

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

JAMES and LOUISE McILHENNEY :
 :
 Plaintiffs, : C.A. No. 01C-03-030 WLW
 :
 v. :
 :
 INTERMATIC INCORPORATED, :
 a Delaware corporation, :
 :
 Defendant. :

Submitted: October 31, 2003
Decided: March 8, 2004

ORDER

Upon Plaintiffs' Motions to Exclude Testimony
and Defendant's Motion to Exclude Testimony.

Robert W. Thomas, Jr., Esquire of Duffy & Keenan, Haddonfield, New Jersey and
John C. Andrade, Esquire of Parkowski Guerke & Swayze, P.A., Dover, Delaware;
attorneys for Plaintiffs.

Kevin J. Connors, Esquire of Marshall Dennehey Warner Coleman and Goggin,
Wilmington, Delaware; attorneys for Defendant.

WITHAM, J.

Introduction

Before this Court are various motions filed by the parties attempting to exclude testimony from a number of experts. Plaintiffs filed motions to preclude the testimony of Edward Condon, Thomas Taylor, and Neil Hollister. Defendant has responded to the Condon and Taylor motions. Defendant filed a motion to preclude the testimony of Thomas Schneiders. Plaintiffs have responded. Based on the following discussion, Defendant's motion is *denied*. Plaintiffs' motions with respect to Edward Condon and Thomas Taylor are *denied*; however, Plaintiffs' motion with respect to Neil Hollister is *granted*.

Background

This case arises from a fire which occurred in the McIlhenneys' garage on March 24, 1999. The McIlhenneys allege that the fire was caused by a malfunction in an Intermatic Malibu Lighting System located on a wall in the garage. The Intermatic system was comprised of a transformer and timer which controlled an outdoor lighting system. Defendant concedes that the cause of the fire was electrical in nature, but argues that the Intermatic system was not the cause. It appears to the Court that because both parties agree that the fire was electrical in nature and began on the north wall of the garage, the experts are merely testifying with respect to whether the Intermatic device caused the fire.

Discussion

With regard to the issue of expert testimony, the trial judge is a gatekeeper and must assess whether the evidence presented is reliable and relevant. The

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objective of this gatekeeping requirement is "to make certain that an expert, whether basing testimony upon professional studies or personal experience, employs in the courtroom the same level of intellectual rigor that characterizes the practice of an expert in the relevant field."¹

As set forth in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*,² when faced with a proffer of expert scientific testimony, the trial judge must determine at the outset whether the expert is proposing to testify to scientific knowledge that will assist the trier of fact to understand or determine a fact in issue. This entails a preliminary assessment of whether the reasoning or methodology underlying the testimony is scientifically valid and of whether that reasoning or methodology can properly be applied to the facts in issue. The Delaware Supreme Court has adopted a five step test to determine the admissibility of expert or scientific testimony:

The trial court must decide that: (I) the witness is 'qualified as an expert by knowledge, skill experience, training or education'. . .; (ii) the evidence is relevant and reliable; (iii) the expert's opinion is based upon information 'reasonably relied upon by experts in the particular field'...; (iv) the expert testimony will 'assist the trier of fact to understand the evidence or to determine a fact in issue'...; and (v) the expert testimony will not create unfair prejudice or confuse or mislead the jury.³

Pursuant to *Kumho Tire Co., Ltd. v. Carmichael, Daubert* and its progeny have been

¹ *Ward v. Shoney's, Inc.*, 817 A.2d 799 (Del. 2003).

² 509 U.S. 579 (1993)

³ *Eskin v. Carden*, 2004 Del. LEXIS 81, *7-8 (citing *Cunningham v. McDonald*, 689 A.2d 1190, 1193 (Del. 1997)).

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extended to all expert testimony, not merely scientific testimony.⁴ There is no talismanic test or a set of required questions that must be answered in a particular manner before the trial court. The trial court has considerable latitude to admit or exclude expert testimony.

Plaintiffs' Motion to Preclude the Testimony of Neil Hollister

Plaintiffs have asked this Court to preclude the testimony of Neil Hollister, identified by the Defendant as an expert on damages. Defendant has not answered interrogatories and has failed to provide a report to Plaintiffs from Mr. Hollister containing his opinion. The Delaware Supreme Court has held “the requirement of a party to comply with discovery directed to identification of expert witnesses and disclosure of the substance of their expected opinion is a pre-condition to the admissibility of expert testimony at trial.”⁵ The Court is not aware that this has been done. Therefore, because Intermatic has not provided a copy of the expert’s report and has not answered interrogatories, Neil Hollister will not be permitted to testify.

Plaintiffs' Motion to Preclude the Testimony of Thomas Taylor

Plaintiffs have moved to preclude the testimony of Thomas Taylor, who holds a bachelor’s degree in electrical engineering from Massachusetts Institute of Technology and a master’s degree and a Ph.D. in electrical engineering from the University of Connecticut. Dr. Taylor intends to testify that there was no internal

⁴ 526 U.S. 137 (1999).

⁵ *Bush v. HMO of Delaware, Inc.*, 702 A.2d 921, 923 (Del. 1997) (citing *Stafford v. Sears Roebuck & Co.*, 413 A.2d 1238 (Del. 1980)).

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malfunction of the Intermatic system which could have caused the fire based on his examination of electrical evidence obtained from the fire scene. Plaintiffs contend that because Dr. Taylor is not an expert in fire science, he cannot testify regarding the cause of this fire.

It appears to this Court that based upon Dr. Taylor's educational background, he is qualified to testify as an expert with respect to electrical systems. Whether the lighting system had an internal electrical malfunction certainly seems relevant in this case, particularly because the Plaintiffs are alleging that the fire was caused by a manufacturing defect or negligent design in the lighting system. Dr. Taylor's opinion is based upon his examination of the electrical components which were involved in the fire. In addition, he bases his testimony on his professional experience and educational background. His testimony regarding the overloaded electrical cord as the possible cause of the fire would be helpful to the jury in determining whether Intermatic was negligent in designing or manufacturing the lighting system and does not seem to be prejudicial, given his education and experience.

Based on Dr. Taylor's educational background and his knowledge with respect to electrical devices and systems, he appears to be qualified to testify as an expert with respect to the electrical system at issue.

Plaintiffs' Motion to Preclude the Testimony of Edward Condon

Plaintiffs also filed a motion to prevent Edward Condon from testifying as both a fact witness and an expert witness with respect to the Malibu lighting system.

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Plaintiffs contend that Mr. Condon is not an expert in fire science and thus is not qualified to testify regarding the origin and cause of the fire. However, Mr. Condon's testimony is that the Intermatic system was not the cause of the fire, that is, he is eliminating the Intermatic system as the cause of the fire. Essentially, Mr. Condon's testimony will be that the part upon which Plaintiffs' expert relied in attributing the fire to the Intermatic device was not even part of that device. As a former Intermatic employee and a mechanical engineer, Mr. Condon has knowledge about mechanical parts associated with the Intermatic device. He inspected the items retrieved from the fire, and reached the conclusion that nothing indicated that the Intermatic system was the cause of the fire. The testimony he intends to give appears to be relevant to the case and should assist the trier of fact. In addition, prejudice to either party has not been alleged. It appears, based upon his report and his background, that Mr. Condon is qualified to testify in this case.

Defendant's Motion to Preclude the Testimony of Thomas Schneiders

Defendant contends that Thomas Schneiders should not be permitted to testify as an expert because he is not qualified to render an opinion as to whether the Intermatic system was defectively designed, manufactured or fabricated. Mr. Schneiders is a retired firefighter and received an associate's degree in fire science. He currently works as an independent contractor with Dove Associates investigating fires. He does not claim to be an expert in electrical engineering and is not offered as an electrical engineering expert. He is offered as an expert on the origin and cause of the fire. Mr. Schneiders' opinion is essentially that the fire was electrical

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in nature and started in the Intermatic transformer/timer device. He concludes that the fire was caused by a product defect in the Intermatic device.

In its motion, Defendant argues that Plaintiffs have not satisfied their burden of proof in establishing that a defect existed in the Intermatic device. However, the Court is concerned only with whether Mr. Schneiders is qualified to state his opinions and whether those opinions are based in reason, relevant to the case, and helpful to the jury. Mr. Schneiders education and work experience, coupled with his investigation of the scene, qualifies him to testify as to the origin and cause of the fire. This testimony is relevant and appears to be reliable. In addition it will assist the jury in making its decision.

The Defendant's concern regarding Mr. Schneiders' testimony appears to address the weight of the testimony rather than its admissibility. At this point the Court is concerned only with its admissibility. The Defendant will have an opportunity at trial to cross examine Mr. Schneiders to expose any weaknesses in his opinion and may also present their own expert testimony which may contradict Mr. Schneiders' opinion. However, Mr. Schneiders will be permitted to testify at trial.

Conclusion

Based on all of the information presented to this Court, Plaintiffs' motions to preclude the testimony of Edward Condon and Thomas Taylor are ***denied***. Plaintiffs' motion to preclude the testimony of Neil Hollister is ***granted***. Defendant's motion to preclude the testimony of Thomas Schneiders is ***denied***.

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IT IS SO ORDERED.

/s/ William L. Witham, Jr.
J.

WLW/dmh
oc: Prothonotary
xc: Order Distribution
File