.courts.ky.gov CR 4.02; CR Official Form 1	 CIVIL SUMMONS	Case No. <u>16 CI-00289</u> Court <input checked="" type="checkbox"/> Circuit <input type="checkbox"/> District County <u>Calloway</u>
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PLAINTIFF

STATE FARM FIRE AND CASUALTY COMPANY
AND
MICHAEL MAXWELL

RECEIVED

AUG 19 2016

VS.

SECRETARY OF STATE

DEFENDANT

SUNBEAM PRODUCTS, INC
serve: CT CORPORATION SYSTEM
1200 South Pine Island Road
Plantation Florida 33324

Service of Process Agent for Defendant:
Kentucky Secretary of State

THE COMMONWEALTH OF KENTUCKY
TO THE ABOVE-NAMED DEFENDANT(S):

You are hereby notified a **legal action has been filed against you** in this Court demanding relief as shown on the document delivered to you with this Summons. **Unless a written defense is made by you or by an attorney on your behalf** within **20 days** following the day this paper is delivered to you, judgment by default may be taken against you for the relief demanded in the attached Complaint.

The name(s) and address(es) of the party or parties demanding relief against you are shown on the document delivered to you with this Summons.

Date: 8-16, 216

By: [Signature] Clerk
[Signature] D.C.

Proof of Service	
This Summons was served by delivering a true copy and the Complaint (or other initiating document) to:	

this _____ day of _____, 2_____.	Served by: _____
	_____ Title