Est. of Lucy McReynolds v. American Kitchen Co. (AMKCO)

Basic Facts:

Lucy McReynolds is a 72 year old grandmother who lives in Norton, Virginia, which is in the southwestern part of the state in the heart of the Appalachian coalfields. Unable to live on social security alone, and not having a pension from any of the many service jobs that she worked over the years while raising her five children, Lucy works as a kitchen assistant at a local All-Suites Hotel that caters to the local businesses and travelers who are in town to call on the local coal industry.

Lucy's job as a kitchen assistant is to assist the line chefs in food preparation and cooking. The hotel offers a complete menu of three meals each day, including buffet items for breakfast and lunch and made-to-order dinners and room service. Depending on her shift, Lucy could be the only assistant working with 1-2 chefs, or one of up to three assistants working with three chefs. Her jobs include preparing soups and salads for the buffet, small cooking chores and organizing the meat, fish, poultry and vegetables necessary to prepare the items to be offered each day on the menu.

Like most 72 year old women who have worked their whole life, Lucy is not in excellent health. She suffers from hypertension, COPD (from smoking) and has blood sugar issues that she tries to control with diet. She is a deeply religious woman, whose belief in God is her strength.

On February 12, 2012, Lucy was scheduled to work the morning prep shift at the hotel kitchen. Occupancy was light that night, so Lucy and one chef, Johnna Billups, were working that morning to prepare the breakfast buffet items, take any room service orders and begin preparation for the Sunday buffet, after church crowd that were bound to come out. The Sunday buffet began service at 11:00 a.m. and Lucy reported to work at 5:00 a.m. to begin the breakfast service, expecting to go home in time to cook lunch at noon for her family who would be returning from church.

That morning was no different than any other Sunday morning during the winter. No more than a few dozen guests trickled in to eat from the

breakfast buffet which featured fruit, toast, yogurt, cereals, as well as hot items like scrambled eggs, bacon, sausage, biscuits, gravy and home fries. These were items that Lucy was used to cooking at home and while main line cooking was not part of her job responsibilities, Johnna recognized that Lucy probably had more cooking experience in her 72 years than Johnna had in her 34, so she was more than willing to let Lucy help by preparing bacon, sausage, gravy and home fries.

As the breakfast rush concluded, Lucy's responsibility was to monitor the buffet and clear it as needed in preparation for the more extensive Sunday lunch buffet, which started at 11:00 am. With only two people working in the kitchen that morning, it was very busy and Lucy worked straight through without a break, only occasionally snacking on eggs and bacon that she had prepared for the buffet. While she loved her work, she was tired and looking forward to getting home and cooking for her family. The one task that Johnna had given her that she had to complete before turning over the job to the next kitchen assistant who would be coming in at 11:00 was to deep fry some taco shells in the two commercial fryers in the kitchen.

These fryers, manufactured by American Kitchen Co of New Hampshire (AMKCO) were brand new and had only been in operation for one month. They had replaced an older set of fryers that had been in the kitchen as long as Lucy had worked at the hotel.

At 10:30 am, Johnna was in the walk-in, the large refrigerated room in the back of the kitchen, getting supplies for the buffet and loading it onto a cart to be taken to the main prep area of the kitchen. As she exited the walk-in and started up the prep section, she found Lucy sitting on the floor in front of one of two AMKCO fryers, doused in what appeared to be scalding oil. The fryer was tilted out from the wall and leaning towards Lucy, secured to the wall by the gas line hose that ran from the gas connection in the wall behind the fryer, into the back of the fryer unit. Lucy appeared stunned, shaking but not screaming, despite her upper torso, arms and lap being soaked with burning oil. Johnna called for help, rushed to Lucy and asked her what had happened but Lucy couldn't say anything other than "it tipped". Johnna could see that the hot oil was starting to blister Lucy's skin and she immediately called 911 and then tried to get the oil soaked clothing off of Lucy.

Paramedics arrived shortly noted the same history of the fryer tipping onto Lucy, spilling the 400 degree oil on her. Burn precautions were applied and she was rushed to the local Appalachian Regional Hospital. In the ER at ARH, it was determined that Lucy was going to need to be transported to the Burn Center at the University of Virginia in Charlottesville.

Suffering from 2nd and 3rd degree burns over 60% of her upper extremities and upper torso, Lucy was given massive amounts of pain killers, but her family reported that when they visited her she still cried out in pain during the night. Ultimately, after a week of treatment, infection set in that would not respond to medication and she contracted sepsis. She passed away nine days after the incident from infection caused by the burns. She was surrounded by her five children when she passed.

Her oldest son, Robert McReynolds, brings this action against American Kitchen, Co for strict liability, negligence and failure to warn. Under applicable law, the doctrine of comparative fault and comparative assumption of risk reduces the recovery in proportion to the fault of th plaintiff. Thus, if the jury were to find that Lucy's negligence contributed more than 50% of the proximate cause of her injuries, she would only recover half of her damages. There is no cap on damages for wrongful death or for punitive damages in this jurisdiction.

Facts regarding the AMKCO Fryer:

1. It is manufactured pursuant to standards established by the American Commercial Kitchen Appliance Association, an industry trade group to which AMKCO belongs;
2. ACKAA certifies submitted equipment of its members and the AMKCO 35C was certified as compliant with ACKAA standards.
3. The ACKAA standards require a stability test for a standard production model before being put on the market. The stability test requires that if tilted forward 15 degrees while under load (using a 40 lb bag of sand in the well where the oil would be loaded), the unit will rock back

and reset (not continue to tip forward). The AMKCO 35C successfully complied with this test.

4. The ACKAA standard also requires that the warning labels and instruction manuals instruct the operator that the unit must have a restraint to prevent tipping, other than the gas line cord that provides gas to the burner.
5. If multiple units are placed together in a kitchen, it is recommended that they be secured together by straps or brackets.
6. AMKCO records indicate three other incidents in the last 2 years of fryers tipping forward and splashing hot oil, but none as severe as this incident, and all three others were caused by someone climbing onto the fryer to try and access the wall behind and above the fryer.
7. The manual for the AMKCO fryer recommends that it be restrained to prevent accidental tipping. Unlike other competing manufacturers, however, AMKCO does not make straps or brackets to restrain the unit. Nor does the manual say that the unit cannot be secured by only the gas line.
8. The unit that Lucy was operating at the time of the incident was not secured by anything other than the gas hose that was connected to the wall.
9. The unit that Lucy was operating was shipped FOB from AMKCO's plant in New Hampshire. There is no record of who installed the units; it appears that hotel personnel probably just unpacked them, hooked them up and started cooking.

Witnesses

Lucy McReynolds (decedent): Lucy is a small woman, only 5'2" tall and weighing approximately 140 lbs. She suffered greatly after her incident, but never regained full consciousness after going into shock after the burns. This was partially related to the

medication she was given to help her cope with the intense pain of the burns. Her doctors will testify that despite their efforts to relieve her pain during the nine days that she survived the incident, it is a medical certainty that she was in extreme pain, which explains her loud cries out in anguish, as described by her family members who were visiting her in the hospital.

Robert McReynolds (Lucy's oldest son)

Robert is retired on disability from the USPS, where he worked for 23 years before suffering a disabling back injury. As the oldest of five siblings, he is looked to as the leader among the clan, especially since their father died 20 years ago. He filed a death benefit Workers Compensation claim against the hotel on behalf of his mother's estate and asked the lawyer who was handling that claim to review the possibility of suing the manufacturer of the fryer. Upon learning that there were other episodes of tipping fryers that injured people, Robert authorized this suit to be filed.

Anthony Peale (Corporate representative, Rule 30(b)(6) witness for AMKCO

Mr. Peale is an engineer for AMKCO in the design and testing laboratory that the company operates. He testifies to the 35C's compliance with ACKAA and ANSI standards, including the stability tests. He does not have an explanation for the failure of AMKCO to make straps or brackets to be used to provide secondary security to prevent tipping. He also does not have any explanation for why the warnings and manual for the 35C do not address the issue of needing a secondary security device to prevent tipping, other than the gas line connected to the burner. He acknowledges that the industry standards require these warnings, but that this version of the 35C does not. He admits that for subsequent years, the omission was corrected and current versions do include the requisite language.

Mr. Peale testified that AMKCO provides installation and maintenance for its customers through a network of approved installers. The closest approved installer to the All Suites Hotel in Norton was in Johnson City, Tennessee, which is 90 minutes away. There is no record at AMKCO or at the authorized installer of the hotel ever calling and asking for assistance in installation of the fryers.

Roger Plymale, P.E. (plaintiff's expert)

Mr. Plymale is a consultant with East Coast Engineering, a major consulting firm for plaintiffs in litigation. All of his work is in consulting for plaintiffs in cases like these, although this is the first time that he has ever worked on a case involving a commercial fryer. His opinions have been excluded on Daubert grounds in no fewer than 6 cases, involving allegations of product failure. He has no personal experience working in a commercial kitchen or with commercial fryers. Everything he knows about commercial fryers he learned in working on this case. He is not a member of any professional organizations in the Kitchen Appliance Industry.

He testified that his testing of a similar model 35C shows that if not installed properly, there is a propensity to tip forward when pressure is applied to the front of the unit. He does not quantify how much pressure would have to be applied to tip it forward in normal operation. Based on the eye-witness accounts, the position of the fryer tipped forward over Lucy as she sat on the floor and the absence of any secondary restraint, Mr. Plymale opines that the fryer was not in compliance with ANSI or ACKAA standards, nor were the manuals or warnings on the unit. He notes that several competing manufacturers do produce stability devices like straps or chains, and also provide clear instructions

that a secondary restraint is necessary for the safe operation of the fryer.

David Stowers, P.E.

Mr. Stowers is a professor of engineering at Virginia Tech University, where he teaches mechanical engineering with a specialty in stability engineering for commercial equipment. He is a member of ACKAA and helped devise the stability test that was used to certify the 35C. He handles approximately 3-5 litigation matters per year, usually on behalf of defendants. This is his first litigation matter involving a commercial fryer, although he has used them in the past in his job as a short order cook while attending undergraduate school.

Mr. Stowers conducted some testing on the 35C and has opined that the most likely cause of the tipping was Lucy opening the door under the fryer that is on the front of the unit and sitting on the door to rest, which causes the center of gravity to be moved forward sufficiently that it would tip over, causing her to fall on the ground into a seated position with the resulting oil spilling onto her. His testing showed this could happen, and his inspection of the subject fryer showed stress marks on the door indicating that it was under stress from some load which caused the door to bend slightly downward.

Johnna Billups (Chef working with Lucy)

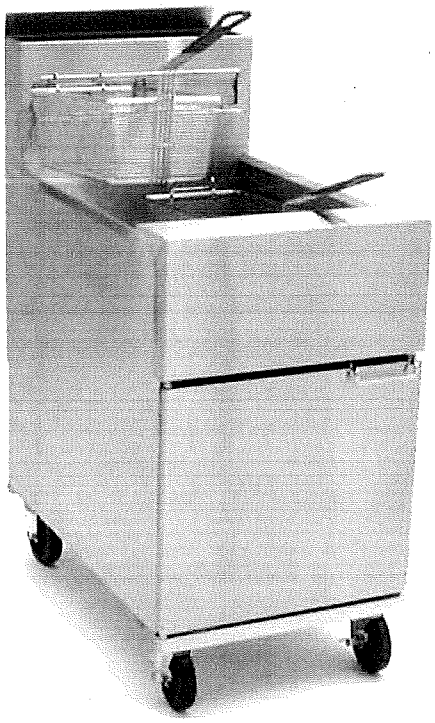
Johnna feels personally responsible for Lucy's accident and cannot shake the belief that she should not have been giving Lucy cooking responsibility that morning. She does not know who installed the fryers, but guesses that since they are pretty simple machines (gas line to a burner, which heats up the oil, which is

controlled by a thermostat on the front), that they were basically "plug and play" types of equipment. She also admits that after the incident, the hotel fabricated a secondary restraint system that bolts the fryers to the floor. This was done to prevent another incident from happening.

Pertinent Portions from AMKCO 35C Manual

American Kitchen, Co.

Installation and Maintenance Manual For Fryer 35C



American Kitchen, Co. 405 Yankee Highway, SE, Nashua, NH 03060

NOTICES

ENGLISH

There are three different types of notices that you should be familiar with, a NOTICE, CAUTION, and WARNING. A NOTICE is a special note used to call attention to a particularly important point. CAUTION is used to point out a procedure or operation which may cause equipment damage. The WARNING notice is the most important of the three because it warns of an operation that may cause personal injury. Please familiarize yourself with your new cooker before operating it and heed the notices throughout this manual. The WARNINGS are listed below and on the following page for your review prior to operating the unit.

FOR YOUR SAFETY

DO NOT store or use gasoline or other flammable vapors or liquids in the vicinity of this or any other appliance.

WARNING: Improper installation, adjustment, alteration, service or maintenance can cause property damage, injury or death. Read the installation, operating and maintenance instructions thoroughly before installing or servicing this equipment.

TO THE PURCHASER

POST IN A PROMINENT LOCATION INSTRUCTIONS TO BE FOLLOWED IN THE EVENT THAT AN OPERATOR SMELLS GAS. OBTAIN THIS INFORMATION FROM YOUR LOCAL GAS SUPPLIER.

THIS MANUAL MUST BE RETAINED FOR FUTURE REFERENCE

WARNING

The cooker must be electrically grounded in accordance with local codes. If local codes do not apply, follow the requirements of National Code ANSI/NFPA 70-1990.

WARNING

This cooker is equipped with a three prong safety plug. This safety plug protects operators from electrical shock in the event of an equipment malfunction. DO NOT remove the grounding (third) prong from this plug.

WARNING

DO NOT use an open flame to check for gas leaks!

WARNING

A cooker that is equipped with casters and a flexible power cord must be connected to the gas supply with a Quick-Disconnect device. This quick disconnect must comply with ANSI Z24.41-1989. A restraining cable must be installed to limit the movement of the cooker.

WARNING

There is an open gas flame inside the cooker. The unit may get hot enough to set nearby materials on fire. Keep the area around the cooker free from combustible materials.

WARNING

Ensure that the cooker can get enough air to keep the flame burning correctly. If the flame is starved for air it can give off dangerous carbon monoxide. Carbon Monoxide is a clear odorless gas that can cause suffocation and death.

WARNING

Be sure the burner tubes are COMPLETELY covered with water before lighting the pilot or main burners. If the tubes are exposed, the cooker may overheat, causing damage to the kettle, creating a fire hazard, and voiding the warranty.

WARNING

Carbon monoxide can build up if the flue is blocked. Blocking the flue will also cause the cooker to overheat. Ensure that minimum clearances specified in the installation instructions are maintained. DO NOT obstruct the flow of combustion/ventilation or air opening around the Noodle Cooker. Adequate clearance around the cooker is necessary for servicing and proper burner operation. Ensure that you meet the minimum clearances specified in the installation instructions.

WARNING

The power supply must be disconnected before servicing or cleaning the appliance.

WARNING

For gas cookers, DO NOT supply the cooker with a gas that is not listed on the data plate. If you need to convert the cooker to another type of fuel, contact your dealer.

WARNING

For gas cookers, WAIT five (5) minutes before attempting to relight the pilot. This allows time for any gas remaining in the cooker to dissipate.

THIS MANUAL MUST BE RETAINED FOR FUTURE REFERENCE

1.3.2 Assembling Multi Fryer Systems

If you purchased a multi-fryer unit, it could be shipped in more than one piece. To assemble the unit follow the instructions below.

a. Unpack the units and move them close together. Remove the front panels and both heat shields from the fryers.

b. There are five joining strips to be attached to the units to make them into one system. These strips are attached in the rear, front, upper front, and the forward and rear caster mount. Use the screws supplied with your system to attach the strips. Secure them tightly to each unit.

c. Replace the heat shield and front panels to complete the system assembly.

1.4 INSTALLATION

Although it is possible for you to install and set up your new fryer, it is STRONGLY recommended that you have it done by qualified professionals. The professionals that install your new fryer will know the local building codes and ensure that your installation is safe.

WARNING

The fryer must be properly restrained to prevent movement or tipping. This restraint must prevent the fryer from movements that would splash hot liquids on personnel. This restraint may be any means (alcove installation, adequate ties, or battery installation).

1.4.1 Installation Clearances

The fryer needs clearance around it for proper operation. Adequate clearances allow for servicing and proper burner operation. The clearances shown below are for cooker installation in combustible and non-combustible construction.

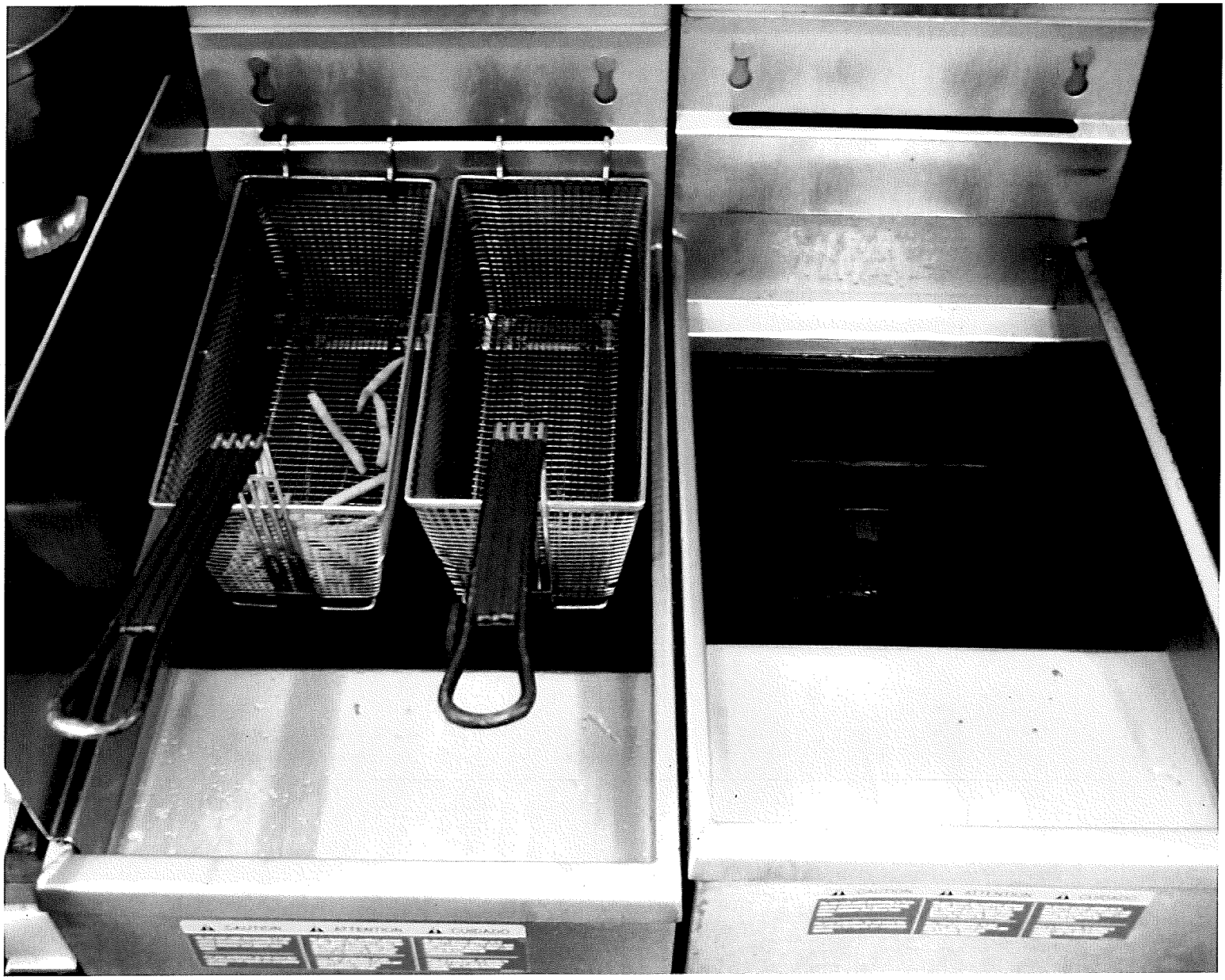
	Combustible Construction	Non-Combustible Construction
Back	6"	0"
Sides	6"	0"
Floor - Combustible	6"	6"

1.4.2 Gas Connection

Your fryer will give you peak performance when the gas supply line is of sufficient size to provide the correct gas flow. The gas line must be installed to meet the local building codes or National Fuel Gas

Photographs of Kitchen Where Incident Occurred and Fryer Involved


Label, Date and Initial everything with tape DO NOT WRITE ON CONTAINERS



Notes from Competing Manufacturer (Vulcan)

American National Standards Institute

IMPORTANT NOTES FOR ALL VULCAN APPLIANCES

1. These units are produced with the best possible workmanship and material. Proper installation is vital if best performance and appearance are to be achieved. Installer must follow the installation instructions carefully.
2. Information on the construction and installation of ventilating hoods may be obtained from the "Standard for the installation of equipment for the removal of smoke and grease laden vapors from commercial cooking equipment," NFPA No. 96 (latest edition) available from the National Fire Protection Association, Battery March Park, Quincy MA 02269.
3. For an appliance equipped with a flexible electric supply cord, the cord is equipped with a three prong (grounding) plug. This grounding plug is for your protection against shock hazard and should be plugged directly into a properly grounded three prong recepticle. Do not cut or remove the grounding prong from this plug. If the appliance is not equipped with a grounding plug, and electric supply is needed, ground the appliance by using the ground lug provided (refer to the wiring diagram).

(FOR GAS APPLIANCES ONLY)

4. Do not obstruct the air flow into and around the appliance. This air flow is necessary for proper combustion of gases and for ventilation of the appliance. Provisions for ventilation of incoming air supply for the equipment in the room must be in accordance with National Fuel Gas Code ANSI Z223.1 (latest edition).
5. Do not obstruct the flow of flue gases from the flue duct (when so equipped) located on the rear (or sides) of the appliance. It is recommended that the flue gases be ventilated to the outside of the building through a ventilation system installed by qualified personnel.
6. For an appliance equipped with casters, (1) the installation shall be made with a connector that complies with the Standard for Connectors for Movable Gas Appliances, ANSI Z21.69 (latest edition), and Addenda, Z21.69a (latest edition), and a quick-disconnect device that complies with the Standard for Quick-Disconnect Devices for Use With Gas Fuel, ANSI Z21.41 (latest edition), and Addenda, Z21.41a (latest edition) and Z21.41b (latest edition), and (2) adequate means must be provided to limit the movement of the appliance without depending on the connector and the quick-disconnect device or its associated piping to limit the appliance movement. If disconnection of the restraint is necessary, reconnect this restraint after the appliance has been returned to its originally installed position.
7. The appliance and its individual shutoff valve must be disconnected from the gas supply piping system during any pressure testing of that system at test pressures in excess of ½ psig (3.45 k Pa).
8. The appliance must be isolated from the gas supply system by closing its individual manual shutoff valve during any pressure testing of the gas supply system at test pressures equal to or less than ½ psig (3.45 k Pa).

CAUTIONS

FOR YOUR SAFETY

DO NOT STORE OR USE GASOLINE OR OTHER FLAMMABLE VAPORS AND LIQUIDS IN THE VICINITY OF THIS EQUIPMENT OR ANY OTHER APPLIANCE.

1. **KEEP THE APPLIANCE FREE AND CLEAR FROM ALL COMBUSTIBLE SUBSTANCES.**
2. **IN THE EVENT A GAS ODOR IS DETECTED, SHUT UNIT(S) DOWN AT THE MAIN SHUTOFF VALVE AND CONTACT THE LOCAL GAS COMPANY OR GAS SUPPLIER FOR SERVICE.**
3. **POST IN A PROMINENT LOCATION, INSTRUCTIONS TO BE FOLLOWED IN THE EVENT THE SMELL OF GAS IS DETECTED. THIS INFORMATION MAY BE OBTAINED FROM A LOCAL GAS SUPPLIER.**

EXHIBIT Kobernat 5 10-18-12

EXHIBIT 1

Diagram from Competing Manufacturer of Available Anchor Straps and Chain Restraint with Installation Instructions

INSTALLATION INSTRUCTIONS FOR ANCHOR STRAP KITS 8261095 AND 8261254 AND CHAIN RESTRAINT KIT 8260900

1. Position the fryer under the exhaust hood.
2. On fryers with legs, adjust the fryer to the desired height after it is under the hood.
3. On fryers with casters, lock the front casters.
4. Remove the outside front mounting bolt from each of the front legs or casters.
5. Attach one end of the anchor strap or the upper end of the chain restraint (the end with the straight link) to the leg or caster with the bolt removed in Step 4.
6. Secure the lower end of the anchor strap or chain restraint to the floor using an appropriate fastener.