

MASSACHUSETTS Lawyers Weekly

Part of the BRIDGETOWER MEDIA network

■ MAY 22, 2024

Subrogation suit over house fire bounced on summary judgment

Plaintiff's expert opinion didn't meet 'Daubert' standards

■ ERIC T. BERKMAN

A U.S. magistrate judge has determined that an insurance company could not bring a subrogation claim against the manufacturer of a bathroom fan under the theory that a design defect caused a fire in an insured's home.

During discovery, plaintiff Liberty Mutual Insurance Co. provided an expert opinion from Jeremiah Pratt, a certified fire investigator and licensed engineer with 25 years of firefighting experience.

Pratt opined that vibration from a fan manufactured by defendant Broan-NuTone caused its internal wiring insulation to abrade, leading to the fire.

Broan argued in a summary judgment motion that Pratt's opinion did not meet admissibility standards for scientific testimony under the U.S. Supreme Court's 1993 decision in *Daubert v. Merrell Dow Pharmaceuticals Inc.* because he had no scientific basis for his assumption that the appliance wire insulation could,

in fact, be abraded away or how that might happen.

Judge Donald L. Cabell agreed. "Pratt's conclusion ... is not based on valid cognitive testing, nor is it undergirded by any specific, generally accepted scientific principles," Cabell wrote, quoting the Supreme Court's 1997 *General Elec. Co. v. Joiner* decision. "The only connection between Pratt's theory and the evidence of electrical activity is his ipse dixit, which means 'there is simply too great an analytical gap between the data and the opinion proffered' for the opinion to be admissible."

Additionally finding that Broan's motion for summary judgment was so closely intertwined with its Daubert challenge that he could not rule on one issue without ruling on the other, Cabell granted summary judgment to the defendant in the case.

The 27-page decision is *Liberty Mutual Insurance Company v. Broan-NuTone LLC*, Lawyers Weekly No. 02-226-24.



Andrew D. Black



Christopher A. Duggan

'A GREAT PRIMER'

David R. Cain and Paul Valentinno represented Liberty and did not respond to requests for comment. Defense counsel Andrew D. Black and Christopher A. Duggan also could not be reached for comment.

EXPERT OPINION

On Dec. 17, 2016, a fire broke out at the Brookline home of Liberty policyholders Marc Rysman and Michelle Ephraim, causing significant damage.

According to Liberty, the fire started inside a ceiling fan installed in the second-floor bathroom.

The fan, a NuTone model 763RLN, manufactured and sold by the de-

endant, was installed before the insureds bought the home in 2006. According to the insureds, it was working properly before the fire.

Liberty retained Pratt as its expert. He inspected the loss site three days after the fire took place and several weeks later as part of a joint scene investigation.

In addition to examining fan components and wiring collected during the joint investigation, Pratt took a statement from Rysman, analyzed fire patterns and dynamics at the scene, reviewed photos, and created an arcing map.

Pratt determined that the most likely area of origin was the void space above the second-floor bathroom.

Based on the physical evidence, he hypothesized that the fire started in the fan's connection junction box and asserted in his report that electrical activity in the box ignited lightweight combustible dust and lint.

He went on to state that vibration from the fan caused a free-hanging wire to rub against a metal divider in the box, wearing through the wire's insulation and eventually causing the electrical activity that started the fire.

Based on that that conclusion, Pratt opined that Broan was responsible for the fire.

When Liberty filed a subrogation action against Broan, the defendant moved to exclude Pratt's

opinion as unreliable under *Daubert* and also moved for summary judgment.

GUARDING THE GATE

In granting the motion, Cabell emphasized that Pratt's investigation into the fire origin showed that he was capable of performing proper cognitive testing.

For example, Cabell said, the expert formulated and tested three hypotheses of where the fire originated, eliminating two of them based on an analysis of the evidence.

He went through a similar process in determining that the ignition point was the connection junction box, the magistrate judge noted.

"This is exactly the type of cognitive testing process that courts often uphold as reliable," Cabell said.

However, he said, the rest of the report stood in stark contrast.

"Pratt does not identify any evidence tending to show that the wire rubbed against the metal divider or that any abrasion occurred, nor does he identify or disprove any other hypotheses," Cabell said. "He also does not point to any evidence suggesting that the vibration he describes could have worn through the wire's insulation, much less any evidence that such a result was probable. When asked if he was aware of any physical test that shows it is possible for wire

LIBERTY MUTUAL INSURANCE COMPANY V. BROAN-NUTONE LLC

THE ISSUE: Could an insurance company bring a subrogation claim against a bathroom fan manufacturer under the theory that a design defect caused a fire in an insured's home?

DECISION: No
(U.S. District Court)

LAWYERS: David R. Cain and Paul Valentino, of Cain, Geller & Vachereau, Boston and Scranton, Pennsylvania (plaintiff)

Andrew D. Black and Christopher A. Duggan, of Smith Duggan Cornell & Gollub, Lincoln (defense)

insulation to wear through in this way, Pratt indicated that he could only point to his "training, education and experience."

Significantly, Pratt's analysis made no reference to empirical data, contrary to what the National Fire Protection Association handbook that is considered the industry standard for fire investigations requires for cognitive testing and contrary to his own origin analysis, Cabell said.

Having determined that Pratt's expert opinion was inadmissible, Cabell concluded that Liberty could not demonstrate that Broan designed or manufactured the fan defectively.

"Broan is therefore entitled to summary judgment," he said.