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Published by:
 Peter A. Lynch, Esq.
 of Cozen O'Connor
palynch@cozen.com
<http://www.cozen.com>

EXECUTIVE SUMMARY: This weekly newsletter covers:

1. [Arizona District Court Allows Expert Testimony that Fire Originated in Electrolux Freezer Even Though Expert Could Not Indentify the Specific Part that Failed](#)

(1) ARIZONA DISTRICT COURT ALLOWS EXPERT TESTIMONY THAT FIRE ORIGINATED IN ELECTROLUX FREEZER EVEN THOUGH EXPERT COULD NOT INDENTIFY THE SPECIFIC PART THAT FAILED

Brief Summary

In *CSE Insurance Group v. Electrolux, Inc.* (D. Ariz. 2007) 2007 WL 951957, available at the [District Court website](#), Arizona District Court rejected Defendant Electrolux's motion to exclude Plaintiff's expert testimony that the fire originated from a failure in the Electrolux freezer in Plaintiff's insured's home even though Plaintiff's expert could not pinpoint the specific part of the freezer that failed. The Court found that Plaintiff's expert's opinion was sufficiently grounded in fact and forensic methods to withstand Daubert requirements.

Detailed Facts and Ruling

Plaintiff CSE Insurance Group originally brought this product liability action in the Superior Court of Arizona in Maricopa County, seeking recovery of insurance proceeds paid to its insured following a fire that allegedly was caused by Defendants' products and destroyed the insured's residence. Defendants removed the action from the state court based on this Court's diversity jurisdiction. A trial before this Court is scheduled to begin on April 10, 2007. Currently before the Court are Defendants' motions in limine to exclude two reports by Plaintiff's expert, Erik S. Anderson, and to preclude Mr. Anderson from testifying at trial; and to exclude Plaintiff's evidence of damages. The motions are opposed. Having carefully considered the arguments raised, the Court now rules.

On approximately December 14, 2002, Plaintiff's insured purchased a freezer from Sears, Roebuck & Co., which was then plugged into an electrical outlet in the home. On approximately December 18, 2002, a fire allegedly caused by the freezer destroyed the residence of Plaintiff's insured. Plaintiff paid its insured the sum of \$299,491.91 for claimed damages, and brought suit against Defendants asserting claims of manufacturing, design, and information defect. Plaintiff hired Erik S. Anderson, a forensic engineer and licensed professional engineer, to investigate the scene of the fire. Anderson issued a report expressing his opinion "within a reasonable degree of certainty that the cause of the fire

was likely ... a failure in the Electrolux freezer present at the time of the fire.” Although he could not point to a specific apparatus in the freezer that may have caused the fire, Anderson based his opinion on “the significant amount of evidence found at the scene of the fire, the procedures used to collect and test the evidence, and the application of accepted principles of engineering applied to the evidence, all in conformity of [sic] reliable scientific principles and methods...” Plaintiff plans to call Anderson as an expert witness at trial, and to enter his preliminary and final reports into evidence.

Defendants have filed motions in limine (1) to exclude Anderson's reports from evidence and to preclude Anderson from testifying at trial, and (2) to exclude Plaintiff's evidence of damages.

Defendants argue that Anderson's testimony and reports should be excluded, because their probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, Mot. (doc. # 46) at 2, and also suggest that Anderson's opinions are not sufficiently grounded in facts to qualify him as an expert, *id.* (citing *Guidroz-Brault v. Mo. Pac. R.R.*, 254 F.3d 825, 830 (9th Cir.2001)).FN1 Defendants contend that Anderson's opinions are “pure speculation,” pointing to deposition testimony where Anderson was unable to identify a specific “apparatus” in the freezer that may have caused an “electrical failure” or fire.

FN1. Defendants also ask the Court to exclude Anderson's reports and preclude his testimony pursuant to Fed.R.Evid. 702, and *Daubert v. Merrell Dow Pharms., Inc.*, 509 U.S. 579 (1993). Because Defendants have not raised any specific legal or factual arguments that would allow the Court to make an informed decision in its “gate-keeping” role at this time, *Daubert* issues, if any, will have to be evaluated at trial prior Plaintiff's proffer of evidence. In response, Plaintiff acknowledges that Anderson cannot identify the specific apparatus responsible for the fire, but maintains that his expertise, and thus the validity of his opinion, lies in his experience as a forensic investigator and licensed professional engineer. Resp. (doc. # 48) at 2. Given Anderson's background, it appears at this juncture that his opinions are sufficiently grounded in fact and forensic methods. See *Guidroz-Brault*, 254 F.3d at 830-31.

The Court is also not convinced by Defendants' conclusory assertion that the probative value of Anderson's testimony and reports is so substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury that they must be excluded. As Plaintiff aptly notes, those dangers will be largely eliminated by Defendants' opportunity for cross-examination. Defendants' motion in limine to exclude Anderson's reports and preclude his testimony will therefore be denied.

(internal citations and remaining portion of opinion unrelated to expert testimony is omitted from this summary)

Mr. Lynch can be reached at Cozen and O'Connor, 501 West Broadway, Suite 1610, San Diego, California 92101, 800-782-3366 (voice), 619-234-7831 (fax), palynch@cozen.com (e-mail), <http://www.cozen.com>.

Please direct comments, suggestions, stories, and other items to the author by e-mail at palynch@cozen.com