Counsel's Advisory
Vol. 26 No. 1 February 2, 2018

Washington Legal Foundation
Advocate for Freedom and Justice®
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Washington, DC 20036
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Courts Begin to Consider Expert-Testimony Standards in "Internet of Things" Litigation

by H. Michael O'Brien

"Dumb" products made smart by connecting to the Internet present a new layer of complexity when a failure occurs. That complexity extends to litigation over such Internet of Things (IoT) devices, and raises the question of whether experts possessing knowledge, skill, and training sufficient to address potential root-cause failures with a dumb version of a product have the requisite expertise to address the root-cause failure with a "smart" version of the product A second, and equally important question, is will such experts be able to withstand challenges to their qualifications and methodologies relied on in a court of law? Courts are now beginning to grapple with this second question.

In *American Strategic Insurance Corp. v. Scope Services, Inc.*, 2017 WL 4098722 (D. Md. Sept. 15, 2017), the court precluded plaintiff's expert witness from offering testimony on the standard of care for the installation of a "smart meter" that was the focus of the plaintiff's subrogation action for property damage. The complaint alleged that the defendant's employee was professionally negligent with the installation and was the direct cause of a fire due to high-resistance contact between the new smart meter and the meter base.

At the close of discovery, the defendant challenged the qualifications of the plaintiff's expert witness with respect to the standard of care for the smart meter installation. Scope Services argued that the expert did not have specific experience installing electric smart meters. In addition, it claimed the plaintiff's expert lacked sufficient knowledge of the industry standard of care. The defendant specifically contended that the expert's general experience in this field was not sufficient to meet the requirements of Rule 702 of the Federal Rules of Evidence.

In reviewing the expert's qualifications, the court found the plaintiff's expert *did* qualify to testify as an expert in the field of electric meter installation. However, the court also determined that despite his qualifications, the plaintiff's expert had to clear an additional hurdle regarding the methodology that he used to form his opinions to show that they met the standard for admissibility. The plaintiff's expert had offered a six-step procedure for the preparation and proper installation of the smart meter. During the plaintiff's expert's deposition, though, he could not identify the factual

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basis for the six steps he offered as being an accepted industry standard, and in fact he disavowed any knowledge of the industry having used his six-step procedure.

The court found the plaintiff's expert's opinions amounted to "little more than his personal views on the proper method of smart meter installation," noting that the plaintiff's expert's proposed "six-step standard of care" lacked foundation because it could not be tied to any government regulation, industry standard, or common practice.

The court ultimately concluded: "Without reliably supported standard-of-care opinion testimony, the fact finder cannot answer whether the defendant's actions fall below standards commonly held by those in the profession. Unfortunately, [the expert's] testimony at best amounts to his personnel views on what the industry standard of care *should* be."

This case is only one instance where smart products connected to the Internet pose a new challenge for expert witnesses who may have the requisite skills to offer opinions on the dumb version of a product but lack the *new* skill sets to avoid exclusion when offering opinions on the smart version. In defending claims related to IoT devices, businesses should be sure to examine whether the plaintiff's expert is capable of offering opinions on both.

 ISBN 1056 3059