

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

ERIE INSURANCE COMPANY,  
Plaintiff

vs.

SEAN HOWELL d/b/a HOWELL DRYWALL,  
Defendant

: NO. 16 - 1776  
:  
: CIVIL ACTION - LAW  
:  
: Motion to Preclude  
: Expert Witnesses and  
: for Summary Judgment

**OPINION AND ORDER**

Before the Court is Defendant's Motion to Preclude Plaintiff's Expert Witnesses and Motion for Summary Judgment, filed March 15, 2018. Argument was heard April 18, 2018.

Plaintiff, as subrogee of George and Sheri Summers, seeks to recover for damages to real and personal property resulting from a fire which destroyed the Summers' home. Plaintiff alleges that Defendant Howell's negligence in leaving a staining rag in the home's garage during renovations caused the fire. Plaintiff has offered three expert witnesses, Dr. Daniel Perlmutter, Kevin Thomas and Ronald Panunto, who all opine that the fire was started by spontaneous combustion of the rag. In his written motion, Defendant seeks to exclude the testimony of all three on the basis that their opinions do not satisfy the Frye<sup>1</sup> standard because they are "not the product of the scientific method". He also contends that Ronald Panunto is not qualified to give the opinion in the first place. Finally, he argues that if the opinions are excluded, he is entitled to summary judgment as there is no evidence to support Plaintiff's claim.

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<sup>1</sup> Frye v. United States, 293 F. 1013 (D.C. Cir. 1923).

The Frye standard provides for the admissibility of novel scientific evidence if the methodology that underlies the evidence has general acceptance in the relevant scientific community. Grady v. Frito-Lay, Inc., 839 A.2d 1038 (Pa. 2003). Frye is not implicated, however, unless a party seeks to introduce *novel* scientific evidence. Trach v. Fellin, 817 A.2d 1102 (Pa. Super. 2003). Further, Frye applies to determine whether the relevant scientific community has generally accepted the principles and methodology the scientist employs, *not* the conclusion the scientist reaches. Id.

Apparently recognizing that the concept of spontaneous combustion has general acceptance in the relevant scientific community and that the science involved is not novel, at argument defense counsel instead posited that the experts' opinions in this matter are so unreliable they should not be admitted. Counsel asserts that since Dr. Perlmutter does not explain how the fire progressed from the rag to the garage ceiling,<sup>2</sup> his opinion is not based on scientific method.<sup>3</sup> The Court notes that Dr. Perlmutter does state that he believes the chemical reaction (spontaneous combustion) ignited "a paper layer of the wallboard",<sup>4</sup> but in any event, Counsel's assertion actually constitutes a challenge to the *conclusions* reached by Dr. Perlmutter, and thus goes to the weight of his opinion, rather than to its admissibility. Such is not a basis for exclusion. *See generally, Cummins v. Rosa*, 846 A.2d 148 (Pa. Super. 2004).

Defendant also challenges the opinion of Ronald Panunto, an electrical engineer, that "the cause of the fire was spontaneous combustion of the oil-soaked

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<sup>2</sup> Defendant Howell testified in his deposition that he left the rag on a sheet of drywall which was resting on three sawhorses in the garage.

<sup>3</sup> Counsel's argument that the opinions of the other two experts must also be excluded is based on the fact that those experts rely on Dr. Perlmutter's opinion in their own analyses.

<sup>4</sup> See Report of Daniel Perlmutter, page 5, attached to Defendant's Motion to Preclude as Exhibit A.

rag”.<sup>5</sup> Defendant contends Mr. Panunto is not qualified to give that opinion because he is an electrical engineer, not a chemical engineer. The Court does not agree.

An expert witness may be qualified to offer an opinion on a matter if he has any reasonable pretension to specialized knowledge on the subject. George v. Ellis, 820 A.2d 815 (Pa. Super. 2003). Here, while Mr. Panunto may not be a chemical engineer, he is certified as a Fire and Explosion Investigator.<sup>6</sup> The Court believes this provides him with the necessary reasonable pretension to specialized knowledge, and defense counsel may cross-examine him on his qualifications if he chooses, to point out to the jury any areas of weakness he believes to exist which might affect the weight of his opinion.

Finally, with respect to the motion for summary judgment, since the testimony of Plaintiff’s expert witnesses will not be excluded, Defendant is not entitled to summary judgment.

**ORDER**

AND NOW, this 23rd day of April 2018, for the foregoing reasons, Defendant’s Motion to Preclude Plaintiff’s Expert Witnesses and Motion for Summary Judgment are both DENIED.

BY THE COURT,

Eric R. Linhardt, Judge

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<sup>5</sup> See Report of Ronald Panunto, page 3, attached to Defendant’s Motion to Preclude as Exhibit C.

<sup>6</sup> Id. See also, Curriculum Vitae of Ronald Panunto, attached to Defendant’s Motion to Preclude as Exhibit D.

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