Products Liability Law Daily Wrap Up, EXPERT EVIDENCE—HOUSEHOLD PRODUCTS—D. Mass.: Fan and motor makers granted summary judgment in insurer's subrogee suit for fire damage, (Aug. 11, 2025)

Products Liability Law Daily Wrap Up

By Pankhuri Bhatnagar, B.A. LL.B.

The insurer's expert testimony was largely excluded for violating procedural rules by presenting new opinions at deposition that were not disclosed in the expert's original reports.

In an action brought against the manufacturers of an exhaust fan and its motor by an insurer seeking to recover the proceeds paid to a homeowner whose house sustained damage due to a fire allegedly originating from the fan, the federal district court in Massachusetts granted the manufacturers' motion to dismiss. The insurer's manufacturing defect, design defect, and negligence claims were dismissed because its experts did not explain how the fan or motor deviated from their intended design, there was no evidence that a product defect actually caused the subject fire, and the proposed design alternatives were untested for their cost and effectiveness (*Citation Ins. Co. v. Broan-Nutone LLC,* No. 4:21-cv-11707-MRG (D. Mass. Aug. 6, 2025)).

Background. In September 2020, a man called a technician to upgrade his home's WiFi system. While attempting to plug the new WiFi modem in the basement, an electrical outlet kept tripping, and soon a smoke alarm went off. A fire broke out and emergency services were called. The fire department determined that the fire originated from a bathroom vent fan. The homeowner received $726,379 for the loss of his real and personal property from his insurer Citation Insurance Company. The insurer then brought a subrogee suit against the exhaust fan's manufacturer, Broan-NuTone LLC, and the fan motor's manufacturer, Jakel Motors Incorporated (together, manufacturers or companies). Notably, the fan had a thermal cut off (TCO) feature, which is a fuse that melts when the motor reaches a certain unacceptably high temperature, cutting off electricity and allowing the product to cool. The complaint asserted manufacturing defect and design defect theories sounding in both breach of implied warranty and negligence. The companies moved for summary judgment based on the insurer's delayed expert testimony and lack of factual allegations.

Evidence exclusion. The court observed that the insurer's engineering expert disclosed several facts for the first time during his deposition which he did not mention in his opening or rebuttal reports. Moreover, he did not produce a supplemental report containing these newly disclosed opinions despite having an obligation to do so under Fed. R. Civ. P. 26(a)(2)(B). The court held that he violated Rule 26(a)(2)(B) by not alleging in his reports (1) a manufacturing defect with sufficient specificity; (2) how any alleged manufacturing defect caused the fire on the insured premises; and (3) alternative product designs and the potential costs and performance interference issues associated with adopting such modifications. Instead, the expert improperly directed the court to his deposition testimony where he identified the TCO's "inadequate thermal protection" as the manufacturing defect, but this testimony was given nearly one month after the date of his rebuttal report. As for causation, he pointed to a paragraph of his opening report, but the court held that the portion did not explain how an alleged manufacturing defect caused the fire and was merely an argument about what did *not* cause the fire, leaving the manufacturers to speculate about the manufacturing defect causation arguments. The insurer made no attempt to prove that the failure to disclose these opinions was "harmless or substantially justified." The court found that the failure to do so unfairly surprised the manufacturers and prevented the engineer's deposition from being fully meaningful relative to at least three areas of inquiry, allowing the insurer to gain an "unfair tactical advantage at trial." *Lohnes v. Level 3 Comm., Inc.,* 272 F.3d 49, 60 (1st Cir. 2001). The court accordingly sanctioned the insurer for this tripartite violation by precluding these

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three aspects of the expert's testimony. Since the first two violations related to essential elements of its manufacturing defect claim and the third to the design defect claim, summary judgment was warranted on this basis alone. Nevertheless, the court considered the merits of each asserted claim.

Manufacturing defect. Nothing in the record suggested that the subject fan/motor installed at the insured premises deviated from its intended design such that it was rendered unreasonably dangerous and therefore unfit for ordinary purposes, as was required to establish a manufacturing defect. *Burnham v. Wyeth Labs., Inc.,* 348 F. Supp. 3d 109, 112 (D. Mass. 2018). At deposition, the engineer identified three "deficiencies" with the fan that were allegedly identified by other industry commentators, but did not explain how the subject products deviated from their intended design. Indeed, the expert conceded that he had not personally conducted any testing on any "fan motors" and acknowledged that his only basis for concluding that the TCO in the fan/motor at issue failed was by analyzing "the damage pattern to the fan," which allegedly showed that the "the motor coil overheated." Even if a defect were shown with the requisite specificity, no reasonable jury could conclude that a manufacturing defect caused the subject fire. The expert conceded that he did not know whether a bend in the TCO caused it to lose its function. Given the complexity of the product at issue, expert testimony was required relative to both the manufacturing defect theory and the design defect theory. The lack of reliable expert testimony was fatal to this count.

Design defect. Next, summary judgment was due to the manufacturers on the design defect claims because Citation failed to elicit any evidence from which a reasonable jury could conclude that there existed "an available design modification which would reduce the risk without undue cost or interference with the performance of the machinery." *Uloth v. City Tank Corp.,* 384 N.E.2d 1188, 1193 (Mass. 1978). The engineer only testified that his proposed modifications would result in the size and other characteristics being different from the status quo product. He added that he had no information regarding cost differentials, other than that the proposed modifications would lead to a more expensive product. As held in the analogous case of *Enrich v. Windmere Corp.,* 616 N.E.2d 1084 (1993), an insurer could not demonstrate that an electrical fan was defectively designed without expert testimony, even where the fan was implicated in a fire. Accordingly, the design defect claim also failed.

Other claims. "To prevail on either a negligence or breach of warranty claim, the plaintiff must present evidence of a defect." *Liberty Mut. Ins. Co. v. Broan-NuTone LLC,* 731 F. Supp. 3d at 220. As discussed above, Citation lacked admissible evidence to show either a design defect or a manufacturing defect, and even if its late-disclosed evidence were admissible, it was insufficient, resulting in the dismissal of its negligence claim. To the extent it asserted a breach of express warranty, that claim was deemed waived for not being briefed and because the experts did not provide sufficient evidence to raise a triable issue of material fact as to a breach of any express warranty. The manufacturers' motion was thus granted in its entirety.

The case is No. 4:21-cv-11707-MRG.

Judge: Guzman, M.

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Companies: Citation Insurance Co.; Broan-NuTone LLC; Jakel Motors Inc.

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