

UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

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ACE AMERICAN INSURANCE )  
COMPANY, )  
Plaintiff, )  
v. )  
EATON ELECTRICAL, INC., )  
Defendant. )

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Case No. 3:11-cv-1741 (CSH)

**JANUARY 16, 2015**

**RULINGS ON DEFENDANT'S MOTIONS TO PRECLUDE EXPERT  
WITNESS TESTIMONY AND FOR SUMMARY JUDGMENT**

**HAIGHT, Senior District Judge:**

This diversity action arises out of a fire that destroyed a residential building in Southbury, Connecticut. Plaintiff ACE American Insurance Company ("ACE"), which had insured the property owner against such loss, paid its insured's claim and filed this subrogation action against Defendant Eaton Electrical, Inc. ("Eaton"). Eaton had manufactured and sold a device called an "electric meter pan with circuit breakers" ("the Meter Pan") which had been installed in the building prior to the fire. The theory of Plaintiff's case, sounding in strict product liability, is that the Meter Pan "was defective and unreasonably dangerous," Complaint [Doc. 1] at ¶ 16, and the fire "was the direct and proximate result of the defect in the Meter Pan," *id.* at ¶ 19.

In support of that theory, Plaintiff relies upon an expert report and opinion rendered by Joseph A. Cristino, a professional electrical engineer. Counsel for Defendant have taken Cristino's

deposition. Defendant now makes a motion [Doc. 36] for an order striking Cristino's opinion and precluding his opinion testimony at trial. Defendant bases that motion upon the Supreme Court's seminal opinion in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), and its progeny, and couples the motion to preclude with a motion for summary judgment [Doc. 38] dismissing Plaintiff's complaint.

Plaintiff opposes both motions. The Court conducted a hearing, at which portions of the evidentiary record created during discovery were examined and able counsel argued all aspects of the case. This Ruling resolves both motions.

### **I. FACTUAL BACKGROUND**

The facts set forth in this Part appear to be undisputed.

In 2005, ACE's insured, Omega Engineering, Inc., constructed a development of four modular residential houses on Vista View Drive in the Town of Southbury, Connecticut. None sold. The homes stood vacant as the years passed. The property owner retained security monitoring services to be provided by a company called Armed & Ready Security Service. Armed & Ready reported to one Jonathan Turner, a representative of the owner. A number of false fire alarms and power outages occurred within the neighborhood. In 2008, Turner instructed Armed & Ready to disable the smoke alarm monitoring, but to continue monitoring the electric power, which apparently was left on in the vacant homes.

At about 10:47 p.m. during the night of January 16, 2011, an Armed & Ready employee telephoned Turner and advised him of a power outage at one of the five houses, the one located at 75 Vista View Drive. About ten minutes later, Armed & Ready contacted Turner again, to advise

that the home at 70 Vista View Drive was also without power. Both houses received power from the same utility company transformer. Underground electrical lines ran from the transformer to the houses and connected with the sort of device that is involved in this action. The night of January 16 was cold, with a temperature of 17° Fahrenheit, and snow covered the ground. Turner instructed Armed & Ready to "place a hold" on both houses for twelve hours, meaning that no further alarms or alerts were to be submitted to Turner, who did not send anyone to check on the properties. About two hours after being alerted to the loss of power at 75 Vista View Drive, Turner was advised that the house was on fire. By the time the first responders arrived, the house was engulfed in flame. The fire caused the damage for which ACE paid its insured, and now seeks by subrogation to recover from Eaton.

ACE's complaint against Eaton contains a single numbered count, Count I, which is captioned "Strict Product Liability," and focuses upon that device the complaint calls "the Meter Pan." The device was manufactured and sold by Defendant Eaton. Cristino, in an unchallenged section of his report, refers to the device as "a Cutler Hammer combination meter enclosure," and goes on to say: "A combination meter enclosure is one which has provisions for an electric utility revenue meter and a main disconnect (circuit breaker or fused disconnect switch)." Doc. 37-2 at 2. Plaintiff's brief [Doc. 44] at 6 expands upon that description of this device:

A combination meter enclosure is a device with a meter and, in a separate compartment, a main circuit breaker. The electric service enters the panel in the bottom[,] travel[s] the length of the panel to the meter, goes through the meter then the circuit breaker and then into the home where it provides electricity to the home's main distribution panel in the basement and then to the various appliances and outlets in the home. The circuit breaker is a safety device intended to protect the home from overcurrent situations.

Throughout this Ruling, I will adopt Cristino's phrasing, and refer to the product in question as the "meter enclosure," an apt phrase because the device enclosed a meter.

The combination meter enclosure and circuit breaker involved in the case at bar was enclosed within a rectangular metal container which was affixed against the exterior wood siding on the northerly face of the structure at 75 Visa View Drive. Cristino, retained as an expert on behalf of the ACE interests, visited the site on January 31, 2011, in the company of Michael Driscoll, a forensic fire investigator, and "other experts," in order to "initiate an investigation of the January 17<sup>th</sup> fire, evaluate possible electrical ignition sources and to formulate and proceed with a course of action to determine the cause of the fire." Cristino Report, Doc. 37-2 at 2. That report also recites that the underground electrical conduit ran from the transformer to a "combination meter enclosure located on the northerly face of the structure," and that:

A fire had occurred at the exterior of the structure on January 17, 2011, that extended into the structure and caused structural damage. The preliminary analysis identified the area of fire origin as being in the vicinity of the electric service meter enclosure and underground conductor conduit location on the northerly side of the structure.

*Id.*

The combination meter enclosure and circuit breaker that had been installed at the 75 Vista View Drive house had suffered extensive exterior and interior damage during the fire. Cristino conducted additional inspections and certain tests, and then delivered the report, Doc. 37-2, which contains the opinions Eaton seeks to preclude under *Daubert*. I will quote the essential parts of those opinions:

Based upon the site examination, laboratory analysis and information obtained from Eaton Corporation Cutler Hammer, it can be stated with a reasonable degree of engineering certainty that the



January 17, 2011, failure within the Cutler Hammer combination meter enclosure that was mounted on the exterior of an [sic] residential structure located at 75 Vista View Drive, Southbury, Connecticut, was due to a short circuit within the 200-amp main circuit breaker mounted within the meter enclosure. The short circuit originated within the circuit breaker's internal Line side components most probably due to a defect that allowed moisture ingress. The meter enclosure was designed and manufactured for outdoor applications. Therefore, the meter enclosure should have been capable of preventing the ingress of moisture typically experienced in a New England winter. The moisture compromised the circuit breaker's internal insulation system . . . . The fault most probably was located in the area of the internal Line side components within the circuit breaker. (This is based upon the observed damage within the circuit breaker remains.) . . . Due to the location of the fault, the Cutler Hammer main circuit breaker was unable to interrupt the electrical fault, thus allowing the fault to expand and intensify. This resulted in the production of temperatures in excess of 2500° Fahrenheit; caused failures of the Mylar insulation at the back of the circuit breaker and two steel components; the extension of the electrical fault outside of the confines of the meter enclosure caused the combustible materials to which the meter enclosure was mounted to ignite.

Based upon laboratory analysis and visual examination, the electrical failure within the Cutler Hammer combination meter socket enclosure was due to a fault that originated within the circuit breaker within the enclosure. Outside sources and failure scenarios have been considered and eliminated because of the location and severity of the damage to the aluminum, insulation material and steel components within the Cutler Hammer combination meter socket enclosure. Neither an external electrical fault nor an external fire could have produced the observed damage and, more importantly, an external event could not have kept the component remains intact.

Cristino report, Doc. 37-2, at 9-10.

I have referred to Cristino's *opinions* in the plural because a careful reading of these passages from his report reveals that Cristino, explicitly or impliedly, offers several separate but related conclusions in support of ACE's theory of the case. Those are:

1. There was a short circuit in the combination meter enclosure.
2. The short circuit caused the fire that damaged the house.
3. The short circuit was caused by the ingress of moisture into the combination meter enclosure.
4. The ingress of moisture into the combined meter enclosure must be ascribed to a defect in the enclosure.

On the present motion to preclude, Defendant contends that the Court, in its gatekeeping capacity mandated by *Daubert*, should slam the gate shut on Cristino's opinions and not let the jury hear them. Plaintiff contends that Cristino's opinions pass muster for admissibility, leaving it to the jury to assess their weight or value.

## **II. DISCUSSION**

### **A. Preliminary Considerations**

During the hearing on these motions, the extended colloquies involving able counsel – Mr. Rossi for Plaintiff ACE and Mr. Barton for Defendant Eaton – served to identify and narrow some of the issues.

One exchange indicated that the parties agree with the first of the four conclusions listed above. I put this question to Mr. Barton: "Do you agree that it happened that there was a short circuit in the circuit breaker?" Mr. Barton responded: "Without question, that is not in dispute by Mr. Rossi or myself. An arc fault occurred inside that circuit breaker." Transcript of Hearing ("Tr.") at 70. The remaining three conclusions are in dispute.

Another subject that arose during the hearing was the nature of Plaintiff's claim. Mr. Barton

interpreted ACE's complaint as "a specific product defect allegation, not a malfunction theory," which in his view "ACE want[s] to pivot and go back to." Tr. at 64. Mr. Rossi rejected any suggestion that Plaintiff had altered its theory of the case. He said of the complaint that:

there's nowhere in there that the plaintiff alleges there was a design defect. I don't know where Eaton got that from, but the plaintiffs never alleged it. We generally allege that there was a defect, and the malfunction theory comes squarely within the confines of our complaint. We never say there's a specific defect. We say there's a defect. That's what the malfunction theory is designed for.

Tr. at 94.

A plaintiff is, within reason, the master of its own complaint. I take Mr. Rossi at his word and interpret ACE's subrogation claim against Eaton as based upon the malfunction theory of products liability. This Court's evaluation of the admissibility at trial of Cristino's opinions is informed by the scope and effect of that malfunction theory, as determined by Connecticut law. The leading case on the subject is the Connecticut Supreme Court's decision in *Metropolitan Property and Casualty Insurance Company v. Deere and Company*, 302 Conn. 123 (2011) ("*Metropolitan*").

**B. The Malfunction Theory of Products Liability under Connecticut Law**

In *Metropolitan*, the plaintiff Metropolitan Property and Casualty Insurance Company insured the home of residents of Cheshire, Connecticut. A substantial portion of the residence and its contents were destroyed by a fire that broke out at about 1 p.m. on a day in July 2003. Metropolitan paid its insureds' losses and then sued defendant Deere and Company by subrogation. Deere had manufactured and sold a gasoline-powered lawn tractor to the homeowners. When the owners were not using the tractor to mow the lawn surrounding the home, they stored it in an attached garage, where the tractor was reposing when the fire broke out, having been used earlier in the day for its

intended purpose.

The theory of Metropolitan's subrogation claim against Deere was that the Deere lawn tractor contained a manufacturing defect in its electrical system that caused the fire. The trial judge admitted, over Deere's objection, the testimony of two expert witnesses called by Metropolitan in support of that theory. The jury returned a verdict in the plaintiff's favor. Deere appealed to the Connecticut Appellate Court. The Supreme Court of the State transferred the undecided appeal to its docket, 302 Conn. at 125 n. 1, reversed the rulings of the trial court, and remanded the case to that court with directions to grant the defendant's motion for a directed verdict and render judgment for the defendant. 302 Conn. at 158.

The Supreme Court's decision in *Metropolitan* brings Connecticut within the jurisdictions recognizing the "malfunction theory" of products liability. All product liability actions, the Court observes, require a plaintiff to prove that "the product was in a defective condition unreasonably dangerous to the consumer or user," 302 Conn. at 131. "Although most product liability cases are based on direct evidence of a specific product defect, there are cases in which such evidence is unavailable," and in such a case, courts use "the 'malfunction theory' of products liability to permit a jury to infer the existence of a product defect that existed at the time of sale or distribution on the basis of circumstantial evidence alone." *Id.* at 131, 133. In other words:

The absence of direct evidence of a specific product defect is not, however, fatal to a plaintiff's claims, and a plaintiff, under certain circumstances, may establish a prima facie case using circumstantial evidence of a defect attributable to the manufacturer . . . . The malfunction theory of products liability permits the plaintiff to establish a prima face product liability case on the basis of circumstantial evidence when direct evidence of a defect is unavailable.

*Id.* at 132, 133.

During the course of its opinion in *Metropolitan*, the Connecticut Supreme Court took pains to stress that the malfunction theory exposes product manufacturers to inherent and potentially unfair risks of liability, against which trial judges are instructed to erect safeguards. "Moreover," the Court said, "the application of the malfunction theory in cases in which the evidence is speculative raises substantial questions of fairness in allowing cases to proceed against product manufacturers . . . . For these reasons, it is important that appropriate limitations be placed on the application of the malfunction theory, and, when the evidence presented by the plaintiff does not remove the case from the realm of speculation, courts must intervene to prevent such cases from reaching a jury." 302 Conn. at 137-138 (citations omitted). Having sounded that general caution, the Court gave these specific curative instructions:

With these concerns in mind, we conclude that, when direct evidence of a specific defect is unavailable, a jury may rely on circumstantial evidence to infer that a product that malfunctioned was defective at the time it left the manufacturer's or seller's control if the plaintiff presents evidence establishing that (1) the incident that caused the plaintiff's harm was of a kind that ordinarily does not occur in the absence of a product defect, and (2) any defect most likely existed at the time the product left the manufacturer's or seller's control and was not the result of other reasonably possible causes not attributable to the manufacturer or seller. These two inferences, taken together, permit a trier of fact to link the plaintiff's injury to a product defect attributable to the manufacturer or seller. A plaintiff may establish these elements through the use of various forms of circumstantial evidence . . .

*Id.* at 139-141 (footnote omitted).

Having declared these general principles, the *Metropolitan* Court applied them to the facts of that case. The Court summarized its holdings at the beginning of its opinion. The opinion notes

that in the trial court, defendant Deere moved "for a directed verdict and to set aside the verdict, in which the defendant claimed that the plaintiff had failed to present sufficient evidence to establish liability." 302 Conn. at 125. The Supreme Court then said:

The plaintiff responds that the trial court properly admitted the evidence and expert testimony at issue and that it presented sufficient evidence to sustain the jury's verdict pursuant to the "malfunction theory" of products liability, which permits a plaintiff to prove its case on the basis of circumstantial evidence. Although we agree that a plaintiff may base a product liability action on the "malfunction theory," we conclude that the plaintiff's evidence in the present case was insufficient to establish its products liability claim, and, therefore, we reverse the judgment of the trial court.

*Id.* at 125-126. In a footnote with which the Supreme Court concludes its opinion in *Metropolitan*, 302 Conn. at 158 n. 20, the Court clarified the nature and extent of its dispositive holding:

Because we conclude that the plaintiff's evidence was not sufficient to support an inference that a failure of the electrical system was attributable to the defendant, we need not examine whether all of the plaintiff's evidence, taken together, was sufficient to remove the case from the realm of speculation and to support a finding that the defendant more likely than not caused the homeowners to suffer harm.

I take this to mean that under Connecticut law, a plaintiff relying upon the "malfunction theory" in a products liability action must satisfy a two-pronged burden of proof: first, proof of the *existence* of a product failure attributable to the defendant; and second, a *causal connection* between that failure and the loss complained of. In *Metropolitan*, the Supreme Court did not reach the second prong because *Metropolitan* failed to prove that the lawn tractor failed in a manner attributable to Deere. That interpretation is reinforced by an earlier footnote in the *Metropolitan* opinion, 302 Conn. at 140 n. 9, where the Court, having described in text a plaintiff's ability to prove the existence of a product defect by circumstantial evidence, is careful to add in the footnote: "In addition to these

two elements, a plaintiff, as a threshold matter, must present sufficient evidence to support a finding that the product, and not some other cause apart from the product, was more likely than not the cause of the plaintiff's injury."

In the case at bar, a careful examination of Mr. Cristino's report shows that it is a chain of inferences, whose structure consists of the following links (quotations are from pages 8-9 of the Cristino report):

(a) On January 17, 2011 (the day of the fire), a "failure" occurred "within the Cutler Hammer combination meter enclosure that was mounted on the exterior" of the residential structure.

(b) The failure "was due to a short circuit within the 200-amp main circuit breaker mounted within the meter enclosure."

(c) "The fault most probably was located in the area of the internal Line side components within the circuit breaker."

(d) "Due to the location of the fault, the Cutler Hammer main circuit breaker was unable to interrupt the electrical fault, thus allowing the fault to expand and intensify," resulting in "the production of temperatures in excess of 2500° Fahrenheit" which "caused failures of the Mylar insulation at the back of the circuit breaker and two steel components; the extension of the electrical fault outside of the confines of the meter enclosure caused the combustible materials to which the meter enclosure was mounted to ignite." To render this particular portion of Cristino's report in plain English, he is saying that the short circuit in the circuit breaker caused the house to catch on fire.

(e) "The short circuit originated within the circuit breaker's internal Line side components most probably due to a defect that allowed moisture ingress." A condition in the meter enclosure that allows "moisture ingress" may fairly be characterized as a *product defect*, Cristino reasons,

because: "The meter enclosure was designed and manufactured for outdoor applications. Therefore, the meter enclosure should have been capable of preventing the ingress of moisture typically experienced in a New England winter. The moisture compromised the circuit breaker's internal insulation system which included the Bakelite-type material from which the circuit breaker body was formed and the internal insulating air gaps." Cristino's opinion concludes that it was a fault of this nature in the meter enclosure, capable of this mischief, that brought about the mechanics of destruction described in subparagraph (d), *supra*.

This is the chain of inferences which, according to Cristino's report and ACE's theory of the case, establishes Eaton's liability as the manufacturer of a defective product that caused the destruction of the house.

In *Metropolitan*, the Connecticut Supreme Court recognized that such a chain of inferences may in principle support a viable claim for product liability based upon the malfunction theory, but stressed the rigors of making that showing in practice. The Court included much of its opinion's guidance in footnotes, and as a source of instruction for the case at bar, it is useful to quote 302 Conn. at 140 n. 9 at some length:

In most cases, direct evidence will strongly support a finding that a particular product caused the plaintiff's harm.

There are those cases, however, such as the present case, in which the evidence that a particular product caused the accident will be wholly circumstantial. This adds an additional inference to the chain of inferences necessary for the trier of fact to find that a defect attributable to the manufacturer caused the plaintiff's injury. This means that, to find the manufacturer liable pursuant to the malfunction theory, the trier of fact must find, first, that the manufacturer's product caused the plaintiff to suffer harm, second, that the product failed *as a result of a defect* and not some other cause, and, third, that the defect was attributable to the manufacturer



and not something or someone else. The addition of this inference to the chain of inferences adds to the danger that the evidence of each element, taken together, may be too speculative to support a finding of liability on the part of the manufacturer. When *each of these inferences* is based on circumstantial evidence alone, *it is essential* that the plaintiff present sufficient evidence not only to support *each of the inferences* but also to satisfy the trier of fact that, after consideration of all of the evidence and inferences together, it is more likely than not that the manufacturer caused the plaintiff to suffer harm. Even if there is sufficient evidence to allow the trier of fact to draw *each of the inferences* necessary to establish a claim pursuant to the malfunction theory, if the trier of fact nevertheless is not convinced that the manufacturer caused the plaintiff to suffer harm, the trier of fact must return a verdict for the manufacturer.

(emphasis added) (citation omitted) .

Applying these holdings by high authority to the present case, there is sufficient evidence in the record to justify Cristino's conclusion that a short circuit in the Eaton-manufactured meter enclosure caused the house to catch fire. The meter enclosure was recovered and examined after the casualty. Counsel for Eaton agree that a short circuit occurred within the product's confines at some time. Cristino's report states, without subsequent contradiction, that "preliminary analysis identified the area of fire origin as being in the vicinity of the electric service meter enclosure and underground conductor conduit location on the northerly side of the structure." Doc. 37-2 at 2. The post-casualty internal condition of the meter enclosure is consistent with heat sufficient to cause combustion being transmitted from the meter enclosure to the combustible residential house structure to which the meter enclosure was attached.

But these circumstances are not sufficient to cast Eaton in liability for a product defect. As the Supreme Court observed in *Metropolitan*, 302 Conn. at 136, "proof of an accident alone is insufficient to establish a manufacturer's liability. The fact of a product accident does not necessarily

establish either the existence of a defect or that the manufacturer is responsible, both of which must be proven in product liability cases."

This requirement of proof brings us directly to the heart of the case: Cristino's stated opinion that *the cause of the short circuit within the meter enclosure* (which in turn caused the house fire) was a defect in the meter enclosure which "allowed moisture ingress." That is the only passage in Cristino's opinion that purports to identify a product defect in the meter enclosure. It goes to the heart of the case because the existence of a product defect is an essential element of a product liability claim. If a plaintiff does not prove that element, then quite apart from questions of causation, a defendant product manufacturer has no case to answer.

While the Connecticut Supreme Court held in *Metropolitan* that under the malfunction theory a plaintiff may establish the element of existing defect "through the use of various forms of circumstantial evidence," 302 Conn. at 140, it is instructive to note the kinds of circumstantial evidence on the issue that the Court immediately identified:

evidence of (1) the history and use of the particular product, (2) the manner in which the product malfunctioned, (3) similar malfunctions in similar products that may negate the possibility of other causes, (4) the age of the product in relation to its life expectancy, and (5) the most likely causes of the malfunction. If lay witnesses and common experience are not sufficient to remove the case from the realm of speculation, the plaintiff will need to present expert testimony to establish a prima facie case.

*Id.* at 141 (citations and footnotes omitted). In the case at bar, ACE attempts to establish that prima facie case though the opinion of its expert, Mr. Cristino, that Eaton's meter enclosure was defective because it allowed "moisture ingress." Cristino uses that phrase rather than the more common noun "water," presumably because the source of the offending "moisture" could have been water, snow,

ice, or a combination of these inescapable forces of nature.

Product liability cases are fact-intensive, but the kind of circumstantial evidence the *Metropolitan* Court identified in category (4) *supra* resonates in the case at bar. That circumstance focuses upon the age of the accused product, and in that regard the Court said in *Metropolitan*:

When a product malfunctions when it is new, the inference that the malfunction resulted from a defect attributable to the manufacturer is likely to be stronger than when the product is older because of the diminished possibility of other causes in the case of the newer product.

302 Conn. at 144 (citation omitted). Expanding on that principle, the *Metropolitan* Court said in a footnote at 302 Conn.156 n. 19:

We note that when the product at issue is new or nearly new, there is much less of a possibility that a malfunction would be caused by factors not attributable to the manufacturer (such as mistreatment, lack of maintenance, or improper maintenance). Therefore, it would not necessarily be speculative to conclude that any defect in the product is attributable to the manufacturer in a recently purchased product, even in the absence of additional affirmative evidence linking the defect to the manufacturer.

The corollary of that principle is that the older a product, the more speculative becomes a theory of damage caused by a defect attributable to the manufacturer. However, whether the product be new or old, just unwrapped from its packaging or hanging on the side of a house for six years, a products liability plaintiff must prove the existence of a defect that caused the harm. That element was stressed in *Metropolitan*, when the Supreme Court came to apply the principles it articulated to the facts in that case.

Applying these principles of law to the facts in *Metropolitan*, the Court rejected the opinion of plaintiff's expert, offered to show that a defect existing in the electrical system of a lawn tractor,

which caused fire damage to a home, was attributable to the tractor manufacturer. The Court reasoned:

In addition, the plaintiff's evidence failed to link an electrical failure in the tractor to a defect attributable to the defendant. The evidence presented at trial clearly established that there were no problems reported with the tractor's electrical system during the first four years of use and that the tractor functioned properly during that time, weakening any inference that the tractor's electrical system was defective at the time it was manufactured or when it was sold to the homeowners. . . .

Furthermore, because the evidence established that the tractor was not new or nearly new when it malfunctioned, the plaintiff was required to present additional evidence to explain how the tractor could have had a defect in the electrical system when it left the defendant's manufacturing facilities yet function without problems for several years before failing in July, 2003. The plaintiff did not present any such evidence.

302 Conn. at 155-56.

In the present case, the evidence shows that the house in question was one of four that a developer, ACE's insured, constructed in 2005 in hopes of selling them. The houses did not sell, but electricity was maintained in them, making use of the meter enclosures manufactured by Eaton. The fire occurred in 2011, six years later. Cristino's theory of product defect is that a meter enclosure "manufactured for outdoor applications . . . should have been capable of preventing the ingress of moisture typically experienced in a New England winter." This argument is logical, but leaves plaintiff hoist with his own petard, for there is no evidence in the present record that Eaton's meter enclosure failed to keep internally dry during five or six winters of considerable severity. If an external meter enclosure left the manufacturer's control, at the time of the product's sale to a property owner, in so defective a condition that foreseeable amounts of natural outdoor water (rain, snow,

ice) could penetrate the product and cause it to short circuit, one would expect this to happen sooner rather than later – surely, sooner than six years later.

In addition, the evidence of the meter enclosure's internal structure makes it somewhat unlikely that water introduced from the outside would have penetrated to the precise part of the mechanism required to produce a short circuit capable of disabling the circuit breaker. At oral argument on the present motions, counsel for Eaton called the Court's attention to the fact that, after Mr. Cristino rendered his opinion with respect to the defect in the meter enclosure, he immersed an Eaton circuit breaker in a bucket of water, and then froze it, and then put the circuit breaker on the meter panel, and the device "worked fine." Transcript of Hearing ("Tr.") at 33. That benign result was obtained, counsel argued, because "the various components inside the circuit breaker [are] encapsulated in various labyrinths of plastic and oil." Tr. at 33-34.

Counsel for Eaton also read into the hearing transcript this exchange during his examination of Cristino at the latter's previously conducted deposition:

Q. So essentially, if I've got the logic correct, with respect to your reasonable degree of engineering certainty, an unknown amount of moisture from an unknown source made its way into the breaker panel from some unknown point, migrated into the breaker in an unknown fashion, entered the breaker through an unknown source, compromising unknown components within the breaker that caused an arc fault on the Line side. Did I accurately depict what your testimony is?

A. Yes, sir.

Q. And you believe this unknown defect, which you cannot tell me or testify to, allowed the moisture ingress. Is that correct?

A. That's correct.

Tr. at 37. Having read that exchange at the argument, counsel concluded with an advocate's flourish:

"That is not science, your Honor. That is guesswork, something the jury should not be allowed to hear." Tr. at 37-38.

Rhetoric aside, this is a significant exchange. Cristino was not a potted plant (to borrow a phrase used by a different attorney during a high profile hearing in an earlier era). Cristino is an experienced engineer, expert consultant and witness. He comes across during his deposition as intelligent and articulate, quite prepared to defend the opinions he had expressed and counsel for Eaton was engaged in challenging. If Cristino disagreed with the summaries of his opinion counsel put to him in the quoted exchange, there is no reason to think that he would not have said so. Instead, Cristino accepted as accurate counsel's recitations of the essence of Cristino's opinions. This is a material factor when the Court comes to consider whether Cristino's opinions would be admissible at a trial.

### **C. The Defendant's Motion to Strike and Preclude**

The Connecticut Supreme Court's opinion in *Metropolitan* is significant in resolving the present motions because the opinion analyzes, under governing Connecticut law, what a plaintiff must prove, and its expert witnesses must say, in order to prevail upon a products liability claim based on the malfunction theory. Accordingly, *Metropolitan* bears upon the validity, effect and legal sufficiency of Cristino's opinions in the case at bar. But *Metropolitan* does not directly address whether those opinions can be admitted at trial in this federal case. That question, presented by these motions, falls under Rule 702 of the Federal Rules of Evidence, which district judges administer in discharging their "gatekeeper" function described in *Daubert* and its progeny.

In *Daubert*, the Supreme Court charged trial judges with the responsibility of acting as

gatekeepers to exclude unreliable expert testimony. In *Kumho Tire Co. v. Carmichael*, 526 U.S. 137 (1999), the Court clarified that this gatekeeper function applies to all expert testimony, not just testimony based in science. Rule 702, which according to its caption governs "Testimony by Expert Witnesses," was amended in 2000 "in response to *Daubert*" and to cases applying it, including *Kumho*. Advisory Committee Note to 2000 Amendments at 463.<sup>1</sup> The Committee's purpose in amending Rule 702 was not to "codify" specific factors of reliability identified in *Daubert*; rather, "The standards set forth in the amendment are broad enough to require consideration of any or all of the specific *Daubert* factors where appropriate." Note at 464. The Advisory Committee recognized that "Courts both before and after *Daubert* have found other factors relevant in determining whether expert testimony is sufficiently reliable to be considered by the trier of fact." *Id.*

After Rule 702(a) defines an "expert witness" as one whose "specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue" (in itself a condition of admissibility), Rule 702 goes on to provide that an expert witness

may testify in the form of an opinion if: . . .

- (b) the testimony is based on sufficient facts or data;
- (c) the testimony is the product of reliable principles and methods; and
- (d) the expert has reliably applied the principles and methods to the facts of the case.

Fed. R. Evid. 702(a)-(d).

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<sup>1</sup> This quotation from the Advisory Committee's Note on the 2000 amendments to Rule 702 is taken from the full text of the Note which appears in West's Pamphlet on Federal Civil Judicial Procedure and Rules (2014 revised edition) at pages 463-466.

The Court said in *Daubert*, 509 U.S. at 595, of district judges' gatekeeping function that the "focus, of course, must be solely on principles and methodology, not on the conclusions they generate." But that does not require "a district court to admit opinion evidence that is connected to existing data only by the *ipse dixit* of the expert. A court may conclude that there is simply too great an analytical gap between the data and the opinion proffered." *General Electric Co. v. Joiner*, 522 U.S. 136, 146 (1997). In its Note on the 2000 amendments to Rule 702 at 465, the Advisory Committee said succinctly: "The trial judge in all cases of proffered expert testimony must find that it is properly grounded, well-reasoned, and *not speculative* before it can be admitted." (emphasis added).

Proponents of expert witness opinion testimony are wont to say (as does the Plaintiff at bar) that an adversary's criticisms of the opinion go only to its weight, not admissibility, and the jury should evaluate the opinion in that light. The Second Circuit does not regard that approach with favor. "The Federal Rules of Evidence require a greater degree of discrimination than that," the Second Circuit said in *Boucher v. U.S. Suzuki Motor Corp.*, 73 F.3d 18, 22 (1996), and added that "we must resist the temptation to answer objections to receipt of expert testimony with the shorthand remark that the jury will give it the weight it deserves." (citations and internal quotation marks omitted). The *Boucher* court concluded: "Since Boucher's expert testimony was not accompanied by a sufficient factual foundation before it was submitted to the jury, it was inadmissible under Federal Rule of Evidence 702." *Id.* (citation and internal quotation marks omitted). The Second Circuit regarded that error as reversible, vacated the district court judgment on the point of damages at issue, and remanded the case for a further trial.

In the case at bar, while I acknowledge Mr. Cristino's expertise as an electrical engineer, and



fully accept the sincerity with which he states his opinions, the admissibility of those opinions at a jury trial is governed by Rule 702, and by *Daubert* and its progeny. I must apply those authorities, in my capacity as gatekeeper, which may be defined as keeping the gate of litigation firmly closed against opinions lacking the requisite indicia of reliability to qualify them for a jury's consideration.

Performing that gatekeeper's function, I am unable to admit into evidence Cristino's opinion that the cause of the events culminating in the fire damage to the house in question was a defect in Eaton's meter enclosure which allowed the ingress of moisture into the enclosure. Meaning no disrespect, that particular opinion is speculation, either unsupported by or contrary to evidence in the record.

As to an absence of evidence supporting this opinion: There is no evidence as to what the defect consisted of physically; how the defect (whatever it was) allowed "moisture" to penetrate the cover of the meter enclosure, and in what quantity; what the moisture consisted of; where the moisture came from; when the ingress occurred; and how the moisture, once allowed ingress into the meter enclosure, succeeded in causing the short circuit in the circuit breaker, which appears to have been a well-protected and insulated component of a sophisticated piece of equipment. Cristino is not to be blamed for these evidentiary shortcomings. The indicated evidence may not be available to anyone. But that is not the issue. Rule 702(b) requires that an expert opinion, to be admissible, must be "based on sufficient facts or data." There is no data in this case, and a near-total absence of facts.

As for evidence to the contrary: Mr. Cristino tested his moisture-ingress theory by immersing a replica of the device in a bucket of water, then freezing the water containing the device (to evoke, one imagines, the rigors of a Connecticut winter), and then testing the circuit breaker component –

which worked perfectly well. One can commend Mr. Cristino for making the test, and there may be reasons for the disappointing result he achieved – disappointing, at least, if the test was intended to demonstrate the validity of his opinion about the ingress of moisture into the meter enclosure. But the test does not enhance the reliability of Cristino's opinion on the existence of a product defect: quite to the contrary.

After careful consideration of all the evidence in the present record, my conclusions come down to these. In order for ACE to succeed on its claim against Eaton for product liability, ACE must prove (together with other elements) that in 2005 ACE's insured received from Eaton a meter enclosure device that contained a defect which caused the house's destruction by fire six years later. The proclaimed defect upon which ACE bases the theory of its case is the meter enclosure's asserted propensity to allow the ingress of moisture into the device. ACE is entitled in principle to prove the existence of that defect by circumstantial evidence. The decisive question is whether ACE's proof suffices in practice. It does not. Cristino's opinion, upon which ACE's theory rests, is ingenious but entirely speculative. Not only is that opinion unsupported in any meaningful way by circumstantial evidence, the concept of a defect admitting a fatal amount of moisture is contrary to circumstantial evidence: the length of time the device remained in place exposed to the elements, with seemingly no malfunctions; and the continued operation of the circuit breaker component in the comparable device which Cristino subjected to what it is fair to call water torture. This record is devoid of evidence, direct or circumstantial, sufficient to support Cristino's opinion on this core issue, and significant circumstances argue against the opinion. I conclude that Cristino's opinion does not pass muster under Rule 702, and would not be admissible at a trial.

In *Metropolitan* and *Boucher*, inadmissible expert opinions were admitted by the trial

courts, and judgments for the plaintiffs were vacated. In the case at bar, the question of the admissibility of the opinion expressed by plaintiff's expert is presented before trial, through defendant's invocation of Rule 702. This Court's conclusion of inadmissibility is reached at an earlier stage in the litigation. That is, one supposes, what a gatekeeper is supposed to do.

For the foregoing reasons, Defendant's motion to preclude the expert opinion testimony of Joseph Cristino [Doc. 36] will be GRANTED.

To the extent that Defendant's motion prays that Cristino's opinion be stricken, that relief will be subsumed in the Order granting preclusion.

**D. Defendant's Motion for Summary Judgment**

Defendant having succeeded on its motion to preclude the opinion testimony of Plaintiff's expert witness, Defendant's companion motion for summary judgment under Fed. R. Civ. P. 56 [Doc. 38] will also be granted.

That necessarily follows, as the night the day, because Cristino's opinion was the only evidence available to Plaintiff to prove that a defect existed in Defendant's meter enclosure. In *Metropolitan*, the Connecticut Supreme Court held that the existence of a defect attributable to the manufacturer was an essential element of a claim for malfunction theory product liability. In such a circumstance, courts frequently couple an order precluding a plaintiff's expert witness testimony with an order granting the defendant summary judgment. *See, e.g., Valente v. Testron, Inc.*, 559 F. App'x 11, 14 (2d Cir. 2014) ("With Seluga's testimony properly excluded, the record is devoid of any evidence supporting Valente's theory that the golf car had a design defect or that such a design defect likely caused his accident. . . . Accordingly, the district court properly granted summary

judgment to defendants on Valente's strict liability and negligence design defect claims."); *Russo v. Keough's Turn of the River Hardware, LLC*, 529 F. App'x . 50, 52 (2d Cir. 2013) ("Without the testimony of their expert witness, Russo's claims fail because there would be no evidence from which a reasonable jury could conclude that the ladder was defective."); *Trumps v. Toastmaster, Inc.*, 969 F.Supp. 247, 254 (S.D.N.Y. 1997) (Summary judgment is appropriate if it appears that the non-moving party cannot prove an essential element in its case. . . . Plaintiff nowhere suggests that she has any evidence addressing either of these issues other than the opinions of Kaufmann, which are not admissible.").

### **III. CONCLUSION**

For the foregoing reasons, the Court resolves the pending motions as follows:

The Motion of Defendant Eaton Electrical, Inc. [Doc. 36] to preclude at trial the expert witness testimony of Joseph Cristino, called as a witness by Plaintiff ACE American Insurance Company, is GRANTED.

The Motion of Defendant Eaton Electrical, Inc. [Doc.38] for summary judgment dismissing the Complaint of Plaintiff ACE American Insurance Company is GRANTED.

The Clerk of the Court is directed to dismiss the Complaint WITH PREJUDICE, and to close the file.

It is SO ORDERED.

Dated: New Haven, Connecticut  
January 16, 2015

/s/Charles S. Haight, Jr.  
CHARLES S. HAIGHT, JR.  
Senior United States District Judge

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF CONNECTICUT**

ACE AMERICAN INSURANCE COMPANY,  
436 Walnut Street  
Philadelphia, PA 19106

Case No. \_\_\_\_\_

Plaintiff,

v.

EATON ELECTRICAL, INC.  
1111 Superior Avenue  
Cleveland, Ohio 44114

**JURY TRIAL DEMANDED**

Defendant.

**COMPLAINT**

NOW COMES Plaintiff, ACE American Insurance Company, by and through its undersigned counsel, and for its Complaint against Eaton Electrical, Inc., alleges as follows:

**PARTIES**

1. Plaintiff, ACE American Insurance Company (“ACE”), is an insurance company organized and existing under the laws of the Commonwealth of Pennsylvania with its principal place of business located at 436 Walnut Street, Philadelphia, Pennsylvania 19106.

2. At all times relevant hereto, ACE was authorized to issue insurance policies in the State of Connecticut.

3. At all times relevant hereto, ACE provided insurance to Omega Engineering, Inc. and Omega’s affiliate Pilot’s Mall L.L.C. (“Omega”) for the property located at 75 Vista View Drive, Southbury, Connecticut 06488 pursuant to policy number GPAD36110934002.

4. Defendant, Eaton Electrical, Inc. (“Eaton”), is a corporation organized and existing under the laws of the State of Delaware with its principal place of business at 1111 Superior Avenue, Cleveland, Ohio 44114.

5. At all times relevant hereto, Eaton was engaged in the business of designing, manufacturing, assembling, fabricating, selling and distributing electrical equipment, including, but not limited to, electric meter pans with circuit breakers .

#### **JURISDICTION AND VENUE**

6. This Court has jurisdiction pursuant to 28 U.S.C. § 1332 as there is diversity between the parties and the amount in controversy, exclusive of interest and costs, exceeds the sum of \$75,000.00.

7. Venue is proper in the District of Connecticut pursuant to 28 U.S.C. § 1391, as the events giving rise to this claim occurred in the District of Connecticut.

#### **GENERAL ALLEGATIONS**

8. On January 17, 2011 Omega owned a residential property located at 75 Vista View Drive, Southbury, Connecticut 06488 (“the Subject Property”).

9. The electrical distribution system at the Subject Property utilized an electric meter pan which included a circuit breaker (hereinafter collectively referred to as “the Meter Pan”) which was upon information and belief designed, manufactured, assembled, fabricated, sold and distributed by Eaton.

10. Electric service entered the Subject Property, connected to the Eaton Meter Pan and was metered and then connected to the Subject Property’s electric distribution system.

11. On January 17, 2011, a failure of the Meter Pan caused a fire (“the Fire”) at the Subject Property causing its substantial destruction.

12. Omega submitted a claim to ACE for the damages caused by the Fire to the Subject Property and, pursuant to the terms and conditions of Omega's policy of insurance, ACE paid Omega \$777,376.74 as the fair and reasonable value to repair and replace the property damaged by the Fire.

13. Pursuant to the principles of legal and equitable subrogation, as well as the terms and conditions of Omega's policy of insurance, ACE is subrogated to Omega's rights to the extent of ACE's payment to Omega.

**COUNT I – STRICT PRODUCT LIABILITY**

14. ACE incorporates the paragraphs 1-13 as if fully set forth herein.

15. Defendant is a product seller, as defined by the Connecticut Product Liability Act, Conn. Gen. Stat. §52-572m, *et seq.* ("the Act") engaged in the business of designing, manufacturing, assembling, fabricating, selling products including, but not limited to, the Meter Pan.

16. The Meter Pan was a product and it was defective and unreasonably dangerous.

17. The defect in the Meter Pan existed at the time Eaton placed the Meter Pan into the stream of commerce.

18. The Meter Pan was expected to, and did, reach Omega without substantial change in its condition from the time that Eaton placed it into the stream of commerce.

19. The Fire that destroyed the Subject Property was the direct and proximate result of the defect in the Meter Pan.

20. Eaton is legally responsible and strictly liable for the losses suffered by ACE in one or more of the following ways:

A. Designing, fabricating, manufacturing, assembling, selling, distributing, supplying, and otherwise placing into the stream of commerce the Meter

Pan in a condition that Defendant knew, or should have known, presented an unreasonably dangerous condition;

- B. Designing, fabricating, manufacturing, assembling, selling, distributing, supplying, and otherwise placing into the stream of commerce the Meter Pan in a condition that was not merchantable or fit for the purpose for which such products are ordinarily and foreseeably used;
- C. Failing to design, fabricate, manufacture, assemble, sell, distribute, and the Meter Pan so that foreseeable failures of the Meter Pan would not present a fire hazard;
- D. Negligently designing, fabricating, manufacturing, assembling, selling, distributing, supplying, and otherwise placing into the stream of commerce the Meter Pan;
- E. Failing to properly and adequately test and/or inspect the Meter Pan, prior to selling, distributing, supplying, and otherwise placing into the stream of commerce the Meter Pan;
- F. Breaching the implied warranty of merchantability in that the Meter Pan, was not fit for its particular intended purpose and was not of fair average quality;
- G. Breaching the implied warranty of fitness for a particular purpose in that the Meter Pan, was not fit for its particular intended purpose
- H. Upon information and belief, breaching express warranties by affirmation promise and description in that the Meter Pan was defective and not as described or promised
- I. Breaching the implied warranty against defects in material and workmanship in that the Meter Pan, was defective and malfunctioned during, ordinary and foreseeable use; and
- J. Otherwise failing to act with due care under the circumstances.

WHEREFORE, Plaintiff, ACE American Insurance Company, demands judgment against Defendant, Eaton Electrical, Inc., in the amount of \$777,376.74, together with interest



and the costs of this action, and such other relief as deemed just and proper under the law.

Dated: November 9, 2011

Respectfully submitted,

THE PLAINTIFF,

By: 

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UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

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ACE AMERICAN INSURANCE COMPANY,

CASE NO. 3:11-CV-01741 (CSH)

Plaintiff,

v.

EATON ELECTRICAL, INC.,

Defendant.

APRIL 19, 2013

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DEFENDANT EATON CORPORATION'S MEMORANDUM OF LAW  
IN SUPPORT OF MOTION TO STRIKE PLAINTIFF'S EXPERT  
JOSEPH CRISTINO

Defendant, Eaton Corporation ("Eaton"), for its Memorandum of Law in Support of its Motion to Strike Plaintiff's Expert Joseph Cristino, pursuant to Fed. R. Evid. 702, 401; *Daubert v. Merrill Dow Pharm., Inc.*, 509 U.S. 579, 589-590 (1993); and, *Kumho Tire Co. v. Carmichael*, 526 U.S. 137, 147 (1999), hereby states as follows:

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## I. INTRODUCTION.

Plaintiff filed this subrogation suit against Eaton Corporation (“Eaton”) for strict product liability seeking recovery for property damage caused by a fire which occurred on January 17, 2011 at 75 Vista View Drive, Southbury Connecticut. (See Doc. No. 8, Plaintiff’s Complaint ¶¶ 8-11). Specifically, Plaintiff claims an electrical meter panel<sup>1</sup> or its corresponding circuit breaker failed in an unknown manner as a result of unknown conditions which caused a fire. *Id.* In support of these allegations, Plaintiff retained Joseph Cristino (“Cristino”) to render an opinion concerning the cause of the fire and support its claims of product defect. (See Exhibit A, Deposition of Joseph Cristino, hereinafter “Cristino”, p. 48). Despite the purpose of his retention, Cristino testified that he knows of no product defect in either the meter panel or its corresponding circuit breaker which caused or contributed to cause this fire. (Cristino, pp. 51-52).

Cristino prepared an expert report on November 12, 2012 pursuant to the Court’s Order. (See Order on Motion for Extension of Time, Doc No. 33; Exhibit B, Electrical Failure Analysis Report, hereinafter “Cristino Report”). In his report, Cristino concludes that a short circuit in the breaker was “most probably<sup>2</sup> due to a defect that allowed moisture ingress.”

**Based upon the site examination, laboratory analysis and information obtained from Eaton Corporation Cutler Hammer™, it can be stated with a reasonable degree of engineering certainty that the January 17, 2011, failure within the Cutler Hammer™ combination meter enclosure that was mounted on the exterior of an residential structure located at 75 Vista View Drive, Southbury, Connecticut, was due to a short circuit within the 200-amp main circuit breaker mounted within the meter enclosure. The short circuit originated within**

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<sup>1</sup> Residential meter breakers are service entrance equipment where a utility company connects to a resident’s home for purposes of metering or calculating the amount of power used.

<sup>2</sup> According to Cristino a “high probability” is something greater than 50% or somewhere between 50% and 100%. (Cristino, p. 123).

**the circuit breaker's internal Line side components most probably due to a defect that allowed moisture ingress.**

(Cristino Report, p. 8).

Cristino failed to test the meter panel to ascertain how or if “moisture ingress” could occur or even if moisture could cause a fault in the breaker.<sup>3</sup> Fortunately, twenty-seven (27) days after producing his Rule 26 expert report and three (3) days before his deposition, Cristino decided to test his theory—at least in part. Foregoing testing on how the moisture made its way into the meter panel which is the premise of his failure analysis, Cristino skips right to the introduction of moisture into the circuit breaker. Thus, he assumes the ingress of moisture through the various overlapping barriers where it then must accumulate both vertically and horizontally to make contact with the elevated platform<sup>4</sup> where the circuit breaker is mounted penetrating a Mylar barrier as well as the circuit breaker housing. Having assumed the necessary premise to support his theory, Cristino exposed an exemplar circuit breaker to the most extreme moisture condition possible. Acknowledging the subject breaker was never submerged in water, Cristino tested his “moisture ingress” theory by submerging an exemplar circuit breaker in a bucket of water for five minutes. (Cristino, pp. 195-196). Thereafter, he took the submerged breaker and froze it into a block of ice. *Id.* Cristino then installed the block of ice containing the circuit breaker into a meter panel, energized it and proved his theory wrong on three separate occasions. (Cristino, pp. 205-206). But the testing was performed after he had reached his conclusion.

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<sup>3</sup> The Second Circuit has emphasized that district courts are not required to accept an expert's testimony regarding speculative and untested theories concerning the cause of an accident in a products liability case. *Lynch v. Trek Bicycle Corp.*, 374 F. App'x 204, 206 (2d Cir. 2010). In *Lynch*, the Second Circuit affirmed the district court's decision to preclude an expert who testified how the product failure could have happened to his untested conjecture and to how certain testing might be conducted as unreliable under Rule 702 and *Daubert* factors. *Id.* In the instant case, Cristino's theories as to the cause of accident were first merely untested, unsubstantiated hypotheses and then tested and proven wrong.

<sup>4</sup> The breaker rests on an elevated platform several inches from the back of the breaker panel and is protected by a Mylar sheet.

- Q. Okay. So [the circuit breaker] was submerged and then frozen?**  
**A. Yes, sir.**  
**Q. All right. And then I take it you later installed it on a meter panel and energized it; is that correct?**  
**A. That's correct.**  
...  
**Q. And those tests prove that the circuit breaker continued to function normally. Is that right?**  
**A. That's correct.**

(Cristino, pp. 205-206).

Thus, using what Cristino describes as “good sound engineering logic” he created a dissimilar test to replicate a failure by skipping the critical step of testing for a defect which would allow the ingress of moisture in the first place. This improper testing was conducted after he concluded the meter panel suffered from some unknown defect that allowed moisture ingress. Thereafter, Cristino concluded the introduction of moisture would cause a failure in the breaker—also without conducting any testing. (Cristino Report, p. 8). His submersion circuit breaker test confirmed the circuit breaker would not fail even after being exposed to the most extreme “moisture” circumstance imaginable. (Cristino, pp. 205-206). Such opinions and methodology are not scientifically valid or based on “good sound engineering logic”.

- Q. Okay. So essentially, if I have got the logic correct with respect to your reasonable degree of engineering certainty, an unknown amount of moisture from an unknown source made its way into the breaker panel from some unknown point, migrated into the breaker in an unknown fashion, entered the breaker through an unknown source, compromising unknown components within the breaker that caused an arc fault on the line side. Did I accurately depict what your testimony is?**  
**A. Yes, sir.**  
...  
**Q. And you believe that this unknown defect which you cannot tell me or testify to allowed the moisture ingress; is that correct?**  
**A. That's correct.**

(Cristino, p. 168-169).

Untested opinions based on speculation and assumption which are contrary to the experts

own post-opinion testing do not meet the standards required for the admissibility of expert testimony under Federal Rule of Evidence 702. As such, Plaintiff's proffered expert's opinions and testimony must be stricken as a matter of law.

## II. STATEMENT OF FACTS.

On January 17, 2011 at approximately 12:31 a.m. a fire was reported at 75 Vista View Drive in Southbury Connecticut. (Exhibit C, Deposition of Fire Marshal Henry Stormer, hereinafter "Stormer", p. 26). 75 Vista View Drive was a vacant modular home constructed in 2005 by Ace's insured Omega Engineering, Inc. (*See* Doc. No. 8, Plaintiff's Complaint ¶¶ 1-3). Five modular homes were built for this development in 2005 but none sold. As a result, 75 Vista View Drive was vacant at the time of the fire. Security monitoring services were provided by Armed & Ready Security Service (hereinafter "Armed & Ready"). (Exhibit D, Deposition of Jonathan Turner, hereinafter "Turner", pp. 24-27). However, Armed & Ready had been asked to stop monitoring the smoke alarms in 2008. *Id.*

The day before the fire, on January 16, 2011, at approximately 10:47 p.m., Armed & Ready contacted Jonathan Turner, the representative of the owner, and advised him of a power outage at 75 Vista View Drive. (Turner, p. 28). Approximately ten minutes later, they contacted Turner again this time advising him that 70 Vista View Drive was without power. (Turner, p. 26). Both homes received power from the same utility transformer which had blown a fuse. (Exhibit E, Deposition of Jay Foster, hereinafter "Foster", p. 94). Turner experienced a number of false fire alarms and power outages within the neighborhood over the past five years. As a result, in 2008 he instructed Armed & Ready to disable the smoke alarm monitoring—but to continue monitoring the power. (Turner, pp. 33-34).

After being notified of the power outages, Turner instructed Armed & Ready to "place a hold" on each property for twelve hours. (Turner, p. 26). In other words, no further alarms or alerts

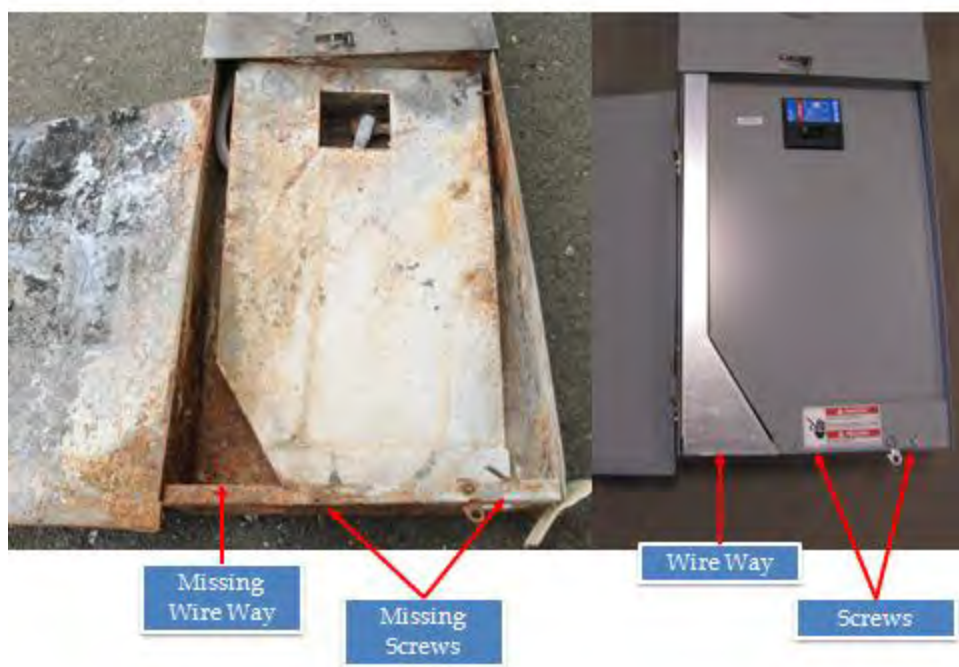
were to be submitted to Turner. In addition, Turner failed to send anyone to check on the property. (Turner, p. 28). Approximately two hours after being alerted that 75 Vista View Drive lost power, Turner was contacted and advised that the property was now on fire. (Turner, p. 29). Fortunately, it only took the fire department nine minutes to arrive on the scene and begin suppression efforts. (Exhibit F, Deposition of Michael Driscoll, hereinafter “Driscoll”, p. 121). According to Plaintiff’s fire investigation expert had Turner responded to the initial notice by Armed & Ready, the home could have been saved. (Driscoll, p. 122). On the evening of the fire it was cold (17° F) with a significant amount of snow on the ground and drifting. (Driscoll, p. 130). By the time the first responders arrived the entire house was fully involved.



The meter panel had been installed five years before the fire by an unknown worker for Kelley Electric. (Cristino, pp. 207-210). The panel had functioned without any problems or the need for maintenance or repair. When the panel was examined at the fire scene it was missing



several component parts<sup>5</sup> including the wire way barrier that protects the energized utility lines from the customer side of the panel. (Cristino, pp. 177-180). In addition, the wire way protects the energized wire from the edge of the separating plate which could compromise its insulation. The meter panel was also missing a screw used to hold the front plate on the meter. It is believed these components were removed by the installer.



<sup>5</sup> The Connecticut Product Liability Act addresses this issue in Section 52-572p, which provides in pertinent part that:

[a] product seller shall not be liable for harm that would not have occurred but for the fact that his product was altered or modified by a third party unless: (1) The alteration or modification was in accordance with the instructions or specifications of the product seller; (2) the alteration or modification was made with the consent of the product seller; or (3) the alteration or modification was the result of conduct that reasonably should have been anticipated by the product seller.

Conn.Gen.Stat. § 52-572p(a) That statute further defines “alteration or modification” to include “changes in the design, formula, function or use of the product from that originally designed, tested or intended by the product seller.” Conn.Gen.Stat. § 52-572p(b). see also, *Lamontagne v. E.I. Du Pont de Nemours and Co., Inc.* 834 F.Supp. 576, 589 (D.Conn. 1993).



### III. STANDARD OF REVIEW.

The District court is charged with ensuring any proffered expert testimony is both “relevant and reliable.” *Daubert*, 509 U.S. at 589. This requires the Court to act as a “gatekeeper” rejecting expert testimony that does not meet this standard. *Id.* at 597. “District courts have a ‘gatekeeping’ role under Federal Rule of Evidence 702 and are charged with ‘the task of ensuring that an expert's testimony both rests on a reliable foundation and is relevant to the task at hand.’ ” *Lynch v. Trek Bicycle Corp.*, 374 F. Appx. 204, 206 (2d Cir.2010) (quoting *Amorgianos v. Nat'l R .R. Passenger Corp.*, 303 F.3d 256, 265 (2d Cir.2002)). Without such a standard, jurists would hear unqualified opinions, resulting in confusion to the jury and prejudice to the parties. One cannot support an opinion by ignoring facts, assuming the existence of evidence in the absence of proof, using flawed circular logic, and setting aside scientific methodology. Without science, such opinions are merely that of an uninformed retained advocate and not probative of any fact at issue.

Federal Rule of Evidence 702 governs the requirements for the admissibility of expert testimony, providing that:

**A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if: (a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue; (b) the testimony is based on sufficient facts or data; (c) the testimony is the product of reliable principles and methods; and (d) the expert has reliably applied the principles and methods to the facts of the case.**

Fed.R.Evid. 702.

In *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579 (1993), the United States Supreme Court interpreted Rule 702 to require district courts to be certain that expert evidence

based on scientific, technical or other specialized knowledge was “not only relevant, but reliable.” *Id.* at 589. As such, the district court must make a “preliminary assessment of whether the reasoning or methodology underlying the testimony is scientifically valid and of whether that reasoning or methodology properly can be applied to the facts in issue.” *Id.* at 592-93. Where, as in the case at bar, a proffered expert fails to conduct testing and sets aside all logic, methodology, and scientific reasoning to formulate an opinion based on assumption and speculation, such testimony is unreliable and, therefore, inadmissible. The jury is not aided by the incorrect assumptions of retained witnesses who serve to merely advocate a position contrary to science and the known facts of a case.

To be admissible, expert testimony must be “sufficiently tied to the facts of the case that it will aid the jury in resolving a factual dispute,” and “must be supported by appropriate validation--*i.e.*, ‘good grounds,’ based on what is known.” *Daubert*, 509 U.S. at 590-91 (quoting *United States v. Downing*, 753 F.2d 1224, 1242 (3d Cir. 1985)). To test the reliability and relevance of a proposed expert’s testimony, the Court must determine whether the expert’s opinions are grounded in the “methods and procedures of science,” *Daubert*, 509 U.S. at 590, and whether the testimony has sufficient “factual underpinnings.” *Walker v. Soo Line R.R. Co.*, 208 F.3d 581, 586 (7th Cir. 2000). The “central objective” of this inquiry is to ensure that any expert “employs in the courtroom the same level of intellectual rigor that characterizes the practice of an expert in the relevant field.” *Kumho Tire Co. v. Charmichael*, 526 U.S. 137, 141-42, 152 (1999).

The standard fire investigators adhere to is the scientific method as set forth in NFPA 921. (Baldwin, pp. 14-15; Stormer, p. 10; Cristino p. 10). The scientific method is defined by NFPA 921 as “[t]he systematic pursuit of knowledge involving the recognition and formulation

of a problem, the collection of data through observation and experiment, and the formulation and testing of a hypothesis.” NFPA 921 *Guide for Fire and Explosion Investigation* § 3.3.139 (2008). It involves the development of a hypothesis “based solely on the ***empirical*** data collected by the investigator.” NFPA 921 § 4.3.5 (2008) (emphasis added). Empirical data is that data which is capable of being verified or disproved by observation or experiment, not assumption. Cristino acknowledged this standard as well as the standard used by forensic engineers before setting aside science assuming the existence of conditions in the absence of proof.

- Q. As a forensic engineer, are you allowed to make up whatever facts you would like?**  
**A. No, sir.**  
**Q. Okay. Why not?**  
**A. It has a, a connotation of voodoo science. And in the world of forensic engineering, the basis for the analysis is science.**

(Cristino, pp. 18-19).

Unfortunately, Cristino sets aside science and the standards adhered to by fire investigators in favor of speculation and assumption—which he knows is not reliable. Here Cristino assumes moisture made its way into the meter panel in some unknown manner. The moisture then made its way to the circuit breaker which failed because of the “ingress of moisture.” Using science or the scientific method, once the expert has formulated his hypothesis using empirical data, he then must test his hypothesis to make sure it withstands scientific scrutiny. As noted in NFPA 921:

The investigator does not have a provable hypothesis unless it can stand the test of careful and serious challenge. Testing of the hypothesis is done by the principle of deductive reasoning, in which the investigator compares his or her hypothesis to all known facts. . . . If no hypothesis can withstand an examination by deductive reasoning, the issue [cause of the fire] should be considered undetermined.

NPFA 921 § 4.3.6 (2008).

Here, Cristino's "hypothesis", albeit one based on assumption and speculation as opposed to empirical data, was not tested using the principals of deductive reasoning before he formulated his opinion. Further, once tested (albeit incomplete testing after he already determined his conclusion), Cristino was able to confirm that his hypothesis was wrong and did not hold up to scientific scrutiny or even his "high probability" standard of at least 50%. (Cristino, p. 123). Under the mandates of NPFA 921 and the standards used by experts in the field Cristino's hypothesis should have been discarded and the cause of the fire listed as "undetermined." NPFA 921 § 4.3.6 (2008). However, such a conclusion would have precluded Ace from filing the present action.

**Q. If we started to assume facts, then that would not be scientific, would it?**

**A. Correct.**

**Q. If we started to assume facts, we could come up with any conclusion we wanted?**

**A. Absolutely.**

(Baldwin, pp. 15).

Cristino cannot identify the exact circumstances that brought his assumed failure mode (moisture) and his failure together. Thus, not only has he failed to show how the moisture entered the meter panel, he has no evidence that the introduction of moisture would cause the failure in the circuit breaker. Indeed, his tests confirmed that "moisture" ***will not*** cause the failure. As such, he assumes the existence of a condition and ignores his own post-opinion testing in an effort to support his employer's desired result. Such conclusions are not scientific and will not aid the trier of fact or rise to the level of scientific rigor used by fire investigators or forensic engineers in the field as is required by this Court. Thus, Cristino's opinions have the "connotation of voodoo science" and must be stricken.

#### IV. LAW AND ARGUMENT.

Cristino's untested opinions are devoid of any factual basis and lack the scientific scrutiny required by this Court. Further, he has no experience in the design, manufacture, or assembly of meter panels or circuit breakers and therefore lacks the skill and expertise necessary to render opinions. His lack of experience with these products highlights the truly reckless nature of his untested, erroneous opinions.

**Q. Have you ever designed a meter panel?**

**A. No, sir, I have not.**

**Q. Have you ever participated in the manufacture of a meter panel?**

**A. No, sir.**

**Q. Have you ever participated in the assembly of a meter panel?**

**A. With regard to manufacturing?**

**Q. Yes, sir.**

**A. No, sir.**

**Q. Okay. Have you ever designed a circuit breaker?**

**A. No, sir.**

**Q. Have you ever participated in the manufacturing or assembly of a circuit breaker?**

**A. No, sir, I have not.**

(Cristino, pp 49-50).

It is axiomatic that expert testimony "must be based on actual knowledge and not subjective belief or unaccepted speculation". *Kuzmech v. Werner Ladder Co.*, No. 3:10-cv-266, 2012 WL 6093898, at \*9 (D. Conn. Dec. 7, 2012) (citations omitted) (attached hereto as Exhibit G). Cristino's testimony and opinions do not meet the standard required for admissible expert testimony. His work fails to meet the requirements set forth in *Daubert* and Rule 702 and constitutes a flagrant violation of the reliable fire investigation techniques required by NFPA 921 and experts in the field. As such, Cristino must not be allowed to testify and confuse the jury with untested and erroneous opinions based on uninformed speculation and conjecture.

**A. CIRCULAR LOGIC, *IPSI DIXIT* AND CRISTINO'S "REASONABLE DEGREE OF ENGINEERING CERTAINTY"**

According to Cristino, a "reasonable degree of engineering certainty" is that degree of certainty that comes from analysis of the facts (presented to him), the results of laboratory testing and using "good sound engineering logic that the opinion that [he] express[es] can be supported by an engineering analysis." (Cristino, pp. 166-167). After failing to conduct any testing on the meter panel or its circuit breaker, Cristino concluded that an unknown amount of moisture entered the meter panel from an unknown location and caused an unknown failure to occur in the breaker. (Cristino, pp. 168-169). Thus, using his "good sound engineering logic" Cristino uses circular logic to conclude the evidence of the moisture is the failure and the failure is his evidence of moisture.

**Q. Okay. Am I correct, sir, that you have no evidence of any moisture inside the subject meter panel or the subject breaker except for your conclusion that moisture caused the electrical fault?**

**A. That's correct.**

**Q. Okay. So because you find a fault, you therefore have concluded that moisture must have been inside not only the meter panel, but the breaker; is that right?**

**A. Because I find the fault?**

**Q. You concluded that moisture not only entered the meter panel, but it entered the breaker. Is that correct?**

**A. That's correct.**

**Q. And so the fault is your evidence of moisture and your only evidence of moisture; is that correct?**

**A. Yes.**

**Q. Okay. And you cannot tell me how that moisture got into the meter panel, nor how that moisture -- if it in fact did -- entered into the breaker. Is that right?**

**A. That's correct.**

(Cristino, p. 120).

As the Supreme Court has made clear "nothing in either *Daubert* or the Federal Rules of Evidence requires a district court to admit opinion evidence that is connected to existing data

only by the *ipse dixit* of the expert.” *Kuzmech*, 2012 WL 6093898, at \*6-7 (quoting *Gen. Elec. Co. v. Joiner*, 522 U.S. 136, 146 (1997)). Without any explanation of the reasoning, any calculations or other type of scientific evidence supporting Cristino’s conclusions, his testimony is opinion evidence that is mere *ipse dixit*<sup>6</sup> of the expert.

The federal courts “repeatedly emphasized the importance of having an expert in a product liability case perform appropriate tests on his and the defendant's designs.” *Id.* at \*8 (quoting *Smith v. Herman Miller, Inc.*, No. CV-03-5358(CPS), 2005 WL 2076570, at \*4 (E.D.N.Y. Aug. 26, 2005) (collecting cases)). The importance of testing both an expert's theory of causation and alternative design “is usually critical to show that an expert adhere[d] to the same standards of intellectual rigor that are demanded in their professional work” and “ensures that the focus of the jury's deliberation is on whether the manufacturer could have designed a safer product, not on whether an expert's proposed but untested hypothesis might bear fruit.” *Colon ex rel. Molina v. BIC USA, Inc.*, 199 F.Supp.2d 53, 76-77 (S.D.N.Y.2001) (internal quotation marks and citation omitted).

In assessing what makes a valid expert opinion, Courts look to what other experts in the field reasonably rely upon in forming such opinions. Under the scientific method, once an investigator has formulated his hypothesis using the empirical data collected, he must test his hypothesis to make sure that it withstands scientific scrutiny. Here, Cristino formed his hypotheses, that the fire was “most probably” caused by moisture and then concluded that the failure was evidence of the moisture. (Cristino, p. 120). In an effort to test his circular logic, Cristino submerged a circuit breaker, froze it and then energized the product. His testing revealed that the “moisture” did not cause a failure in the breaker and left unanswered and untested how

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<sup>6</sup> The Latin translation is literally 'he himself said it' which is commonly referred to as a dogmatic and unproven statement.

the moisture made its way into the breaker—if it in fact did. Fortunately, Cristino assumes the existence of moisture rather than conducting a scientific analysis.

**B. THE ASSUMED EXISTENCE OF “UNKNOWN MOISTURE FROM AN UNKNOWN SOURCE” IS NOT A SCIENTIFIC ANALYSIS UPON WHICH AN EXPERT CAN RELY.**

Cristino testified that moisture may have been introduced into the meter panel from snow drifts that somehow infiltrated the meter panel—but he does not know how.

**Q. Do you believe it was drifting snow that made its way into the meter panel?**

**A. I think it's something that can't be ruled out.**

**Q. Did this drifting snow enter in through the bottom, through the top, through the side, through the back? Can you tell me?**

**A. No, sir, I can't.**

(Cristino, p. 172).

Cristino does not limit the assumed ingress of moisture to the snow and ice activity that may have occurred on January 17, 2011. Instead, Cristino speculates that the cumulative effect of five years of moisture caused an unspecified failure in the meter panel. Of course, when Cristino submerged an exemplar circuit breaker, froze it into a block of ice and installed it into a meter panel it worked fine. Despite this testing, Cristino concludes that an unknown amount of moisture over a five year period of time would have compromised the meter panel and circuit breaker contributing to cause the failure.

**Q. Do you believe that any rain, snowstorms, hail, or natural moisture of any type that occurred prior to January 16 of 2011 caused or contributed to cause the fire at 75 Vista View Drive?**

**A. In my opinion, I think it's highly probable.**

**Q. Okay. Which rain, snow, storms, or hail highly -- well, you believe highly are potentially a cause of the fire at 75 Vista View Drive?**

**A. All of them.**

**Q. All of them?**

**A. Yes, sir.**

**Q. Can you tell me how much rain this particular meter panel was exposed to?**

**A. No, sir, I cannot.**

**Q. Can you tell me if any of the rain this meter panel was exposed to ever made its way into the internal components of the meter?**



- A. No, sir.
- Q. Can you tell me how much snow this meter panel was exposed to?
- A. No, sir, I can't.
- Q. Can you tell me how much snow made its way into the internal components of the meter panel?
- A. No, I cannot.
- Q. Can you tell me how much hail this meter panel was exposed to?
- A. No, sir.
- Q. Can you tell me whether any of this hail caused any damage or made its way into the internal working of the meter panel?
- A. No, sir.
- Q. Are there any other natural sources of moisture that we haven't covered that you believe are highly probable to have caused or contributed to cause this fire?
- A. None that come to mind, sir.

(Cristino, p. 114).

Such testimony is the very reason the federal courts adopted the *Daubert* standard. Cristino's testimony does not even rise to the level of junk science. It is unsupported opinion in its truest form without any basis, analysis, science, testing or logic. Even basic scientific tenets such as evaporation elude Cristino's analysis. He testified that the failure of this product took five years because that was the amount of time required for an unknown amount of moisture to accumulate in the circuit breaker and cause an unknown failure without any testing or factual support. Further, that once this moisture entered the breaker, it remained until the fault occurred.

- Q. Okay. Do you have an opinion as to why this meter panel waited five years before it failed despite the fact that it was in your opinion subject to hail, snow, and rain?
- A. Well, based on the location of the failure in meter, I think it was a matter of time. Time was necessary for this to, this failure to occur.
- Q. How much time was it required for this failure to occur?
- A. In my opinion, the time from when it was initially installed until January 16, 2011.
- Q. How did time contribute to this failure?
- A. It allowed for the buildup of moisture within that meter enclosure to reach the point where the fault occurred within the circuit breaker.
- Q. How much moisture is required to build up within the circuit breaker to require a fault?
- A. I don't know.

**Q. Is it your testimony that once moisture enters the circuit breaker it does not leave it?**

**A. Other than through a fault event, yes, sir.**

(Cristino, pp. 114-115).

Even if Cristino assumed moisture made its way into to the meter panel and infiltrated the circuit breaker where it resided forever, defying the laws of nature, that still does not explain how or why this failure occurred. Such assumptions are of no value to reasoned scientific analysis.

The Court and the trier of fact cannot assume there was a defect or failure because Plaintiff's expert says so. Instead, all inferences or assertions must be derived by the scientific method and "supported by appropriate validation—*i.e.*, 'good grounds,' ***based upon what is known***," – not what is unknown. *Daubert*, 509 U.S. at 590 (emphasis added). Cristino's selected "hypothesis" cannot be tested using the principles of deductive reasoning because it is based solely on assumptions with no factual underpinning. The assumed existence of moisture from unknown sources and a failure mode which is contrary to Cristino's post-opinion testing does not satisfy the requirements of *Daubert*. Under the mandates of NFPA 921, Cristino's hypothesis should have been discarded as unsupported and the cause of the fire listed as "undetermined." NFPA 921 § 4.3.6 (2008). As Cristino admitted—fire investigators cannot rely on "voodoo science" in rendering their opinions. (Cristino, p 19).

**C. THERE IS NO DESIGN, MANUFACTURING OR WARNING DEFECT IN THE METER PANEL OR THE CIRCUIT BREAKER.**

Cristino testified that neither the meter panel nor its corresponding circuit breaker were defective. (Cristino, pp. 51-52). Without a defect, it is unclear what condition of the meter panel or circuit breaker Cristino assumes allowed the ingress of moisture.<sup>7</sup> Although Cristino

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<sup>7</sup> Circuit breakers require venting to prevent the buildup of pressure in the event of a trip which is the function of a

concludes moisture caused the fault that lead to the fire he also testified that there is no design or manufacturing defect in the subject meter panel. Thus, there is no product defect in the panel which caused or contributed to cause the ingress of moisture—if in fact there was ingress of moisture.

**Q. Okay. Are you going to be offering any opinions in this case that the subject meter panel is defective in design?**

**A. No, sir.**

**Q. Are you going to be rendering any opinions that the subject meter panel in this case is defective or suffers from any manufacturing defect?**

**A. No, sir.**

(Cristino, p. 51).

Further, that there was no failure to warn or instruct with respect to the subject meter panel. *Id.* In addition to finding no defect in the meter panel Cristino also testified that there was no defect in the circuit breaker.

**Q. Okay. In this case are you going to be rendering an opinion as to a defect in design of the Cutler Hammer CSR2200 circuit breaker?**

**A. No, sir.**

**Q. In this case are you going to be rendering opinions with respect to a manufacturing defect with respect to the subject CSR2200 breaker?**

**A. No, sir.**

**Q. In this case, are you going to be rendering any opinions with respect to a failure to warn or instruct with respect to the CSR2200 breaker?**

**A. No, sir.**

(Cristino, p. 52).

Having found no defect in this Defendant's products, Cristino concluded that an unknown condition caused moisture ingress into the meter panel and thereby caused some

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breaker. (Cristino, pp. 172-173). The vents which allow air flow through the breaker also could subject the breaker to moisture—if moisture entered the meter panel. However, moisture does not cause a circuit breaker to fail as Cristino learned upon testing. Further, there are no “waterproof” breakers on the market because of the required venting.

**Q. Are you aware of any breaker that exists in the marketplace which is waterproof?**

**A. No, sir.**

(Cristino p. 173).

failure. Of course, Cristino never tested the meter panel to determine what amount of moisture, if any, could make its way into a meter panel. Further, he did not test what effect the missing components would have on this assumed infiltration of moisture. Nevertheless, Cristino believes the missing components allowed the progression of the fault to occur which contributed to the fire.

**Q. Okay. Do you know what happened to that missing wire gutter, the gutter way?**

**A. No, sir, I do not.**

**Q. Did that cause or contribute to cause any failure mode and/or the fire in this case?**

**A. In this case, in my opinion, it allowed the initial fault within the circuit breaker to more easily attack the connect line power conductors.**

(Cristino, p. 178).

**Q. Okay. Is it your understanding that Eaton Corporation intended for this wire way to be present at the installation and a complete product that was installed?**

**A. Yes, sir.**

**Q. Okay. So its intended design included this wire way which was missing from the subject unit; is that right?**

**A. Yes.**

(Cristino, p. 179).

Electrical devices such as the meter panel at issue are intended to reach the consumer with all of their component parts. Further they are tested with the complete enclosure to meet all applicable standards. Indeed, the meter panel at issue is a National Electric Manufacturers Association (NEMA) 3R rated panel which means it can withstand rain and moisture. (Cristino, p. 171). Further, the complete meter panel is tested by Underwriters Laboratories to confirm that it meets industry standards.

**Q. Do you know if the removal of component parts from electrical devices such as meter panels somehow changed its underwriters laboratory certification?**

**A. Based on my experience, it's, it's likely.**

- Q. Okay. Because Underwriters Laboratory tests a complete piece of equipment as intended to be sold, distributed, and received by the customer?**
- A. That's correct.**
- Q. Okay. So as soon as we start removing component parts, that alters what the finished product should be?**
- A. That's correct.**

(Cristino, p. 181).

Thus, Plaintiff claims this altered product with missing components that no longer complies with UL standards or the NEMA 3R designation is somehow responsible for the fire. Such a circumstance does not give rise to a product liability subrogation cause of action but instead an insurer's responsibility to cover their insured's loss.

It is unconscionable for an expert in the area of fire cause to form a hypothesis and then fail to confirm the validity of that theory. To later espouse untested hypotheses as a valid opinion is irresponsible and the very reason the Court established the gate-keeping procedures under *Daubert*. Nevertheless, Plaintiff now asks this Court and the trier of fact to "trust" in Cristino's assumptions and speculation and find the same unspecified failure based on unknown conditions. This is exactly the type of *ipse dixit* that the Court in *Daubert* sought to prevent from reaching a jury.

As a matter of law, for the above reasons, Cristino's testimony and opinions are inadmissible under Federal Rule of Evidence (FRE) 702 and the guidelines set forth in *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579 (1993), and its progeny. The Court therefore should grant Defendant's Motion to Strike Cristino's testimony and opinions in their entirety.

WHEREFORE, Defendant Eaton Corporation moves this Court for an order striking the proffered testimony and opinions of Joseph Cristino and for such other and further relief as this Court deems just.

Respectfully submitted,

**EATON CORPORATION**

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**CERTIFICATE OF SERVICE**

I hereby certify that on April 19, 2012, a copy of the foregoing Memorandum in Support of Motion to Strike Expert Witness was filed electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by email to all parties by operation of the Court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the Court's CM/ECF System.

/s/ Jonathan T. Barton

Case: Ace American Insurance Company v.  
Eaton Electrical, Inc.

Transcript of Joe Cristino

Date: December 20, 2012

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1

UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT  
-----x  
ACE AMERICAN INSURANCE COMPANY,  
  
Plaintiff,  
  
vs. Case No. 3:11-cv-01741-CSH  
Date: December 20, 2012  
EATON ELECTRICAL, INC.,  
  
Defendant.  
-----x  
  
DEPOSITION OF JOSEPH CRISTINO  
  
The deposition of Joseph Cristino was taken  
on December 20, 2012, beginning at 9:20 a.m., at 150  
Trumbull Street, Hartford, Connecticut, before Susan  
Wandzilak, Registered Professional Reporter and Notary  
Public in the State of Connecticut.  
  
Susan Wandzilak License No. 377

3

1 STIPULATIONS  
2 IT IS HEREBY STIPULATED AND AGREED by  
3 and between counsel representing the parties that  
4 each party reserves the right to make specific  
5 objections at the trial of the case to each and  
6 every question asked and of answers given  
7 thereto by the deponent, reserving the right to  
8 move to strike out where applicable, except as to  
9 such objections as are directed to the form of  
10 the question.  
11 IT IS HEREBY STIPULATED AND AGREED by  
12 and between counsel representing the respective  
13 parties that proof of the official authority of  
14 the Notary Public before whom this deposition is  
15 taken is waived.  
16 IT IS FURTHER STIPULATED AND AGREED by  
17 and between counsel representing the respective  
18 parties that the reading and signing of the  
19 deposition by the deponent is not waived.  
20 IT IS FURTHER STIPULATED AND AGREED by  
21 and between counsel representing parties that all  
22 defects, if any, as to the notice of the taking  
23 of the deposition are waived.  
24 Filing of the Notice of Deposition with  
25 the original transcript is waived.

2

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4

1 **THE VIDEOGRAPHER: We are now on record.**  
2 **December 20, 2012. The time on videotaped record**  
3 **is approximately 9:47 a.m.**  
4 **You can swear the witness, please.**  
5 **JOSEPH CRISTINO,**  
6 **having been first duly sworn, testified as**  
7 **follows:**  
8 **THE COURT REPORTER: Can I have your full**  
9 **name and address for the record.**  
10 **THE WITNESS: Joseph Anthony Cristino. And**  
11 **our business address is Lois Lane in Redding**  
12 **Connecticut 06875.**  
13 **DIRECT EXAMINATION**  
14 **BY MR. BARTON:**  
15 **Q.** Mr. Cristino, my name is John Barton. I'm an  
16 attorney and I represent Eaton Corporation in a cause  
17 of action that Ace Insurance Company has brought  
18 against it arising out of a fire which occurred on  
19 January 16, 2011.  
20 I understand you have given your deposition a  
21 number of times; is that correct?  
22 **A.** Yes, sir.  
23 **Q.** Okay. Well, the same rules will apply, but  
24 for some reason lawyers always like to say them  
25 anyway, even to an expert witness who has given a



5	<p>1 number of depositions.</p> <p>2 So as we go along here, I'm going to ask you</p> <p>3 a series of questions. If at any time you don't</p> <p>4 understand my question or it's not clear in any way,</p> <p>5 just ask me to repeat or rephrase myself and I'll be</p> <p>6 glad to do so. Okay?</p> <p>7 A. Yes, sir.</p> <p>8 Q. All right. About how many depositions have</p> <p>9 you given?</p> <p>10 A. Approximately 20. It's in that deposition</p> <p>11 transcript list.</p> <p>12 Q. We'll get to that in a second.</p> <p>13 A. I never took the time to remember how many,</p> <p>14 how many times.</p> <p>15 Q. It's my understanding that you're here today</p> <p>16 because you have been retained by the plaintiff's</p> <p>17 attorney, Peter Rossi, to provide testimony in this</p> <p>18 case. Is that correct?</p> <p>19 A. That's correct.</p> <p>20 Q. Can I get your date of birth, sir?</p> <p>21 A. June 5th, 1947.</p> <p>22 Q. And are you currently employed?</p> <p>23 A. Yes, sir. I am.</p> <p>24 Q. And what is your occupation?</p> <p>25 A. I'm a consulting engineer.</p>	7	<p>1 until about two years ago approximately 40 to 45</p> <p>2 percent of our business was forensic analysis for</p> <p>3 electrical failures.</p> <p>4 Q. What is it now?</p> <p>5 A. Last year was the first time that we actually</p> <p>6 went over 50 percent. I think last year we were</p> <p>7 approximately 55 percent forensic and approximately 45</p> <p>8 percent design.</p> <p>9 Q. And who do you do design work for?</p> <p>10 A. Oh, our clients include the Third Taxing</p> <p>11 District Electrical Department. They are a municipal</p> <p>12 power company in East Norwalk, Connecticut.</p> <p>13 Advanced Fusion Systems, they are a</p> <p>14 developmental company in Newtown, Connecticut. We are</p> <p>15 still in the process of getting them on line.</p> <p>16 Rhode Island Hospital, New Milford Hospital,</p> <p>17 the Miriam Hospital in Rhode Island, Bradley Memorial</p> <p>18 Hospital in Connecticut, New Britain General Hospital</p> <p>19 in Connecticut.</p> <p>20 Q. And these design -- this design work that you</p> <p>21 are describing, that's design work done by Cristino</p> <p>22 Associates; is that correct?</p> <p>23 A. That is correct.</p> <p>24 Q. What percent of your work?</p> <p>25 <b>MR. ROSSI: Did you want him to finish his</b></p>
6	<p>1 Q. And who are you a consulting engineer for?</p> <p>2 A. With regard to my clients or the company that</p> <p>3 we work with?</p> <p>4 Q. The company that employs you.</p> <p>5 A. Oh, Cristino Associates, Inc.</p> <p>6 Q. And are you the owner of Cristino Associates,</p> <p>7 Inc.?</p> <p>8 A. I'm president and partner.</p> <p>9 Q. How many other partners do you have?</p> <p>10 A. One.</p> <p>11 Q. And who is your other partner?</p> <p>12 A. Lois Buchanan.</p> <p>13 Q. How many employees does Cristino Consulting,</p> <p>14 Inc., have?</p> <p>15 A. Associates.</p> <p>16 Q. How many associates?</p> <p>17 A. Right now we have five full-time employees</p> <p>18 and two part-time.</p> <p>19 Q. And what is the -- what does Cristino</p> <p>20 Consulting do?</p> <p>21 A. Cristino Associates?</p> <p>22 Q. Cristino Associates. Excuse me.</p> <p>23 A. We, we are an electrical engineering firm.</p> <p>24 Our core business is design of high voltage, medium</p> <p>25 voltage, and electrical distribution systems. And up</p>	8	<p>1 <b>answer?</b></p> <p>2 <b>MR. BARTON: He said that's correct.</b></p> <p>3 <b>MR. ROSSI: No, with regard to the clients.</b></p> <p>4 <b>You asked him a question. I'm not sure if he was</b></p> <p>5 <b>finished or not.</b></p> <p>6 <b>Do you have other clients?</b></p> <p>7 <b>MR. BARTON: Let me ask the question.</b></p> <p>8 <b>BY MR. BARTON:</b></p> <p>9 Q. Are you finished with the listing of design</p> <p>10 clients that Cristino Associates handles?</p> <p>11 A. I can add to it. I mean --</p> <p>12 Q. Well, I'm trying to get a sampling.</p> <p>13 A. Again, in my c.v there is a whole list of</p> <p>14 them there.</p> <p>15 Q. My question now is, How much design work do</p> <p>16 you, Mr. Cristino, do as opposed to forensic analysis?</p> <p>17 A. Approximately 50 to 60 percent.</p> <p>18 Q. Okay. So you divide your time between</p> <p>19 forensic and design and about 50 to 60 percent of your</p> <p>20 time is on the design side?</p> <p>21 A. That's correct.</p> <p>22 Q. With only 40 to 50 percent of your time on</p> <p>23 the forensic analysis side?</p> <p>24 A. That's correct.</p> <p>25 Q. And how long has it been that way?</p>

2 (Pages 5 to 8)

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9	<p>1 A. The 50 -- approximately 2 years.</p> <p>2 Q. Okay. If I were to go back two years and ask</p> <p>3 you the same question, what percentage of your work</p> <p>4 would have been on the forensic analysis side as</p> <p>5 opposed to the design side?</p> <p>6 A. Well, beyond two years -- prior to two years</p> <p>7 ago, we were, we were -- my time was probably 35 to 45</p> <p>8 percent forensic and the remaining design.</p> <p>9 Q. How long have you operated Cristino</p> <p>10 Associates?</p> <p>11 A. Since 1983.</p> <p>12 Q. Could you describe your educational</p> <p>13 background for me.</p> <p>14 A. Yes, sir. After graduating from high school,</p> <p>15 I obtained an associate of science degree from Norwalk</p> <p>16 State Technical College in Connecticut. That was in</p> <p>17 electromechanics.</p> <p>18 After that, I went to work for Bell</p> <p>19 Laboratories for a short time and had been enrolled in</p> <p>20 the University of Bridgeport in Connecticut and</p> <p>21 obtained my bachelor of science in electrical</p> <p>22 engineering.</p> <p>23 Q. Are you a licensed electrical engineer?</p> <p>24 A. Yes, sir, I am.</p> <p>25 Q. Are you a professional engineer?</p>	11	<p>1 Connecticut.</p> <p>2 And that part-time job slowly evolved into a</p> <p>3 full-time job. So by 1983 I started the business and</p> <p>4 by 1987 I was basically working two full-time jobs.</p> <p>5 So at, at that time I left Connecticut Light &amp; Power.</p> <p>6 Q. When you joined Connecticut Light &amp; Power in</p> <p>7 1969, what position did you hold?</p> <p>8 A. The position was engineering estimator.</p> <p>9 Q. And how long were you an engineer estimator?</p> <p>10 A. Approximately two years.</p> <p>11 Q. And then what -- how did your position</p> <p>12 change?</p> <p>13 A. I put in for a position opening in the Berlin</p> <p>14 office. I had been working out of Norwalk originally</p> <p>15 and there was an opening in Berlin for a test</p> <p>16 technician. And I had, I had worked as a test</p> <p>17 technician while I was in college part-time so it was</p> <p>18 something that interested me. And in 1972 I was hired</p> <p>19 into the -- or transferred into the Berlin test</p> <p>20 department.</p> <p>21 Q. And then after you were a test technician,</p> <p>22 what was your position at CL&amp;P?</p> <p>23 A. Oh, I got promoted to test specialist, I</p> <p>24 think, in 1975. And I took a promotion as regional</p> <p>25 test supervisor when the company regionalized in 1978</p>
10	<p>1 A. Well, when you say licensed, it's a</p> <p>2 registered professional engineer -- I think in</p> <p>3 Connecticut is the way it's identified.</p> <p>4 Q. And when did you first become registered as a</p> <p>5 professional engineer?</p> <p>6 A. If I remember correctly, it was 1983.</p> <p>7 Q. When did you obtain your associate's degree</p> <p>8 in electrical mechanics?</p> <p>9 A. 1967.</p> <p>10 Q. And your bachelor's of science in electrical</p> <p>11 engineering?</p> <p>12 A. If I remember correct, it was either 1981 or</p> <p>13 1982.</p> <p>14 Q. Prior to working with Cristino Associates,</p> <p>15 what did you do?</p> <p>16 A. Let's see. I, I worked for Connecticut Light</p> <p>17 &amp; Power from 1969 until 1987, so there was some</p> <p>18 overlap there.</p> <p>19 Q. That's what I was going to ask. Was that a</p> <p>20 part-time position? Or why is it that your employment</p> <p>21 at CL&amp;P and Cristino Associates overlapped?</p> <p>22 A. My position from 1978 on was as a regional</p> <p>23 test supervisor. And in 1979, I was requested to</p> <p>24 provide some technical assistance to a small</p> <p>25 electrical municipal power company in South Norwalk,</p>	12	<p>1 Q. And that position slowly morphed into your</p> <p>2 full-time position at Cristino Associates?</p> <p>3 A. That's -- I mean, they basically ran</p> <p>4 parallel. I mean, as far as morphing, there was,</p> <p>5 there was no crossover between the two positions,</p> <p>6 but...</p> <p>7 Q. Why did you leave CL&amp;P?</p> <p>8 A. Changes going on in the company, internal</p> <p>9 policies, and the way the company was restructuring</p> <p>10 itself.</p> <p>11 Q. Were you terminated or did you leave</p> <p>12 voluntarily?</p> <p>13 A. No, I left voluntarily.</p> <p>14 Q. Okay. What did you do before you worked at</p> <p>15 CL&amp;P?</p> <p>16 A. I -- well, I worked part-time at a company</p> <p>17 called Fermont Dynamics, F-E-R-M-O-N-T. I was working</p> <p>18 there while I was attending the University of</p> <p>19 Bridgeport.</p> <p>20 Q. Well, what did you do for -- I'm sorry, go</p> <p>21 ahead.</p> <p>22 A. I was, I was a test technician. We tested</p> <p>23 engine generator sets that Fermont produced.</p> <p>24 Q. And what did you do before Fermont Dynamics?</p> <p>25 A. Well, I spent some time at Bell Telephone</p>

13	<p>1 Laboratories in New Jersey.</p> <p>2 <b>Q.</b> What did you do for Bell Telephone?</p> <p>3 <b>A.</b> I was an engineering technician.</p> <p>4 <b>Q.</b> How long did you work at Bell Telephone?</p> <p>5 <b>A.</b> The summer of 1967 into the fall. And then I</p> <p>6 left.</p> <p>7 <b>Q.</b> Okay. Did you have any employment before</p> <p>8 Bell Telephone?</p> <p>9 <b>A.</b> I worked for Fermont for two years, summers</p> <p>10 and part-time my senior year at Norwalk State</p> <p>11 Technical College.</p> <p>12 <b>Q.</b> Did you ever serve in the military?</p> <p>13 <b>A.</b> No, sir.</p> <p>14 <b>Q.</b> Have you ever pled guilty or been convicted</p> <p>15 of a felony?</p> <p>16 <b>A.</b> No, sir.</p> <p>17 <b>Q.</b> Cristino Associates, you describe the two</p> <p>18 types of work that is done: design work and then the</p> <p>19 second would be forensic analysis. Let's start with</p> <p>20 design work. What does design work entail?</p> <p>21 <b>A.</b> Well, depending upon our client, we either</p> <p>22 start out with a blank piece of paper and a concept or</p> <p>23 we, we analyze their existing electrical system and</p> <p>24 attempt to either integrate something that they want</p> <p>25 or design modifications to get them to an end result</p>	15	<p>1 <b>A.</b> Maybe once a year on average.</p> <p>2 <b>Q.</b> How many years have you worked with Cozen</p> <p>3 O'Connor about once a year? I mean, can you ballpark</p> <p>4 how many cases you have had with his law firm?</p> <p>5 <b>A.</b> Maybe 10 or 12.</p> <p>6 <b>Q.</b> What percentage of your forensic analysis</p> <p>7 work, yours personally, Mr. Cristino, comes from</p> <p>8 insurance companies?</p> <p>9 <b>A.</b> Possibly 60 to 70 percent.</p> <p>10 <b>Q.</b> And what percentage of your forensic analysis</p> <p>11 work is on behalf of the plaintiff in litigation?</p> <p>12 <b>A.</b> You'd have to look at that listing that we</p> <p>13 have got. I want to say it's close to 50/50, but</p> <p>14 there may be some, you know, some slight difference</p> <p>15 one way or the other.</p> <p>16 <b>Q.</b> Well, when we get to the list, we'll have you</p> <p>17 identify which ones were for the defense and which</p> <p>18 ones were for the plaintiff.</p> <p>19 <b>A.</b> They're marked on the list.</p> <p>20 <b>Q.</b> Are they?</p> <p>21 <b>A.</b> Yes.</p> <p>22 <b>Q.</b> Great. In doing a forensic analysis, as an</p> <p>23 electrical engineer, are you allowed to rely on</p> <p>24 assumption and speculation?</p> <p>25 <b>A.</b> Well, engineering assumptions, yes, but just</p>
14	<p>1 that they think they may, they may want.</p> <p>2 <b>Q.</b> Am I correct that that's the design of</p> <p>3 electrical distribution systems for your clients?</p> <p>4 <b>A.</b> That's correct.</p> <p>5 <b>Q.</b> Okay. You're not designing products for use</p> <p>6 in those electrical distribution systems, are you?</p> <p>7 <b>A.</b> No, sir, I'm not.</p> <p>8 <b>Q.</b> Okay, with respect to forensic engineering,</p> <p>9 can you describe what forensic engineering -- I'm</p> <p>10 sorry. Forensic analysis was the term you used. Can</p> <p>11 you describe what forensic analysis is.</p> <p>12 <b>A.</b> Well, with regard to our firm, we assist in</p> <p>13 analyzing electrical failures or suspected electrical</p> <p>14 failures.</p> <p>15 <b>Q.</b> And when you say you assist, you provide</p> <p>16 electrical experience and knowledge regarding those</p> <p>17 failures?</p> <p>18 <b>A.</b> Yes, sir.</p> <p>19 <b>Q.</b> Okay. Have you ever worked with Mr. Rossi</p> <p>20 before?</p> <p>21 <b>A.</b> Not that I can recall.</p> <p>22 <b>Q.</b> Have you ever worked with Cozen O'Connor, his</p> <p>23 law firm, before?</p> <p>24 <b>A.</b> Yes, sir, I have.</p> <p>25 <b>Q.</b> How often?</p>	16	<p>1 pure speculation, no.</p> <p>2 <b>Q.</b> Well, let's get into the difference between</p> <p>3 the two. Can you just assume the existence of the</p> <p>4 fact or the nonexistence of a fact in doing an</p> <p>5 engineering forensic analysis?</p> <p>6 <b>A.</b> It depends on the nature of the fact.</p> <p>7 <b>Q.</b> Okay. Why does it depend on the nature of</p> <p>8 the fact?</p> <p>9 <b>A.</b> Well --</p> <p>10 <b>Q.</b> Give me -- well, let me make it easier. Give</p> <p>11 me an example where you would assume the existence of</p> <p>12 a fact in coming to a conclusion in a forensic</p> <p>13 analysis.</p> <p>14 <b>A.</b> Well, let's see. If -- if we had an</p> <p>15 electrical device -- it's about two three years ago I</p> <p>16 had an outdoor disconnect switch. And in analyzing</p> <p>17 the failure, we found that there was a very large</p> <p>18 amount of oxidation and flaking and scaling and rust</p> <p>19 and deterioration of the metal.</p> <p>20 Based on that fact, we, we made an</p> <p>21 engineering assumption that there was moisture getting</p> <p>22 into the switch, causing it to degrade. So that's</p> <p>23 probably the easiest way that I have to explain the</p> <p>24 difference.</p> <p>25 <b>Q.</b> Okay. And the example you gave me, what</p>

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17	<p>1 other than moisture causes oxidation?</p> <p>2 A. Dissimilar metals, a corrosive environment.</p> <p>3 Q. In the example you gave, did you find the</p> <p>4 existence of dissimilar metals or a corrosive</p> <p>5 environment?</p> <p>6 A. No, sir, I did not.</p> <p>7 Q. What you described for me was a situation</p> <p>8 where you were able to take known facts that you did</p> <p>9 not assume and make a deductive reasoning about those</p> <p>10 facts to come up with a conclusion. Is that a fair</p> <p>11 statement?</p> <p>12 A. Yes, sir, it is.</p> <p>13 Q. My question to you is, as a forensic</p> <p>14 engineer, can you rely on assumption and pure</p> <p>15 speculation? In your example, for example, assume the</p> <p>16 existence of corrosion, to later then conclude that</p> <p>17 there had been some moisture or water that caused</p> <p>18 oxidation? Do you understand my questions?</p> <p>19 A. No, sir, I don't.</p> <p>20 Q. Okay. Can you assume the existence of facts</p> <p>21 in rendering an opinion as a forensic -- an engineer</p> <p>22 doing your forensic analysis work?</p> <p>23 A. I'm sorry. I'm missing the, I'm missing the</p> <p>24 point.</p> <p>25 Q. You know what an assumption is, correct?</p>	19	<p>1 Q. Okay. Why not?</p> <p>2 A. It has a, a connotation of voodoo science.</p> <p>3 And in the world of forensic engineering, the basis</p> <p>4 for the analysis is science.</p> <p>5 Q. Has your testimony or opinions ever been</p> <p>6 excluded under Daubert or any other state standard?</p> <p>7 A. No, sir.</p> <p>8 Q. We talked about your formal educational</p> <p>9 background. Other than your PE, do you have any other</p> <p>10 certificates?</p> <p>11 A. Yes, sir, I do.</p> <p>12 Q. And what certificates do you have?</p> <p>13 A. I am a certified firefighter. I received</p> <p>14 certification as a fire service instructor. And I</p> <p>15 also have certification as a fire investigator and an</p> <p>16 explosion investigator.</p> <p>17 Q. When did you obtain your certification as a</p> <p>18 firefighter?</p> <p>19 A. I started in 19 -- 1990. At the time, there</p> <p>20 was a three-step program so I went through the old</p> <p>21 program of firefighter 1, firefighter 2, and</p> <p>22 firefighter 3. If I remember correctly, I achieved</p> <p>23 the certification of firefighter 3 around 1992-1993.</p> <p>24 Q. Have you ever been employed, volunteered, or</p> <p>25 worked as a firefighter?</p>
18	<p>1 A. Yes, sir.</p> <p>2 Q. Okay. What is an assumption?</p> <p>3 A. An assumption is making a decision based on</p> <p>4 possible experience or partial input of data.</p> <p>5 Q. I'm not sure that's exactly what an</p> <p>6 assumption is.</p> <p>7 MR. ROSSI: You asked him what he thought an</p> <p>8 assumption was.</p> <p>9 MR. BARTON: Well, I did.</p> <p>10 BY MR. BARTON:</p> <p>11 Q. If I were to use the term invented fact, does</p> <p>12 that mean anything to you?</p> <p>13 MR. ROSSI: Invented?</p> <p>14 MR. BARTON: Invented out of whole cloth.</p> <p>15 THE WITNESS: Well, I don't know about the</p> <p>16 out of whole cloth, but as far as invented fact,</p> <p>17 I would say it's something that someone made up.</p> <p>18 BY MR. BARTON:</p> <p>19 Q. Okay.</p> <p>20 A. Something that has no logic or any bearing on</p> <p>21 a -- or basis in fact.</p> <p>22 Q. Let's use made up. As a forensic engineer,</p> <p>23 are you allowed to make up whatever facts you would</p> <p>24 like?</p> <p>25 A. No, sir.</p>	20	<p>1 A. Yes, sir.</p> <p>2 Q. For which fire-fighting districts?</p> <p>3 A. Fire company number 1 in Redding,</p> <p>4 Connecticut.</p> <p>5 Q. When was that?</p> <p>6 A. From 1988 until 2001.</p> <p>7 Q. Any other work as a firefighter?</p> <p>8 A. No, sir.</p> <p>9 Q. Okay. And when you worked in Redding, did</p> <p>10 you actually fight fires?</p> <p>11 A. Yes, sir.</p> <p>12 Q. You indicated you also have a certification</p> <p>13 in fire investigation and explosions; is that correct?</p> <p>14 A. Yes, sir.</p> <p>15 Q. When did you obtain that?</p> <p>16 A. Sometime around 1996 to 1998.</p> <p>17 Q. And what organization did you obtain that</p> <p>18 certification through?</p> <p>19 A. NAFL.</p> <p>20 Q. Down in Sarasota?</p> <p>21 A. Well, I think they are in Sarasota now. When</p> <p>22 I was certified, it was out in Chicago.</p> <p>23 Q. Mr. Kennedy's association?</p> <p>24 A. Yes.</p> <p>25 Q. All right. Now, I understand Mr. Rossi has</p>

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21	<p>1 asked you to make some opinions in this case; is that</p> <p>2 correct?</p> <p>3 <b>A.</b> That is -- the question that I analyze the</p> <p>4 events of January 16, 17. That's correct.</p> <p>5 <b>Q.</b> Okay. And have you completed your</p> <p>6 investigation into the events of January 16 or 17?</p> <p>7 <b>A.</b> To date, yes, sir.</p> <p>8 <b>Q.</b> Okay. Do you require any additional</p> <p>9 information before creating your final opinions in</p> <p>10 this case?</p> <p>11 <b>A.</b> At this point, no, sir.</p> <p>12 <b>Q.</b> Is there any additional testing that you</p> <p>13 would like to do or that you have asked Mr. Rossi that</p> <p>14 you should do?</p> <p>15 <b>A.</b> At this point, no, sir.</p> <p>16 <b>Q.</b> Okay. So you have completed all the testing</p> <p>17 you deem necessary to render your final opinion in</p> <p>18 this case; is that correct?</p> <p>19 <b>A.</b> That's correct.</p> <p>20 <b>Q.</b> You completed all the investigation you deem</p> <p>21 necessary to render your final opinion as well; is</p> <p>22 that right?</p> <p>23 <b>A.</b> That's correct.</p> <p>24 <b>Q.</b> And I understand you have reduced your final</p> <p>25 opinion to writing; is that correct, sir?</p>	23	<p>1 <b>MR. ROSSI: Objection. That's protected by</b></p> <p>2 <b>the Federal Rules -- Federal Rule of Civil</b></p> <p>3 <b>Procedure.</b></p> <p>4 <b>MR. BARTON: I don't know what you're talking</b></p> <p>5 <b>about.</b></p> <p>6 <b>MR. ROSSI: Protecting drafts of any reports</b></p> <p>7 <b>or disclosure required under 26(a)(2).</b></p> <p>8 <b>MR. BARTON: My question stands. You will</b></p> <p>9 <b>have to instruct him not to answer because I</b></p> <p>10 <b>didn't ask to see the report. I just asked the</b></p> <p>11 <b>question.</b></p> <p>12 <b>BY MR. BARTON:</b></p> <p>13 <b>Q.</b> And the question was, Did you at any time</p> <p>14 submit any drafts to Mr. Rossi for his review?</p> <p>15 <b>A.</b> Not that I recall.</p> <p>16 <b>Q.</b> So in the past -- when did you begin drafting</p> <p>17 this report which is Exhibit 79?</p> <p>18 <b>A.</b> What's the date on that?</p> <p>19 <b>Q.</b> November 12 of 2012.</p> <p>20 <b>A.</b> Probably within a few weeks of the date on</p> <p>21 that.</p> <p>22 <b>Q.</b> Okay, within a few weeks. Within two weeks</p> <p>23 of November 12?</p> <p>24 <b>A.</b> I would say yes.</p> <p>25 <b>Q.</b> Okay. And as you sit here today, you can't</p>
22	<p>1 <b>A.</b> Yes, I have.</p> <p>2 (Whereupon, Exhibit No. 79 was marked for</p> <p>3 identification.)</p> <p>4 <b>BY MR. BARTON:</b></p> <p>5 <b>Q.</b> Let me hand you what has been marked as</p> <p>6 Cristino 79, Exhibit 79. Can you identify this for</p> <p>7 the record, please.</p> <p>8 <b>A.</b> Yes, sir. That's our report dated November</p> <p>9 12, 2012.</p> <p>10 <b>Q.</b> Is this the only report that you have</p> <p>11 prepared in connection with this case?</p> <p>12 <b>A.</b> Yes, sir.</p> <p>13 <b>Q.</b> Were there any drafts of this report dated</p> <p>14 November 12, 2012?</p> <p>15 <b>A.</b> No, sir.</p> <p>16 <b>Q.</b> So you sat down one time and you typed up</p> <p>17 this entire report; is that correct?</p> <p>18 <b>A.</b> No, sir.</p> <p>19 <b>Q.</b> Who typed it up?</p> <p>20 <b>A.</b> I did.</p> <p>21 <b>Q.</b> Over what period of time did you type up this</p> <p>22 report?</p> <p>23 <b>A.</b> Probably a day or two.</p> <p>24 <b>Q.</b> Did you ever submit any drafts of this report</p> <p>25 to Mr. Rossi for his evaluation or review?</p>	24	<p>1 recall if whether in the past five or six weeks you</p> <p>2 presented Mr. Rossi with any drafts of this report for</p> <p>3 his commentary or edits?</p> <p>4 <b>A.</b> I don't believe I did, but that's, that's the</p> <p>5 fact.</p> <p>6 <b>Q.</b> One of the things I asked for you to do today</p> <p>7 was to bring all of the e-mail correspondence that you</p> <p>8 have with Mr. Rossi. Did you do that?</p> <p>9 <b>A.</b> The e-mail correspondence is in the pocket of</p> <p>10 the loose leaf.</p> <p>11 <b>Q.</b> Okay. And I appreciate that. But my</p> <p>12 question was, Have you brought all of the e-mail</p> <p>13 correspondence that you have had with Mr. Rossi,</p> <p>14 including whether or not there were any e-mail</p> <p>15 correspondence transmitting drafts of this report to</p> <p>16 his attention for any edits or commentary?</p> <p>17 <b>A.</b> I brought all the e-mails with me today.</p> <p>18 <b>Q.</b> Okay. So if you, in fact, did send Mr. Rossi</p> <p>19 any e-mails or any draft reports, we would see</p> <p>20 certainly the transmittal correspondence contained</p> <p>21 within this file; is that correct?</p> <p>22 <b>MR. ROSSI: We removed various e-mails from</b></p> <p>23 <b>his file. I did.</b></p> <p>24 <b>BY MR. BARTON:</b></p> <p>25 <b>Q.</b> Okay. Then I guess let me -- well, let's get</p>

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25	<p>1 your answer to my question.</p> <p>2 Are all of your e-mails with Mr. Rossi</p> <p>3 contained in your file that you have brought here</p> <p>4 today?</p> <p>5 A. That file?</p> <p>6 Q. How many files do you have concerning 75</p> <p>7 Vista View Drive?</p> <p>8 A. I had one file, but....</p> <p>9 Q. Okay. My question is, Have you brought here</p> <p>10 today all e-mail correspondence that you have with</p> <p>11 Mr. Rossi?</p> <p>12 A. When I arrived here this morning, I had all</p> <p>13 of my e-mail correspondence that I sent to Mr. Rossi.</p> <p>14 Q. Okay. Did anyone remove any documents from</p> <p>15 your file today?</p> <p>16 A. Yes, sir.</p> <p>17 Q. Who removed those documents?</p> <p>18 A. Mr. Rossi.</p> <p>19 Q. What documents did he remove?</p> <p>20 <b>MR. ROSSI: Objection.</b></p> <p>21 <b>BY MR. BARTON:</b></p> <p>22 Q. What documents did he remove?</p> <p>23 <b>MR. ROSSI: Don't answer that. I will be</b></p> <p>24 <b>happy to represent what documents I removed. And</b></p> <p>25 <b>they are privileged and trial preparation</b></p>	27	<p>1 <b>MR. ROSSI: They are e-mails and some of his</b></p> <p>2 <b>notes with regard to my conversations with him.</b></p> <p>3 <b>MR. BARTON: So if you sent him any</b></p> <p>4 <b>correspondence suggesting he change his opinion</b></p> <p>5 <b>or providing him with additional information that</b></p> <p>6 <b>he may rely on that you have now removed from the</b></p> <p>7 <b>file, I'm not entitled to that?</b></p> <p>8 <b>MR. ROSSI: No, I didn't remove any documents</b></p> <p>9 <b>that identified facts or data that a party's</b></p> <p>10 <b>attorney provided.</b></p> <p>11 <b>MR. BARTON: Again, I have not seen a</b></p> <p>12 <b>privilege log. You'll need to instruct him not</b></p> <p>13 <b>to answer and I will call that up because I have</b></p> <p>14 <b>no idea what you are talking about. I don't</b></p> <p>15 <b>know.</b></p> <p>16 <b>BY MR. BARTON:</b></p> <p>17 Q. How many documents did Mr. Rossi remove from</p> <p>18 your file today that he didn't want me to see?</p> <p>19 A. I don't know.</p> <p>20 Q. Were you there when he was removing documents</p> <p>21 from your file?</p> <p>22 A. Yes, sir, I was.</p> <p>23 Q. I'm sorry?</p> <p>24 A. Yes, sir, I was, for part of the time.</p> <p>25 Q. Did you watch him remove those documents?</p>
26	<p>1 <b>documents.</b></p> <p>2 <b>MR. BARTON: I have not seen a privilege log.</b></p> <p>3 <b>MR. ROSSI: I will indicate to you that the</b></p> <p>4 <b>rule protects communications between a party's</b></p> <p>5 <b>attorney and expert witnesses. Communications</b></p> <p>6 <b>between a party's attorney, an expert witness</b></p> <p>7 <b>is required to provide a report under</b></p> <p>8 <b>26(a)(2)(B), which is what he is.</b></p> <p>9 <b>Regardless of the form of the communications,</b></p> <p>10 <b>except to the extent that the communications</b></p> <p>11 <b>relate to compensation, which I have left in the</b></p> <p>12 <b>file.</b></p> <p>13 <b>For the expert's study or testimony, identify</b></p> <p>14 <b>facts or data that the party's attorney provided</b></p> <p>15 <b>and that the expert considered in forming the</b></p> <p>16 <b>opinions to be expressed, I left that in the</b></p> <p>17 <b>file.</b></p> <p>18 <b>And identify assumptions that the party's</b></p> <p>19 <b>attorney provided and that the expert relied on</b></p> <p>20 <b>in forming the opinions to be expressed. That's</b></p> <p>21 <b>also left in the file, if there is any.</b></p> <p>22 <b>And so I removed things that you are not</b></p> <p>23 <b>entitled to see.</b></p> <p>24 <b>MR. BARTON: Well, what things would those</b></p> <p>25 <b>be?</b></p>	28	<p>1 A. Not, not particularly. No, sir.</p> <p>2 Q. Okay. So you have no idea how many pieces of</p> <p>3 paper he removed from your file?</p> <p>4 A. That's correct.</p> <p>5 Q. Okay. Of the paper and documents that</p> <p>6 Mr. Rossi removed from your file to prevent me from</p> <p>7 reviewing today --</p> <p>8 <b>MR. ROSSI: I did it pursuant to the Federal</b></p> <p>9 <b>Rules, not to prevent you from anything. You are</b></p> <p>10 <b>not entitled to it. It's pretty -- it's black</b></p> <p>11 <b>and white in the rules. Unless you have another</b></p> <p>12 <b>rule or unless this court doesn't abide by the</b></p> <p>13 <b>Federal Rules, you're not entitled to see it.</b></p> <p>14 <b>MR. BARTON: I'm not sure what it is. I'm</b></p> <p>15 <b>not sure what you --</b></p> <p>16 <b>MR. ROSSI: I've already represented to you</b></p> <p>17 <b>that I removed e-mails between Mr. Cristino and I</b></p> <p>18 <b>and notes that he took during conversations with</b></p> <p>19 <b>me.</b></p> <p>20 <b>MR. BARTON: What did those e-mails say.</b></p> <p>21 <b>MR. ROSSI: Well, you're not entitled to</b></p> <p>22 <b>that.</b></p> <p>23 <b>MR. BARTON: I'm entitled to a privilege log</b></p> <p>24 <b>identifying that information.</b></p> <p>25 <b>MR. ROSSI: The rule doesn't call for a</b></p>

7 (Pages 25 to 28)

29	<p>1 privilege log.</p> <p>2 MR. BARTON: But you're going to claim</p> <p>3 they're privileged.</p> <p>4 MR. ROSSI: Under the rule they are</p> <p>5 privileged, trial preparation protection for --</p> <p>6 MR. BARTON: This is an issue we will he</p> <p>7 bring to the court.</p> <p>8 MR. ROSSI: Can I finish, John? They're</p> <p>9 protected under Rule 26, trial preparation</p> <p>10 protection for communications between the party's</p> <p>11 attorney and expert witness.</p> <p>12 And I'm claiming the privilege and protecting</p> <p>13 trial preparation materials. I'm expressly</p> <p>14 making the claim.</p> <p>15 I have described the documents --</p> <p>16 communications are tangible things -- not</p> <p>17 produced or disclosed. And I did so in a manner</p> <p>18 without revealing the information which you are</p> <p>19 not entitled to. It's self-privileged or</p> <p>20 protected. So I'll certainly maintain these in a</p> <p>21 form --</p> <p>22 MR. BARTON: I would ask that.</p> <p>23 MR. ROSSI: Of course. I absolutely will.</p> <p>24 MR. BARTON: And then we'll ask for an in</p> <p>25 camera review and --</p>	31	<p>1 to consult with us who are not testifying at</p> <p>2 trial, you are not entitled to that information.</p> <p>3 MR. BARTON: I'm not entitled to understand</p> <p>4 or know who else may have been copied on these</p> <p>5 e-mails for which you now claim privilege.</p> <p>6 MR. ROSSI: That's not what you asked me.</p> <p>7 You may very well.</p> <p>8 MR. BARTON: Well, let me ask you it again.</p> <p>9 Who else was copied on these e-mails?</p> <p>10 MR. ROSSI: As I recall, there was nobody</p> <p>11 else copied on the e-mails. There was certainly</p> <p>12 no third parties that would waive any privilege.</p> <p>13 MR. BARTON: And you believe these e-mails</p> <p>14 fall within the scope of Rule 26.</p> <p>15 MR. ROSSI: Absolutely.</p> <p>16 MR. BARTON: Such that you do not have to</p> <p>17 provide them here today.</p> <p>18 MR. ROSSI: Absolutely.</p> <p>19 MR. BARTON: And you knew that I had made the</p> <p>20 request for his entire file prior to today.</p> <p>21 MR. ROSSI: Yes.</p> <p>22 MR. BARTON: And you chose not to file with</p> <p>23 the court or with me any protective order or</p> <p>24 privilege log.</p> <p>25 MR. ROSSI: John, this is a deposition. If</p>
30	<p>1 MR. ROSSI: If that's what you want to do, I</p> <p>2 have them and I will maintain them. And I assure</p> <p>3 you.</p> <p>4 BY MR. BARTON:</p> <p>5 Q. So you didn't watch what documents Mr. Rossi</p> <p>6 removed from the file, did you, sir?</p> <p>7 A. No, sir, I did not.</p> <p>8 Q. Were the documents that Mr. Rossi removed</p> <p>9 from the file only between you and Mr. Rossi or was</p> <p>10 there any other party copied on those documents?</p> <p>11 A. I couldn't tell. I mean, I have no way of</p> <p>12 telling what he removed.</p> <p>13 MR. BARTON: Mr. Rossi, who else was copied</p> <p>14 on those documents?</p> <p>15 MR. ROSSI: Nobody.</p> <p>16 MR. BARTON: So just between you and your</p> <p>17 expert witness?</p> <p>18 MR. ROSSI: And perhaps Mr. Driscoll or</p> <p>19 others, experts that you're not entitled to.</p> <p>20 MR. BARTON: Did you remove anything from</p> <p>21 Mr. Driscoll's file?</p> <p>22 MR. ROSSI: No.</p> <p>23 MR. BARTON: When you say Mr. Driscoll or</p> <p>24 others, who are the others?</p> <p>25 MR. ROSSI: If we, if we retain other experts</p>	32	<p>1 you have questions of this witness, ask him.</p> <p>2 MR. BARTON: I'm raising an objection.</p> <p>3 MR. ROSSI: I'm not under oath and you are</p> <p>4 not going to depose me.</p> <p>5 MR. BARTON: I'm just trying to make sure I</p> <p>6 understand.</p> <p>7 MR. ROSSI: I'll be happy to preserve them to</p> <p>8 the court. I will preserve them and if you want</p> <p>9 to make a motion, they will be here.</p> <p>10 MR. BARTON: Yeah, I will.</p> <p>11 BY MR. BARTON:</p> <p>12 Q. All right. Other than Mr. Rossi removing</p> <p>13 documents from your file, has anyone else removed</p> <p>14 documents from your file?</p> <p>15 A. No, sir.</p> <p>16 Q. Okay, did you bring with you here today your</p> <p>17 entire file other than what Mr. Rossi elected to</p> <p>18 remove?</p> <p>19 A. Yes, sir, I did.</p> <p>20 Q. Okay. Did Mr. Rossi add any documents to</p> <p>21 your file?</p> <p>22 A. No, sir.</p> <p>23 Q. Did anyone else add any documents to your</p> <p>24 file?</p> <p>25 A. No, sir.</p>

8 (Pages 29 to 32)

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33	<p>1 Q. Okay. Before you came here today, did you 2 print off all electronic e-mail and electronic 3 documents that you have? 4 And here is what I'm trying to ask: You 5 don't have an electronic version of this file anywhere 6 that contains different information, do you, sir? 7 A. No, sir, I don't. 8 Q. So this contains all electronic information 9 you may have, whether spreadsheets, billing 10 information, photographs, et cetera. It's all 11 contained here? 12 A. The only thing is I made an executive 13 decision. When my secretary was printing our 14 photographs, there are discs I think that were 15 provided by Eaton and if I remember correctly, a total 16 of over 600 photographs. So what my decision was was 17 to retain those in electronic format, which are on the 18 CDs within the file that I brought with me today. 19 But all of our original photographs are from 20 my, my original file. And the discs that we have got 21 there were printed and in the loose leaf. So that's 22 the only thing that is in electronic format that you 23 should not have in hard copy today. 24 Q. Okay. So if it wasn't in hard copy here, 25 then we've got CD Roms that contain the information,</p>	35	<p>1 correspondence? 2 A. Yes, sir. 3 MR. BARTON: Okay. And just for a 4 housekeeping matter, Peter, I would assume if I 5 were to ask him any of the contents of those 6 correspondence or any information concerning that 7 correspondence, you would instruct him not to 8 answer? 9 MR. ROSSI: Correct. 10 MR. BARTON: And your instruction would be on 11 the basis of a privilege claimed under Rule 26? 12 MR. ROSSI: Correct. 13 MR. BARTON: All right. Mr. Cristino, I'm 14 going to mark, as a group exhibit again, this 15 entire binder that you have labeled 75 Vista 16 View, Southbury, Connecticut, loss, job number 17 11-1015, Cozen O'Connor. 18 (Whereupon, Exhibit No. 80 was marked for 19 identification.) 20 BY MR. BARTON: 21 Q. Can you describe what generally is contained 22 in this binder. 23 A. Well, we've got Exhibit 80 in the cover. 24 Q. Correct. 25 A. And there should be --</p>
34	<p>1 correct? 2 A. That's correct. 3 Q. But this comprises your whole entire file 4 except what Mr. Rossi removed? 5 A. That's correct. 6 Q. Mr. Cristino, I'm going to mark some of these 7 exhibits as group exhibits. They seem very well 8 organized in this binder. And we're probably just 9 going to keep that entire binder as a separate group 10 exhibit, okay? 11 A. Very good. 12 Q. All right. The first group exhibit comprises 13 a number of what appears to be e-mail communication. 14 And I have marked it as Cristino 80. Can you describe 15 what that grouping of documents is. 16 A. Yeah, these -- this first grouping, Cristino 17 80, contains e-mails. And it appears to be -- well, 18 it isn't appears to be. There is a fax transmittal in 19 here from my secretary to Walter Kopec at central 20 claims management services. 21 And everything else appears to be e-mails 22 with some handwritten notes on them, but it appears to 23 be by my secretary. 24 Q. Okay. And is this grouping of e-mails -- are 25 these the documents from which Mr. Rossi removed</p>	36	<p>1 Q. And I'm not looking for you to go through and 2 identify each document. We will do that. I just want 3 to have a general understanding of what Exhibit 80 4 is. 5 A. It should be what was requested of us with 6 regard to our rate sheet, my c.v., and my deposition 7 and trial experience. And then all the photographs. 8 And I believe the Quali-Tech data, Quali-Tech 9 Laboratories data, that are on CDs in the original 10 file under your left hand there. 11 Q. Okay. And did you put that binder together 12 for purposes of this deposition today? 13 A. Well, I didn't personally. I had my 14 secretary do it. But yeah, that was the purpose of 15 it. 16 MR. BARTON: All right. 17 (Whereupon, Exhibit Nos. 81 and 82 were 18 marked for identification.) 19 BY MR. BARTON: 20 Q. And let me hand you what has been marked as 21 Exhibit 81. This is a manila folder also with the 22 file number 11-1015 and Cozen O'Connor's name on it. 23 Can you just generally describe for me what is 24 contained in Exhibit 81. 25 MR. BARTON: That one was 82, yes?</p>



37	<p>1 <b>MR. ROSSI: You made this one 81. And 80</b></p> <p>2 <b>is inside of 82.</b></p> <p>3 <b>MR. BARTON: Okay, well, let's clear this</b></p> <p>4 <b>up. Exhibit 80 is the e-mail grouping that is</b></p> <p>5 <b>contained inside the binder that we just</b></p> <p>6 <b>discussed, which is Exhibit 82.</b></p> <p>7 <b>BY MR. BARTON:</b></p> <p>8 <b>Q.</b> I have now handed you Exhibit 81. And I</p> <p>9 apologize for going out of order, but can you tell us</p> <p>10 what is in Exhibit 81.</p> <p>11 <b>A.</b> Yes, sir. 81 contains CDs that we have</p> <p>12 collected or produced over the course of the</p> <p>13 assignment. And it's our standard hard copy file of</p> <p>14 handwritten notes, sign-in sheets, product</p> <p>15 information, and data collected over the course of our</p> <p>16 examinations and inspections.</p> <p>17 <b>Q.</b> I have heard some experts refer to it as</p> <p>18 their working file. Would this be your working file?</p> <p>19 <b>A.</b> Yes, sir.</p> <p>20 <b>Q.</b> Now, did you have an opportunity -- well, I</p> <p>21 know you had an opportunity to meet with Mr. Rossi</p> <p>22 before your deposition today. Is that right?</p> <p>23 <b>A.</b> That's correct.</p> <p>24 <b>Q.</b> How long did you meet with him?</p> <p>25 <b>A.</b> Approximately 30 minutes.</p>	39	<p>1 discuss what you were going to talk about in your</p> <p>2 deposition?</p> <p>3 <b>MR. ROSSI: Objection.</b></p> <p>4 <b>BY MR. BARTON:</b></p> <p>5 <b>Q.</b> Go ahead.</p> <p>6 <b>MR. ROSSI: Again, don't answer.</b></p> <p>7 <b>MR. BARTON: Again the basis?</b></p> <p>8 <b>MR. ROSSI: The rule.</b></p> <p>9 <b>MR. BARTON: Okay, so I'm not allowed to find</b></p> <p>10 <b>out if you discussed trial preparation, but you</b></p> <p>11 <b>are going to instruct him not to answer because</b></p> <p>12 <b>you are claiming privilege based on trial</b></p> <p>13 <b>preparation discussions?</b></p> <p>14 <b>MR. ROSSI: The rule says -- it doesn't just</b></p> <p>15 <b>protect trial preparations. It protects all</b></p> <p>16 <b>communications between parties' attorneys and</b></p> <p>17 <b>expert witnesses according to... regardless of</b></p> <p>18 <b>the form of the communications except to the</b></p> <p>19 <b>extent.... And then there are three exceptions.</b></p> <p>20 <b>And I have no objection to your asking about</b></p> <p>21 <b>the three areas that you are allowed to inquire</b></p> <p>22 <b>about.</b></p> <p>23 <b>BY MR. BARTON:</b></p> <p>24 <b>Q.</b> Mr. Cristino, did you discuss your opinions</p> <p>25 in any way with Mr. Rossi during your 30-minute</p>
38	<p>1 <b>Q.</b> Okay. And what did you and Mr. Rossi</p> <p>2 discuss?</p> <p>3 <b>A.</b> We discussed the --</p> <p>4 <b>MR. ROSSI: I again object to this. You are</b></p> <p>5 <b>not entitled to conversations between me and him</b></p> <p>6 <b>unless they fall in these three areas. So why</b></p> <p>7 <b>don't you ask him if there were conversations</b></p> <p>8 <b>regarding compensation, facts or data, or</b></p> <p>9 <b>assumptions, because there weren't.</b></p> <p>10 <b>MR. BARTON: You can instruct him not to</b></p> <p>11 <b>answer.</b></p> <p>12 <b>BY MR. BARTON:</b></p> <p>13 <b>Q.</b> What did you and Mr. Rossi discuss this</p> <p>14 morning during your 30-minute meeting before the</p> <p>15 deposition?</p> <p>16 <b>MR. ROSSI: Don't answer that.</b></p> <p>17 <b>MR. BARTON: And the basis is?</b></p> <p>18 <b>MR. ROSSI: You are not allowed to ask that</b></p> <p>19 <b>question. Trial preparation for communication</b></p> <p>20 <b>between parties, attorneys, and expert witnesses</b></p> <p>21 <b>are not allowed. This rule protects</b></p> <p>22 <b>communications between me and him.</b></p> <p>23 <b>BY MR. BARTON:</b></p> <p>24 <b>Q.</b> Mr. Cristino, did you discuss trial</p> <p>25 preparation before your deposition today or did you</p>	40	<p>1 meeting with him?</p> <p>2 <b>A.</b> Yes, sir, I did.</p> <p>3 <b>Q.</b> Okay. And what was the nature of that</p> <p>4 discussion?</p> <p>5 <b>A.</b> Basically the facts surrounding my opinion</p> <p>6 regarding the loss at 75 Vista View and the -- the</p> <p>7 failure that -- failure mechanisms that we observed</p> <p>8 during the laboratory analysis.</p> <p>9 <b>Q.</b> What laboratory analysis?</p> <p>10 <b>A.</b> At Quali-Tech, we performed both visual and</p> <p>11 optical and scan electron microscopy. And EDS</p> <p>12 analysis of the defaulted plate behind the circuit</p> <p>13 breaker and the examination of the enclosure and the</p> <p>14 components within the enclosure.</p> <p>15 <b>Q.</b> And when did you conduct this testing?</p> <p>16 <b>A.</b> You would have to look at the sign-in</p> <p>17 sheets. If I remember correctly, one was in March</p> <p>18 of -- it may have been -- it was 2011. There were two</p> <p>19 exams at Quali-Tech, one in March and one in</p> <p>20 September. And the latest was September of 2012.</p> <p>21 <b>Q.</b> Did Mr. Rossi discuss with you Mr. Driscoll's</p> <p>22 testimony at all?</p> <p>23 <b>MR. ROSSI: Objection. You are not allowed</b></p> <p>24 <b>to ask him that.</b></p> <p>25 <b>BY MR. BARTON:</b></p>

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41	<p>1 Q. Go ahead and answer.</p> <p>2 <b>MR. BARTON: Are you going to instruct him?</b></p> <p>3 <b>MR. ROSSI: No, he can answer that.</b></p> <p>4 <b>THE WITNESS: No, sir.</b></p> <p>5 <b>BY MR. BARTON:</b></p> <p>6 Q. Okay. Did Mr. Rossi discuss with you any</p> <p>7 other witness's testimony during your 30-minute</p> <p>8 meeting this morning?</p> <p>9 A. No, sir.</p> <p>10 Q. Other than the 30-minute meeting you had this</p> <p>11 morning with Mr. Rossi -- and I take it we have not</p> <p>12 covered your entire conversation with Mr. Rossi this</p> <p>13 morning, have we, sir?</p> <p>14 A. No, sir.</p> <p>15 Q. There is additional material that you and</p> <p>16 Mr. Rossi discussed that he is preventing me from</p> <p>17 obtaining from you.</p> <p>18 <b>MR. ROSSI: I'm not preventing you. The rule</b></p> <p>19 <b>is.</b></p> <p>20 <b>BY MR. BARTON:</b></p> <p>21 Q. Is that correct, sir?</p> <p>22 A. Well, based on what Attorney Rossi instructed</p> <p>23 me not to answer, yes.</p> <p>24 Q. Okay.</p> <p>25 A. And in addition to that, we, we discussed the</p>	43	<p>1 asking you about?</p> <p>2 <b>MR. ROSSI: Objection. Don't answer that.</b></p> <p>3 <b>BY MR. BARTON:</b></p> <p>4 Q. Did Mr. Rossi provide you with any additional</p> <p>5 documentation or information at the meeting in your</p> <p>6 office in Cheshire?</p> <p>7 A. No, sir.</p> <p>8 Q. Did he show you any documents this morning?</p> <p>9 A. No, sir.</p> <p>10 Q. Did the two of you review any documents this</p> <p>11 morning?</p> <p>12 A. Other than the, the report that he had</p> <p>13 already mentioned to you that had incomplete</p> <p>14 photographs, no, sir.</p> <p>15 Q. That report that had incomplete photographs,</p> <p>16 is it within the file materials I have before me or</p> <p>17 has that been removed as well?</p> <p>18 A. If I remember correctly, I pulled it.</p> <p>19 Q. Where did you put it?</p> <p>20 A. I think it's in my attache case.</p> <p>21 <b>MR. ROSSI: That you can see, John. The only</b></p> <p>22 <b>reason he didn't present it is because it's not</b></p> <p>23 <b>all in photographs.</b></p> <p>24 <b>BY MR. BARTON:</b></p> <p>25 Q. When we take a break, I'll ask you to</p>
42	<p>1 weather. So, yeah, there were things that --</p> <p>2 Q. I'm pretty sure he doesn't mind me finding</p> <p>3 out about the weather.</p> <p>4 A. I just wanted to present to you that there</p> <p>5 was more than just talking about, you know, this</p> <p>6 assignment.</p> <p>7 Q. I appreciate that. Other than the 30-minute</p> <p>8 meeting you had with Mr. Rossi this morning, when was</p> <p>9 the last time you either spoke with or met with</p> <p>10 Mr. Rossi prior to that?</p> <p>11 A. We met at my office at Cheshire. I think it</p> <p>12 was a week ago Monday.</p> <p>13 Q. And who was in attendance at that meeting?</p> <p>14 A. Attorney Rossi and fire investigator</p> <p>15 Driscoll.</p> <p>16 Q. And how long did you meet with Mr. Rossi and</p> <p>17 Mr. Driscoll?</p> <p>18 A. Approximately four hours.</p> <p>19 Q. And what was the purpose of that meeting?</p> <p>20 A. To discuss the loss.</p> <p>21 Q. What about the loss?</p> <p>22 A. Well, the facts and analysis that I had</p> <p>23 performed with regard to the loss.</p> <p>24 Q. Was there anything specific about the facts</p> <p>25 or analysis that you performed that Mr. Rossi was</p>	44	<p>1 retrieve that so I can see it.</p> <p>2 A. Sure. If you wish, I've got it right next to</p> <p>3 me if that will help.</p> <p>4 Q. Grab it while we're going through this</p> <p>5 exercise.</p> <p>6 A. (Handing.)</p> <p>7 Q. Excluding the documents Mr. Rossi removed</p> <p>8 from your files, is this the only other document that</p> <p>9 has been removed from your file?</p> <p>10 A. Yes, sir.</p> <p>11 <b>MR. BARTON: And I'm going to mark this as</b></p> <p>12 <b>Exhibit 83.</b></p> <p>13 <b>(Whereupon, Exhibit No. 83 was marked for</b></p> <p>14 <b>identification.)</b></p> <p>15 <b>BY MR. BARTON:</b></p> <p>16 Q. Is that right?</p> <p>17 A. Yes, sir.</p> <p>18 Q. Okay. And Exhibit 83 does appear to contain</p> <p>19 some color photographs. Why was this removed from</p> <p>20 your file?</p> <p>21 A. It was incomplete. Didn't have all the</p> <p>22 photographs attached to the back.</p> <p>23 Q. Okay. Have you supplemented your report</p> <p>24 since November 12 of 2012, sir?</p> <p>25 A. No, sir.</p>

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45	<p>1 Q. Peter, do you know if Exhibit 79 is the</p> <p>2 report that you produced to us pursuant to Rule 26?</p> <p>3 MR. ROSSI: Yeah, I'm pretty sure it was.</p> <p>4 Can we go off the record just for a quick</p> <p>5 second?</p> <p>6 MR. BARTON: Sure.</p> <p>7 THE VIDEOGRAPHER: Off record, 10:37.</p> <p>8 (Briefly off the record, as a break is</p> <p>9 taken.)</p> <p>10 THE VIDEOGRAPHER: We're back on record,</p> <p>11 10:47.</p> <p>12 BY MR. BARTON:</p> <p>13 Q. Mr. Cristino, for purposes of your deposition</p> <p>14 today, we are going to use Exhibit 79, which is a</p> <p>15 little bit different than the expert report I received</p> <p>16 pursuant to the Rule 26 disclosure. And we will go</p> <p>17 through the differences.</p> <p>18 But I need to know, did you at any time</p> <p>19 change or amend any of the contents of your report or</p> <p>20 add or remove or alter any of the photographs in your</p> <p>21 report since November 12 of 2012?</p> <p>22 A. Not that I recall, no, sir.</p> <p>23 Q. Okay. When you type up your report, do you</p> <p>24 create the cover sheet last?</p> <p>25 A. It depends on the, the way in which I do it.</p>	47	<p>1 26 and I want to make sure we have the same language</p> <p>2 in each report. Okay?</p> <p>3 A. Very good.</p> <p>4 Q. The first paragraph on page 1 of Exhibit 79</p> <p>5 talks about a meeting that you had on January 31st of</p> <p>6 2011 with Mr. Driscoll; is that correct?</p> <p>7 A. That's correct.</p> <p>8 Q. And what was the purpose of that meeting?</p> <p>9 A. To walk through the fire scene.</p> <p>10 Q. Was that the first time you walked through</p> <p>11 the fire scene?</p> <p>12 A. Yes, sir.</p> <p>13 Q. And when you walked that fire scene, did you</p> <p>14 also take photographs?</p> <p>15 A. Yes, sir. I did.</p> <p>16 Q. And those are contained within your file</p> <p>17 which is Exhibit 82; is that correct?</p> <p>18 A. That's correct.</p> <p>19 Q. Have you worked with Mr. Driscoll before?</p> <p>20 A. Yes, I have.</p> <p>21 Q. About how many occasions?</p> <p>22 A. Approximately 20.</p> <p>23 Q. Did you perform an origin-and-cause</p> <p>24 investigation into this fire?</p> <p>25 A. No, sir.</p>
46	<p>1 Sometimes I will -- I mean, the cover sheet is a</p> <p>2 stand-alone.</p> <p>3 Q. With respect to Exhibit 79, did you first</p> <p>4 type the report and then later finalize by preparing</p> <p>5 the cover sheet and dating it and then signing it?</p> <p>6 A. That's possible.</p> <p>7 Q. You don't recall as you sit here today?</p> <p>8 A. No, sir, I don't.</p> <p>9 Q. Okay. And Exhibit 79 contains all of your</p> <p>10 final opinions; is that correct?</p> <p>11 A. Yes, sir.</p> <p>12 Q. And that's based on all the information that</p> <p>13 you reviewed and all the testing and work that you</p> <p>14 performed prior to November 12, 2012, correct?</p> <p>15 A. That's correct.</p> <p>16 Q. All right. I direct your attention to page</p> <p>17 one of Exhibit 79. Mr. Cristino, I'm going to walk</p> <p>18 through your report, for lack of a better phrase,</p> <p>19 okay, so I get a good overview of what your opinions</p> <p>20 are.</p> <p>21 A. Okay.</p> <p>22 Q. And as I go through the contents of your</p> <p>23 report, please let me know if where I'm directing you</p> <p>24 has different content than between the two reports.</p> <p>25 I'm using the one that I actually received under Rule</p>	48	<p>1 Q. Am I correct you are not going to be offering</p> <p>2 any testimony as to an area of origin in this case?</p> <p>3 A. That's correct.</p> <p>4 Q. And am I also correct that you have limited</p> <p>5 your testimony to a failure analysis of the electrical</p> <p>6 products that you believe are involved?</p> <p>7 A. That's correct.</p> <p>8 Q. Okay. And just so we have it on the record,</p> <p>9 what do you believe are the electrical products that</p> <p>10 are involved in this fire?</p> <p>11 A. The fire involved the Cutler Hammer</p> <p>12 combination meter socket, the circuit breaker within</p> <p>13 the meter socket, and the conductors enclosed by that</p> <p>14 meter socket.</p> <p>15 Q. When you say the conductors enclosed by the</p> <p>16 meter socket, what do you mean?</p> <p>17 A. There was a set -- there were three</p> <p>18 conductors from Connecticut Light &amp; Power Company that</p> <p>19 were routed from the transformer through an</p> <p>20 underground conduit to the meter socket, entered the</p> <p>21 meter socket in the lower left hand corner, were</p> <p>22 routed up through the left-hand side of the meter</p> <p>23 socket -- or combination meter socket enclosure, and</p> <p>24 then penetrated a barrier about two-thirds of the way</p> <p>25 up or three-quarters of the way up through the</p>

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49	<p>1 enclosure and then made a 180-degree bend and were 2 terminated at the top of the meter socket. 3 And then there was a second cable -- 4 actually, let's see. It would have been a 5 four-conductor cable: two energized conductors, a 6 neutral, and a concentric ground that formed what's 7 identified as an SER cable. 8 That routed out the load side of the Cutler 9 Hammer circuit breaker and down through the meter 10 enclosure and exited the lower -- if I remember 11 correctly, I think it's the lower right-hand corner of 12 the meter socket. 13 <b>Q.</b> Thanks, sir. Have you ever designed a meter 14 panel? 15 <b>A.</b> No, sir, I have not. 16 <b>Q.</b> Have you ever participated in the manufacture 17 of a meter panel? 18 <b>A.</b> No, sir. 19 <b>Q.</b> Have you ever participated in the assembly of 20 a meter panel? 21 <b>A.</b> With regard to manufacturing? 22 <b>Q.</b> Yes, sir. 23 <b>A.</b> No, sir. 24 <b>Q.</b> Okay. Have you ever designed a circuit 25 breaker?</p>	51	<p>1 sometime in the late eighties and one in the nineties. 2 <b>Q.</b> Okay. Are you going to be offering any 3 opinions in this case that the subject meter panel is 4 defective in design? 5 <b>A.</b> No, sir. 6 <b>Q.</b> Are you going to be rendering any opinions 7 that the subject meter panel in this case is defective 8 or suffers from any manufacturing defect? 9 <b>A.</b> No, sir. 10 <b>Q.</b> Do you hold yourself out as an expert in 11 warnings or failure to warn or instruct? 12 <b>A.</b> In certain instances, yes, sir, I am. 13 <b>Q.</b> In this case, are you going to be offering 14 any opinions on a failure to warn with respect to the 15 subject meter panel? 16 <b>A.</b> No, sir. 17 <b>Q.</b> In this case, are you going to be offering 18 opinions with respect to a failure to instruct with 19 respect to the subject meter panel? 20 <b>A.</b> No, sir. 21 <b>Q.</b> Turning your attention to the breaker that 22 was installed in the subject meter panel, do you know 23 what the type of breaker was? 24 <b>A.</b> Yes, sir. 25 <b>Q.</b> What was that?</p>
50	<p>1 <b>A.</b> No, sir. 2 <b>Q.</b> Have you ever participated in the 3 manufacturing or assembly of a circuit breaker? 4 <b>A.</b> No, sir, I have not. 5 <b>Q.</b> Have you ever installed a meter panel on a 6 home? 7 <b>A.</b> Yes, sir, I have. 8 <b>Q.</b> How many times? 9 <b>A.</b> Let's see three times. 10 <b>Q.</b> Was that through an employment that you had? 11 <b>A.</b> No, sir. 12 <b>Q.</b> Okay. Personal installations? 13 <b>A.</b> That's correct. 14 <b>Q.</b> For your own home? 15 <b>A.</b> Yes, sir. 16 <b>Q.</b> All three times? 17 <b>A.</b> Two times for homes and once for one of my 18 children. 19 <b>Q.</b> Are these new constructions? 20 <b>A.</b> Upgrades on two and new on one. 21 <b>Q.</b> And what brand meter panel did you use? 22 <b>A.</b> I don't recall. 23 <b>Q.</b> When did you do these? 24 <b>A.</b> The most recent was 2006 when we upgraded the 25 service in Cheshire. The other two, one was in the --</p>	52	<p>1 <b>A.</b> It was a Cutler Hammer -- well, an Eaton 2 Cutler Hammer CSR style circuit breaker. 3 <b>Q.</b> Okay. In this case are you going to be 4 rendering an opinion as to a defect in design of the 5 Cutler Hammer CSR2200 circuit breaker? 6 <b>A.</b> No, sir. 7 <b>Q.</b> In this case are you going to be rendering 8 opinions with respect to a manufacturing defect with 9 respect to the subject CSR2200 breaker? 10 <b>A.</b> No, sir. 11 <b>Q.</b> In this case, are you going to be rendering 12 any opinions with respect to a failure to warn or 13 instruct with respect to the CSR2200 breaker? 14 <b>A.</b> No, sir. 15 <b>Q.</b> Do you have any opinions with respect to 16 whether the installation of the subject meter panel 17 was properly installed? 18 <b>A.</b> Based on the, the remains that we were able 19 to examine on January 31st, it appeared that it had 20 been -- that the meter enclosure had been properly 21 installed. 22 <b>Q.</b> All right. Do you have any criticisms as to 23 the location of where the meter panel was located on 24 the home at 75 Vista View Drive? 25 <b>A.</b> No, sir, I do not.</p>

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53	<p>1 Q. Okay, let's go back to Exhibit 79, paragraph</p> <p>2 1 on page 1. On January 31st, 2011, it indicates that</p> <p>3 you spoke with Mr. Driscoll and, quote, other</p> <p>4 experts. Who are the other experts?</p> <p>5 A. I don't know if we had a sign-in sheet there,</p> <p>6 but there were quite a few individuals that were</p> <p>7 there, including -- let's see, if I remember</p> <p>8 correctly, Jim Matthew from the Wright Group (ph). I</p> <p>9 think Ron Parsons might have been there from the</p> <p>10 Wright Group. Peter Davis was there. I think Peter</p> <p>11 was with Valentine at the time. And I think John</p> <p>12 Mulcahey might have been there from Nevco.</p> <p>13 Q. Your Exhibit 28 contains a sign-in sheet</p> <p>14 which shows all the people that would have been</p> <p>15 present on January 31st of 2011. Is that correct?</p> <p>16 A. That I don't recall. I mean, there are</p> <p>17 several sign-in sheets there, but I thought the</p> <p>18 majority of them were from -- well, one of them was</p> <p>19 from the Connecticut Light &amp; Power transformer test,</p> <p>20 but I thought the majority were from the Quali-</p> <p>21 Tech.... There may be one other.</p> <p>22 Q. At any of the site inspections that you</p> <p>23 attended at 75 Vista View Drive, were there</p> <p>24 representatives of Eaton Corporation present?</p> <p>25 A. Not that I recall.</p>	55	<p>1 &amp; Power conduit run, the remains of the SER cable, and</p> <p>2 also the condition of the wall assembly and the area</p> <p>3 where the meter would have been -- the meter enclosure</p> <p>4 would have been mounted and residential wiring in that</p> <p>5 area.</p> <p>6 Q. When you say documented, what do you mean?</p> <p>7 Photographed?</p> <p>8 A. Photographed and reviewed and inspected.</p> <p>9 Q. Your report indicates that the fire origin</p> <p>10 was in the vicinity of the electrical service meter</p> <p>11 enclosure and the underground conductor conduit</p> <p>12 location. Am I correct, sir, that you are going to</p> <p>13 rely on Mr. Driscoll with respect to the area of</p> <p>14 origin for this fire, his opinions?</p> <p>15 A. Yes, sir, I am.</p> <p>16 Q. Okay. Your report, Exhibit 79, on page 1</p> <p>17 says that the area of origin is where the underground</p> <p>18 is in the vicinity of the electrical service meter.</p> <p>19 That's the meter panel that we have been talking</p> <p>20 about, correct?</p> <p>21 A. That's correct.</p> <p>22 Q. Okay. And underground conductor conduit</p> <p>23 location. What underground conductor and conduit</p> <p>24 location are you referring to?</p> <p>25 A. Well, previously I had identified that as a</p>
54	<p>1 Q. Okay. As a forensic engineer doing an</p> <p>2 electrical examination of the fire scene, is it</p> <p>3 important to attend the site of the fire, a site</p> <p>4 visit?</p> <p>5 A. It depends on what, what remains after the</p> <p>6 fire. But, you know, we would prefer to be there</p> <p>7 rather than not.</p> <p>8 Q. And why would you prefer to be there rather</p> <p>9 than not?</p> <p>10 A. To make a complete analysis.</p> <p>11 Q. Okay. And when you say a complete analysis,</p> <p>12 look at all the electrical components and the full</p> <p>13 picture of what occurred at the home; is that correct?</p> <p>14 A. For an electrical analysis, yes, sir.</p> <p>15 Q. And if you are not able to do that, that may</p> <p>16 compromise your opinions or your ability to analyze</p> <p>17 the electrical system in a home or where there is a</p> <p>18 fire; is that correct?</p> <p>19 A. Depending upon documentation and remains.</p> <p>20 Q. And when you say depending upon documentation</p> <p>21 and remains, what do you mean?</p> <p>22 A. Well, in this case, we, we -- the overall</p> <p>23 group documented everything that was left including</p> <p>24 the circuit breaker panels, the Connecticut Light &amp;</p> <p>25 Power insulation, the remains of the Connecticut Light</p>	56	<p>1 Connecticut Light &amp; Power conduit that ran from the</p> <p>2 transformer to the meter enclosure.</p> <p>3 Q. Any other conduit in that area?</p> <p>4 A. If I remember correctly, there was an exit</p> <p>5 point for the, for the ground conductor that went over</p> <p>6 to the system ground. But I don't recall there being</p> <p>7 any other conduit. Telephone might have been in</p> <p>8 conduit, but again I don't recall it off the top of my</p> <p>9 head.</p> <p>10 Q. What you have described, the conduit that</p> <p>11 went from the CL&amp;P transformer to the home,</p> <p>12 specifically to the meter panel, that's commonly</p> <p>13 referred to as the line side; is that correct?</p> <p>14 A. That would connect to the line side of the</p> <p>15 meter socket, yes, sir.</p> <p>16 Q. And going from the meter socket to -- into</p> <p>17 the home, is that called the load side?</p> <p>18 A. That's correct.</p> <p>19 Q. I'm just trying to get definitions straight</p> <p>20 so you and I can talk about what's line and what's</p> <p>21 load. Do you understand what I'm talking about?</p> <p>22 A. Yes, sir.</p> <p>23 Q. All right. Your report, Exhibit 79, page 1</p> <p>24 in paragraph 1, talks about the underground conductor</p> <p>25 conduit. I asked you what that included and you</p>

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57	<p>1 described the line side conductor that went from 2 CL&amp;P's transformer to the meter panel; is that right? 3 <b>A.</b> That's correct. 4 <b>Q.</b> Does it also include the load side conduit 5 that went from the meter panel into the home? 6 <b>A.</b> Our examination included that, but the 7 identification of where the electrical fault activity 8 was in the area of origin of the fire was in the 9 vicinity of the -- we had the meter socket in -- up to 10 that conduit. So with regard to the SER cable, the 11 SER cable was included in the analysis. 12 But as far as the preliminary analysis of 13 identifying where the fire origin was, the fire origin 14 was identified more internal to the meter enclosure 15 and the conductors coming out of that underground 16 conduit. 17 <b>MR. BARTON: Move to strike the narrative and</b> 18 <b>nonresponsive portion of the witness's answer.</b> 19 <b>BY MR. BARTON:</b> 20 <b>Q.</b> My question was, The underground conductor 21 conduit that you identified -- 22 <b>A.</b> Yes, sir. 23 <b>Q.</b> -- in your report as being within the 24 vicinity of this fire origin, does that also include 25 the load side cable that goes from the meter panel</p>	59	<p>1 say that it begins on the load side of the breaker 2 within the meter panel and then travels into the home 3 and ends at the breaker box. Is that an accurate 4 description of what the SER cable would comprise of? 5 <b>A.</b> Yes, sir. 6 <b>Q.</b> Is there any code requirements on how long 7 the SER cable should be or can be? 8 <b>A.</b> No, sir. 9 <b>Q.</b> Okay. Do you know how long the SER cable was 10 at 75 Vista View Drive? 11 <b>A.</b> No, sir, I do not. 12 <b>Q.</b> Were there portions of the SER cable that 13 were missing when you conducted your investigation on 14 January 31st, 2011? 15 <b>A.</b> Yes, sir. 16 <b>Q.</b> Okay. How many feet or inches of the SER 17 cable was missing? 18 <b>A.</b> It would be the distance from the bottom of 19 the meter enclosure to the bottom side of the circuit 20 breaker within the meter enclosure. 21 <b>Q.</b> Let me see if I understand what you just 22 said. So the only portion of the SER cable that was 23 missing when you did your examination on January 31st, 24 2011, was the section that went from the load side of 25 the breaker inside the meter panel to where it exited</p>
58	<p>1 into the home? 2 If the answer is no, I'll ask a different 3 question. If the answer is yes, I'll ask a different 4 question as well. 5 But that's all I'm looking for: Does that 6 area of origin where you are talking about the 7 underground conductor conduit, does that include what 8 you are describing as the SER cable, or otherwise 9 known as the load line, that goes from the meter panel 10 into the home? 11 <b>A.</b> The underground conductor conduit does not 12 include the SER cable. 13 <b>Q.</b> Thank you. Do you believe the SER cable was 14 outside the area of origin for this home -- this 15 fire? Excuse me. 16 <b>A.</b> No, sir. 17 <b>Q.</b> So the SER cable was within the area of 18 origin; is that correct? 19 <b>A.</b> Yes, sir. 20 <b>Q.</b> And does SER stand for something? 21 <b>A.</b> Yes, it does. It is a service entrance cable 22 with an additional conductor added to it to comply 23 with the National Electrical Code requirement for 24 separation of neutral and ground conductors. 25 <b>Q.</b> And am I correct that the SER cable, we'll</p>	60	<p>1 the meter panel; is that correct? 2 <b>A.</b> Yes, sir, that's correct. 3 <b>Q.</b> Okay. So there was still a portion of the 4 SER cable that went from the meter panel all the way 5 down and into the home; is that correct? 6 <b>A.</b> Well, from the remains of that SER cable was 7 what was left from the bottom of the meter enclosure 8 to the top of the circuit breaker panel in the 9 basement. 10 <b>Q.</b> Now, as part of your investigation into this 11 case, did you speak with any witnesses? 12 <b>A.</b> No, sir. 13 <b>Q.</b> Have you reviewed any depositions in this 14 case? 15 <b>A.</b> Yes, sir, I did. 16 <b>Q.</b> What depositions have you reviewed? 17 <b>A.</b> Off the top of my head, I don't recall. 18 <b>Q.</b> Is there a reason why the depositions are not 19 contained within the file that you brought here 20 today? Or are they? 21 <b>A.</b> I might have -- I must have forgotten to 22 bring them with me because -- 23 <b>MR. ROSSI: There was a transcript. I saw</b> 24 <b>it.</b> 25 <b>THE WITNESS: Was there a transcript?</b></p>

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61	<p>1       <b>MR. BARTON: Would you take that out too.</b></p> <p>2       <b>MR. ROSSI: I'm sorry.</b></p> <p>3       <b>THE WITNESS: I'm sorry. There we go.</b></p> <p>4       <b>MR. BARTON: All right, let's mark this.</b></p> <p>5       <b>(Whereupon, Exhibit No. 84 was marked for</b></p> <p>6       <b>identification.)</b></p> <p>7       <b>Q.</b> Before we go on with these questions, is</p> <p>8 there anything else that you have in your attache case</p> <p>9 that contains documents pertaining to 75 Vista View</p> <p>10 Drive?</p> <p>11       <b>A.</b> No, sir.</p> <p>12       <b>Q.</b> Okay. Can you see Exhibit 84 -- I've marked</p> <p>13 the deposition of Jeff Johnson as Exhibit 84; is that</p> <p>14 correct, sir?</p> <p>15       <b>A.</b> Yes, sir.</p> <p>16       <b>Q.</b> All right. And you have just presented this</p> <p>17 to me. Are there any other depositions other than</p> <p>18 Mr. Johnson that you have reviewed?</p> <p>19       <b>A.</b> Not that I recall.</p> <p>20       <b>Q.</b> The highlighting that appears on Exhibit 84,</p> <p>21 is that your highlighting?</p> <p>22       <b>A.</b> May I see that?</p> <p>23       <b>Q.</b> Sure.</p> <p>24       <b>A.</b> Yes, sir, that's my highlighting.</p> <p>25       <b>Q.</b> And did you highlight things you found</p>	63	<p>1 know, Cathy received it.</p> <p>2       <b>Q.</b> That's your secretary?</p> <p>3       <b>A.</b> That's my secretary. And she would have put</p> <p>4 it in the file.</p> <p>5       <b>Q.</b> Do you know how your secretary Cathy received</p> <p>6 Exhibit 84?</p> <p>7       <b>A.</b> No, sir, I don't.</p> <p>8       <b>Q.</b> Do you know when she received Exhibit 84?</p> <p>9       <b>A.</b> No, sir, I don't.</p> <p>10       <b>Q.</b> But you believe it came from Mr. Rossi or</p> <p>11 somebody at the law firm of Cozen O'Connor?</p> <p>12       <b>A.</b> I would believe so, yes, sir.</p> <p>13       <b>Q.</b> And you do not recall whether you received</p> <p>14 this before your final report of November 12, 2012?</p> <p>15 Is that right?</p> <p>16       <b>A.</b> That's correct.</p> <p>17       <b>Q.</b> When did you do the highlighting that appears</p> <p>18 on Exhibit 84?</p> <p>19       <b>A.</b> When I reviewed it.</p> <p>20       <b>Q.</b> When did you review it?</p> <p>21       <b>A.</b> Again, I don't recall.</p> <p>22       <b>Q.</b> So you don't know when you reviewed this and</p> <p>23 you don't know when you received this. Is that right?</p> <p>24       <b>A.</b> That's correct.</p> <p>25       <b>Q.</b> Okay.</p>
62	<p>1 important? Is there some reason why you highlighted</p> <p>2 these items?</p> <p>3       <b>A.</b> Oftentimes just to expedite my reading, I'll</p> <p>4 go through as I -- I'll highlight as I go through.</p> <p>5       <b>Q.</b> When did you receive Mr. Johnson's</p> <p>6 deposition?</p> <p>7       <b>A.</b> Is there a date in the upper -- where I sign</p> <p>8 the upper right-hand corner there?</p> <p>9       <b>Q.</b> No, there is not.</p> <p>10       <b>A.</b> I don't recall. Sometime after it was taken.</p> <p>11       <b>Q.</b> Was it after your November 12, 2012, report?</p> <p>12       <b>A.</b> I don't believe so.</p> <p>13       <b>Q.</b> Was it in the past three or four weeks; do</p> <p>14 you know?</p> <p>15       <b>A.</b> No, sir, I, I don't recall.</p> <p>16       <b>Q.</b> How did you get Exhibit 84? How did you get</p> <p>17 the deposition of Jeff Johnson?</p> <p>18       <b>A.</b> I don't know if we -- we might have -- may I</p> <p>19 see that for a second. We might have gotten that</p> <p>20 through, through Attorney Rossi.</p> <p>21       <b>Q.</b> Okay. Was it transmitted to you via e-mail?</p> <p>22 It looks to be an electronic copy.</p> <p>23       <b>A.</b> I don't know. I can't say. If this came in</p> <p>24 with the number that is on the side, that would have</p> <p>25 been put on my by secretary. So as far as I know, you</p>	64	<p>1       <b>A.</b> But that's my signature up on top. My</p> <p>2 initials JAC, that indicates that I signed it.</p> <p>3 Usually I date it. And I just didn't date it when I</p> <p>4 completed the review process.</p> <p>5       <b>Q.</b> When you came here today, was this contained</p> <p>6 within the file materials we have in front of us,</p> <p>7 Exhibit 82 and Exhibit 81?</p> <p>8       <b>A.</b> I think it might have just been in my</p> <p>9 attache.</p> <p>10       <b>Q.</b> You think it was or do you know it was?</p> <p>11       <b>A.</b> Well, when I took the file out of my attache</p> <p>12 this morning and handed the manila envelope to -- or</p> <p>13 the manila file to Attorney Rossi, that was not in</p> <p>14 there. So it either fell out when I put everything in</p> <p>15 the attache last night or it, you know, it was</p> <p>16 separate. I just don't recall.</p> <p>17       <b>Q.</b> Okay. Did you review Exhibit 84, the</p> <p>18 deposition of Jeff Johnson, with Mr. Rossi this</p> <p>19 morning?</p> <p>20       <b>A.</b> No, sir.</p> <p>21       <b>Q.</b> And there is nothing else in your attache</p> <p>22 case that pertains to this case; is that right?</p> <p>23       <b>A.</b> That's correct.</p> <p>24       <b>Q.</b> Other than Mr. Johnson's deposition that you</p> <p>25 reviewed on an unknown date, who else -- what other</p>

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65	<p>1 depositions have you reviewed, any?</p> <p>2 A. None that I can recall.</p> <p>3 Q. All right. So you have spoken with no</p> <p>4 witnesses and you reviewed only Mr. Johnson's</p> <p>5 deposition. Is that a fair summary?</p> <p>6 A. That's correct.</p> <p>7 Q. Have you examined an exemplar of the meter</p> <p>8 panel, a CMBX B-200 BTS, that is involved in this</p> <p>9 case?</p> <p>10 A. Yes, sir, I have.</p> <p>11 Q. When did you examine the exemplar meter</p> <p>12 panel?</p> <p>13 A. Let's see. If I remember correctly, it would</p> <p>14 have been just prior to writing the report.</p> <p>15 Q. And when you say just prior to writing the</p> <p>16 report, when was that?</p> <p>17 A. If I remember correctly, sometime around</p> <p>18 November 1st or in the area between November 1st and</p> <p>19 November 12th.</p> <p>20 Q. And how did you acquire the exemplar meter</p> <p>21 panel?</p> <p>22 A. Let's see. The exemplar meter panel I</p> <p>23 received from a colleague.</p> <p>24 Q. The name of the colleague?</p> <p>25 A. Don Galler.</p>	67	<p>1 A. I don't believe so.</p> <p>2 Q. Have you paid for the exemplar meter panel?</p> <p>3 A. No, sir, not --</p> <p>4 Q. So he gifted this meter panel to you?</p> <p>5 A. As far as I know, sir, yes, sir.</p> <p>6 Q. Do you still have this exemplar meter panel?</p> <p>7 A. Yes, sir, I do.</p> <p>8 Q. Is it in your office or facility?</p> <p>9 A. No, sir.</p> <p>10 Q. Where is it?</p> <p>11 A. It's in my car.</p> <p>12 Q. Today?</p> <p>13 A. Yes, sir.</p> <p>14 Q. Why is it in your car?</p> <p>15 A. In case we needed to look at one, I brought</p> <p>16 one with me.</p> <p>17 Q. Okay. Do you have any documents that show</p> <p>18 when this exemplar meter panel was transmitted to you?</p> <p>19 A. No, sir, I don't believe I do.</p> <p>20 Q. How did Mr. Galler know you wanted an</p> <p>21 exemplar meter panel? If you know. Did you request</p> <p>22 it from him?</p> <p>23 A. I don't believe that I did request it from</p> <p>24 him. I think it, I think it came through Attorney</p> <p>25 Rossi.</p>
66	<p>1 Q. And where does Mr. Galler work?</p> <p>2 A. He works at MIT.</p> <p>3 Q. Do you know how Mr. Don Galler obtained the</p> <p>4 subject meter panel?</p> <p>5 A. No, sir, I don't.</p> <p>6 Q. You don't know where he purchased it from or</p> <p>7 if he just had it on hand?</p> <p>8 A. No, sir, I don't.</p> <p>9 Q. Okay. What is your relationship with</p> <p>10 Mr. Galler?</p> <p>11 A. We are colleagues. We work sometimes on the</p> <p>12 same assignment. In the last 5 to 10 years, we've,</p> <p>13 we've been on the same side and sometimes we've been</p> <p>14 on opposing sides.</p> <p>15 Q. Okay. What does he do at MIT?</p> <p>16 A. If I remember correctly, he runs the scanning</p> <p>17 electron microscope and the metallurgy lab.</p> <p>18 Q. Okay. So the subject -- or I'm sorry, not</p> <p>19 the subject. The exemplar meter panel that you</p> <p>20 received came from Mr. Don Galler sometime between</p> <p>21 November 1 of 2012 and November 12 of 2012; is that</p> <p>22 correct?</p> <p>23 A. As I remember, yes, sir.</p> <p>24 Q. Okay. Did Mr. Galler send you an invoice for</p> <p>25 the exemplar meter panel?</p>	68	<p>1 Q. Were you given any advanced notice that a</p> <p>2 meter panel was going to be delivered to your office</p> <p>3 from anyone or did one day it just appear?</p> <p>4 A. Do you have to --</p> <p>5 Q. No, you can answer the question and then</p> <p>6 we'll take a break.</p> <p>7 A. If I remember correctly, we received a call</p> <p>8 that there was going to be a meter panel and a few</p> <p>9 circuit breakers arriving.</p> <p>10 Q. Okay. Had you requested that a meter panel</p> <p>11 and a few circuit breakers come to your office?</p> <p>12 A. No, sir, I had not.</p> <p>13 <b>MR. BARTON: Let's go ahead and take a break</b></p> <p>14 <b>so we can change the tape.</b></p> <p>15 <b>THE VIDEOGRAPHER: This concludes videotape</b></p> <p>16 <b>number 1. Going off record, 11:19 a.m.</b></p> <p>17 <b>(Briefly off the record, as a break is</b></p> <p>18 <b>taken.)</b></p> <p>19 <b>THE VIDEOGRAPHER: We're back on record.</b></p> <p>20 <b>This marks the beginning of videotape number 2,</b></p> <p>21 <b>11:29 a.m.</b></p> <p>22 <b>BY MR. BARTON:</b></p> <p>23 Q. Mr. Cristino, did you rely on Exhibit 84, the</p> <p>24 deposition of Jeff Johnson, in formulating your</p> <p>25 opinions that we have in your expert report?</p>

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69	<p>1 A. Only with regard to the verifying what my 2 initial opinions were as to how the meter enclosure 3 was laid out.</p> <p>4 Q. Okay. In terms of the design of the meter 5 panel?</p> <p>6 A. The internal component layout.</p> <p>7 Q. And you utilized Mr. Johnson's deposition for 8 that; is that correct? In part.</p> <p>9 A. In part, yes, sir.</p> <p>10 Q. If we look at page 1 of Exhibit 79, the third 11 full paragraph, it says: This report is based on the 12 January 31st site examination. 13 That's the examination where I discussed 14 where you reviewed the home with Mr. Driscoll; is that 15 correct?</p> <p>16 A. That's correct.</p> <p>17 Q. Subsequent examinations. And my question is, 18 What subsequent examinations are you referring to?</p> <p>19 A. Well, that's one complete thought. 20 Subsequent examinations and testing....</p> <p>21 Q. So the subsequent examinations and testing, 22 you are referring to, then, are those that were done 23 at CL&amp;P's facility? Is that correct?</p> <p>24 A. Yeah. And then also in Quali-Tech 25 Laboratories.</p>	71	<p>1 best characterized as nondestructive. All the parties 2 that were involved, including Connecticut Light &amp; 3 Power, a representative from Eaton Corporation -- 4 yeah, if you look at the sign-in sheet, there are 5 several parties that were represented, including I 6 think Milbank was there.</p> <p>7 Q. Okay. What was tested at Quali-Tech 8 Laboratories on the first day of examination?</p> <p>9 A. Well, it was more examination than testing.</p> <p>10 Q. Okay. What was examined on the first day 11 while you were at Quali-Tech Laboratories?</p> <p>12 A. The meter socket, the meter enclosure 13 complete.</p> <p>14 Q. Okay, the complete meter panel?</p> <p>15 A. Yes, sir.</p> <p>16 Q. All right. What was examined on the second 17 day of testing and examination at Quali-Tech?</p> <p>18 A. Well, the same components that were examined 19 during the first examination in March were then more 20 closely examined and subjected to both optical and 21 scanning electron microscopy in September 2012.</p> <p>22 Q. So is it your testimony that in September of 23 2102 the entire meter panel was also present at 24 Quali-Tech for examination?</p> <p>25 A. Yes, sir.</p>
70	<p>1 Q. How many examinations and -- how many 2 examinations occurred at CL&amp;P's facility?</p> <p>3 A. Let's see. We -- one day the examination 4 included --</p> <p>5 Q. I just want to know how many examinations.</p> <p>6 A. Well, one examination at the CL&amp;P facility, 7 Freight Street.</p> <p>8 Q. And what was examined at CL&amp;P? Was it the 9 transformer?</p> <p>10 A. Panama transformer, yes, sir.</p> <p>11 Q. And all of the testing that was done at CL&amp;P 12 was involving that pad-mounted transformer; is that 13 correct?</p> <p>14 A. That's correct.</p> <p>15 Q. There was no testing and examinations done at 16 CL&amp;P of the meter panel, its breaker, or any of its 17 conduit; is that correct?</p> <p>18 A. That's correct.</p> <p>19 Q. The third item you have listed is Quali-Tech 20 Laboratories -- or Quali-Tech (Q-U-A-L-I capital 21 T-E-C-H) Laboratories in Meriden, Connecticut. What 22 examinations and testing were performed at Quali-Tech 23 Laboratories?</p> <p>24 A. Well, as I mentioned before, we were at 25 Quali-Tech twice. The first time the testing was, was</p>	72	<p>1 Q. Was there ever an examination where the only 2 artifact present was the breaker that was inside the 3 meter panel?</p> <p>4 A. Not that I recall. I believe that the entire 5 panel was there during the September examination. I 6 don't remember there being -- I mean, we may have 7 focused on the circuit breaker and its mounting, but I 8 don't believe that that was the only device that was 9 at Quali-Tech.</p> <p>10 Q. At some point in time did someone remove the 11 circuit breaker from the meter panel?</p> <p>12 A. Yes, sir.</p> <p>13 Q. And who was that?</p> <p>14 A. It would have been me, Mr. Sabo from Quali- 15 Tech. And I don't remember the exact individuals, but 16 there were probably two or three of us that were 17 working together to -- I think it's important to note 18 that the circuit breaker was friable by the time we 19 got a chance to examine it. So I had lost most of the 20 resins in its composition. So it was very, very 21 fragile. So it took more than just two hands to 22 remove it from the panel.</p> <p>23 Q. When you removed the breaker from the panel 24 was there any representative of Eaton present?</p> <p>25 A. Yes, sir.</p>

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73	<p>1 Q. Who was that?</p> <p>2 A. If I remember correctly, there was. I would</p> <p>3 have to check and see what the --</p> <p>4 Q. Let me get there another day. Did you remove</p> <p>5 the breaker from the panel during the first</p> <p>6 examination that took place at Quali-Tech?</p> <p>7 A. I don't believe that we did.</p> <p>8 Q. Did you remove the breaker from the panel</p> <p>9 during the second examination that took place at</p> <p>10 Quali-Tech?</p> <p>11 A. I believe we did at that point.</p> <p>12 Q. Did you videotape the removal of the breaker</p> <p>13 from the meter panel?</p> <p>14 A. No, sir.</p> <p>15 Q. Did you prepare any videotapes of any of the</p> <p>16 artifacts in this case?</p> <p>17 A. No, sir, I did not.</p> <p>18 Q. Have we completely covered all of the items</p> <p>19 with respect to the examinations and testing you did</p> <p>20 at Quali-Tech Laboratories?</p> <p>21 And I'm going to get into all the photographs</p> <p>22 and details in a moment. I just want to have an</p> <p>23 overview of what you actually relied on in your</p> <p>24 opinion, sir. So when you say Quali-Tech</p> <p>25 Laboratories, have we covered the two inspections of</p>	75	<p>1 from any other entity other than I believe Mr. Rossi</p> <p>2 would have provided our discovery to you? Do you</p> <p>3 understand my question? Did you surf the Net and</p> <p>4 download anything? Did you get anything from</p> <p>5 Mr. Galler?</p> <p>6 A. We received some information from Mr. Morales</p> <p>7 during the first Quali-Tech examination. And I</p> <p>8 believe he was able to come upon that by surfing the</p> <p>9 Internet.</p> <p>10 Q. Okay. And that information is contained</p> <p>11 within your file; is that correct?</p> <p>12 A. Yeah.</p> <p>13 Q. Okay. And does that comprise generally the</p> <p>14 material provided by Eaton Corporation that you</p> <p>15 reference on page 1 of Exhibit 79?</p> <p>16 A. Yes, sir.</p> <p>17 Q. All right. It also goes on to say</p> <p>18 discussions with fire investigator Driscoll as the</p> <p>19 basis of your opinions. Are those the discussions you</p> <p>20 had throughout the investigation?</p> <p>21 A. Yes, sir.</p> <p>22 Q. Okay. Have you spoken with Mr. Driscoll</p> <p>23 since his deposition was taken?</p> <p>24 A. No, sir, I have not.</p> <p>25 Q. Okay. Am I correct that you have not</p>
74	<p>1 the meter panel and the breaker? Is that it?</p> <p>2 A. At Quali-Tech.</p> <p>3 Q. Yes?</p> <p>4 A. Yes, sir.</p> <p>5 Q. Okay, the next item you listed as being the</p> <p>6 -- as reviewing in support of your opinions are</p> <p>7 material provided by Eaton Corporation. What</p> <p>8 material?</p> <p>9 A. I would have to go through the file. There</p> <p>10 is quite an extensive amount of information that Eaton</p> <p>11 provided and --</p> <p>12 Q. Would I be correct in saying that it is the</p> <p>13 documents that are contained within your file that we</p> <p>14 see in Exhibit 82 and in group Exhibit 81?</p> <p>15 A. That's correct.</p> <p>16 Q. Okay. And when I looked at this briefly</p> <p>17 before your deposition today, I saw in there several</p> <p>18 documents that were produced in discovery in this</p> <p>19 case. Is that also your understanding?</p> <p>20 A. Yes, sir.</p> <p>21 Q. Were there any documents that you received</p> <p>22 from Eaton Corporation directly through a</p> <p>23 representative of Eaton outside of the litigation?</p> <p>24 A. No, sir.</p> <p>25 Q. Okay. Did you receive any Eaton documents</p>	76	<p>1 reviewed any of the Fire Marshal's reports in this</p> <p>2 case?</p> <p>3 A. I believe that's correct. I didn't see it in</p> <p>4 our file so there's a -- it's most probable I haven't</p> <p>5 seen it if it's not in the file.</p> <p>6 Q. And previously you told me you didn't speak</p> <p>7 with any witnesses either?</p> <p>8 A. That's correct.</p> <p>9 Q. Have we covered the extent of the material</p> <p>10 and information generally speaking, that you relied on</p> <p>11 in preparing the November 12, 2012, report?</p> <p>12 A. Well, there is one more thing and it really</p> <p>13 was included in general terms under examinations.</p> <p>14 When we were at Connecticut Light &amp; Power, we</p> <p>15 requested a sample of oil.</p> <p>16 Q. Um-uh.</p> <p>17 A. The testing that took place at the</p> <p>18 Connecticut Light &amp; Power facility included specific</p> <p>19 electrical tests on the transformer, but in addition</p> <p>20 to that, they performed a dielectric test on the</p> <p>21 insulating oil within the transformer.</p> <p>22 And following that, that session, or in the</p> <p>23 course of that session they drew oil for me and</p> <p>24 provided me with a sample of oil that we subsequently</p> <p>25 sent to Doble Engineering in Watertown, Massachusetts,</p>

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77	<p>1 for analysis.</p> <p>2 <b>Q.</b> Do you believe the transformer -- pad-mounted</p> <p>3 transformer -- I believe it's 968. Maybe I'm wrong on</p> <p>4 that number. But the pad-mounted transformer that</p> <p>5 supplied power to 75 Vista View Drive, do you believe</p> <p>6 that its failure caused or contributed to cause the</p> <p>7 fire?</p> <p>8 <b>A.</b> No, sir.</p> <p>9 <b>Q.</b> Do you know what caused -- well, let me ask a</p> <p>10 better question. How many breakers are there in that</p> <p>11 pad-mounted transformer, if you know?</p> <p>12 <b>A.</b> One.</p> <p>13 <b>Q.</b> Okay. After the fire, what was the status of</p> <p>14 that breaker?</p> <p>15 <b>A.</b> It appeared that the breaker was in the</p> <p>16 tripped position.</p> <p>17 <b>Q.</b> Okay. Do you know what caused that breaker</p> <p>18 to be in the tripped position?</p> <p>19 <b>A.</b> I can provide what I would consider to be an</p> <p>20 educated opinion on that.</p> <p>21 <b>Q.</b> Okay. And what is an educated opinion?</p> <p>22 <b>A.</b> Well, it would be based on the facts that</p> <p>23 there was a short circuit in the line side conductors</p> <p>24 at the meter socket enclosure and that that circuit</p> <p>25 breaker is intended to operate for short circuit and</p>	79	<p>1 the meter panel?</p> <p>2 <b>A.</b> Of sufficient duration and intensity, yes.</p> <p>3 <b>Q.</b> Okay. And what is the sufficiency of the</p> <p>4 duration and intensity required to trip the breaker of</p> <p>5 the transformer?</p> <p>6 <b>A.</b> If I remember correctly, that was a 25 KVA</p> <p>7 transformer. So a 25 KVA transformer at 120 volts</p> <p>8 would provide approximately -- let's see --</p> <p>9 approximately 200 amps of full load current.</p> <p>10 Depending upon the characteristic of the</p> <p>11 breaker, it would typically trip it 250 percent at</p> <p>12 approximately 10 seconds. So a fault of -- what would</p> <p>13 that be? 200 would be 500 amps, approximately 500</p> <p>14 amps at 10 seconds. And that goes exponentially</p> <p>15 upward at shorter time and higher current values.</p> <p>16 <b>Q.</b> Okay. Do you believe the fault occurred</p> <p>17 inside the meter panel that was in excess of 500 amps</p> <p>18 and lasted for longer than 10 seconds?</p> <p>19 <b>A.</b> In my opinion, based on the damage that we</p> <p>20 see, the fault, the fault was of sufficient intensity</p> <p>21 and duration to cause that circuit breaker to trip. I</p> <p>22 can't identify where that would be on the curve.</p> <p>23 The characteristics for that circuit breaker</p> <p>24 operation are along a curve, not just a specific</p> <p>25 point, so the point that I gave you of 10 seconds at</p>
78	<p>1 overload conditions. My opinion is that that circuit</p> <p>2 breaker is what de-energized the fault at 75 Vista</p> <p>3 View.</p> <p>4 <b>Q.</b> Okay. And if I understand what you are</p> <p>5 saying is that the transformer -- I'm sorry, the</p> <p>6 breaker inside the transformer is designed to trip</p> <p>7 when it senses an electrical fault downstream of its</p> <p>8 location. Is that correct?</p> <p>9 <b>A.</b> That's correct.</p> <p>10 <b>Q.</b> And you understand what I mean by downstream,</p> <p>11 right?</p> <p>12 <b>A.</b> Yes, sir.</p> <p>13 <b>Q.</b> Downstream of the transformer would be the</p> <p>14 meter panel and the home itself, right?</p> <p>15 <b>A.</b> That's correct.</p> <p>16 <b>Q.</b> Okay. And upstream of the transformer would</p> <p>17 be the utility lines going back to the utility,</p> <p>18 correct?</p> <p>19 <b>A.</b> That's correct.</p> <p>20 <b>Q.</b> Do you know the rating of the circuit breaker</p> <p>21 that was inside the transformer?</p> <p>22 <b>A.</b> No, sir, I do not.</p> <p>23 <b>Q.</b> But it's your educated opinion that whatever</p> <p>24 that rating was for that transformer, that it would</p> <p>25 trip when it sensed an electrical arc or fault inside</p>	80	<p>1 250 percent would be a point on the curve.</p> <p>2 If I remember correctly, most of those</p> <p>3 circuit breaker curves start somewhere around 1,000</p> <p>4 seconds or more. So the breaker could start to trip</p> <p>5 at, say, 110 percent at 1,000 seconds or more. And at</p> <p>6 a point of, say, 500 or 1,000 percent of its rating,</p> <p>7 it may trip in as quickly as 10 cycles depending upon</p> <p>8 the characteristic of that, of that circuit breaker.</p> <p>9 So anywhere in that, in that range would be the</p> <p>10 duration of the fault within that, that panel.</p> <p>11 <b>Q.</b> Can you tell me what the characteristics of</p> <p>12 the breaker inside the pad-mounted transformer are?</p> <p>13 <b>A.</b> No, sir, I cannot.</p> <p>14 <b>Q.</b> Do you need to know the characteristics of</p> <p>15 that breaker inside the pad-mounted transformer to</p> <p>16 render an opinion as to what type of electrical</p> <p>17 activity would cause that transformer to trip? And by</p> <p>18 type I mean duration and amount of amps.</p> <p>19 <b>A.</b> No, sir.</p> <p>20 <b>Q.</b> Okay. Is it your opinion that the electrical</p> <p>21 arc fault that occurred inside the meter panel, the</p> <p>22 subject meter panel at 75 Vista View Drive is what</p> <p>23 caused the breaker inside the transformer to trip?</p> <p>24 <b>A.</b> Yes, sir, it is.</p> <p>25 <b>Q.</b> Thank you. And I take it, then, you believe</p>

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81	<p>1 that that arc fault -- and we are talking about the</p> <p>2 arc fault in the vicinity of the breaker of the meter</p> <p>3 panel -- was of sufficient amperage and duration to</p> <p>4 cause a breaker inside that transformer, utility</p> <p>5 transformer, to trip. Is that correct?</p> <p>6 <b>A.</b> That's correct.</p> <p>7 <b>Q.</b> Okay. I draw your attention to page 2 of</p> <p>8 Exhibit 79. There is a number of bullet points here.</p> <p>9 And, sir, I don't mean to jump around, but there are</p> <p>10 just a number that I want to address.</p> <p>11 Some you have just cited as facts such as</p> <p>12 this is a meter panel with a disconnect. There is no</p> <p>13 dispute as to that. I'm just going to ask you those</p> <p>14 points, so if at all you need to refer back, please</p> <p>15 let me know. I'm not trying to confuse you by jumping</p> <p>16 around, okay?</p> <p>17 <b>A.</b> Very good.</p> <p>18 <b>Q.</b> But I'll do my best to go in order. All</p> <p>19 right, I'd like to draw your attention to a bullet</p> <p>20 point number 2 on page 2 of Exhibit 79. It says</p> <p>21 here: The Cutler Hammer combination meter enclosure</p> <p>22 exhibited signs of electrical fault activity within</p> <p>23 its confines.</p> <p>24 What is the -- what are the signs of</p> <p>25 electrical fault activity?</p>	83	<p>1 fragmentation, and missing aluminum conductors, which</p> <p>2 you also attribute to electrical fault activity; is</p> <p>3 that correct?</p> <p>4 <b>A.</b> That's correct.</p> <p>5 <b>Q.</b> These fragmented, melting, and missing</p> <p>6 aluminum conductors, were they load side or line side</p> <p>7 conductors or both?</p> <p>8 <b>A.</b> Both.</p> <p>9 <b>Q.</b> All right. Please, sir, go on. What other</p> <p>10 signs of electric fault activity did you observe</p> <p>11 within the confines of the meter panel?</p> <p>12 <b>A.</b> Well, I had said the mounting plate. And</p> <p>13 this was very early on. But we were able to identify</p> <p>14 that there was damage to the plate upon which the</p> <p>15 circuit breaker was mounted.</p> <p>16 <b>Q.</b> And when you say mounting plate, there is an</p> <p>17 elevated steel plate inside the meter panel upon which</p> <p>18 the breaker is attached; is that correct?</p> <p>19 <b>A.</b> That's correct.</p> <p>20 <b>Q.</b> Okay, go on, sir.</p> <p>21 <b>A.</b> The load side connectors on the circuit</p> <p>22 breaker were, were severely damaged to the point of</p> <p>23 where if I remember correctly, the only thing that was</p> <p>24 left were the tabs coming out of the circuit breaker.</p> <p>25 So the lugs into which the SER cable conductors would</p>
82	<p>1 <b>A.</b> There, there were areas that were readily</p> <p>2 visible where the steel within the meter enclosure had</p> <p>3 melted.</p> <p>4 There was an area at the back of the meter</p> <p>5 enclosure where the steel had melted. And there was</p> <p>6 actually -- initially, we were able to identify a hole</p> <p>7 that was blown, melted through the back of the panel</p> <p>8 where it would have been attached to the structure, to</p> <p>9 the residential structure of the home.</p> <p>10 There was a great deal of the aluminum</p> <p>11 conductors, both from Connecticut Light &amp; Power and</p> <p>12 the SER cable, that were fragmented, melted, and</p> <p>13 missing. There was a --</p> <p>14 <b>Q.</b> Let me just stop you there. Do you attribute</p> <p>15 the fragmentation, the melting, and the missing to</p> <p>16 electrical fault activity?</p> <p>17 <b>A.</b> Yes, sir, I do.</p> <p>18 <b>Q.</b> Okay, go ahead. So we have got -- and I</p> <p>19 don't mean to interrupt you, but I want to make sure I</p> <p>20 understand your response. The electrical fault</p> <p>21 activity you observed was the erosion of the steel at</p> <p>22 the back of the meter panel from electrical arcing; is</p> <p>23 that correct?</p> <p>24 <b>A.</b> That's correct.</p> <p>25 <b>Q.</b> You have also described the melting,</p>	84	<p>1 have been inserted and connected were, were missing</p> <p>2 They were destroyed in the electrical fault activity.</p> <p>3 <b>Q.</b> Okay. The damaged load side conductors, you</p> <p>4 attribute that to electrical fault activity; is that</p> <p>5 correct?</p> <p>6 <b>A.</b> Yes, I do.</p> <p>7 <b>Q.</b> So they weren't attacked by fire or subject</p> <p>8 to melting from some other source. These were</p> <p>9 directly attacked through electrical arc fault?</p> <p>10 <b>A.</b> Based on what, what was left in that panel,</p> <p>11 sir, I would say yes, that's correct.</p> <p>12 <b>Q.</b> Okay.</p> <p>13 <b>A.</b> Beyond that, I already mentioned the</p> <p>14 fragments because there were some fragments of the</p> <p>15 conductor strands that were welded into the -- if I</p> <p>16 remember correctly, I think it's the cover, the back</p> <p>17 side of the cover that went over the circuit breaker.</p> <p>18 <b>Q.</b> When you say the back side of the cover, are</p> <p>19 you referring to a dead front that fits over the front</p> <p>20 of the breaker --</p> <p>21 <b>A.</b> Yes, sir.</p> <p>22 <b>Q.</b> -- that serves as a barrier between the</p> <p>23 internal wiring and the actual front cover itself?</p> <p>24 <b>A.</b> That's correct.</p> <p>25 <b>Q.</b> Okay. Any other evidence or signs of</p>

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85	<p>1 electrical fault activity within the confines of the</p> <p>2 meter panel?</p> <p>3 <b>A.</b> The Connecticut Light &amp; Power revenue meter</p> <p>4 was reduced to its -- to a portion of its component</p> <p>5 parts. It appeared that this wasn't an older style</p> <p>6 electromechanical meter.</p> <p>7 It appeared to have been -- or what we saw</p> <p>8 appeared to have been the remains of an electronic</p> <p>9 type meter which would have had two copper bus bars</p> <p>10 around which electrical components would have been</p> <p>11 connected and to which printed circuit boards and a</p> <p>12 display would have been attached.</p> <p>13 <b>Q.</b> Do you believe there was electrical faulting</p> <p>14 within the electrical meter supplied by the power</p> <p>15 company?</p> <p>16 <b>A.</b> No, sir, I do not.</p> <p>17 <b>Q.</b> All I'm asking about is electrical arcing</p> <p>18 activity or electrical fault activity within the</p> <p>19 confines of the meter panel. Is there anything other</p> <p>20 than what we discussed?</p> <p>21 <b>A.</b> Well, I think it's significant in that the</p> <p>22 damage -- the heat produced by the electrical fault</p> <p>23 activity did --</p> <p>24 <b>Q.</b> We're going to get to fire patterns and</p> <p>25 melting in a little bit.</p>	87	<p>1 <b>Q.</b> Have you examined an exemplar of the meter?</p> <p>2 <b>A.</b> No, sir, I do not.</p> <p>3 <b>Q.</b> And if I understand your testimony, it's your</p> <p>4 belief that the heat that was generated by the arc</p> <p>5 fault at the breaker in the subject meter panel was of</p> <p>6 such temperature and duration that that heat caused</p> <p>7 melting in the upper section of the meter panel to the</p> <p>8 meter itself. Is that correct?</p> <p>9 <b>A.</b> No, sir.</p> <p>10 <b>Q.</b> Okay. Explain to me how the heat from the</p> <p>11 electrical arcing activity at the breaker, how that</p> <p>12 caused melting to the meter?</p> <p>13 <b>A.</b> Well --</p> <p>14 <b>Q.</b> Or if it didn't, then I'm totally confused at</p> <p>15 what you just said.</p> <p>16 <b>A.</b> The arc activity that we were able to see the</p> <p>17 resulting signs of -- this is during our initial</p> <p>18 examination on January 31st. What we were able to</p> <p>19 determine at that point was that there was a</p> <p>20 sufficient amount of steel that was lost in the</p> <p>21 event.</p> <p>22 Knowing that steel melts at 2,500 degrees,</p> <p>23 approximately, and that aluminum melts at 1,200</p> <p>24 degrees Fahrenheit, we, we had an electrical event at</p> <p>25 the back side of the circuit breaker that melted the</p>
86	<p>1 <b>A.</b> This isn't fire, though.</p> <p>2 <b>MR. ROSSI: I don't think he's finished with</b></p> <p>3 <b>his answer.</b></p> <p>4 <b>MR. BARTON: I don't think so either. I just</b></p> <p>5 <b>want to make sure he's giving me an answer.</b></p> <p>6 <b>BY MR. BARTON:</b></p> <p>7 <b>Q.</b> This is electrical fault activity is what</p> <p>8 you're describing.</p> <p>9 <b>A.</b> And the heat generated by it.</p> <p>10 <b>Q.</b> Okay.</p> <p>11 <b>A.</b> Because in that scenario, the heat was</p> <p>12 extensive in the -- in the lower portion of the meter</p> <p>13 enclosure, which included the circuit breaker itself.</p> <p>14 The heat did extend up into the area of the</p> <p>15 meter socket. And that's what I just wanted to point</p> <p>16 out. And you will see in -- I think we have got one</p> <p>17 or two photographs in the report that show the remains</p> <p>18 of the meter itself. And that was significant in that</p> <p>19 the damage was -- did not have electrical fault</p> <p>20 activity associated with it.</p> <p>21 <b>Q.</b> Okay. And I think I understand your answer,</p> <p>22 but let me ask a couple of questions. The actual</p> <p>23 meter itself, do you know the make, model, or brand of</p> <p>24 the meter?</p> <p>25 <b>A.</b> No, sir, I do not.</p>	88	<p>1 steel upon which the circuit breaker was mounted, was</p> <p>2 of sufficient intensity and duration to be able to</p> <p>3 expand and melt a hole through the back of the panel,</p> <p>4 again, the steel panel, but in addition to that expand</p> <p>5 sideways.</p> <p>6 And in doing so, in expanding sideways, it</p> <p>7 attacked the Connecticut Light &amp; Power aluminum</p> <p>8 conductors that came up. You facing the panel, it</p> <p>9 would be up at the left side of the panel. That heat</p> <p>10 and electrical fault activity expanded onto those</p> <p>11 aluminum conductors.</p> <p>12 And that was a -- that was the next phase of</p> <p>13 the fault activity. Because there was a fault at the</p> <p>14 circuit breaker, there was melting of the steel, the</p> <p>15 two steel components that -- you know, in close</p> <p>16 proximity to the circuit breaker, there was an</p> <p>17 expansion of that electrical plasma, the fault arc to</p> <p>18 the side that then included the Connecticut Light &amp;</p> <p>19 Power aluminum cables.</p> <p>20 And at that point the aluminum began</p> <p>21 vaporizing and burning back towards the transformer,</p> <p>22 which would have been at the bottom of the -- the</p> <p>23 transformer feed would have been from the bottom of</p> <p>24 the panel.</p> <p>25 What was in that common compartment were both</p>

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89	<p>1 the Connecticut Light &amp; Power underground conductors</p> <p>2 and the SER cable. And that's where we had this large</p> <p>3 electrical fault that was working its way towards the</p> <p>4 bottom of the panel, the heat of which was going up</p> <p>5 through the holes.</p> <p>6 And the steel barrier that was above the</p> <p>7 circuit breaker had holes for penetrations for the two</p> <p>8 factory installed copper conductors between the load</p> <p>9 side of the meter socket and the line side of the</p> <p>10 circuit breaker.</p> <p>11 And in addition to that, on the left side</p> <p>12 facing the circuit breaker panel or the -- yeah, the</p> <p>13 circuit breaker and the meter socket, there was</p> <p>14 another small chase, another opening that was cut</p> <p>15 through that barrier plate through which the</p> <p>16 Connecticut Light &amp; Power aluminum conductors were</p> <p>17 routed.</p> <p>18 And what we found and you can see in the</p> <p>19 photographs: Those were still in a U-shaped</p> <p>20 configuration melted off in the area of that steel</p> <p>21 plate. So that is -- you know, that explains how the</p> <p>22 fault initiated, expanded, and then eventually as</p> <p>23 those aluminum conductors within the enclosure</p> <p>24 vaporized and were damaged caused a circuit breaker to</p> <p>25 trip down at the pad-mounted transformer.</p>	91	<p>1 boards, the -- that style of meter, based on, you</p> <p>2 know, my experience and the remains that we found at</p> <p>3 the scene -- those revenue meters of that style and</p> <p>4 class typically don't come with glass globes as the</p> <p>5 older meters.</p> <p>6 Typically there is a Plexiglass or Lexan or</p> <p>7 some, some form of plastic cover. The glass or the</p> <p>8 globe on the front of it is some form of plastic. And</p> <p>9 we lost all of that, including the principal circuit</p> <p>10 boards and a majority of the wiring.</p> <p>11 <b>Q.</b> And I appreciate that. The material that</p> <p>12 makes up the meter panel that could be melted or</p> <p>13 consumed by fire was melted or consumed by fire; is</p> <p>14 that correct?</p> <p>15 <b>A.</b> That's correct.</p> <p>16 <b>Q.</b> Okay. How do you differentiate between</p> <p>17 whether that was attacked by fire as opposed to</p> <p>18 exposed to ambient heat from an arc fault in a lower</p> <p>19 compartment?</p> <p>20 <b>A.</b> The difference between the temperatures of</p> <p>21 what a fire could do in free air versus what an</p> <p>22 electrical fault could do.</p> <p>23 I mean, you could burn that house to the</p> <p>24 ground and not have a fire of sufficient intensity to</p> <p>25 cause a short circuit in the circuit breaker that</p>
90	<p>1 <b>Q.</b> Okay. Which brings me back to my original</p> <p>2 question: Is it your testimony that the arc faulting</p> <p>3 in the bottom portion of the meter panel created</p> <p>4 sufficient heat that then transferred up to the top</p> <p>5 portion of the meter panel and melted the meter?</p> <p>6 Remember, we're talking about the electrical</p> <p>7 activity that you have identified. And you told me</p> <p>8 the melted meter is evidence of electrical arc</p> <p>9 activity, electrical fault activity. And I'm trying</p> <p>10 to get to how you came to that conclusion.</p> <p>11 <b>A.</b> That's, that's correct.</p> <p>12 <b>Q.</b> Okay.</p> <p>13 <b>A.</b> I mean, we've got an enclosed -- basically,</p> <p>14 we've got an enclosed enclosure. You have a six-sided</p> <p>15 box with a metal plate three-quarters of the way up</p> <p>16 that has penetrations in it.</p> <p>17 So as the heat -- and that's the point that I</p> <p>18 was trying to make before, was that it was the heat</p> <p>19 from the electrical arc activity that caused the</p> <p>20 damage in the upper portion, you know, the upper</p> <p>21 compartment if we call it that.</p> <p>22 Because there weren't any signs of electrical</p> <p>23 fault activity in that upper portion, but there</p> <p>24 appeared to be, you know, significant signs of heat</p> <p>25 damage. We lost the insulation, the printer circuit</p>	92	<p>1 would respond the way that it did.</p> <p>2 In other words, the way the enclosure is</p> <p>3 manufactured, as you had said, you had the mounting</p> <p>4 plate on the inside with the panel. It has to do with</p> <p>5 temperature and duration in this case. And there</p> <p>6 isn't a way to get a house fire up hot enough to be</p> <p>7 able to melt the steel.</p> <p>8 <b>Q.</b> And I'm not asking you about the inside of</p> <p>9 the meter panel. Again, let's talk about the -- what</p> <p>10 you called the revenue meter.</p> <p>11 <b>A.</b> Yes, sir.</p> <p>12 <b>Q.</b> We all have them on our house. They are</p> <p>13 glass meters that extend out of the meter panel.</p> <p>14 Would you agree with that?</p> <p>15 <b>A.</b> Yes, sir.</p> <p>16 <b>Q.</b> Okay. And I thought your original testimony</p> <p>17 was that the arcing within the lower portion of the</p> <p>18 meter panel was of such duration and heat that it</p> <p>19 allowed temperatures to reach a specific degree that</p> <p>20 caused the meter panel in the upper portion, the globe</p> <p>21 that you described, to melt.</p> <p>22 <b>MR. ROSSI: You said the meter panel. You</b></p> <p>23 <b>didn't mean that. You meant the meter.</b></p> <p>24 <b>MR. BARTON: Excuse me.</b></p> <p>25 <b>BY MR. BARTON:</b></p>

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93	<p>1 Q. The meter, the revenue meter to melt. Is 2 that right?</p> <p>3 A. Well, the revenue meter to sustain damage. I 4 mean, it was -- the load temperature components were 5 destroyed in that meter.</p> <p>6 Q. I understand, but I'm trying to figure out 7 how you tell when you have -- when you examined the 8 remnants of the meter, what was left?</p> <p>9 A. The copper bars and the ends of the bars that 10 were in the meter socket.</p> <p>11 Q. If the meter was to be consumed by fire, what 12 would you expect to see left?</p> <p>13 A. In a house fire?</p> <p>14 Q. In any fire.</p> <p>15 A. Just a free burning fire.</p> <p>16 Q. A fire. Would it be the same thing?</p> <p>17 A. It, it would be similar.</p> <p>18 Q. In what ways might it be different?</p> <p>19 A. Well, the fire required for that device to 20 sustain or to exhibit the same amount of damage and 21 the same characteristics of the damage that we saw, it 22 would have had to be a fire that attacked that device 23 from its front, in other words, a face-on fire.</p> <p>24 If the building had a fire set in front of 25 it, you know, a hand-of-man type fire where someone</p>	95	<p>1 installed at 75 Vista View Drive. Is that correct?</p> <p>2 A. That's correct.</p> <p>3 Q. How do you know it had a circuit board in it?</p> <p>4 A. Based on the, the construction of what was 5 left.</p> <p>6 Q. Did you take the construction of what was 7 left and talk to anybody at CL&amp;P to find out what it 8 would have looked like in a pristine state?</p> <p>9 A. No, sir.</p> <p>10 Q. Have you reviewed any design schematics of 11 the meter that would have been installed in the 12 subject breaker panel?</p> <p>13 A. No, sir.</p> <p>14 Q. Are you just assuming that there was a 15 circuit board inside that meeting?</p> <p>16 A. No, sir, it's not an assumption. It's based 17 on my knowledge of how electronic meters are built.</p> <p>18 Q. How was the electronic meter that was 19 attached to 75 Vista View Drive built?</p> <p>20 A. With printed circuit boards inside.</p> <p>21 Q. And you based that on what information, sir?</p> <p>22 A. On my experience as an electrical engineer in 23 the power industry for the last 40 years.</p> <p>24 Q. In your experience in the power industry for 25 the last 40 years, have you ever seen a meter, a</p>
94	<p>1 set a fire in a barrel or on the ground in front of 2 the meter enclosure and that extended up, that could 3 damage the -- what you would call the glass, which is 4 actually the plastic assembly, the plastic globe.</p> <p>5 But there would have been some different 6 damage, at least in my experience. Because we have 7 seen some of these, these units come through both fire 8 and, and failure. And in my experience there would 9 have been some copper left and the copper traces on 10 the printed circuit boards.</p> <p>11 And the only copper that we saw here were 12 some of the small copper conductors that came off of 13 the bus bars. We didn't see any of the traces from 14 the printed circuit boards.</p> <p>15 And typically if the meters are attacked by 16 fire, in my experience that's what I would see. There 17 would be a fine wire with a little tab on it, maybe 18 the size of a postage stamp or larger, that would have 19 the copper traces or portions of the printed circuit 20 board on it.</p> <p>21 Q. Fair enough. What's the melt temperature of 22 the plastic globe that the meter is made up of?</p> <p>23 A. I don't know.</p> <p>24 Q. And I'm correct that you don't know the make, 25 model, or brand of the revenue meter that was</p>	96	<p>1 revenue meter did not have circuit boards?</p> <p>2 A. Yes, sir.</p> <p>3 Q. Okay. Do you know whether or not the meter 4 at 75 Vista View Drive -- do you know this, sir -- had 5 circuit boards or not?</p> <p>6 A. Do I know that it had circuit boards?</p> <p>7 Q. Yes, one way or another. If you know, I'll 8 ask how. If you don't, then you have answered my 9 question.</p> <p>10 A. Yes, I do know that it had circuit boards.</p> <p>11 Q. And how do you know that?</p> <p>12 A. Based on the remains.</p> <p>13 Q. What about the remains identified to you that 14 they were circuit boards?</p> <p>15 A. There are two different styles of meters that 16 are used as revenue meters for the electric utility 17 industry in the United States. One is called an 18 electromechanical relay -- or electromechanical 19 meter. And the second is an electronic meter.</p> <p>20 An electromechanical meter is very easy to 21 identify and differentiate from an electronic style 22 meter in that it includes an aluminum disc that is 23 approximately two and a half to three inches in 24 diameter. It has dual bearings on it. It sits in a 25 metal frame. It has electromagnetic coils and</p>

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97	<p>1 permanent magnet coils on it.</p> <p>2 It is -- the only, only description I could</p> <p>3 give that would be in layman's terms, I think,</p> <p>4 acceptable would be robust. It's a very robust</p> <p>5 construction compared to the electronic meters which</p> <p>6 are built around two bus bars that connect from line</p> <p>7 to load, around which are small toroids. Small</p> <p>8 toroids are wrapped to provide a current translation.</p> <p>9 In other words, 200 amperes through the meter into the</p> <p>10 house would represent some current output from the</p> <p>11 toroids.</p> <p>12 Those toroids are connected into printed</p> <p>13 circuit boards and electronic components. Now that I</p> <p>14 can't -- I can't tell you exactly what components were</p> <p>15 there, microprocessors or transistors or any of the</p> <p>16 exact components. That would vary by manufacturer,</p> <p>17 from General Electric to a Landis &amp; Gyr to whomever</p> <p>18 meter would have been on the house.</p> <p>19 And we never queried with Connecticut Light &amp;</p> <p>20 Power as to whose meter would have been there, what</p> <p>21 the meter number was, or the style of the meter. But</p> <p>22 based on the remains in the meter socket, I could say</p> <p>23 with a reasonable degree of engineering certainty that</p> <p>24 that was an electronic meter at that location.</p> <p>25 <b>Q.</b> So -- because you did not find any of the</p>	99	<p>1 exhumed or dug up in any way?</p> <p>2 <b>A.</b> If I remember correctly, it wasn't.</p> <p>3 <b>Q.</b> So it should be still there?</p> <p>4 <b>A.</b> It should still be on site.</p> <p>5 <b>Q.</b> And on bullet point number 5 on page 2 of</p> <p>6 Exhibit 79, it says: The SER cable, or service cable,</p> <p>7 that interconnected the Cutler Hammer meter enclosure</p> <p>8 with the main circuit breaker panel was consumed up to</p> <p>9 where it exited the meter enclosure.</p> <p>10 And I think you testified about this earlier,</p> <p>11 but what you are referring to there is that the SER</p> <p>12 cable is consumed within the meter panel itself, but</p> <p>13 remained from the point it exited the meter panel</p> <p>14 until it went into the home. Is that correct?</p> <p>15 <b>A.</b> That amount of cable; that is correct.</p> <p>16 <b>Q.</b> Okay. The last bullet point on page 2 of</p> <p>17 Exhibit 79 talks about the orientation of the switch</p> <p>18 on the breaker itself being a horizontal orientation.</p> <p>19 Do you have any criticisms of that orientation?</p> <p>20 <b>A.</b> The orientation?</p> <p>21 <b>Q.</b> Yes.</p> <p>22 <b>A.</b> No, sir. I just didn't see any point to it,</p> <p>23 but....</p> <p>24 <b>Q.</b> When you say you didn't see any point to it,</p> <p>25 what do you mean?</p>
98	<p>1 mechanical components that are required for a</p> <p>2 mechanical meter, you concluded that this was an</p> <p>3 electric meter; is that correct?</p> <p>4 <b>A.</b> No, I didn't find the components for an</p> <p>5 electricomechanical meter, electromechanical meter.</p> <p>6 <b>Q.</b> Okay.</p> <p>7 <b>A.</b> So therefore I identify this as an electronic</p> <p>8 type meter.</p> <p>9 <b>Q.</b> I want to draw your attention to Exhibit 79,</p> <p>10 page 2, and bullet number 3 -- I'm sorry, 4. You talk</p> <p>11 about the underground PVC conduit that was routed from</p> <p>12 the CL&amp;P pad mount transformer. What is PVC conduit?</p> <p>13 <b>A.</b> That's polyvinyl chloride. It's a plastic</p> <p>14 conduit that is commonly used for underground and</p> <p>15 sometimes above ground electrical applications.</p> <p>16 <b>Q.</b> All right. And you indicate in this bullet</p> <p>17 point that it had been partially consumed. Was it</p> <p>18 consumed all the way down to the ground level?</p> <p>19 <b>A.</b> We'd have to look at the photographs, but if</p> <p>20 I remember correctly, it was close to ground level.</p> <p>21 <b>Q.</b> Okay. Did you examine any remnants of the</p> <p>22 PVC conduit?</p> <p>23 <b>A.</b> No, sir.</p> <p>24 <b>Q.</b> Okay, do you know if the cable or the conduit</p> <p>25 from the CL&amp;P pad mount up to the meter panel had been</p>	100	<p>1 <b>A.</b> Well, given the application and the available</p> <p>2 space, from an engineering -- just pure electrical</p> <p>3 engineering analysis, I saw no reason to have a</p> <p>4 circuit breaker that had a toggle that went left to</p> <p>5 right when the entire panel was vertical and a</p> <p>6 standard up-for-on-and-down-for-off circuit breaker</p> <p>7 could be used.</p> <p>8 <b>Q.</b> Circuit breakers in meter panels, are you</p> <p>9 aware of any that have a vertical orientation, up/down</p> <p>10 as opposed to horizontal?</p> <p>11 <b>A.</b> Yes, sir.</p> <p>12 <b>Q.</b> Which ones?</p> <p>13 <b>A.</b> Which ones? Well, Bryant, the old Bryant</p> <p>14 breakers -- mains were vertical orientation. General</p> <p>15 Electric. Square D still produces vertical</p> <p>16 orientation.</p> <p>17 <b>Q.</b> Am I correct that you're identifying vertical</p> <p>18 orientation breakers?</p> <p>19 <b>A.</b> I'm identifying breakers that their toggle</p> <p>20 operations -- their toggles and their orientation from</p> <p>21 line to load is vertical.</p> <p>22 <b>Q.</b> And these are breakers that are used in meter</p> <p>23 panels, is; that correct?</p> <p>24 <b>A.</b> Let's see. In meter panels. I'm sorry.</p> <p>25 <b>Q.</b> And my point is -- let me just try to make</p>

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101	<p>1 sure that I --</p> <p>2 A. Sure.</p> <p>3 Q. I understand that there are breakers out</p> <p>4 there that have a vertical orientation in terms of the</p> <p>5 toggle switch as opposed to horizontal. My question</p> <p>6 to you is: Are you aware of any vertical orientation</p> <p>7 breakers that are used in meter panels -- that are</p> <p>8 specified for use in a meter panel or that are used in</p> <p>9 meter panels? And if so, I would like to know which</p> <p>10 ones.</p> <p>11 A. I can't answer that with any confidence.</p> <p>12 Q. Are you going to testify that the orientation</p> <p>13 of the breaker in the meter panel in any way caused or</p> <p>14 contributed to cause the fire at 75 Vista View Drive?</p> <p>15 A. No, sir.</p> <p>16 Q. Okay. Your report indicates that the circuit</p> <p>17 breaker was rated for 200 amperes with an interrupting</p> <p>18 rating of 2,200 amperes. Where did you obtain that</p> <p>19 information?</p> <p>20 A. 22,000.</p> <p>21 Q. 22,000. Excuse me.</p> <p>22 A. That's okay. If I remember correctly, that</p> <p>23 was from the -- I'm trying to think if that was</p> <p>24 information that we obtained through, through the spec</p> <p>25 sheet for the breaker.</p>	103	<p>1 you know, the position of the breaker being in either</p> <p>2 on or off position.</p> <p>3 Q. Okay. So whether it's on, off, or tripped</p> <p>4 makes no difference to your opinions?</p> <p>5 A. That's correct.</p> <p>6 Q. Okay. You mentioned that the meter panel was</p> <p>7 found on the ground; is that correct?</p> <p>8 A. As far as I know, yes, sir.</p> <p>9 Q. Was the meter panel on the ground -- do you</p> <p>10 know how the meter panel got to the ground?</p> <p>11 A. As I understand it, it fell from the building</p> <p>12 in the course of the fire.</p> <p>13 Q. Okay. So you believe it fell after the fire</p> <p>14 ignited; is that correct?</p> <p>15 A. As I understand it, sir, yes.</p> <p>16 Q. Okay. Do you know if it was on the ground</p> <p>17 before the fire ignited?</p> <p>18 A. No, sir, I do not.</p> <p>19 Q. I draw your attention to page 3 of Exhibit</p> <p>20 79. Your first bullet point indicates that portions</p> <p>21 of the meter enclosures circuit breakers line side</p> <p>22 connections -- and those would again be coming from</p> <p>23 the utility; is that right? The line side?</p> <p>24 A. Well, they would have been coming from the</p> <p>25 meter socket.</p>
102	<p>1 Q. Okay. Are you going to testify that the</p> <p>2 interruption rating of the subject circuit breaker in</p> <p>3 any way caused or contributed to cause the fire at 75</p> <p>4 Vista View Drive?</p> <p>5 A. No, sir.</p> <p>6 Q. Do you have any understanding as to whether</p> <p>7 or not the subject circuit breaker that was installed</p> <p>8 in the meter panel was in the tripped position or not?</p> <p>9 <b>MR. ROSSI: At what time?</b></p> <p>10 <b>BY MR. BARTON:</b></p> <p>11 Q. At any time after you examined -- when you</p> <p>12 examined the meter panel -- or I'm sorry, when you</p> <p>13 examined the breaker that was within the meter panel.</p> <p>14 Do you have any understanding if it was tripped or</p> <p>15 not?</p> <p>16 A. If I remember correctly, and again we would</p> <p>17 have to look at the photographs, I believe it was in</p> <p>18 the off position. I don't believe that it was in the</p> <p>19 tripped position. But we would have to look at the</p> <p>20 photographs.</p> <p>21 And there was so much damage to the internal</p> <p>22 components to the breaker and the fact that the entire</p> <p>23 enclosure was found on the ground, it had actually</p> <p>24 fallen off the house, that I don't, I don't remember</p> <p>25 giving any wait or any credence to the fact that --</p>	104	<p>1 Q. You are correct. Just so we understand the</p> <p>2 line side, though, the line side goes from the</p> <p>3 transformer into the meter panel that goes up and</p> <p>4 around the meter panel on the inside and connects to</p> <p>5 the actual revenue meter itself; is that correct?</p> <p>6 A. The socket for the meter.</p> <p>7 Q. The socket.</p> <p>8 A. Yes, sir.</p> <p>9 Q. And at that point, there are an additional</p> <p>10 two conduits that go from the socket for the revenue</p> <p>11 meter down to the line side of the circuit breaker; is</p> <p>12 that your understanding?</p> <p>13 A. Conductors.</p> <p>14 Q. Conductors?</p> <p>15 A. That's correct. Those are factory installed</p> <p>16 copper conductors.</p> <p>17 Q. And when you say portions of the meter</p> <p>18 enclosures circuit breaker's line side connections</p> <p>19 sustained physical damage due to electrical fault</p> <p>20 activity, what you're saying is the conductors that</p> <p>21 received power from the utility coming straight from</p> <p>22 that meter socket; is that correct? I'm trying to</p> <p>23 differentiate between line and load side.</p> <p>24 A. Yes. In this case, it would have been the</p> <p>25 upper -- facing it would have been -- the upper</p>

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105	<p>1 terminals would have been the line side and the lower</p> <p>2 terminals would have been the load sign.</p> <p>3 <b>Q.</b> And when you say upper, those closer to the</p> <p>4 revenue meter; is that correct?</p> <p>5 <b>A.</b> That's correct.</p> <p>6 <b>Q.</b> And what damage did you see to the line side</p> <p>7 connections of the subject circuit breaker?</p> <p>8 <b>A.</b> The lugs, the Allen screw type connectors</p> <p>9 that were there exhibited some signs of heat and</p> <p>10 melting of the copper aluminum material. And that's</p> <p>11 what I indicated in the report. That was my</p> <p>12 observation.</p> <p>13 <b>Q.</b> Okay. And let me hand you what has been</p> <p>14 marked as Exhibit 56. This is an exemplar breaker</p> <p>15 provided by opposing counsel and used in Mr. Fello's</p> <p>16 deposition.</p> <p>17 Could you identify and show for the camera</p> <p>18 the line side lugs that you're referring to?</p> <p>19 <b>A.</b> Yes, sir. With the circuit breaker mounted</p> <p>20 vertically, the line side lugs would have been here --</p> <p>21 or are here (indicating). The copper conductors would</p> <p>22 have come from the revenue meter. And these would be</p> <p>23 the load side lugs.</p> <p>24 <b>Q.</b> And the lugs, we actually see them in Exhibit</p> <p>25 No. 56; is that correct?</p>	107	<p>1 -- was subjected to damage from fault activity. In</p> <p>2 other words, not electro short circuit at the device</p> <p>3 themselves, but it was subjected in that first -- the</p> <p>4 right. It says: Portions of the meter enclosure</p> <p>5 circuit breaker's line side connections sustained</p> <p>6 physical damage due to electrical fault activity.</p> <p>7 <b>Q.</b> Okay. Then let me see if I can clarify it.</p> <p>8 What you are referring to is heat and melting, but not</p> <p>9 necessarily electrical arcing?</p> <p>10 <b>A.</b> That's correct.</p> <p>11 <b>Q.</b> Okay. And so what your testimony is and what</p> <p>12 your report is intending to articulate is that both</p> <p>13 the line side connections and the load side terminals</p> <p>14 sustained damage from heat; is that correct?</p> <p>15 <b>A.</b> Well, the load side terminals -- all right,</p> <p>16 one of the load side terminals actually was melted to</p> <p>17 the point of where it came it free during our</p> <p>18 examination.</p> <p>19 <b>Q.</b> Okay.</p> <p>20 <b>A.</b> So we had more -- we had the effects of</p> <p>21 electrical fault activity in the circuit -- let's</p> <p>22 see. We had the effects of electrical fault activity</p> <p>23 on the line and load side of the breaker.</p> <p>24 <b>Q.</b> And, and the effects of electrical fault</p> <p>25 activity I understand can be heat. But I'm trying to</p>
106	<p>1 <b>A.</b> That's correct.</p> <p>2 <b>Q.</b> They are the aluminum screws, for lack of a</p> <p>3 better term, but they are lugs?</p> <p>4 <b>A.</b> Yeah, it it's a combination. The material is</p> <p>5 made for copper and aluminum. It's appropriate for</p> <p>6 both.</p> <p>7 <b>Q.</b> And you're observed melting of those lugs; is</p> <p>8 that correct?</p> <p>9 <b>A.</b> Well, if I can refer to a photograph, I think</p> <p>10 you can see that we had severe damage to the material,</p> <p>11 the insulating material that surrounded it, and some</p> <p>12 heat and melting damage to the lugs themselves.</p> <p>13 <b>Q.</b> Okay. And, Mr. Cristino, we will go through</p> <p>14 all the photographs and have you kind of back up and</p> <p>15 say, oh, this is what I was referring to.</p> <p>16 <b>A.</b> Very good. Thank you.</p> <p>17 <b>Q.</b> The second bullet point on page 3 of Exhibit</p> <p>18 79 says: One of the circuit breaker's load side</p> <p>19 terminals, those connecting the conductors routing to</p> <p>20 the basement circuit breaker panel, was damaged as a</p> <p>21 result of electrical fault activity.</p> <p>22 Is it your testimony that there was</p> <p>23 electrical fault activity both on the line side and</p> <p>24 the load side of the circuit breaker?</p> <p>25 <b>A.</b> The line side was subjected to fault activity</p>	108	<p>1 differentiate between actual electrical arcing and</p> <p>2 then melting as a result of arcing which occurs, I</p> <p>3 understand, in close proximity temporarily to that arc</p> <p>4 fault.</p> <p>5 What I'm trying to find out is, Was there</p> <p>6 actual electrical arcing on either the line side</p> <p>7 connections or the load side terminals or did you just</p> <p>8 observe heat and melting? If it's heat and melting,</p> <p>9 let me know and we'll move on.</p> <p>10 <b>A.</b> I would have to look at the photograph, but</p> <p>11 if I remember correctly, we had the majority of the</p> <p>12 electrical, the actual electrical arc activity within</p> <p>13 the breaker itself, in the back side of the breaker,</p> <p>14 with some effects and possibly some arcing extending</p> <p>15 toward the line side and damage being sustained on the</p> <p>16 load side terminals.</p> <p>17 <b>Q.</b> So as you sit here right now, you can't tell</p> <p>18 me whether there was actual arcing on the load and</p> <p>19 line without first looking at the photographs?</p> <p>20 <b>A.</b> I would have to look at the photos to give</p> <p>21 you a definitive answer. One of the things to keep in</p> <p>22 mind, though, is the fact that the terminals that we</p> <p>23 see on the line side of that breaker were duplicated</p> <p>24 on the load side of this breaker, because this breaker</p> <p>25 would have just had the two aluminum conductors from</p>

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109	<p>1 the SER cable coming into it.</p> <p>2 And as you see this breaker today, this is</p> <p>3 the way the breaker was that we saw it on January</p> <p>4 31st. So these copper aluminum connections that the</p> <p>5 terminals, the lugs that are at the top of this</p> <p>6 breaker, would have been here.</p> <p>7 And you can see in the photographs they are</p> <p>8 gone. So they basically were vaporized. They were</p> <p>9 destroyed in the electrical fault activity and melted</p> <p>10 along with the aluminum conductors.</p> <p>11 <b>Q.</b> Were the lugs actually vaporized or did you</p> <p>12 account for them all?</p> <p>13 <b>A.</b> If I remember correctly -- and again we would</p> <p>14 have to look at the photographs -- I think we found</p> <p>15 one portion of a -- the threaded Allen screw and</p> <p>16 possibly a portion of the body. But I would have to</p> <p>17 double-check and we will get to that when we get to</p> <p>18 the photographs.</p> <p>19 <b>Q.</b> When you're using the term vaporized, are you</p> <p>20 meaning that to be vaporized from electrical fault</p> <p>21 activity or are you meaning it to be melting that is</p> <p>22 just not there?</p> <p>23 <b>A.</b> I mean vaporized as in being exposed to the</p> <p>24 plasma of an electrical arc.</p> <p>25 <b>Q.</b> An electrical arc fault hit it, blew it</p>	111	<p>1 <b>A.</b> The overall meter enclosure, the combination</p> <p>2 meter socket enclosure.</p> <p>3 <b>Q.</b> And when you say the meter socket enclosure,</p> <p>4 you mean the upper portion or the lower portion?</p> <p>5 <b>A.</b> The overall assembly.</p> <p>6 <b>Q.</b> So the entire meter panel including the upper</p> <p>7 portion that has the revenue meter and the lower</p> <p>8 portion which contains the breaker; is that correct?</p> <p>9 <b>A.</b> That's correct.</p> <p>10 <b>Q.</b> All right. How did this moisture enter the</p> <p>11 enclosure?</p> <p>12 <b>A.</b> That, we don't have any --</p> <p>13 <b>Q.</b> You don't know?</p> <p>14 <b>A.</b> I don't know.</p> <p>15 <b>Q.</b> So if I were to ask you and go through all</p> <p>16 the various points and every aspect of this meter</p> <p>17 panel, you would not be able to tell me where this</p> <p>18 believed moisture entered the panel; is that correct?</p> <p>19 <b>A.</b> That's correct.</p> <p>20 <b>Q.</b> Okay. This may sound odd, but can you</p> <p>21 describe the moisture for me, sir?</p> <p>22 <b>A.</b> No, sir, I can't.</p> <p>23 <b>Q.</b> Okay.</p> <p>24 (Pause.)</p> <p>25 <b>THE WITNESS: Can we take a break for a</b></p>
110	<p>1 apart, and completely obliterated that component?</p> <p>2 <b>A.</b> No, the electrical, the electrical arc</p> <p>3 expanded to the point of where that existed and was of</p> <p>4 sufficient heat and duration to be able to melt it to</p> <p>5 the point of where it actually fell off its mount.</p> <p>6 Because there would have been two mounting screws</p> <p>7 coming through these terminals to hold the back side</p> <p>8 just as you see here.</p> <p>9 <b>Q.</b> So the electrical arc actually consumed those</p> <p>10 lugs on the load side?</p> <p>11 <b>A.</b> In my opinion, yes.</p> <p>12 <b>Q.</b> All right.</p> <p>13 <b>A.</b> Or a portion -- at least a portion of one of</p> <p>14 them that we found some remains of.</p> <p>15 <b>Q.</b> Page 3 of your report on Exhibit 79. And I</p> <p>16 want to direct your attention to bullet point number 4</p> <p>17 on that page. It says:</p> <p>18 Damage to the Cutler Hammer combination meter</p> <p>19 socket enclosure and internal components appeared to</p> <p>20 be consistent with an event created by the ingress of</p> <p>21 moisture into the enclosure and a result of electrical</p> <p>22 failure.</p> <p>23 Let's start with ingress of moisture into the</p> <p>24 enclosure. First, what enclosure are you referring</p> <p>25 to?</p>	112	<p>1 <b>minute?</b></p> <p>2 <b>MR. BARTON: Absolutely.</b></p> <p>3 <b>THE VIDEOGRAPHER: Off record, 12:26 p.m.</b></p> <p>4 <b>(Briefly off the record, as a break is</b></p> <p>5 <b>taken.)</b></p> <p>6 <b>THE VIDEOGRAPHER: We're back on record,</b></p> <p>7 <b>12:34.</b></p> <p>8 <b>BY MR. BARTON:</b></p> <p>9 <b>Q.</b> Mr. Cristino, before we took our break, we</p> <p>10 were discussing the moisture that you believe made its</p> <p>11 way into this meter panel from an unknown -- from some</p> <p>12 unknown way. My question to you is, What caused this</p> <p>13 moisture? Where did the moisture come from?</p> <p>14 <b>A.</b> Well, based on what we saw in the area in</p> <p>15 that development, there were snow drifts. We noted a</p> <p>16 snow drift across the road on a similar structure that</p> <p>17 was up to and over the front of the meter enclosure at</p> <p>18 that location and --</p> <p>19 <b>Q.</b> And let me just make sure I understand you.</p> <p>20 You're talking about snow on the ground drifting up</p> <p>21 past the actual revenue meter; is that correct?</p> <p>22 <b>A.</b> That's correct.</p> <p>23 <b>Q.</b> Okay. So this is snow on the ground.</p> <p>24 <b>A.</b> Yes, sir.</p> <p>25 <b>Q.</b> All right. Any other sources of moisture?</p>

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113	<p>1 A. Well, this meter enclosure had been 2 installed, as I understood, for five years at the time 3 of this loss so there would have been rain and other 4 snowstorms and hail and all manner of natural moisture 5 in that time period. 6 Q. Do you believe that any rain, snowstorms, 7 hail, or natural moisture of any type that occurred 8 prior to January 16 of 2011 caused or contributed to 9 cause the fire at 75 Vista View Drive? 10 A. In my opinion, I think it's highly probable. 11 Q. Okay. Which rain, snow, storms, or hail 12 highly -- well, you believe highly are potentially a 13 cause of the fire at 75 Vista View Drive? 14 A. All of them. 15 Q. All of them? 16 A. Yes, sir. 17 Q. Can you tell me how much rain this particular 18 meter panel was exposed to? 19 A. No, sir, I cannot. 20 Q. Can you tell me if any of the rain this meter 21 panel was exposed to ever made its way into the 22 internal components of the meter? 23 A. No, sir. 24 Q. The meter panel. 25 A. No, sir, I can't.</p>	115	<p>1 Q. How much time was it required for this 2 failure to occur? 3 A. In my opinion, the time from when it was 4 initially installed until January 16, 2011. 5 Q. How did time contribute to this failure? 6 A. It allowed for the buildup of moisture within 7 that meter enclosure to reach the point where the 8 fault occurred within the circuit breaker. 9 Q. How much moisture is required to build up 10 within the circuit breaker to require a fault? 11 A. I don't know. 12 Q. Is it your testimony that once moisture 13 enters the circuit breaker it does not leave it? 14 A. Other than through a fault event, yes, sir. 15 Q. Okay. So evaporation, things like that 16 aren't going to happen. Once the moisture is going to 17 get in there, it's going to stay in there for time and 18 memorial? 19 A. No, sir. If the breaker enclosure reaches a 20 high enough temperature, yes, evaporation could take 21 place. The fact that this was on the northerly side 22 of the structure, it may have seen some early morning 23 easterly sun, so it was possible that it did get warm 24 enough to evaporate. 25 Q. So it's your opinion that this unknown amount</p>
114	<p>1 Q. Can you tell me how much snow this meter 2 panel was exposed to? 3 A. No, sir, I can't. 4 Q. Can you tell me how much snow made its way 5 into the internal components of the meter panel? 6 A. No, I cannot. 7 Q. Can you tell me how much hail this meter 8 panel was exposed to? 9 A. No, sir. 10 Q. Can you tell me whether any of this hail 11 caused any damage or made its way into the internal 12 working of the meter panel? 13 A. No, sir. 14 Q. Are there any other natural sources of 15 moisture that we haven't covered that you believe are 16 highly probable to have caused or contributed to cause 17 this fire? 18 A. None that come to mind, sir. 19 Q. Okay. Do you have an opinion as to why this 20 meter panel waited five years before it failed despite 21 the fact that it was in your opinion subject to hail, 22 snow, and rain? 23 A. Well, based on the location of the failure in 24 meter, I think it was a matter of time. Time was 25 necessary for this to, this failure to occur.</p>	116	<p>1 of rain, snow, and hail of which you have no 2 understanding of how much may have made its way into 3 the breaker panel or how it would have made its way 4 into the breaker panel somehow did make its way into 5 the breaker panel and accumulated within the circuit 6 breaker? And you believe that's the highly probable 7 cause of the fire at 75 Vista View Drive? 8 A. No, that's the highly probable cause of the 9 failure within the circuit breaker that then caused 10 the fire at 735 Vista View Drive, yes. 11 Q. Fair enough. 12 <b>THE VIDEOGRAPHER: May I interrupt for a</b> 13 <b>second?</b> 14 <b>MR. BARTON: You may.</b> 15 <b>THE VIDEOGRAPHER: We're getting some light</b> 16 <b>on the witness from the window. I can try and</b> 17 <b>block that.</b> 18 <b>MR. BARTON: We can go off.</b> 19 <b>THE VIDEOGRAPHER: Going off record, 12:39.</b> 20 <b>(Whereupon, it was decided to take luncheon</b> 21 <b>recess while technical adjustments are made.)</b> 22 <b>THE VIDEOGRAPHER: We are back on record.</b> 23 <b>This marks the beginning of videotape number 3,</b> 24 <b>1:14 p.m.</b> 25 <b>BY MR. BARTON:</b></p>

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117	<p>1 <b>Q.</b> Mr. Cristino, drawing your attention back to</p> <p>2 Exhibit 79, page 3. And I'm still working my way</p> <p>3 through the fourth bullet point from the top of that</p> <p>4 page.</p> <p>5 We were talking before the break about this</p> <p>6 unknown moisture entry in the enclosure. And your</p> <p>7 report goes on to say: This was characterized by</p> <p>8 electrical fault activity extending outward from the</p> <p>9 interior of the Cutler Hammer circuit breaker to the</p> <p>10 rear sheet metal mounting plate.</p> <p>11 And the lack of indications of road and farm</p> <p>12 activity, et cetera. My question to you is, What is</p> <p>13 the "this" that's being characterized by electrical</p> <p>14 fault activity?</p> <p>15 <b>A.</b> The failure mechanism based on the ingress of</p> <p>16 moisture.</p> <p>17 <b>Q.</b> Okay, so you believe that the moisture -- the</p> <p>18 reason why you're able to conclude moisture is because</p> <p>19 you're able -- you find an electrical fault activity?</p> <p>20 <b>A.</b> The reason why I was able to conclude</p> <p>21 moisture was</p> <p>22 -- the fact that there were no indications of</p> <p>23 any mechanical debris such as flashing or anything</p> <p>24 left over from the manufacturing process,</p> <p>25 -- the fact that there was -- at least based on</p>	119	<p>1 and fault. And another mechanism would be overload.</p> <p>2 <b>Q.</b> Did you find any evidence of an overload in</p> <p>3 this particular breaker?</p> <p>4 <b>A.</b> Well, based on the, the loading within the</p> <p>5 structure, which we understand to have been strictly</p> <p>6 some security lighting and a boiler to keep the</p> <p>7 building from freezing up, there were no indications</p> <p>8 of overload conditions. All the circuit wiring from</p> <p>9 the circuit breaker panels was intact. None of the</p> <p>10 circuit breakers in the circuit breaker panels</p> <p>11 indicated any -- any faults or failures.</p> <p>12 <b>Q.</b> Is your answer no, you did not find any</p> <p>13 evidence of an overload in the circuit breaker? If</p> <p>14 you did find evidence of an overload in the circuit</p> <p>15 breaker, I'm going to ask you what it is. If you</p> <p>16 didn't, tell me you didn't.</p> <p>17 <b>A.</b> No.</p> <p>18 <b>Q.</b> Thank you. Anything else that can cause</p> <p>19 electrical fault activity in a circuit breaker?</p> <p>20 <b>A.</b> Nothing else that comes to mind at this time.</p> <p>21 <b>Q.</b> If the circuit breaker is attacked by fire,</p> <p>22 would that cause electrical fault activity?</p> <p>23 <b>A.</b> It's possible.</p> <p>24 <b>Q.</b> Okay. Am I correct, sir, that you have no</p> <p>25 evidence of any moisture inside the subject meter</p>
118	<p>1 the fact that the breaker was in service, there were</p> <p>2 no indications that there was a mechanical problem</p> <p>3 with the breaker prior to putting it in service,</p> <p>4 -- and also the lack of any other failure</p> <p>5 mechanism or the presence of any other failure</p> <p>6 mechanism in the area of the circuit breaker.</p> <p>7 <b>Q.</b> Do you believe moisture causes electrical</p> <p>8 fault activity?</p> <p>9 <b>A.</b> Yes, it can.</p> <p>10 <b>Q.</b> Okay. Are there any other things that can</p> <p>11 cause electrical fault activity in a circuit breaker?</p> <p>12 <b>A.</b> Yes.</p> <p>13 <b>Q.</b> Such as?</p> <p>14 <b>A.</b> Another type of compromise of its insulation</p> <p>15 system such as a fracture or insulation degradation</p> <p>16 due to either malformation or some problem in the</p> <p>17 manufacturing process.</p> <p>18 <b>Q.</b> Anything else that will cause electrical</p> <p>19 fault activity in a circuit breaker?</p> <p>20 <b>A.</b> You know, lightning.</p> <p>21 <b>Q.</b> Why would lightning cause electrical fault</p> <p>22 activity?</p> <p>23 <b>A.</b> Well, lightning could actually exceed the</p> <p>24 insulation value of the electrical device and cause it</p> <p>25 to flash over and either degrade or become conductive</p>	120	<p>1 panel or the subject breaker except for your</p> <p>2 conclusion that moisture caused the electrical fault?</p> <p>3 <b>A.</b> That's correct.</p> <p>4 <b>Q.</b> Okay. So because you find a fault, you</p> <p>5 therefore have concluded that moisture must have been</p> <p>6 inside not only the meter panel, but the breaker; is</p> <p>7 that right?</p> <p>8 <b>A.</b> Because I find the fault?</p> <p>9 <b>Q.</b> You concluded that moisture not only entered</p> <p>10 the meter panel, but it entered the breaker. Is that</p> <p>11 correct?</p> <p>12 <b>A.</b> That's correct.</p> <p>13 <b>Q.</b> And so the fault is your evidence of moisture</p> <p>14 and your only evidence of moisture; is that correct?</p> <p>15 <b>A.</b> Yes.</p> <p>16 <b>Q.</b> Okay. And you cannot tell me how that</p> <p>17 moisture got into the meter panel, nor how that</p> <p>18 moisture -- if it in fact did -- entered into the</p> <p>19 breaker. Is that right?</p> <p>20 <b>A.</b> That's correct.</p> <p>21 <b>Q.</b> Your report indicates that a lack of</p> <p>22 indications of rodent or varmint activity in the</p> <p>23 absence of human -- and in the absence of human</p> <p>24 interaction and other causes. What would you expect</p> <p>25 to see if there was rodent or varmint activity?</p>

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<p>1 A. Bone platelets, some remains of the carcass 2 or the animal, indications of gnawing, or other rodent 3 activity such as fecal matter. 4 Q. Gnawing on what? 5 A. Well, given the extent of the damage, I mean, 6 the only mechanism that would have been, you know, 7 still relatively intact post fire would have been the 8 case of the breaker itself, if an animal had gotten in 9 there and used that to gnaw on. 10 Q. So am I correct that if there was an animal, 11 varmint, rodent of some type inside the meter panel, 12 you would not be able to find any evidence of gnawing 13 to any of the components in the meter panel because 14 that had all been consumed? 15 A. Well, with the exception of the body of the 16 circuit breaker itself, that's correct. 17 Q. Okay. What is the body of the circuit 18 breaker comprised of? 19 A. To the best of my knowledge, it's comprised 20 of bakelite. 21 Q. Okay. And in terms of the evidence of other 22 rodent activity, would you expect rodent feces to 23 survive the heat and temperature that you have 24 testified existed within the meter panel as a result 25 of the fault?</p>	<p>1 any bone fragments, to look for any bone fragments? 2 A. We sifted through the bottom of the meter 3 enclosure, which still had the cover intact when I was 4 there. And we were able to find the wire fragments 5 and the pieces of that lug assembly that was still 6 intact. 7 And based on that, I would -- in my opinion, 8 there would be a good -- a high probability that there 9 would be bone platelets or bone remains of an animal 10 or varmint in, in with that. 11 Q. When you say high probability, what does that 12 mean? 13 A. Well, high probability, greater than 50 14 percent. 15 Q. Well, 51 percent? 60 percent? 16 A. Okay. 17 Q. So anything between 51 percent and 100 18 percent? 19 A. I would say yes. 20 Q. Okay. What temperature is required to 21 cremate bone fragments of a small rodent? 22 A. I don't know. 23 Q. So in creating your opinion of a high 24 probability that the bone fragments of a small rodent 25 would survive the temperatures within the meter panel,</p>
122	124
<p>1 A. Unlikely. 2 Q. Okay. Would you expect there to be a carcass 3 that would survive the heat and temperatures that were 4 created inside the meter panel at the time of the 5 fire? 6 A. Possible, but unlikely. 7 Q. So because you did not find any evidence of 8 rodents, which would be unlikely given the 9 circumstances, you concluded that there was no -- 10 A. No. No -- 11 <b>MR. ROSSI: Let him finish his question.</b> 12 <b>THE WITNESS: I'm sorry.</b> 13 <b>BY MR. BARTON:</b> 14 Q. You concluded that there was no evidence of 15 rodent or varmint activity; is that right? 16 A. You left out the bone platelets. I mean, 17 there would be bone matter and the bone matter can 18 survive that type of electrical event. 19 Q. Okay. So the bone matter of a small rodent, 20 a mouse, a chipmunk, I don't know, whatever would be 21 in the area, it's your testimony that that would 22 survive the heat and temperature that was sustained 23 within that meter panel? 24 A. Based on my experience, yes. 25 Q. Okay. Did you sift through the ashes to find</p>	<p>1 how were you able to come up with that conclusion to a 2 high probability? 3 A. I have had a similar failure where we 4 actually had copper wiring involved in a similar 5 electrical fault and electrical trough type raceway. 6 And in with all the destruction and the melted wires 7 and the molten copper and steel, we found bone 8 platelets from a, from a rat. And it was determined 9 through analysis that the rat was alive at the time of 10 the fire. 11 Q. And when you say a similar failure, was it a 12 meter panel? 13 A. No. 14 Q. Was it a closed -- an enclosed electrical 15 box? 16 A. Yes, it was. 17 Q. What type of electrical box was it? 18 A. It was a, if I remember correct, it was an 19 eight inch by eight inch trough. 20 Q. And was -- were all of the consumable 21 products within that eight inch by eight inch trough 22 consumed, meaning there is no plastic, no residue, no 23 nothing that survived the fire incident? 24 A. Well, in that case, there were copper 25 conductors. So the actual arc activity in the melting</p>

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125	<p>1 temperature of the copper is higher. Copper melts at 2 1,980 degrees -- 3 <b>Q.</b> Did the arc -- 4 <b>A.</b> -- so we still had portions of the copper 5 intact. But we did have a metal graphic analysis 6 indicating that there were intermolecular activity -- 7 there was intermolecular activity taking place between 8 the copper and the steel, so they actually found 9 copper molecules across the steel grain.... 10 <b>Q.</b> The arcing activity, did that occur in the 11 eight by eight trough? 12 <b>A.</b> Yes, sir, it did. 13 <b>Q.</b> And the bone fragments you found were from a 14 rat; is that correct? 15 <b>A.</b> That's as it was explained to me, yes, sir. 16 <b>Q.</b> Do you know how big rats are? 17 <b>A.</b> Yes, I do. 18 <b>Q.</b> How big? 19 <b>A.</b> Depending upon the age, they could range 20 anywhere from an inch or two up to several inches. 21 <b>Q.</b> Have you ever examined or been involved -- 22 let me ask a better question. 23 Have you ever rendered an opinion that a 24 meter panel is defective before? 25 <b>A.</b> Not that I recall.</p>	127	<p>1 was a -- based on the input of Mr. Driscoll, that 2 there was another area of the structure that involved 3 the hand of man in starting the fire. That's what I 4 meant by that. 5 <b>Q.</b> Okay. You said that no human compromised the 6 insulation. You testified earlier that you have no 7 criticisms of the installation of this meter pan; is 8 that correct? 9 <b>A.</b> That's correct. 10 <b>Q.</b> Okay. And you believe that this insulation 11 was fine insulation. Is that correct? 12 <b>A.</b> Well, in my opinion, based on the fact that 13 the structure received -- as I understood it, it had a 14 certificate of occupancy, so it would have undergone a 15 at least the final stages of electrical inspection 16 because Connecticut Light &amp; Power would not put a 17 meter in that socket unless the building official or 18 the electrical inspector for the area had signed off 19 on it. 20 So based on that, it is my opinion that, at 21 the very least, that installation would have been made 22 in compliance with the National Electrical Code. 23 <b>Q.</b> Okay. Did an electrical inspector from CL&amp;P 24 sign off in the installation of this meter panel? 25 <b>A.</b> CL&amp;P doesn't have electrical inspectors.</p>
126	<p>1 <b>Q.</b> Have you ever rendered any opinions that a 2 breaker is defective, a circuit breaker? 3 <b>A.</b> Not that I recall. 4 <b>Q.</b> Have you ever been involved in a fire 5 investigation or electrical analysis where a meter 6 panel was believed to have caused the fire? 7 <b>A.</b> Not that I recall. 8 <b>Q.</b> Have you ever been involved in a fire 9 investigation where it was believed that the circuit 10 breaker was believed to have caused the fire? 11 <b>A.</b> I don't believe so. 12 <b>Q.</b> Have you ever rendered any opinions that any 13 Cutler Hammer or Eaton products are defective? 14 <b>A.</b> Not that I recall. 15 <b>Q.</b> And let me try to -- Eaton and Cutler Hammer 16 electrical products, did you understand that's what I 17 meant? 18 <b>A.</b> Yes, sir. That's what I understood. 19 <b>Q.</b> Your report indicates that there is no -- 20 that you found no indication of human interaction or 21 other causes. First, what is human interaction? What 22 do you mean there? 23 <b>A.</b> Well, that no one had removed the cover of 24 the meter and done any -- anything that would have 25 compromised the insulation. No indications that there</p>	128	<p>1 <b>Q.</b> Did CL&amp;P sign off on the installation of this 2 meter panel? 3 <b>A.</b> CL&amp;P wouldn't sign off on the installation. 4 <b>Q.</b> Who signed off on the installation of this 5 meter panel, if you know? 6 <b>A.</b> It would be the building official at the town 7 of Southbury. 8 <b>Q.</b> Who was the building official for the town of 9 Southbury who signed off on this meter panel? 10 <b>A.</b> I don't know. 11 <b>Q.</b> Have you seen any documents to support your 12 conclusion that a building official from the town of 13 Southbury signed off on this installation? 14 <b>A.</b> No, I do not. 15 <b>Q.</b> So your testimony that you believe a building 16 official with the town of Southbury would have signed 17 off on this installation is based on what? 18 Assumption? 19 <b>A.</b> It's based on my knowledge of the operating 20 practices and procedures of the electric utility 21 companies in the state of Connecticut. 22 <b>Q.</b> I thought you said the electrical utilities 23 in the state of Connecticut don't sign off on 24 inspections, but instead it would be the town, so my 25 question comes back to: What are you basing this</p>

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129	<p>1 conclusion that the town of Southbury would have 2 signed off on the electrical meter inspection? Is it 3 assumption, sir? 4 <b>A.</b> No, it is not assumption. 5 <b>Q.</b> Okay. What evidence -- and I understand you 6 don't have any written documentation confirming that 7 someone from the town of Southbury signed off on this 8 installation; is that correct? 9 <b>A.</b> That's correct. 10 <b>Q.</b> And you cannot tell me who would have 11 inspected the installation of this meter panel once it 12 was affixed to the home. Is that also correct? 13 <b>A.</b> Who from the standpoint of a building 14 official in the town of Southbury as far as I can 15 identify. But that's correct. 16 <b>Q.</b> And your conclusion that an official from the 17 town of Southbury did, in fact, inspect this meter 18 panel is based on what? 19 <b>A.</b> The fact that Connecticut Light &amp; Power set 20 the meter. 21 <b>Q.</b> And when you say Connecticut Light &amp; Power 22 set the meter, what does that mean? What is setting 23 the meter? 24 <b>A.</b> In the state of Connecticut, the electric 25 utility companies do not set meters. They do not open</p>	131	<p>1 inspections here. 2 <b>A.</b> Depending upon who set the meter, it would 3 occur before the meter is set. 4 <b>Q.</b> Okay. And meter set means the utility 5 actually installs power to the meter; is that correct? 6 <b>A.</b> No, it means that the utility actually plugs 7 the meter into the meter socket. 8 <b>Q.</b> Got you. So the utility may actually put the 9 wires onto the connectors already -- the wires, the 10 line side to the socket that the meter goes on, but 11 they will not actually install the meter until the 12 town conducts their inspection. Is that correct? 13 <b>A.</b> Until they receive notification that the town 14 has performed their inspection. That's correct. 15 <b>Q.</b> Do you know who installed the meter panel? 16 <b>A.</b> As far as I know, it was electricians. The 17 panel was installed by electricians working for -- I 18 think it's S -- SL Kelley, K-E-L-L-E-Y. 19 <b>Q.</b> Do you know which electrician? 20 <b>A.</b> No, sir, I do not. 21 <b>Q.</b> If you turn to page 5 of your report, you 22 identify at the top of that that there were two 23 inspections. And we've discussed these are artifact 24 inspections that took place at Quali-Tech 25 Laboratories; is that correct?</p>
130	<p>1 up the front cover of a meter pan, in this case 2 install the underground conductors and install a meter 3 within the meter socket and then close the meter 4 socket up and seal it unless they receive a sign-off 5 from either a building official or a local authority 6 having jurisdiction, which would include the -- you 7 know, an electrical inspector for a town or a building 8 official for a town. 9 <b>Q.</b> Okay. What's involved in the town of 10 Southbury's inspection of a meter panel? 11 And if you don't know, tell me you don't 12 know. 13 <b>A.</b> I don't know. 14 <b>Q.</b> Does that inspection take place before the 15 utility lines are connected to the meter? 16 <b>A.</b> It could. 17 <b>Q.</b> I understand it could. My question is, Does 18 it? If you don't know, tell me you don't know. 19 <b>A.</b> I don't know. 20 <b>Q.</b> Okay. So I take it you don't know whether 21 that inspection would take place after the utility 22 already installs the electric lines and closes up the 23 box? 24 <b>A.</b> Well, no. 25 <b>Q.</b> I'm trying to figure out the order of</p>	132	<p>1 <b>A.</b> That's correct. 2 <b>Q.</b> And the first was on March 14, 2011? 3 <b>A.</b> That's correct. 4 <b>Q.</b> And we see a number of bullet points that 5 extend from page 5. Really go all the way to page 7. 6 And these are the observations you had during 7 the March 14, 2011, inspection; is that right? 8 <b>A.</b> Yes, sir. 9 <b>Q.</b> I did not see a section that discussed the 10 findings or observations you had with respect to the 11 September 7, 2011, artifact examination. Is there a 12 reason why you didn't include those observations in 13 your final report? 14 <b>A.</b> Yeah, the paragraph right underneath, the 15 remains of the top paragraph on page 7, the first full 16 paragraph: Additional laboratory analysis was 17 undertaken on September 7. 18 <b>Q.</b> Okay, so if you turn to page 7, you have a 19 first full paragraph there that begins, The 20 observations for September 7, 2011. Is that correct? 21 <b>A.</b> That's correct. 22 <b>Q.</b> There was just no heading for it? 23 <b>A.</b> Oh, correct. 24 <b>Q.</b> So that's just -- I don't even know if it's a 25 typographical error, but there's just no heading for</p>

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133	<p>1 your September 11, 2011, observations. Is that</p> <p>2 correct, sir?</p> <p>3 A. There's no heading; that's correct.</p> <p>4 Q. Turning your attention back to page 5 on</p> <p>5 Exhibit 79, the second bullet point under your March</p> <p>6 14, 2011, observations, says: Other damage was</p> <p>7 observed in the area of the revenue meter socket.</p> <p>8 What other damage are you referring to?</p> <p>9 A. The loss of insulation on the aluminum</p> <p>10 conductors on the line side of the meter socket, loss</p> <p>11 of insulation on the copper conductors between the</p> <p>12 circuit breaker and the meter socket, the load side.</p> <p>13 As we talked about before, the remains of the</p> <p>14 revenue meter within the jaws of the meter socket.</p> <p>15 And if I remember correctly, on this device,</p> <p>16 there is a -- on the left-hand side there is a manual</p> <p>17 bypass lever that permits short circuiting around the</p> <p>18 meter and loosening the jaws so that the meter can be</p> <p>19 drawn out without interrupting power to the house.</p> <p>20 And on that, on that lever there is typically, you</p> <p>21 know, plastic insulation, a handle that is part of</p> <p>22 that lever assembly. And that was gone.</p> <p>23 Q. Okay. Your third bullet point under your</p> <p>24 March 14 observations indicates that most of the</p> <p>25 aluminum conductors that had been rotted through the</p>	135	<p>1 itself, the mounting plate, or just the --</p> <p>2 Q. The distance from the back of the circuit</p> <p>3 breaker to the back of the meter panel.</p> <p>4 A. May I look at my file? I might have it in my</p> <p>5 notes there.</p> <p>6 Q. Sure. The manila?</p> <p>7 A. Yeah.</p> <p>8 Q. Let me hand you Exhibit 81.</p> <p>9 A. Thank you. (After review.) I don't know the</p> <p>10 exact measure is readily at hand, but I'm almost</p> <p>11 positive that we --</p> <p>12 Q. You know there is an air gap between the</p> <p>13 breaker and the back of the panel; is that correct?</p> <p>14 A. Yes, sir, I do.</p> <p>15 Q. But you can't place the exact dimensions</p> <p>16 right now, but it's contained within your file?</p> <p>17 A. I believe it is. I remember taking</p> <p>18 dimensions of it when we were in the lab.</p> <p>19 Q. Okay. Suffice it to say the bracket is</p> <p>20 connected to the back of the meter panel. But it's</p> <p>21 elevated up and then the circuit breaker sits on top</p> <p>22 of that elevated bracket; is that correct?</p> <p>23 A. That's correct.</p> <p>24 Q. Okay.</p> <p>25 A. And that played a very, very large role in</p>
134	<p>1 meter enclosure had been consumed by electrical fault</p> <p>2 activity. And again I think we have discussed this</p> <p>3 already, but that's load and line side conductors. Is</p> <p>4 that correct?</p> <p>5 A. That's correct.</p> <p>6 Q. And electrical fault activity is actual</p> <p>7 electrical arcing; is that right?</p> <p>8 A. That's correct.</p> <p>9 Q. Your observations on March 14, 2011, bullet</p> <p>10 point number 5, indicates that a Mylar -- a sheet of</p> <p>11 Mylar insulation separated the circuit breaker from</p> <p>12 its mounting bracket or plate. I take it you found</p> <p>13 that to be still be -- or evidence that it was</p> <p>14 present. Is that correct?</p> <p>15 A. If I remember correctly, there was a portion</p> <p>16 of it that was, that was retrieved.</p> <p>17 Q. So if I have the orientation correct, we have</p> <p>18 a circuit breaker and then we have a Mylar</p> <p>19 insulation sheet and then we have the mounting</p> <p>20 bracket. Is that your understanding?</p> <p>21 A. Yes, sir.</p> <p>22 Q. What is the distance between the back of the</p> <p>23 meter panel and the back of the circuit breaker; do</p> <p>24 you know?</p> <p>25 A. Including the thickness of the bracket</p>	136	<p>1 analyzing the failure, so it's -- it was important</p> <p>2 with regard to identifying the fact that there was an</p> <p>3 air gap between the back of the panel and the back of</p> <p>4 that mounting plate.</p> <p>5 Q. Okay, explain to me the role of the elevated</p> <p>6 plate in your analysis.</p> <p>7 A. Well, what's critical in the -- what's</p> <p>8 important is the fact that the circuit breaker is on a</p> <p>9 mounting plate and there is an air gap between the</p> <p>10 back of the mounting plate and the back of the panel.</p> <p>11 And you can see in the photographs that we</p> <p>12 took that there is a hole that is actually blown right</p> <p>13 through the back of the panel. The size of the hole</p> <p>14 that's blown through the back of the panel is</p> <p>15 somewhere between 30 and maybe 40 percent of the size</p> <p>16 of the total destruction that is -- that took place on</p> <p>17 the back of the panel or the back of the circuit</p> <p>18 breaker mounting plate.</p> <p>19 So what's really critical is the fact that</p> <p>20 the -- there is a failure that destroyed a good</p> <p>21 portion of the internal components of the circuit</p> <p>22 breaker. I mean, this is just fact based on what we</p> <p>23 see in the lab and what's left, the remains from</p> <p>24 January 31st when we were on the scene.</p> <p>25 From January 31st we could see that the</p>

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137	<p>1 plate, which had a definite offset to it, had melted 2 and the steel was dripping down towards the load side 3 terminals. 4 In addition to that, once we got the circuit 5 breaker dismounted from that panel, from that mounting 6 plate, we could see that there was a significant -- 7 and when I say significant, a very wide area -- of 8 fault activity that had consumed the steel. 9 <b>Q.</b> The steel mounting plate? 10 <b>A.</b> The steel mounting plate. So there was a 11 disparity between the amount of damage on the steel 12 mounting plate as opposed to -- versus the steel at 13 the back of the unit. 14 <b>Q.</b> Let me make sure I understand you. There was 15 greater damage to the steel mounting plate in the back 16 of the breaker itself than there was on the back of 17 the meter panel, which was -- had some isolation 18 between the two. Is that what you're telling me? 19 <b>A.</b> Well, there was an air gap in between. 20 That's correct. 21 <b>Q.</b> Okay. With respect to the breaker that 22 you're holding in your hand there, can you tell me -- 23 let me ask you first the question: Do you believe 24 that the initial arc fault which caused the fire at 75 25 Vista View Drive began within the subject breaker?</p>	139	<p>1 would be the line side of this left face, which winds 2 up being the right side load terminal. So it appears 3 that the damage is in the area of the line side of the 4 left line. 5 <b>Q.</b> Okay. Are you able to render an opinion one 6 way or another if the initial arc occurred in the line 7 side or if it occurred in the load side? Or are you 8 telling me now you just don't know. 9 <b>A.</b> No, I'm telling you it appears -- based on 10 all the damage that we see, that it appears that it's 11 the line side of the left side face facing in front of 12 the breaker because that's where the concentration of 13 damage is within the breaker. 14 <b>Q.</b> Where you're losing me is when you add the 15 "it appears to be." Is there some reason why you're 16 using a qualifier or preparatory language to indicate 17 that it may not be the line side? Do you have any 18 reason to believe that it was actually on the load 19 side? 20 <b>A.</b> No, sir. 21 <b>Q.</b> So if I have your testimony correct, then, an 22 initial arc fault occurring within the breaker as a 23 result of two unknown components arcing compromised 24 the back of the breaker, compromised the Mylar, went 25 through the steel bracketing and then all the way</p>
138	<p>1 <b>A.</b> Based on our observations in the laboratory 2 analysis, yes. 3 <b>Q.</b> Okay. Can you tell me what components arced 4 together within the subject breaker? 5 <b>A.</b> No, I can't. 6 <b>Q.</b> Okay. Can you tell me and I take it you 7 can't tell me how those components within the subject 8 breaker would have arced together? 9 <b>A.</b> No, sir, I can't. 10 <b>Q.</b> Okay, but it's your testimony that somewhere 11 inside -- let me ask a better question. 12 Can you tell me whether the initial arc that 13 occurred -- that you believe occurred inside the 14 subject breaker occurred on the load side or the line 15 side? 16 <b>A.</b> Well, the way that the circuit breaker is 17 constructed, the line and load sides actually 18 crisscross because of this -- because of this 19 horizontal connection. 20 As a matter of fact, on the top of the 21 circuit breaker, there is actually a little diagram 22 that shows that crisscrossing in effect. The damage 23 internal to the breaker appears to be facing the 24 breaker, more concentrated on the left side of the 25 breaker mechanism, which if I remember correctly, that</p>	140	<p>1 through the back of the meter panel. Is that the 2 progression? 3 <b>A.</b> Yes, sir. 4 <b>Q.</b> And I'm correct that you don't know what 5 occurred to cause that initial arc within the subject 6 breaker? 7 <b>A.</b> That's correct. 8 <b>Q.</b> And am I also correct that it was that 9 occurrence, the arc fault within the breaker that went 10 through the mounting bracket into the back of the 11 meter panel, that you believe caused the breaker 12 within the transformer to trip? And by transformer, 13 the CL&amp;P transformer, the pad-mounted transformer. 14 <b>A.</b> No. 15 <b>Q.</b> I thought earlier you testified that it was. 16 <b>A.</b> In my opinion -- and I thought I testified 17 that it was the overall event, which included the 18 vaporizing of the aluminum conductors within that 19 metal enclosure, that resulted in the CL&amp;P transformer 20 circuit breaker tripping. 21 <b>Q.</b> Okay. Now, in between the time that you 22 testified earlier and what I'm hearing right now, we 23 took a lunch break. Did you have occasion to talk 24 about your opinions and your testimony with Mr. Rossi? 25 <b>A.</b> No, sir.</p>

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141	<p>1 Q. Did you guys talk about the case at all?</p> <p>2 A. No, sir.</p> <p>3 Q. All right.</p> <p>4 MR. ROSSI: You told us not to.</p> <p>5 MR. BARTON: I did. And I appreciate that.</p> <p>6 BY MR. BARTON:</p> <p>7 Q. So when you say it's the overall event</p> <p>8 occurring within the meter panel, what do you mean by</p> <p>9 overall event?</p> <p>10 A. Well, when analyzing the electrical failure,</p> <p>11 using whatever technique, using, say, the scientific</p> <p>12 method from 921 or using -- NFPA 921 -- or using a</p> <p>13 logical engineering analysis starting, say, at the</p> <p>14 point of greatest damage or -- say the way a fire</p> <p>15 investigator looks at a building from a 360-degree</p> <p>16 examination around the outside and working his way</p> <p>17 in.</p> <p>18 In the case of this fault, there are two</p> <p>19 things that very -- that stand out. Number one is the</p> <p>20 amount of damage at the back of the breaker and</p> <p>21 internal to the circuit breaker. And number two is</p> <p>22 the damage to the aluminum conductors. The one thing</p> <p>23 to keep --</p> <p>24 Q. Go ahead.</p> <p>25 MR. ROSSI: Let him finish.</p>	143	<p>1 breaker, the Mylar to which it was connected --</p> <p>2 or insulated with, the mounting plate to which it</p> <p>3 was connected and melt the steel of the mounting</p> <p>4 plate and create sufficient heat and energy to</p> <p>5 melt a hole through the steel on the back of the</p> <p>6 enclosure.</p> <p>7 Keep in mind that we are looking at events</p> <p>8 that are in the neighborhood of 2,500 degrees</p> <p>9 Fahrenheit.</p> <p>10 While that's going on, if you can envision</p> <p>11 that there are conductors that melt at 1,200</p> <p>12 degrees, immediately below and adjacent to that</p> <p>13 event and the fact that post event we find pieces</p> <p>14 of aluminum conductor in fragments of the -- the</p> <p>15 conductor strands melted into the -- what you had</p> <p>16 identified before I think as the inner cover.</p> <p>17 It's the retention cover under the circuit</p> <p>18 breaker. We found strands of aluminum conductor</p> <p>19 there. We found resolidified strands and molten</p> <p>20 aluminum in the bottom of this panel enclosure.</p> <p>21 It gives a relatively explicit time line as</p> <p>22 to how this event could have occurred. Because</p> <p>23 if the fault had started on the line side or if</p> <p>24 that circuit breaker at the Connecticut Light &amp;</p> <p>25 Power transformer had tripped for no reason at</p>
142	<p>1 THE WITNESS: The one thing to keep in</p> <p>2 mind -- and, I mean, oftentimes experts or</p> <p>3 individuals will use a water analogy to try to</p> <p>4 explain electrical currents. And if -- on the</p> <p>5 very simplest plane for explaining that, if we</p> <p>6 had a water hose, a hose full of water, and you</p> <p>7 trap the water hose five feet from its end, the</p> <p>8 leak is going to occur -- or a leak will occur at</p> <p>9 that five-foot portion.</p> <p>10 The rest of the hose basically is going to</p> <p>11 drain itself free and there would be water</p> <p>12 flowing at that five-foot mark.</p> <p>13 In this case, excuse me, we didn't see any</p> <p>14 fault activity in the meter enclosure in the area</p> <p>15 where the SER cable ran.</p> <p>16 The SER cable was connected to the bottom of</p> <p>17 the circuit breaker. And we had no blow fuse in</p> <p>18 that area. The cable was basically vaporized.</p> <p>19 It was gone. We had some fragments of it. And</p> <p>20 we had pieces of it that were, that were melted</p> <p>21 and resolidified at the bottom.</p> <p>22 But the circuit breaker had gotten to the</p> <p>23 point of where it had a fault that was of</p> <p>24 sufficient duration and intensity to be able to</p> <p>25 penetrate the insulation at the back of the</p>	144	<p>1 all -- you know, say it just was a bad breaker or</p> <p>2 there was a bump on the system and the breaker</p> <p>3 tripped -- there wouldn't have been any energy</p> <p>4 within that panel.</p> <p>5 If there was a fault on the line side</p> <p>6 conductors anywhere from the -- that separating</p> <p>7 barrier that we see adjacent to the circuit</p> <p>8 breaker to the bottom of the panel, the circuit</p> <p>9 breaker would not have sustained the damage that</p> <p>10 it sustained.</p> <p>11 What's interesting to notice is that the arc</p> <p>12 chutes, the exhaust assemblies on that breaker,</p> <p>13 when you look at our photographs, these little</p> <p>14 barriers, the little gray barriers that can be</p> <p>15 seen in this breaker, weren't there.</p> <p>16 And one of the things that we identified</p> <p>17 through the examination and investigation process</p> <p>18 and with the help of Mr. Morales, who had</p> <p>19 provided some input for us, the difference</p> <p>20 between the CRS breaker and the BW breaker is --</p> <p>21 one of the differences is the fact that the BW</p> <p>22 does not have these little separators. And</p> <p>23 basically they are, they are a mechanism in the</p> <p>24 larger breakers. We call them arc chute, part of</p> <p>25 the arc chute assembly, which actually helps cool</p>

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145	<p>1 <b>and exhaust the arc.</b></p> <p>2 <b>But they were, they were missing. They were</b></p> <p>3 <b>not in the breaker, so we had a significant event</b></p> <p>4 <b>of exceptionally high energy, sufficient energy</b></p> <p>5 <b>to melt the steel. And we also had an event that</b></p> <p>6 <b>expanded and melted aluminum.</b></p> <p>7 <b>If the event that melted the aluminum</b></p> <p>8 <b>occurred before the melting of the steel, there</b></p> <p>9 <b>wouldn't have been energy to melt the steel. And</b></p> <p>10 <b>that's part of the logic that was used in the</b></p> <p>11 <b>scientific method that was used of identifying</b></p> <p>12 <b>the stages of this, this failure.</b></p> <p>13 <b>BY MR. BARTON:</b></p> <p>14 <b>Q.</b> Okay, thank you. The arc chutes that you</p> <p>15 just testified weren't present in the subject CSR2200</p> <p>16 breakers, when you say they weren't there, is it your</p> <p>17 testimony they were not installed in the subject</p> <p>18 circuit breaker?</p> <p>19 <b>A.</b> No, sir.</p> <p>20 <b>Q.</b> So what you're trying to convey is that you</p> <p>21 were not able to find them in the remnants of the</p> <p>22 breaker when you examined it; is that correct?</p> <p>23 <b>A.</b> We found one and it was not in the breaker.</p> <p>24 It was -- excuse me. If I remember correctly, it was</p> <p>25 in the bottom of the panel.</p>	147	<p>1 arc fault activity in the line side conductors. I'm</p> <p>2 almost positive that's exactly what I stated both</p> <p>3 times.</p> <p>4 <b>Q.</b> So your answer -- is your testimony, then,</p> <p>5 that there was no electrical arc fault activity in the</p> <p>6 load side cable, the SER that went from the breaker</p> <p>7 into the home?</p> <p>8 <b>A.</b> But there was, based on damage from the line</p> <p>9 side.</p> <p>10 <b>Q.</b> So your testimony is that --</p> <p>11 <b>MR. ROSSI: I don't think he was finished.</b></p> <p>12 <b>He was answering.</b></p> <p>13 <b>MR. BARTON: We're going to be here all day</b></p> <p>14 <b>if ---</b></p> <p>15 <b>MR. ROSSI: I don't care. Please let him</b></p> <p>16 <b>finish.</b></p> <p>17 <b>MR. BARTON: It's not an answer to my</b></p> <p>18 <b>question.</b></p> <p>19 <b>MR. ROSSI: You might not like it, but it is</b></p> <p>20 <b>an answer.</b></p> <p>21 <b>MR. BARTON: No, I --</b></p> <p>22 <b>MR. ROSSI: If you're not going to answer the</b></p> <p>23 <b>question, we're going to finish the deposition</b></p> <p>24 <b>right now. Let him finish the answer.</b></p> <p>25 <b>MR. BARTON: Could you read back my question</b></p>
146	<p>1 <b>Q.</b> Okay. And in your narrative that you just</p> <p>2 provided, you have made a number of statements that</p> <p>3 contradict things you testified to earlier. And I'm</p> <p>4 going to go through some of them so that I have a</p> <p>5 better understanding of what your testimony actually</p> <p>6 is.</p> <p>7 <b>A.</b> Yes, sir.</p> <p>8 <b>Q.</b> Earlier you testified that the SER, or the</p> <p>9 service cable, that went from the load side of the</p> <p>10 breaker down into the home had sustained arc fault</p> <p>11 damage from the breaker within the meter panel to the</p> <p>12 end of the meter panel where it exits that particular</p> <p>13 -- the box, the meter panel. And that arc fault</p> <p>14 damage is caused by electrical activity.</p> <p>15 In your narrative which you just provided,</p> <p>16 you indicated that there was no electrical arc fault</p> <p>17 activity on the load side going from the breaker out</p> <p>18 past the meter panel.</p> <p>19 My question to you is: Which is it? Was</p> <p>20 there electrical fault activity on the SER cable that</p> <p>21 left the breaker and exited the meter panel and went</p> <p>22 into the home or not?</p> <p>23 <b>A.</b> I think if you go back and play this</p> <p>24 videotape back, you will see that what I testified to</p> <p>25 previously is that the SER cable was a victim of the</p>	148	<p>1 <b>and his first answer. And then we will hear the</b></p> <p>2 <b>rest of it. Please.</b></p> <p>3 <b>(Whereupon, the last complete question, the</b></p> <p>4 <b>answer, and the partial question were read back.)</b></p> <p>5 <b>MR. ROSSI: See, he wasn't finished</b></p> <p>6 <b>answering.</b></p> <p>7 <b>BY MR. BARTON:</b></p> <p>8 <b>Q.</b> Please finish your answer. Would you like me</p> <p>9 to restate the question? It might be easier for us</p> <p>10 all.</p> <p>11 <b>A.</b> Go ahead.</p> <p>12 <b>Q.</b> Is there any electrical arc fault activity on</p> <p>13 the SER cable that goes from the breaker and travels</p> <p>14 into the home at 75 Vista View Drive?</p> <p>15 <b>A.</b> I think I'm going to have to have you</p> <p>16 identify for me what you mean by arc fault activity on</p> <p>17 the load side conductors going into 75 Vista View.</p> <p>18 <b>Q.</b> Why don't you tell me what your definition is</p> <p>19 of an arc fault activity, of evidence of an arc</p> <p>20 fault. And we'll go from there. Because I think</p> <p>21 there is a lot of confusion as to what that means at</p> <p>22 this point. So what is your definition of arc fault</p> <p>23 activity?</p> <p>24 <b>A.</b> Arc fault activity in this case would have</p> <p>25 been a flow of electricity that would have compromised</p>

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149	<p>1 insulation and vaporized metal.</p> <p>2 <b>Q.</b> Okay, so for there to be arc fault activity</p> <p>3 in a cable, that particular cable must be energized;</p> <p>4 is that correct?</p> <p>5 <b>A.</b> Not in this case because the SER cable was</p> <p>6 adjacent to an energized cable.</p> <p>7 <b>Q.</b> How can the flow of electricity through the</p> <p>8 SER cable create arc fault activity -- how can a lack</p> <p>9 of a flow of electricity to the SER cable create an</p> <p>10 arc fault activity in it?</p> <p>11 <b>A.</b> Because the arc fault activity was in the</p> <p>12 line side conductors adjacent to it and basically the</p> <p>13 SER cable was consumed by that plasma.</p> <p>14 <b>Q.</b> How can you testify that the arc fault</p> <p>15 activity was in the line side?</p> <p>16 <b>A.</b> How can I testify that it was on the line</p> <p>17 side? Because the line side conductors were vaporized</p> <p>18 from the bottom of the separating metal piece adjacent</p> <p>19 to the circuit breaker to the bottom of the panel.</p> <p>20 <b>Q.</b> Okay. Let's go to the load side. Was there</p> <p>21 any vaporization of the load side cable from the</p> <p>22 breaker all the way down to the end of the meter</p> <p>23 panel?</p> <p>24 <b>A.</b> We know that there was.</p> <p>25 <b>Q.</b> All right. So now we have vaporization on</p>	151	<p>1 That's why when we looked at the SER cable,</p> <p>2 it, it ended at the bottom of the panel. The heat</p> <p>3 from the arc fault activity on the line side -- and I</p> <p>4 think you had pointed out to me before -- it actually</p> <p>5 extended through the PVC to just about ground level,</p> <p>6 so --</p> <p>7 <b>Q.</b> Go ahead.</p> <p>8 <b>A.</b> We had energy. In order for there to be arc</p> <p>9 fault activity, there's got to be an electrical</p> <p>10 source. When I say source, electrical energy.</p> <p>11 <b>Q.</b> Let's remove the word activity, okay? I</p> <p>12 think you're -- if I understand what you're trying to</p> <p>13 do, you're saying if basically our camera here has an</p> <p>14 arc fault inside of it and all of a sudden my eyebrow</p> <p>15 gets singed off, my eyebrow sustained arc fault</p> <p>16 activity. Would that be your definition of arc fault</p> <p>17 activity?</p> <p>18 <b>A.</b> No.</p> <p>19 <b>Q.</b> Okay.</p> <p>20 <b>A.</b> If that camera burst into a massive arc fault</p> <p>21 and began to melt the stand that is holding the light,</p> <p>22 that to me would be -- it was involved in the arc</p> <p>23 fault arc activity.</p> <p>24 <b>Q.</b> Okay.</p> <p>25 <b>A.</b> Because there is actually a voltage that is</p>
150	<p>1 the line side which you attribute to electrical fault</p> <p>2 activity and we have the vaporization of the load side</p> <p>3 cable, the SER cable, which is electrical fault</p> <p>4 activity?</p> <p>5 <b>A.</b> No, it's due to the arc fault on the line</p> <p>6 side conductors.</p> <p>7 <b>Q.</b> Okay. Is it your testimony that you can have</p> <p>8 an arc fault without electricity?</p> <p>9 <b>A.</b> You can have the effects of arc fault without</p> <p>10 electricity, but -- no, I'm sorry. You're saying</p> <p>11 without electricity.</p> <p>12 <b>Q.</b> Yes.</p> <p>13 <b>A.</b> The electricity is in the line side</p> <p>14 conductors, which were within a matter of 10 inches or</p> <p>15 less away from the SER cable.</p> <p>16 <b>Q.</b> Okay. Did the arc extend from the line side</p> <p>17 cable and make contact to the load side cable?</p> <p>18 <b>A.</b> The plasma did. Yes, it did.</p> <p>19 <b>Q.</b> Okay.</p> <p>20 <b>A.</b> That's the reason for the aluminum being</p> <p>21 vaporized and being, being damaged. We had this</p> <p>22 massive fault flowing from between the conductors on</p> <p>23 your left-hand side of that panel, spanning within</p> <p>24 that confined space of the panel and then melting</p> <p>25 itself down to the bottom.</p>	152	<p>1 produced in that plasma.</p> <p>2 <b>Q.</b> So melting of -- the arc itself, some people</p> <p>3 describe it as a blue, lightning bolt type thing. Do</p> <p>4 you understand what I'm talking about?</p> <p>5 <b>A.</b> Yes, sir.</p> <p>6 <b>Q.</b> Okay. And it gets its name, an electrical</p> <p>7 arc. And we see it. And it flashes and it's blue or</p> <p>8 it has a bluish tint to it. And that's an arc created</p> <p>9 by electricity. You know what I'm talking about?</p> <p>10 <b>A.</b> Yes, sir.</p> <p>11 <b>Q.</b> Did any such blue arc ever occur, in your</p> <p>12 opinion, on the load side cable that went from the</p> <p>13 breaker and into the home?</p> <p>14 <b>A.</b> No, sir.</p> <p>15 <b>Q.</b> But you believe that that cable sustained</p> <p>16 damage from an arc that did occur on the line side</p> <p>17 inside the meter panel; is that correct?</p> <p>18 <b>A.</b> That's correct.</p> <p>19 <b>Q.</b> And if I ask you if there was ever an arc</p> <p>20 fault on the load side cable that went from the</p> <p>21 breaker into the home, what would your answer be? Not</p> <p>22 arc fault activity. Not heat from arc fault.</p> <p>23 Is there -- has there ever been to your</p> <p>24 knowledge or in your opinion an arc fault on the</p> <p>25 service cable that went from the breaker that was</p>

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153	<p>1 inside the meter panel and into the home?</p> <p>2 <b>A.</b> Based on our observations and examinations, I</p> <p>3 would say no.</p> <p>4 <b>Q.</b> Now, if we look at the bottom of page 6 of</p> <p>5 Exhibit 79 in your report, you talk about the</p> <p>6 configuration of the breaker inside the meter panel.</p> <p>7 And we talked about that earlier. That -- you're not</p> <p>8 basing your opinions on the configuration of the</p> <p>9 breaker inside the meter panel at all, are you?</p> <p>10 <b>A.</b> No, sir.</p> <p>11 <b>Q.</b> Doesn't make a difference, okay. You talk</p> <p>12 about this -- what you call this crisscross internal</p> <p>13 electrical bus work. In your report at the top of</p> <p>14 page 7, it says: This placed internal components that</p> <p>15 were electrically energized at 240 volts within</p> <p>16 approximately one-half inch of each other.</p> <p>17 Did I read that correctly?</p> <p>18 <b>A.</b> Yes, sir.</p> <p>19 <b>Q.</b> What did the placement of these -- well,</p> <p>20 first of all, what internal components were within</p> <p>21 one-half inch of each other?</p> <p>22 <b>A.</b> The bus bars that created that crisscross</p> <p>23 assembly.</p> <p>24 <b>Q.</b> Okay, so the actual bus bars themselves?</p> <p>25 <b>A.</b> That's correct.</p>	155	<p>1 <b>Q.</b> When can you do that?</p> <p>2 <b>A.</b> September 7th at Quali-Tech.</p> <p>3 <b>Q.</b> On a CSR2200 breaker?</p> <p>4 <b>A.</b> It might have been at the BW2200.</p> <p>5 <b>Q.</b> Do you believe the proximity of these two bus</p> <p>6 bars caused or contributed to cause this fire?</p> <p>7 <b>A.</b> I don't think that the uniqueness of this</p> <p>8 breaker can be ruled out as part of that moisture</p> <p>9 ingress and failure mechanism that we discussed</p> <p>10 earlier.</p> <p>11 <b>Q.</b> Okay. When you say the unique aspect and you</p> <p>12 talked about moisture ingress -- I'm going to get to</p> <p>13 that in a second, but I want to get an answer to my</p> <p>14 question first. Do you believe the crisscross design</p> <p>15 within the subject breaker caused or contributed to</p> <p>16 cause the failure which you believe ignited the fire</p> <p>17 in this case?</p> <p>18 <b>A.</b> As I said before, I don't think it could be</p> <p>19 ruled out.</p> <p>20 <b>Q.</b> Why can't it be ruled out?</p> <p>21 <b>A.</b> Because it's in the area where damage</p> <p>22 occurred in the breaker.</p> <p>23 <b>Q.</b> What about the crisscross design do you</p> <p>24 believe caused or contributed to cause the fire?</p> <p>25 <b>A.</b> Well, based on my experience with standard</p>
154	<p>1 <b>Q.</b> How close -- or you said within approximately</p> <p>2 a half inch of each other. They were within a half</p> <p>3 inch of each other on a plane vertically?</p> <p>4 Horizontally? Can you tell me?</p> <p>5 <b>A.</b> If I remember correctly, it was vertically.</p> <p>6 <b>Q.</b> Vertically.</p> <p>7 <b>A.</b> And we should be able to see that in the</p> <p>8 photographs because we disassembled one of the</p> <p>9 breakers.</p> <p>10 <b>Q.</b> And in this half inch that separates these</p> <p>11 two bus bars, what is contained within that half inch</p> <p>12 space?</p> <p>13 <b>A.</b> If I remember correctly, there was -- some of</p> <p>14 the bakelit insulation was in that area.</p> <p>15 <b>Q.</b> Is bakelit insulation a conductive material?</p> <p>16 <b>A.</b> No, sir.</p> <p>17 <b>Q.</b> So when you say some of the bakelit</p> <p>18 insulation, can you tell me whether or not there is a</p> <p>19 half inch of nonconductive material between the two</p> <p>20 bus bars and the CSR2200 breaker?</p> <p>21 <b>A.</b> We would have to look at the photographs or</p> <p>22 take this breaker apart for me to give you a</p> <p>23 definitive answer.</p> <p>24 <b>Q.</b> Have you already done that, sir?</p> <p>25 <b>A.</b> Yes, we did that in the lab.</p>	156	<p>1 configuration circuit breakers, the breakers are</p> <p>2 manufactured in such a way that the components, the</p> <p>3 individual face components, are segregated to separate</p> <p>4 portions of the circuit breaker body without having</p> <p>5 the components coming in close proximity to each</p> <p>6 other. They are equally spaced along their entire</p> <p>7 run.</p> <p>8 <b>Q.</b> Is there a specific circuit breaker you are</p> <p>9 referencing?</p> <p>10 <b>A.</b> No, sir, just the standard circuit breakers</p> <p>11 that I have been familiar with for the last 40 years.</p> <p>12 <b>Q.</b> Well, I don't know what a standard circuit</p> <p>13 breaker is. Is there a specific --</p> <p>14 <b>A.</b> Well, a circuit breaker that is not oriented</p> <p>15 with a crisscross toggle and you have a line on top</p> <p>16 and a load on the bottom.</p> <p>17 <b>Q.</b> So is it your testimony that had this circuit</p> <p>18 breaker not had a crisscross orientation, but instead</p> <p>19 had the parallel orientation, this fire would not have</p> <p>20 occurred?</p> <p>21 <b>A.</b> No, sir.</p> <p>22 <b>Q.</b> But you're not going to rule out the</p> <p>23 possibility that a crisscross design may have caused</p> <p>24 or contributed to the cause of this fire?</p> <p>25 <b>A.</b> As I said before, I don't think it can be</p>

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157	<p>1 ruled out. That's correct.</p> <p>2 <b>Q.</b> And you can't tell me what about that</p> <p>3 crisscross design may have caused or contributed to</p> <p>4 cause this fire, can you?</p> <p>5 <b>A.</b> Other than the driving potential of 240</p> <p>6 volts, no, sir, I can't.</p> <p>7 <b>Q.</b> How many volts are in a standard circuit</p> <p>8 breaker?</p> <p>9 <b>A.</b> Well, the standard circuit breaker is 240</p> <p>10 volts.</p> <p>11 <b>Q.</b> Okay, so the existence of 240 volts through a</p> <p>12 crisscross design as opposed to a parallel design,</p> <p>13 it's going to be the same in either one of the circuit</p> <p>14 breakers; is that right?</p> <p>15 <b>A.</b> No, because in a standard circuit breaker,</p> <p>16 the 240 volts wouldn't be across the one-half inch</p> <p>17 gap, or one-half inch space. It would be a greater</p> <p>18 distance.</p> <p>19 It would be basically the distance that you</p> <p>20 see here between the bus bars, because the circuit</p> <p>21 breaker would be built in a vertical fashion with the</p> <p>22 contacts in line.</p> <p>23 <b>Q.</b> What is the distance between the bus bars and</p> <p>24 a standard circuit breaker?</p> <p>25 <b>A.</b> I don't, I don't have a number off the top of</p>	159	<p>1 <b>A.</b> Well, the crisscross and the way the arc</p> <p>2 chutes are mounted on the side. The overall</p> <p>3 orientation of the breaker in the panel would be</p> <p>4 vertically with the toggle going left to right and the</p> <p>5 arc chutes are on the side.</p> <p>6 As I said before, in our findings, when we</p> <p>7 took the circuit breaker out of the panel, the</p> <p>8 internal assembly of the arc chutes were gone except</p> <p>9 for one that we found at the bottom of the panel. And</p> <p>10 the back of the circuit breaker was blown out.</p> <p>11 The areas that moisture could get into the</p> <p>12 circuit breaker are in through the areas of the arc</p> <p>13 chute assemblies, which connect directly into the</p> <p>14 contacts internal to the circuit breaker.</p> <p>15 <b>Q.</b> Okay.</p> <p>16 <b>A.</b> And in looking at what -- the remains of the</p> <p>17 breaker, of the subject breaker, there is an area</p> <p>18 that's totally consumed in the breaker itself that</p> <p>19 aligns with one of the arc chutes.</p> <p>20 I think one of the things I didn't say</p> <p>21 before: My experience is in high voltage and medium</p> <p>22 voltage systems, and when I look at the failure, this</p> <p>23 failure, to me it was unique.</p> <p>24 A 240-volt circuit breaker failure of this</p> <p>25 type to me was very unique. But it is similar to</p>
158	<p>1 my head. We'd have to --</p> <p>2 <b>Q.</b> Do you know if there are any standard circuit</p> <p>3 breakers whose bus bars are within a half inch of each</p> <p>4 other?</p> <p>5 <b>A.</b> Not that I know of.</p> <p>6 <b>Q.</b> Do you know if the CSR2200 circuit breaker</p> <p>7 complies with all URL standards?</p> <p>8 <b>A.</b> Seeing that it has a UL label on it, I would</p> <p>9 have to say it does.</p> <p>10 <b>Q.</b> Do you participate in UL at all, in the</p> <p>11 design or anything of that nature?</p> <p>12 <b>A.</b> No, I don't.</p> <p>13 <b>Q.</b> Have you written any letters to Underwriters</p> <p>14 Laboratory to advise them of your opinions with</p> <p>15 respect to the crisscross design of the subject</p> <p>16 circuit breaker?</p> <p>17 <b>A.</b> No, sir, I did not.</p> <p>18 <b>Q.</b> You are not proposing any alternative designs</p> <p>19 for the CSR2200 breaker, are you?</p> <p>20 <b>A.</b> Not at this time, no.</p> <p>21 <b>Q.</b> You indicated that the unique design of this</p> <p>22 circuit breaker may have contributed to the moisture</p> <p>23 ingress. Explain to me how the unique -- and by</p> <p>24 unique design we are just talking the crisscross; is</p> <p>25 that right?</p>	160	<p>1 failures that I have seen in medium voltage switch</p> <p>2 work, especially where there is moisture ingress.</p> <p>3 Because the similar mechanism of -- how could I put</p> <p>4 it -- end of event indicators, in other words, the</p> <p>5 failure of the body of the breaker itself, the</p> <p>6 destruction that we see where the arc activity flowed,</p> <p>7 where the steel melted, I mean, it's -- this failure</p> <p>8 is similar to at least four medium voltage circuit</p> <p>9 breaker failures that I've had to investigate when I</p> <p>10 was with Connecticut Light &amp; Power.</p> <p>11 So that's some of the experience that I</p> <p>12 brought to this, to this assignment, that I was</p> <p>13 surprised that I was -- I could make a correlation</p> <p>14 based on, you know, on other investigations that I</p> <p>15 performed.</p> <p>16 <b>Q.</b> Are you relying on other investigations of</p> <p>17 what you deemed similar medium voltage circuit</p> <p>18 breakers in forming your opinions in this case?</p> <p>19 <b>A.</b> Well, not similar medium voltage circuit</p> <p>20 breakers. Similar failures in medium voltage circuit</p> <p>21 breakers.</p> <p>22 <b>Q.</b> So you're relying on you what deem to be</p> <p>23 similar failures in medium voltage circuit breakers in</p> <p>24 forming your opinions in this case?</p> <p>25 <b>A.</b> To some degree, yes.</p>

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161	<p>1 Q. I need to know what those are, then. Let's</p> <p>2 start -- how many of these medium voltage circuit</p> <p>3 breakers have you inspected with respect to a, I</p> <p>4 guess, moisture ingress?</p> <p>5 A. Over the last 30 years, well, I can name 5.</p> <p>6 And if I remember correctly, there is about 10. But I</p> <p>7 think I can name 5 for you:</p> <p>8 Wallingford Electric; it's the old pier</p> <p>9 station.</p> <p>10 East, East Rock substation in Norwalk,</p> <p>11 Connecticut.</p> <p>12 East Avenue substation in East Norwalk,</p> <p>13 Connecticut.</p> <p>14 Wilton substation in Wilton, Connecticut.</p> <p>15 And if I'm not mistaken, it was Byram</p> <p>16 substation, B-Y-R-A-M substation, in Greenwich,</p> <p>17 Connecticut.</p> <p>18 Q. What was the make and model number of the</p> <p>19 medium voltage breaker in the Wallingford case that</p> <p>20 you mentioned?</p> <p>21 A. Wallingford was a General Electric type AM</p> <p>22 circuit breaker, identified as a Magne-Blast.</p> <p>23 Q. Is the design of the General Electric AM</p> <p>24 circuit breaker identical to the CSR2200?</p> <p>25 A. No, sir.</p>	163	<p>1 in design as the CSR2200 circuit breaker?</p> <p>2 A. No, sir.</p> <p>3 Q. Can you tell me whether the medium voltage</p> <p>4 circuit breaker at the East Rock substation was</p> <p>5 installed in a meter panel?</p> <p>6 A. No, sir.</p> <p>7 Q. Can you tell me how the breaker at the East</p> <p>8 Rock substation was exposed to moisture?</p> <p>9 A. The East Rock substation failure, if I</p> <p>10 remember correctly, was a bush leak. Rain water got</p> <p>11 in around the seal on a bushing.</p> <p>12 Q. And all these are medium voltage switch</p> <p>13 gears; is that correct?</p> <p>14 A. Yes.</p> <p>15 Q. Switch breakers. Would you agree with me</p> <p>16 that those are all substantially different circuit</p> <p>17 breakers than a residential CSR2200 breaker, or no?</p> <p>18 A. They work on the same principal.</p> <p>19 Q. Okay, we will go through this. The East</p> <p>20 Avenue substation, could you tell me the make and</p> <p>21 model number of the circuit breaker that was involved</p> <p>22 in that case?</p> <p>23 A. If I remember correctly, that was an old</p> <p>24 Allis Chalmers Switchgear.</p> <p>25 Q. Is that of identical design as the CSR2200</p>
162	<p>1 Q. Was it installed in an identical manner as</p> <p>2 the CSR2200 in this case?</p> <p>3 A. No, sir.</p> <p>4 Q. Was the GE AM circuit breaker that is the</p> <p>5 subject of this Wallingford matter, was it installed</p> <p>6 in a meter panel?</p> <p>7 A. No, sir.</p> <p>8 Q. Was it also exposed to unknown ingress of</p> <p>9 moisture from an unknown source through unknown</p> <p>10 avenues?</p> <p>11 A. We were able to identify the moisture ingress</p> <p>12 on that.</p> <p>13 Q. And what was the moisture ingress on that</p> <p>14 particular one?</p> <p>15 A. It was a roof leak.</p> <p>16 Q. Do you have a file on Wallingford?</p> <p>17 A. No, sir.</p> <p>18 Q. Did you prepare a report?</p> <p>19 A. No, sir.</p> <p>20 Q. All right, the East Rock substation, can you</p> <p>21 tell me the make and model number of that medium</p> <p>22 voltage circuit breaker?</p> <p>23 A. No, sir, I can't.</p> <p>24 Q. Can you tell me whether the medium voltage</p> <p>25 circuit breaker at East Rock substation was identical</p>	164	<p>1 circuit breaker?</p> <p>2 A. No, sir.</p> <p>3 Q. Was the East Avenue substation circuit</p> <p>4 breaker installed in a meter panel?</p> <p>5 A. No, it was not.</p> <p>6 Q. Are you able to tell us what or how the</p> <p>7 moisture ingress occurred at the East Avenue</p> <p>8 substation breaker?</p> <p>9 A. If I remember correctly, on East Avenue was a</p> <p>10 door seal. It was worn down. Moisture was able to</p> <p>11 penetrate the enclosure through the door seal.</p> <p>12 Q. Can you tell me what the make and model</p> <p>13 number is of the Wilton medium voltage circuit</p> <p>14 breaker?</p> <p>15 A. No, sir, I can't.</p> <p>16 Q. Is it of identical design as the CSR2200</p> <p>17 circuit breaker?</p> <p>18 A. No, sir.</p> <p>19 Q. Was it installed in a meter panel?</p> <p>20 A. No, sir.</p> <p>21 Q. Can you tell me how water made its way into</p> <p>22 the circuit breaker that was involved in this Wilton</p> <p>23 matter?</p> <p>24 A. No, sir, I can't.</p> <p>25 Q. All right. Let's look at the Byram,</p>

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165	<p>1 B-Y-R-A-M, substation. Can you tell me the make and 2 model of that circuit breaker? 3 A. If I remember correctly, on that one it was 4 General Electric. Again, I think it was a Magne- 5 Blast. 6 Q. Was it an identical design to the CSR2200? 7 A. No, sir, it was not. 8 Q. Can you tell me, was this Byram substation 9 breaker installed in a meter panel? 10 A. No, sir, it was not. 11 Q. Can you tell me how water or moisture made 12 its way into this GE circuit breaker? 13 A. If I remember correctly, on Byram, it was 14 another roof seal. 15 Q. Okay. Am I correct that you -- were you 16 required to prepare reports or render opinions with 17 respect to these five circuit breakers? 18 A. I rendered opinions, didn't have to produce 19 reports. 20 Q. Okay. And am I correct that your opinions 21 with respect to these five circuit breakers was that 22 none of them were defective? 23 A. That's correct. 24 Q. Yet you are going to render an opinion -- or 25 are you going to render an opinion that the circuit</p>	167	<p>1 as presented to me, the results of laboratory testing 2 and analysis and based on other factors, you know, if 3 there are other factors to take into consideration, 4 using engineering, you know, a good sound engineering 5 logic that the opinion that I express can be supported 6 by an engineering analysis. 7 Q. All right, page 8 of Exhibit 79 states that 8 the short circuit originated within the circuit 9 breaker's internal line side components -- and I 10 believe we have already discussed that -- most 11 probably due to a defect that allowed moisture 12 ingress. What is the defect that you are referring 13 to? 14 A. I don't know what the defect is. 15 Q. Okay. How can you say that the moisture 16 ingress was most probably due to a defect when you 17 don't know what the defect is? 18 A. Well, because there should not be moisture 19 getting inside the circuit breaker or the circuit 20 breaker panel. So if that does get in there, then 21 there is a defect. 22 Q. And if, in fact, there was no moisture inside 23 the meter panel, would you conclude there was no 24 defect? 25 A. Well, if using that logic, then the breaker</p>
166	<p>1 breaker that was installed in the meter panel at 75 2 Vista View Drive was defective? 3 A. No, sir, I didn't say the breaker was 4 defective. 5 Q. Okay, I just want to make sure. 6 A. Right. 7 Q. And if you have any reports or materials or 8 documents with respect to these five cases, I would 9 ask that you preserve them. We will be issuing a 10 subpoena to get copies of all that. 11 A. We don't have any of those. The Wallingford 12 matter was over 20 years old. And the East Norwalk 13 loss was -- let's see. I started consulting for them 14 in 1980, so that's -- yeah, that's over 30 years old. 15 And the other three were when I worked for Connecticut 16 Light &amp; Power and I haven't been with them since 1987. 17 Q. I want to draw your attention to Exhibit 79, 18 page 8. This is your conclusions; is that correct? 19 A. Yes, sir. 20 Q. And your conclusions are based on a 21 reasonable degree of engineering certainty; is that 22 right? 23 A. Yes, sir. 24 Q. What does that mean? 25 A. When I perform an analysis based on the facts</p>	168	<p>1 didn't fail. And yet we've got this hole and the 2 house is burned down. 3 Q. Well, you're missing one of the main points 4 of logic. Perhaps the breaker did fail, but perhaps 5 your opinions are wrong. That's the difference. 6 All I'm asking you is, If no moisture was 7 inside that meter panel, would you conclude that there 8 is no defect or would you just try to find something 9 else? 10 A. If there was no moisture in the panel, then 11 that would lead us to believe that there was a defect 12 in the circuit breaker that caused it to fail without 13 moisture. 14 Q. And you couldn't tell me what that is either, 15 right? 16 A. No, sir, I could not. 17 Q. Okay. So essentially, if I have got the 18 logic correct with respect to your reasonable degree 19 of engineering certainty, an unknown amount of 20 moisture from an unknown source made its way into the 21 breaker panel from some unknown point, migrated into 22 the breaker in an unknown fashion, entered the breaker 23 through an unknown source, compromising unknown 24 components within the breaker that caused an arc fault 25 on the line side. Did I accurately depict what your</p>

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169	<p>1 testimony is?</p> <p>2 A. Yes, sir.</p> <p>3 <b>MR. ROSSI: He said there was no arc on the</b></p> <p>4 <b>line side.</b></p> <p>5 <b>BY MR. BARTON:</b></p> <p>6 Q. It says: The short circuit originated within</p> <p>7 the circuit breaker's internal line side components.</p> <p>8 Did I read that correct in your opinions</p> <p>9 stated?</p> <p>10 A. Yes, sir.</p> <p>11 Q. And you believe that this unknown defect</p> <p>12 which you cannot tell me or testify to allowed the</p> <p>13 moisture ingress; is that correct?</p> <p>14 A. That's correct.</p> <p>15 Q. Okay. And when you say moisture, I know I</p> <p>16 asked you to describe the moisture earlier. Water,</p> <p>17 ice, we don't know. Does it have to be water?</p> <p>18 A. Does it have to be water? It has to be</p> <p>19 moisture, some form of water.</p> <p>20 Q. Do you know what the temperature was on</p> <p>21 January 16, 2011, about 10:35 p.m.?</p> <p>22 A. Not accurately, sir, no.</p> <p>23 Q. Okay. Do you know what the temperature that</p> <p>24 water freezes at?</p> <p>25 A. Yes, I do.</p>	171	<p>1 Q. Okay. Are you aware if UL has any</p> <p>2 requirements with respect to meter panels to prevent</p> <p>3 the ingress of moisture?</p> <p>4 A. Yes, sir, to some, to some degree I do.</p> <p>5 Q. Okay. What is your understanding of the UL</p> <p>6 requirements to prevent the ingress of moisture into a</p> <p>7 meter panel?</p> <p>8 A. It depends on the style of the meter panel</p> <p>9 and its rating.</p> <p>10 Q. What about the CSR2200 meter panel?</p> <p>11 A. Well, yeah, but what is its --</p> <p>12 <b>MR. BARTON: He's talking about the --</b></p> <p>13 <b>BY MR. ROSSI:</b></p> <p>14 Q. I'm sorry, the CMBX B-200 BTS meter panel.</p> <p>15 A. As a NEMA 3R enclosure?</p> <p>16 Q. You tell me. What is the, what is the type</p> <p>17 of enclosure?</p> <p>18 A. Well, NEMA 3R means that it can handle rain</p> <p>19 up to 30 degrees out of the vertical.</p> <p>20 Q. Okay. Could the subject breaker panel in</p> <p>21 this case meet that requirement?</p> <p>22 A. For rain, yes.</p> <p>23 Q. Do you believe it did not meet that</p> <p>24 requirement for other substances?</p> <p>25 A. In this case, I think it's highly probable.</p>
170	<p>1 Q. What is that?</p> <p>2 A. Thirty-two degrees Fahrenheit.</p> <p>3 Q. And when we get below 32 degrees Fahrenheit,</p> <p>4 that water freezes, right, becomes ice?</p> <p>5 A. That's correct.</p> <p>6 Q. All right. Do you know prior to January 16,</p> <p>7 2011, at 10:35 p.m. when the last time the temperature</p> <p>8 in and around the Southbury, Connecticut, area had</p> <p>9 exceeded 32 degrees?</p> <p>10 A. No, I don't.</p> <p>11 Q. It says here: The meter enclosure was</p> <p>12 designed and manufactured for outdoor applications.</p> <p>13 Therefore the meter enclosure should have been capable</p> <p>14 of preventing the ingress of moisture typically</p> <p>15 experienced in a New England winter.</p> <p>16 How was the meter panel not capable of</p> <p>17 preventing the ingress of moisture?</p> <p>18 A. Well, again, that's part of the mechanism</p> <p>19 that caused the ingress of moisture we don't identify,</p> <p>20 we don't have a way of identifying that.</p> <p>21 Q. Okay. Can you tell me what mechanisms the</p> <p>22 meter panel used to prevent the ingress of moisture?</p> <p>23 A. Based on the remains and also the circuit</p> <p>24 breaker panel that we've got, it appears it uses</p> <p>25 overlapping surfaces.</p>	172	<p>1 Q. And why do you think it's highly probable?</p> <p>2 A. Because of the drifting snow.</p> <p>3 Q. Do you believe it was drifting snow that made</p> <p>4 its way into the meter panel?</p> <p>5 A. I think it's something that can't be ruled</p> <p>6 out.</p> <p>7 Q. Did this drifting snow enter in through the</p> <p>8 bottom, through the top, through the side, through the</p> <p>9 back? Can you tell me?</p> <p>10 A. No, sir, I can't.</p> <p>11 Q. And do you think if drifting snow somehow</p> <p>12 made its way into the meter panel, that that would</p> <p>13 somehow violate the UL standards?</p> <p>14 A. No, sir.</p> <p>15 Q. The circuit breaker, the CSR2200 circuit</p> <p>16 breaker, it has vent holes; is that your</p> <p>17 understanding?</p> <p>18 A. When you say vent holes, identifying the dark</p> <p>19 chute assemblies.</p> <p>20 Q. Sure. There is openings in the breakers; is</p> <p>21 that your understanding?</p> <p>22 A. Yes, sir.</p> <p>23 Q. There is ways for air to flow through it; is</p> <p>24 that correct?</p> <p>25 A. The intent is for air to exhaust from that to</p>

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173	<p>1 help extinguish the arc.</p> <p>2 <b>Q.</b> Do you believe those events should be closed?</p> <p>3 <b>A.</b> No, sir.</p> <p>4 <b>Q.</b> Are you aware of any breaker that exists in</p> <p>5 the marketplace which is waterproof?</p> <p>6 <b>A.</b> No, sir.</p> <p>7 <b>Q.</b> Do you believe the CSR2200 breaker was</p> <p>8 intended to be used in a water environment?</p> <p>9 <b>MR. ROSSI: What do you mean by water</b></p> <p>10 <b>environment, John?</b></p> <p>11 <b>MR. BARTON: If you don't understand, please</b></p> <p>12 <b>let me know.</b></p> <p>13 <b>THE WITNESS: Well, if you could explain what</b></p> <p>14 <b>you mean by water environment.</b></p> <p>15 <b>BY MR. BARTON:</b></p> <p>16 <b>Q.</b> Do you believe the CSR2200 breaker was</p> <p>17 designed to be used when subjected to water, moisture,</p> <p>18 the type of water or moisture you believe somehow</p> <p>19 infiltrated this particular breaker?</p> <p>20 <b>A.</b> No, sir, I don't believe it is.</p> <p>21 <b>MR. BARTON: Okay, I think we have to change</b></p> <p>22 <b>the tape. Why don't we go ahead and do that.</b></p> <p>23 <b>It's probably a good time for a break.</b></p> <p>24 <b>THE VIDEOGRAPHER: This concludes videotape</b></p> <p>25 <b>number 3. Going off record, 3:01 p.m.</b></p>	175	<p>1 <b>A.</b> That's correct.</p> <p>2 <b>Q.</b> It's not what they are designed to do?</p> <p>3 <b>A.</b> That's correct.</p> <p>4 <b>Q.</b> They are designed to monitor and trip when</p> <p>5 they sense fault activity or electrical anomalies on</p> <p>6 the load side; is that right?</p> <p>7 <b>A.</b> That's correct.</p> <p>8 <b>Q.</b> Okay. There are a number of photographs that</p> <p>9 are attached to the report that you have in front of</p> <p>10 you, Exhibit 79. I would like to go through those</p> <p>11 now.</p> <p>12 And let me start by asking you: Generally,</p> <p>13 these are excerpts of photographs you have taken out</p> <p>14 of your file materials to highlight some of your</p> <p>15 observations. Is that fair?</p> <p>16 <b>A.</b> Yes, sir.</p> <p>17 <b>Q.</b> Okay. And you have gone through the liberty</p> <p>18 of numbering the photographs that you have before you</p> <p>19 is that correct?</p> <p>20 <b>A.</b> Yes, sir, in the captions.</p> <p>21 <b>Q.</b> In the captions. And those are your</p> <p>22 annotations. You wrote that; is that right?</p> <p>23 <b>A.</b> That's correct.</p> <p>24 <b>Q.</b> All right. And photograph 1 of Exhibit 79</p> <p>25 shows us just an overview structure of 75 Vista View</p>
174	<p>1 <b>(Briefly off the record for technical</b></p> <p>2 <b>adjustments.)</b></p> <p>3 <b>MR. BARTON: We're back on record. This</b></p> <p>4 <b>marks the beginning of videotape number 4,</b></p> <p>5 <b>3:06 p.m.</b></p> <p>6 <b>BY MR. BARTON:</b></p> <p>7 <b>Q.</b> Mr. Cristino, we were reviewing your report,</p> <p>8 which is Exhibit 79. I direct your attention back to</p> <p>9 page 8. You indicate that due to the location of the</p> <p>10 fault, the Cutler Hammer main circuit breaker was</p> <p>11 unable to interrupt the electrical fault, thus</p> <p>12 allowing the fault to expand and intensify.</p> <p>13 Do you believe the circuit breaker that was</p> <p>14 installed in the meter panel on 75 Vista View Drive</p> <p>15 was designed to interrupt electrical faults on the</p> <p>16 line side from the breaker?</p> <p>17 <b>A.</b> There aren't any circuit breakers that are</p> <p>18 designed to interrupt faults on the line side.</p> <p>19 <b>Q.</b> I'm sorry. You said there's not any?</p> <p>20 <b>A.</b> There aren't any. And that's what makes them</p> <p>21 the line side. The line side is the source side of</p> <p>22 the vents.</p> <p>23 <b>Q.</b> So you wouldn't expect this circuit breaker</p> <p>24 to be able to stop an electrical fault occurring on</p> <p>25 the line side; is that right?</p>	176	<p>1 Drive; is that correct?</p> <p>2 <b>A.</b> Yes, sir.</p> <p>3 <b>Q.</b> All right. And if you will look at</p> <p>4 photograph number 4, this is a depiction of the meter</p> <p>5 panel at the first time you observed it. Is that</p> <p>6 correct?</p> <p>7 <b>A.</b> That's correct.</p> <p>8 <b>Q.</b> Are there any missing component parts within</p> <p>9 this meter panel?</p> <p>10 <b>A.</b> As seen in photograph number 4?</p> <p>11 <b>Q.</b> Yes.</p> <p>12 <b>A.</b> What's missing is the cover, the ringless</p> <p>13 cover that would cover the meter socket at the top</p> <p>14 there? There is -- at the --</p> <p>15 <b>Q.</b> The top cover. I understand what you're</p> <p>16 saying. The top cover where the meter would go in,</p> <p>17 that's been removed?</p> <p>18 <b>A.</b> It was -- yeah, it was off when I looked at</p> <p>19 it.</p> <p>20 <b>Q.</b> But it was still there, right? I mean, it</p> <p>21 exists?</p> <p>22 <b>A.</b> Yes, sir.</p> <p>23 <b>Q.</b> All right. Any other components that in</p> <p>24 looking at photograph 4 were not present?</p> <p>25 <b>A.</b> Well, let's see.</p>

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177	<p>1 Q. Let me ask a better way. Do you know if</p> <p>2 there were any missing pieces to the meter panel that</p> <p>3 was installed on 75 Vista View Drive?</p> <p>4 A. There appears to be the pieces for the gutter</p> <p>5 space.</p> <p>6 Q. Okay. And when you say the pieces for the</p> <p>7 gutter space, what do you mean?</p> <p>8 A. Let's see. If I could turn to another</p> <p>9 photograph --</p> <p>10 Q. Please do.</p> <p>11 A. -- it may make it easier for where we could</p> <p>12 look at the Cutler Hammer information that was</p> <p>13 provided.</p> <p>14 I've got -- probably photograph 18 would show</p> <p>15 a good portion of the lower section of the meter</p> <p>16 enclosure.</p> <p>17 Q. Okay.</p> <p>18 A. To the left of the circuit breaker, there</p> <p>19 should have been two pieces of sheet metal, one that</p> <p>20 would have gone vertical from the separator above the</p> <p>21 circuit breaker all the way -- extending all the way</p> <p>22 down to the bottom of the panel to where the, the</p> <p>23 knockout, the hole was at the bottom of the panel for</p> <p>24 the entry of the conduit from Connecticut Light &amp;</p> <p>25 Power.</p>	179	<p>1 component did not contribute to cause the failure, but</p> <p>2 allowed the failure to propagate?</p> <p>3 A. Yes, sir.</p> <p>4 Q. Okay. Did this missing component have any</p> <p>5 connection with what you believe to be the ingress of</p> <p>6 moisture into the circuit panel?</p> <p>7 A. Based on my observations, no.</p> <p>8 Q. Okay. Is it your understanding that Eaton</p> <p>9 Corporation intended for this wire way to be present</p> <p>10 at the installation and a complete product that was</p> <p>11 installed?</p> <p>12 A. Yes, sir.</p> <p>13 Q. Okay. So it's intended design included this</p> <p>14 wire way which was missing from the subject unit; is</p> <p>15 that right?</p> <p>16 A. Yes.</p> <p>17 Q. When the wire way was removed from this</p> <p>18 particular meter panel, did that expose the utility</p> <p>19 lines to any other risks or hazards?</p> <p>20 A. No, sir.</p> <p>21 Q. Do you believe it is safe and/or good</p> <p>22 practices to have a straight edge against power</p> <p>23 lines? And do you know what I mean by a straight</p> <p>24 edge?</p> <p>25 A. A straight metal edge?</p>
178	<p>1 And then there would have been a cover over</p> <p>2 the top of that, that first piece that basically</p> <p>3 created a gutter space, an enclosed wire way through</p> <p>4 which the utility conductors would have been routed.</p> <p>5 Q. Okay. Do you know what happened to that</p> <p>6 missing wire gutter, the gutter way?</p> <p>7 A. No, sir, I do not.</p> <p>8 Q. Did that cause or contribute to cause any</p> <p>9 failure mode and/or the fire in this case?</p> <p>10 A. In this case, in my opinion, it allowed the</p> <p>11 initial fault within the circuit breaker to more</p> <p>12 easily attack the connect line power conductors.</p> <p>13 Q. How did it allow the initial fault to more</p> <p>14 easily attack those conductors?</p> <p>15 A. If that -- if the vertical piece of the</p> <p>16 gutter space had been in place, there would have been</p> <p>17 an additional steel barrier between the fault and</p> <p>18 those Connecticut Light &amp; Power conductors.</p> <p>19 As it was, the molten steel that was being</p> <p>20 expelled in that fault, in the fault behind the</p> <p>21 circuit breaker, was able to impact the Connecticut</p> <p>22 Light &amp; Power conductors that were immediately</p> <p>23 adjacent to the circuit breaker and not protected by</p> <p>24 another piece of steel.</p> <p>25 Q. So is it your testimony that this missing</p>	180	<p>1 Q. You got it.</p> <p>2 A. No, sir.</p> <p>3 Q. Why not?</p> <p>4 A. Well, given the normal life cycle and</p> <p>5 functionality of electrical equipment, most conductors</p> <p>6 and equipment enclosures are subjected to vibration</p> <p>7 and movement.</p> <p>8 And at the very least, in my experience</p> <p>9 manufacturers will install either a rolled edge or put</p> <p>10 some type of protective cover over a straight edge as</p> <p>11 to not permit long-term degradation or impact of</p> <p>12 installation by a straight edge.</p> <p>13 Q. Did the missing wire way in the subject meter</p> <p>14 panel subject the line conductors to a straight edge?</p> <p>15 A. Based upon what I see in photograph 14, I</p> <p>16 would say no.</p> <p>17 Q. Okay. Drawing your attention back to Exhibit</p> <p>18 79, photograph number 4, can you tell me what other</p> <p>19 parts are missing from the meter panel.</p> <p>20 A. No, sir, I can't from what I see in 14.</p> <p>21 Q. As someone who does electric design work, is</p> <p>22 it your recommendation that electrical equipment be</p> <p>23 installed completely and have all of its component</p> <p>24 parts?</p> <p>25 A. Yes, sir.</p>

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181	<p>1 Q. Do you ever recommend that people remove</p> <p>2 component parts from electrical machinery or</p> <p>3 distribution systems?</p> <p>4 A. Only to aid in installation.</p> <p>5 Q. Okay. But if they have to remove it to aid</p> <p>6 in installation, they should reassemble the electrical</p> <p>7 device; is that correct?</p> <p>8 A. That's correct.</p> <p>9 Q. Do you know if the removal of component parts</p> <p>10 from electrical devices such as meter panels somehow</p> <p>11 changed its underwriters laboratory certification?</p> <p>12 A. Based on my experience, it's, it's likely.</p> <p>13 Q. Okay. Because Underwriters Laboratory tests</p> <p>14 a complete piece of equipment as intended to be sold,</p> <p>15 distributed, and received by the customer?</p> <p>16 A. That's correct.</p> <p>17 Q. Okay. So as soon as we start removing</p> <p>18 component parts, that alters what the finished product</p> <p>19 should be?</p> <p>20 A. That's correct.</p> <p>21 Q. Okay. I draw your attention to photograph</p> <p>22 6. There is a photograph of an aluminum conductor</p> <p>23 welded to the inside panel of the meter enclosure. Do</p> <p>24 you know if that conductor that is welded to the</p> <p>25 inside panel is line or load side?</p>	183	<p>1 The gap is, is relatively self-explanatory.</p> <p>2 It's the gap through which conductors would have been</p> <p>3 routed.</p> <p>4 This is one of the aluminum conductors from</p> <p>5 Connecticut Light &amp; Power that is seen at the top just</p> <p>6 below this arc damage that we see on the steel.</p> <p>7 Q. The arc damage that you see on the steel --</p> <p>8 A. Yes, sir.</p> <p>9 Q. -- did that occur after the arc fault</p> <p>10 occurred within the meter panel -- I'm sorry, within</p> <p>11 the breaker, in your opinion?</p> <p>12 A. Yes, sir.</p> <p>13 Q. Okay. So first the breaker experienced an</p> <p>14 arc fault and then later the arc faults that we see</p> <p>15 depicted in photograph 8 occurred. Is that your</p> <p>16 testimony?</p> <p>17 A. It had to be.</p> <p>18 Q. Why did it have to be?</p> <p>19 A. Because this notch that we see that is burned</p> <p>20 through the separator is closer to the source than</p> <p>21 what the circuit breaker was. So if this is what the</p> <p>22 initial point of failure was, the circuit breaker</p> <p>23 would not have had energy to fault and to fail in the</p> <p>24 manner in which it failed.</p> <p>25 Q. Okay. Does the existence of an arc fault at</p>
182	<p>1 A. That's line side.</p> <p>2 Q. Okay. How do you know?</p> <p>3 A. The gauge of the wire. It's 4 off, which</p> <p>4 would have been the Connecticut Light &amp; Power</p> <p>5 underground conductors.</p> <p>6 Q. I want to draw your attention to photograph</p> <p>7 number 8. All right. What's depicted in photograph</p> <p>8 number 8?</p> <p>9 A. We are looking at the --</p> <p>10 Q. Would you read the caption that is underneath</p> <p>11 it.</p> <p>12 A. Oh, I'm sorry. Yeah. Photograph 8, the</p> <p>13 underside of the horizontal sheet metal separator and</p> <p>14 supply side conductor routing gap.</p> <p>15 Q. Okay. So we're looking at the underside of</p> <p>16 the divider where the line side would come through; is</p> <p>17 that correct?</p> <p>18 A. That's correct.</p> <p>19 Q. All right. What is depicted in photograph 8</p> <p>20 of Exhibit 79, sir?</p> <p>21 A. What we are looking at is the separator.</p> <p>22 Q. Okay.</p> <p>23 A. This more or less hazy vertical piece on the</p> <p>24 left-hand side of the photograph would be the</p> <p>25 left-hand portion of the enclosure itself.</p>	184	<p>1 that location that we see in photograph 8, does that</p> <p>2 mean that if an arc fault occurred there first, that</p> <p>3 power would have been terminated to the line side that</p> <p>4 meets up with the circuit breaker inside the panel?</p> <p>5 A. Yes.</p> <p>6 Q. Why is that?</p> <p>7 A. Because this is the line side conductor that</p> <p>8 would have been supplying power up through the meter</p> <p>9 socket down through the copper conductors to the</p> <p>10 circuit breaker.</p> <p>11 Q. Okay, so explain it me how some arc damage</p> <p>12 there would suddenly stop power leading to the circuit</p> <p>13 breaker.</p> <p>14 A. Because what would have happened here is what</p> <p>15 we saw later on as this fault evolved. If the fault</p> <p>16 initiated here, the aluminum would have faulted.</p> <p>17 So we would have had arc fault between</p> <p>18 aluminum conductors. It would have damaged this</p> <p>19 steel. And it would have melted the aluminum down to</p> <p>20 the bottom of the panel as we see here. But there</p> <p>21 would not have been any energy that would have been</p> <p>22 available at the circuit breaker.</p> <p>23 Q. And that's my question: Why wouldn't there</p> <p>24 have been any energy available at the circuit breaker</p> <p>25 if the arc fault began at the damage point we see in</p>

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185	<p>1 photograph 8?</p> <p>2 <b>A.</b> This is the same thing as I explained before,</p> <p>3 having that hose that we cut off five feet before the</p> <p>4 end. If you consider the circuit breaker being the</p> <p>5 end of the line, if we cut the circuit here at this</p> <p>6 notch where the line side conductors are which are on</p> <p>7 the line side, on the source side of the circuit</p> <p>8 breaker, electrical current could not flow through the</p> <p>9 conductors.</p> <p>10 <b>Q.</b> Is it your testimony that the arc fault</p> <p>11 damage we see here also corresponds with the severing</p> <p>12 or cutting of the line side conductors?</p> <p>13 <b>A.</b> It does because you can see the remains of</p> <p>14 the line side conductor on the other side of the steel</p> <p>15 panel.</p> <p>16 <b>Q.</b> Okay. So you believe first the fault</p> <p>17 occurred within the breaker, then secondly at this</p> <p>18 point we see here at the edge as is depicted in</p> <p>19 photograph number 8. Is that the order of things?</p> <p>20 <b>A.</b> Yes, sir.</p> <p>21 <b>Q.</b> Let me hand you Exhibit No. 83. Can you read</p> <p>22 what photograph number that is.</p> <p>23 <b>A.</b> It says photograph number 8.</p> <p>24 <b>Q.</b> Can you explain to me why the photograph</p> <p>25 number 8 I received is different from the photograph</p>	187	<p>1 determine components, what parts and pieces were in</p> <p>2 various locations in that mass of aluminum that was</p> <p>3 found at the bottom of the panel.</p> <p>4 <b>Q.</b> Okay. I want to draw your attention to</p> <p>5 photograph 42 of Exhibit 79. And it looks like this</p> <p>6 is a photograph of the back side or the bottom of a</p> <p>7 BW2200 breaker. Is that your understanding as well?</p> <p>8 <b>A.</b> On the left-hand side would be the BW22</p> <p>9 upside down, so the load terminals would be to the top</p> <p>10 and the line terminals would be to the bottom.</p> <p>11 <b>Q.</b> Okay.</p> <p>12 <b>A.</b> And on the right side is the subject circuit</p> <p>13 breaker.</p> <p>14 <b>Q.</b> Do you know if the BW2200 configuration is</p> <p>15 identical to the CSR2200?</p> <p>16 <b>A.</b> With the exception of the additional</p> <p>17 components in the arc chute assembly, it's my</p> <p>18 understanding that it is.</p> <p>19 <b>Q.</b> Okay. There are a number of x-rays contained</p> <p>20 at the back of your report; is that correct?</p> <p>21 <b>A.</b> Yes, sir.</p> <p>22 <b>Q.</b> What do these x-rays tell you, if anything?</p> <p>23 <b>A.</b> Well, we, we have taken film type x-rays of</p> <p>24 both an exemplar unit and the subject unit before the</p> <p>25 lab exam in September. So what we're attempting to do</p>
186	<p>1 number 8 that was presented to me today and when it</p> <p>2 was added.</p> <p>3 There is no corresponding photograph that</p> <p>4 matches the photograph 8 in the exhibit you're looking</p> <p>5 at right now if that's what you're looking for.</p> <p>6 <b>A.</b> Yes, sir, that is what I was looking for.</p> <p>7 <b>Q.</b> Yeah, that's what I looked for, too.</p> <p>8 <b>A.</b> (After review.) No, sir, I can't.</p> <p>9 <b>Q.</b> Do you recall amending or changing your</p> <p>10 report in any way after November 12th of 2012?</p> <p>11 <b>A.</b> No, sir, I don't.</p> <p>12 <b>Q.</b> Do you have any recollection of inserting</p> <p>13 photograph number 8 that we have in Exhibit 79 into</p> <p>14 your report?</p> <p>15 <b>A.</b> No, sir, I don't.</p> <p>16 <b>Q.</b> If you will turn to photograph 27 of Exhibit</p> <p>17 79, let's just use that one. This looks like the</p> <p>18 portion of debris that you analyzed using a scanning</p> <p>19 electron microscope. Is that right?</p> <p>20 <b>A.</b> Yes, sir.</p> <p>21 <b>Q.</b> Okay. What was the purpose of that exercise?</p> <p>22 <b>A.</b> What we want to do is to see using electron</p> <p>23 dispersion spectroscopy, the EDS, in the -- on the</p> <p>24 little drawing there -- just to identify what elements</p> <p>25 that were there in an effort to see if we could</p>	188	<p>1 is just to identify the component locations before</p> <p>2 disassembly to -- at one point it was to aid in</p> <p>3 disassembly if disassembly was necessary, especially</p> <p>4 of the subject circuit breaker.</p> <p>5 And as could be seen in like photograph --</p> <p>6 radiograph number 2, the one that is identified number</p> <p>7 2, we can see even though this -- the left-hand image</p> <p>8 is displaced downward towards the page, this is the</p> <p>9 similar portion of the assembly as to what is on the</p> <p>10 subject breaker to the right.</p> <p>11 <b>Q.</b> Have you ever x-rayed a CSR2200?</p> <p>12 <b>A.</b> Other than at -- oh, I'm sorry. No, I have</p> <p>13 not. Well, in this case, it's assuming that the</p> <p>14 remains are necessarily the 2200.</p> <p>15 <b>Q.</b> You are correct. Have you ever x-rayed an</p> <p>16 exemplar CSR2200?</p> <p>17 <b>A.</b> No, sir, I have not.</p> <p>18 <b>Q.</b> Let me see that report.</p> <p>19 <b>A.</b> Sure.</p> <p>20 <b>Q.</b> Mr. Cristino, I want to go through some of</p> <p>21 the documents that are contained in group Exhibit 82.</p> <p>22 And I will represent to you at end of this deposition</p> <p>23 today, I'm going to ask that we have an entire copy</p> <p>24 made of this entire binder. And we can leave it with</p> <p>25 the court reporter or give it to you to have it made,</p>

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189	<p>1 however you would like. Okay?</p> <p>2 A. Sure.</p> <p>3 Q. And I understand Exhibit 82 was compiled by</p> <p>4 an assistant of yours; is that correct?</p> <p>5 A. Yes, sir.</p> <p>6 Q. You charge Mr. Rossi for your time; is that</p> <p>7 correct?</p> <p>8 A. Up until the beginning of this deposition,</p> <p>9 yes, sir.</p> <p>10 Q. And now you're charging me, right?</p> <p>11 A. Yes, sir.</p> <p>12 Q. What are you charging Mr. Rossi for your</p> <p>13 time?</p> <p>14 A. The same as what I'm charging you.</p> <p>15 Q. And what would that be?</p> <p>16 A. Whatever is on that sheet.</p> <p>17 Q. Do you know what it is?</p> <p>18 A. Off the top of my head, sir, no, I don't.</p> <p>19 Q. Are you a principal engineer?</p> <p>20 A. Yes, sir, I am.</p> <p>21 Q. Your regular rate is \$230 per hour?</p> <p>22 A. Yes.</p> <p>23 Q. What do you charge your regular rate for?</p> <p>24 A. Design work on scene investigation time,</p> <p>25 laboratory analysis, and report prep.</p>	191	<p>1 Q. You have also included your c.v. Is this</p> <p>2 current and up to date?</p> <p>3 A. It should be, sir.</p> <p>4 Q. Is there anything you want to add to your c.v</p> <p>5 or remove from it, any amendments that you want</p> <p>6 make to it?</p> <p>7 A. Not that I can think of.</p> <p>8 Q. This is complete current and accurate?</p> <p>9 A. It should be.</p> <p>10 Q. Okay. You also have a section listed as</p> <p>11 trials and depositions in group Exhibit 82?</p> <p>12 A. Yes, sir.</p> <p>13 Q. These are what's commonly referred to as your</p> <p>14 Rule 26 disclosure; is that right?</p> <p>15 A. Yes, sir.</p> <p>16 Q. And the P would be for plaintiff and the D</p> <p>17 would be for defendant; is that right?</p> <p>18 A. Yes, sir.</p> <p>19 Q. Have you ever testified against Eaton</p> <p>20 Corporation before?</p> <p>21 A. No, sir, not that I know of.</p> <p>22 Q. You have a section that is entitled loss at</p> <p>23 75 Vista View, Southbury, Connecticut, invoices. Are</p> <p>24 these all the invoices that you have submitted to</p> <p>25 Mr. Rossi?</p>
190	<p>1 Q. Okay. And in terms of trial or deposition</p> <p>2 testimony, how much do you charge? \$300 an hour?</p> <p>3 A. Is that what's on there? Yes, sir.</p> <p>4 Q. That's what's on here.</p> <p>5 A. Then that's what it is.</p> <p>6 Q. Have you done trial or deposition testimony</p> <p>7 in this case for Mr. Rossi?</p> <p>8 A. Other than today, no, sir.</p> <p>9 Q. Are you charging him 230 hours -- or \$300 an</p> <p>10 hour for your time here today or are you charging me</p> <p>11 that?</p> <p>12 A. I'm charging you that.</p> <p>13 Q. So you're charging me \$300 an hour?</p> <p>14 A. Yes, sir.</p> <p>15 Q. And all the time you worked with Mr. Rossi in</p> <p>16 doing your report and investigation, I take it you</p> <p>17 charged him \$230 an hour?</p> <p>18 A. Yes, sir.</p> <p>19 Q. Do you know how much you have charged him</p> <p>20 total in your investigation in preparation of the</p> <p>21 report in this case?</p> <p>22 A. No, sir, I don't.</p> <p>23 Q. Have you brought the invoices with you here?</p> <p>24 A. Yes, the invoices are on the second or third</p> <p>25 page.</p>	192	<p>1 A. It should be, sir.</p> <p>2 Q. Okay. And has Mr. Rossi compensated for your</p> <p>3 time and effort in this matter?</p> <p>4 A. I wouldn't know.</p> <p>5 Q. I'm sorry?</p> <p>6 A. I wouldn't know.</p> <p>7 Q. Who would?</p> <p>8 A. Our office manager.</p> <p>9 Q. And who is that?</p> <p>10 A. Lois Buchanan.</p> <p>11 Q. Has anyone else in your office worked on this</p> <p>12 file other than you and Ms. Buchanan?</p> <p>13 A. Ms. Horn, Cathy Horn (ph), is our secretary.</p> <p>14 She usually proofreads and makes copies of my</p> <p>15 reports.</p> <p>16 If I'm not mistaken, our lead technician Nuno</p> <p>17 Almeida conducted an exam with some of your people at</p> <p>18 a storage facility.</p> <p>19 Q. Okay.</p> <p>20 A. I think that was a short time ago. Somebody</p> <p>21 stopped over to see the panel and the other artifacts.</p> <p>22 Q. Anyone else from your office work on this</p> <p>23 file?</p> <p>24 A. Not that I believe.</p> <p>25 Q. Okay. You have a section here that says</p>

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193	<p>1 January 31st, 2011, loss at Vista View, site exam, 2 evidence retrieval photographs. I take it these are 3 the photographs you took at that examination; is that 4 correct? 5 A. Yes, sir. 6 Q. And do you have these in electronic format as 7 well? 8 A. They are in the file. 9 Q. Okay. They're in Exhibit 81? 10 A. Yes, sir. 11 Q. You also have photographs from the February 12 17, 2011 exam; is that correct? 13 A. Yes, sir. 14 Q. And the March 14, 2011, lab exam. Is that 15 right? 16 A. Yes, sir. 17 Q. And the September 11, 2011, lab exam. Is 18 that also correct? 19 A. Yes, sir. 20 Q. The x-rays, they were taken on July 27 of 21 2012; is that correct? 22 A. As I believe, yes, sir. 23 Q. And you have a section that includes those 24 x-rays in Exhibit 82; is that right? 25 A. Yes, sir.</p>	195	<p>1 A. Yes, sir. 2 Q. And what testing was done? 3 A. We dipped the circuit breaker in water. 4 Q. When you say dipped, submerged completely? 5 A. Yes, sir. 6 Q. And who is we? 7 A. Mr. Almeida and I. 8 Q. Did you prepare any reports of this testing? 9 A. No, sir. 10 Q. Did you videotape the testing? 11 A. We have got one videotape that was -- it 12 wasn't taken at that time, I don't think. What is the 13 date on those photographs? 14 Q. October 29th of 2012. 15 A. Yeah, we didn't videotape anything at that 16 time. 17 Q. How long did the circuit breaker remain 18 submerged? 19 A. If I remember correctly, the circuit breaker 20 was submerged for approximately five minutes. 21 Q. Was it energized when it was submerged for 22 five minutes? 23 A. No, sir. 24 Q. Had you altered the circuit breaker in any 25 way prior to submerging it for five minutes?</p>
194	<p>1 Q. All right. It looks like additional 2 photographs were taken on July 30th of 2012 as well. 3 Is that your understanding? 4 A. Of the x-rays, yes, sir, I think it's -- I 5 take that back. That's our other technician Jerry 6 Seeland (ph). 7 Q. I was going to ask who that is. 8 A. Yeah, Jerry took those photographs in an 9 attempt to get better copies than what was in the 10 previous tab there. 11 Q. Okay. And were these the ones that are used 12 in Exhibit 79? 13 A. If I remember correctly, yes. 14 Q. Okay. It looks like you took photographs on 15 October 29, 2012, of a breaker. Is that correct? 16 A. Yes, sir. 17 Q. And did you take these photographs? 18 A. Those might have been taken by -- can you 19 flip through them for a just a second here. They 20 might have been taken by Mr. Almeida, our lead tech. 21 Q. This is of a CSR2200 breaker; is that 22 correct? 23 A. Yes, sir. 24 Q. The breaker appears to be wet. Was there 25 some sort of testing done on this breaker?</p>	196	<p>1 A. No, sir. 2 Q. What was the point of submerging the circuit 3 breaker for five minutes? 4 A. We were looking to see if having freestanding 5 water in the circuit breaker and then subjecting it to 6 freezing conditions could possibly explain a fracture 7 or have created some failure with the back side of the 8 breaker. 9 Q. Okay. Was there freestanding water in the 10 meter panel that was attached to 75 Vista View Drive? 11 A. When? 12 Q. Prior to the fire or at any time, to your 13 knowledge. 14 A. Not that I know of, sir, no. 15 Q. This test you performed to see if there would 16 be any cracking, what was the result of that test? 17 A. There was no cracking. 18 Q. Okay. I see photographs of a BWH2200 circuit 19 breaker. Can you tell me why you have a BWH circuit 20 breaker? 21 A. It was just another circuit breaker that was 22 available of similar configuration. 23 Q. Did you also submerge this circuit breaker? 24 A. Yes, sir, we did. 25 Q. What was the purpose of submerging the BWH</p>

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197	<p>1 circuit breaker?</p> <p>2 A. The same as the CRS, to see if there was any</p> <p>3 damage that would result from -- from moisture within</p> <p>4 the circuit breaker?</p> <p>5 Q. Okay. Was there any damage that</p> <p>6 resulted from moisture within the circuit breaker?</p> <p>7 A. No, sir, there was not.</p> <p>8 Q. And I take it that after you submerged the</p> <p>9 circuit breaker for five minutes, you took it apart?</p> <p>10 A. Yes, sir, we did.</p> <p>11 Q. And that revealed that after it's been</p> <p>12 submerged for five minutes, water will, in fact, enter</p> <p>13 through the vent holes and get inside the circuit</p> <p>14 breaker. Is that your understanding?</p> <p>15 A. That's correct.</p> <p>16 Q. Do you believe that the manufacturer intends</p> <p>17 for this circuit breaker to be submerged?</p> <p>18 A. No, sir.</p> <p>19 Q. And I trust you will never install this</p> <p>20 circuit breaker anywhere now that it has been</p> <p>21 submerged. Is that correct?</p> <p>22 A. That's correct.</p> <p>23 Q. Why did you take the -- I believe this is the</p> <p>24 CSR2200 circuit breaker. Why did you take the top off</p> <p>25 after you had submerged it?</p>	199	<p>1 Q. After you had submerged it for five minutes,</p> <p>2 how long did you keep it out of water before you</p> <p>3 disassembled the breaker?</p> <p>4 A. Within a matter of 10 to 15 minutes.</p> <p>5 Q. At any point after its submersion -- that's a</p> <p>6 bad question.</p> <p>7 How many times did you examine it after it</p> <p>8 had been submerged? Just the one time 10 to 15</p> <p>9 minutes later?</p> <p>10 A. Yes, sir.</p> <p>11 Q. Where is this submerged CSR2200 circuit</p> <p>12 breaker now?</p> <p>13 A. If I'm not mistaken, it's in my car.</p> <p>14 Q. Other than the exemplar meter panel that is</p> <p>15 in your car and this CSR2200 circuit breaker, are</p> <p>16 there any other components, parts, exemplars,</p> <p>17 documents, or anything else that relates to this case</p> <p>18 in your car?</p> <p>19 A. There would be, I think, two more circuit</p> <p>20 breakers in the car.</p> <p>21 Q. And when you say two more, of the CSR2200?</p> <p>22 A. The BWH and then another CSR.</p> <p>23 Q. Okay. Do they still have moisture in them?</p> <p>24 A. We would have to open them up and take a</p> <p>25 look.</p>
198	<p>1 A. To observe the internal workings and see</p> <p>2 where moisture would have been trapped and where</p> <p>3 moisture would have settled.</p> <p>4 Q. And did that assist you in forming your</p> <p>5 opinions in any way?</p> <p>6 A. It gave us some insight as to where, where</p> <p>7 the moisture would be within the circuit breaker.</p> <p>8 Q. Where would the moisture be within the</p> <p>9 circuit breaker?</p> <p>10 A. In and around the arc chute chambers and the</p> <p>11 bus assemblies.</p> <p>12 Q. Anywhere else after it has been submerged for</p> <p>13 five minutes?</p> <p>14 A. That was pretty much it.</p> <p>15 Q. Were there any areas within the circuit</p> <p>16 breaker that were not subjected to moisture after you</p> <p>17 submerged it for five minutes?</p> <p>18 A. The portion of the toggle assembly, the upper</p> <p>19 portion of the toggle assembly.</p> <p>20 Q. Any other section of the breaker that was not</p> <p>21 exposed to moisture after it had been submerged for</p> <p>22 five minutes?</p> <p>23 A. Well, when you say exposed to moisture, it</p> <p>24 would have been -- we are looking for it to retain</p> <p>25 moisture.</p>	200	<p>1 Q. They're reassembled?</p> <p>2 A. Yes, sir.</p> <p>3 Q. I take it you haven't opened them back up to</p> <p>4 take a look, have you?</p> <p>5 A. No, sir.</p> <p>6 Q. Since you submerged the circuit breakers,</p> <p>7 have you tested them in any way?</p> <p>8 A. We did a test. There is a CD here, if I may.</p> <p>9 Q. Please.</p> <p>10 A. I put dates on them. I don't know if I put</p> <p>11 the date on them. Yeah. Yesterday. I got a CD. One</p> <p>12 of the things that we --</p> <p>13 Q. You've handed me a CD dated December 19,</p> <p>14 2012; is that correct?</p> <p>15 A. Yes, sir.</p> <p>16 Q. And what is on this CD?</p> <p>17 A. That's a video of one of the circuit breakers</p> <p>18 that we froze. And there is a hand in the, in the</p> <p>19 photograph. If I'm not mistaken, it is Mr. Almeida's</p> <p>20 hand attempting to turn the circuit breaker from the</p> <p>21 on position to the off position.</p> <p>22 Q. While it's frozen?</p> <p>23 A. After it was taken out of the freezer, yes.</p> <p>24 Q. So let me see if I understand it right. You</p> <p>25 submerged a CSR2200 circuit breaker for five minutes?</p>

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201	<p>1 A. Yes, sir.</p> <p>2 Q. And then you put in the freezer and froze</p> <p>3 it?</p> <p>4 A. That's correct.</p> <p>5 Q. And when it was frozen, you brought it back</p> <p>6 out and Mr. Almeida did what to it?</p> <p>7 A. He manipulated the toggle from on to off.</p> <p>8 Q. And did that work?</p> <p>9 A. No, sir.</p> <p>10 Q. Do you know why not?</p> <p>11 A. We, we didn't take the breaker apart at that</p> <p>12 point. And we didn't have a way of x-raying it. So</p> <p>13 no.</p> <p>14 Q. What does the fact that a breaker that is</p> <p>15 submerged in water and then frozen and having its</p> <p>16 toggle switch not work tell you about this case, if</p> <p>17 anything?</p> <p>18 A. Well, what it does is it gives us insight as</p> <p>19 to the reaction of the circuit breaker to cold weather</p> <p>20 operation if it's exposed to moisture.</p> <p>21 Q. When you say exposed to moisture, submerged</p> <p>22 for five minutes?</p> <p>23 A. Well, submerged --</p> <p>24 Q. And frozen?</p> <p>25 A. Submerged for five minutes and frozen, yes,</p>	203	<p>1 Mr. Almeida ran through it on his own.</p> <p>2 Q. Okay. And Exhibit 82 also has a blue section</p> <p>3 that says October 29, 2012, frozen breaker</p> <p>4 photographs. I take it these are what the breaker</p> <p>5 looked like after you froze it; is that correct?</p> <p>6 A. Yes, sir.</p> <p>7 Q. After you froze these breakers, did you</p> <p>8 subject them to any electrical test in a frozen state</p> <p>9 after they had been submerged for five minutes?</p> <p>10 A. After they had been dried, yes.</p> <p>11 Q. Okay. And what was the result of that</p> <p>12 testing?</p> <p>13 A. What the result of the testing was was that</p> <p>14 the first two tests, the circuit breaker just remained</p> <p>15 energized and on a third breaker test our lab didn't</p> <p>16 have sufficient energy and we wound up tripping</p> <p>17 circuit breakers upstream so we basically blacked out</p> <p>18 the lab.</p> <p>19 Q. So you're -- and when you say -- I take it</p> <p>20 you did three tests on three different breakers?</p> <p>21 A. Yes.</p> <p>22 Q. And the results of those three tests on three</p> <p>23 different breakers were the ones that had been</p> <p>24 submerged and frozen continued to work and then on the</p> <p>25 third test you actually tripped your breaker at your</p>
202	<p>1 sir.</p> <p>2 Q. Was the circuit breaker that was installed in</p> <p>3 the meter panel at 75 Vista View Drive ever submerged</p> <p>4 for five minutes?</p> <p>5 A. To the best of my knowledge, no. But it was</p> <p>6 subjected to weather conditions for over five years.</p> <p>7 And this was our way of providing a means of</p> <p>8 documenting what that circuit breaker would operate</p> <p>9 like if it did have moisture inside and was subjected</p> <p>10 to low temperatures.</p> <p>11 Q. Is the only video you took....</p> <p>12 <b>MR. BARTON: Let's mark this.</b></p> <p>13 <b>(Whereupon, Exhibit No. 85 was marked for</b></p> <p>14 <b>identification.)</b></p> <p>15 <b>BY MR. BARTON:</b></p> <p>16 Q. What I have now marked as Exhibit 85, which</p> <p>17 is the video dated December 19, 2012, is this the only</p> <p>18 video you've taken in this case?</p> <p>19 A. Yes, sir.</p> <p>20 Q. Did you run through a trial run before you</p> <p>21 turned on the videotape of the breaker?</p> <p>22 A. No, sir.</p> <p>23 Q. Am I correct you and Mr. Almeida were the</p> <p>24 only two present?</p> <p>25 A. No, sir, I wasn't present at that time.</p>	204	<p>1 facility and couldn't conduct the test.</p> <p>2 A. That's correct.</p> <p>3 Q. And I take it you didn't videotape any of</p> <p>4 those tests?</p> <p>5 A. No, sir, we did not.</p> <p>6 Q. Did you take photographs of those tests?</p> <p>7 A. There may be some photographs in that --</p> <p>8 Q. Did you conduct those tests?</p> <p>9 A. No, sir, Mr. Almeida did.</p> <p>10 Q. When were those tests conducted?</p> <p>11 A. I think -- take a look at it. It should be</p> <p>12 -- you will see -- it's easy to tell because the panel</p> <p>13 is in there with the wires connected to the breaker.</p> <p>14 Q. Let me get to that. On the Exhibit 82, we</p> <p>15 also see a blue section that says September 7</p> <p>16 photographs. These are Mr. Almeida's photographs from</p> <p>17 the artifact inspection we did; is that correct?</p> <p>18 A. I believe that's when you sent people to our</p> <p>19 facility.</p> <p>20 Q. Correct. All right. And we see a section</p> <p>21 called test photographs dated December 17, 2012.</p> <p>22 A. Right.</p> <p>23 Q. And were you present during the tests on</p> <p>24 December 17, 2012?</p> <p>25 A. December 17 would have been --</p>

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205	<p>1 Q. Monday?</p> <p>2 A. Monday? No, sir, I was not.</p> <p>3 Q. Have you reviewed these photographs before?</p> <p>4 A. Yes, sir, I looked at them.</p> <p>5 Q. And what, if any effect, did the photographs</p> <p>6 taken on December 17 2012, have with respect to your</p> <p>7 opinions, if any?</p> <p>8 A. None.</p> <p>9 Q. Do you know what these photographs depict?</p> <p>10 Is this ice?</p> <p>11 A. Yes, it is. There should have been some ice</p> <p>12 on the back of the circuit breaker.</p> <p>13 Q. How did the moisture get on the back of this</p> <p>14 circuit breaker that forms the ice?</p> <p>15 A. Again, this is one of the breakers that was</p> <p>16 exposed to moisture and then frozen.</p> <p>17 Q. Okay. So it was submerged and then frozen?</p> <p>18 A. Yes, sir.</p> <p>19 Q. All right. And then I take it you later</p> <p>20 installed it on a meter panel and energized it; is</p> <p>21 that correct?</p> <p>22 A. That's correct.</p> <p>23 Q. And that's what we see here in these other</p> <p>24 photographs?</p> <p>25 A. That's correct.</p>	207	<p>1 A. As far as I know, he was by himself.</p> <p>2 Q. Who instructed him to do that testing, if</p> <p>3 anyone?</p> <p>4 A. I, I instructed him to perform that test.</p> <p>5 Q. Why?</p> <p>6 A. We had, we had performed the, the other tests</p> <p>7 previously and it was just a matter of performing an</p> <p>8 additional test after we saw that that....</p> <p>9 <b>MR. BARTON: Can you mark this.</b></p> <p>10 <b>(Whereupon, Plaintiff's Exhibit No. 86 was</b></p> <p>11 <b>marked for identification.)</b></p> <p>12 <b>BY MR. BARTON:</b></p> <p>13 Q. Within Exhibit 81 there is a number of</p> <p>14 documents. I'm going to mark some of them separate</p> <p>15 just to make it easy for us.</p> <p>16 Let me hand you Exhibit 86. Can you tell me</p> <p>17 what this is.</p> <p>18 A. Yes, sir, that's a telephone log of a</p> <p>19 telephone conversation I had with the owner of SL</p> <p>20 Kelley Electric.</p> <p>21 Q. Earlier in this deposition, I asked you who</p> <p>22 you spoke with and what witnesses you spoke with in</p> <p>23 connection with this case and you indicated none. Did</p> <p>24 you just forget that you spoke with Mr. Kelley?</p> <p>25 A. I didn't consider him to be a witness.</p>
206	<p>1 Q. And those tests prove that the circuit</p> <p>2 breaker continued to function normally. Is that</p> <p>3 right?</p> <p>4 A. That's correct.</p> <p>5 Q. And you took no videos of that testing; is</p> <p>6 that right?</p> <p>7 A. That's correct.</p> <p>8 Q. Is this circuit breaker we see here depicted</p> <p>9 in your test, is it frozen?</p> <p>10 A. Well, it should be in the thawing stage of</p> <p>11 having been frozen.</p> <p>12 Q. Okay, so this is the one that had been</p> <p>13 submerged, frozen. And it looks like it still has ice</p> <p>14 on it and you energized it?</p> <p>15 A. Yes.</p> <p>16 Q. And it worked fine?</p> <p>17 A. Yes, sir, it did.</p> <p>18 Q. And we only have three photographs of that;</p> <p>19 is that right?</p> <p>20 A. Yes, sir.</p> <p>21 Q. And Mr. Almeida is the one that did that</p> <p>22 testing?</p> <p>23 A. Yes, sir.</p> <p>24 Q. And do you know who was present with</p> <p>25 Mr. Almeida when that testing was done on Monday?</p>	208	<p>1 Q. Why did you talk to him?</p> <p>2 A. I was attempting to identify the -- what we</p> <p>3 had discussed before, that gutter assembly. It had</p> <p>4 been something that showed up in our photographs and</p> <p>5 something that I never remember seeing from the first</p> <p>6 day that I was on the fire scene.</p> <p>7 And so this is a matter of following up with</p> <p>8 a telephone conversation and just getting his, his</p> <p>9 remembrance of what had transpired up to and including</p> <p>10 the installation of the panel.</p> <p>11 Q. And did anyone instruct you to call</p> <p>12 Mr. Kelley?</p> <p>13 A. I had spoken with Attorney Rossi and gotten</p> <p>14 permission from him to do so.</p> <p>15 Q. Okay. And Exhibit 86 is your notes from that</p> <p>16 conversation?</p> <p>17 A. Yes, sir.</p> <p>18 Q. And did Mr. -- let me ask a better question.</p> <p>19 When was the first time you realized the</p> <p>20 gutter was missing from this meter panel?</p> <p>21 A. When I observed that usual -- excuse me, the</p> <p>22 unusual slant in the panel construction, that was my</p> <p>23 first indication.</p> <p>24 And then when we received the information</p> <p>25 from Eaton (maybe about a year later I think we got</p>

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209	<p>1 that), that was the first time that I knew. But I</p> <p>2 was, I was suspect from the day that we did the</p> <p>3 inspection in 2011.</p> <p>4 <b>Q.</b> Is there some reason why you didn't mention</p> <p>5 the missing components in your report of November 12,</p> <p>6 2012?</p> <p>7 <b>A.</b> No, sir.</p> <p>8 <b>Q.</b> What did Mr. Kelley tell you with respect to</p> <p>9 the gutter?</p> <p>10 <b>A.</b> Well, as he remembered, it was there when his</p> <p>11 fellows purchased it. He said he normally doesn't use</p> <p>12 Eaton products. I can't remember. He used another</p> <p>13 major manufacturer. But given the time line of the 75</p> <p>14 Vista View installation, his fellows went to a local</p> <p>15 supply house. And Cutler Hammer had some type of</p> <p>16 program in place and so they got the meter enclosure</p> <p>17 at a very reduced cost.</p> <p>18 And they, his two electricians, as reported</p> <p>19 to me, delivered it to the site, installed it on the</p> <p>20 side of the building, installed the SER cable from the</p> <p>21 bottom of the circuit breaker.</p> <p>22 And in his statement, he stated that then</p> <p>23 Connecticut Light &amp; Power showed up and installed</p> <p>24 their wiring and made their connections.</p> <p>25 <b>Q.</b> Did Mr. Kelley tell you who the electricians</p>	211	<p>1 <b>A.</b> No, sir, I did not.</p> <p>2 <b>Q.</b> So if I have got it right, you spoke with</p> <p>3 Mr. Kelley on December what? The 10th?</p> <p>4 <b>A.</b> Yes, sir.</p> <p>5 <b>Q.</b> Of 2012, at Mr. Rossi's suggestion. And</p> <p>6 Mr. Kelley advised you that two of his guys who you</p> <p>7 cannot identify installed the meter panel and he</p> <p>8 believed that the wire way -- the gutter wire way</p> <p>9 would have been present. Is that right?</p> <p>10 <b>A.</b> Yes, sir.</p> <p>11 <b>Q.</b> Did Mr. Kelley indicate to you that he spoke</p> <p>12 with the two gentleman who installed the meter panel?</p> <p>13 <b>A.</b> No, sir, he did not.</p> <p>14 <b>Q.</b> Okay. Did you ask him how he knows that the</p> <p>15 gutter was in place on a meter panel he has never seen</p> <p>16 which was installed by two employees who he cannot</p> <p>17 identify?</p> <p>18 <b>A.</b> I didn't ask him to identify the employees.</p> <p>19 I can't that he couldn't. I never asked who installed</p> <p>20 it.</p> <p>21 In the process of talking to him, he had --</p> <p>22 he was the only person in the office. He had the</p> <p>23 phone ringing in the background. And I asked him for</p> <p>24 the information that I thought was important and he</p> <p>25 presented it to me.</p>
210	<p>1 were who were the ones that installed the meter at 75</p> <p>2 Vista View Drive?</p> <p>3 <b>A.</b> No, he did not. I didn't ask.</p> <p>4 <b>Q.</b> Okay. When you say Mr. Kelley advised you</p> <p>5 that the gutter was present on the meter panel when</p> <p>6 his guys installed it, did you ask him how he knows</p> <p>7 that?</p> <p>8 <b>A.</b> No, sir, I didn't.</p> <p>9 <b>Q.</b> Did you ask Mr. Kelley if he had ever been to</p> <p>10 75 Vista View Drive?</p> <p>11 <b>A.</b> I had asked him if he had been there for the</p> <p>12 installation, at which time he explain to me that he</p> <p>13 didn't do field work, that he was basically in the</p> <p>14 office.</p> <p>15 <b>Q.</b> So it's your understanding that Mr. Kelley</p> <p>16 was never at Vista View prior to the fire; is that</p> <p>17 right?</p> <p>18 <b>A.</b> That I don't know. I mean, I just know that</p> <p>19 he wasn't there for the installation.</p> <p>20 <b>Q.</b> Okay.</p> <p>21 <b>A.</b> He might have been there for a drive-by or to</p> <p>22 drop some equipment off to his people, but I don't</p> <p>23 know.</p> <p>24 <b>Q.</b> Did you ask Mr. Kelley if he had ever seen</p> <p>25 the meter panel prior to the fire?</p>	212	<p>1 There was a discussion with regard to, you</p> <p>2 know, what, what the gutter was and where the gutter</p> <p>3 was. And that's when he said -- you know, stated to</p> <p>4 me that it had been present when it was purchased. So</p> <p>5 how he knew that, you know, I didn't press the issue</p> <p>6 on that.</p> <p>7 <b>Q.</b> Did he tell you why his employees got a</p> <p>8 discount on this meter panel?</p> <p>9 <b>A.</b> He said that Cutler Hammer was running some</p> <p>10 special promotion and they -- they meaning the supply</p> <p>11 house -- was able to provide it at a greatly reduced</p> <p>12 price.</p> <p>13 <b>Q.</b> Did you work with -- and if Don is a</p> <p>14 consultant, tell me. But did you work with Don Galler</p> <p>15 at all in connection with this case?</p> <p>16 <b>MR. ROSSI: Yes, he's a retained expert.</b></p> <p>17 <b>MR. BARTON: He was retained, but</b></p> <p>18 <b>nontestifying.</b></p> <p>19 <b>MR. ROSSI: Right. And I wanted to produce</b></p> <p>20 <b>that letter, but I didn't want to take his name</b></p> <p>21 <b>out of it, so.... Because the letter has --</b></p> <p>22 <b>MR. BARTON: Yeah, it does.</b></p> <p>23 <b>MR. ROSSI: -- information in it.</b></p> <p>24 <b>BY MR. BARTON:</b></p> <p>25 <b>Q.</b> Other than Mr. Kelley, have you spoken with</p>

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1 anyone else in connection with this case, excluding  
 2 your conversations with Mr. Rossi or Mr. Galler?  
 3 **A.** Or Mr. Driscoll?  
 4 **Q.** Or Mr. Driscoll.  
 5 **A.** No.  
 6 **Q.** Nobody else? Have you had any other phone  
 7 interviews with anybody that I would call a witness?  
 8 **A.** I don't believe so.  
 9 **Q.** Okay. Mr. Cristino, do you believe we have  
 10 covered all of your opinions and the basis for them  
 11 today?  
 12 **A.** Yes.  
 13 **Q.** Is there anything we have missed?  
 14 **A.** No, sir.  
 15 **Q.** Stapled to the back of Exhibit 81 is eight CD  
 16 Roms. I won't go through them all. But these  
 17 comprise not only your photographs, but the documents  
 18 received by Mr. Rossi and through Quali-Tech; is that  
 19 correct?  
 20 **A.** Yes, sir.  
 21 **Q.** They're all labeled.  
 22 **A.** Yes, sir, they are.  
 23 **MR. ROSSI: I think your photos are in there**  
 24 **too.**  
 25 **MR. BARTON: Yeah.**

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1 **BY MR. BARTON:**  
 2 **Q.** Other than the documents Mr. Rossi has  
 3 removed, do I now have and have we now gone through  
 4 all of the documents that are contained in your file,  
 5 sir?  
 6 **A.** Yes, sir.  
 7 **Q.** And I believe we've exhausted your opinions  
 8 in this case; is that right?  
 9 **A.** Well, I've got opinions you haven't even  
 10 touched on. But for this case.  
 11 **Q.** Well, in this case.  
 12 **A.** Yes, sir.  
 13 **MR. BARTON: I'm sure you have many**  
 14 **opinions. Mr. Cristino, thank you for your time**  
 15 **today. I don't have any to further questions for**  
 16 **you.**  
 17 **MR. ROSSI: He'll read and sign.**  
 18 **THE VIDEOGRAPHER: That concludes his**  
 19 **testimony. Going off videotape number 4,**  
 20 **4:00 p.m.**  
 21 **(Whereupon, at 4:00 p.m., the taking of the**  
 22 **deposition concluded.)**  
 23 **\*\*\*\*\***  
 24  
 25

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1 **CERTIFICATE**  
 2 I, Susan Wandzilak, hereby certify that I am  
 3 a Registered Professional Reporter and Notary Public  
 4 in and for the State of Connecticut, commissioned and  
 5 qualified to administer oaths.  
 6 I further certify that the deponent named in  
 7 the foregoing deposition was by me duly sworn, and  
 8 thereupon testified as appears in the foregoing  
 9 deposition; that said deposition was taken by me  
 10 stenographically in the presence of counsel and  
 11 reduced to typewriting under my direction, and the  
 12 foregoing pages are a true and accurate copy of the  
 13 original transcript of the testimony.  
 14 I further certify that I am neither of  
 15 counsel nor attorney to either of the parties to said  
 16 suit, nor am I an employee of either party to said  
 17 suit, nor of either counsel in said suit, nor am I  
 18 interested in the outcome of said cause.  
 19 Witness my hand and seal as Notary Public  
 20 this 5th day of January 2013.  
 21  
 22 \_\_\_\_\_  
 23 SUSAN WANDZILAK  
 24  
 25

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1  
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217	<p>1 GorePerry Reporting &amp; Video                  2 Tuesday, January 8, 2013                  3 Peter Rossi                  Cozen O'Connor                  4 1900 Market Street                  Philadelphia PA 19103                  5                  6 Re: Deposition of Joe Cristino                  Date:Thursday, December 20, 2012                  Case:Ace American Insurance Company v. Eaton Electrical, Inc.                  Peter Rossi                  8                  9                  10 Your witness did not waive the right to read and sign                  his/her deposition in the above referenced matter.                  11 Enclosed is the copy of the deposition you ordered,                  together with errata sheets and additional signature                  12 page. Please instruct your witness to read the                  transcript, list any corrections (including page and                  13 line number) on the errata sheets, sign and date the                  errata sheets and signature page.                  14                  15 Within 30 days, please return the errata sheets and                  signature page to our office for further processing.                  16 Your prompt cooperation will be appreciated.                  17 Sincerely,                  18                  19                  20                  21                  22                  23 Production Department                  GorePerry Reporting &amp; Video                  24 515 Olive Street                  St. Louis, MO 63101                  25 (314) 241-6750</p>	219	<p>1 Page Line Should Read:                  2 Reason for change:                  3                  4 Page Line Should Read:                  5 Reason for change:                  6                  7 Page Line Should Read:                  8 Reason for change:                  9                  10 Page Line Should Read:                  11 Reason for change:                  12                  13 Page Line Should Read:                  14 Reason for change:                  15                  16 Page Line Should Read:                  17 Reason for change:                  18                  19 Page Line Should Read:                  20 Reason for change:                  21                  22 Page Line Should Read:                  23 Reason for change:                  24                  25</p>
218	<p>1 Page Line Should Read:                  2 Reason for change:                  3                  4 Page Line Should Read:                  5 Reason for change:                  6                  7 Page Line Should Read:                  8 Reason for change:                  9                  10 Page Line Should Read:                  11 Reason for change:                  12                  13 Page Line Should Read:                  14 Reason for change:                  15                  16 Page Line Should Read:                  17 Reason for change:                  18                  19 Page Line Should Read:                  20 Reason for change:                  21                  22 Page Line Should Read:                  23 Reason for change:                  24                  25</p>	220	<p>1 Comes now the witness, Joe Cristino ,                  2 and having read the foregoing transcript                  3 of the deposition taken on 12/20/2012,                  4 acknowledges by signature hereto that it is a                  5 true and accurate transcript of the testimony given                  6 on the date hereinabove mentioned.                  7                  8                  9 _____                  10 Joe Cristino                  11                  12 Subscribed and sworn to me before this                  13 ____ day of _____, 20____.                  14 My Commission expires                  15                  16                  17 _____                  18 Notary Public                  19                  20                  21                  22                  23                  24                  25</p>

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221	<p>1 COURT MEMO</p> <p>2</p> <p>3</p> <p>4</p> <p>5 Ace American Insurance Company v. Eaton Electrical, Inc.</p> <p>6</p> <p>7</p> <p>8 CERTIFICATE OF OFFICER AND</p> <p>9 STATEMENT OF DEPOSITION CHARGES</p> <p>10</p> <p>11 DEPOSITION OF Joe Cristino</p> <p>12</p> <p>13 12/20/2012</p> <p>14 Name and address of person or firm having custody of</p> <p>15 the original transcript:</p> <p>16</p> <p>17 Sandberg, Phoenix &amp; von Gontard, P.C.</p> <p>18 600 Washington Avenue, 15th Floor</p> <p>19 St. Louis, MO 63101</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	223	<p>1 Upon delivery of transcripts, the above</p> <p>2 charges had not been paid. It is anticipated</p> <p>3 that all charges will be paid in the normal course</p> <p>4 of business.</p> <p>5 GORE PERRY GATEWAY &amp; LIPA REPORTING COMPANY</p> <p>6 515 Olive Street, Suite 700</p> <p>7 St. Louis, Missouri 63101</p> <p>8 IN WITNESS WHEREOF, I have hereunto set</p> <p>9 STATEMENT OF DEPOSITION CHARGES</p> <p>10 my hand and seal on this _____ day of _____</p> <p>11 Commission expires</p> <p>12 _____</p> <p>13 Notary Public</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
222	<p>1 <b>ORIGINAL TRANSCRIPT TAXED IN FAVOR OF:</b></p> <p>2</p> <p>3 Sandberg, Phoenix &amp; von Gontard, P.C.</p> <p>4 600 Washington Avenue, 15th Floor</p> <p>5 St. Louis, MO 63101</p> <p>6 Total:</p> <p>7 1 ONE COPY - TAXED IN FAVOR OF:</p> <p>8</p> <p>9 COZEN OCONNER</p> <p>10 1900 Market Street</p> <p>11 Philadelphia, PA 19103</p> <p>12 Total:</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>		

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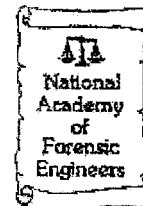
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# CRISTINO ASSOCIATES INC.

ELECTRICAL POWER SYSTEMS ENGINEERING  
DESIGN, FORENSICS AND TRAINING



## 75 Vista View Drive Southbury, CT Electrical Failure Analysis Report

Prepared By:

Joseph A. Cristino, P.E.

CT License # 13432

November 12, 2012

On January 31, 2011, the writer met with Fire Investigator Michael Driscoll (of PT&C Forensic Investigations) and other experts at a residential structure located at 75 Vista View Drive in Southbury, Connecticut. A fire had occurred at the exterior of the structure on January 17, 2011, that extended into the structure and caused structural damage. The preliminary analysis identified the area of fire origin as being in the vicinity of the electric service meter enclosure and underground conductor conduit location on the northerly side of the structure.

The purpose of the January 31<sup>st</sup> site examination was to initiate an investigation of the January 17<sup>th</sup> fire, evaluate possible electrical ignition sources and to formulate and proceed with a course of action to determine the cause of the fire.

This report is based upon the January 31<sup>st</sup> site examination, subsequent examinations and testing at the Connecticut Light and Power Company's (CL&P) Freight Street facility, in Waterbury, Connecticut, and QualiTech Laboratories in Meriden, Connecticut, a review of material provided by Eaton Corporation and discussions with Fire Investigator Driscoll. The writer reserves the right to supplement and/or amend should additional information become available.

**BACKGROUND INFORMATION:**

- The residential structure at 75 Vista View Drive was one of four structures within the same development that were built but never occupied.
- Electrical service to all of the structures within the development was supplied via 13,800-volt underground cables, above-grade, pad-mount transformers and underground 120/240-volt underground conductors.
- A pad-mount transformer was located to the right side of the driveway (facing the structure) and supplied 75 Vista View and one other residential structure located across Vista View Drive.

- An underground PVC conduit ran from the pad-mount transformer to a Cutler Hammer™ combination meter enclosure located on the northerly face of the structure. Note: A combination meter enclosure is one which has provisions for an electric utility revenue meter and a main disconnect (circuit breaker or fused disconnect switch). In addition, this enclosure was equipped with a meter by-pass which permitted the removal of the revenue meter without interruption of power to the structure.
- The Cutler Hammer™ combination meter enclosure exhibited signs of electrical fault activity within its confines. This damage extended outward through the back of the metal enclosure.
- The exterior wall of the residential structure in the area of the Cutler Hammer™ combination meter enclosure location exhibited fire damage.
- The underground PVC conduit that was routed from the CL&P pad-mount transformer to the Cutler Hammer™ combination meter enclosure had been partially consumed in the area below the meter enclosure.
- The type SER cable that interconnected the Cutler Hammer™ combination meter enclosure with the main circuit breaker panel located within the basement was consumed up to where it exited the meter enclosure.
- The Cutler Hammer™ combination meter enclosure was fitted with a circuit breaker that was electrically connected to the revenue meter socket within the enclosure.
- The meter enclosure's circuit breaker was oriented so that its toggle operated horizontally (side-to-side) although the electrical connections were oriented vertically (Line Connections at the Top and Load Connections at the Bottom). The circuit breaker was rated for 200 amperes with an interrupting rating of 22,000 amperes.

- Portions of the meter enclosure circuit breaker's Line Side connections (those coming from the meter socket) sustained physical damage due to electrical fault activity.
- One of the circuit breaker's Load Side terminals (those connecting to the conductors routed to the basement circuit breaker panel) was damaged as a result of electrical fault activity.
- The CL&P revenue meter was damaged with only portions of the current-sensing components remaining within the meter socket jaws.
- Damage to the Cutler Hammer™ combination meter socket enclosure and internal components appeared to be consistent with an event created by the ingress of moisture into the enclosure and a resultant electrical failure. This was characterized by electrical fault activity extending outward from the interior of the Cutler Hammer™ circuit breaker to the rear sheet metal mounting plate and the lack of indications of rodent or varmint activity and the absence of human interaction or other causes.

Following the January 31<sup>st</sup> site examination, the CL&P pad-mount transformer was inspected and tested at the CL&P Area Work Center at Freight Street in Waterbury, Connecticut. CL&P Western Regional Test Department and Waterbury Area Work Center Electrical Maintenance personnel provided assistance and performed some of the testing.

- The transformer was a 25 kVA, pad-mount type, oil filled, single-phase unit with a CL&P designation of #968.
- The transformer had a high voltage rating of 13,800/7,970 volts and a low voltage rating of 240/120 volts.
- The transformer was fitted with a secondary circuit breaker; the circuit breaker was found to be inoperable and had been reported to have a

feeling “like mush” when a CL&P Lineman attempted to operate it at the fire scene at 75 Vista View Drive.

- Continuity tests performed on the transformer’s primary (13,800/7,970–volt) winding indicated that it was intact.
- Continuity tests performed on the transformer’s secondary (240/120–volt) winding indicated that the low voltage circuit breaker was in the “OPEN” position and that the secondary winding was electrically isolated from the transformer’s output bushings.
- Samples of the transformer’s dielectric oil were tested using a Hipotronics OC60A Oil Test Set; test results indicated that the oil was dielectrically sound and that the transformer did not experience an internal dielectric or electrical failure. Note: The oil test results indicate that the secondary circuit breaker failure was not due to an electrical fault within the transformer but rather a mechanical failure that did not negatively impact the integrity of the transformer’s insulation system. The circuit breaker most probably failed during its operation while interrupting the fault within the Cutler Hammer™ combination meter socket enclosure at 75 Vista View. Had the transformer circuit breaker failed prior to the January 17<sup>th</sup> incident, electrical power would not have been available to the structure; the type of failure that occurred within the transformer circuit breaker could not have created an electrical power anomaly that would have caused the January 17<sup>th</sup> incident.
- The pad–mount transformer did not exhibit any exterior signs of distress, overheating or failure.
- Test results and visual examination of the CL&P pad–mount transformer that served 75 Vista View Drive indicate that the detected transformer damage was the result of the transformer supplying energy into the fault

and that the transformer neither caused nor created the January 17, 2011, electrical fault.

On March 14, 2011, and September 7, 2011, artifacts from the 75 Vista View Drive loss site were examined at the QualiTech Laboratories, 190 Pratt Street, Meriden, Connecticut. The March 14<sup>th</sup> session included interested parties, including representatives from the Connecticut Light and Power Company (CL&P). The September 7<sup>th</sup> session focused on analysis of the 200-amp Cutler Hammer™ circuit breaker remains.

#### March 14, 2011, Observations

- The Cutler Hammer™ combination meter enclosure exhibited damage throughout the interior of the portion of the enclosure within which the 200-amp main circuit breaker was mounted.
- Other damage was observed in the area of the revenue meter socket.
- Most of the aluminum conductors that had been routed through the meter enclosure had been consumed by the electrical fault activity.
- The 200-amp main circuit breaker had been mounted to a steel sheet metal plate which was located against the rear of the meter enclosure in the area below the revenue meter socket.
- A sheet of Mylar insulation separated the rear of the circuit breaker from the steel sheet metal mounting plate that was attached to the metal enclosure.
- A portion of the steel sheet metal mounting plate had been consumed by electrical fault activity. The damage aligned with damage at the back of the 200-amp main circuit breaker.

- The damage to the main circuit breaker and steel sheet metal mounting plate aligned with a hole through the sheet metal that made up the rear of the meter enclosure.
- The Load side connections of the main circuit breaker, within the meter enclosure, were found to have been melted along with the aluminum conductors that had been in place prior to the January 17, 2011, incident.
- The material that comprised the outer portions of the main circuit breaker was found to be brittle and friable.
- Approximately 50% of the main circuit breaker's internal components had been consumed or destroyed by the January 17, 2011, incident.
- Mr. Ruben Morales, of Eaton Corporation, identified the circuit breaker and combination meter enclosure as a BW2200 circuit breaker within a MB816B200BTS enclosure. (Subsequent research revealed that the Cutler Hammer™ division of Eaton Corporation produced this meter enclosure in several configurations and that the M816B200BTS enclosure included additional circuit breakers located in a dedicated distribution circuit breaker area located below the main circuit breaker.)
- Based upon the actual SL Kelley Electric invoice and additional research, it was determined that the circuit breaker panel was a model CMBXB200BTS with a model CRS2200 circuit breaker. This was verified in the deposition testimony of the Eaton Corporation designee Jeffrey Johnson.
- The main circuit breaker was found to have a unique internal and external configuration. The Line side connections were located at the top of the circuit breaker (with the circuit breaker placed vertically). The Load side connections were located at the bottom of the circuit breaker (again, the circuit breaker positioned vertically). The action of the ON-OFF Toggle operated Left to Right. To produce the electrical connections and



toggle action, the circuit breaker was designed and manufactured with a crisscross in its internal electrical bus work. This placed internal components that were electrically energized at 240-volts within approximately ½-inch of each other. Externally, the circuit breaker was fitted with mechanical lugs on its Line side terminals and metal plates on its Load side.

Additional laboratory analysis was undertaken on September 7, 2011. The subject 200-amp circuit breaker from the loss site and a circuit breaker of similar construction were subjected to radiographic analysis prior to the laboratory examination. The radiographs were used to aid in analyzing the failure within the subject circuit breaker. The circuit breaker of similar construction (a Cutler Hammer BW2200) was non-destructively disassembled and used to obtain additional details of the internal components and their respective locations:

- The damage to the subject circuit breaker was identified to be centered in the area of the internal portions of the right-side Line side components.
- When the subject circuit breaker's remains were compared against the BW2200 circuit breaker, a hole was visible from the front of the circuit breaker's outer surface, through the circuit breaker's interior components, through to the circuit breaker's rear surface, through to the damaged sheet metal mounting plate at the rear of the meter enclosure and through the metal of the meter enclosure.
- The observed damage was consistent with that caused by an electrical fault within the subject circuit breaker, including the melting of the mounting plate and the sheet metal of the meter enclosure.
- Samples were identified and cut from the sheet metal mounting plate for analysis within the QualiTech Scanning Electron Microscope (SEM).

**CONCLUSION:**

Based upon the site examination, laboratory analysis and information obtained from Eaton Corporation Cutler Hammer™, it can be stated with a reasonable degree of engineering certainty that the January 17, 2011, failure within the Cutler Hammer™ combination meter enclosure that was mounted on the exterior of an residential structure located at 75 Vista View Drive, Southbury, Connecticut, was due to a short circuit within the 200-amp main circuit breaker mounted within the meter enclosure. The short circuit originated within the circuit breaker's internal Line side components most probably due to a defect that allowed moisture ingress. The meter enclosure was designed and manufactured for outdoor applications. Therefore, the meter enclosure should have been capable of preventing the ingress of moisture typically experienced in a New England winter. The moisture compromised the circuit breaker's internal insulation system which included the Bakelite-type material from which the circuit breaker body was formed and the internal insulating air gaps. The fault most probably was located in the area of the internal Line side components within the circuit breaker. (This is based upon the observed damage within the circuit breaker remains.) Due to the location of the fault, the Cutler Hammer™ main circuit breaker was unable to interrupt the electrical fault, thus allowing the fault to expand and intensify. This resulted in the production of temperatures in excess of 2500° Fahrenheit; caused failures of the Mylar insulation at the back of the circuit breaker and two steel components; the extension of the electrical fault outside of the confines of the meter enclosure caused the combustible materials to which the meter enclosure was mounted to ignite.

Based upon laboratory analysis and visual examination, the electrical failure within the Cutler Hammer™ combination meter socket enclosure was due

to a fault that originated within the circuit breaker within the enclosure. Outside sources and failure scenarios have been considered and eliminated because of the location and severity of the damage to the aluminum, insulation material and steel components within the Cutler Hammer™ combination meter socket enclosure. Neither an external electrical fault nor an external fire could have produced the observed damage and, more importantly, an external event could not have kept the component remains intact.

Case: Ace American Insurance Company vs.  
Eaton Electrical, Inc.

Transcript of the Testimony of Henry Stormer

Date: July 25, 2012



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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF CONNECTICUT

-----X  
ACE AMERICAN INSURANCE COMPANY : CAUSE NO.  
: 3:11-CV-01741-CSH  
VS. :  
:  
EATON ELECTRICAL, INC. :  
-----X

**DEPOSITION OF: HENRY STORMER**  
**DATE: JULY 25, 2012**  
**HELD AT: SIEGEL O'CONNOR**  
**150 TRUMBULL STREET**  
**HARTFORD, CONNECTICUT**

Reporter: MIMI Z. ARMANDO, LSR # 00222

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25 **(Note: Reporter retained original exhibits; copies sent with copies of transcript, originals kept with original transcript.)**

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1 **APPEARANCES:**  
2  
3 **REPRESENTING THE PLAINTIFF:**  
4 **COZEN O'CONNER**  
5 **1900 MARKET STREET**  
6 **PHILADELPHIA, PENNSYLVANIA 19103**  
7 **By: PETER ROSSI, ESQ.**  
8  
9  
10 **REPRESENTING THE DEFENDANT:**  
11 **SANDBERG, PHOENIX & von GONTARD, P.C.**  
12 **600 WASHINGTON AVENUE - 15TH FLOOR**  
13 **ST. LOUIS, MISSOURI 63101-1313**  
14 **By: JONATHAN T. BARTON, ESQ.**  
15  
16  
17  
18 **ALSO IN ATTENDANCE:**  
19 **Brian Capouch, Videographer**  
20  
21  
22  
23  
24  
25

4

**STIPULATIONS**

1  
2  
3 It is stipulated by counsel for the parties that  
4 all objections are reserved until the time of trial,  
5 except those objections as are directed to the form of  
6 the question.  
7  
8 It is stipulated and agreed between counsel for  
9 the parties that the proof of the authority of the  
10 Notary Public before whom this deposition is taken is  
11 waived.  
12  
13 It is further stipulated that any defects in the  
14 Notice are waived.  
15  
16 It is further stipulated that the reading and  
17 signing of the deposition transcript by the witness is  
18 waived.  
19  
20  
21  
22  
23  
24  
25

5	<p>1 (The deposition commenced at 12:16 p.m.)</p> <p>2</p> <p>3 <b>THE VIDEOGRAPHER: This is the beginning of</b></p> <p>4 <b>tape number 2. This is the case of Ace American</b></p> <p>5 <b>Insurance Company versus Eaton Electrical. The</b></p> <p>6 <b>name of the witness is Henry Stormer. The</b></p> <p>7 <b>deposition is being held at 150 Trumbull Street,</b></p> <p>8 <b>Hartford, Connecticut. The court reporter will now</b></p> <p>9 <b>swear in the witness.</b></p> <p>10</p> <p>11 HENRY STORMER, Deponent, having first been duly</p> <p>12 sworn, deposes and states as follows:</p> <p>13</p> <p>14 <b>DIRECT EXAMINATION BY MR. BARTON:</b></p> <p>15</p> <p>16 <b>Q</b> Could you state your name for the record,</p> <p>17 please?</p> <p>18 <b>A</b> Henry William Stormer.</p> <p>19 <b>Q</b> Mr. Stormer, my name is John Barton. I'm an</p> <p>20 attorney and I represent Eaton Corporation in a cause</p> <p>21 of action that Ace American Insurance has brought</p> <p>22 against it arising out of the fire which occurred on</p> <p>23 January 17, 2011. Have you ever given a deposition</p> <p>24 before?</p> <p>25 <b>A</b> Yes, I have.</p>	7	<p>1 <b>A</b> Yes, I am.</p> <p>2 <b>Q</b> And what is your employment?</p> <p>3 <b>A</b> I'm a senior fire investigator for</p> <p>4 EFI Global, Incorporated.</p> <p>5 <b>Q</b> And how long have you been a senior fire</p> <p>6 investigator?</p> <p>7 <b>A</b> I began that job in January of 2012 when I</p> <p>8 left the town of Southbury.</p> <p>9 <b>Q</b> What is EFI Global?</p> <p>10 <b>A</b> We're a fire investigation and engineering</p> <p>11 firm.</p> <p>12 <b>Q</b> You mentioned you started after you left your</p> <p>13 position at the town of Southbury, what was your</p> <p>14 position with the town of Southbury?</p> <p>15 <b>A</b> I was the fire marshal for the town of</p> <p>16 Southbury from approximately August of 2006 until</p> <p>17 January of 2012. I also prior to that I worked as a</p> <p>18 part-time fire investigator with EFI Global from</p> <p>19 October of 2010 through becoming full time in January</p> <p>20 of '12.</p> <p>21 <b>Q</b> And what are your job duties as the fire</p> <p>22 marshal for the town of Southbury, what were they?</p> <p>23 <b>A</b> Compliance with Connecticut Chapter 541 of</p> <p>24 the General Statutes which regard fire investigation,</p> <p>25 hazardous materials which includes blasting, fireworks,</p>
6	<p>1 <b>Q</b> About how many times?</p> <p>2 <b>A</b> Fires, three or four; civil suits for my job</p> <p>3 as a police officer in excess of ten.</p> <p>4 <b>Q</b> As we go along here today, I'm going to ask</p> <p>5 you a series of questions. If at any time you don't</p> <p>6 understand my questions or they are unclear in any way,</p> <p>7 just ask me to repeat or rephrase myself and I will be</p> <p>8 glad to do so. From time to time you may say uh-huh or</p> <p>9 uh-uh, I'll ask you if that's a yes or a no. I'm not</p> <p>10 trying to be rude, I'm just trying to make sure we have</p> <p>11 a clean record; all right?</p> <p>12 <b>A</b> Sure.</p> <p>13 <b>Q</b> Final rule of thumb is that it is your</p> <p>14 deposition, so if you need a break at any time for any</p> <p>15 reason, just let us know. I don't anticipate we'll go</p> <p>16 too long, but if you do need one, please let us know.</p> <p>17 <b>A</b> Sure.</p> <p>18 <b>Q</b> What is your current address?</p> <p>19 <b>A</b> My current address is 146 Burma, B-u-r-m-a,</p> <p>20 Road, Southbury, Connecticut.</p> <p>21 <b>Q</b> And your telephone number?</p> <p>22 <b>A</b> 203-604-5653.</p> <p>23 <b>Q</b> Your date of birth?</p> <p>24 <b>A</b> August 28, 1961.</p> <p>25 <b>Q</b> Are you currently employed?</p>	8	<p>1 cargo tank vehicles for oil, gasoline, and other liquid</p> <p>2 hazardous materials, and conducting fire code</p> <p>3 inspections on the occupancies required to be</p> <p>4 inspected, anything greater than a two-family residence</p> <p>5 in the state of Connecticut.</p> <p>6 <b>Q</b> Would you let me know what does it mean to do</p> <p>7 an origin and cause investigation, what does that</p> <p>8 entail?</p> <p>9 <b>A</b> That entails following the guidelines as set</p> <p>10 forth in my training as a fire marshal with the state</p> <p>11 of Connecticut, following the training received by</p> <p>12 numerous different outlets in fire cause and origin</p> <p>13 investigations, following NFPA standards.</p> <p>14 <b>Q</b> And when you say NFPA standards the 921?</p> <p>15 <b>A</b> 921-1033.</p> <p>16 <b>Q</b> Okay.</p> <p>17 <b>A</b> And basically it is to go in and using the</p> <p>18 scientific method to take your fire scene starting from</p> <p>19 scratch and doing an investigation to determine how and</p> <p>20 where that fire started.</p> <p>21 <b>Q</b> And what is the scientific method?</p> <p>22 <b>A</b> The scientific method is steps where the</p> <p>23 investigator will go in and begin investigating the</p> <p>24 scene, taking photographs, working from the area of</p> <p>25 least damage to the area of most damage. It is</p>



9	<p>1 basically what I have been doing since 1986 with a</p> <p>2 whole bunch of technical terms now, but, you know, you</p> <p>3 go in and you just try and let the evidence lead you to</p> <p>4 a hypothesis of where and how the fire started.</p> <p>5 <b>Q</b> You mentioned hypothesis, this is an opinion</p> <p>6 that you form; is that correct?</p> <p>7 <b>A</b> Yes.</p> <p>8 <b>Q</b> In order to support that hypothesis, do you</p> <p>9 look to facts in your investigation to support that</p> <p>10 hypothesis?</p> <p>11 <b>A</b> You try to.</p> <p>12 <b>Q</b> If you can't find the facts, do you just</p> <p>13 assume they existed?</p> <p>14 <b>A</b> No.</p> <p>15 <b>Q</b> Why not?</p> <p>16 <b>A</b> Because you can't assume that they existed.</p> <p>17 <b>Q</b> Why can't you assume that they existed?</p> <p>18 <b>A</b> Because every time I assume something, I get</p> <p>19 in deep trouble.</p> <p>20 <b>Q</b> If we want to assume facts, we can come up</p> <p>21 with any cause of a fire we want; right?</p> <p>22 <b>A</b> Exactly. I mean, you can basically take the</p> <p>23 evidence and make it fit whatever scenario you want if</p> <p>24 you don't follow the method properly.</p> <p>25 <b>Q</b> And the method that you follow is the</p>	11	<p>1 Exhibit 15. Can you identify this for us?</p> <p>2 <b>A</b> That appears to be my resume.</p> <p>3 <b>Q</b> Does it accurately depict your employment</p> <p>4 history and background?</p> <p>5 <b>A</b> Yes.</p> <p>6 <b>Q</b> Is that a document you prepared?</p> <p>7 <b>A</b> Yes, this one is. You never know when you're</p> <p>8 looking for another job. The only thing looking at my</p> <p>9 training, that doesn't appear to be totally updated.</p> <p>10 There may be a few more courses that aren't on there</p> <p>11 but.</p> <p>12 <b>Q</b> Fair enough. Can you describe your education</p> <p>13 background for me?</p> <p>14 <b>A</b> I graduated from Newtown High School in</p> <p>15 Newtown, Connecticut in 1979. In the fall of '79 I</p> <p>16 took criminal justice courses at what used to be</p> <p>17 Mattatuck Community College in Waterbury, Connecticut.</p> <p>18 In 1982, in April of '82, I graduated from the</p> <p>19 Connecticut Police Academy as a certified police</p> <p>20 officer in the state of Connecticut. In 1989 I went to</p> <p>21 the New England Institute of Law Enforcement Management</p> <p>22 at Babson College in Wellesley, Mass and graduated from</p> <p>23 that program. And in 1990 I graduated from the</p> <p>24 Connecticut Fire Marshal Certification Program.</p> <p>25 <b>Q</b> It sounds like were you a police officer for</p>
10	<p>1 scientific method?</p> <p>2 <b>A</b> Yes.</p> <p>3 <b>Q</b> And you adhere to NFPA 921 as a guide; is</p> <p>4 that correct?</p> <p>5 <b>A</b> As best as I possibly can. It is one of</p> <p>6 numerous sources that I use, but I do actually use the</p> <p>7 NFPA 921 checklist out of the back of the book when I</p> <p>8 do fire scenes.</p> <p>9 <b>Q</b> And I take it you're a certified fire</p> <p>10 investigator?</p> <p>11 <b>A</b> Yes, I am.</p> <p>12 <b>Q</b> And how long have you been certified?</p> <p>13 <b>A</b> I received my certification in August of</p> <p>14 2010.</p> <p>15 <b>Q</b> From what organization?</p> <p>16 <b>A</b> The International Association of Arson</p> <p>17 Investigators.</p> <p>18 <b>Q</b> So IAAI?</p> <p>19 <b>A</b> Yes.</p> <p>20</p> <p>21 (Defendant's Exhibit 15, resume, marked for</p> <p>22 identification.)</p> <p>23</p> <p>24 <b>BY MR. BARTON:</b></p> <p>25 <b>Q</b> Let me hand you what has been marked as</p>	12	<p>1 a period of time?</p> <p>2 <b>A</b> I was a police officer for just shy of 25</p> <p>3 years. But I worked for the police department for 25</p> <p>4 years.</p> <p>5 <b>Q</b> In what positions did you work for the police</p> <p>6 department?</p> <p>7 <b>A</b> I started as a dispatcher in October of 1980.</p> <p>8 In January of 1982 I got promoted to the rank of patrol</p> <p>9 officer. In 1989 I was promoted to the rank of patrol</p> <p>10 sergeant. From 1997 through 2002 I was the commanding</p> <p>11 officer of the detective and youth bureaus. And I</p> <p>12 finished my career from 2002 to 2005 as the senior</p> <p>13 patrol sergeant and then I retired in April of 2005.</p> <p>14 <b>Q</b> You indicated in 1990 though you attended or</p> <p>15 you obtained a fire certification?</p> <p>16 <b>A</b> Yes. The town of Newtown certified me as a</p> <p>17 deputy fire marshal where I served a dual role as both</p> <p>18 a police sergeant and deputy fire marshal for the town.</p> <p>19 <b>Q</b> How long were you a deputy fire marshal?</p> <p>20 <b>A</b> I left in November of 2005 so roughly fifteen</p> <p>21 years, a little over.</p> <p>22 <b>Q</b> And when you left in November of 2005, did</p> <p>23 you then go to Southbury as a fire marshal?</p> <p>24 <b>A</b> No. I was hired in Southbury in 1994 as a</p> <p>25 deputy fire marshal.</p>

13	<p>1 Q Okay.</p> <p>2 A So as a police officer, I served as a deputy</p> <p>3 fire marshal in Newtown and a part-time deputy fire</p> <p>4 marshal in Southbury, which was my hometown. So on</p> <p>5 days off I would do inspections or fire investigations.</p> <p>6 Q And in your role as a fire marshal, I take it</p> <p>7 you do origin and cause investigations?</p> <p>8 A Too many to count.</p> <p>9 Q I was going ask you how many?</p> <p>10 A I would guess thousands. By the time my</p> <p>11 career was over, Connecticut law requires the fire</p> <p>12 marshal to investigate the cause and origin of every</p> <p>13 fire and/or explosion or every threatened fire and</p> <p>14 explosion within the confines of the jurisdiction.</p> <p>15 Q So --</p> <p>16 A I was averaging 125 to 140 a year in</p> <p>17 Southbury and that was fifteen years after I started</p> <p>18 doing them in Newtown.</p> <p>19 Q Fair enough. So you have seen a lot of fire</p> <p>20 scenes, I take it?</p> <p>21 A Yes.</p> <p>22 Q And you have sifted through a lot of ash over</p> <p>23 the years?</p> <p>24 A Too much ash.</p> <p>25 Q I want to turn your attention to some ash you</p>	15	<p>1 I did not hear my radio go off advising of the fire</p> <p>2 call. And when I heard the sirens, I got up and I was</p> <p>3 standing in my kitchen looking for my pager because</p> <p>4 there was a recall button where you could hear the fire</p> <p>5 call. And as I looked out my picture window, I could</p> <p>6 see the glow in the sky from this fire because I live</p> <p>7 about a mile away from where the fire happened.</p> <p>8 Q So you actually didn't receive a page, you</p> <p>9 actually visually saw the fire?</p> <p>10 A Yeah, I heard sirens and then.</p> <p>11 Q Do you recall what time it was that you heard</p> <p>12 these sirens?</p> <p>13 A It was after 12:30.</p> <p>14 Q When you heard the sirens and saw the glow,</p> <p>15 what did you do next?</p> <p>16 A Uttered an expletive, got dressed, bundled</p> <p>17 and hopped in the car. And at that point, I knew where</p> <p>18 they were going because they were redispaching the</p> <p>19 fire as a working structure fire.</p> <p>20 Q When you arrived on the scene, was the fire</p> <p>21 department already there?</p> <p>22 A Yes.</p> <p>23 Q Were they commencing with suppression</p> <p>24 efforts?</p> <p>25 A I did not see water hit this house until</p>
14	<p>1 sifted through on January 17, 2011.</p> <p>2 A Frozen ash.</p> <p>3 Q I understand it was cold that evening; is</p> <p>4 that right?</p> <p>5 A It was very cold that evening.</p> <p>6 Q Left me hand you Exhibit 1. Can you identify</p> <p>7 that for us?</p> <p>8 A It appears to be a fire investigation report</p> <p>9 that I prepared regarding a fire at 75 Vista View</p> <p>10 Drive.</p> <p>11 Q And at the time you prepared this report, you</p> <p>12 were the fire marshal for the Town of Southbury; is</p> <p>13 that correct?</p> <p>14 A Yes, I was.</p> <p>15 Q What time did you report to the scene of that</p> <p>16 fire?</p> <p>17 A I want to say that I went through some of the</p> <p>18 records and I don't think the dispatch records are</p> <p>19 correct. I believe I was there at approximately 12:40</p> <p>20 a.m.</p> <p>21 Q Your report indicates 12:50 a.m. as the time</p> <p>22 you arrived roughly?</p> <p>23 A Roughly. I mean, I see the dispatch record</p> <p>24 is 12:45, if I'm not mistaken. The fire -- when the</p> <p>25 fire came in that night, I heard sirens. I was home.</p>	16	<p>1 approximately one o'clock a.m. and I had been sitting</p> <p>2 on the side of the road watching. It was hard to get</p> <p>3 in and out. That's when they were just -- the trucks</p> <p>4 were just arriving, hose was being laid, portable bonds</p> <p>5 were being set up. The initial arrival seems to be the</p> <p>6 most hectic for our fire department.</p> <p>7 Q When you arrived on the scene, can you</p> <p>8 describe what the house looked like at the time?</p> <p>9 A Major fire to the right side of the</p> <p>10 structure, which would have been the garage and above.</p> <p>11 There was a bonus room above. That appeared to be</p> <p>12 totally engulfed in flames. The roof structure was</p> <p>13 appearing from the center out to also be totally</p> <p>14 engulfed in flames. I took some initial pictures from</p> <p>15 my vehicle as I parked.</p> <p>16 Q Let me hand you what has been marked as</p> <p>17 Exhibit 2, can you identify that for me?</p> <p>18 A That is one of the pictures I took as I first</p> <p>19 got there.</p> <p>20 Q I understand you used a digital camera?</p> <p>21 A Yes.</p> <p>22 Q And there was some question as to whether</p> <p>23 Deputy Fire Marshal Baldwin had taken these pictures,</p> <p>24 can you confirm that these are your pictures?</p> <p>25 A This one I took sitting in my vehicle on the</p>

4 (Pages 13 to 16)

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17	<p>1 side of the road because you can see that I'm sitting 2 so low that I've actually missed the first floor of the 3 residence. This is the second floor and up. There was 4 a huge hill and the snow was so deep we actually lost 5 one of our shorter fireman for a moment. He walked off 6 a stone wall and disappeared. Not that that's very 7 funny but. 8 <b>Q</b> I understand. Let me hand you Exhibit 3, can 9 you tell me what this is? 10 <b>A</b> This I took from the driveway of the home and 11 these times are actually, I believe, almost very 12 correct. I mean, I'm not going to say that I timed 13 them to the Naval Observatory Clock but. 14 <b>Q</b> And the time stamp on Exhibit 3 is what? 15 <b>A</b> 00:57, so 12:57 a.m. 16 <b>Q</b> And what we see in Exhibit 3 is what you 17 described just a moment ago, the garage is fully 18 engulfed; is that correct? 19 <b>A</b> Yes, and the roof is. 20 <b>Q</b> And that is a front elevation shot of the 21 home; correct? 22 <b>A</b> This photo, yes. This is actually taken from 23 the driveway of the home behind the fire truck and you 24 can see there is no water being put on the structure at 25 that point.</p>	19	<p>1 going through and opening windows, which really wasn't 2 necessary anyway because there was no fire, the fire 3 department decided they were going to break the windows 4 out and they were doing it where people were standing. 5 <b>Q</b> What I'm getting at: When you arrived, there 6 was no flame on the first floor; is that correct? 7 <b>A</b> Nothing. 8 <b>Q</b> All the flames were isolated to the second 9 floor and the roof structure? 10 <b>A</b> Right. Except for this area, which was one 11 of the reasons I took this picture. I was looking at 12 the area to the right of the front door. 13 <b>Q</b> And when you say this area, would you go 14 ahead and circle the area you're referring to on 15 Exhibit No. 3? 16 <b>A</b> Sure. 17 <b>Q</b> And then draw a line and put your initials 18 next to it. 19 <b>MR. ROSSI: Can I see that, Joe?</b> 20 <b>MR. BARTON: Sure.</b> 21 <b>BY MR. BARTON:</b> 22 <b>Q</b> And the area you're referring to is on the 23 front to the right of what looks like a little bay 24 window that they had built out; is that correct? 25 <b>A</b> Yeah, because later we found out it was a</p>
18	<p>1 <b>Q</b> Let me ask a question first. When you 2 arrived, did you walk around the home and take 3 photographs? 4 <b>A</b> I took photographs from the front. I had 5 Deputy Baldwin and Deputy Tolles walk around the home 6 and take some photos. 7 <b>Q</b> Did they do it in the early morning hours or 8 do you know if they waited? What time did you have 9 Deputy Baldwin -- 10 <b>A</b> I had them doing it during suppression so I 11 don't know what was in the file. There were some 12 photos because we were extremely upset that the fire 13 department was walking around smashing windows out of 14 the first floor where there was no fire and they were 15 actually doing it from the inside out and there were 16 people below them and glass was falling on other 17 firefighters. 18 <b>Q</b> When you say smashing windows out of the 19 first floor where there was no fire, what do you mean, 20 there was no burning going on? 21 <b>A</b> Right. There was no fire burning on the 22 first floor of that structure. Everything was above 23 the second floor ceiling. And then you had some drop 24 fire when the roof and the ceilings upstairs collapsed. 25 Nothing came down to the first floor so instead of</p>	20	<p>1 den. 2 <b>Q</b> So to the front and right of the den in this 3 photograph, you said there was fire at that level at 4 the time you arrived? 5 <b>A</b> Yes. 6 <b>Q</b> Now, this photograph was taken at 12:57. 7 There doesn't appear to be fire in that area at that 8 point? 9 <b>A</b> The burn pattern -- I'm sorry, I used the 10 wrong word. Instead of fire, there was looking for the 11 lowest area of burning, that pattern stood out because 12 of the fact that, you know, with the exception of this 13 garage, which just totally collapsed with the bonus 14 room, it was strange that we had a -- almost like a 15 channel that burned from the roof down to the ground or 16 from the ground up to the roof and that's why we were 17 looking right at that. 18 <b>Q</b> Was that the lowest point of burning you 19 found when you arrived on the scene? 20 <b>A</b> Later after suppression efforts were over and 21 we could get in there, yeah, we could get into the 22 spot. 23 <b>Q</b> Let me hand you Exhibit 4, can you tell me 24 what that depicts? 25 <b>A</b> That looks like the final moments of the</p>

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21	<p>1 garage.</p> <p>2 <b>Q</b> So we see a photograph depicting the garage</p> <p>3 doors; is that correct?</p> <p>4 <b>A</b> Yes.</p> <p>5 <b>Q</b> And again, it shows the fire on the roof and</p> <p>6 quite a bit inside that garage; is that right?</p> <p>7 <b>A</b> Yes.</p> <p>8 <b>Q</b> Can you also see the den area you referred to</p> <p>9 in Exhibit No. 4?</p> <p>10 <b>A</b> A lot of smoke over in that area. Yes, you</p> <p>11 can just to the left.</p> <p>12 <b>Q</b> How many feet of snow were on the ground that</p> <p>13 day?</p> <p>14 <b>A</b> Wow. Depending on where you were, because</p> <p>15 this is such a wide open area, the reason we lost the</p> <p>16 fireman was there was over five feet of snow at the end</p> <p>17 of a stone wall. I would say we had at least two,</p> <p>18 two-and-a-half feet. Because when I was looking for</p> <p>19 these photos, I was able at home with my digital camera</p> <p>20 to take the card out of the camera, and the town of</p> <p>21 Southbury didn't have the capability of putting the</p> <p>22 card into the computers at the time, so I would do it</p> <p>23 at home and then I would burn CDs on my personal</p> <p>24 computer and I tried to see if I had these photos. But</p> <p>25 I believe I had photos from the 11th, which was right</p>	23	<p>1 <b>Q</b> Do you remember if the walkway leading to the</p> <p>2 front door was shoveled?</p> <p>3 <b>MR. ROSSI: To the extent that you're saying</b></p> <p>4 <b>shoveled, do you mean by hand or by a machine or</b></p> <p>5 <b>what do you mean?</b></p> <p>6 <b>MR. BARTON: Neither. Cleared.</b></p> <p>7 <b>BY MR. BARTON:</b></p> <p>8 <b>Q</b> Was snow removed from the sidewalk by either</p> <p>9 or any mechanism that you're aware of when you got to</p> <p>10 that scene?</p> <p>11 <b>A</b> That I don't recall.</p> <p>12 <b>Q</b> Here is what I'm getting at. I'm looking at</p> <p>13 Exhibit No. 5 and I see a mound of snow piled up</p> <p>14 against the house, I'm wondering if the walkway was</p> <p>15 shoveled on the way to the front door, if they shoveled</p> <p>16 the snow out toward the front yard or up against the</p> <p>17 house?</p> <p>18 <b>A</b> I know what you're saying. Excuse me, let me</p> <p>19 just turn this off. I'm sorry. I think that if you</p> <p>20 look at where this is, here would be the end of the</p> <p>21 driveway, so whoever plowed came up the driveway and</p> <p>22 stopped at the end of the driveway, so they were</p> <p>23 basically pushing the driveway snow to the end. This</p> <p>24 really wasn't against the house.</p> <p>25 <b>Q</b> And you're talking about the driveway snow in</p>
22	<p>1 -- January 11, which was right after a snow storm and</p> <p>2 we had about two-and-a-half to three feet of snow on</p> <p>3 the ground on the 11th.</p> <p>4 <b>Q</b> Let me hand you Exhibit 5. Again, this is a</p> <p>5 photograph of it looks like the garage and then looking</p> <p>6 into the backyard?</p> <p>7 <b>A</b> Right, that's the rear of the home.</p> <p>8 <b>Q</b> Again, the roof and the second story appear</p> <p>9 to be significantly involved in flames; is that right?</p> <p>10 <b>A</b> Yes.</p> <p>11 <b>Q</b> We also see piles of snow there up against</p> <p>12 the house, at least the garage section?</p> <p>13 <b>A</b> Yes.</p> <p>14 <b>Q</b> Do you know who shoveled the snow for this</p> <p>15 home?</p> <p>16 <b>A</b> I believe it was the caretakers.</p> <p>17 <b>Q</b> And who were the caretakers?</p> <p>18 <b>A</b> Oh, God, they were employees of Pilots Mall,</p> <p>19 if I'm not mistaken. I have his name somewhere. Do</p> <p>20 you mind if I look through the report?</p> <p>21 <b>Q</b> I do not.</p> <p>22 <b>A</b> John Turner was the property manager.</p> <p>23 <b>Q</b> Do you know is he the individual who actually</p> <p>24 shoveled the snow?</p> <p>25 <b>A</b> That I don't know.</p>	24	<p>1 Exhibit 5?</p> <p>2 <b>A</b> Right.</p> <p>3 <b>Q</b> I'm asking you about the walkway to the front</p> <p>4 door of the house?</p> <p>5 <b>A</b> I really don't remember. It may have been.</p> <p>6 But I don't recall having to, you know, trek like we</p> <p>7 were in Alaska to get to the front of the home. But</p> <p>8 then again, we had melting and water issues at the time</p> <p>9 so.</p> <p>10 <b>Q</b> Fair enough. I will draw your attention back</p> <p>11 to Exhibit No. 1, your fire investigation report. The</p> <p>12 last page of this report is signed by you; is that</p> <p>13 correct?</p> <p>14 <b>A</b> Yes.</p> <p>15 <b>Q</b> Do you recall when you prepared this?</p> <p>16 <b>A</b> No, I don't.</p> <p>17 <b>Q</b> I noticed it is not dated. Is there a reason</p> <p>18 the report is not dated?</p> <p>19 <b>A</b> No. I just didn't do it.</p> <p>20 <b>Q</b> On the day you arrived, when did you begin</p> <p>21 conducting your origin and cause investigation?</p> <p>22 <b>A</b> I always waited until the fire department was</p> <p>23 done with their efforts because I had found that if I</p> <p>24 didn't I would usually end up getting saturated or</p> <p>25 something falling on my head.</p>

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25	<p>1 Q Do you remember what time the fire department</p> <p>2 finished with their efforts?</p> <p>3 A I want to say we really didn't start doing</p> <p>4 anything until after five a.m. and that was after I had</p> <p>5 contacted -- because of the size of the loss, I had</p> <p>6 contacted the state fire marshal's office to come in</p> <p>7 and assist with the investigation.</p> <p>8 Q When did you contact the state fire marshal?</p> <p>9 A Pretty early on.</p> <p>10</p> <p>11 (Defendant's Exhibit 16, fire department run form,</p> <p>12 marked for identification.)</p> <p>13</p> <p>14 <b>BY MR. BARTON:</b></p> <p>15 Q Let me hand you Exhibit 16. Do you recognize</p> <p>16 that document at all?</p> <p>17 A That would have been the Run Form from the</p> <p>18 CAD, computer-aided dispatch system for the town of</p> <p>19 Southbury.</p> <p>20 Q And what is a run form?</p> <p>21 A Every fire that is entered into the computer</p> <p>22 system is assigned a number, an incident number, so</p> <p>23 this would have been 11-35.</p> <p>24 <b>MR. ROSSI: That's Exhibit 16?</b></p> <p>25 <b>THE WITNESS: Yes.</b></p>	27	<p>1 that at 2:50 a.m. the state fire marshal was on scene?</p> <p>2 A Yeah. I would notify dispatch that the state</p> <p>3 fire marshal arrived, which means I would have called</p> <p>4 them probably in the area of 1 to 1:30 a.m.</p> <p>5 Q Was it normal to have the state fire marshal</p> <p>6 come out?</p> <p>7 A For a loss that big, yes.</p> <p>8 Q Is there a size loss that --</p> <p>9 A I usually judged it based on the type of</p> <p>10 fire. The reason in this case honestly was vacant</p> <p>11 home, brand new construction burns to the ground.</p> <p>12 Until we get in there we don't know whether or not we</p> <p>13 have an arson so it is a good idea to have the dog on</p> <p>14 scene.</p> <p>15 Q And when you say brand new construction, this</p> <p>16 particular home looks like it was --</p> <p>17 A Three years old or something.</p> <p>18 Q Five or six years old?</p> <p>19 A Yeah.</p> <p>20 Q The home was built in 2005 and it was a 2011</p> <p>21 fire?</p> <p>22 A Well, we knew that all the homes in there</p> <p>23 were in the million dollar range or were on the market</p> <p>24 in the million dollar range, so basically looking at</p> <p>25 that -- that fact that it is a holiday weekend, it was</p>
26	<p>1 A It gives you the date, it gives you the name</p> <p>2 of the dispatcher, who that would be Kim Russo, third</p> <p>3 shift. It was reported as a structure fire. 911 call.</p> <p>4 And it gives you the times of dispatch.</p> <p>5 <b>BY MR. BARTON:</b></p> <p>6 Q And it looks like at 12:31 that the police</p> <p>7 department was on the scene; is that correct?</p> <p>8 A That's what that would indicate, yes.</p> <p>9 Q And according to this run form, it also</p> <p>10 indicates that at 2:10 a.m. that the fire is knocked</p> <p>11 down. Do you know what that refers to?</p> <p>12 A At that point that flames are minimal and</p> <p>13 that they are going to begin overhaul and destroying</p> <p>14 the property.</p> <p>15 Q And when you say overhaul and destroying the</p> <p>16 property, that is going in with shovels looking for hot</p> <p>17 spots?</p> <p>18 A Right. That's ripping down walls, ceilings,</p> <p>19 making sure there are no extensions into areas that</p> <p>20 they can't see or.</p> <p>21 Q Basically so they don't have to come back out</p> <p>22 when the fire reignites?</p> <p>23 A Right, which they did in this fire, I</p> <p>24 believe, anyway.</p> <p>25 Q I understand. It also indicates Exhibit 16</p>	28	<p>1 Martin Luther King weekend, I believe, so it is a</p> <p>2 Sunday night, the fire happens. We know kids have hung</p> <p>3 out there. If you drive through the area and you go to</p> <p>4 the cul-de-sac about a mile away from the fire at the</p> <p>5 end, you can tell the kids party in the cul-de-sac. So</p> <p>6 without knowing what caused this fire at one a.m. and</p> <p>7 seeing the scope of the fire, I would call for</p> <p>8 assistance and that's what we did here.</p> <p>9 Q And according to Exhibit 16, it looks like</p> <p>10 that the origin and cause or cause and origin</p> <p>11 investigation started around 5:46 a.m.; is that right?</p> <p>12 A Walking around the area, yes, but we didn't</p> <p>13 really do much because we wanted someone from</p> <p>14 Connecticut Light &amp; Power on scene to tell us that the</p> <p>15 house was safe. We didn't want to start digging</p> <p>16 through, you know, piles and getting electrocuted.</p> <p>17 Q Did you contact Connecticut Light &amp; Power?</p> <p>18 A Yes, we did.</p> <p>19 Q What time did you contact them?</p> <p>20 A I'm not sure if I contacted them or if the</p> <p>21 fire chief had done it earlier. I would have to --</p> <p>22 Q At some point in time, do you remember</p> <p>23 Connecticut Light &amp; Power arriving on the scene?</p> <p>24 A Yes, I do.</p> <p>25 Q Did you speak with their representatives when</p>

Case: Ace American Insurance Company v.  
Eaton Electrical, Inc.

Transcript of Jonathan Turner

Date: December 17, 2012

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<p style="text-align: right;">1</p> <p>UNITED STATES DISTRICT COURT DISTRICT OF CONNECTICUT -----x ACE AMERICAN INSURANCE COMPANY,  Plaintiff,  vs. Case No. 3:11-cv-01741-CSH Date: December 17, 2012 EATON ELECTRICAL, INC.,  Defendant. -----x  DEPOSITION OF JONATHAN TURNER  The deposition of Jonathan Turner was taken on December 17, 2012, beginning at 10:39 a.m., at One Landmark Square, Stamford, Connecticut, before Susan Wandzilak, Registered Professional Reporter and Notary Public in the State of Connecticut.   Susan Wandzilak License No. 377</p>	<p style="text-align: right;">3</p> <p>1 STIPULATIONS 2 IT IS HEREBY STIPULATED AND AGREED by 3 and between counsel representing the parties that 4 each party reserves the right to make specific 5 objections at the trial of the case to each and 6 every question asked and of answers given 7 thereto by the deponent, reserving the right to 8 move to strike out where applicable, except as to 9 such objections as are directed to the form of 10 the question. 11 IT IS HEREBY STIPULATED AND AGREED by 12 and between counsel representing the respective 13 parties that proof of the official authority of 14 the Notary Public before whom this deposition is 15 taken is waived. 16 IT IS FURTHER STIPULATED AND AGREED by 17 and between counsel representing the respective 18 parties that the reading and signing of the 19 deposition by the deponent is not waived. 20 IT IS FURTHER STIPULATED AND AGREED by 21 and between counsel representing parties that all 22 defects, if any, as to the notice of the taking 23 of the deposition are waived. 24 Filing of the Notice of Deposition with 25 the original transcript is waived.</p>
<p style="text-align: right;">2</p> <p>1 A P P E A R A N C E S 2 PETER G. ROSSI, ESQUIRE 3 Cozen O'Connor 4 1900 Market Street 5 Philadelphia, Pennsylvania 19103-3508 6 215-665-2783 Phone 7 215-701-2483 Fax 8 prossi@cozen.com 9 Attorney for Plaintiff 10 JONATHAN T. BARTON, ESQUIRE 11 Sandberg Phoenix &amp; Von Gontard, P.C. 12 600 Washington Avenue - 15th Floor 13 St. Louis, Missouri 63101 14 314-231-3332 Phone 15 314-241-7604 Fax 16 jbarton@sandbergphoenix.com 17 Attorney for Defendant 18 Also Present: John E. Chaffee, River Bend Center, LLC 19 20 21 22 23 24 25</p>	<p style="text-align: right;">4</p> <p>1 THE VIDEOGRAPHER: We are now on record, 2 December 17, 2012. The time on videotaped record 3 is approximately 10:39 a.m. You can swear the 4 witness, please. 5 JONATHAN TURNER, 6 having been first duly sworn, testified as 7 follows: 8 THE COURT REPORTER: Can I have your full 9 name and address for the record. 10 THE WITNESS: Jonathan Turner, 17 Flak, 11 F-L-A-K, Lane, New Fairfield, Connecticut 06812. 12 DIRECT EXAMINATION 13 BY MR. BARTON: 14 Q. Mr. Turner, my name is John Barton. I'm an 15 attorney and I represent Eaton Corporation in a cause 16 of action that has been brought against it arising out 17 of a fire that occurred on January 16, 2011. 18 Have you ever given a deposition before? 19 A. No. 20 Q. As we go along here today, I'm going to ask 21 you a series of questions. If at any time you don't 22 understand my question or it's unclear in any way, 23 just ask me to repeat or rephrase myself and I'll be 24 glad to do so. 25 A. Okay.</p>

5	<p>1 Q. So if you shake your head or say um-uh or</p> <p>2 un-uh, I will say, Is that a yes? or, Is that a no?</p> <p>3 A. Yeah, um-uh.</p> <p>4 Q. I'm not trying to be rude. Just trying to</p> <p>5 make sure we have a clear record. Okay?</p> <p>6 A. Yes.</p> <p>7 Q. And a final rule of thumb is, if you need a</p> <p>8 break at any time for any reason, just let me know and</p> <p>9 we will take one. I just ask that you answer whatever</p> <p>10 question is on the table. Fair enough?</p> <p>11 A. Will do, yes.</p> <p>12 Q. All right. You already identified your</p> <p>13 address. Can you give me your telephone number. And</p> <p>14 the business number is fine, sir.</p> <p>15 A. 203-359-7657.</p> <p>16 Q. Are you currently employed?</p> <p>17 A. Yes.</p> <p>18 Q. And who do you work for?</p> <p>19 A. River Bend Center, LLC.</p> <p>20 Q. And what do you do for them?</p> <p>21 A. I'm a property manager. I handle all the</p> <p>22 real estate.</p> <p>23 Q. What type of real estate does River Bend,</p> <p>24 LLC, own?</p> <p>25 A. Mostly commercial and part residential.</p>	7	<p>1 where did you work?</p> <p>2 A. I was a kid. I worked at Town Fair Tire.</p> <p>3 Q. I'm sorry. You worked where?</p> <p>4 A. I was a kid. I worked at Town Fair Tire. I</p> <p>5 worked at Bradleys, Caldor.</p> <p>6 Q. What is your date of birth, sir?</p> <p>7 A. 1/9/69.</p> <p>8 Q. Can you describe your educational background</p> <p>9 for me.</p> <p>10 A. I went to Abbott Tech and I took electrical</p> <p>11 as a trade.</p> <p>12 Q. So I take it you got a certificate in</p> <p>13 electrical work from Abbott Tech; is that correct?</p> <p>14 A. Yes, sir.</p> <p>15 Q. And what year was that?</p> <p>16 A. 1987.</p> <p>17 Q. Any other formal education?</p> <p>18 A. No.</p> <p>19 Q. No other certificates or degrees?</p> <p>20 A. In AED and stuff like that.</p> <p>21 Q. I'm sorry?</p> <p>22 A. AED, life safety and stuff like those, but</p> <p>23 nothing else.</p> <p>24 Q. When you worked at SL Kelly Electric, what</p> <p>25 were your job duties?</p>
6	<p>1 Q. Okay. What percentage is residential?</p> <p>2 A. About five percent.</p> <p>3 Q. Okay. And of the commercial property it</p> <p>4 owns, is that residential or business?</p> <p>5 A. The --</p> <p>6 Q. The commercial property. I'm sorry. It's</p> <p>7 commercial property, correct?</p> <p>8 A. It's commercial property.</p> <p>9 Q. How long have you been a property manager for</p> <p>10 River Bend?</p> <p>11 A. Probably 10 years.</p> <p>12 Q. Has it always been -- well, has it always</p> <p>13 been under River Bend? Have you always been employed</p> <p>14 by River Bend?</p> <p>15 A. I was employed by Omega Engineering.</p> <p>16 Q. Okay. Prior to working at Omega Engineering,</p> <p>17 what did you do?</p> <p>18 A. I was an electrician.</p> <p>19 Q. For who?</p> <p>20 A. SL Kelly Electric.</p> <p>21 Q. How long did you work for SL Kelly Electric?</p> <p>22 A. Nine and a half years.</p> <p>23 Q. And what years were those?</p> <p>24 A. '87 to '95, I believe.</p> <p>25 Q. Okay. And prior to your work at SL Kelly,</p>	8	<p>1 A. Electrical wiring for commercial. Majority</p> <p>2 commercial. And residential.</p> <p>3 Q. Did you ever install a meter panel before?</p> <p>4 A. Yes.</p> <p>5 Q. About how many times?</p> <p>6 A. A hundred times.</p> <p>7 Q. Did you ever have any problems installing a</p> <p>8 meter panel?</p> <p>9 A. No.</p> <p>10 Q. When you installed a meter panel, were you</p> <p>11 the individual that selected where to place the meter</p> <p>12 panel on the home?</p> <p>13 A. Yes, sometimes. And sometimes not.</p> <p>14 Q. What considerations would you take when</p> <p>15 placing a meter panel on the home?</p> <p>16 A. Location and distance.</p> <p>17 Q. Okay. And when you say location distance,</p> <p>18 location from what or location where?</p> <p>19 A. Well, there's code. Windows, stuff like</p> <p>20 that. And the distances that you can travel for your</p> <p>21 cable coming over or on the ground.</p> <p>22 Q. Okay. Were there any codes that you are</p> <p>23 aware of that related to location or placement near</p> <p>24 downspouts, gutter systems, or water?</p> <p>25 A. No.</p>

21	<p>1 major issue, I would not know about it.</p> <p>2 <b>Q.</b> Were you ever made aware of any major issues</p> <p>3 at Vista View?</p> <p>4 <b>A.</b> Furnace out on 12 Vista View, I believe.</p> <p>5 <b>Q.</b> Okay, any others?</p> <p>6 <b>MR. ROSSI: You mean before the fire.</b></p> <p>7 <b>MR. BARTON: Yes.</b></p> <p>8 <b>THE WITNESS: Prior to the fire?</b></p> <p>9 <b>MR. BARTON: Yes.</b></p> <p>10 <b>THE WITNESS: Well, I think we had a bad</b></p> <p>11 <b>furnace and a bad blower in one of the two</b></p> <p>12 <b>buildings.</b></p> <p>13 <b>BY MR. BARTON:</b></p> <p>14 <b>Q.</b> Which one had the bad blower?</p> <p>15 <b>A.</b> I think it was 116.</p> <p>16 <b>Q.</b> Any other issues that were brought to your</p> <p>17 attention that you were aware of?</p> <p>18 <b>A.</b> Not that I'm aware of. You may have wind</p> <p>19 damage or little things. Nothing that's....</p> <p>20 <b>Q.</b> Did anybody prior to the fire bring to your</p> <p>21 attention any problems with the gutter system?</p> <p>22 <b>A.</b> No.</p> <p>23 <b>Q.</b> Were you made aware of any ice damage or ice</p> <p>24 sheeting flowing down from the gutter system at Vista</p> <p>25 View?</p>	23	<p>1 security system at 75 Vista View Drive?</p> <p>2 <b>A.</b> Yes.</p> <p>3 <b>Q.</b> What problem did you have?</p> <p>4 <b>A.</b> We had a problem with the smoke detectors in</p> <p>5 the alarm panel, the interface.</p> <p>6 <b>Q.</b> Okay, what was the problem?</p> <p>7 <b>A.</b> We kept on getting false reports. And it</p> <p>8 sent off the fire alarm constantly at different</p> <p>9 times. And it happened in a majority of the houses</p> <p>10 there.</p> <p>11 <b>Q.</b> Okay, so not just 75.</p> <p>12 <b>A.</b> It happened in 12. It happened in 116, 70.</p> <p>13 <b>Q.</b> What did do you to alleviate these false fire</p> <p>14 alarms?</p> <p>15 <b>A.</b> I had the alarm company disconnect the</p> <p>16 interface in between that they had the problem with.</p> <p>17 <b>Q.</b> So effectively no longer monitor?</p> <p>18 <b>A.</b> By the outside no longer monitored.</p> <p>19 <b>Q.</b> Okay. So there may have been smoke detectors</p> <p>20 inside the homes so if somebody was there they would</p> <p>21 hear it sound, right?</p> <p>22 <b>A.</b> There was definitely smoke detectors inside</p> <p>23 the homes.</p> <p>24 <b>Q.</b> Okay. But in terms of monitoring by an</p> <p>25 outside security agency, it wasn't happening?</p>
22	<p>1 <b>A.</b> No.</p> <p>2 <b>Q.</b> If there was significant ice flowing down</p> <p>3 from the gutters, is that something you would expect</p> <p>4 either Mr. Ribisl to advise you of or East Brook</p> <p>5 Construction?</p> <p>6 <b>A.</b> Yeah.</p> <p>7 <b>Q.</b> They should bring it to your attention?</p> <p>8 <b>A.</b> Should.</p> <p>9 <b>Q.</b> Did you ever have any problems with any of</p> <p>10 the electrical systems at Vista View prior to the</p> <p>11 fire?</p> <p>12 <b>A.</b> Electrical systems?</p> <p>13 <b>Q.</b> Yes.</p> <p>14 <b>A.</b> No.</p> <p>15 <b>Q.</b> Was there any electrical maintenance done on</p> <p>16 75 Vista View Drive prior to the fire?</p> <p>17 <b>A.</b> No, not that I know of or I recall.</p> <p>18 <b>Q.</b> What about any of the other properties?</p> <p>19 <b>A.</b> No.</p> <p>20 <b>Q.</b> You didn't participate in any of the</p> <p>21 construction or the electrical contracting that was</p> <p>22 done for the building?</p> <p>23 <b>A.</b> No. I didn't sign off on any of that stuff.</p> <p>24 It was a project that Bob Pollard was handling.</p> <p>25 <b>Q.</b> Did you ever have any problems with the</p>	24	<p>1 <b>A.</b> Wasn't happening.</p> <p>2 <b>Q.</b> Okay. Do you know when the smoke detectors</p> <p>3 were disabled? Or the monitoring for the smoke</p> <p>4 detectors.</p> <p>5 <b>A.</b> Sometime in 2008, I believe, right after Bob</p> <p>6 Pollard left.</p> <p>7 <b>Q.</b> About the time you took over the properties?</p> <p>8 <b>A.</b> Yeah. And Bob was having the same problem</p> <p>9 too, I believe.</p> <p>10 <b>Q.</b> Now, the security system Armed and Ready was</p> <p>11 your security service, correct?</p> <p>12 <b>A.</b> Correct. Still are.</p> <p>13 <b>Q.</b> Now, when Armed and Ready advised you of any</p> <p>14 issues with the property, what was supposed to happen?</p> <p>15 <b>A.</b> Well, they would just do maintenance. They</p> <p>16 wouldn't advise us of anything. We would call them in</p> <p>17 if there was a problem.</p> <p>18 <b>Q.</b> Well, if there was a problem on the property,</p> <p>19 for example, power out, low temperature (or since</p> <p>20 there was smoke detectors that were disabled, let's</p> <p>21 just go with power out or low temperature), what would</p> <p>22 happen? Would you get notified?</p> <p>23 <b>A.</b> Yes.</p> <p>24 <b>Q.</b> Okay. Who would notify you?</p> <p>25 <b>A.</b> It would be a central monitoring station.</p>

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25	<p>1 Q. Okay.</p> <p>2 A. When you meant Armed and Ready, I believe you</p> <p>3 were talking about the company itself.</p> <p>4 Q. Correct. And when you would be advised of a</p> <p>5 problem on the property, what was supposed to happen?</p> <p>6 A. Depending on what it was.</p> <p>7 Q. Okay. If it was a power outage, what were</p> <p>8 you supposed to do?</p> <p>9 A. If it's a power outage, I would tell them to</p> <p>10 disregard.</p> <p>11 Q. Why?</p> <p>12 A. Because we lost power many many times up</p> <p>13 there.</p> <p>14 Q. How many times have you lost power up there?</p> <p>15 A. Offhand?</p> <p>16 Q. Yes.</p> <p>17 A. Twenty-plus times.</p> <p>18 Q. How many times had you lost power at 75 Vista</p> <p>19 View Drive?</p> <p>20 A. Most of the time they all would go out at the</p> <p>21 same time.</p> <p>22 Q. Okay.</p> <p>23 A. They would start with one and then you would</p> <p>24 end up putting them all on test.</p> <p>25 Q. So even if there is a -- if it's extremely</p>	27	<p>1 A. Yes.</p> <p>2 Q. The first was for 75; the second one was for</p> <p>3 70?</p> <p>4 A. Not sure which way it went, but....</p> <p>5 Q. We have records to show.</p> <p>6 A. Yeah.</p> <p>7 Q. Didn't receive any power outage at any of the</p> <p>8 other homes?</p> <p>9 A. Correct.</p> <p>10 Q. Did that strike you as unusual?</p> <p>11 A. No.</p> <p>12 Q. A moment ago you told me when the power went</p> <p>13 out to the neighborhood, they all went out.</p> <p>14 A. Yeah, but --</p> <p>15 Q. But on the 16th only two go out?</p> <p>16 A. It could happen.</p> <p>17 Q. Had it ever happened before?</p> <p>18 A. No.</p> <p>19 Q. When you received the notification about 75</p> <p>20 Vista View Drive, what, if anything, did you tell the</p> <p>21 representative of Armed and Ready?</p> <p>22 A. I believe I told Armed and Ready to</p> <p>23 disregard, put on test.</p> <p>24 Q. When you received the call advising that you</p> <p>25 the house across the street from 75, which is 70 Vista</p>
26	<p>1 cold outside like it was on January 16 of 2011 when</p> <p>2 you received a power outage, just don't call me back</p> <p>3 for another 12 hours?</p> <p>4 A. Correct.</p> <p>5 Q. Is that standard procedure?</p> <p>6 A. Yes.</p> <p>7 Q. Who created that procedure?</p> <p>8 A. Me.</p> <p>9 Q. And was this because you had so many power</p> <p>10 outage alarms?</p> <p>11 A. Yes.</p> <p>12 Q. On January 16 of 2011, did you receive an</p> <p>13 alarm for power outage at 75 Vista View Drive?</p> <p>14 A. Yes.</p> <p>15 Q. Do you recall what time it was that you</p> <p>16 received that?</p> <p>17 A. It was close to midnight.</p> <p>18 Q. Did you receive an alarm for power outage at</p> <p>19 70 Vista View Drive?</p> <p>20 A. Yes.</p> <p>21 Q. And do you recall when that was?</p> <p>22 A. About -- it could be around the same time, 15</p> <p>23 minutes later, 10 minutes later.</p> <p>24 Q. Okay. So you received two calls that</p> <p>25 evening?</p>	28	<p>1 View Drive, also was without power, what did you tell</p> <p>2 them to do at that point?</p> <p>3 A. Disregard and put it on test.</p> <p>4 Q. Did you call anybody at Omega or Pilot's Mall</p> <p>5 or really anybody and say, hey, somebody go out and</p> <p>6 check the property?</p> <p>7 A. No.</p> <p>8 Q. If the records indicate that you received the</p> <p>9 first call at 10:47 p.m. --</p> <p>10 A. Okay.</p> <p>11 Q. -- do you have any reason to dispute that?</p> <p>12 A. No, if that's what it says.</p> <p>13 Q. Do you know how long it took the first fire</p> <p>14 department to arrive on scene?</p> <p>15 A. No, I don't.</p> <p>16 <b>MR. ROSSI: You mean with regard to the</b></p> <p>17 <b>fire?</b></p> <p>18 <b>MR. BARTON: Correct. On -- well, actually</b></p> <p>19 <b>they didn't, they didn't get there until January</b></p> <p>20 <b>17th. Yes, I'm talking about the fire.</b></p> <p>21 <b>BY MR. BARTON:</b></p> <p>22 Q. Do you know how long it took the first fire</p> <p>23 department to report to the scene?</p> <p>24 A. I have no idea.</p> <p>25 Q. Let me finish the question.</p>

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29	<p>1 <b>MR. ROSSI: Let him finish his question.</b></p> <p>2 <b>THE WITNESS: Okay.</b></p> <p>3 <b>BY MR. ROSSI:</b></p> <p>4 <b>Q.</b> From the time they received notification of</p> <p>5 the fire to get there. Do you have any idea?</p> <p>6 <b>A.</b> I have no idea.</p> <p>7 <b>Q.</b> Do you know what time the fire department</p> <p>8 received notification of the fire?</p> <p>9 <b>A.</b> I have no idea.</p> <p>10 <b>Q.</b> After Armed and Ready had contacted you</p> <p>11 twice, did you receive any other phone calls on the</p> <p>12 16th concerning 75 Vista View Drive?</p> <p>13 <b>A.</b> Yes, I believe I received it from someone</p> <p>14 from the fire department telling me that one of our</p> <p>15 houses were on fire.</p> <p>16 <b>Q.</b> I think that was on the 17th.</p> <p>17 <b>A.</b> Well, close to -- we were close to --</p> <p>18 <b>Q.</b> I know we are close to midnight here.</p> <p>19 <b>A.</b> I was sleeping, so....</p> <p>20 <b>Q.</b> And what did the fire department advise you?</p> <p>21 <b>A.</b> They told me that one of our houses were on</p> <p>22 fire, that I needed to come on up.</p> <p>23 <b>Q.</b> Okay. And what did you do next?</p> <p>24 <b>A.</b> I immediately called Scott Ribisl. I picked</p> <p>25 Scott Ribisl up and we immediately went up there.</p>	31	<p>1 notified that there was a power outage?</p> <p>2 <b>A.</b> Yes, I believe I did.</p> <p>3 <b>Q.</b> For both properties?</p> <p>4 <b>A.</b> Yes, I believe I did.</p> <p>5 <b>Q.</b> After you spoke with the fire investigators,</p> <p>6 what did you do next?</p> <p>7 <b>A.</b> At the?</p> <p>8 <b>Q.</b> With respect to the property. Did you stay</p> <p>9 there all night?</p> <p>10 <b>A.</b> I stayed there all night.</p> <p>11 <b>Q.</b> Okay.</p> <p>12 <b>A.</b> I didn't leave until 12:00 the next day.</p> <p>13 <b>Q.</b> Did anybody advise you what may have caused</p> <p>14 the fire that evening?</p> <p>15 <b>A.</b> No.</p> <p>16 <b>Q.</b> Have you come to learn what caused the fire?</p> <p>17 <b>A.</b> I heard it was the meter panel.</p> <p>18 <b>Q.</b> What about the meter panel?</p> <p>19 <b>A.</b> That they believed that the fire started in</p> <p>20 the meter panel.</p> <p>21 <b>Q.</b> Okay, who told you that?</p> <p>22 <b>A.</b> It was -- I was in part of the</p> <p>23 investigation. I was there with the people that were</p> <p>24 doing the investigation. So they were talking about</p> <p>25 it.</p>
30	<p>1 <b>Q.</b> All right. What time did you arrive at the</p> <p>2 property?</p> <p>3 <b>A.</b> I want to say somewhere around 12:30, quarter</p> <p>4 to 1:00.</p> <p>5 <b>Q.</b> And describe the scene for me when you got</p> <p>6 there. Was the house still on fire?</p> <p>7 <b>A.</b> Well, when you come to the road, it was all</p> <p>8 blocked off. Obviously, they didn't want us to come</p> <p>9 up in that area. But we told them that we were the</p> <p>10 owners of the house so they let us get up to the</p> <p>11 bottom of the road, basically. At that point I could</p> <p>12 see the fire.</p> <p>13 <b>Q.</b> At some point in time did you speak with the</p> <p>14 fire investigators?</p> <p>15 <b>A.</b> Fire investigators?</p> <p>16 <b>Q.</b> Yeah.</p> <p>17 <b>A.</b> Connecticut Lab, yes.</p> <p>18 <b>Q.</b> Fire marshals? Other firefighters up there?</p> <p>19 <b>A.</b> Well, I spoke to the Connecticut Crime Lab,</p> <p>20 yes.</p> <p>21 <b>Q.</b> And what did you tell them?</p> <p>22 <b>A.</b> They interviewed me on what happened.</p> <p>23 <b>Q.</b> Much like I'm doing right now?</p> <p>24 <b>A.</b> Right now, yeah. I was in the crime truck.</p> <p>25 <b>Q.</b> Did you advise them that you had been</p>	32	<p>1 <b>Q.</b> When you say they, can you --</p> <p>2 <b>A.</b> Meaning the 20 people that were doing the</p> <p>3 investigation for multiple insurance companies that</p> <p>4 were there.</p> <p>5 <b>Q.</b> Okay, so if I were to ask you to name those</p> <p>6 individuals, you wouldn't be able do so.</p> <p>7 <b>A.</b> No. Besides, I also was there with the crime</p> <p>8 lab. So, I mean, the state police said the same</p> <p>9 thing.</p> <p>10 <b>Q.</b> Was there any discussion about ice or</p> <p>11 weather?</p> <p>12 <b>A.</b> No.</p> <p>13 <b>Q.</b> Were there any -- at any time did you examine</p> <p>14 the other meter panels on the other homes at Vista</p> <p>15 View?</p> <p>16 <b>A.</b> No.</p> <p>17 <b>Q.</b> Okay.</p> <p>18 <b>A.</b> I believe that someone had a conversation</p> <p>19 about running over to see what type of meter panels</p> <p>20 they were during the investigations.</p> <p>21 And I brought every insurance company to</p> <p>22 every house. And we walked in every house and they</p> <p>23 documented every house.</p> <p>24 <b>Q.</b> Are all the houses identical?</p> <p>25 <b>A.</b> Three of them are close to identical. They</p>

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33	<p>1 are called the same. And the majority of the layouts 2 are the same, yes. 3 <b>Q.</b> Are the meter panels located in the exact 4 same spot? 5 <b>A.</b> I can't tell you exactly. 6 <b>Q.</b> Okay. 75 Vista View Drive, do you have any 7 understanding of where that meter panel is located on 8 the home? Or was located. 9 <b>A.</b> Yes. 10 <b>Q.</b> Okay. Was it the same as on other properties 11 or was it different? 12 <b>A.</b> I can't answer that. 13 <b>Q.</b> I hand you what has been previously marked as 14 Exhibit 14. Can you identify that document for me? 15 <b>A.</b> Yeah. 16 <b>Q.</b> What is it? 17 <b>A.</b> It's me sending a note to Armed and Ready to 18 disconnect the smoke detectors causing the false 19 alarms. 20 <b>Q.</b> For Vista View Drive? 21 <b>A.</b> Yes. 22 <b>Q.</b> And what is the date of that correspondence? 23 <b>A.</b> October 28, 2008. 24 <b>Q.</b> Were the smoke detectors for Vista View -- 25 for any of the Vista View properties ever turned back</p>	35	<p>1 the property with a Detective Christensen? 2 <b>A.</b> I believe so. 3 <b>Q.</b> Okay. 4 <b>A.</b> I don't remember his name exactly. 5 <b>Q.</b> With a detective for the state of 6 Connecticut? 7 <b>A.</b> Yes, if that's his name. 8 <b>Q.</b> Okay. Did you take him to observe ice 9 buildup in the gutters where the meter panels were 10 located on the Arlington style homes? 11 <b>A.</b> No. I brought him to the houses. If he saw 12 that, then that's what he saw. 13 <b>Q.</b> Had you had a problem at Vista View with ice 14 damming prior to the fire? Do you know what that is? 15 <b>A.</b> Explain to me. 16 <b>Q.</b> Sure. Ice damming is the gutters filling up 17 with ice and then overflowing as if there is no gutter 18 system. 19 <b>A.</b> Yes, a lot of people had the problem, yeah. 20 I believe they probably at certain areas might have 21 had problems, yes. 22 <b>Q.</b> There was a lot of snow. 23 <b>A.</b> Yeah, there was very -- I mean, all over on 24 all the properties. But you do more damage ripping it 25 out.</p>
34	<p>1 on, or the monitoring for them? 2 <b>A.</b> Yes. 3 <b>Q.</b> And when was that? 4 <b>A.</b> I can't recall exactly what dates. 5 <b>Q.</b> Was it after the fire? 6 <b>A.</b> It was after the fire, yes. And they weren't 7 just turned back on. 8 <b>Q.</b> I'm sorry. What do you mean they weren't 9 just turned back on? 10 <b>A.</b> We had to spend a lot of extra money to 11 integrate something that was better to the system now 12 to make it work. 13 <b>Q.</b> But you were aware as of October 28, 2008, 14 that there would be no monitoring at 75 Vista View 15 Drive of any fire or smoke; is that correct? 16 <b>A.</b> External monitoring. There was internal 17 monitoring, yes. 18 <b>Q.</b> By internal monitoring you mean if there was 19 somebody inside the home, they would hear it; is that 20 right? 21 <b>A.</b> Correct. 22 <b>Q.</b> At the time of the fire, Vista View was 23 vacant; is that correct? 24 <b>A.</b> Correct. 25 <b>Q.</b> On the day of the fire, do you recall walking</p>	36	<p>1 <b>Q.</b> When you say you do more damage ripping it 2 out, what do you mean? 3 <b>A.</b> To like if you rip it off the roof and stuff 4 like that. 5 <b>Q.</b> Did you advise anybody not to rip the ice off 6 the roof at 75 Vista View Drive? 7 <b>A.</b> I didn't advise them to do anything. 8 <b>Q.</b> Had you been made aware there had been ice 9 damming at the Vista View properties? 10 <b>A.</b> I don't think so. 11 <b>Q.</b> I meant to add prior to the fire. 12 <b>A.</b> Prior to the fire, no. 13 <b>Q.</b> After the fire, in your role as a property 14 manager for Omega, what did do you with respect to 75 15 Vista View? Did you have any tasks or duties? 16 <b>A.</b> Oh, yes. Go by the place with Scottie and 17 make sure the place was safe until we hired East Brook 18 Construction to board up the place. I hired them to 19 demo and make the place secure. 20 <b>Q.</b> So East Brook did both the boarding up and 21 the demo? 22 <b>A.</b> Yes. 23 <b>Q.</b> Is there any plans to rebuild 75 Vista View 24 Drive? 25 <b>A.</b> At this time no because we have three houses</p>

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Case: Ace American Insurance Company v.  
Eaton Electrical, Inc.

Transcript of the Testimony of Jay Foster

Date: September 11, 2012



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Ace American Insurance Company v. Eaton Electrical, Inc.

1

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF CONNECTICUT

-CV-01741-CSH

----- X

:  
ACE AMERICAN INSURANCE :  
COMPANY, :  
:  
Plaintiff, :  
:  
-versus- :  
:  
EATON ELECTRICAL, INC., :  
:  
Defendant. :  
----- X

Video deposition of JAY FOSTER, JR.,  
taken pursuant to the Federal Rules of Civil  
Procedure, at the Law offices of Carmody &  
Torrance, 50 Leavenworth Street, Waterbury,  
Connecticut, before Lea M. Palombo, LSR #00184,  
RPR, a Notary Public in and for the State of  
Connecticut, on Tuesday, September 11, 2012, at  
9:16 a.m.

2

1 **APPEARANCES:**  
2 **For the Plaintiff:**  
3 **COZEN O'CONNOR**  
4 **1900 Market Street**  
5 **Philadelphia, PA 19103**  
6 **(215) 665-2783**

7 **By: PETER ROSSL, ESQ.**

8 For the Defendant:  
9 **SANDBERG PHOENIX & von GONTARD, P.C.**  
10 **600 Washington Avenue, 15th Floor**  
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12 **(314) 231-3332**

13 **By: JONATHAN T. BARTON, ESQ.**

14 For Connecticut Light & Power Company:  
15 **CARMODY & TORRANCE**  
16 **50 Leavenworth Street**  
17 **Waterbury, CT 06721**  
18 **(203) 573-1200**

19 **By: RICHARD L. STREET, ESQ.**

20 **ALSO PRESENT:**  
21 **Bob Brown**  
22 **Geomatrix Productions**  
23 **270 Amity Road**  
24 **New Haven, CT 06525**

25 Linda Bennett

3

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19 **NOTE: Exhibits attached to transcript.**

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4

1 **VIDEOGRAPHER: On the record**

2 **1916 -- 9:16. This is the deposition of Jay**

3 **Foster recorded on September 11th, 2012 in**

4 **Waterbury, Connecticut and this deposition is**

5 **being taken in the case of Amer -- Ace American**

6 **Insurance Company versus Eaton Electrical and**

7 **was noticed by the defendant.**

8 **Videotape operator is Bob Brown of**

9 **Geomatrix Productions, 270 Amity Road, New**

10 **Haven, Connecticut.**

11 **Stipulations?**

12 **MR. BARTON: There are no**

13 **stipulations.**

14 **VIDEOGRAPHER: Okay.**

15 **MR. STREET: He will read and sign**

16 **the transcript.**

17 **VIDEOGRAPHER: If the counsel can**

18 **identify themselves.**

19 **MR. BARTON: John Barton**

20 **representing Eaton Corporation.**

21 **MR. ROSSI: Peter Rossi**

22 **representing the plaintiff.**

23 **MR. STREET: Richard Street**

24 **representing the Connecticut Light & Power**

25 **Company.**

5	<p>1           <b>VIDEOGRAPHER: Swear in the</b></p> <p>2 <b>witness, please.</b></p> <p>3 <b>J A Y F O S T E R, J R.,</b></p> <p>4 <b>90 Pershing Drive, Plainville, Connecticut</b></p> <p>5 <b>06062,</b></p> <p>6 <b>called as a witness, having been first</b></p> <p>7 <b>duly sworn by Lea M. Palombo, LSR</b></p> <p>8 <b>#00184, RPR, a Notary Public in and for</b></p> <p>9 <b>the State of Connecticut, was examined</b></p> <p>10 <b>and testified as follows:</b></p> <p>11 <b>DIRECT EXAMINATION</b></p> <p>12 <b>BY MR. BARTON:</b></p> <p>13 <b>Q.</b> Could you state your name for the</p> <p>14 record, please?</p> <p>15 <b>A.</b> Jay Foster, Jr.</p> <p>16 <b>Q.</b> Mr. Foster, my name is Jon Barton, I'm</p> <p>17 an attorney. I represent Eaton Corporation in a</p> <p>18 cause of action that's been brought against it</p> <p>19 by Ace American Insurance Company arising out of</p> <p>20 a fire which occurred on January 17th, 2011.</p> <p>21 Have you ever given a deposition</p> <p>22 before?</p> <p>23 <b>A.</b> No.</p> <p>24 <b>Q.</b> Okay. As we go along here today, I'm</p> <p>25 going to ask you a series of questions. If at</p>	7	<p>1 <b>Q.</b> And your current address?</p> <p>2 <b>A.</b> 90 Pershing Drive, Plainville,</p> <p>3 Connecticut.</p> <p>4 <b>Q.</b> Could you describe your educational</p> <p>5 background for me?</p> <p>6 <b>A.</b> Most recently I went to Rensselaer</p> <p>7 Polytechnic Institute for my undergraduate.</p> <p>8 <b>Q.</b> Did you obtain a degree?</p> <p>9 <b>A.</b> Yes.</p> <p>10 <b>Q.</b> And what was that degree in?</p> <p>11 <b>A.</b> Electric power engineering.</p> <p>12 <b>Q.</b> Is that a Bachelor's Degree?</p> <p>13 <b>A.</b> Yes.</p> <p>14 <b>Q.</b> And what year did you receive that?</p> <p>15 <b>A.</b> 2003.</p> <p>16 <b>Q.</b> Prior to obtaining your electric power</p> <p>17 engineering Bachelor's Degree in 2003, what</p> <p>18 other education do you have?</p> <p>19 <b>A.</b> Actually, let me -- let me correct</p> <p>20 myself because the most recent thing I did was</p> <p>21 just like this little certificate thing that we</p> <p>22 did with the company at UConn, but it has</p> <p>23 nothing to do with any degrees I received. I</p> <p>24 wasn't thinking about that.</p> <p>25 <b>Q.</b> Okay. Well, let me stop you there.</p>
6	<p>1 any time they're confusing or unclear in any</p> <p>2 way, just ask me to repeat or rephrase myself</p> <p>3 and I'll be glad to do so, okay?</p> <p>4 <b>A.</b> Yes.</p> <p>5 <b>Q.</b> The other rule of thumb is we'll need</p> <p>6 verbal responses from you. So if at any time</p> <p>7 you shake your head or say uh-huh or unh-unh,</p> <p>8 and don't worry, everybody does it, I'll say is</p> <p>9 that a yes or is that a no. I'm not trying to</p> <p>10 be rude, I'm just trying to get a verbal</p> <p>11 response. Fair?</p> <p>12 <b>A.</b> Yes.</p> <p>13 <b>Q.</b> All right. And the final rule of thumb</p> <p>14 is this is your deposition, so if you need a</p> <p>15 break at any time for any reason, you just let</p> <p>16 us know and we'll take one. The only thing I</p> <p>17 would ask is that if there's a question pending</p> <p>18 that you answer that first before we take a</p> <p>19 break. Fair enough?</p> <p>20 <b>A.</b> Yes.</p> <p>21 <b>Q.</b> Don't anticipate we'll be here very</p> <p>22 long, but we'll see.</p> <p>23 All right. Sir, could you give me</p> <p>24 your date of birth, please?</p> <p>25 <b>A.</b> August 24th, 1979.</p>	8	<p>1 You graduated from high school?</p> <p>2 <b>A.</b> I did graduate from high school.</p> <p>3 <b>Q.</b> What year?</p> <p>4 <b>A.</b> It's like a quiz. 1998.</p> <p>5 <b>Q.</b> All right. After you graduated high</p> <p>6 school, what educational institution did you</p> <p>7 attend right after that?</p> <p>8 <b>A.</b> Rensselaer Polytechnic Institute.</p> <p>9 <b>Q.</b> Okay. And you completed that program</p> <p>10 in 2003?</p> <p>11 <b>A.</b> That's correct.</p> <p>12 <b>Q.</b> And what year did you start that</p> <p>13 program?</p> <p>14 <b>A.</b> 1998.</p> <p>15 <b>Q.</b> All right. After Rensselaer</p> <p>16 Polytechnichal Institute, what other educational</p> <p>17 institutions did you attend, if any?</p> <p>18 <b>A.</b> I went to UConn School Of Business in</p> <p>19 Hartford.</p> <p>20 <b>Q.</b> Okay. And what years did you attend</p> <p>21 UConn School Of Business?</p> <p>22 <b>A.</b> I actually don't even remember what</p> <p>23 year it was.</p> <p>24 <b>Q.</b> Did you complete a program there?</p> <p>25 <b>A.</b> It was a -- it was a company program.</p>

2 (Pages 5 to 8)

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89	<p>1 fault from the transformer to the -- to the</p> <p>2 meter socket, so --</p> <p>3 <b>Q.</b> So it happened either at the meter</p> <p>4 socket or on the other side of the meter socket,</p> <p>5 correct?</p> <p>6 <b>A.</b> Correct.</p> <p>7 <b>Q.</b> Okay. And just so I correct my</p> <p>8 understanding, make sure I understand this</p> <p>9 correctly, a fault happened at 75 Vista View and</p> <p>10 it caused an overcurrent to come through the</p> <p>11 transformer?</p> <p>12 <b>A.</b> In layman's terms, yes.</p> <p>13 <b>Q.</b> And that's what, in your view, caused</p> <p>14 the breaker to open; is that correct?</p> <p>15 <b>A.</b> Yes.</p> <p>16 <b>Q.</b> And is there any -- you said that, in</p> <p>17 your view, you think it was a fault, correct?</p> <p>18 <b>MR. BARTON: Asked and answered.</b></p> <p>19 <b>A.</b> Yes. But if I even may clarify a</p> <p>20 little bit, the reason I state it the way I do</p> <p>21 is because, on secondary systems, a high</p> <p>22 resistance fault can electrically look like</p> <p>23 load, so it -- so that's why I constantly say,</p> <p>24 well, load or fault because, when we talk about</p> <p>25 a fault, you -- if you took two conductors and</p>	91	<p>1 <b>Go ahead.</b></p> <p>2 <b>A.</b> If a -- yeah. If an expert were to say</p> <p>3 that was because of electric arcing right there</p> <p>4 at that spot and that's what actually caused it,</p> <p>5 but I'm not expert enough to say that's --</p> <p>6 <b>Q.</b> Understood.</p> <p>7 <b>A.</b> -- really what happened. But something</p> <p>8 like that could feasibly generate enough current</p> <p>9 to trip the breaker.</p> <p>10 <b>Q.</b> Now, how does a situation like that</p> <p>11 generate current? When you say generate</p> <p>12 current, that implies to me that somehow this is</p> <p>13 generating current, but it's actually drawing</p> <p>14 current through the transformer, correct?</p> <p>15 <b>A.</b> Yes. Thanks for correcting me. It's</p> <p>16 not generating any current --</p> <p>17 <b>Q.</b> Right.</p> <p>18 <b>A.</b> -- but that's just the way we say it,</p> <p>19 typically, when we say generates fault current.</p> <p>20 The current -- the electricity is actually</p> <p>21 generated, obviously, at a generating plant and,</p> <p>22 during a load or anything that's using current,</p> <p>23 if you will, what it's really doing is creating</p> <p>24 a circuit, which means the current is going</p> <p>25 through the circuit and actually back to the</p>
90	<p>1 just bolted them right together, that's a fault,</p> <p>2 but there can also be a failure that could just</p> <p>3 look like load to the transformer and it would</p> <p>4 be probably very high, so.</p> <p>5 <b>Q.</b> Now, when you were at the meeting where</p> <p>6 the meter panel was examined and you saw the</p> <p>7 hole in the back of the meter panel, was that</p> <p>8 some evidence of the kind of fault that you</p> <p>9 would expect could cause the secondary side</p> <p>10 breaker to open?</p> <p>11 <b>MR. BARTON: Object to form.</b></p> <p>12 <b>A.</b> I'm not expert enough in the -- in</p> <p>13 electric -- or in the arcing failures,</p> <p>14 et cetera. There were some people there that</p> <p>15 probably have reports on that stuff.</p> <p>16 <b>Q.</b> Well, just in your experience, did the</p> <p>17 evidence that you saw in the breaker panel that</p> <p>18 the -- the back of the breaker panel in the</p> <p>19 vicinity of the circuit breaker was burned</p> <p>20 through, was that the kind of event which could</p> <p>21 cause the breaker on the secondary side of the</p> <p>22 transformer to open?</p> <p>23 <b>MR. BARTON: Object to form.</b></p> <p>24 <b>Vague, also speculation. Beyond this knowledge</b></p> <p>25 <b>of the witness.</b></p>	92	<p>1 generating plant. Like it's just a circuit so</p> <p>2 it literally completes around. And it actually</p> <p>3 does that in inverse directions 60 times per</p> <p>4 second, in this case, so.</p> <p>5 I'm sorry, did that answer your</p> <p>6 question?</p> <p>7 <b>Q.</b> Sort of. Tell me what -- do you have</p> <p>8 an understanding as to what the normal load on</p> <p>9 this house would be, if there were no faults?</p> <p>10 Would it be measured in volts, for example?</p> <p>11 <b>A.</b> No, it would be measured in amps.</p> <p>12 <b>Q.</b> And how many amps would this house</p> <p>13 normally draw?</p> <p>14 <b>A.</b> Occupied?</p> <p>15 <b>Q.</b> No, just as it was sitting there.</p> <p>16 <b>A.</b> Just as it was sitting right there?</p> <p>17 <b>Q.</b> Yeah. I just need a benchmark to ask</p> <p>18 you another question.</p> <p>19 <b>A.</b> It's actually very hard for me to say,</p> <p>20 but if the heat was running, because it was</p> <p>21 winter, so let's -- let's assume the heat was</p> <p>22 running and they probably had no lights on</p> <p>23 anyway, and I'm not familiar with everything</p> <p>24 about the house, so -- so I would say normal</p> <p>25 load would pretty much be just the heat and</p>

23 (Pages 89 to 92)

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93	<p>1 the -- and maybe the alarm system, if it was 2 armed. And so you might be looking at 20 to 40 3 amps. 4 Q. Now, when you had a fault situation, 5 how many amps would you be drawing? 6 A. Indications would show that it would be 7 greater than 125 because it did trip that 8 breaker. 9 Q. Because the breaker is rated for 125 10 amps, correct? 11 A. Yes. It's not a exact number, it's 12 rough, but it's around there somewhere. 13 Q. And since you know the breaker is 14 opened, this had to either approximate or exceed 15 125 amps, correct? 16 A. Correct. 17 Q. Okay. Now, take a look at Exhibit 49, 18 and tell me what this is again? 19 A. This is a map of the CL&amp;P facilities on 20 Vista View Drive. 21 Q. And Strongtown Road, that's where 22 the -- the facilities originate, correct, in 23 this map? 24 A. Yes, the -- the fuse that shows the 25 source side on Vista View Drive is actually</p>	95	<p>1 number 968, are there other overcurrent 2 protectors? 3 A. No. 4 Q. You mentioned before there was 5 lightning protection? 6 A. Yes. 7 Q. Is that depicted on this map? 8 A. No. 9 Q. Where would that be, approximately, if 10 you -- if you know? 11 A. At the 30K fuse? 12 Q. Mm-mm. 13 A. If you were to go out to Strongtown 14 Road and look up, you'd see it there. 15 Q. There's a pole there? 16 A. That -- that is a pole, that's on a 17 pole, pole 63280. 18 Q. I got ya. So you've got a fuse there 19 and you've got lightning protection? 20 A. That's correct. 21 Q. Which side of the fuse is the lightning 22 protection on? 23 A. The load side. 24 Q. That's the house side? 25 A. The cable side. Towards the house.</p>
94	<p>1 originates at Strongtown Road. 2 Q. Is that the fuse that we see right over 3 the 30K? 4 A. The fuse is actually a rectangle with a 5 line through it. It looks like two rectangles 6 next to each other that -- that symbol is the 7 fuse. If you actually look at the bottom, 8 you'll see a key and it should be on there 9 somewhere. And then 30K denotes that it's a 30 10 amp fuse, K type. 11 Q. Did anybody inspect that fuse and 12 determine whether it was blown after the fire? 13 A. Yes, it was inspected. 14 Q. And was it blown? 15 A. No. 16 Q. It was intact? 17 A. It was intact. 18 Q. And the fact that it's intact, that 19 fuse is intact, does that mean that it did not 20 get an overcurrent situation at that fuse? 21 A. Yes. 22 Q. And does that mean that whatever 23 problem occurred was downstream of that fuse? 24 A. Yes. 25 Q. Now, between that fuse and transformer</p>	96	<p>1 Q. Right. Now, between the fuse, the 30K 2 fuse, you have transformer 967, correct? 3 A. Yes. 4 Q. And then going up towards 75 Vista 5 View, you have 968? 6 A. Correct. 7 Q. And how many -- based upon what this 8 map tells you, how many houses or properties 9 does 968 service? 10 A. What the map shows is that transformer 11 968 services house 70 and 75. And then there 12 are available service points for lot number 13 seven and lot number two, but lot number two 14 appears that it has a service installed. 15 Q. From transformer 969? 16 A. From transformer 969. 17 Q. When -- you testified here that you 18 were at at least two meetings, one to evaluate 19 the transformer and one to look at the meter 20 panel, correct? 21 A. That's correct. 22 Q. And during the meeting where the 23 transformer was evaluated, did you see anything 24 that drew you to the conclusion that the 25 transformer caused this fire?</p>

24 (Pages 93 to 96)

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97	<p>1 A. No.</p> <p>2 Q. And when the breaker on the secondary</p> <p>3 side of this transformer opens, does that</p> <p>4 terminate electricity into the property?</p> <p>5 A. From our facilities, yes.</p> <p>6 Q. Yes. We have no information that there</p> <p>7 was another source of electricity at this</p> <p>8 property; do you understand that?</p> <p>9 A. Correct. Yes.</p> <p>10 Q. Okay. So if the breaker opens, there's</p> <p>11 no electricity going into the house?</p> <p>12 A. Correct.</p> <p>13 Q. Now, you talked earlier about a fault</p> <p>14 condition somewhere at the house. Is it your</p> <p>15 understanding that it was at the meter panel?</p> <p>16 <b>MR. BARTON: Object to form.</b></p> <p>17 <b>Asked and answered.</b></p> <p>18 <b>Go ahead.</b></p> <p>19 A. Yeah, my -- my understanding is that it</p> <p>20 was on the load side of the CL&amp;P facilities.</p> <p>21 Q. The house side?</p> <p>22 A. Right. I mean, if I were to expand</p> <p>23 that, I saw damage on the meter panel, but like</p> <p>24 I said before, I'm not an expert enough to say</p> <p>25 what caused it or anything like that, so.</p>	99	<p>1 know there were experts there in that meeting</p> <p>2 that were, you know, qualified to answer that.</p> <p>3 There's a metallurgic engineer, actually, that's</p> <p>4 where we were was at a place where they inspect</p> <p>5 that stuff and could make decisions -- or, you</p> <p>6 know, they were -- they were the experts on that</p> <p>7 stuff.</p> <p>8 Q. Let me ask you a hypothetical question,</p> <p>9 which Mr. Barton will object to.</p> <p>10 <b>MR. BARTON: Clearly.</b></p> <p>11 Q. If it was caused by electricity, is it</p> <p>12 fair to assume that it happened before the</p> <p>13 secondary breaker opened?</p> <p>14 <b>MR. BARTON: Let me object to</b></p> <p>15 <b>form. Improper hypothetical, assumes facts not</b></p> <p>16 <b>in evidence, calls for speculation and</b></p> <p>17 <b>components of it are asked and answered by this</b></p> <p>18 <b>witness multiple times.</b></p> <p>19 Q. Go ahead.</p> <p>20 A. Could you actually ask again? I'm</p> <p>21 sorry.</p> <p>22 <b>MR. ROSSI: She'll read that back</b></p> <p>23 <b>to you.</b></p> <p>24 <b>(Record read as requested.)</b></p> <p>25 <b>MR. BARTON: Let me add vague to</b></p>
98	<p>1 Q. The reason I ask is because, when you</p> <p>2 were answering Mr. Barton's questions, you said</p> <p>3 that the insulation on the cables melted away</p> <p>4 and could have caused this condition, correct?</p> <p>5 A. Correct.</p> <p>6 Q. But you don't know if that's what</p> <p>7 caused the breaker to open, correct?</p> <p>8 A. Yeah, that's actually true, you're</p> <p>9 correct.</p> <p>10 Q. It could have been whatever caused the</p> <p>11 hole in the panel caused the breaker to open,</p> <p>12 correct?</p> <p>13 A. That -- that's a possibility.</p> <p>14 Q. Okay. So you don't know, do you?</p> <p>15 A. No, I don't know.</p> <p>16 Q. Is it fair to say that the situation</p> <p>17 you saw in the -- in the breaker panel, in the</p> <p>18 vicinity of the main circuit breaker, that that</p> <p>19 hole was in the meter panel was caused by</p> <p>20 electricity?</p> <p>21 <b>MR. BARTON: Object to form.</b></p> <p>22 <b>Purely speculation.</b></p> <p>23 <b>Go ahead.</b></p> <p>24 A. Yeah, I already answered it, I'm -- I'm</p> <p>25 not expert enough to say what caused that. I</p>	100	<p>1 <b>the objection.</b></p> <p>2 <b>Go ahead.</b></p> <p>3 A. Can I -- can I restate it?</p> <p>4 Q. Sure.</p> <p>5 A. Can I? Are you asking me that if the</p> <p>6 hole in the back of the meter pan, the meter</p> <p>7 socket or cabinet, if that was caused by</p> <p>8 electricity?</p> <p>9 Q. Correct.</p> <p>10 A. Is it fair to say that it was -- that</p> <p>11 it occurred prior to the breaker opening?</p> <p>12 Q. Correct.</p> <p>13 A. Yes, that's fair to say.</p> <p>14 Q. Okay. Have you ever installed a meter</p> <p>15 panel?</p> <p>16 A. Yes.</p> <p>17 Q. And Mr. Barton asked you questions</p> <p>18 about some inspection that someone -- you</p> <p>19 thought that the city would make; is that</p> <p>20 correct, or the municipality?</p> <p>21 A. Mr. Barton asked me if the -- yeah.</p> <p>22 Ask your question again?</p> <p>23 Q. What I want to know is what would</p> <p>24 they -- what would they inspect for, if you</p> <p>25 know. If you've installed a meter panel, you've</p>

25 (Pages 97 to 100)

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Eaton Electrical, Inc.

Transcript of Michael Driscoll

Date: December 19, 2012

*This transcript is printed on 100% recycled paper*



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<p style="text-align: right;">1</p> <p>UNITED STATES DISTRICT COURT DISTRICT OF CONNECTICUT -----x ACE AMERICAN INSURANCE COMPANY,  Plaintiff,  vs. Case No. 3:11-cv-01741-CSH Date: December 19, 2012 EATON ELECTRICAL, INC.,  Defendant. -----x  DEPOSITION OF MICHAEL J. DRISCOLL  The deposition of Michael J. Driscoll was taken on December 19, 2012, beginning at 9:09 a.m., at 150 Trumbull Street, Hartford, Connecticut before Susan Wandzilak, Registered Professional Reporter and Notary Public in the State of Connecticut.   Susan Wandzilak License No. 377</p>	<p style="text-align: right;">3</p> <p>1 STIPULATIONS 2 IT IS HEREBY STIPULATED AND AGREED by 3 and between counsel representing the parties that 4 each party reserves the right to make specific 5 objections at the trial of the case to each and 6 every question asked and of answers given 7 thereto by the deponent, reserving the right to 8 move to strike out where applicable, except as to 9 such objections as are directed to the form of 10 the question. 11 IT IS HEREBY STIPULATED AND AGREED by 12 and between counsel representing the respective 13 parties that proof of the official authority of 14 the Notary Public before whom this deposition is 15 taken is waived. 16 IT IS FURTHER STIPULATED AND AGREED by 17 and between counsel representing the respective 18 parties that the reading and signing of the 19 deposition by the deponent is not waived. 20 IT IS FURTHER STIPULATED AND AGREED by 21 and between counsel representing parties that all 22 defects, if any, as to the notice of the taking 23 of the deposition are waived. 24 Filing of the Notice of Deposition with 25 the original transcript is waived.</p>
<p style="text-align: right;">2</p> <p>1 A P P E A R A N C E S 2 PETER G. ROSSI, ESQUIRE 3 Cozen O'Connor 4 1900 Market Street 5 Philadelphia, Pennsylvania 19103-3508 6 215-665-2783 Phone 7 215-701-2483 Fax 8 prossi@cozen.com 9 Attorney for Plaintiff 10 JONATHAN T. BARTON, ESQUIRE 11 Sandberg Phoenix &amp; Von Gontard, P.C. 12 600 Washington Avenue - 15th Floor 13 St. Louis, Missouri 63101 14 314-231-3332 Phone 15 314-241-7604 Fax 16 jbarton@sandbergphoenix.com 17 Attorney for Defendant 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">4</p> <p>1 <b>THE VIDEOGRAPHER: We are now on record.</b> 2 <b>December 19, 2012. The time on videotaped record</b> 3 <b>is approximately 9:09 a.m.</b> 4 <b>Swear the witness, please.</b> 5 <b>MICHAEL J. DRISCOLL,</b> 6 <b>having been first duly sworn, testified as</b> 7 <b>follows:</b> 8 <b>THE COURT REPORTER: What is your full name</b> 9 <b>and address for the record.</b> 10 <b>THE WITNESS: My full name is Michael J.</b> 11 <b>Driscoll. My address is 119 Spokerat (ph)</b> 12 <b>Street, Seymour, Connecticut 06483.</b> 13 <b>DIRECT EXAMINATION</b> 14 <b>BY MR. BARTON:</b> 15 <b>Q.</b> Mr. Driscoll, my name is John Barton. I am 16 an attorney and I represent Eaton corporation in a 17 cause of action that Ace Insurance Company has brought 18 against it arising out of the fire which occurred on 19 January 16 of 2011. 20 I understand you have been retained as a 21 witness by Mr. Peter Rossi; is that correct? 22 <b>A.</b> Yes. 23 <b>Q.</b> And as part of your retention, you have done 24 examination into the origin and cause of this fire. 25 Is that also correct?</p>

5	<p>1 A. Yes.</p> <p>2 Q. All right. And as a retained witness, it is</p> <p>3 my understanding that you have probably given a number</p> <p>4 of depositions in the past.</p> <p>5 A. I have.</p> <p>6 Q. Okay, as we go along here today, I'm going to</p> <p>7 ask you a series of questions. If at any time you</p> <p>8 don't understand it or if they are confusing in any</p> <p>9 way, just ask me to repeat or rephrase myself and I</p> <p>10 will be glad to do so, okay?</p> <p>11 A. Yes.</p> <p>12 Q. Can you describe your educational background</p> <p>13 for me.</p> <p>14 A. My educational background includes a graduate</p> <p>15 from St. Joseph's High School in Trumbull,</p> <p>16 Connecticut, in 1986.</p> <p>17 I hold an associate's degree in fire and</p> <p>18 occupational safety from the University of New Haven</p> <p>19 and also a bachelor's in science degree in fire</p> <p>20 science, also from the University of New Haven.</p> <p>21 In addition, I have been certified previously</p> <p>22 as a fire marshal by the state of Connecticut. That</p> <p>23 entailed going through a 16-week program. Subsequent</p> <p>24 to my retirement, I allowed that certification to</p> <p>25 lapse.</p>	7	<p>1 explosion investigation. And it is an entity which</p> <p>2 also certifies people on a national level.</p> <p>3 Q. Is that still run by Mr. Kennedy down in</p> <p>4 Sarasota?</p> <p>5 A. It is.</p> <p>6 Q. Do you know what Mr. Kennedy does for a</p> <p>7 living?</p> <p>8 A. I believe he is a fire investigator as well.</p> <p>9 Q. Who does he testify for 100 percent of the</p> <p>10 time?</p> <p>11 A. That I don't know.</p> <p>12 Q. What does it take to get a certification from</p> <p>13 NAFI?</p> <p>14 A. NAFI requires you to submit background</p> <p>15 information on a number of fires that you have</p> <p>16 investigated previously, educational materials or</p> <p>17 documents. And they also require you to take a test.</p> <p>18 Q. Okay. Did you take that test?</p> <p>19 A. I did.</p> <p>20 Q. Did you pass the test?</p> <p>21 A. I did.</p> <p>22 Q. Do you know what the pass/fail rate is for</p> <p>23 that test?</p> <p>24 A. I don't.</p> <p>25 Q. Are you also required to make a payment for</p>
6	<p>1 I am also a certified fire and explosion</p> <p>2 investigator through --</p> <p>3 Q. We'll get to your certification --</p> <p>4 A. Okay.</p> <p>5 Q. -- and all of that in a moment.</p> <p>6 With respect to your formal educational</p> <p>7 background, what year did you receive your associate's</p> <p>8 degree?</p> <p>9 A. I believe that was in '96.</p> <p>10 Q. And when did you receive your bachelor's of</p> <p>11 science?</p> <p>12 A. 1999.</p> <p>13 Q. Any other formal education other than your</p> <p>14 associate's and bachelor's degree?</p> <p>15 A. No.</p> <p>16 Q. All right, let's talk about your</p> <p>17 certifications. What certifications do you currently</p> <p>18 hold?</p> <p>19 A. Currently through the National Association of</p> <p>20 Fire Investigators, I hold a certification of fire and</p> <p>21 explosion investigator.</p> <p>22 Q. What is NAFI or National Association of Fire</p> <p>23 Investigators?</p> <p>24 A. It is just a national organization that is</p> <p>25 used to promote the professional side of fire and</p>	8	<p>1 your dues?</p> <p>2 A. Yes.</p> <p>3 Q. All right. And what are those dues, sir?</p> <p>4 A. Honestly, I don't know.</p> <p>5 Q. Why don't you know?</p> <p>6 A. Once I pay them, I expense them.</p> <p>7 Q. Are they yearly?</p> <p>8 A. No, I believe it's every three years. It</p> <p>9 could be every five.</p> <p>10 Q. Is there a minimum CLE -- not CLE. Is there</p> <p>11 a minimum continuing education requirement to maintain</p> <p>12 your certification in NAFI?</p> <p>13 A. Yes.</p> <p>14 Q. And what is that?</p> <p>15 A. I believe it's 40 hours. In that cycle.</p> <p>16 Q. And is NAFI the only organization that you</p> <p>17 are certified as a fire investigator through?</p> <p>18 A. Yes.</p> <p>19 Q. Are you a member of the International</p> <p>20 Association of Arson Investigators?</p> <p>21 A. I am.</p> <p>22 Q. Do they have a certification process?</p> <p>23 A. They do.</p> <p>24 Q. Is there a reason why you are not certified</p> <p>25 by IWAI?</p>

29	<p>1 Seymour.</p> <p>2 Q. Do you live in the town of Seymour?</p> <p>3 A. I do.</p> <p>4 Q. How long were you the fire inspector for the</p> <p>5 town of Seymour?</p> <p>6 A. I believe two years.</p> <p>7 Q. What did you do prior to that?</p> <p>8 A. I worked with New England Ambulance Service</p> <p>9 as an EMT intermediate.</p> <p>10 Q. As an EMT what?</p> <p>11 A. Intermediate.</p> <p>12 Q. What is an EMT intermediate?</p> <p>13 A. Allowed to start in intravenous lines.</p> <p>14 Q. How long were you an EMT?</p> <p>15 A. Fifteen years.</p> <p>16 Q. And what organization was that for?</p> <p>17 A. New England Ambulance, but I was also a</p> <p>18 member of the Seymour Ambulance Association.</p> <p>19 Q. What year did you start as an EMT?</p> <p>20 A. I believe 1984.</p> <p>21 Q. Now, what did you do before you were an EMT?</p> <p>22 A. I was in school.</p> <p>23 Q. All right, let me hand you what has been</p> <p>24 marked as Exhibit 61. Can you identify this for the</p> <p>25 record, please.</p>	31	<p>1 A. And beyond.</p> <p>2 Q. And beyond. How far back does it go?</p> <p>3 A. To September of 1997.</p> <p>4 Q. And that listing, is it all depositions you</p> <p>5 have given or only trial testimony?</p> <p>6 A. It is a combination of depositions and a</p> <p>7 trial.</p> <p>8 Q. Okay. And that contains all depositions and</p> <p>9 trials you have testified in going back to '97?</p> <p>10 A. Yes.</p> <p>11 Q. Of the depositions you have given, how many</p> <p>12 have been on behalf of the insurance companies? And</p> <p>13 take a moment to review.</p> <p>14 A. Thank you.</p> <p>15 <b>MR. ROSSI: I'll object to the form of the</b></p> <p>16 <b>question. I'm not quite sure what you mean by on</b></p> <p>17 <b>behalf, whether they are litigants or clients.</b></p> <p>18 <b>THE WITNESS: (After review.) Ten.</b></p> <p>19 <b>BY MR. BARTON:</b></p> <p>20 Q. So 10 have been on behalf of insurance</p> <p>21 companies; is that correct?</p> <p>22 A. Yes.</p> <p>23 Q. How many have been on behalf of the</p> <p>24 plaintiff?</p> <p>25 A. (After review.) Eleven.</p>
30	<p>1 A. This is my c.v.</p> <p>2 Q. Is it complete and accurate?</p> <p>3 A. With the exception of my promotion which</p> <p>4 recently occurred.</p> <p>5 Q. And what promotion was that? To vice</p> <p>6 president?</p> <p>7 A. Yes.</p> <p>8 Q. And that's at PT&amp;C, correct?</p> <p>9 A. Yes.</p> <p>10 Q. Is there anything else that you would like to</p> <p>11 amend, add to, or remove from that c.v.?</p> <p>12 A. No.</p> <p>13 Q. Does Exhibit 61 contain all of a listing of</p> <p>14 your certifications and your education?</p> <p>15 A. It does.</p> <p>16 Q. Okay, Mr. Driscoll, let me hand you what is</p> <p>17 marked as Exhibit 62. Can you identify this for the</p> <p>18 record.</p> <p>19 A. This is my expert witness experience form.</p> <p>20 Q. Okay, sometimes referred to as Rule 26</p> <p>21 disclosure?</p> <p>22 A. Yes.</p> <p>23 Q. All right. So that has a listing of your</p> <p>24 testimony that you have given in the past five years;</p> <p>25 is that correct?</p>	32	<p>1 Q. Would you identify those that were on behalf</p> <p>2 of the defendant with a triangle next to the specific</p> <p>3 case, please.</p> <p>4 A. (Witness complying.)</p> <p>5 Q. Thank you. Has your testimony ever been</p> <p>6 excluded or precluded by Daubert or any state</p> <p>7 standard?</p> <p>8 A. No.</p> <p>9 Q. Have you ever served in the military?</p> <p>10 A. I have not.</p> <p>11 Q. Have you ever had any cases involving</p> <p>12 electrical meter panels?</p> <p>13 <b>MR. ROSSI: You mean besides this one?</b></p> <p>14 <b>MR. BARTON: Yes.</b></p> <p>15 <b>THE WITNESS: Yes.</b></p> <p>16 <b>BY MR. BARTON:</b></p> <p>17 Q. Okay, how many?</p> <p>18 A. I believe one.</p> <p>19 Q. What was the manufacturer of that electrical</p> <p>20 meter panel?</p> <p>21 A. I don't recall.</p> <p>22 Q. When was that case?</p> <p>23 A. I believe it was when I was a local fire</p> <p>24 marshal, so the specific time frame I don't know.</p> <p>25 Q. Did you conclude that the meter panel had</p>

33	<p>1 caused the fire?</p> <p>2 A. Yes.</p> <p>3 Q. Did you make a determination as to what about</p> <p>4 the meter panel caused the fire?</p> <p>5 A. No.</p> <p>6 Q. And you don't remember the brand of meter</p> <p>7 panel?</p> <p>8 A. I do not.</p> <p>9 Q. Was that a litigated matter?</p> <p>10 A. I don't believe it was.</p> <p>11 Q. Did you ever render any opinions that that</p> <p>12 particular meter panel was the cause of the fire?</p> <p>13 A. It would have been as a part of a report,</p> <p>14 yes.</p> <p>15 Q. Have you ever made any conclusions that any</p> <p>16 Eaton or Cutler Hammer product was the cause of a</p> <p>17 fire?</p> <p>18 <b>MR. ROSSI: I object to the extent that he</b></p> <p>19 <b>said he didn't recall who the manufacturer of</b></p> <p>20 <b>that panel was.</b></p> <p>21 <b>THE WITNESS: Beyond this fire, I don't</b></p> <p>22 <b>recall if there are any. I don't think so.</b></p> <p>23 <b>BY MR. BARTON:</b></p> <p>24 Q. Have you ever made any determination that</p> <p>25 weather was a cause of a fire?</p>	35	<p>1 design or manufacturing of the CSR 2200 circuit</p> <p>2 breaker which was installed in the meter panel that is</p> <p>3 involved in this case?</p> <p>4 A. No.</p> <p>5 Q. Am I correct that you will be rendering no</p> <p>6 opinions as to any design defect with respect to the</p> <p>7 meter panel?</p> <p>8 A. Yes.</p> <p>9 Q. Am I correct that you will be rendering no</p> <p>10 opinions with respect to any manufacturing defect of</p> <p>11 the meter panel?</p> <p>12 A. Yes.</p> <p>13 Q. Am I correct that you will be offering no</p> <p>14 opinions with respect to any design defect in the</p> <p>15 subject breaker, which is a CSR 2200?</p> <p>16 A. Yes.</p> <p>17 Q. Am I also correct that you will be rendering</p> <p>18 no opinions as to any manufacturing defect that may</p> <p>19 exist in the CSR 2200?</p> <p>20 A. Yes.</p> <p>21 Q. Am I also correct that you are not a warnings</p> <p>22 expert?</p> <p>23 A. Yes.</p> <p>24 Q. So you will be offering no opinions with</p> <p>25 respect to any warning, failure to warn, or failure to</p>
34	<p>1 A. Yes.</p> <p>2 Q. How often?</p> <p>3 A. No idea.</p> <p>4 Q. More than once?</p> <p>5 A. Yes.</p> <p>6 Q. How can weather be the cause of a fire?</p> <p>7 A. Lightning.</p> <p>8 Q. Other than lightning, anything else?</p> <p>9 A. That has been my experience, lightning.</p> <p>10 Q. Okay. You are not an electrical engineer; is</p> <p>11 that correct?</p> <p>12 A. I am not.</p> <p>13 Q. And I take it, then, you don't have any</p> <p>14 experience with the design and manufacturing of</p> <p>15 electrical products, do you?</p> <p>16 A. No.</p> <p>17 Q. Have you examined or done any investigation</p> <p>18 into the manufacturing of the subject meter panel</p> <p>19 which is involved in this case?</p> <p>20 A. No.</p> <p>21 Q. Have you done any investigation into the</p> <p>22 design of the subject meter panel which is at issue in</p> <p>23 this case?</p> <p>24 A. No.</p> <p>25 Q. Have you done any examination into either the</p>	36	<p>1 instruct with respect to the subject meter panel or</p> <p>2 its accompanying breaker; is that correct?</p> <p>3 A. Yes.</p> <p>4 Q. All right. I take it you have never</p> <p>5 installed a meter panel before? Or have you?</p> <p>6 A. Yes.</p> <p>7 Q. You have?</p> <p>8 A. Yes -- I was answering the first question.</p> <p>9 Q. That was a terrible question, wasn't it?</p> <p>10 A. It was.</p> <p>11 Q. Let me ask it in a way that you can answer.</p> <p>12 A. Okay.</p> <p>13 Q. Have you ever installed a meter panel, sir?</p> <p>14 A. No.</p> <p>15 Q. Are you familiar with the installation</p> <p>16 process for a meter panel?</p> <p>17 A. Vaguely.</p> <p>18 Q. What is your vague understanding?</p> <p>19 A. Of just how they are mounted to a solid wall,</p> <p>20 if you will.</p> <p>21 Q. How are they mounted to a solid wall?</p> <p>22 A. Usually with screws.</p> <p>23 Q. That's a very basic understanding.</p> <p>24 A. And truly that's all my understanding is.</p> <p>25 Q. Okay. You're not going to be offering any</p>

121	<p>1 fire department to respond to the scene of this fire</p> <p>2 after it received the first call?</p> <p>3 <b>A.</b> I would have to refer to their incident</p> <p>4 report.</p> <p>5 <b>Q.</b> I referred to it. It's nine minutes.</p> <p>6 <b>A.</b> Okay.</p> <p>7 <b>Q.</b> Is that about accurate in terms of --</p> <p>8 <b>A.</b> Sure.</p> <p>9 <b>Q.</b> A fairly quick response.</p> <p>10 <b>A.</b> Yes.</p> <p>11 <b>Q.</b> Do you know how much fire progression can</p> <p>12 occur in nine minutes?</p> <p>13 <b>A.</b> Exactly, no.</p> <p>14 <b>Q.</b> Okay. So if I were to ask you, from the</p> <p>15 moment your theory that an arc fault caused this fire,</p> <p>16 from the moment that happened exterior to the home,</p> <p>17 can you say how much fire extension could occur in</p> <p>18 that nine minutes? Can you give me an estimate?</p> <p>19 <b>A.</b> No.</p> <p>20 <b>Q.</b> Do you think it broke through the walls of</p> <p>21 the home within that nine minutes?</p> <p>22 <b>A.</b> I believe it could have, yes.</p> <p>23 <b>Q.</b> Do you think if the fire department would</p> <p>24 have responded within nine minutes, this home could</p> <p>25 have been salvageable?</p>	123	<p>1 58 minutes is a pretty long time?</p> <p>2 <b>A.</b> Yes.</p> <p>3 <b>Q.</b> Okay. That's going to allow that fire to</p> <p>4 progress through the home, up into the roof, extend</p> <p>5 throughout the house?</p> <p>6 <b>MR. ROSSI: Objection. There is no evidence</b></p> <p>7 <b>that this fire burned for an hour and 15 minutes.</b></p> <p>8 <b>BY MR. BARTON:</b></p> <p>9 <b>Q.</b> Correct?</p> <p>10 <b>MR. ROSSI: Objection.</b></p> <p>11 <b>MR. BARTON: I got your objection. Noted.</b></p> <p>12 <b>THE WITNESS: Yes, the fire could progress to</b></p> <p>13 <b>that extent.</b></p> <p>14 <b>BY MR. BARTON:</b></p> <p>15 <b>Q.</b> Okay. Mr. Turner was told at 10:47 p.m. that</p> <p>16 there was a power outage to this structure. Do you</p> <p>17 know what he said, what he advised the alarm company?</p> <p>18 <b>A.</b> He advised the alarm company to place a hold</p> <p>19 on the system for 12 hours.</p> <p>20 <b>Q.</b> Call me back in 12 hours?</p> <p>21 <b>A.</b> Pretty much.</p> <p>22 <b>Q.</b> Okay. Do you know if anybody went out to the</p> <p>23 house or any response was made to determine why the</p> <p>24 power outage occurred?</p> <p>25 <b>A.</b> I don't believe so.</p>
122	<p>1 <b>A.</b> Within nine minutes of the ignition?</p> <p>2 <b>Q.</b> Yes.</p> <p>3 <b>A.</b> Depending upon suppression techniques and</p> <p>4 this house being on an elevated level, the home could</p> <p>5 have been salvaged, yes.</p> <p>6 <b>Q.</b> Okay. If you were to look at it as a</p> <p>7 firefighter and say, okay, if we got there within 9</p> <p>8 minutes, maybe we had a shot to save this property.</p> <p>9 What if I were to tell you I want you to compare what</p> <p>10 you could have done if you waited 9 minutes between</p> <p>11 the ignition of the fire in your suppression efforts</p> <p>12 or if you waited 1 hour and 58 minutes?</p> <p>13 <b>MR. ROSSI: Objection. It's beyond the scope</b></p> <p>14 <b>of his opinions and the report.</b></p> <p>15 <b>BY MR. BARTON:</b></p> <p>16 <b>Q.</b> Well, I thought you were a firefighter.</p> <p>17 <b>MR. ROSSI: He's not being called as a</b></p> <p>18 <b>firefighter. He's being called as a fire</b></p> <p>19 <b>investigator.</b></p> <p>20 <b>BY MR. BARTON:</b></p> <p>21 <b>Q.</b> Yeah, go ahead.</p> <p>22 <b>A.</b> Obviously, progression -- or the longer the</p> <p>23 time frame, the longer the fire is able to grow</p> <p>24 exponentially and unabated.</p> <p>25 <b>Q.</b> In terms of the fire progression, an hour and</p>	124	<p>1 <b>Q.</b> Do you believe that the power outage to 75</p> <p>2 Vista View Drive occurred at the exact moment of the</p> <p>3 ignition of fire?</p> <p>4 <b>MR. ROSSI: Objection. Beyond the scope. Go</b></p> <p>5 <b>ahead.</b></p> <p>6 <b>THE WITNESS: I believe a short circuit would</b></p> <p>7 <b>have interrupted power to the house, yes.</b></p> <p>8 <b>BY MR. BARTON:</b></p> <p>9 <b>Q.</b> Okay. And that's a fine answer, but my</p> <p>10 question is, do you believe that when the ignition</p> <p>11 occurred that you believe started this fire, there is</p> <p>12 an ignition, an arcing event -- do you believe that</p> <p>13 that corresponded with the loss of power to 75 Vista</p> <p>14 View Drive?</p> <p>15 <b>A.</b> I do.</p> <p>16 <b>Q.</b> So that when this home lost power 10:35 or</p> <p>17 whatever it turns out to be, a little after 10:00 p.m.</p> <p>18 in the evening, that that's when the ignition began</p> <p>19 for this property. Is that correct in your opinion?</p> <p>20 <b>A.</b> Yes.</p> <p>21 <b>Q.</b> And that ignition and that fire was allowed</p> <p>22 to progress unabated until the fire department arrived</p> <p>23 and began suppression efforts?</p> <p>24 <b>A.</b> Yes.</p> <p>25 <b>Q.</b> Okay. If you will turn to page 5 of Exhibit</p>

31 (Pages 121 to 124)

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125	<p>1 66, that's your report. I just want to point out 2 where I have got my nine minutes. 3 If you look under fire department, it says 4 the alarm was received and dispatched at approximately 5 12:24 a.m. And then one of the lieutenants for the 6 fire department arrived on the scene at approximately 7 12:33 a.m., nine minutes later. 8 <b>A.</b> Yes. 9 <b>Q.</b> All right. It goes on to say that the 10 firefighters identify the fire along the roof 11 structure extending from the north to the south of the 12 building and they used multiple water tankers. What 13 are water tankers? 14 <b>A.</b> There were no municipal fire hydrants 15 installed in this location, so the fire suppression 16 activities included calling in mutual aid tankers, 17 usually 3,000 gallons of water. 18 <b>Q.</b> Are you aware of any additional water sources 19 that had been created in this neighborhood to address 20 fire suppression efforts? 21 <b>A.</b> No. 22 <b>Q.</b> Okay. Do you know what I'm talking about? I 23 was told that there's -- 24 <b>A.</b> A cistern. 25 <b>Q.</b> -- a cistern inside this property. Are you</p>	127	<p>1 and was deemed to be accidental. 2 Who made the determination of this ignition 3 source? 4 <b>A.</b> Again that was information gleaned from 5 Marshal Stormer's report. 6 <b>Q.</b> Okay. So none of these conclusions were from 7 Detective Christensen's report? 8 <b>A.</b> Correct. 9 <b>Q.</b> And you have not looked -- or did you look at 10 Mr. Stormer's testimony? 11 <b>A.</b> I did. 12 <b>Q.</b> Okay. Did you take into consideration the 13 fact that he walked away from these opinions and said 14 the cause of the fire was undetermined? 15 <b>A.</b> I did. And -- 16 <b>Q.</b> I'm curious why the statement is contained in 17 here. 18 <b>A.</b> Because I took the statement directly from 19 his report, his official report. 20 <b>Q.</b> His official report, which he said if he had 21 the information he now knows, he would rule this as a 22 undetermined fire. 23 <b>A.</b> I don't remember seeing that statement but 24 that's there. 25 <b>Q.</b> Okay. And you also believe that he rendered</p>
126	<p>1 aware of that? 2 <b>A.</b> Exactly where it was or if it existed, I'm 3 not sure. 4 <b>Q.</b> Okay. If there is one, is that where 5 firefighters are supposed to hook up first? It 6 depends? 7 <b>A.</b> It depends, yes. 8 <b>Q.</b> Your report on page 5 goes on to say: 9 Following completion of fire suppression activities, 10 Fire Marshal Stormer with assistance from the 11 Connecticut State Police Fire Marshal's Office -- 12 Detective Christensen, correct? 13 <b>A.</b> Yes. 14 <b>Q.</b> All right. They did their investigation. 15 And your report says: The origin of this fire was 16 identified to be at the electric meter box service 17 line entry located on the northeast exterior of the 18 building. 19 Are you attributing that statement to either 20 Stormer or Christensen? 21 <b>A.</b> It would have been Stormer's report, yes. 22 <b>Q.</b> It goes on to say: The ignition source for 23 this fire was determined to be an electrical short 24 circuit that occurred within the meter breaker/meter 25 pan assembly located within the point of fire origin</p>	128	<p>1 a conclusion as to the ignition source of this fire, 2 which just happens to be the exact same one that you 3 have come up with? 4 <b>A.</b> Actually, it was his report first. And yes. 5 <b>Q.</b> Okay. And then of course his testimony under 6 oath that that's not what -- 7 <b>A.</b> He's walking away. 8 <b>Q.</b> But you are not including that in your 9 report? 10 <b>A.</b> I did not include that in my report. 11 <b>Q.</b> Detective Christensen testified that he found 12 arc fault beads inside the home in the basement. Did 13 you recover those at all? 14 <b>A.</b> I did not see any arc fault beads in the 15 basement during my examination. 16 <b>Q.</b> Okay. Did you recover any of the wiring 17 inside the basement where Detective Christensen 18 testified that he found arc faulting? 19 <b>A.</b> I collected all the wiring that remained. 20 <b>Q.</b> When you say all the wiring that remained, 21 what wiring were you talking about? 22 <b>A.</b> That's actually the cable. 23 <b>Q.</b> And you're talking about the service cable? 24 <b>A.</b> Yes. 25 <b>Q.</b> Page 6 of your report goes to detail the</p>

32 (Pages 125 to 128)

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129	<p>1 interviews that you had with Joe P. and Mr. Jonathan 2 Turner; is that correct? 3 <b>A.</b> Yes. 4 <b>Q.</b> Did you ever speak with Peter Sullivan or 5 Scott Ribisl? 6 <b>MR. ROSSI: Rib-is'-ill.</b> 7 <b>MR. BARTON: Ribisl. Thank you, sir.</b> 8 <b>THE WITNESS: I believe I had discussions</b> 9 <b>with them during my scene examinations.</b> 10 <b>BY MR. BARTON:</b> 11 <b>Q.</b> And what discussions did you have with 12 Mr. Sullivan? 13 <b>A.</b> I would have to refer to see if I have any 14 notes. 15 <b>Q.</b> Please do. 16 <b>A.</b> My only reference is that Scott Ribisl was 17 the maintenance electrician and he drove by Friday 18 before the fire and walked all the houses. 19 <b>Q.</b> Okay. And my question really is the 20 interview you had with Jonathan Turner -- 21 <b>A.</b> Yeah. 22 <b>Q.</b> -- you then associate the information that he 23 relayed to you about what Mr. Sullivan and what Mr. 24 Ribisl did, Ribisl did. You don't have any direct 25 information from them?</p>	131	<p>1 in the area of the home, 75 Vista View Drive. What 2 does that mean, above normal? 3 <b>A.</b> It was the worst winter in Connecticut in 4 many, many years. 5 <b>Q.</b> Okay. Can you give me an idea of how many 6 feet of snow were on the ground at the time of the 7 fire? 8 <b>A.</b> At that time, I think we were in excess of 9 five feet. 10 <b>Q.</b> And that was gathered on the roofs and things 11 of that nature? 12 <b>A.</b> Yes. 13 <b>Q.</b> All right. It goes on to say that ice 14 damming and snow accumulation were identified in 15 adjacent properties. What is ice damming? 16 <b>A.</b> Ice damming is where the water accumulates 17 and freezes in corners and in gutters and continues to 18 melt down into icicle forms. 19 <b>Q.</b> Okay. The gutters are clogged? 20 <b>A.</b> Yes. 21 <b>Q.</b> And as there is melting and refreezing, large 22 ice formations form? 23 <b>A.</b> Right. 24 <b>Q.</b> So it's essentially like you don't have 25 gutters?</p>
130	<p>1 <b>A.</b> I don't. 2 <b>Q.</b> So any statements or material that is 3 contained in your report attributed to Mr. Sullivan or 4 Mr. Ribisl is coming from your interview with Jonathan 5 Turner. 6 <b>A.</b> Yes. 7 <b>Q.</b> All right. I direct your attention to page 7 8 of Exhibit 66. It looks like you have a scene 9 examination summary of the examinations that you 10 commenced in January and in February. Is that 11 correct? 12 <b>A.</b> Yes. 13 <b>Q.</b> All right. And in terms of weather 14 conditions at the time of the loss, you identify the 15 temperatures to be approximately 17 degrees 16 Fahrenheit; is that correct? 17 <b>A.</b> Yes. 18 <b>Q.</b> Pretty cold? 19 <b>A.</b> Yes. 20 <b>Q.</b> All right. How did you determine the 21 temperature? 22 <b>A.</b> I either Googled the Weather Underground or 23 gleaned that from Henry Stormer. 24 <b>Q.</b> Okay. In terms of the weather conditions, 25 you indicate that there was above normal precipitation</p>	132	<p>1 <b>A.</b> Correct. 2 <b>Q.</b> It comes right off the roof and straight 3 down? 4 <b>A.</b> Yes. 5 <b>Q.</b> Does that have anything to do with this fire? 6 <b>A.</b> I don't know. 7 <b>Q.</b> Was there ice damming along the north wall of 8 the study? 9 <b>A.</b> I don't know. 10 <b>Q.</b> And we will get to your photographs. I 11 understand you walked around and took some photographs 12 of some of the ice formations on these homes; is that 13 correct? 14 <b>A.</b> Yes. 15 <b>Q.</b> Were there ice formations in the area of the 16 meter panels on the other homes in the neighborhood? 17 <b>A.</b> Yes. 18 <b>Q.</b> Do you know if the other homes in the 19 neighborhood were identical to 75 Vista View Drive? 20 <b>A.</b> I believe we looked at an exemplar, so they 21 were pretty close. 22 <b>Q.</b> And my understanding is they are Arlington 23 style homes. Does that mean anything to you? 24 <b>A.</b> No. 25 <b>Q.</b> Under the scene examination page of Exhibit</p>

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THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF CONNECTICUT

ACE AMERICAN INSURANCE	:	
COMPANY,	:	
	:	
Plaintiff,	:	Case No. <u>3:11-cv-01741-CSH</u>
	:	
v.	:	
	:	
EATON ELECTRICAL, INC.	:	
	:	
Defendant.	:	

**PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFENDANT,  
EATON ELECTRICAL, INC.'S MOTION TO STRIKE PLAINTIFF'S EXPERT**

COMES NOW Plaintiff, ACE American Insurance Company, by and through its attorney's Cozen O'Connor, and hereby opposed and responds to Eaton Electrical, Inc.'s Motion to Strike Plaintiff's Expert Joseph Cristino and states as follows:

1. It is admitted that Plaintiff's complaint was filed under the Connecticut Products Liability Statute and as such all claims against the defendant including negligence and breach of warranty are included therein.
2. Denied as stated. The Eaton panel was defective and failed as a result of a short circuit in the panel's circuit breaker. It is admitted that Mr. Cristino is one of plaintiff's experts who was retained to investigate the fire.
3. Denied as stated. The fire started in the Eaton meter enclosure as a result of a short circuit in the enclosure's circuit breaker and spread from there to the home and property.
4. Denied as stated. Cristino's report states that the enclosure caused the fire most probably as a result of a defect.
5. Denied as stated. Cristino's report states that the enclosure caused the fire most probably as a result of a defect.

6. Denied as stated. Eaton's corporate designee, Jeffery Johnson admitted that the moisture can enter the enclosure and Cristino did testing as part of his investigation (Exhibit D, Jeffrey Johnson's Deposition at P. 122, ).

7. Denied as stated. While it is admitted that after he prepared and submitted his report and before his deposition Cristino conducted additional tests on exemplar evidence however the testing was not used to "test part of his theory." The post report test did not "prove his theory wrong." In fact, after the procedure the toggle that is used to re-set the breaker when it operates did not work from on to off (Exhibit I, Joseph Cristino's Deposition at P. 201, ).

8. Denied. Cristino conducted numerous tests and an in-depth investigation. His testimony is well grounded in science and not speculation or conjecture is reliable and will aid the trier of fact in a determination of facts in this case.

9. Legal conclusion, no response required.

10. No response required. Legal argument.

11. Denied. Plaintiff's experts conducted all necessary tests and investigations and Eaton participated in these tests. Cristino's testimony is reliable and admissible.

12. No response required.

Dated: May 17, 2013

COZEN O'CONNOR

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**CERTIFICATE OF SERVICE**

I hereby certify that on March 17, 2013, Plaintiff's Response in Opposition to Defendant's Motion to Strike Plaintiff's Expert Witness Joseph Cristino and Memorandum of Law were filed electronically. Notice of this filing will be sent by email to all parties by operation of this Court's electronic filing system. Parties may access this filing through the Court's ECF system.

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\_\_\_\_\_  
Peter G. Rossi

THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF CONNECTICUT

ACE AMERICAN INSURANCE	:	
COMPANY,	:	
	:	Case No. <u>3:11-cv-01741-CSH</u>
Plaintiff,	:	
	:	
v.	:	
	:	
EATON ELECTRICAL, INC.	:	
	:	
Defendant.	:	

**PLAINTIFF'S MEMORANDUM IN OPPOSITION TO DEFENDANT,  
EATON ELECTRICAL, INC.'S MOTION TO STRIKE PLAINTIFF'S EXPERT**

COMES NOW Plaintiff, ACE American Insurance Company, by and through its attorney's Cozen O'Connor, and hereby opposed and responds to Eaton Electrical, Inc.'s Motion to Strike Plaintiff's Expert Joseph Cristino and states as follows:

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**I. INTRODUCTION AND BACKGROUND**

Eaton Electrical, Inc. (“Eaton”) seeks to prohibit plaintiff’s electrical expert, Joseph Cristino, from testifying. Mr. Cristino has been a practicing electrical engineer for thirty years, has been qualified to testify on many previous occasions in state and federal court and conducted a thoughtful, thorough investigation, including testing, of this fire. His opinions are based upon sufficient facts developed through a lengthy, in depth investigation, are the product of reliable principles and methods which he has properly applied to the facts of the case. The basic facts of this subrogation claim are undisputed; a fire occurred on January 17, 2011 at plaintiff’s insured unoccupied home in Southbury Connecticut. Plaintiff claims that Eaton’s product caused the fire. Defendant now moves to preclude the testimony of one of Plaintiff’s experts Joseph Cristino, despite Mr. Cristino’s qualifications and scientific investigation.

Eaton seeks to preclude Mr. Cristino’s trial opinion testimony not because it is wrong, inaccurate or incorrect but because Eaton does not like the manner in which Cristino conducted his investigation. Eaton claims that Cristino’s methods are inadequate because they are inadequate. One of the same criticisms that they have of Cristino; Ipse Dixit reasoning. Eaton never claims that Cristino is wrong or that his conclusions are incorrect or that their product did not cause the fire. Nor do they contend that Cristino’s testimony will confuse or mislead the jury or that his testimony will not be helpful. They simply offer intense and academic criticism of Cristino and his methods; an analysis of what Cristino did not do rather than the sufficiency and reliability of what he did do. Moreover their criticism is limited to one test that he conducted post fire involving wet and cold conditions. They have no comment on the numerous test and inspections he conducted prior to them which Eaton participated in.

Eaton focuses on the careful and crafty deposition taken of Cristino and disregards the lengthy in depth testing and inspections he conducted and the report he prepared. A careful review of Cristino’s report and the history of his investigation indicates that he conducted

himself and his investigation carefully and in compliance with all applicable standards and that his opinions are reasonable, factually supported, scientifically valid, reliable and should be allowed. Eaton mistakes the weight of his testimony with its admissibility.

Plaintiff filed suit against Eaton because Eaton's product caused a catastrophic fire in Southbury, Connecticut. A meter panel and circuit breaker that Eaton manufactured, marketed and sold failed catastrophically and caused the fire on January 17, 2011. Mr. Cristino was retained to investigate the cause of the product failure. After a lengthy comprehensive investigation Mr. Cristino concluded that:

Based upon the site examination, laboratory analysis and information obtained from Eaton Corporation Cutler Hammer, it can be stated with a reasonable degree of engineering certainty that the January 17, 2011, failure within the Cutler Hammer™ combination meter enclosure that was mounted on the exterior of an [sic] residential structure located at 75 Vista View Drive, Southbury, Connecticut, was due to a short circuit within the 200-amp main circuit breaker mounted within the meter enclosure. The short circuit originated within the circuit breaker's internal Line side components most probably due to a defect that allowed moisture ingress.

(Joseph Cristino's Report, Exhibit A). Mr. Cristino holds engineering licenses in several states including Connecticut, Massachusetts, Maine, New York and Florida. He has a degree in electrical engineering and has worked as an electrical engineer for thirty years. He is a design engineer and worked for Connecticut Light & Power from 1969 until 1982. He has been qualified numerous times to testify and has testified in state and federal courts. He has experience in the design of electrical distribution projects, electrical substation projects and related projects (Joseph Cristino's Curriculum Vitae, Exhibit B).

### ***The Home and Fire***

The home was a vacant modular home located at 75 Vista View Drive Southbury Ct. built in 2005 by Omega Engineering, Inc. The home was unoccupied but was for sale. In the

late evening of January 16 early morning of January 17 there was a power outage at the home and at the neighboring home on 70 Vista View Drive. Two hours later the home was reportedly on fire. Given the severity of the fire, it was fully consumed within minutes and was destroyed by the fire.

During the fire, as witnessed by first responders and documented through photographs taken at the scene as the fire was burning, the fire extended from the Eaton enclosure up the roof structure and extended to the opposite side of the home, where it involved 100-lb propane tank, creating an extensive fuel load and thereby exacerbating the fire.

### ***The Fire Investigation***

The day after the fire, Michael J. Driscoll, CFEI, was retained by plaintiffs to perform a cause & origin investigation. He conducted a comprehensive investigation visiting the property on three occasions: January 19 and 31, 2011 and February 17, 2011. Based upon his investigation utilizing a systematic methodology, including the appropriate use of fire pattern analysis, arc mapping, and fire dynamics along with the consideration of witness information and other information available, Mr. Driscoll determined that the fire originated on the exterior east (front) side of the structure where the Eaton meter breaker/meter pan assembly was installed and connected to the underground electrical service feed (Michael J. Driscoll's Report, Exhibit C) .

He also determined that the ignition source of the fire was an electrical short circuit that occurred within the Eaton enclosure. His opinion is consistent with Mr. Cristino's. The short circuit caused electrical arcing to extend throughout the assembly and through the exterior rear panel (the physical evidence includes a blow hole in the rear of the Eaton panel. The wiring insulation was the combustible materials which originally ignited, which then spread to the exterior wood siding located behind the meter assembly where there was a hole that developed due to the fire, which is consistent with electrical arcing and then to other portions of the house.

He also observed that there was a hole burned through the back of the Eaton meter panel in the location of the circuit breaker; He excluded all other potential causes for the fire. The Eaton product caused the fire.



27. Hole in exterior rear side of enclosure



28. Closer view of hole in rear of enclosure

*The Electric Meter and Service*

The electrical service cable from the CL&P transformer which supplied the power to the home extended underground and upward against the concrete foundation wall of the home and the exterior wood siding above it to the Eaton combination meter enclosure and circuit breaker, which was installed against the exterior wood siding. A combination meter enclosure is a device with a meter and, in a separate compartment, a main circuit breaker. The electric service enters the panel in the bottom travel the length of the panel to the meter, goes through the meter then the circuit breaker and then into the home where it provides electricity to the home's main distribution panel in the basement and then to the various appliances and outlets in the home. The circuit breaker is a safety device intended to protect the home from overcurrent situations.

At the time of the incident, both the electrical service cable and meter enclosure and breaker were energized. As a result of the severity of the fire, many components of the electric meter enclosure were melted and/or destroyed as a result of electric activity inside of the enclosure. Given the severity of the fire in the area of the Eaton enclosure, Mr. Driscoll, the state and local fire authorities and Mr. Cristino, all believe that the fire started in or near the Eaton product as a result of an electrical short circuit. Because there was agreement among the various investigators regarding the area of the fire's origin, electrical engineer Joseph Cristino was hired to investigate the failure that caused the fire. After the fire, parts were missing from the Eaton product so it did not conform to the Eaton plans and specifications or the applicable standards. There is no evidence regarding how or when the parts were removed or if the missing parts were ever installed on the product by Eaton. While the product is sold and distributed by Eaton it is assembled/manufactured by Eaton's vendor Durham (Jeffrey Johnson's Deposition at p. 27, Exhibit D).

***Mr. Cristino's Investigation***

Mr. Cristino's investigation spanned several years. As indicated in his report (Exhibit "A"), his first step was to conduct a site inspection of the fire scene on January 31, 2011 just days after the fire. At that time he met with investigator Driscoll and fire and electrical investigators who were at the scene for other potentially interested parties. He was told that the area of the fire's origin was in the vicinity of the Eaton enclosure. Mr. Cristino first took note of the electric meter and surrounding equipment during his first of two site inspections. He noted that the Cutler Hammer/Eaton combination meter enclosure exhibited damage throughout the interior of the portion of the enclosure within which the 200-amp main circuit breaker was mounted, as well as other damage in the revenue meter socket. This damage extended outward through a "blow hole" in the back of the Eaton enclosure (see picture above) which corresponded to the area inside of the enclosure where the breaker was attached. This indicated a catastrophic, high heat high energy electrical event in the Eaton enclosure in the vicinity of the circuit breaker.

The circuit breaker's line side connections were missing as a result of the event. He also noted that most of the aluminum conductors that had been routed through the meter enclosure had been consumed by the electrical fault activity. There was also a steel sheet metal plate which was located against the rear of the meter enclosure in the area below the revenue meter socket, and this sheet had also been consumed by electrical fault activity, aligning with damage the back of the 200-amp main circuit breaker, where the hole had been found. He systematically excluded everything upstream of the Eaton enclosure including the house wiring, the house breaker panel and all of the appliances in the house as causing or contributing to the fire. He also systematically excluded the downstream equipment such as the CL&P transformer and the



service wiring as causing or contributing to the fire. He then removed the physical evidence from the scene to storage

Next, Cristino participated in joint inspection and *testing* of the CP&L transformer that provided electricity to the home on the night of the fire. After the fire there was an indication that the CP&L transformer's circuit breaker had opened and could not be re-set. Therefore per the applicable investigative standards, the transformer had to be evaluated to determine if it caused or contributed to the fire. This joint inspection/testing was completed at CL&P Area Work Center at Freight Street in Waterbury, Connecticut. Eaton engineer, Rubin Morales, was present to witness the testing on Eaton's behalf. Eaton reviewed and approved the test protocol beforehand.

The transformer was inspected and tested at that time. This testing included continuity testing and testing of the transformer's oil using a Hipotronics OC60A Oil Test Set. The transformer's oil sample was sent to Doble Labs for analysis. The results of the lab tests were distributed to all interested parties, including Eaton. The transformer tests indicated that the transformer's circuit breaker (a different circuit breaker failure than the circuit breaker in the Eaton enclosure) failure was not due to an electrical fault within the transformer but rather a mechanical failure that did not negatively impact the integrity of the transformer's insulation system. Based upon this testing and inspection, Cristino concluded that the transformer's circuit breaker most probably failed during its operation while interrupting the fault within the Eaton enclosure at 75 Vista View. He also concluded, as a result of this testing, that if the transformer had failed prior to the Eaton circuit breaker failure then the electric supply to the Eaton equipment would likely have been terminated and there would not have been a catastrophic failure at the Eaton equipment which there is clear evidence of. The post fire physical evidence suggests that the Eaton circuit breaker failed before the transformer and probably caused the

transformer to fail. These conclusions are not conjecture or speculation but are based upon solid joint investigation and are important parts of Cristino's analysis.

Next Cristino participated in a joint inspection and testing of the physical evidence that was removed for the scene including the enclosure, the breaker and related parts and equipment. Eaton was notified of this further investigation and participated. Mr. Cristino scheduled and conducted these tests and inspections at QualiTech Laboratories, 190 Pratt Street, Meriden, CT per his protocol which was distributed for review (pre-test) to all interested parties (including Eaton) beforehand. These meetings took place on two separate days; March 14, 2011 and September 7, 2011. These inspections included photographic and microscopic evaluations of the evidence. Disassembly, x-ray tests and analysis of the evidence. Cristino also prepared, cut, mounted and polished coupon samples of the electrical and mechanical components for Scanning Electron Microscopic tests and evaluation which was completed and participated in by Eaton. X-Ray evaluation of the evidence. The results of these tests were provided to Eaton.

Cristino also obtained an exemplar of the circuit breaker and used it to re-animate the damaged breaker to better understand how and why the circuit breaker failed. He was also able to conclude based upon this testing and inspection of the remaining evidence that the failure resulted in the formation of a plasma arc which melted the steel enclosure and ignited surrounding combustibles. This is not a slip shod investigation but a laboratory based scientific inquiry which Eaton participated in. In fact the protocol for this investigation was sent to Eaton for comment beforehand so Eaton agreed with the protocol. Based upon this joint inspection and testing, Cristino concluded that the circuit breaker experienced an internal failure (rather than being damaged by an external source) and, based upon his tests and inspections, he determined that the most likely cause was the ingress of moisture. This conclusion is based upon his investigation, training, laboratory analysis and testing not guess or speculation.

The load side connections of the main circuit breaker, within the meter enclosure, were melted along with the aluminum conductors. In Mr. Cristino's opinion, approximately 50% of the internal components of the circuit breaker had been consumed or destroyed by the event. Specifically, the damage to the circuit breaker was identified to be centered in the area of the internal portions of the right-side line side components specifically the circuit breaker. All of the observed damage was consistent with an electrical fault within the subject circuit breaker, including the melting of the mounting plate and the sheet metal of the meter enclosure.

Based upon his training and experience in dealing with electrical failures and his observations and testing of the evidence, Mr. Cristino concluded that "the electrical failure within the Eaton combination meter enclosure was due to a fault that originated within the circuit breaker within the enclosure." Mr. Cristino systematically considered and eliminated all other outside sources and failure scenarios because of the location and the severity of the damage to the aluminum, insulation material and steel components within the Eaton enclosure, concluding that the fire had to have originated internally within the enclosure. This is consistent with the opinions of the state and local fire marshals and Mr. Driscoll. Eaton participated in the inspection and testing. They were provided with an opportunity to inspect the fire scene shortly after the fire occurred and they were provided with protocols of all the testing and evidence inspections and provided with an ample opportunity to comment on the protocols or offer alternative or additional tests. (See Exhibit "J" Affidavit of Peter Rossi)

Against this backdrop, Eaton seeks to preclude the testimony of Mr. Cristino, mainly arguing that his testing methodology was faulty. Specifically, Defendant critiques Mr. Cristino's methods for testing his opinion that the short-circuiting was caused by the ingress of moisture into the electric meter which, over time, caused the short-circuiting. It is noteworthy that Eaton does not mention the many tests and inspections that Cristino did conduct which allowed him to

make reasonable reliable conclusions. They choose to comment on the test they say he should have done (to prove a proposition with which they agree) and a test he did conduct but after he arrived at his conclusions and prepared his report. Mr. Cristino's investigation meets the rigors of *Daubert* and his testimony should be allowed. Cristino's conclusions are based upon a detailed in depth scientific investigation.

Much of the defense criticism of Cristino's investigation centers on Cristino's inability to pinpoint the exact manner in which moisture entered the Eaton panel. However Eaton's corporate designee, Jeffrey Johnson, testified that "...many people think that absolutely no moisture can ever get into the enclosure. That is not the case, and that's not what the standard says" (Jeffrey Johnson's Deposition at p. 122, Exhibit D). So Eaton admits that moisture can get into the Eaton enclosure. Eaton would have Cristino prove something they admit. Eaton presumably knows its own products characteristics so it was reasonable for Cristino to assume moisture entered the enclosure and explain the physical evidence that he found based upon that presumption and known scientific facts such as water is a conductor of electricity. It is noteworthy that Eaton does not dispute the conclusion that moisture can cause the sort of short circuit that we see in the evidence.

While the enclosure is intended for sale in New England and is marketed as "rainproof" it is neither snow or ice tested and certainly not "moisture proof." Based upon the testimony of the fire department witnesses that at the time of the fire there was over five feet of snow on the ground and that the fire department was not able to rule out ice and snow as a potential cause of the fire (Henry Stormer's Deposition at p. 21, Exhibit E and Exhibit "H" Report of State Fire Marshal Christensen at P 12/12). Mike Driscoll also testified that there were ice formations in the area of meter panels on the other homes in the neighborhood (Michael Driscoll's Deposition at P. 132, Exhibit "F").

Cristino's report explains in detail that the conditions found at the loss site, which neither defense counsel or his expert saw despite plaintiff's repeated invitations, and the conditions inside the Eaton product were consistent with "a defect that allowed moisture ingress." Moisture is an acknowledged conductor of electricity and is not supposed to be inside of the enclosure (Exhibit "I" P. 118). This led to a short circuit that produced temperatures in excess of 2500 degrees F. Cristino's deductive reasoning and scientific investigation, both sanctioned by NFPA 921, concluded that having eliminated all other causes and because the external and internal conditions were consistent with a short circuit caused by moisture ingress that it was the most probable cause. This opinion is scientific, fact based, relevant, reliable and admissible. (

Cristino's conclusions are also consistent with those of other investigators who were on the fire scene immediately after the fire. Town of Southbury Fire Marshall Henry Stormer's (one of the opinion witnesses identified by Plaintiff) investigation report (Exhibit "G" Report of Henry Stormer) of the fire concludes that the area of origin, based on observation, fire damage and burn patterns to be on the north east side (front) of the home on the exterior north east side of the study, at the area of the electrical meter and service entry to the home. Fire patterns in this area indicate an exterior to interior burn, from the meter box and service line into the sill and floor area of the study and basement directly below. Likewise State Fire Marshall Ken Christensen's (also an opinion witness identified by plaintiff) report (Exhibit H Report of Connecticut State Fire Marshal Ken Christensen) concluded that the area of origin was where the meter socket/disconnect was located...the cause of the fire is related to an electrical malfunction where the power enters the structure.

The defense also criticizes Cristino's evaluation of the breaker under wet and cold conditions. Cristino never reported these results as they were not controlled laboratory tests and did not rely on them in coming to his conclusion. Contrary to the defense assertion, the tests do

not confirm that their product did not and will not fail. In fact Cristino testified that the evaluation indicated that after the breaker was exposed to cold and wet conditions the toggle switch used to reset the breaker did not work (Exhibit "I" Joseph Cristino's Deposition at 201, Exhibit I). He also said that the exercise gave him insight into how the breaker reacts to cold weather and moisture. Cristino does not intend to rely on these tests at trial and will not, unless asked on cross exam, refer to them.

The defense claims that the Eaton enclosure was altered post sale and pre-fire by enclosure's installer (a wire gutter which protects energized utility lines from the customer side of the panel and a screw used to hold the front plate on the meter). They suggest that Cristino was remiss in failing to consider how these missing parts caused or contributed to the fire and that this "alteration" gives them statutory immunity from liability under Connecticut law. Their expert, Andrew J. Neuhalfen, PhD., P.E. (Exhibit "K" Neuhalfen Report) states in his report that the installation of the enclosure without the gutter enclosure is an improper installation which has been determined to be a contributory factor in the cause of the fire. However, during the deposition of Eaton's corporate designee Jeffrey Johnson Mr. Johnson testified that the meter enclosure was manufactured by Eaton's vendor Durham. When asked if he could testify that the enclosure was manufactured with a wire gutter which was then removed he responded that he could not say definitely (Jeffrey Johnson's Deposition at p. 27, Exhibit D). There is no credible evidence that the screw or wire gutter was installed in the enclosure prior to sale or that it was missing prior to the fire. If it is determined that it was not installed by Eaton, the defendant's own expert places liability for a defective product squarely on Eaton's shoulders.



## II. STANDARD OF REVIEW

The admission of expert testimony is governed by Rule 702 of the Federal Rules of Evidence and the Supreme Court's decision in *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579 (1993). Rule 702 provides the following requirements for the admission of expert testimony:

If scientific, technical or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience training or education, may testify thereto in the form of an opinion or otherwise, if (1) the testimony is based on sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case.

Fed. R. Evid. 702.

Under Rule 702 and *Daubert*, the district court must determine whether the proposed expert testimony rests on a reliable foundation and whether the testimony is relevant to the facts at issue. *See Daubert*, 509 U.S. at 594-95. Essentially, the district court acts as a "gatekeeper" to exclude unreliable and irrelevant expert testimony. *See McCulloch v. H.B. Fuller Co.*, 61 F.3d 1038, 1042 (2d Cir. 1995). When considering the admission of expert testimony, the district court should focus on the principles and methodology of the expert's conclusions, rather than on the conclusions themselves. *Daubert*, 509 U.S. at 595.

In *Daubert*, the Supreme Court "identified several factors to be considered by the trial court in determining whether a proposed submission is sufficiently reliable under Rule 702. These include whether the theory or technique offered can be tested; whether it has been subjected to peer review and publication; what the known or potential rate of error is; and whether it is generally accepted in the relevant scientific community." *Martin v. Shell Oil Co.*, 180 F. Supp. 2d 313, 318 (D. Conn. 2002) (citing *Daubert*, 509 U.S. at 592-95). The gatekeeping inquiry depends on the facts of a particular case, and "*Daubert*'s list of factors 'was

meant to be helpful, not definitive.” *Id.* (quoting *Kumho Tire Co. v. Carmichael*, 526 U.S. 137, 151 (1999)).

Under Rule 702, a witness can qualify as an expert “by knowledge, skill, experience, training, or education.” “These bases for qualification are disjunctive.” *See* Rule 702 Advisory Committee Comments. Thus, practical experience is but one of several bases for qualification, and it is not required. *See id.*; *see also Betterbox Communs., Ltd. v. BB Techs., Inc.*, 300 F.3d 325, 328 (3d Cir. 2002); *TC Sys. Inc. v Town of Colonie*, 213 F. Supp. 2d 171 (N.D.N.Y. 2002).

Courts has also recognized “a bias in favor of admitting evidence,” unless the expert’s opinion is based on data, methodology or studies that are simply inadequate to support the expert’s conclusion. *In re Xerox Corp. Securities Litigation*, 746 F. Supp. 2d 402, 407 (quoting *Borawick v. Shay*, 68 F.3d 597, 610 (2d Cir.1995)). A trial court should only “exclude expert testimony if it is speculative or conjectural or based on assumptions that are ‘so unrealistic and contradictory as to suggest bad faith’ or to be in essence ‘an apples and oranges comparison.’” *Zerega Ave. Realty Corp. v. Hornbeck Offshore Transp., LLC*, 571 F.3d 206, 214 (2d Cir. 2009) (quoting *Boucher v. U.S. Suzuki Motor Corp.*, 73 F.3d 18, 21 (2d Cir. 1996). “[O]ther contentions that the assumptions are unfounded go to the weight, not the admissibility, of the testimony.” *Id.*

“The Rules of Evidence embody a strong and undeniable preference for admitting any evidence which has the potential for assisting the trier of fact.” *Kannankeri v. Terminix International, Inc.*, 128 F.3d 802, 806 (3d Cir. 1997). Accordingly, “Rule 702, which governs the admissibility of expert testimony, has a liberal policy of admissibility.” *Pineda v. Ford Motor Co.*, 520 F.3d 237, 243 (3d Cir. 2008) (citations omitted); *Kannankeri*, 128 F.3d at 806. “The ultimate touchstone in evaluating admissibility under Rule 702 is helpfulness to the trier of fact.” *I.B.E.W. Local Union 380 Pension Fund v. Buck Consultants*, 2008 WL 2265269 at \*1 (E.D. Pa.

June 3, 2008) (O’Neill, J); *Total Control, Inc. v. Danaher Corp.*, 338 F. Supp. 2d 566, 569 (E.D. Pa. 2004). “Whether the [challenged] expert might have done a better job is not the test.” *Kannankeri*, 128 F.3d at 809.

A witness is qualified to present expert testimony if he possesses “specialized expertise.” *Pineda*, 520 F.3d at 244 (citations omitted). “If the expert meets liberal minimum qualifications, then the level of the expert’s expertise goes to credibility and weight, not admissibility.” *Kannankeri*, 128 F.3d at 809. “Gaps in an expert witness’s qualifications or knowledge generally go to the weight of the witness’s testimony not its admissibility.” 29 Wright and Miller, *Federal Practice and Procedure* § 6265.

Since the Supreme Court’s decision in *Daubert*, the rejection of expert testimony has been the exception rather than the rule. *See* Rule 702 Advisory Committee Notes. As the *Daubert* Court explained: “Vigorous cross-examination, presentation of contrary evidence, and careful instruction on the burden of proof are the traditional and appropriate means of attacking shaky but admissible evidence.” *See also Meyer-Chatfield v. Century Business Servicing, Inc.*, 732 F. Supp. 2d 514, 525 (E.D. Pa. 2010). “[T]he trial court’s role as gatekeeper is not intended to serve as a replacement for the adversary system.” *United States v. 14.38 Acres of Land Situated in Leflore County, Mississippi*, 80 F.3d 1074, 1078 (5th Cir. 1996).

Although courts routinely deny motions to preclude expert testimony on the papers, they rarely grant such motions without holding rigorous, trial-like hearings. *See Padillas v. Stork-Gamco, Inc.*, 186 F.3d 412, 418 (3d Cir. 1999) (“If the Court [is] concerned with the factual dimensions of the expert evidence, it should have . . . an *in limine* hearing to assess the admissibility of the report, giving plaintiff an opportunity to respond to the Court’s concerns. . . . A trial setting normally will provide the best operating environment for the triage which *Daubert* demands. Given the complex factual inquiry required by *Daubert*, courts will be hard-pressed in

all but the most clear cut cases to gauge the reliability of expert proof on a truncated record.”) (citations omitted). Indeed, precluding expert testimony without first holding a *Daubert* hearing can constitute an abuse of discretion and reversible error. *See , e.g , Padillas ,* 186 F.3d at 418.

### **III. LEGAL ARGUMENT IN OPPOSITION**

#### **A. Any Attacks To Mr. Cristino’s Testimony Goes To Weight Of Evidence, Not Admissibility, Which Is Better Addressed Via Cross-Examination At Trial**

Defendant does not criticize Mr. Cristino’s qualifications or the substance of his conclusions; but instead, the brunt of Defendant’s attack on Mr. Cristino’s proposed testimony is on the testing that Mr. Cristino did or failed to do, arguing that his investigation fails to meet the rigors of *Daubert*. The defense does not claim that Cristino is wrong or that their product did not fail, only that Cristino’s methods do not meet the standards of *Daubert*. Eaton focuses on what Cristino didn’t do rather than what he did do. The thrust of their claim is that Cristino failed to establish that moisture can and did enter the enclosure. However, Eaton never denied and in fact admits that moisture can enter the enclosure making further testing of the proposition unnecessary. Over the course of two years plaintiff through Cristino conducted a series of inspections and tests intended to determine the cause of the failure in the Eaton enclosure. Eaton was included and agreed to them after having reviewed and consented to the test and inspection protocols. Now they say that the tests they agreed with and participated in were not enough. If they had a problem with the protocol the time to speak up was when the tests were being done. Rather they sat back and now complain that we didn’t do enough.

Cristino used the latest technology to test and inspect this evidence in an effort to fully and fairly evaluate this fire including x-ray technology, scanning electron microscopy, microscopic inspection and oil analysis. This is in addition to his personnel hands on inspection of the loss site and evidence. Cristino spent many hours on site and in the laboratory testing, inspecting and evaluating the evidence. He obtained exemplars that he used to recreate the

missing parts of the evidence to understand how and where this failure occurred. He developed a working hypothesis that moisture was the most likely cause of this failure based upon his tests and inspections and accepted scientific principals and doctrine and his many years of training education and experience in the field. He has been qualified to testify in state in federal courts many times in the past.

Against this backdrop, the defense laid in wait and only now chooses to surgically deconstruct selected portions of Mr. Cristino's work through his deposition testimony rather than evaluate his investigation and opinions and conclusions from a dispassionate review of his report and full joint investigation. He did test and inspect the evidence, he did evaluate the fire scene he did apply tested and accepted scientific principles. The defense says he did not do enough. The question is not if Cristino's testimony is admissible it is whether or not it is credible and believable and, most important, reliable; weight not admissibility.

Under *Daubert*, whether an expert's theory can be tested is one of the many considerations a court must take into account when ruling on a motion to preclude, but the list of considerations is not exclusive nor mandatory. Joe Cristino is qualified; his opinions are reliable and will be helpful to the jury. Courts applying *Daubert* in evaluating an expert's reliability should consider: (1) whether the theory or technique upon which the expert relies can be tested; (2) whether the theory or technique has been subject to peer review and publication; (3) the known or potential rate of error; (4) the existence and maintenance of standards controlling the technique's operation; and (5) whether the theory or technique has been widely accepted by the relevant scientific community. See *id.* at 593– 94; see also *Kumho Tire Co. v. Carmichael*, 526 U.S. 137, 148, 119 S.Ct. 1167, 143 L.Ed.2d 238 (1999) (applying *Daubert* factors to all expert testimony). The test of reliability is flexible, however, and the specific factors listed in *Daubert* “neither necessarily nor exclusively appl [y] to all experts or in every case.” No single factor is

necessarily dispositive of the reliability of a particular expert's testimony. *Kumho Tire*, 526 U.S. at 150.

The defense claims that Cristino's opinions are unreliable because the testing he did do was done improperly and he did not conduct tests that he should have done. The testing the defense most strongly criticizes is the wet cold testing Cristino did after his report was issued. This test was not used to arrive at his conclusions. The question of the reliability of these tests is moot since he did not and will not rely on them in offering his opinion. The defense also claims that Cristino should have tested the claim that moisture can enter the enclosure. This proposition, however is one with which Eaton agrees (Jeffrey Johnson's Deposition at p. 122, Exhibit D) so no testing is required. The Daubert test evaluation is not applicable to either of these two issues.

The proposition that if a circuit breaker becomes contaminated with moisture it can short circuit is elementary science and needs no testing. Water is a conductor of electricity and under the proper circumstances will support electrical activity such as that found in the post-fire physical evidence. The other testing that he did; Scanning Electron Microscopy, X-ray imaging and continuity and oil testing is all accepted by the scientific community, is reliable and can be repeated. Moreover Eaton participated in this testing. It is from these tests and his observations of the evidence and the inspection and comparison of the damaged evidence to undamaged exemplars that are most important to Cristino's opinions and what the court must evaluate for reliability. Here it is important that Cristino's experience and training is considered which is authorized by *Daubert* and *Kumho Tire*. If his experience and training as well as all of the work he did in this case are considered, then the court will see that his opinions are trustworthy and reliable.

In some cases, the reliability of an expert witness may be based upon his personal knowledge or experience. *Kumho Tire*, 526 U.S. at 156. The trial court must determine whether



the expert's training and qualifications relate to the subject matter of the proposed testimony. *Id.* This testimony must be supported by appropriate validation – i.e. “good ground” based upon what is known by the evidence. *Isely v. Capuchin Province*, 877 F.Supp. 1055 (E.D. Mich. 1995). As noted in *In re Paoli RR Yard PCB Litigation*, 35 F.3d 717 (3d Cir. 1994), proponents of expert testimony:

Do not have to demonstrate to the judge by a preponderance of the evidence that the assessments of their experts are correct, they only have to demonstrate by a preponderance of evidence that their opinions are reliable. . . The evidentiary requirement of reliability is lower than the merits standard of correctness.

*Id.* at 744.

Acceptance or rejection of expert opinion is part of the jury's fact-finding role:

Vigorous cross-examination, presentation of contrary evidence, and careful instruction on the burden of proof are the traditional and appropriate means of attacking shaky but admissible evidence. *Daubert*, 509 U.S. at 596.

In *McCulloch v. H.B. Fuller Company*, 61 F.3d 1038, 1045 (2d Cir. 1995) the Second Circuit pointed out that in order to avoid encroaching on the jury's function, the Court's “gatekeeping” function under *Daubert* must be regarded as a limited function:

Trial judges must exercise sound discretion as gatekeepers of expert testimony under *Daubert*. *Fuller*, however, would elevate them to the role of St. Peter at the gates of heaven, performing a searching inquiry into the depth of an expert witness's soul – separating the saved from the damned. Such an inquiry would inexorably lead to evaluating witnesses' credibility and weight of the evidence, the ageless role of the jury.

In *Travelers Property & Casualty Corp. v. General Electric Co.*, 150 F.Supp.2d 360 (D. Conn. 2001) the court allowed the plaintiff's cause and origin expert to testify after a *Daubert*

review. The Court found the expert to be qualified based on his experience and history. Then the court considered his methodology. While his methodology was not made clear in his report, it was made clear during the Daubert hearing. The court held that the expert's "experience, knowledge and training, taken together with the process he described during the [Daubert hearing] of analyzing the burn patterns in the [subject products] and then ruling out potential alternative explanations, is sufficient to meet the Daubert threshold of admissibility." *Id.* at 366. Also, the Court pointed out that while the proposed expert had not tested his theory experimentally, the theory was indeed capable of testing, meaning the defendant's experts could have employed testing on their own to try and undercut the proposed expert's theories at cross-examination. *Id.* The court was convinced that the expert had taken the necessary steps to develop his opinions, steps which were consistent with NFPA 921.

And with regard to the defendant's critiques of the expert's investigation, the court wrote, "[A]lthough [the defendant] has raised some very strong points about the way in which [the proposed expert] conducted his investigation, the data he collected and the way it was analyzed-including the probative value of certain tests he performed after the issuance of his report-the court believes that those concerns are, under the circumstances of this case, more appropriately the subject of what will no doubt be a rigorous cross-examination." *Id.* The Court held that while the proposed expert did a poor job of explaining his methodology, a review of his report and his deposition testimony, along with the testimony at the Daubert hearing, made it clear that the expert did indeed follow the scientific method and used a reliable methodology.

In *Peerless Ins. Co. v. Broan-Nutone LLC*, 2012 WL 1288196, No. 3:10-cv-0868, (D. Conn. April 16, 2012) the District Court of Connecticut denied a plaintiff's motion to exclude defendant's experts because they were not peer reviewed and therefore unreliable. The court considered the experts' qualifications and decided that their history and experience made them

qualified and their opinions reliable. *Id.* at \*2. Thus, the fact that their opinions were not peer reviewed did not automatically exclude their opinion.

Purported deficiencies in the Cristino investigation do not diminish the reliability of his opinions. Given his extensive qualifications and the investigation he performed and the facts he relied upon in forming his opinions, they are reliable and therefore admissible under Daubert.

A case from the Third Circuit provides some additional guidance. In *Breidor v Sears, Roebuck & Co.*, 722 F2d 1134 (3d Cir. 1984), the Court reversed a judgment for the manufacturer and retailer of a refrigerator and remanded the case. The Third Circuit held, that to the extent that the allegedly speculative nature of the testimony was the basis for the district court's refusing to permit the expert to state his opinion as to the probable cause of the fire, the court abused its discretion because the testimony fell within the ambit of Rule 702 since it was helpful to the trier of fact in determining the origin of the fire. Stressing that helpfulness is the touchstone of Rule 702, the court declared that the mere fact that the expert could not identify a specific defect in the refrigerator in which the fire allegedly began did not mean that he was speculating when he offered his expert opinion as to the cause of the fire. His testimony that the probable cause of the fire was an electrical malfunction in the refrigerator thermostat was helpful because it would afford to the jury an explanation of how a fire could have started in the upper part of the refrigerator, as opposed to the expert testimony of a defense witness that the fire started outside the refrigerator. The court observed that the testimony was not speculative or lacking foundation in that the expert had eliminated all possible causes of fire except for a malfunction in the refrigerator thermostat.

It was reasonable for Cristino to assume, based upon what he knew, that moisture entered the enclosure and circuit breaker. His wet/cold protocol proved that moisture could enter the breaker (Eaton apparently admits this proposition as well. See note 7 in their Motion) if in the

enclosure and Eaton admits that it can enter the enclosure. It was also reasonable to conclude that it was the most probable cause of the short. Eaton does not dispute that if moisture entered the breaker it could cause a short circuit. Therefore, based upon the physical and scientific evidence that he saw, Cristino concluded that the most probably cause of the short circuit was moisture ingress. The evidence from the event was consistent with a failure caused by a short circuit. Short circuits can only be caused by a limited number of things and moisture ingress is the most probable in this case. Based upon his education, experience and the examination of the evidence, Mr. Cristino concluded that the fire was caused by a shorting of the electrical meter. As Mr. Cristino makes clear in his report, this short circuit was most probably caused by moisture. Again, this was based on an examination of the evidence, as Mr. Cristino testified at his deposition:

Q: Okay. Do you have an opinion as to why this meter panel waited five years before it failed despite the fact that it was in your opinion subject to hail, snow, and rain?

A: Well, based on the location of the failure in meter, I think it was a matter of time. Time was necessary for this to, this failure to occur.

Q: How much time was it [sic] required for this failure to occur?

A: In my opinion, the time from when it was initially installed until January 16, 2011.

Q: How did time contribute to this failure?

A: It allowed for the buildup of moisture within that meter enclosure to reach the point where the fault occurred within the circuit breaker.

(Joseph Cristino's Deposition at pp. 114:19-115:8, Exhibit I). The conclusion regarding the location of the failure was derived from Cristino's examination, evaluation and testing of the evidence. All proper within Daubert and FRE 702 and all consistent with the physical evidence and accepted scientific principles. But any inadequacies Defendant finds in Mr. Cristino's testing affect the weight of his opinion and not its admissibility. *Cf. Giddens v. Equitable Life*

*Assur. Soc'y of United States*, 356 F. Supp.2d 1313 (N.D. Ga. 2004) (purported deficiencies in expert's methodology impacted only credibility of testimony, and not admissibility).

In *Tiffany (NJ) Inc. v. eBay, Inc.*, 576 F. Supp.2d 457 (S.D.N.Y. 2007), a proffered expert's testimony was properly admitted under the Federal Rules because the expert was properly qualified and his opinion was relevant, and the opponent's concerns about the expert's methodology addressed the weight of the evidence, and not the admissibility, and was more properly addressed on cross-examination. The same holds true here; the evidence suggested that moisture caused the electrical failure. The opinion, and the testing done to support it, can be challenged properly through cross-examination, but Mr. Cristino's opinion is relevant and will assist the trier of fact and is admissible. The development of Mr. Cristino's opinion is set out in his report and is entirely consistent with other expert's opinions offered in this case:

- The Cutler Hammer combination meter enclosure exhibited signs of electrical fault activity within its confines. This damage extended outward through the back of the metal enclosure.
- Portions of the meter enclosure circuit breaker's Line Side connections (those coming from the meter socket) sustained physical damage due to electrical fault activity
- One of the circuit breaker's Load Side terminals (those connecting to the conductors routed to the basement circuit breaker panel) was damaged as a result of electrical fault activity.
- Damage to the Cutler Hammer combination meter socket enclosure and internal components appeared to be consistent with an event created by the ingress of moisture into the enclosure and a resultant electrical failure. This was characterized by electrical fault activity extending outward from the interior of the Cutler Hammer circuit breaker to the rear sheet metal mounting plate and the lack of indications of rodent or varmint activity and the absence of human interaction or other causes.
- Most of the aluminum conductors that had been routed through the meter enclosure had been consumed by the electrical fault activity.
- The damage to the main circuit breaker and steel sheet metal mounting plate aligned with a hole through the sheet metal that made up the rear of the meter enclosure.
- Approximately 50% of the main circuit breaker's internal components had been consumed or destroyed by the January 17, 2011, incident.
- The damage to the subject circuit breaker was identified to be centered in the area of the internal portions of the right-side Line side components.

- When the subject circuit breaker's remains were compared against the BW2200 circuit breaker [an exemplar used during testing], a hole was visible from the front of the circuit breaker's outer surface, through the circuit breaker's interior components, through to the circuit breaker's rear surface, through to the damaged sheet metal mounting plate at the rear of the meter enclosure and through the metal of the meter enclosure.
- The observed damage was consistent with that caused by an electrical fault within the subject circuit breaker, including the melting of the mounting plate and the sheet metal of the meter enclosure.

(Joseph Cristino's Report at pp. 2-7, Exhibit A).

There can be no debate that Mr. Cristino's investigation and conclusions will be helpful to a jury in determining liability in this matter. The Defendant only attacks specifics of Mr. Cristino's opinions, but those arguments do not detract from the validity and reliability of his opinions, which are based upon available evidence. Defendant criticizes Mr. Cristino's testing of an exemplar unit under wet and cold conditions, arguing that his testing fails to support his theory. Contrary to the defense argument the exercise did add to Cristino's understanding of how the breaker operated and while it continued to work in some respects the toggle (the switch that is used to re-set the breaker when it opens) failed to operate from the on to off position (Joseph Cristino's Deposition at p. 201, Exhibit I). Mr. Cristino should be allowed to present his opinion to the jury, and any criticisms that the Defendant may have, including the testing, can be challenged through cross examination. Doing so allows a jury to make the final determination as to Mr. Cristino's credibility as an expert witness.

Pursuant to *Daubert* and its progeny, experts are permitted wide latitude to offer opinions, so long as the expert is qualified and that the expert's opinion will assist the trier of fact. Here, Mr. Cristino is well qualified in the operation of electrical equipment and investigation of electrical failures, and his opinion on the cause of this fire will assist the trier of fact in determining how to allocate fault. Scientific testimony must "fit" the issue to which the expert is testifying to the extent that it is tied to the facts of the case and will aid the jury in resolving a factual dispute. *Bradley*, 42 F.3d at 437. Mr. Cristino examined the known-facts –



namely, the available evidence – and formed his opinion. Mr. Cristino’s methods and results can be challenged during cross-examination, but these criticisms alone should not bar Mr. Cristino’s testimony. There is no chance that Mr. Cristino will mislead or confuse the jury. Defendant’s Motion to Strike does not claim that Mr. Cristino’s testimony would not be helpful to the fact finder. Indeed, there is no question that it would be helpful. Eaton is obviously concerned that, if believed, Cristino’s opinion will result in a finding of liability against it. In view of the foregoing, Mr. Cristino’s proposed testimony satisfies the *Daubert* standards to be employed by district courts in fulfilling their gatekeeping function under Rule 702. Accordingly, Defendant’s Motion to Strike his proffered expert trial testimony must be denied.

**IV. CONCLUSION**

Mr. Cristino is a well-qualified expert and his opinions are grounded in the scientific method and reliable. His testimony will aid the jury in fact finding and should be allowed. Plaintiff respectfully requests that Defendant’s Motion be denied.

Dated: May 17, 2013

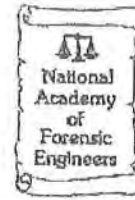
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# **Exhibit A**



**CRISTINO ASSOCIATES INC.**  
ELECTRICAL POWER SYSTEMS ENGINEERING  
DESIGN, FORENSICS AND TRAINING



75 Vista View Drive  
Southbury, CT  
Electrical Failure  
Analysis Report

Prepared By:

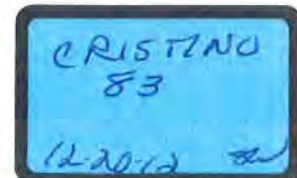
Joseph A. Cristino, P.E.

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November 12, 2012

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Cristino-0763



On January 31, 2011, the writer met with Fire Investigator Michael Driscoll (of PT&C Forensic Investigations) and other experts at a residential structure located at 75 Vista View Drive in Southbury, Connecticut. A fire had occurred at the exterior of the structure on January 17, 2011, that extended into the structure and caused structural damage. The preliminary analysis identified the area of fire origin as being in the vicinity of the electric service meter enclosure and underground conductor conduit location on the northerly side of the structure.

The purpose of the January 31<sup>st</sup> site examination was to initiate an investigation of the January 17<sup>th</sup> fire, evaluate possible electrical ignition sources and to formulate and proceed with a course of action to determine the cause of the fire.

This report is based upon the January 31<sup>st</sup> site examination, subsequent examinations and testing at the Connecticut Light and Power Company's (CL&P) Freight Street facility, in Waterbury, Connecticut, and QualiTech Laboratories in Meriden, Connecticut, a review of material provided by Eaton Corporation and discussions with Fire Investigator Driscoll. The writer reserves the right to supplement and/or amend should additional information become available.

**BACKGROUND INFORMATION:**

- The residential structure at 75 Vista View Drive was one of four structures within the same development that were built but never occupied.
- Electrical service to all of the structures within the development was supplied via 13,800-volt underground cables, above-grade, pad-mount transformers and underground 120/240-volt underground conductors.
- A pad-mount transformer was located to the right side of the driveway (facing the structure) and supplied 75 Vista View and one other residential structure located across Vista View Drive.

- An underground PVC conduit ran from the pad-mount transformer to a Cutler Hammer™ combination meter enclosure located on the northerly face of the structure. Note: A combination meter enclosure is one which has provisions for an electric utility revenue meter and a main disconnect (circuit breaker or fused disconnect switch). In addition, this enclosure was equipped with a meter by-pass which permitted the removal of the revenue meter without interruption of power to the structure.
- The Cutler Hammer™ combination meter enclosure exhibited signs of electrical fault activity within its confines. This damage extended outward through the back of the metal enclosure.
- The exterior wall of the residential structure in the area of the Cutler Hammer™ combination meter enclosure location exhibited fire damage.
- The underground PVC conduit that was routed from the CL&P pad-mount transformer to the Cutler Hammer™ combination meter enclosure had been partially consumed in the area below the meter enclosure.
- The type SER cable that interconnected the Cutler Hammer™ combination meter enclosure with the main circuit breaker panel located within the basement was consumed up to where it exited the meter enclosure.
- The Cutler Hammer™ combination meter enclosure was fitted with a circuit breaker that was electrically connected to the revenue meter socket within the enclosure.
- The meter enclosure's circuit breaker was oriented so that its toggle operated horizontally (side-to-side) although the electrical connections were oriented vertically (Line Connections at the Top and Load Connections at the Bottom). The circuit breaker was rated for 200 amperes with an interrupting rating of 22,000 amperes.

- Portions of the meter enclosure circuit breaker's Line Side connections (those coming from the meter socket) sustained physical damage due to electrical fault activity.
- One of the circuit breaker's Load Side terminals (those connecting to the conductors routed to the basement circuit breaker panel) was damaged as a result of electrical fault activity.
- The CL&P revenue meter was damaged with only portions of the current-sensing components remaining within the meter socket jaws.
- Damage to the Cutler Hammer™ combination meter socket enclosure and internal components appeared to be consistent with an event created by the ingress of moisture into the enclosure and a resultant electrical failure. This was characterized by electrical fault activity extending outward from the interior of the Cutler Hammer™ circuit breaker to the rear sheet metal mounting plate and the lack of indications of rodent or varmint activity and the absence of human interaction or other causes.

Following the January 31<sup>st</sup> site examination, the CL&P pad-mount transformer was inspected and tested at the CL&P Area Work Center at Freight Street in Waterbury, Connecticut. CL&P Western Regional Test Department and Waterbury Area Work Center Electrical Maintenance personnel provided assistance and performed some of the testing.

- The transformer was a 25 kVA, pad-mount type, oil filled, single-phase unit with a CL&P designation of #968.
- The transformer had a high voltage rating of 13,800/7,970 volts and a low voltage rating of 240/120 volts.
- The transformer was fitted with a secondary circuit breaker; the circuit breaker was found to be inoperable and had been reported to have a



and that the transformer neither caused nor created the January 17, 2011, electrical fault.

On March 14, 2011, and September 7, 2011, artifacts from the 75 Vista View Drive loss site were examined at the QualiTech Laboratories, 190 Pratt Street, Meriden, Connecticut. The March 14<sup>th</sup> session included interested parties, including representatives from the Connecticut Light and Power Company (CL&P). The September 7<sup>th</sup> session focused on analysis of the 200-amp Cutler Hammer™ circuit breaker remains.

#### March 14, 2011, Observations

- The Cutler Hammer™ combination meter enclosure exhibited damage throughout the interior of the portion of the enclosure within which the 200-amp main circuit breaker was mounted.
- Other damage was observed in the area of the revenue meter socket.
- Most of the aluminum conductors that had been routed through the meter enclosure had been consumed by the electrical fault activity.
- The 200-amp main circuit breaker had been mounted to a steel sheet metal plate which was located against the rear of the meter enclosure in the area below the revenue meter socket.
- A sheet of Mylar insulation separated the rear of the circuit breaker from the steel sheet metal mounting plate that was attached to the metal enclosure.
- A portion of the steel sheet metal mounting plate had been consumed by electrical fault activity. The damage aligned with damage at the back of the 200-amp main circuit breaker.

CONCLUSION:

Based upon the site examination, laboratory analysis and information obtained from Eaton Corporation Cutler Hammer™, it can be stated with a reasonable degree of engineering certainty that the January 17, 2011, failure within the Cutler Hammer™ combination meter enclosure that was mounted on the exterior of an residential structure located at 75 Vista View Drive, Southbury, Connecticut, was due to a short circuit within the 200-amp main circuit breaker mounted within the meter enclosure. The short circuit originated within the circuit breaker's internal Line side components most probably due to a defect that allowed moisture ingress. The meter enclosure was designed and manufactured for outdoor applications. Therefore, the meter enclosure should have been capable of preventing the ingress of moisture typically experienced in a New England winter. The moisture compromised the circuit breaker's internal insulation system which included the Bakelite-type material from which the circuit breaker body was formed and the internal insulating air gaps. The fault most probably was located in the area of the internal Line side components within the circuit breaker. (This is based upon the observed damage within the circuit breaker remains.) Due to the location of the fault, the Cutler Hammer™ main circuit breaker was unable to interrupt the electrical fault, thus allowing the fault to expand and intensify. This resulted in the production of temperatures in excess of 2500° Fahrenheit; caused failures of the Mylar insulation at the back of the circuit breaker and two steel components; the extension of the electrical fault outside of the confines of the meter enclosure caused the combustible materials to which the meter enclosure was mounted to ignite.

Based upon laboratory analysis and visual examination, the electrical failure within the Cutler Hammer™ combination meter socket enclosure was due

to a fault that originated within the circuit breaker within the enclosure. Outside sources and failure scenarios have been considered and eliminated because of the location and severity of the damage to the aluminum, insulation material and steel components within the Cutler Hammer™ combination meter socket enclosure. Neither an external electrical fault nor an external fire could have produced the observed damage and, more importantly, an external event could not have kept the component remains intact.

**Exhibit B**

**JOSEPH A. CRISTINO** • P. O. Box 1238, Redding, CT 06875 • (203) 938-0500

***PARTIAL CLIENT LIST***

**Metro-North Railroad,**  
New York, NY

**McFarland-Johnson, Inc.,**  
Binghamton, NY

**AT&T, Meriden, CT**

**Northrup Grumman-Norden  
Systems, Inc., East Norwalk, CT**

**Hartford Steam Company,**  
Hartford, CT

**Town of New Canaan, New  
Canaan, CT**

**Cozen O'Connor Attorneys,**  
Philadelphia, PA

**Third Taxing District Electric,**  
Norwalk, CT

**White and Williams, LLP,**  
Philadelphia, PA

**Buchanan & Associates,**  
Norwood, MA

**Robinson & Cole, LLP,**  
Stamford, CT

**Sikorsky Aircraft Corporation,**  
Stratford, CT

**Grubb & Ellis**  
Middletown, CT

**Metropolitan Insurance, Rocky  
Hill, CT**

**Peerless Insurance Company,**  
New Hampshire Office

**U.S. Fidelity & Guaranty Co.,**  
Rocky Hill, CT

**Reliance Insurance Company,**  
White Plains, NY

**Hartford Steam Boiler,**  
Nationwide Offices

**CONNECTICUT LICENSE 13432  
MASSACHUSETTS LICENSE 34488  
MAINE LICENSE 6459  
NEW YORK LICENSE 073442  
FLORIDA LICENSE 59576  
OHIO LICENSE 68520  
RHODE ISLAND LICENSE 8243**

***EXPERIENCE***

**1983 - Present**  
**President / Principal Engineer**  
Cristino Associates, Inc.  
Lois Lane  
PO Box 1238  
Redding, CT 06875-1238  
(203) 938-0500

***Duties and Responsibilities***

- Design of Electrical Distribution Projects.
- Provide Protective Relaying Specifications and Settings.
- Provide Protective Device Engineering Studies.
- Design, Specification and Bid Package Production for Electrical Substation Projects.
- Forensic Investigations to determine Electrical Causation.
- Fault studies, Load Flow and Short Circuit Coordination Studies.

***Additional Duties***

- General Electrical Power Consulting Engineer

**Chubb Insurance**, Chesapeake,  
VA

**ITT/Hartford Insurance  
Group**, Connecticut Offices

**Allstate Insurance**, Connecticut  
Offices

**Rhode Island Hospital**,  
Providence, RI

**State Farm Insurance**, Ballston  
Spa, NY

**Quinnipiac College**, Hamden,  
CT

**New York Presbyterian  
Hospital**, New York, NY

**Yale University**, New Haven,  
CT

**New Milford Hospital**, New  
Milford, CT

**Mohegan Tribal Utility  
Authority**, Uncasville, CT

**Advance Fusion System**  
Newtown, CT

**ACCOMPLISHMENTS:**

Plant Tour and Discussion of  
Cogeneration Project at  
Component Technologies,  
Newington, CT for the  
Connecticut Power & Energy  
Society, March 1997

Authorized and presented article  
titled "Cogeneration &  
Engineering: Critical Match for  
Project Success" at PowerGen  
International '96 Convention,  
December 1996.

Authored article for T & D  
Magazine on television and  
radio frequency detection and  
correction.

Authored article on "Careful  
Analysis of a Chicken Coop  
Fire" for EC&M Magazine, July  
1998.

**1982 - 1987**

**Regional Test Supervisor - Southern Region**

The Connecticut Light & Power Company  
Bethel, Connecticut

*Duties and Responsibilities*

- Planning, scheduling and supervision of maintenance testing, construction testing and protective and control scheme testing on equipment for the Transmission and Distribution systems of the Southern Region.
- Evaluate testing procedures and to analyze electric test results on equipment, protection devices and control systems, etc. and to recommend or direct corrective action.
- To hire, train, promote and evaluate Department personnel.
- To oversee all maintenance testing of protective relays and protective system and to direct and coordinate distribution relay testing program.
- To plan and supervise testing of substation equipment at its initial installation and to supervise testing and installation of mobile transformers and substations, and to authorize the energizing of same.
- To coordinate, schedule and direct testing associated with the Northeast Utilities Preventative Maintenance Program for system maintenance planning.
- To oversee calibration tests for combustible gas testers.
- To schedule all work associated with television and radio frequency interference complaints including detection and correction.
- To oversee customer complaint investigations involving power line problems including computer mid-operations, etc.
- To oversee all testing and fault locating required for all cables within the region.

Provided engineering support for the restoration of the Sheffield Island Lighthouse electrical distribution system.

Presentations at the International Electric Test Association and the Doble Conference.

The Institute of Electrical and Electronics Engineers Battery Working Group establishing international standards.

Coauthored an article in *Forensics Magazine* with Oscar Berendsohn entitled: *The Role of Material Science in the Investigation of Electrical and Electronic Failures*, Vol. I, June 2001.

Coauthored an article in *Transmission & Distribution World Magazine* with Paul Woronik, MTUA, entitled: *Casino Town Doesn't Gamble on its Power Supply*, 4/1/2002.

**PROFESSIONAL ORGANIZATIONS:**

National Society of Professional Engineers

Association of Energy Engineers

Professional Engineers in Private Practice

Connecticut Society of Professional Engineers

International Electric Test Association

The Institute of Electrical and Electronics Engineers

National Fire Protection Association

Connecticut Power & Energy Society

National Academy of Forensic Engineers

**1978 - 1982**

**Regional Test Supervisor**

The Connecticut Light & Power Company  
Norwalk, CT

*Duties and Responsibilities*

- Duties same as above except restricted to distribution system relays and protection.

**1972 - 1978**

**Test Technician/Test Specialist**

The Connecticut Light & Power Company  
Berlin, Connecticut

*Duties and Responsibilities*

- To perform maintenance testing of oil circuit breakers and oil fill transformers.
- To perform calibration test on all substation relaying.
- To perform high voltage cable tests.
- To perform substation and generating plant construction wiring testing.
- To troubleshoot control circuiting.

**1969 - 1972**

**Engineering Estimator**

The Connecticut Light & Power Company  
Norwalk, Connecticut

*Duties and Responsibilities*

- To calibrate customer load requirements.
- To plan and layout overhead distribution lines.
- To oversee contract labor crews assigned for special projects.
- To perform necessary functions as required for storm damage restoration.



***SUMMARY OF  
EDUCATION:***

University of Bridgeport,  
Bridgeport, CT 1982  
Bachelor of Science Degree -  
Electrical Engineering

Norwalk State Technical  
College, Norwalk, CT 1967  
Associate of Science Degree -  
Electro-Mechanical Engineering

**1966 - 1968**

**Test Technician**

Fermont Dynamics  
Bridgeport, Connecticut

*Duties and Responsibilities*

- To perform acceptance test on engine-driven generator sets.
- To troubleshoot control circuit on generator sets.

# **Exhibit C**



Fire & Explosion Unit  
(888) PTC-FIRE

**PRIVILEGED, PROPRIETARY & CONFIDENTIAL**

**REPORT DATE:** November 12, 2012

**REPORT RECIPIENT:**

ACE / Westchester Insurance  
c/o Cozen O'Connor  
1900 Market Street  
Philadelphia, PA 19103

**ATTENTION:** Peter Rossi

**OWNER:** Omega Engineering

**DATE OF LOSS:** Monday, January 17, 2011 **Time:** 12:24 a.m.

**LOSS LOCATION:** 75 Vista View Drive

**CITY / STATE OF LOSS:** Southbury, Connecticut 06488

**CLAIM NUMBER:** JY11J0024673

**PT&C FILE NUMBER:** 11-00276

**PREPARED BY:** Michael J. Driscoll, CFEI  
North Regional Manager

**File Status:** First and Final Report

DRISCOLL  
46  
12-19-12

**THIS REPORT IS FURNISHED AS PRIVILEGED, PROPRIETARY & CONFIDENTIAL TO ADDRESSEE.  
RELEASE TO ANY OTHER COMPANY, CONCERN, OR INDIVIDUAL IS SOLELY  
THE RESPONSIBILITY OF ADDRESSEE.**



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**ASSIGNMENT:**

Received from: Mr. Peter Rossi of Cozen O'Connor  
 Instructions: Conduct an origin and cause investigation

Received on:	Tuesday	January 18, 2011
Scene Examination:	Wednesday	January 19, 2011
	Monday	January 31, 2011
	Thursday	February 17, 2011
Exam Completed:	Thursday	February 17, 2011

**RISK:**

The property owner is identified as Omega Engineering.

The property is identified as an unoccupied, two-story, wood-constructed, single-family home. The building was constructed in a modular fashion and assembled on a concrete foundation that forms a full basement level.

Omega Engineering is the owner, developer, and contractor who constructed this single-family dwelling within this subdivision.

**ORIGIN AND CAUSE SUMMARY:**

This fire origin and cause investigation was conducted utilizing a systematic methodology, including the appropriate use of fire pattern analysis, arc mapping, and fire dynamics along with the consideration of witness information and other available data. Based on the physical scene examination and other information currently available, it is my opinion this fire originated on the exterior east (front) side of the structure. More specifically, the origin was identified to be on the exterior north side of the study wall where the structure jutted toward the attached garage and where the meter breaker / meter pan assembly was installed and connected to the underground electrical service feed. It was subsequently determined that the meter breaker / meter pan assembly was sold and manufactured by Cutler Hammer.

From the origin area the fire extended against the exterior wood siding of the building and into the space between the interior and exterior wall surfaces where the fire extended upward ultimately consuming the adjacent garage and building roof structures. The fire further extended when drop down fire caused the subsequent ignition of propane fuel located on the south exterior side of the building.

The ignition source for this fire was an electrical short circuit that occurred within the meter breaker / meter pan assembly located within the point of fire origin. The electrical short circuit caused electrical arcing to extend throughout the assembly and through its exterior rear wall panel.

The first material ignited was the wiring insulation within the assembly and the exterior wood siding located immediately behind the assembly where a hole consistent with an electrical arc was identified.



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The event that caused the union of the ignition source and the first material ignited was an electrical failure within the meter breaker / meter pan assembly. The specific failure within said assembly is described and identified in Mr. Joseph Cristino's (Electrical Engineer, Cristino Associates) report.

Based on the information currently available, it is my opinion that this fire is classified as accidental.

#### **PROPERTY OVERVIEW:**

Approximate: Age- Yrs:	6	Stories:	2	Sq. Footage:	4400
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#### **Construction Overview:**

This single-family house was of modular design having been constructed by Westchester Modular Homes located in Wingsdale, New York. The wood-constructed modular sections were assembled at the loss location in 2005 on a concrete foundation that formed a full basement level beneath the two main living levels. In addition, an attached garage was connected at the north end of the main structure. The attached garage was set back from the main structure by six feet forming a six-foot section wall space on the exterior north wall of the study area where the water and electrical services entered the dwelling. Both the garage and house had pitched roofs that were finished with composite material shingles.

#### **Outbuildings / Exposures:**

No outbuildings or other structures sustained damage in this incident.

#### **Utilities (Electric / Gas):**

A 100-lb. propane tank was located on the exterior south side of the building and supplied fuel to the interior fireplaces and cooking appliances. None of these appliances was in use at the time of this incident. During the progression of this fire, as witnessed by first responders and documented through their photographs, the fire extended across the entire roof structure from the north end of the building to the south. The fire then dropped down along the south exterior side of the structure ultimately involving the attached propane fuel system. The propane tank self-vented during the progression of this fire creating an extensive fuel load at the south exterior side of the structure.

There was no evidence present to indicate that the propane tank and fuel were involved in the ignition scenario for this loss.

Underground electrical utilities are installed throughout the development. A transformer located between 75 and 77 Vista View Drive supplied electrical power to the house involved in this fire via an underground service cable. The electrical service cable extended through the ground along the north exterior side of the study wall in the six-foot wall section between the front of the main house and the garage. The service cable extended upward against the concrete foundation wall and the exterior wood siding above it to the meter breaker / meter pan assembly installed against the exterior wood siding.

The electrical service cable and meter breaker / meter pan assembly were energized at the time of this incident. The installed meter assembly sustained severe fire and heat damage during the



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progression of this fire, and melted components of the meter remained with the meter breaker / meter pan assembly following fire suppression activities.

An electrical service cable entered the basement ceiling from the east end of the north basement wall and ran along the north wall of the basement level to feed two installed breaker distribution panels. Two electrical distribution breaker panels were installed against the north wall of the basement at the west end. The panels bore identification labels identifying them as Cutler Hammer. These panels sustained no visible fire or heat damage in this incident. The main breaker panel was examined, and all breakers were identified to be in the "on" position with the exception of three breakers identified to be for the microwave, wine cooler, and refrigerator circuits which were identified to be in the "off" position. All of the breakers located within the second panel were identified to be in the "on" position at the time of my examination. None of the breakers in either panel was identified to be in the "tripped" position.

Following fire suppression activities, the electric utility, C.L. & P. responded and was unable to reset the transformer. According to Fire Marshal Stormer, no physical damage was identified within the transformer. The utility company ultimately replaced the transformer.

#### **Climate Control:**

An oil-fueled, forced-air heating system was installed and in use to provide heat to this building at the time of this fire. The heating system sustained smoke damage as a result of exposure to the extending fire. The installed fuel oil tank located in the basement level was approximately  $\frac{3}{4}$  full at the time of my investigation. Air conditioner compressor units, installed on the exterior south side of the building, sustained fire and heat damage as a result of exposure to the extending fire.

There is no physical evidence present to indicate that any of the climate control features installed within this structure were involved as potential ignition sources for this fire. None was located within the area of fire origin.

#### **Alarm System:**

A fire alarm system was installed throughout the building but was not in use at the time of this incident. The installed system had previously been monitored by Armed and Ready Alarm Company of Oxford, Connecticut, but was disabled from central station monitoring in 2008 due to previous false alarms within the development.

According to Fire Marshal Stormer, an alarm was received at 10:35 p.m. on January 16, 2011, by Armed and Ready Alarm Company indicating a power failure at the 70 Vista View Drive. The alarm company sent an alpha page to the property manager, Jonathon Turner, at 10:47 p.m. advising him of the alarm condition. Mr. Turner advised the alarm company to place a hold on the alarm system for twelve hours.



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**FIRE DEPARTMENT:**

The Southbury Volunteer Fire Department responded to this incident along with mutual aid from Oxford, Middlebury, Woodbury, Roxbury, and Sandy Hook Fire Departments

This information was received from an interview conducted with Fire Marshal Henry Stormer as well as material gleaned from the fire marshal's report.

The fire department was dispatched to this fire following dispatch receipt of a 911 call placed by passerby Joseph Piscacureta of 124 Head O'Meadow Road, Newtown, Connecticut.

The alarm was received and dispatched at approximately 12:24 A.M. Lt. Gillotti arrived on scene at approximately 12:33 A.M.

The fire fighters identified fire along the roof of the structure extending from the north end toward the south end of the building. Multiple water tankers were required to supply fire suppression activities at the loss location.

The property was identified to be secured at the time of this incident, and windows and doors were forced by fire fighters during fire suppression activities.

The home was vacant and for sale at the time of this incident, and no property owners were present at the time of the fire department's arrival.

Following completion of fire suppression activities, Fire Marshal Stormer with assistance from the Connecticut State Police Fire Marshal's Office conducted an investigation of this incident. The origin of this fire was identified to be at the electrical meter box / service line entry located on the northeast exterior of the building. The ignition source for this fire was determined to be an electrical short circuit that occurred within the meter breaker / meter pan assembly located within the point of fire origin and was deemed to be accidental.

Nothing was removed from the site by local and state investigators. The remains of the meter breaker / meter pan assembly that were located on the ground during their investigation were placed in the garage area following their investigation.





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**PERSON DISCOVERING / REPORTING INCIDENT:**

Joseph Piscacureta  
124 Head O'Meadow Road  
Newtown, Connecticut  
(203) 546-0020

I conducted a telephone interview of Mr. Piscacureta following my fire scene examination. Mr. Piscacureta and three unidentified people had been playing Dungeons and Dragons at a residence in Oxford, Connecticut, when they decided to drive to a twenty-four McDonald's Restaurant located in Southbury, Connecticut. Mr. Piscacureta stated that while driving on Route 188, which is the main road adjacent to Vista View Drive, he observed an orange glow and turned onto Vista View Drive. He stated that once on Vista View Drive, he saw flames coming from a house located on top of a hill and immediately called 911 from his cell phone. He stated that a police officer was the first to arrive, and he was told to move his car. He stated that he gave his information to the police officer. He further stated that he did not get close enough to see exactly where the fire was in and around the building.

**INTERVIEW - (Jonathon Turner):**

Jonathon Turner, Property Manager  
Omega Engineering  
One Omega Drive  
Stamford, Connecticut 06907-0047  
(203) 359-7657

I interviewed Jonathon Turner, property manager, on January 18, 2011. Mr. Turner stated that the house has been for sale since it was constructed and that there have never been occupants residing in the building. He stated that the development is known as Pilots Mall LLC. He stated that Peter Sullivan of East Brook Construction was retained as Clerk of The Works for the development and that he in turn retained the services of various sub-contractors during the construction of the house. Mr. Turner stated that the fire alarm system was disconnected from central station in 2008 due to false alarms within the development but that on the night prior to the fire, he received an alpha page from the alarm company indicating a power outage at 70 Vista View Drive. He stated that the next page he received was indicating a general fire alarm at 75 Vista View Drive. He stated that he was not certain of the times the pages were received but believes that they were received at approximately 11:09 p.m. and 1:00 a.m., respectively.

Mr. Turner stated that there had not been any problems identified at the loss location prior to the fire and that the heating and electrical systems were on and in good working order. He stated that the only circuits that were kept off within the house were for the refrigerator, wine cooler, and microwave. He stated that Peter Sullivan had driven through the development on the Saturday prior to the fire and that he did not notice anything out of the ordinary. Mr. Turner stated that the maintenance electrician, Scott Ribsl, was within the development on the Friday prior to the fire and that he walked through all of the vacant houses and did not identify any problems.



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**Claim No:** JY11J0024673  
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**SCENE EXAMINATION:**

**Date Commenced:** Wednesday January 19, 2011  
 Monday January 31, 2011  
 Thursday February 17, 2011  
**Date Completed:** Thursday February 17, 2011

**Safety survey:** A safety assessment of the loss location was conducted, and the roof and partial floor collapses were identified as safety concerns. A hole in the study room floor was also identified as a potential safety issue.

**Weather conditions:** The weather conditions at the time of this loss were identified to be temperatures of approximately 17 degrees Fahrenheit, no precipitation, and slight winds of approximately 3 mph.

Winter conditions leading up to this incident were above normal in terms of precipitation and below normal in temperatures. Ice damming and snow accumulation were identified in adjacent properties as photographed at 70 Vista View Drive directly across from the loss location.

**Individual(s) Present:** The insured representatives were present during the fire scene examination that commenced on January 19, 2011, and subsequent dates. Various representatives of interested parties were present during the subsequent scene examinations as identified in the attached sign-in forms.

**Previous Alterations:** Snow had covered the property following the fire incident, and the meter breaker / meter pan assembly had been placed in the garage area following the local and state investigations. No alterations or conditions were present to preclude me from determining the origin and cause of this fire.

Following my initial scene examination, representatives of the insured constructed a wooden enclosure on the exterior front side of the building around the identified area of fire origin located at the north side of the study room. This enclosure remained secure following and between scene examinations.



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It should be noted that the property was secured following the fire with plywood secured against all door and window openings. The house remained secured at the time of my examination that was initiated on January 18, 2011. However, at some unknown date between my examination conducted on the 18<sup>th</sup> of January and the next scene examination date of January 31, 2011, the plywood covering located on a rear basement window was forcibly pulled from the structure. It was identified on January 31, 2011, that person(s) unknown entered the building where they cut and removed various metallic items such as plumbing pipes. The unlawful entry and subsequent removal of metal from the basement level of this house did not in any way impact the investigation into the origin and cause of this fire.

Special Equip Req'd: No special equipment was required to investigate this loss.

Access Authority By: Omega Engineering representatives were present and provided access to the property.

Photos taken? Yes

Field Diagram prepared? Yes

#### **EXTERIOR OBSERVATIONS:**

The front elevation of the structure faces east. Fire damage was identified at the north end of the front of the building. Fire and heat damage was identified to be from ground level upward against the north wall of the study room adjacent to the attached garage. The fire and heat pattern along the north exterior wall of the study extended upward to the roof structures of the main house and adjacent garage.

The left elevation of the structure faces south. Extensive fire and heat damage was identified to this side of the building and was caused by drop down of the extending fire and subsequent ignition of the propane fuel within a 100-lb. propane cylinder installed on this side of the house.

The rear of the structure faces west. Fire damage was identified at the roof levels of the main house and attached garage structures.

The right elevation of the structure faces north. Fire patterns extended up the exterior wall of the main house from the north side of the study room to the main roof level and also over to the attached garage roof structure.

The roof of the structure was collapsed and consumed during the progression of this fire.

#### **SECURITY ISSUES (at time of incident):**

There were no occupants of this house at the time of this fire, and the fire department was required to force entry into the exterior doors and windows during fire suppression activities.



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## **INTERIOR OBSERVATIONS:**

The interior of the main structure was constructed off site with modular wood framing. The wood constructed walls and ceilings of the structure were finished with drywall. The exterior wall spaces were insulated with fiberglass insulation. The wood-framed floors were covered with plywood sheeting and finished on the first-floor level with hardwood flooring materials.

The second-floor level of the main structure sustained severe fire and heat damage as a result of the collapsed and burning roof structure. A bedroom located in the northeast corner of the second floor sustained fire damage along its north end as a result of exposure to the extending fire from below in the exterior north wall and flooring assembly located along the north wall.

The first floor sustained water, heat, and smoke damage throughout as a result of exposure to the extending fire. The study room located in the northeast corner of the first-floor level sustained fire damage predominately at the northeast corner of the room where fire extended from the exterior north wall space into the room. The fire extended up the north exterior wall space of this room to the second floor causing the ceiling to partially collapse. Further, the fire extended into the study room floor space from the north exterior wall causing a hole and partial collapse of the flooring assembly along the north wall of the room. All of the fire and heat patterns identified along the north end of the study room were identified to be the result of the fire extending from the exterior north wall space where the meter breaker / meter pan assembly was located.

The unfinished full basement level sustained smoke and water damage resulting from exposure to the extending fire. A hole was burned through the ceiling assembly immediately below the study room area located above at the north exterior wall where the main electrical service cable extended through the wall into the basement ceiling. The wood threshold plate located on top of the foundation wall was consumed during the progression of this fire that originated from the exterior side of the wall.

The attached garage, located at the north end of the main structure, sustained fire and heat damage as result of the collapsed and burning roof assembly.

## **AREA OF ORIGIN:**

Based on the physical scene examination and other information currently available, it is my opinion this fire originated on the exterior east (front) side of the structure. More specifically, the origin was identified to be on the exterior north side of the study room wall where the structure jutted toward the attached garage and where the meter breaker / meter pan assembly was installed and connected to the underground electrical service feed.

The exterior north wall where the meter breaker / meter pan assembly was located was covered with siding installed over wood framing materials. The fire consumed the wood siding and framing materials from the foundation sill level upward to the roof level immediately above.

The fire and heat patterns located on the exterior north side of the main structure and to the east side of the adjacent garage were all directional back to the north exterior side of the study room where the meter breaker / meter pan assembly was installed.



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The exterior area of fire origin was cleared of snow and ice during the scene examinations. The remains of melted aluminum electrical service cable were located and preserved as exhibits in this investigation. The underground service cable traveling from the street side transformer to the exterior north side of the study room was located and identified to be melted / arc damaged at ground level. A clean burn pattern, consistent with the high temperatures created during electrical arcing, was identified to the concrete foundation wall where the main exterior service cable extended upward to the installed meter breaker / meter pan assembly. The wood sill plate immediately behind where this cable traveled up the exterior wall to the breaker/meter pan assembly was consumed. The fire extended from the exterior wall siding into the interior wall space behind it.

All of the fire patterns were identified to be directional to the exterior north wall of the study room where the meter breaker / meter pan assembly was installed.

#### **Electrical Distribution System:**

The meter breaker / meter pan assembly being fed by the underground electrical service cable from the street side transformer was the only electrical distribution system component located in the area of fire origin.

Interior electrical distribution wiring and associated receptacles installed within the north wall of the study room sustained fire and heat damage as a result of exposure to the extending fire on the exterior side of the wall. No physical evidence of electrical arcing was identified to any of the interior electrical distribution system components providing physical evidence that these components were not energized at the time of fire exposure.

There is no physical evidence present to indicate that any of the interior electrical distribution system components were involved as potential ignition sources for this fire.

The main electrical service cable that extended from the meter breaker / meter pan assembly on the exterior side of the house entered the basement ceiling at the east end of the north wall of the basement. This cable was melted and severed at the point where the cable entered the interior ceiling space of the basement. This is consistent with its exposure to the extending exterior fire. There was no physical evidence of any other damage to the cable from the entry point to the electrical breaker panels installed at the west end of the north basement walls.

There is no physical evidence present to indicate that this interior service cable extending between the meter breaker / meter pan assembly and electrical breaker panels was involved as an ignition source for this fire.

The underground service cable connected to the meter breaker / meter pan assembly installed on the exterior north wall of the study room. This assembly was recovered and examined while at the fire scene. A hole, consistent with damage caused by an electrical arc, was identified through the exterior rear side of the assembly where it would have been against the wood exterior siding of the house. The damage to the assembly provided physical evidence that it was involved as an ignition source for this fire. Further, the electrical arc damage to this assembly had to occur prior to the electrical arcing and severing of the underground service cable that supplied it.



**Owner:** Omega Engineering  
**Claim No:** JY11J0024673  
**PT&C File No:** 11-00276  
**Report Date:** November 12, 2012  
**Page:** 11 of 12

---

This assembly and the associated wiring components were removed and secured as physical evidence by Mr. Joseph Cristino, EE, of Cristino Associates. Please see Mr. Cristino's report for additional details related to the examination of this assembly.

**Fixed Electrical Appliances:**

No fixed electrical appliances were located within the area of fire origin beyond the meter breaker / meter pan assembly.

**Electrical Appliances:**

No portable electrical appliances or fixtures were installed within the area of fire origin.

**Gas / Alternative Fuel Appliances:**

No gas or alternative fuel appliances were present within the area of fire origin.

**Ignition Source:**

The ignition source for this fire was an electrical short circuit that occurred within the meter breaker / meter pan assembly located within the point of fire origin. The electrical short circuit caused electrical arcing to extend throughout the assembly and through its exterior rear wall panel.

The first material ignited was the wiring insulation within the assembly and the exterior wood siding located immediately behind the assembly where a hole consistent with an electrical arc was identified.

The event that caused the union of the ignition source and the first material ignited is an electrical failure within the meter breaker / meter pan assembly. The specific failure within said assembly is described and identified in Mr. Joseph Cristino's (Electrical Engineer, Cristino Associates) report.

**Property / Evidence - Retrieved / Retained from this scene:**

All physical evidence was removed and retained by Cristino Associates.

**FILE STATUS:**

At the present time and with no further investigation immediately anticipated, this file is being closed. Should future circumstances warrant, this file can be easily reopened to allow for additional investigation. If you have any questions or require further assistance, please contact me at the number listed below.

Respectfully,

A handwritten signature in black ink, appearing to read "Michael J. Driscoll". The signature is written in a cursive, flowing style.

Michael J. Driscoll, CFEI  
North Regional Manager  
Seymour, CT  
203-231-2193



<b>Owner:</b>	<b>Omega Engineering</b>
<b>Claim No:</b>	<b>JY11J0024673</b>
<b>PT&amp;C File No:</b>	<b>11-00276</b>
<b>Report Date:</b>	<b>November 12, 2012</b>
<b>Page:</b>	<b>12 of 12</b>

---

Cf: Ben Wilkerson  
Director

(Address all correspondence concerning this file to the following address. Please include the PTC file number.)

PT&C Forensic Consulting Services  
Fire & Explosion Unit  
2727 Paces Ferry Rd, Suite 1-1200  
Atlanta, GA 30339

---

**ENCLOSURES:**

*Certain enclosures and/or specifically noted information contained herein may be the result of information retrieved from one or more independent commercial database sources. PT&C Forensic Consulting Services, P.A. does not warrant information from outside sources. As such, this information may require independent verification.*

1. Diagram – Exterior Wall
2. Diagram – Study Room
3. Photographs – January 19, 2011
4. Photographs – January 31, 2011
5. Photographs – February 17, 2011
6. Photographs – Southbury Fire Department
7. Fire Marshal Investigation Report
8. Sign-In Sheets

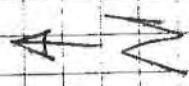


14'6"

Study

Closet

Built In Cabinets



Not To Scale

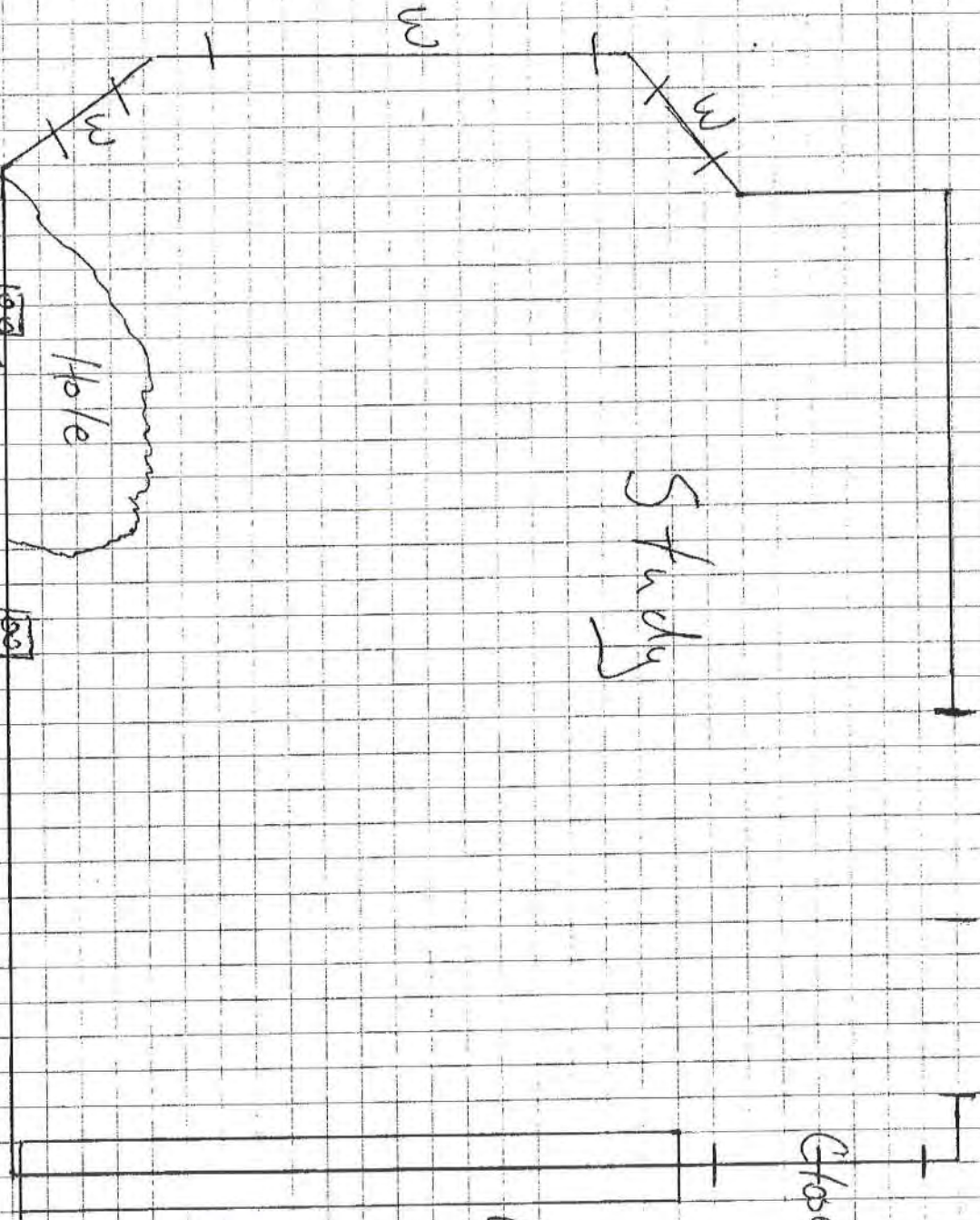
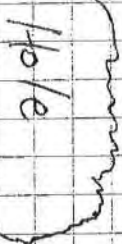
Driscoll

11-00376

Driscoll  
69  
12-1912

Threshold  
Burned  
Aways

11' - 3"



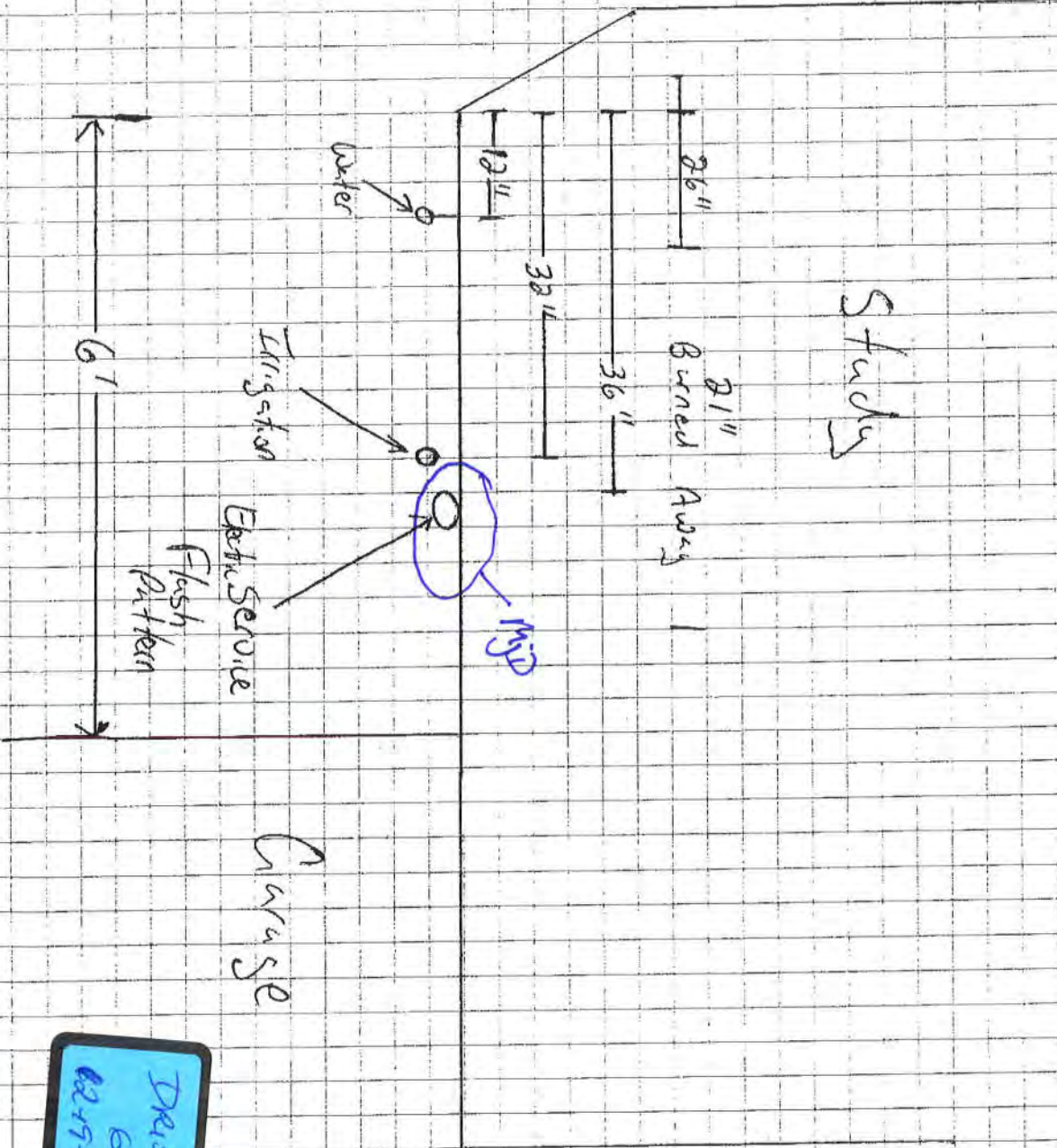


Driscoll  
11-00276

NA

Not To Scale  
Exterior

Study



DRISCOLL  
68  
02-19-12

**Exhibit D**

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF CONNECTICUT

ACE AMERICAN INSURANCE )  
COMPANY, )

Plaintiff, )

vs. )

EATON ELECTRICAL, INC., )

Defendant. )

) Case No. 3:11-CV-01741-CSH

DEPOSITION OF JEFFREY JOHNSON  
TAKEN OF BEHALF OF THE PLAINTIFF  
JULY 31, 2012

GOLKOW TECHNOLOGIES, INC.

877.370.3377 ph | 917.591.5672 fax

deps@golkow.com

1 I N D E X

2	QUESTIONS BY:	PAGE
3	MR. ROSSI	7

4

5

6

7

8

9 E X H I B I T S

10	EXHIBIT	DESCRIPTION	PAGE
11	1	Color photograph	15
12	2	Color photograph	15
13	3	Color photograph	15

14

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16

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24

1           A.    I don't believe so.  I believe my attorney  
2 and I discussed it.

3           Q.    Yeah.  And is it -- are you able to say  
4 that this was manufactured with a wire gutter and then  
5 it was removed?

6           A.    I cannot say that definitely.

7           Q.    Might have been man --

8           A.    I mean, it would be very difficult to not  
9 see that that was in the product because it's --  
10 there's a fastening means over here that you fasten  
11 the barrier to.  So when you go through the buildup  
12 of the product, you would absolutely notice that it  
13 was missing, and you can also see you would have a --  
14 if this dead front was installed, you would have this  
15 huge gap.  The utility company would be complaining  
16 because it could not seal off their wires.  They don't  
17 want these wires accessible to the customer, and  
18 that's the purpose of the gutter.

19          Q.    And just a generic description of this  
20 meter pan:  It's in two sections; correct?

21          A.    Yes.

22          Q.    And the bottom section encloses the  
23 breaker; correct?

24          A.    Yes.

1 turret press, and that would -- which punch hits where  
2 is programmed. The brake presses -- some brake  
3 presses are programmable; some are manual.

4 Q. Now, in the manufacturing process, tell me  
5 how it works. Do you make a batch of a certain box  
6 and then switch to a different type of box? Is that  
7 how it works? Or do you make them one at a time?

8 A. That's depending on what the orders are at  
9 the time. I couldn't answer that definitively.

10 Q. Okay. Now, the box in question -- do you  
11 have an idea as to when it was made? Obviously  
12 sometime after September 2004; correct?

13 A. Yes.

14 Q. And do you know where it was made?

15 A. Yes.

16 Q. Where?

17 A. At -- in Lebanon, Missouri.

18 Q. What's in Lebanon, Missouri?

19 A. The Durham Company produces these devices.

20 Q. D-u-r-h-a-m?

21 A. Yes.

22 Q. Durham Company?

23 A. The Durham Company.

24 Q. The Durham Company. Is that a division or



1 a subsidiary of Eaton company?

2 A. No.

3 Q. It's a stand -- it's a separate business,  
4 a vendor?

5 A. Yes.

6 Q. Is that correct?

7 A. Yes.

8 Q. So there's a vendor/vendee relationship  
9 between Eaton and Durham for the production of these  
10 boxes?

11 A. Yes.

12 Q. Is there a contract between the two  
13 companies?

14 A. I don't know.

15 Q. You've never seen one?

16 A. No.

17 Q. And how long has The Durham Company been a  
18 vendor of the Eaton company?

19 A. I don't know. I just know for these  
20 devices.

21 Q. When you say "these devices," you mean the  
22 CMBXB box?

23 A. Yes.

24 Q. Does Durham Company make other devices for

1           A.    Not weatherproof.  They're rainproof.  3R  
2   rainproof is the consideration.

3           Q.    3R rainproof -- what does that mean?

4           A.    That's the UL specification that's in UL  
5   50, and you'd have to actually read the standard to  
6   see what that actually is.  There's a lot written on  
7   it.

8           Q.    Uh-huh.

9           A.    But, basically, it means that it can -- it  
10   has withstood -- it or another construction very  
11   similar to this enclosure has withstood the rain and  
12   no -- no -- what is -- how is it actually termed?  I  
13   believe it's -- I believe it states no water can enter  
14   above live parts, and you can't have an accumulation  
15   of water in the bottom end wall.

16                   Now, when it says "rainproof," many people  
17   think absolutely no moisture can ever get into the  
18   enclosure.  That is not the case, and that's not what  
19   the standard says.

20           Q.    You try and keep moisture out, however?

21           A.    Of course, you do.  You know, you do your  
22   utmost to keep it out.

23           Q.    And what is it that makes these enclosures  
24   rainproof?

**Exhibit E**

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF CONNECTICUT

-----X  
ACE AMERICAN INSURANCE COMPANY : CAUSE NO.  
: 3:11-CV-01741-CSH  
VS. :  
:  
EATON ELECTRICAL, INC. :  
-----X

DEPOSITION OF: HENRY STORMER  
DATE: JULY 25, 2012  
HELD AT: SIEGEL O'CONNOR  
150 TRUMBULL STREET  
HARTFORD, CONNECTICUT

Reporter: MIMI Z. ARMANDO, LSR # 00222

1 APPEARANCES:

2

3 REPRESENTING THE PLAINTIFF:

4 COZEN O'CONNER

5 1900 MARKET STREET

6 PHILADELPHIA, PENNSYLVANIA 19103

7 By: PETER ROSSI, ESQ.

8

9

10 REPRESENTING THE DEFENDANT:

11 SANDBERG, PHOENIX & von GONTARD, P.C.

12 600 WASHINGTON AVENUE - 15TH FLOOR

13 ST. LOUIS, MISSOURI 63101-1313

14 By: JONATHAN T. BARTON, ESQ.

15

16

17

18 ALSO IN ATTENDANCE:

19 Brian Capouch, Videographer

20

21

22

23

24

25

1 garage.

2 Q So we see a photograph depicting the garage  
3 doors; is that correct?

4 A Yes.

5 Q And again, it shows the fire on the roof and  
6 quite a bit inside that garage; is that right?

7 A Yes.

8 Q Can you also see the den area you referred to  
9 in Exhibit No. 4?

10 A A lot of smoke over in that area. Yes, you  
11 can just to the left.

12 Q How many feet of snow were on the ground that  
13 day?

14 A Wow. Depending on where you were, because  
15 this is such a wide open area, the reason we lost the  
16 fireman was there was over five feet of snow at the end  
17 of a stone wall. I would say we had at least two,  
18 two-and-a-half feet. Because when I was looking for  
19 these photos, I was able at home with my digital camera  
20 to take the card out of the camera, and the town of  
21 Southbury didn't have the capability of putting the  
22 card into the computers at the time, so I would do it  
23 at home and then I would burn CDs on my personal  
24 computer and I tried to see if I had these photos. But  
25 I believe I had photos from the 11th, which was right

**Exhibit F**



Case: Ace American Insurance Company v.  
Eaton Electrical, Inc.

Transcript of Driscoll, Michael

**Date:** December 19, 2012

*This transcript is printed on 100% recycled paper*



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Internet: [www.goreperry.com](http://www.goreperry.com)

UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

-----X  
ACE AMERICAN INSURANCE COMPANY,

Plaintiff,

vs.

Case No. 3:11-cv-01741-CSH

Date: December 19, 2012

EATON ELECTRICAL, INC.,

Defendant.  
-----X

DEPOSITION OF MICHAEL J. DRISCOLL

The deposition of Michael J. Driscoll was taken on December 19, 2012, beginning at 9:09 a.m., at 150 Trumbull Street, Hartford, Connecticut before Susan Wandzilak, Registered Professional Reporter and Notary Public in the State of Connecticut.

Susan Wandzilak License No. 377

1 A P P E A R A N C E S

2 PETER G. ROSSI, ESQUIRE  
3 Cozen O'Connor  
4 1900 Market Street  
5 Philadelphia, Pennsylvania 19103-3508.  
6 215-665-2783 Phone  
7 215-701-2483 Fax  
8 prossicozen.com

9 Attorney for Plaintiff

10 JONATHAN T. BARTON, ESQUIRE  
11 Sandberg Phoenix & Von Gontard, P.C.  
12 600 Washington Avenue - 15th Floor  
13 St. Louis, Missouri 63101  
14 314-231-3332 Phone  
15 314-241-7604 Fax  
16 jbarton@sandbergphoenix.com

17 Attorney for Defendant

18  
19  
20  
21  
22  
23  
24  
25

1 A. Correct.

2 Q. It comes right off the roof and straight  
3 down?

4 A. Yes.

5 Q. Does that have anything to do with this fire?

6 A. I don't know.

7 Q. Was there ice damming along the north wall of  
8 the study?

9 A. I don't know.

10 Q. And we will get to your photographs. I  
11 understand you walked around and took some photographs  
12 of some of the ice formations on these homes; is that  
13 correct?

14 A. Yes.

15 Q. Were there ice formations in the area of the  
16 meter panels on the other homes in the neighborhood?

17 A. Yes.

18 Q. Do you know if the other homes in the  
19 neighborhood were identical to 75 Vista View Drive?

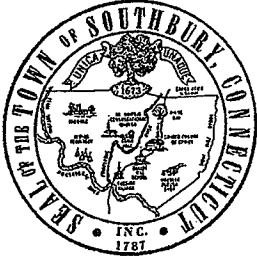
20 A. I believe we looked at an exemplar, so they  
21 were pretty close.

22 Q. And my understanding is they are Arlington  
23 style homes. Does that mean anything to you?

24 A. No.

25 Q. Under the scene examination page of Exhibit

# **Exhibit G**



# TOWN OF SOUTH BURY

## OFFICE OF THE FIRE MARSHAL

501 Main Street South  
Southbury, Connecticut 06488

(203) 262-0620  
Fax: (203) 264-3719

### FIRE INVESTIGATION REPORT

Date of fire:	January 17, 2011	Time of Fire:	0024 hrs
Place of fire:	75 Vista View Drive	Type of fire:	Structure
Reporting:	Cell Phone to 911	By:	Joe Piscacureta, 203-546-0020 124 Head O' Meadow Rd, Newtown

**Assignment:** The assignment to conduct an origin and cause investigation was received on January 17, 2011 at 0024 hrs. Deputy Fire Marshal Timothy Baldwin arrived on scene at approximately 0030 hrs and I arrived on scene at approximately 0050 hours. Photographs were taken by me and DFM Baldwin prior to and during suppression. Scene investigation was delayed until approximately 0545 hrs. while waiting for Fire Department suppression and overhaul efforts to be completed.

**Fire Department Response:** The fire call was dispatched at approximately 0025 hrs. Lt's Gillotti and Decremer arrived on scene at approx. 0033 hrs. The first arriving apparatus was Engine 4 at approx. 0040 hrs., and Ladder 1 at 0045 hrs.

Upon arrival flames were already seen from the entire roof area of the structure with overhang collapse to ground level.

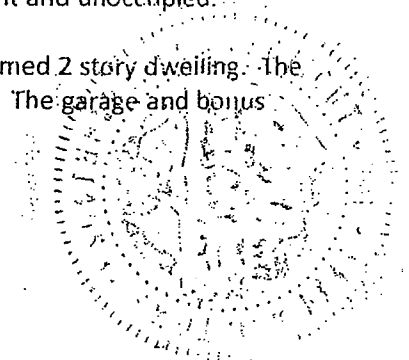
I observed that the first application of water to the fire, from Ladder 1 was at 0100 hrs.

Assistance was provided to the Southbury FD with manpower and equipment by the Oxford, Middlebury, Woodbury, Roxbury and Sandy Hook Fire Departments.

**Scene Information:** 75 Vista View Drive is a single family, 2 story wood frame residential dwelling located in a rural residential area served by well water and septic systems. The owner of the property is Pilots Mall LLC, PO Box 4047, Stamford CT 06905. Building department records show the home was built in 2005 and that the home is modular in construction. Assessor information shows the home to have 4,434 square feet of livable space. At the time of the fire, the home was vacant and unoccupied.

The home is constructed on a concrete foundation and is a modular, wood framed 2 story dwelling. The siding of the home is wood slat with a portion sided by cultured stone veneer. The garage and bonus room above were built on site. The roof is made up of composite shingle.

The front of the home faces east.



**Scene Investigation:** The fire scene investigation was commenced on January 17, 2011 at approximately 0545 hrs. I received a written consent to search form from Jonathan Turner, Property Manager for Pilots Mall LLC. (enclosed)

On scene assisting with the investigation were Deputy Fire Marshal's T. Baldwin and R. Tolles and Detectives K. Christenson and R. Gregory of the Office of the State Fire Marshal and Presley, Canine Accelerant Detection.

Connecticut Light and Power was contacted at 0606 hrs. to respond to the scene to ensure there was no power to the structure prior to investigators entering the structure. A representative arrived on scene at approx. 0645 hrs. We were assured no power was being directed toward #75 Vista View Drive through the underground supply line however we were advised by the lineman that there was a problem with the transformer and that he could not reset the transformer.

Connecticut Light and Power Representatives, including supervisor Joe Mancini of CL&P. 250 Freight Street, Waterbury CT, 203-592-6637 or 203-597-4418 was on scene. Due to a problem with the transformer feeding 75 Vista View Drive and another home, the transformer was replaced. I advised Mr. Mancini of the need for him to preserve the removed transformer for possible review and testing by potential interested parties. He assured me the unit would be preserved at the Waterbury CL&P site.

Prior to removal of the transformer it was documented with photographs by myself and Detectives Christenson and Gregory, including serial number information.

Scene photographs had been taken pre and during suppression efforts and are part of the photo CD made for this case file. Video and Photograph recordings were also conducted by CSP-OSFM.

Inspection of the scene was conducted. It was noted that total collapse occurred at the garage and the room above. Total collapse of the building's roof structure also occurred across the length of the building. The fire breached the exterior walls at the front of the home, in a room called the study. The fire also breached the exterior walls on the south side of the home. The lowest fire patterns were located in the front of the home to the north east of the study.

After visually following damage and burn patterns from least to most damage I found an area at the front of the structure, located between the front door and garage area which showed an area of complete burn. This area is considered to be the area of origin. (attached sketch).

*NOTE: The south side of the structure sustained exterior to interior fire damage as a result of roof and overhang fire collapse to the ground. I observed this damage which was enhanced by the drop fire heating up a 100 lb propane tank located on the south side wall at ground level. The tank heated up and the fire was fed by propane when the relief valve released propane into the air. Severe damage was sustained by the wood siding on this side of the home.*

In looking at the area, which would be the outer wall of the "study" of the home, I noted that at the top of the concrete foundation, the wood base for the structure had burned through to concrete in this area. There were no interior wall studs that survived the fire in this wall above the sill burn through. The thick overhead beams separating the first and second floor had also burned through and no longer existed in this area. I then photographed and documented this damage.



I additionally observed that the fire had burned through the flooring on the first and second floors in this area, indicating the area of most damage/greatest burn. Fire Chief Rick Lyle and Officer Kevin Burns both advised me that upon their initial arrival, flames were most concentrated to this area and had spread to the roof structure and room above the adjacent garage, before spreading to the attic/roof of the main portion of the structure.

All investigative signs point to this area at the study as the area of origin.

Further inspection of the home, namely the interior basement showed the electrical breaker panels to be in very good condition. A check of the breakers showed no breakers in the tripped position. Following the electrical line from the breaker panels to the inlet into the home and basement showed the electrical line was severed just below the area where the aforementioned damage was observed. It was noted that the wood flooring above this line was missing due to fire damage. After photographing the electrical panels and wiring I again went to the exterior area of the home outside the study. Detective Christenson had found the electrical meter box in the debris directly below the area of most damage. The meter itself no longer existed due to fire damage. The electrical wiring entering and exiting the meter box was severed. It should be noted this home was fed by underground electrical service from the ground based transformer.

The damage to the meter box and areas where electrical wiring entered the box and home, were consistent with being the area of origin. Having no tripped breakers within the breaker panels indicates the event that happened electrically occurred between the transformer and the meter box and did not involve interior wiring of the home itself.

The other homes in this development were inspected to observe similarities in the construction and placement/location of the electrical meters. Photos were taken of exemplar meters.

Since this home was vacant and for sale, there were no furnishings or contents within. Fire load was confined to combustibles within the construction.

Windows on the home were damaged as a result of the fire or fire department ventilation operations.

Doors on the home were damaged as a result of fire or fire department entry and suppression operations.

Security of the home at the time of the fire is not an issue.

Damage from fire totally destroyed the roof and second floor ceilings and walls of the home. The first floor of the home sustained water and smoke damage, as well as suppression and overhaul damage. The Garage and bonus room above the garage were completely destroyed. Exterior damage was noted on the south side of the home due to the ventilation of the propane tank located at ground level on that side of the home.

**Utilities:** Electrical service was connected to the building at the time of the fire. Heating was supplied with #2 fuel oil, (the tank and furnace were not impacted or involved in the fire). A 100 lb. propane tank on the south side of the home used for supplying gas fired logs was impacted by drop fire and vented its product, creating severe damage to the south side of the home.

The home was alarmed by Armed and Ready Alarm Company of Oxford CT. The fire alarm system was disabled in October of 2008 due to many false alarms within the vacant dwellings of Vista View Drive. At the time of the fire, the fire alarm system was not operable. However, the alarm system did report to Armed and Ready that power to the building failed at 2235 hrs. on 1/16/2011. This would indicate an electrical event 1 hour and 49 minutes before the fire was reported. Armed and Ready sent an alpha page to property manager Jonathan Turner at 2247 hrs. on 1/16/2011 and Mr. Turner advised Armed and Ready to put a hold on the alarm for 12 hours.

**Conclusion:** On or about 2235 hours on January 16, 2011 electrical power to the residence located at 75 Vista View Drive was interrupted based on information obtained from Armed and Ready Alarm Co. At approximately 0024 hours on January 17, 2011 passersby reported seeing fire coming from #75 Vista View Drive.

First arriving police and fire units noticed that fire was concentrated at the front/garage and roof areas of the home. This at approximately 0030 hours on January 17, 2011.

Investigation shows the area of origin, based on observation, fire damage and burn patterns to be on the north east side (front) of the home on the exterior north east side of the study, at the area of the electrical meter and service entry to the home. Fire damage patterns in this area indicate an exterior to interior burn, from the meter box and service line into the sill and floor area of the study and basement directly below.

Fire, burned upward through the walls of the study, into the second floor bedroom above and into the garage and bonus room area above the garage. Fire continued burning into the attic of the home and spread throughout the attic causing collapse of the roof and second floor ceilings. Fire caused collapse of the garage side of the structure also.

When CL&P arrived on scene at approximately 0700 hours on January 17, 2011, the lineman indicated he could not reset the power in the transformer due to a problem. CL&P officials eventually arrived on scene and by 1000 hours on January 17, 2011 replaced the transformer with a new one.

**Origin and Cause:** The origin of this fire is the electrical meter box/service line entry on the north east exterior of the home. The cause of the fire is an unknown electrical problem or malfunction and is deemed accidental.

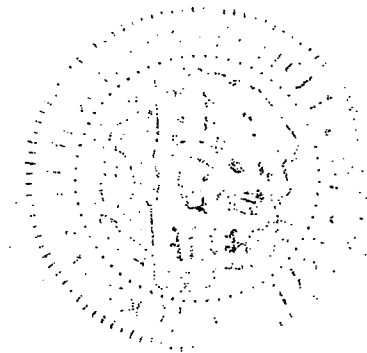
Investigator:



Henry W. Stormer, IAAI-CFI

Fire Marshal

Town of Southbury CT



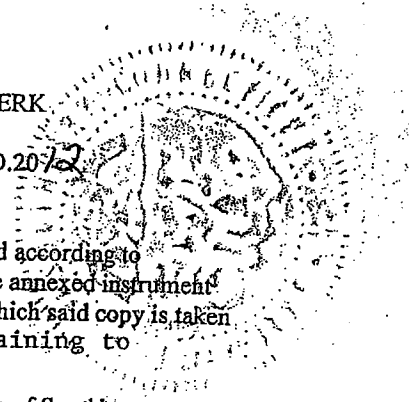
STATE OF CONNECTICUT  
COUNTY OF NEW HAVEN

OFFICE OF THE TOWN CLERK

Southbury, CT

3/23

A.D. 2012



I Lynn S Dwyer, Deputy Town Clerk of said Southbury, duly appointed and qualified according to law and having custody of the seal of said Town of Southbury, hereby certify that the annexed instrument is a true copy from the records of said Town, and that the original instrument from which said copy is taken from: the file of the Southbury Fire Marshal's office, pertaining to 75 Vista View Drive, Southbury CT

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Town of Southbury,

This 23 day of March

AD 2012

*Lynn S Dwyer*

Deputy Town Clerk

**TOWN OF SOUTHURY- FIRE MARSHAL'S OFFICE**  
501 MAIN STREET SOUTH, SOUTHURY, CT 06488-2295  
PHONE 203 262-0620 FAX: 203-264-3719 EMAIL: firemarshal@southbury-ct.gov

**FIRE INCIDENT REPORT**

**FDID:** #06620 **FIRE MARSHAL NO.:** #0149 **INCIDENT NO.:** 11-35

**DATE:** 01/17/2011

Joe Piscareta  
124 Head o' Meadow Rd, N.W.

**TIME REPORTED:** 0024 **REPORTED BY:** (203)546-0020 Joe

**LOCATION:** 75 VISTA VIEW DRIVE

**PROPERTY OWNER/OCCUPANT:** Pilot's Mall LLC, Longa Dr.

**TYPE OF OCCUPANCY:** Vacant Single Family Residential Dwelling  
Stanford

**FIRE OFFICER IN CHARGE:** Chief Lyle

**CAD SHEET ATTACHED:**  **FD INCIDENT REPORT:**

**ASSESSORS PROPERTY CARD:**  **PRIOR FD ISSUES:**

**INSURANCE CO:** \_\_\_\_\_ **POLICY #:** \_\_\_\_\_

**ORIGIN AND CAUSE OF FIRE:** Fire started at The Exterior Electrical  
Meter/Service Entry Due to Electrical Problem/  
malfunction **INJURIES:** None

**ESTIMATED AMOUNT OF LOSS:** + \$ 500,000

**NARRATIVE:** - See Full Narrative -

**FIRE MARSHAL MAKING REPORT:**  **DATE:** 1/19/11

SIGNED

DATE

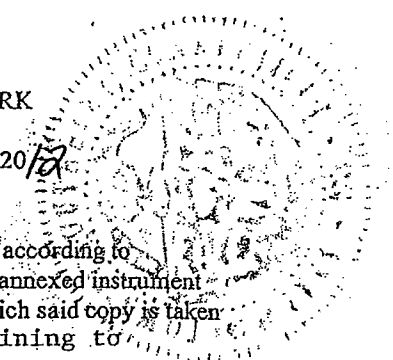
STATE OF CONNECTICUT  
COUNTY OF NEW HAVEN

OFFICE OF THE TOWN CLERK

Southbury, CT

3/23

A.D. 2012



I Lynn S Dwyer, Deputy Town Clerk of said Southbury, duly appointed and qualified according to law and having custody of the seal of said Town of Southbury, hereby certify that the annexed instrument is a true copy from the records of said Town, and that the original instrument from which said copy is taken from: the file of the Southbury Fire Marshal's office, pertaining to

75 Vista View Drive, Southbury CT

In Testimony Whereof, I have hereunto set my hand and affixed the seal of said Town of Southbury,

This 23 day of March

AD 2012

*Lynn S Dwyer* Deputy Town Clerk

Fire Investigation

TOWN OF SOUTHBURY  
OFFICE OF THE FIRE MARSHAL

Supplemental Report

Date Reported: 01/17/11 Time Fire Reported: 0024

Reported By: Joseph Pisacreta Phone Number: 203-546-0020 Hm Bs  Cell

Reporting Method: 911 Actual Date/Time of Fire: 01/17/11 0024

Address: 25 VISTA VIEW DR.

Property Owner: PILOTS MALL LLC

Occupant: N/A

Fire Officer in Charge: Chief Lyle

1st Firefighter on Scene: LT. DeCramer

Residential Living Units in Bldg.  1 Number of Bldgs Involved/Exposures:  1

Structure Type: Enclosed Bldg  Fixed Port. Structure   
Tent  Platform

Status: Under Construction  Normal Operation   
Vacant  Under Demolition

Approximate Main Floor Size \_\_\_\_\_ Square Feet

Bldg. Height: Stories above Grade:  2  Below Grade:  0

Story of Fire Origin:  1 Stories Damaged by Fire:  1-24%  25-49%  50-74%  75-100%

Fire Spread Confined To:  OBJECT  ROOM  FLOOR  BUILDING

Area of Origin: Exterior Electrical Meter Unknown

Heat Source: Electrical Unknown

Item 1st Ignited: Electrical Wiring / Wood Siding Unknown

Material Ignited: wiring insulation / wood Unknown

Cause of Ignition: Malfunction Unknown

Factors Contributing to Ignition: Potential transformer Problem Unknown   
Potential water / weather Issues

Human Factors Contributing to Ignition:  Asleep  Impaired  Unsupervised  Disability  Age  None

Fire Investigation

TOWN OF SOUTHBURY  
OFFICE OF THE FIRE MARSHAL

Supplemental Report

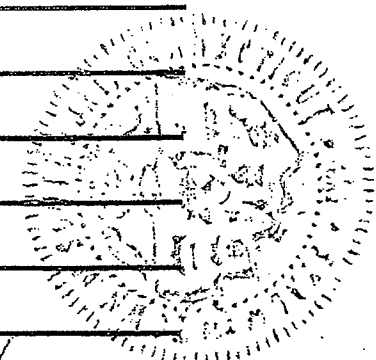
Detection:	Present	<input checked="" type="checkbox"/>	None	<input type="checkbox"/>	Undetermined	<input type="checkbox"/>
Type:	Heat	<input type="checkbox"/>	Smoke	<input checked="" type="checkbox"/>	Combo	<input type="checkbox"/>
Power Supply:	Battery	<input type="checkbox"/>	Hardwire	<input checked="" type="checkbox"/>	Other	<input type="checkbox"/>
Operation:	Fire too small to activate	<input type="checkbox"/>	Yes	<input checked="" type="checkbox"/>	No	<input type="checkbox"/>
Alerted Occupants:	YES	<input type="checkbox"/>	NO	<input checked="" type="checkbox"/>		
Sprinkler System:	Present	<input type="checkbox"/>	None	<input checked="" type="checkbox"/>	Undetermined	<input type="checkbox"/>

NARRATIVE:

8am FRIDAY - last Insp  
oil Burner heat / H<sub>2</sub>O  
No work Recently

(1129 pm - 1/16 - Power failure (w #70)

Armed & READY Alarm Co



Investigator: *W. W. [Signature]* Date: 1/19/2011

Reviewed By: \_\_\_\_\_ Date: \_\_\_\_\_



# **Exhibit H**

STATE OF CONNECTICUT, DEPARTMENT OF PUBLIC SAFETY - INVESTIGATION REPORT (DPS-683-E) (REVISED 2/3/06)

Report #: 1100028012 - 00035584

Report Type: Initial Report:  Prosecutors Report:  Supplement:  Re-open:  Assist:  Closing:   
 Attachments: Statements:  Teletype:  Photos:  Sketchmap:  Evidence:  Other:

CFS NO. 1100028012	INCIDENT DATE 01/17/2011	TIME 01:13	INCIDENT DATE 01/17/2011	PRIMARY OFFICER CHRISTENSEN, KENNETH W.	BADGE NO. 0441	INVESTIGATING OFFICER TFC CHRISTENSEN, KENNETH W.	BADGE NO. 0441
INCIDENT ADDRESS 00015 Vista View Drive Dr Southbury 06488		APARTMENT NO. T130	TOWN CD T130	TYPE OF EXCEPTIONAL CLEARANCE Not Applicable	CASE STATUS Active		

OFFENSE / INCIDENT TYPE FIRE INVESTIGATION	CHARGE 29-310	ATT/COMP Completed	LOCATION Residence/home
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STATUS CODE C=COMPLAINANT V=VICTIM A=ARRESTEE J=JUVENILE M=MISSING W=WITNESS O=OFFENDER/ACCUSED T=TOT

STATUS	NAME	SEX	RACE	D.O.B.	TELEPHONE	ADDRESS
W	Gregory, Richard (Det.)	M	W		(860) 685 - 8460	1111 Country Club Rd MIDDLETOWN CT
W	Baldwin, Timothy				(203) 262 - 0620	501 Main St Southbury CT
W C	Storner, Henry	M	W		(203) 262 - 0620	501 Main St Southbury CT
W	Tolles, Russ	M	W		(203) 262 - 0620	501 Main Street Southbury CT
V	Pilots Mall LLC				(203) 359 - 7657	1 Omega Drive Stamford CT

CD	QTY	DESCRIPTION	BRAND	MODEL	YEAR	STATE	REG	MAKE	MODEL	COLOR	VIN/SERIAL NO.	EST. VALUE
2	1	Structures - Single occupancy										\$1,000,000.00

PROPERTY 2=BURNED 3=COUNTERFEIT/FORGED 4=DAMAGED/DESTROYED 5=RECOVERED 6=SEIZED 7=STOLEN 8=UNKNOWN 9=FOUND E=EVIDENCE

Date & Time of Incident:

01/17/11 at 0024 hours. This was the time the report was received at Southbury Communications Center via 911. The call was made by a Joe Piscacureta, #124 Head O'Meadow Road, Newtown, CT Tel: 203-546-0020. He was in a car with two friends on Rt. 188 at the time.

Location:

The fire occurred at # 75 Vista Drive, Southbury, CT. The structure was located on the west side of Vista View drive and faced east.

IT

THE UNDERSIGNED, AN INVESTIGATOR HAVING BEEN DULY SWORN DEPOSES AND SAYS THAT: I AM THE WRITER OF THE ATTACHED POLICE REPORT PERTAINING TO THIS INCIDENT NUMBER. THAT THE INFORMATION CONTAINED THEREIN WAS SECURED AS A RESULT OF (1) MY PERSONAL OBSERVATION AND KNOWLEDGE; OR (2) INFORMATION RELAYED TO ME BY OTHER MEMBERS OF MY POLICE DEPARTMENT OR OF ANOTHER POLICE DEPARTMENT; OR (3) INFORMATION SECURED BY MYSELF OR ANOTHER MEMBER OF A POLICE DEPARTMENT FROM THE PERSON OR PERSONS NAMED OR IDENTIFIED THEREIN, AS INDICATED IN THE ATTACHED REPORT. THAT THE REPORT IS AN ACCURATE STATEMENT OF THE INFORMATION SO RECEIVED BY ME.

INVESTIGATOR SIGNATURE: <i>Robert V. C. ...</i>	INVESTIGATOR I.D.#: 4411	REPORT DATE: 2/28/11	SUPERVISOR SIGNATURE: <i>Stefan ...</i>	SUPERVISOR I.D.#: 131	DATE: 7/4/2011
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Report #: 1100028012 - 000355

STATE OF CONNECTICUT, DEPARTMENT OF PUBLIC SAFETY-  
INVESTIGATION REPORT (DPS-683-E) (REVISED 2/3/06)



Date & Time of Investigation:

The OSFM investigation commenced at approximately 0215 hours on 01/17/11 and continued until approximately 1400 hours.

Incident Summary:

The Southbury Fire Department responded and conducted suppression activities at the above location. Fire Marshal Stormer conducted an initial scene assessment, and later contacted the Office of State Fire Marshal for additional assistance at 0126 hours on 01/17/11.

Scope of Investigation:

The scope of the investigation was to assist the Southbury Fire Marshal's Office personnel in determining the origin and cause of the fire.

Fire Marshal:

Fire Marshal Stormer and DFM Tolles and DFM Baldwin responded to the scene initially and conducted a preliminary investigation.

Fire Chief:

Fire Chief Richard Lyle of the Southbury Fire Department coordinated the fire suppression activities.

First Firefighter:

Southbury VFD firefighters Jason DeCramer and Brian Ice and FF Gillotti were among the first to arrive. They reported heavy fire in the center area and that the structure's second floor was fully engulfed at the north end, spreading to the south

Weather:

At the approximate time of the fire, the weather conditions according to Internet weather site "wunderground" in the approximate area where the fire occurred consisted of a temperature of 17.8 degrees F, dew point 6.8 degrees F, 4.6 mph wind out of NNW, no precipitation, partly cloudy.

Structure Description:

The involved structure was a modular two story wood frame, approximately 4,400 square foot residence consisting of four bedrooms and six other rooms. The interior finish consisted of gypsum wall board. The full basement was unfinished. The exterior was comprised of wood clapboard and

I, THE UNDERSIGNED, AN INVESTIGATOR HAVING BEEN DULY SWORN, DEPOSES AND SAYS THAT: I AM THE WRITER OF THE ATTACHED POLICE REPORT PERTAINING TO THIS INCIDENT NUMBER. THAT THE INFORMATION CONTAINED THEREIN WAS SECURED AS A RESULT OF (1) MY PERSONAL OBSERVATION AND KNOWLEDGE; OR (2) INFORMATION RELAYED TO ME BY OTHER MEMBERS OF ANY POLICE DEPARTMENT OR OF ANOTHER POLICE DEPARTMENT; OR (3) INFORMATION SECURED BY MYSELF OR ANOTHER MEMBER OF A POLICE DEPARTMENT FROM THE PERSON OR PERSONS NAMED OR IDENTIFIED THEREIN, AS INDICATED IN THE ATTACHED REPORT. THAT THE REPORT IS AN ACCURATE STATEMENT OF THE INFORMATION SO RECEIVED BY ME.

INVESTIGATOR SIGNATURE: <i>Robert P. Tolles</i>	INVESTIGATOR I.D.#: 441	REPORT DATE: 2/28/11	SUPERVISOR SIGNATURE: <i>Robert P. Tolles</i>	SUPERVISOR I.D.#: 131	DATE: 4/4/2011
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**STATE OF CONNECTICUT, DEPARTMENT OF PUBLIC SAFETY-  
INVESTIGATION REPORT (DPS-683-E) (REVISED 2/3/06)**

a stone veneer. The foundation was constructed of poured concrete. The roof was gabled with asphalt shingles with wood underlayment.

**Electrical Service:**

The electrical service entered the structure underground from the north side pad transformer. The meter socket/disconnect panel was on the north side of the den/family room. The distribution panel was located on the north wall in the basement and was a 200 amp panel. The service panel consisted of circuit breakers and sustained minor smoke damage.

**Heat:**

Heat was provided to the structure at the time of the fire. The System in use at the time was oil fired with hot water baseboard.

**Photos:**

Refer to the photo report submitted by Detective Gregory for details.

**Video:**

Detective Gregory used the assigned OSFM video recorder at the time of the investigation. Refer to his supplemental report.

**Sketch Map:**

Refer to exhibit # 4 for floor plan and additional information.

**Canine Accelerant Team:**

A canine accelerant team consisting of this Detective and canine Presley #9036 was summoned to the scene of this fire. Refer to the narrative for details

**Control:**

At approximately 1155 hours on 01/17/11 "Presley" was calibrated, by this detective, using one drop of partially evaporated gasoline placed on a piece of wood, away from the scene. Presley alerted to this control sample prior to and after working the scene.

**Canine Qualifications:**

BT

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INVESTIGATOR SIGNATURE: <i>Det K Christensen</i>	INVESTIGATOR I.D.#: 4411	REPORT DATE: 02/28/11	SUPERVISOR SIGNATURE: <i>Det [Signature]</i>	SUPERVISOR I.D.#: 131	DATE: 2/14/2011
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Report #: 1100028012 - 000355

**STATE OF CONNECTICUT, DEPARTMENT OF PUBLIC SAFETY -  
INVESTIGATION REPORT (DPS-683-E) (REVISED 2/3/06)**



Presley is a 9 year old male Black Labrador Retriever, assigned to the Office of State Fire Marshal. He has been trained and certified as an Accelerant Detection Dog and has worked numerous fire scenes.

**Fuel Load:**

The main fuel load in this fire consisted of the ordinary combustible wooden structural components of this building and the interior finishes of which this structure was comprised of, ordinary combustible products which consisted from framing to siding, counters, built-in components etc...

**Area of Origin:**

The area of origin was determined to have been the exterior area where the meter socket/disconnect was located, on the north side wall of the den/family room, at the front of the residence.

**Smoke Detectors:**

Smoke Detectors were present at the time of this investigation. No reference to any code regarding its applicability is made at this time. Refer to narrative for other information.

**Sprinklers:**

A sprinkler system was not in use at the time of this fire. NOTE: This is an observation made at the time of this investigation. No reference to any code regarding its applicability is made at this time.

**Alarm:**

There was an alarm monitoring service for this residence, Armed and Ready, Oxford, CT telephone # 203-881-1996. See narrative for additional details.

**Injuries:**

There were no reported injuries in this fire. Refer to the Southbury Fire Department NFIRS report on file at the Office of State Fire Marshal for details.

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INVESTIGATOR SIGNATURE: <i>K C D... ..</i>	INVESTIGATOR I.D.#: 4141	REPORT DATE: 2/28/11	SUPERVISOR SIGNATURE: <i>Scott... ..</i>
			SUPERVISOR I.D.#: 131
			DATE: 4/4/2011

Report #: 1100028012 - 000355

**STATE OF CONNECTICUT, DEPARTMENT OF PUBLIC SAFETY-  
INVESTIGATION REPORT (DPS-683-E) (REVISED 2/3/06)**



**Flame Spread:**

Based on burn patterns, lines of demarcation, and physical evidence available, the fire traveled from the area of origin and spread to the second floor and attic/roof, moving north to south.

**Scene Security:**

The area was secured by the Southbury Police Department, and Southbury Fire Marshal Stormer.

**Documents:**

1. Consent to Search signed by Property Manager
2. Town of Southbury Fire Marshal Incident Report
3. Copy of Property card for #75 Vista View Drive
4. Town of Southbury Fire Marshal's report 11-35

**Exhibits:**

1. CD photographs taken by Southbury Patrolman Burns AC-74
2. CD photographs taken by Southbury DFM Tolles
3. CD photographs taken by Southbury FM Stormer
4. Real Estate brochure of "The Arlington" style residence
5. Armed and Ready copy of 10/28/08 letter from Pilots Mall LLC
6. Armed and Ready copy of alarm information for #75 Vista View Drive (2 pages)
7. Armed and Ready copy of alarm information for #70 Vista View Drive

**Witnesses:**

- Southbury Fire Marshal, Henry Stormer
- Location and Intensity of Fire
- Fire Origin and Cause Investigation
- Scene Security

INVESTIGATOR SIGNATURE: <i>Det K. C. Stanton</i>		INVESTIGATOR I.D.#: 4411	REPORT DATE: 4/18/11	SUPERVISOR SIGNATURE: <i>Ed. M. ...</i>	SUPERVISOR I.D.#: 131	DATE: 4/19/2011
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THE UNDERSIGNED, AN INVESTIGATOR HAVING BEEN DULY SWORN DEPOSES AND SAYS THAT: I AM THE WRITER OF THE ATTACHED POLICE REPORT PERTAINING TO THIS INCIDENT NUMBER. THAT THE INFORMATION CONTAINED THEREIN WAS SECURED AS A RESULT OF (1) MY PERSONAL OBSERVATION AND KNOWLEDGE; OR (2) INFORMATION RELAYED TO ME BY OTHER MEMBERS OF MY POLICE DEPARTMENT OR OF ANOTHER POLICE DEPARTMENT; OR (3) INFORMATION SECURED BY MYSELF OR ANOTHER MEMBER OF A POLICE DEPARTMENT FROM THE PERSON OR PERSONS NAMED OR IDENTIFIED THEREIN, AS INDICATED IN THE ATTACHED REPORT. THAT THE REPORT IS AN ACCURATE STATEMENT OF THE INFORMATION SO RECEIVED BY ME.



STATE OF CONNECTICUT, DEPARTMENT OF PUBLIC SAFETY-  
INVESTIGATION REPORT (DPS-683-E) (REVISED 2/3/06)

Report #: 1100028012 - 000355.



Southbury Deputy Fire Marshal, Russ Tolles

- Location and Intensity of Fire
- Fire Origin and Cause Investigation
- Scene Security

Southbury Deputy Fire Marshal, Tim Baldwin

- Location and Intensity of Fire
- Fire Origin and Cause Investigation
- Scene Security

Office of State Fire Marshal, Detective Richard Gregory

- Fire Origin and Cause Investigation
- Digital Photography
- Video

Action Taken:

On 01/17/11 at approximately 0130 hours I was advised by OSFM Sgt. Guari #203 to respond to the scene of a structure fire at #75 Vista View Drive, Southbury, CT. I drove to Troop A-Southbury and picked up the OSFM West Investigation Van and responded to the scene, arriving at approximately 0215 hours. OSFM Det. Gregory was also assigned and arrived to assist.

I could not immediately get to the immediate fire scene due to a regional tanker shuttle. There were personnel and equipment in use from Middlebury, Oxford, Roxbury and Newtown.

I met with Southbury Patrolman Kevin Burns AC-74 and learned he had been the first person to arrive at the scene in response to a 911 cell call. He stated that he observed the main fire was on the second level, more fire to the north end or garage end and was moving to the south. He did

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THE UNDERSIGNED, AN INVESTIGATOR HAVING BEEN DULY SWORN DEPOSES AND SAYS THAT: I AM THE WRITER OF THE ATTACHED POLICE REPORT PERTAINING TO THIS INCIDENT NUMBER. THAT THE INFORMATION CONTAINED THEREIN WAS SECURED AS A RESULT OF (1) MY PERSONAL OBSERVATION AND KNOWLEDGE; OR (2) INFORMATION RELAYED TO ME BY OTHER MEMBERS OF MY POLICE DEPARTMENT OR OF ANOTHER POLICE DEPARTMENT; OR (3) INFORMATION SECURED BY MYSELF OR ANOTHER MEMBER OF A POLICE DEPARTMENT FROM THE PERSON OR PERSONS NAMED OR IDENTIFIED THEREIN, AS INDICATED IN THE ATTACHED REPORT. THAT THE REPORT IS AN ACCURATE STATEMENT OF THE INFORMATION SO RECEIVED BY ME.					
INVESTIGATOR SIGNATURE: <i>Det. Kevin Burns</i>	INVESTIGATOR I.D.#: 4411	REPORT DATE: 2/22/11	SUPERVISOR SIGNATURE: <i>Sgt. Richard Gregory</i>	SUPERVISOR I.D.#: 131	DATE: 2/14/11



STATE OF CONNECTICUT, DEPARTMENT OF PUBLIC SAFETY - INVESTIGATION REPORT (DPS-683-E) (REVISED 2/3/06)



take several photos after he had been scene for a short while. See Exhibit # 1

I met with Fire Marshal Stormer and learned that the Vista View Drive development was a few years old, that there are approximately four large million dollar plus homes that were built a few years previously but none had been sold. He also stated there had been a power failure to the house across the street approximately an hour before the report of the fire. He had taken some photos also while at the scene. Refer to Exhibit #2.

I also spoke with Southbury Dep. Chief/ Dep. Fire Marshal Baldwin about his observations. He stated that he was among the first to arrive and had noticed the driveway was plowed, the sidewalk was shoveled. The front door was secured with a realtor's lock box on it. The garage door area was also secure. He did not observe any footprints in the snow.

The investigation team consisted of Southbury Fire Marshal Stormer, DFM Baldwin, Tolles, and OSFM Det. Gregory. DFM Tolles also had taken some photographs while at the scene. Refer to exhibit #3

The investigation team spoke with Jonathan Turner (17 Flak Lane, New Fairfield, CT DOB: 01/09/69 cell 203-733-8762), the Property Manager for the development. He stated he had received a call at 2309 hours from the Armed and Ready Alarm Company about a power outage at #70 Vista View Drive. That was the residence across the street from the fire scene. He did not need to go to the residence about it. He stated that on Friday January 14 the homes were checked personally by Scott Riebel, an assistant. There was nothing out of the ordinary at that time. Turner stated the development is owned by a Dr. Hollander of Stamford, doing business as Pilots Mall LLC, 1 Omega Drive, Stamford, CT 203-359-7657.

We were advised by Turner the homes were modular style with the Great Room and garage that were stick built on-site. The fire scene structure was known as an The Arlington, as was #70 and #106 Vista View. See Exhibit # 4 for details.

Once the suppression and overhaul was completed, the scene was documented with digital photography and video by Det. Gregory starting at approximately 0610 hours.

In examining the exterior of this involved structure, this detective observed the following fire related damage to the exterior of the structure. The

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INVESTIGATOR SIGNATURE: <i>Det K C O...</i>	INVESTIGATOR I.D.#: 4411	REPORT DATE: 2/28/11	SUPERVISOR SIGNATURE: <i>Det. Tolles</i>	SUPERVISOR I.D.#: 191	DATE: 4/4/2011
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STATE OF CONNECTICUT, DEPARTMENT OF PUBLIC SAFETY - INVESTIGATION REPORT (DPS-683-E) (REVISED 2/3/06)



examination began on the east (front) side and went clockwise around the structure. There was extensive damage at the second floor and roof level. There was also extensive damage on the north side of a den/family type room, where the meter socket/disconnect was located. Fire damage was from the ground level to the second story. There was a lawn sprinkler system that was on the left side, of where the main power came in. The sill plate was consumed and other structural members in this area were heavily damaged. This area was later determined to have been the area of origin.

The south side had extensive damage in part due to drop down debris igniting the wood clapboard and a 100 gallon LP tank that was venting. There were three HVAC ground mount units on this side still intact. The west side had primarily damage at the second floor and roof level. Fire had vented out of the roof first based on fire patterns. The north side at the garage end had extensive damage as the Great room had collapsed into the garage.

The Interior Examination was begun in the area of the least amount of damage and progressed to the area of most damage. The investigation team began the interior examination in the unfinished basement area of the residence. There was fire damage at the south side due to drop down from the exterior overhead. In the southwest corner the exterior clapboard went to ground level as the foundation was at that level in comparison to the southeast corner. Most of the exterior wall was consumed or pulled down during overhaul. The gas log gas connector had been turned off at the time of the fire. The boiler was made by PB Heat serial 519901-200508. There was also a Peerless hot water heater in the same area. There was no fire damage and both were eliminated as a possible cause of the fire. A NU-tone central vacuuming system at the north wall was also eliminated as a possible cause of the fire.

There was a 200 amp distribution panel and a sub-panel on the north wall with some smoke damage. There was no fire damage to either panel. It was noted none of the circuit breakers had tripped. That was unusual in terms of fires in structures that are energized.

In the north end, east corner there was a 330 gallon oil tank unaffected by fire. In the northeast corner there was burn through area that corresponded with the location of the meter socket/disconnect. A portion of what appeared to be an aluminum cable that had arced was found on the floor in this area. There was PVC in this area was affected by the heat. There was a Well Rite irrigation system at the floor level that was still intact and not the origin of the fire.

The next area to examine was the first floor. It should be noted that the structure was brand new and did not have furniture installed yet. The

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INVESTIGATOR SIGNATURE: <i>D. K. Quinn</i>	INVESTIGATOR I.D.#: 4511	REPORT DATE: 02/22/11	SUPERVISOR SIGNATURE: <i>[Signature]</i>	SUPERVISOR I.D.#: 121	DATE: 4/4/2011
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STATE OF CONNECTICUT, DEPARTMENT OF PUBLIC SAFETY-  
INVESTIGATION REPORT (DPS-683-E) (REVISED 2/3/06)



front foyer on the east side had drop down debris from the second floor.

There were two large open rooms on the south side of the foyer, the living room and dining room. They both had some smoke damage and water damage.

There was smoke and water damage in the kitchen area. The appliances were off at the time of the fire. There was a Sub-Zero Refrigerator Freezer, two Wolf ovens and one stove top, a General Electric microwave oven, and a Fisher-Pakel dishwasher.

There was a room with a wet bar that only had smoke damage, located in the northwest portion of the structure. There was a laundry room that opened into the garage. There was heavy heat, fire, and smoke damage coming from the garage. The Bosch dryer and washer were in the "Off" position.

The den/family room had extensive damage along the north wall. This was the area where the meter socket/disconnect was located. Most of the exterior wall was gone at the time of investigation. From the fire patterns it was clear the fire was originating on the exterior side and extended into the interior as the fire progressed.

The garage consisted of mostly a shell as a result of the Great Room above collapsing into it as the fire progressed. There was nothing remaining overhead the garage.

The second floor had extensive fire damage as the fire had spread from the first floor into the second floor and into the attic. There was no roof remaining at the time of the investigation.

The northeast bedroom had extensive damage. There was a portion of the northeast corner of the floor that had collapsed or was consumed during the fire. This area also had double 2 x 10 structural members consumed above, and in line with the area of origin. There were saddle burns as a result of the fire spreading into the attic and roof area. The other bedrooms had extensive fire damage as a result of the fire overhead and then dropping down.

The investigation team dug through the debris in the area of the meter socket/disconnect panel in a systematic manner. As stated this was the area of origin based on lines of demarcation and patterns. Some of the floor joists extending into the den/family room were consumed. There was

II

THE UNDERSIGNED, AN INVESTIGATOR HAVING BEEN DULY SWORN DEPOSES AND SAYS THAT: I AM THE WRITER OF THE ATTACHED POLICE REPORT PERTAINING TO THIS INCIDENT NUMBER. THAT THE INFORMATION CONTAINED THEREIN WAS SECURED AS A RESULT OF (1) MY PERSONAL OBSERVATION AND KNOWLEDGE; OR (2) INFORMATION RELAYED TO ME BY OTHER MEMBERS OF MY POLICE DEPARTMENT OR OF ANOTHER POLICE DEPARTMENT; OR (3) INFORMATION SECURED BY MYSELF OR ANOTHER MEMBER OF A POLICE DEPARTMENT FROM THE PERSON OR PERSONS NAMED OR IDENTIFIED THEREIN, AS INDICATED IN THE ATTACHED REPORT. THAT THE REPORT IS AN ACCURATE STATEMENT OF THE INFORMATION SO RECEIVED BY ME.

INVESTIGATOR SIGNATURE: <i>Det. K. C. ...</i>	INVESTIGATOR I.D.#: 4411	REPORT DATE: 02/28/11	SUPERVISOR SIGNATURE: <i>[Signature]</i>	SUPERVISOR I.D.#: 121	DATE: 4/4/2011
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**STATE OF CONNECTICUT, DEPARTMENT OF PUBLIC SAFETY-  
INVESTIGATION REPORT (DPS-683-E) (REVISED 2/3/06)**



part of a gutter down spout found in the debris pile. The meter panel was found to have a blow out hole on the rear side. There was a section of aluminum conductor that appeared to have arced. There was a portion of aluminum cable found on the basement floor previously.

At the second floor level there were horizontal 2 x 10 structural members that had the center portion consumed. This pattern was almost directly above where the meter socket/disconnect was located.

Due to the known information of the power failure across the street, CL+P had been notified and requested to come to the scene. It was not known if there was a connection between the power outage across the street at # 70 Vista View Drive an hour and forty nine minutes before the fire. Note: It was not learned until 01/19/11 by FM Stormer that the first report of a power failure actually came from #75 Vista View Drive at 2235:22 hours. The power failure for #70 Vista View Drive was 2235:49. See exhibits #7 +8 for details.

There was a pad transformer at the bottom of the driveway, #968. It was manufactured by Cooper, Serial # 0405061548. Tim Reilly, a CL+P lineman came to the scene. He stated the primary was 13,800 volts, down to 120/240 for a 200 amp system. He stated the pad transformer was used for both of the homes.

Prior to Reilly making any changes Det. Gregory took a few photos with the transformer cover open. Reilly was not able to reset the pad transformer and make it safe. He then called for a CL+P electrician for further assistance. He commented that something was not right that he could not reset it. CL+P Foreman Joseph Mancini also came out and supervised the work that had to be done.

The investigation team was told that in order for power to be restored to the other home across the street, the transformer needed to be replaced. He was told that the current transformer #968 would have to be secured and left untouched so that any other interested party would have an opportunity to look at it. Mancini stated it would be set aside and secured by CL+P at their Waterbury plant.

Det. Gregory took photos of the transformer prior to it being swapped out with a different one.

Also during the course of the investigation I went to #106 Vista View Drive to look at another Arlington style home with Jonathan Turner. He stated it was almost the same as #75 Vista View with some differences. I observed the ice build-up on the gutters in the area where that particular socket meter/disconnect was located. Turner stated the meter for #75 Vista View would have been closer to the valley of where the roof peaks

THE UNDERSIGNED, AN INVESTIGATOR HAVING BEEN DULY SWORN DEPOSES AND SAYS THAT: I AM THE WRITER OF THE ATTACHED POLICE REPORT PERTAINING TO THIS INCIDENT NUMBER. THAT THE INFORMATION CONTAINED THEREIN WAS SECURED AS A RESULT OF (1) MY PERSONAL OBSERVATION AND KNOWLEDGE; OR (2) INFORMATION RELAYED TO ME BY OTHER MEMBERS OF MY POLICE DEPARTMENT OR OF ANOTHER POLICE DEPARTMENT; OR (3) INFORMATION SECURED BY MYSELF OR ANOTHER MEMBER OF A POLICE DEPARTMENT FROM THE PERSON OR PERSONS NAMED OR IDENTIFIED THEREIN, AS INDICATED IN THE ATTACHED REPORT. THAT THE REPORT IS AN ACCURATE STATEMENT OF THE INFORMATION SO RECEIVED BY ME.

INVESTIGATOR SIGNATURE: <i>Det. K. P. ...</i>	INVESTIGATOR I.D.#: 441	REPORT DATE: 02/12/11	SUPERVISOR SIGNATURE <i>[Signature]</i>	SUPERVISOR I.D.#: 131	DATE 4/4/06
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STATE OF CONNECTICUT, DEPARTMENT OF PUBLIC SAFETY-  
INVESTIGATION REPORT (DPS-683-E) (REVISED 2/3/06)



meet, that it could have possibly been ice covered. I observed the gas fire place and exhaust vent in the basement area.

At approximately 1155 hours I calibrated my assigned accelerant detection canine Presley. I then worked him through the first floor and portions of the second floor. I brought him outside and worked him in the area of origin. The canine search was negative for an accelerant.

Prior to leaving the scene, Shawn Burch, owner of Armed and Ready came to the scene. He stated the fire protection aspect of all of the monitored homes on Vista View Drive had been discontinued at the request of the owner due to prior false alarms.

He also stated an alarm had come in for #75 but was after the fire began and attributed it to the alarm panel having direct fire exposure at that point.

The scene was cleared at approximately 1300 hours and turned over to the Jonathan Turner.

Fire Marshal Stormer later contacted real estate agent Jane Ferro of Coldwell Banker. She stated the last time someone was shown the house was before Christmas.

Fire Marshal Stormer later also made contact with Sean Burch of Armed and Ready. Stormer was given records indicating that on 10/28/08 the owner, Pilots Mall, authorized the fire zones be disabled for #12, #70, #75, #106 Vista View Drive regarding false fire alarms. See Exhibit #4. Stormer was also told that on 12/05/10 Armed and Ready was advised not to dispatch anyone concerning low temperature alarms. Stormer also was advised that on 01/16/11 there was a power failure noted for #75 Vista View Drive first, followed by the one at #70 Vista View Drive.

According to the record provided by Armed and Ready Alarm Systems Inc. the first alarm notification of a power failure was on 01/16/11 at 22:35:22 for # 75 Vista View. The next event was also a power failure at 22:35:49 at #70 Vista View Drive, across the street. At the time of the fire, the investigation team was unaware of that information.

Armed and Ready did make contact with Jonathan Turner at 22:53:27 hours concerning #75 Vista View and 2303 hours concerning #70 Vista View and was advised by him to put a hold on the alarms for twelve hours, except in the event of a fire.

During the on-scene investigation, Turner did not mention anything about receiving a power failure notification concerning #75 Vista View, only at

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INVESTIGATOR SIGNATURE: <i>D. K. ...</i>	INVESTIGATOR I.D.#: 1101	REPORT DATE: 02/28/11	SUPERVISOR SIGNATURE <i>...</i>
			SUPERVISOR I.D.#: 131
			DATE 2/19/2011

STATE OF CONNECTICUT, DEPARTMENT OF PUBLIC SAFETY - INVESTIGATION REPORT (DPS-683-E) (REVISED 2/3/06)



#70 Vista View and that was 2309 hours according to him.

On 02/15/11 I spoke with Shawn Burch and verified that the power failure occurred first at #75 Vista View and then #70 Vista Lane 27/100th second later. He stated that due to requests by Pilot Mall LLC, Armed and Ready monitors only burglar alarm notification.

Conclusion:

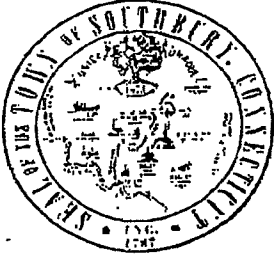
The fire that occurred on 01/17/11 at 0024 hours at #75 Vista View Drive, Southbury was consistent with an accidental fire. Based on lines of demarcation, fire patterns and witness observations, the area of origin was where the meter socket/disconnect was located, on the exterior of the north side of the den/family room, at the front of the structure. The fire spread into the garage and vertically and eventually breeched into the second floor and attic space.

The cause of the fire is related to an electrical malfunction where the power enters the structure. The exact cause is undetermined pending an examination by an electrical engineer(s) or other engineering experts. The investigation team did not rule out the affect an ice build-up or encasement by ice in the area of origin could have had at the time of the event.

MA 08

THE UNDERSIGNED, AN INVESTIGATOR HAVING BEEN DULY SWORN, DEPOSES AND SAYS THAT: I AM THE WRITER OF THE ATTACHED POLICE REPORT PERTAINING TO THIS INCIDENT NUMBER. THAT THE INFORMATION CONTAINED THEREIN WAS SECURED AS A RESULT OF (1) MY PERSONAL OBSERVATION AND KNOWLEDGE; OR (2) INFORMATION RELAYED TO ME BY OTHER MEMBERS OF MY POLICE DEPARTMENT OR OF ANOTHER POLICE DEPARTMENT; OR (3) INFORMATION SECURED BY MYSELF OR ANOTHER MEMBER OF A POLICE DEPARTMENT FROM THE PERSON OR PERSONS NAMED OR IDENTIFIED THEREIN, AS INDICATED IN THE ATTACHED REPORT. THAT THE REPORT IS AN ACCURATE STATEMENT OF THE INFORMATION SO RECEIVED BY ME.

INVESTIGATOR SIGNATURE: <i>Robert K. Cloutman</i>	INVESTIGATOR I.D.#: 441	REPORT DATE: 02/18/11	SUPERVISOR SIGNATURE: <i>Robert M. ...</i>	SUPERVISOR I.D.#: 131	DATE: 2/19/2011
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# TOWN OF SOUTHBURY

OFFICE OF THE FIRE MARSHAL

501 Main Street South  
Southbury, Connecticut 06488-2295  
(203) 262-0620  
Fax: (203) 264-3719

**CFS-1100028012**  
**Document # 1**

CONSENT TO SEARCH FORM

DATE: 01/17/11

LOCATION: 75 VISTA VIEW DR.

I Jonathan Turner, Pilots Mall, Prop. mgr., HAVING BEEN INFORMED OF MY CONSTITUTIONAL RIGHT NOT TO HAVE A SEARCH MADE OF MY PREMISES WITHOUT A SEARCH WARRANT AND OF MY RIGHT TO REFUSE TO CONSENT TO SUCH A SEARCH DO AUTHORIZE members of the Southbury and State of CT Fire Marshal's  
(NAME(S) OF INVESTIGATOR(S))  
OFFICES, FM H. Stormer, FM T. Baldwin & R. Tolles - STBY  
(TITLES AND AGENCIES)

I AM AWARE THAT THE SEARCH IS BEING CONDUCTED FOR POSSIBLE EVIDENCE OF ARSON AND I AGREE TO ALLOW THE ABOVE NAMED PERSON(S) OR HIS/THEIR DESIGNEE TO TAKE PHOTOGRAPHS OF THE PREMISES, TO REMOVE PAPERS, LETTERS, MATERIALS, OR OTHER PROPERTY, KNOWING THEY MAY BE SUBMITTED FOR EXAMINATION AND ANALYSIS AND/OR TESTING.

I AM AWARE THAT THE ABOVE NAMED PERSONS OR HIS/THEIR DESIGNEES WILL BE ON THE PREMISES FOR A PERIOD OF TIME AND I HAVE NO OBJECTION TO THEIR ENTERING AND REMAINING ON THE PREMISES FOR A NUMBER OF DAYS.

THIS WRITTEN CONSENT IS BEING GIVEN BY ME VOLUNTARILY AND WITHOUT THREATS OR PROMISES OF ANY KIND.

I KNOW THAT I CAN REFUSE TO GIVE THIS CONSENT TO SEARCH AND I AM WAIVING THAT RIGHT BY SIGNING THIS CONSENT.

SIGNED: X 

ADDRESS: 17 Flak Ln  
New Fairfield Ct  
203-746-2722  
W: 203-359-7657

WITNESSES: (1) \_\_\_\_\_  
(2) \_\_\_\_\_

CASE NUMBER 11-35



# TOWN OF SOUTHBURY- FIRE MARSHAL'S OFFICE

501 MAIN STREET SOUTH, SOUTHBURY, CT 06488-2295

FAX: 203-264-3719 EMAIL: firemarshal@southbury-ct.gov

CFS-1100028012  
Document # 2

## FIRE INCIDENT REPORT

FDID: #06620 FIRE MARSHAL NO.: #0149 INCIDENT NO: 11-35

DATE: 01/17/2011

Joe Pisacureta  
124 HEAD O' MEADOW RD, N  
STAMFORD.

TIME REPORTED: 0024 REPORTED BY: (203)546-0020 Joe

LOCATION: 75 VISTA VIEW DRIVE

PROPERTY OWNER/OCCUPANT: Pilot's Mall LLC, 1 Omega DR  
STAMFORD.

TYPE OF OCCUPANCY: Vacant Single Family Residential Dwelling

FIRE OFFICER IN CHARGE: Chief Lyle

CAD SHEET ATTACHED:  FD INCIDENT REPORT:

ASSESSORS PROPERTY CARD:  PRIOR FD ISSUES: \_\_\_\_\_

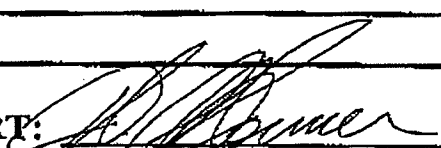
INSURANCE CO: \_\_\_\_\_ POLICY #: \_\_\_\_\_

ORIGIN AND CAUSE OF FIRE: Fire Started at The Exterior Electrical

Meter/Service Entry Due to Electrical <sup>Problem/</sup>malfunction INJURIES: None

ESTIMATED AMOUNT OF LOSS: + \$500,000

NARRATIVE: - See Full Narrative -

FIRE MARSHAL MAKING REPORT:  1/19/11  
SIGNED DATE

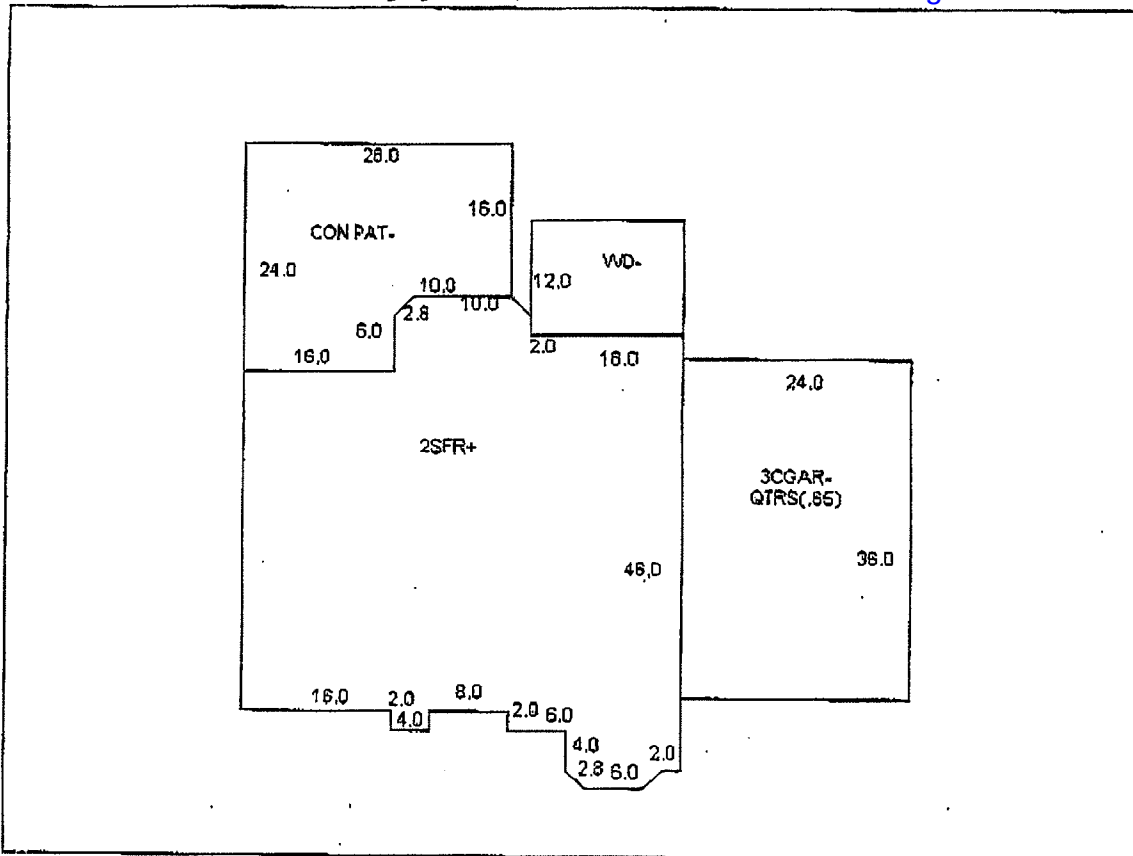


eQuality Valuation Services, llc.

CFS-1100028012  
Document # 3

Home |

Account #:	00539420						
Location:	75 VISTA VIEW DRIVE						
Sale Date:	11/26/97						
Sale Price:							
Assessment:	498000						
Deed Type:							
Vol / Page:	327 137						
Map	53-34-1H						
Exempt:							
Zone:	R-60						
Total Acre:	1.62						
Census Tract:							
Owner Name:	PILOTS MALL LLC		Total Area:	4434			
			Bsmt Finish Area:				
			Bsmt Semi Finish Area:	732			
			Net Area:	4434			
	Kit	DR	LR	BR	FR	Other	Total
Bsmt						1	1
1st	1	1	1		1	1	5
2nd				4	1		5
3rd							
Total	1	1	1	4	2	2	11
Bsmt Garage:							
Rooms:	11		State Desc.	Assesment	Unit	Acre	
Bed Rooms:	4		RES. LAND	175000		1.38	
Baths:	3.5		RES. EXCESS ACREAGE	1680		0.24	
Year Built:	2005		RES. DWELLINGS	321320	1		
House Type:	COLONIAL 2						
Occupancy:	FAMILY RESIDENCE						
Heating Fuel:	OIL						
Heat Type:	OTHER		OB. Construct	OB. Desc	Year	Sq. Ft.	
A.C. %:	100						
Foundation:	POURED CONC.						
Siding:	CLAPBOARDS						
Roof Type:	GABLE						
Roof Mat.:	ARCH SHINGLES						
Fireplaces:	2						
Description:							



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AS OF 01/18/2011

GENERAL DATA REAL ESTATE TOWN OF SOUTHBURY

BILL NO: 2009-01-0006647 ORIGINAL OWNER: PILOTS KALL L&C  
 UNIQUE ID: 00539420 C/O:  
 LINK# ADDRESS: PO BOX 4047  
 FILE# ADDRESS2: STANFORD CT 06905  
 BANK: CITY ST ZIP:  
 ESCROW: COUNTRY:  
 VOL/PAGE: 327-137 PROP LOC.: 75 VISTA VIEW DRIVE  
 LIEN VOL/PAGE: EKR PROP LOC:  
 DISTRICT: M/B/L: 53-34-1H

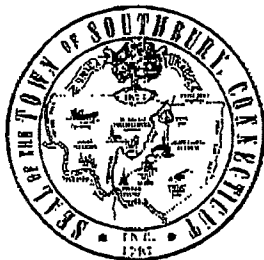
PROP ASSESSED: 498,000 AID CODE: 0  
 EXEMPTIONS: EXEMPT CHANGE:  
 COC CHANGE:  
 NET VALUE: 498,000  
 MILL RATE: 21.5000

\*\*\* BILLED \*\*\*  
 INST1: TOWN  
 INST2: 5,353.50  
 INST3: 5,353.50  
 INST4: 0.00  
 ADJS: 0.00  
 TOT TAX: 10,707.00  
 TOTAL PAID: 5,353.50

\*\*\* PAYMENTS \*\*\*  
 TYPE CYCLE DATE ADJ BATCH TERM AMOUNT LIENS FEES TOTALS  
 Pay 1 07/29/2010 5 82 5,353.50 0.00 0.00 5,353.50  
 TOTAL PAYMENTS: 5,353.50 0.00 0.00 5,353.50

TOTAL BALANCE DUE AS OF 01/18/2011  
 TOWN 0.00  
 LIEN DUE: 0.00  
 FEES DUE: 0.00  
 TAX DUE NOW: 5,353.50  
 TOT DUE NOW: 5,353.50  
 BALANCE DUE: 5,353.50

\*\*\* FLAGS \*\*\*  
 Circuit Breaker Amount: 0 Benefit Year: 0  
 Invalid Address Flag No



# TOWN OF SOUTHBURY

OFFICE OF THE FIRE MARSHAL

501 Main Street South  
Southbury, Connecticut 06488

(203) 262-0620

Fax: (203) 264-3719

COPY

## FIRE INVESTIGATION REPORT

Date of fire: January 17, 2011 Time of Fire: 0024 hrs  
Place of fire: 75 Vista View Drive Type of fire: Structure  
Reporting: Cell Phone to 911 By: Joe Piscacureta, 203-546-0020  
124 Head O' Meadow Rd, Newtown

**Assignment:** The assignment to conduct an origin and cause investigation was received on January 17, 2011 at 0024 hrs. Deputy Fire Marshal Timothy Baldwin arrived on scene at approximately 0030 hrs and I arrived on scene at approximately 0050 hours. Photographs were taken by me and DFM Baldwin prior to and during suppression. Scene investigation was delayed until approximately 0545 hrs. while waiting for Fire Department suppression and overhaul efforts to be completed.

**Fire Department Response:** The fire call was dispatched at approximately 0025 hrs. Lt's Gillotti and Decremer arrived on scene at approx. 0033 hrs. The first arriving apparatus was Engine 4 at approx. 0040 hrs., and Ladder 1 at 0045 hrs.

Upon arrival flames were already seen from the entire roof area of the structure with overhang collapse to ground level.

I observed that the first application of water to the fire, from Ladder 1 was at 0100 hrs.

Assistance was provided to the Southbury FD with manpower and equipment by the Oxford, Middlebury, Woodbury, Roxbury and Sandy Hook Fire Departments.

**Scene Information:** 75 Vista View Drive is a single family, 2 story wood frame residential dwelling located in a rural residential area served by well water and septic systems. The owner of the property is Pilots Mall LLC, PO Box 4047, Stamford CT 06905. Building department records show the home was built in 2005 and that the home is modular in construction. Assessor information shows the home to have 4,434 square feet of livable space. At the time of the fire, the home was vacant and unoccupied.

The home is constructed on a concrete foundation and is a modular, wood framed 2 story dwelling. The siding of the home is wood slat with a portion sided by cultured stone veneer. The garage and bonus room above were built on site. The roof is made up of composite shingle.

The front of the home faces east.

Post:		
To	CFS-1100028012	to alo
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Phone		FM
Fax #		

1

**Scene Investigation:** The fire scene investigation was commenced on January 17, 2011 at approximately 0545 hrs. I received a written consent to search form from Jonathan Turner, Property Manager for Pilots Mall LLC. (enclosed)

On scene assisting with the investigation were Deputy Fire Marshal's T. Baldwin and R. Tolles and Detectives K. Christenson and R. Gregory of the Office of the State Fire Marshal and Presley, Canine Accelerant Detection.

Connecticut Light and Power was contacted at 0606 hrs. to respond to the scene to ensure there was no power to the structure prior to investigators entering the structure. A representative arrived on scene at approx. 0645 hrs. We were assured no power was being directed toward #75 Vista View Drive through the underground supply line however we were advised by the lineman that there was a problem with the transformer and that he could not reset the transformer.

Connecticut Light and Power Representatives, including supervisor Joe Mancini of CL&P, 250 Freight Street, Waterbury CT, 203-592-6637 or 203-597-4418 was on scene. Due to a problem with the transformer feeding 75 Vista View Drive and another home, the transformer was replaced. I advised Mr. Mancini of the need for him to preserve the removed transformer for possible review and testing by potential interested parties. He assured me the unit would be preserved at the Waterbury CL&P site.

Prior to removal of the transformer it was documented with photographs by myself and Detectives Christenson and Gregory, including serial number information.

Scene photographs had been taken pre and during suppression efforts and are part of the photo CD made for this case file. Video and Photograph recordings were also conducted by CSP-OSFM.

Inspection of the scene was conducted. It was noted that total collapse occurred at the garage and the room above. Total collapse of the building's roof structure also occurred across the length of the building. The fire breached the exterior walls at the front of the home, in a room called the study. The fire also breached the exterior walls on the south side of the home. The lowest fire patterns were located in the front of the home to the north east of the study.

After visually following damage and burn patterns from least to most damage I found an area at the front of the structure, located between the front door and garage area which showed an area of complete burn. This area is considered to be the area of origin. (attached sketch).

*NOTE: The south side of the structure sustained exterior to interior fire damage as a result of roof and overhang fire collapse to the ground. I observed this damage which was enhanced by the drop fire heating up a 100 lb propane tank located on the south side wall at ground level. The tank heated up and the fire was fed by propane when the relief valve released propane into the air. Severe damage was sustained by the wood siding on this side of the home.*

In looking at the area, which would be the outer wall of the "study" of the home, I noted that at the top of the concrete foundation, the wood base for the structure had burned through to concrete in this area. There were no interior wall studs that survived the fire in this wall above the sill burn through. The thick overhead beams separating the first and second floor had also burned through and no longer existed in this area. I then photographed and documented this damage.

I additionally observed that the fire had burned through the flooring on the first and second floors in this area, indicating the area of most damage/greatest burn. Fire Chief Rick Lyle and Officer Kevin Burns both advised me that upon their initial arrival, flames were most concentrated to this area and had spread to the roof structure and room above the adjacent garage, before spreading to the attic/roof of the main portion of the structure.

All investigative signs point to this area at the study as the area of origin.

Further inspection of the home, namely the interior basement showed the electrical breaker panels to be in very good condition. A check of the breakers showed no breakers in the tripped position. Following the electrical line from the breaker panels to the inlet into the home and basement showed the electrical line was severed just below the area where the aforementioned damage was observed. It was noted that the wood flooring above this line was missing due to fire damage.

After photographing the electrical panels and wiring I again went to the exterior area of the home outside the study. Detective Christenson had found the electrical meter box in the debris directly below the area of most damage. The meter itself no longer existed due to fire damage. The electrical wiring entering and exiting the meter box was severed. It should be noted this home was fed by underground electrical service from the ground based transformer.

The damage to the meter box and areas where electrical wiring entered the box and home, were consistent with being the area of origin. Having no tripped breakers within the breaker panels indicates the event that happened electrically occurred between the transformer and the meter box and did not involve interior wiring of the home itself.

The other homes in this development were inspected to observe similarities in the construction and placement/location of the electrical meters. Photos were taken of exemplar meters.

Since this home was vacant and for sale, there were no furnishings or contents within. Fire load was confined to combustibles within the construction.

Windows on the home were damaged as a result of the fire or fire department ventilation operations.

Doors on the home were damaged as a result of fire or fire department entry and suppression operations.

Security of the home at the time of the fire is not an issue.

Damage from fire totally destroyed the roof and second floor ceilings and walls of the home. The first floor of the home sustained water and smoke damage, as well as suppression and overhaul damage. The Garage and bonus room above the garage were completely destroyed. Exterior damage was noted on the south side of the home due to the ventilation of the propane tank located at ground level on that side of the home.

**Utilities:** Electrical service was connected to the building at the time of the fire. Heating was supplied with #2 fuel oil, (the tank and furnace were not impacted or involved in the fire). A 100 lb. propane tank on the south side of the home used for supplying gas fired logs was impacted by drop fire and vented its product, creating severe damage to the south side of the home.



The home was alarmed by Armed and Ready Alarm Company of Oxford CT. The fire alarm system was disabled in October of 2008 due to many false alarms within the vacant dwellings of Vista View Drive. At the time of the fire, the fire alarm system was not operable. However, the alarm system did report to Armed and Ready that power to the building failed at 2235 hrs. on 1/16/2011. This would indicate an electrical event 1 hour and 49 minutes before the fire was reported. Armed and Ready sent an alpha page to property manager Jonathan Turner at 2247 hrs. on 1/16/2011 and Mr. Turner advised Armed and Ready to put a hold on the alarm for 12 hours.

**Conclusion:** On or about 2235 hours on January 16, 2011 electrical power to the residence located at 75 Vista View Drive was interrupted based on information obtained from Armed and Ready Alarm Co. At approximately 0024 hours on January 17, 2011 passersby reported seeing fire coming from #75 Vista View Drive.

First arriving police and fire units noticed that fire was concentrated at the front/garage and roof areas of the home. This at approximately 0030 hours on January 17, 2011.

Investigation shows the area of origin, based on observation, fire damage and burn patterns to be on the north east side (front) of the home on the exterior north east side of the study, at the area of the electrical meter and service entry to the home. Fire damage patterns in this area indicate an exterior to interior burn, from the meter box and service line into the sill and floor area of the study and basement directly below.

Fire, burned upward through the walls of the study, into the second floor bedroom above and into the garage and bonus room area above the garage. Fire continued burning into the attic of the home and spread throughout the attic causing collapse of the roof and second floor ceilings. Fire caused collapse of the garage side of the structure also.

When CL&P arrived on scene at approximately 0700 hours on January 17, 2011, the lineman indicated he could not reset the power in the transformer due to a problem. CL&P officials eventually arrived on scene and by 1000 hours on January 17, 2011 replaced the transformer with a new one.

**Origin and Cause:** The origin of this fire is the electrical meter box/service line entry on the north east exterior of the home. The cause of the fire is an unknown electrical problem or malfunction and is deemed accidental.

Investigator



Henry W. Stormer, IAAI-CFI

Fire Marshal

Town of Southbury CT



HIGHLAND ESTATES



# THE ARLINGTON

3,992 SQ.FT.

(877) 745-6876

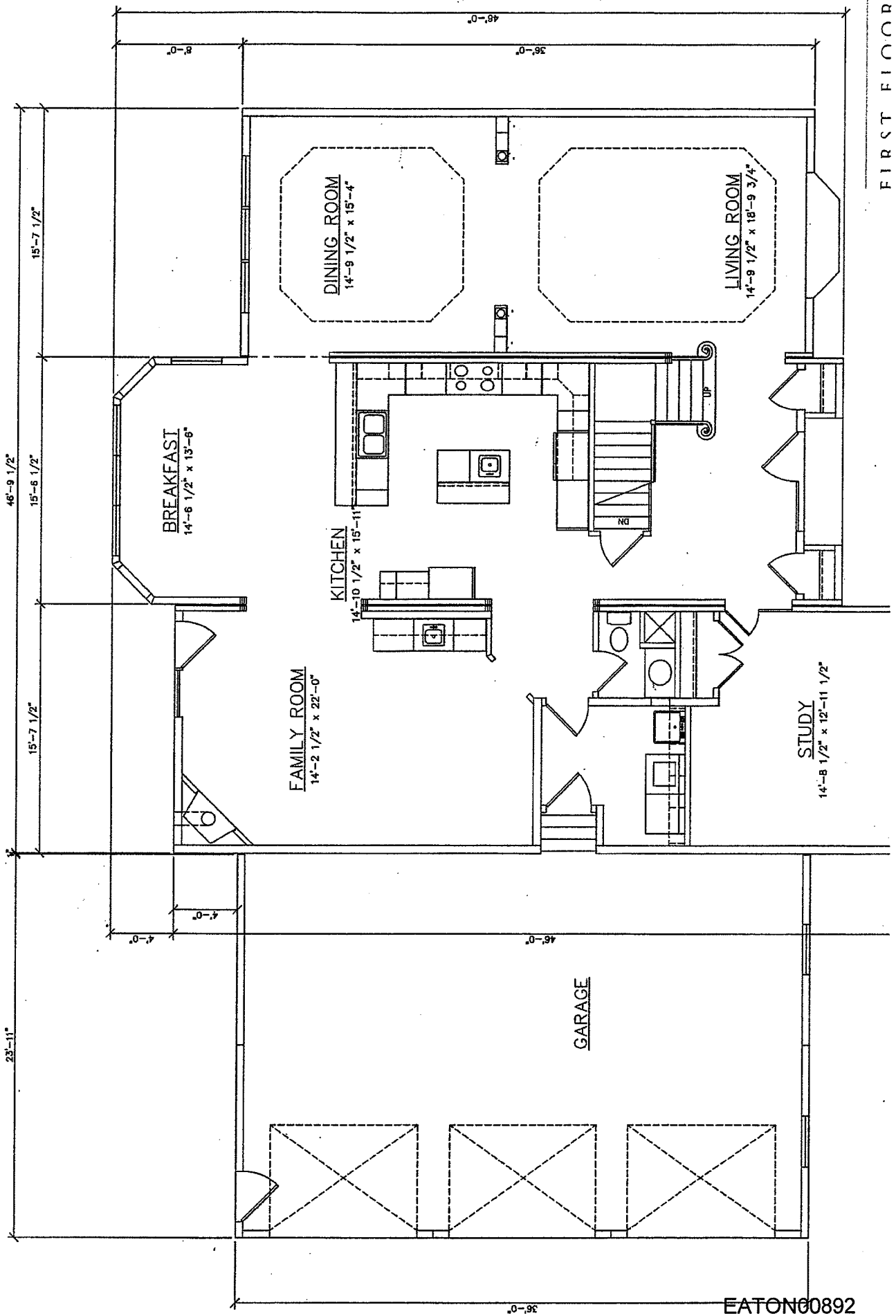
VISTA VIEW DRIVE, SOUTHURY, CONNECTICUT  
WWW.HIGHLANDESTATES.COM

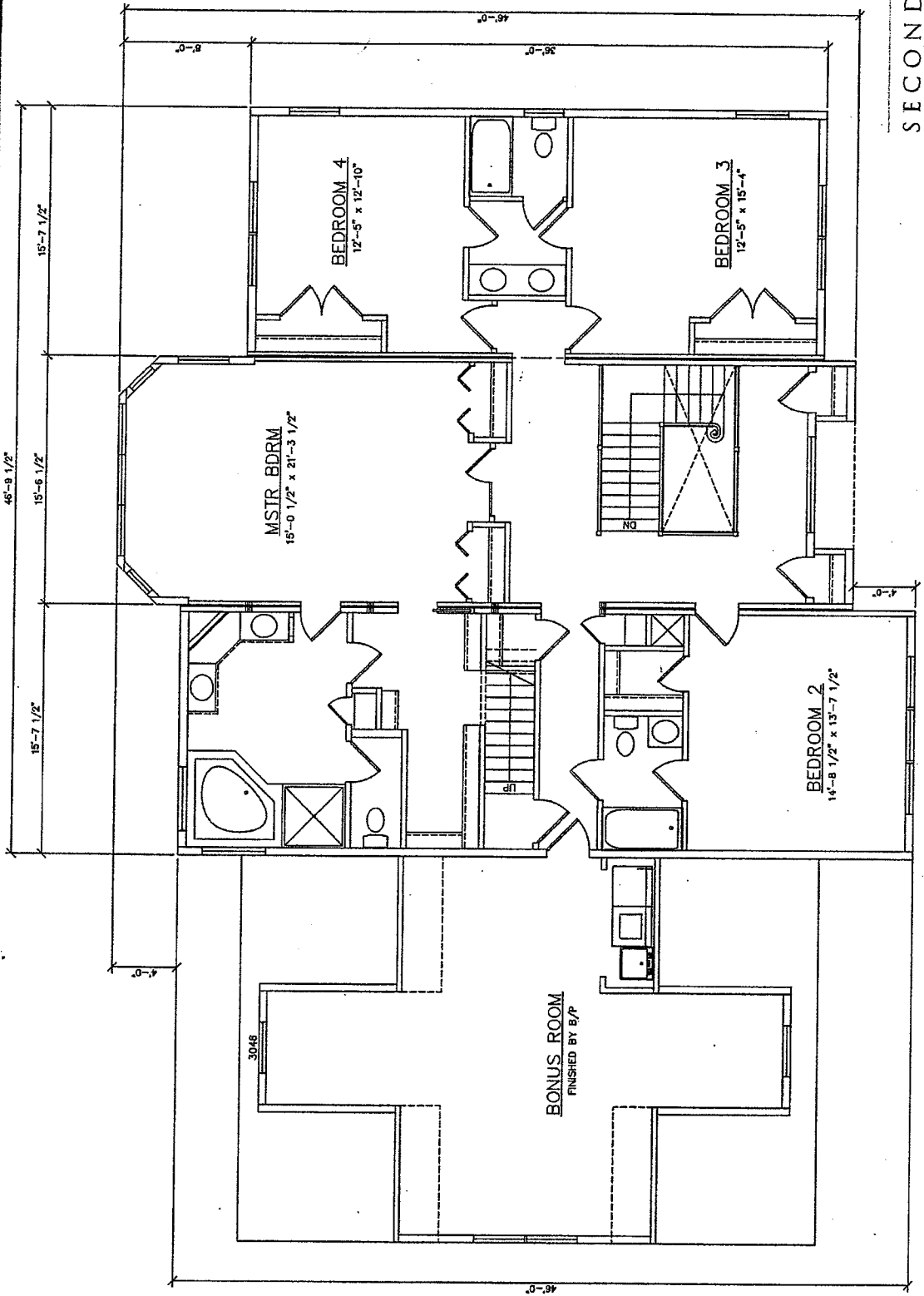
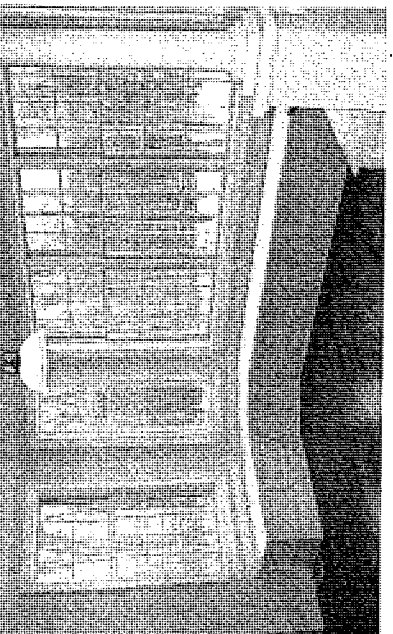
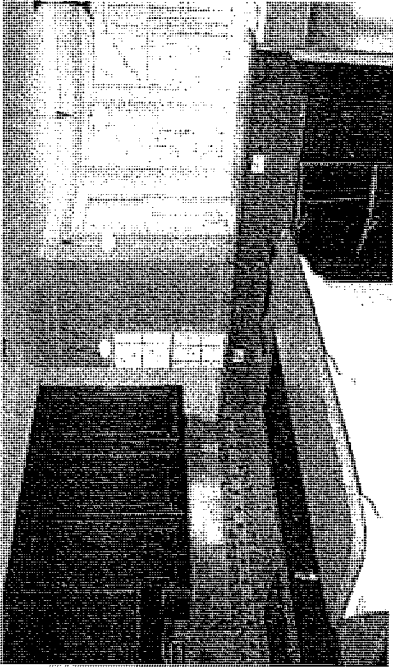
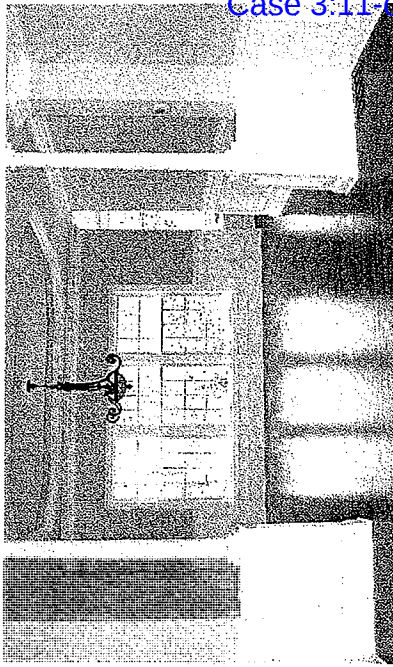
**EXHIBIT # 4**  
**CFS-110028012**

EATON06



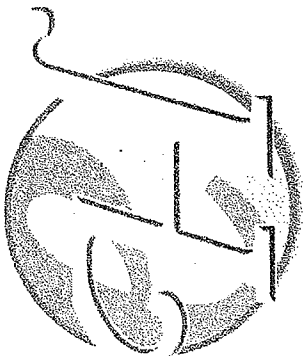
# THE ARLINGTON



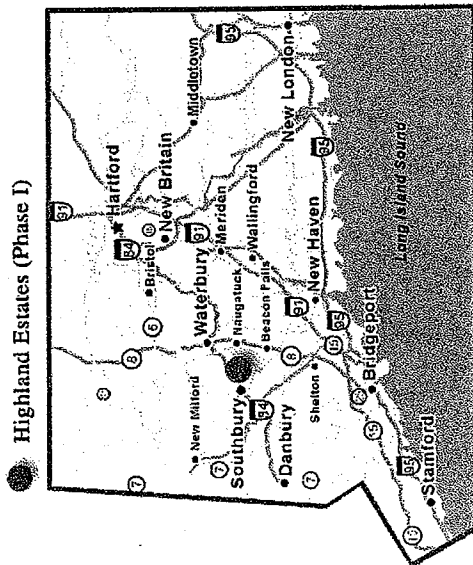


SECOND FLOOR  
THE ILLUSTRATIONS SHOWN MAY NOT ACCURATELY DEPICT THE FINAL CONSTRUCTION. ALL DIMENSIONS ARE APPROXIMATE. FLOOR PLANS SUBJECT TO CHANGE WITHOUT NOTICE





**HIGHLAND ESTATES**



*Nestled between Danbury and Waterbury, Highland Estates Phase I will allow homeowners quick access to Interstate 84 without sacrificing the privacy and serenity of rural living. Southbury Connecticut is known for its excellent school system, reasonable tax structure and pristine beauty. Homeowners will be treated to breathtaking panoramic vistas of the surrounding countryside including an adjacent wildlife sanctuary. Shopping and services are conveniently located in Southbury.*

**WATERBURY HIGHLAND ESTATES**

Developed by Waterbury Hills Associates, Inc. All rights reserved. © 2008 Waterbury Hills Associates, Inc. All rights reserved.

*Luxury and superior quality are the most defining features. The Arlington Series comes equipped with the following upgrade options at no additional charge. With this series, the most discriminating homebuyer will enjoy a home of lasting value.*

- ☛ Built-in custom closets
- ☛ Extensive molding throughout the house
- ☛ 9 1/2" roof pitch with low profile "shingle over" ridge vent
- ☛ Andersen Tilt Wash high performance windows
- ☛ Solid Oak hardwood floors throughout the house
- ☛ Decorative inlays in some rooms
- ☛ Anderson patio doors in family room
- ☛ Merillat kitchen cabinetry featuring:
  - ☛ Granite counter tops
  - ☛ 42" wall cabinets
  - ☛ Open soffit with crown molding
  - ☛ Wood range hood
  - ☛ Island bar with sink
  - ☛ Pantry cabinet
  - ☛ 36" Stainless Steel Wolf gas cook top
  - ☛ Stainless Steel Sub Zero refrigerator
  - ☛ Stainless Steel Wolf double convection ovens with cabinet
  - ☛ Stainless Steel GE microwave oven
  - ☛ 2 Stainless Steel Bosch dishwashers
  - ☛ 9' ceilings on first floor
  - ☛ 3 1/2" Windsor colonial casting and 5 1/4" baseboard molding
  - ☛ 200 amp electrical service
  - ☛ Cable TV, Cat-5, and telephone wiring throughout
- ☛ 3-zone HVAC (10 tons)
- ☛ Master bath featuring:
  - ☛ Jacuzzi brand whirlpool bath
  - ☛ Separate 48" X 48" shower stall
  - ☛ His and hers vanity
- ☛ "Best" lighting package by Seagull
- ☛ Oak tread stairs with double volute and gooseneck rails
- ☛ First and second floor Bosch washer and dryer
- ☛ Walk up attic
- ☛ Irrigation system
- ☛ Central vacuum
- ☛ Lower level space (available for finishing with plumbing for full bath) walk-out basement
- ☛ Fully landscaped
- ☛ Underground utilities
- ☛ 3 car garage with garage door openers and keypads
- ☛ 181 sq. ft. deck
- ☛ 1 wet bar
- ☛ 10-year structural warranty
- ☛ Exterior landscape lighting
- ☛ Thermatru Fiber-Classic 6-panel double front entry doors
- ☛ Custom built-ins in some rooms
- ☛ Coffered ceilings
- ☛ Many other extras not listed above

**EXHIBIT # 5**  
**CFS-1100028012**

**Pilots Mall, LLC**

October 28, 2008

Armed and Ready Alarm Systems, Inc  
PO Box 591  
Oxford, CT 06478

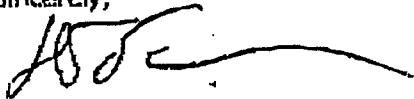
To Whom It May Concern:

This letter is written to authorize you to disable all the fire zones causing the false fire alarms.

- Properties: 12 Vista View Drive, Account 8812171
- 70 Vista View Drive, Account 8812130
- 75 Vista View Drive, Account 8812160
- 106 Vista View Drive, Account 8812271

Thank you.

Sincerely,



Jonathan Turner  
Property Manager

Pilots Mall, LLC.

PO Box 4047

Stamford, CT 06907

PILOTTS MALL, LLC  
 75 VISTA VIEW DRIVE  
 SOUTHURY, CT 06488

Acct: 8812160  
 Signal # 883880224  
 Mon 01/17/11 00:32:42

USR ALRM FIRE \*  
 Signal: UAF  
 Zone/Id: 0  
 Line 2

WHEN ALPHA-PAGING RP's, USE A 5-MIN RECALL AFTER SENDING EACH PAGE.  
 WHEN ALPHA-PAGING RP's, USE A 5-MIN RECALL AFTER SENDING EACH PAGE.

0110-DL ARMED & READY 866-527-9562  
 USR ALRM FIRE

WHEN NOTIFYING RP's, USE THE MESSAGE CENTER TO SEND ALPHAPAGES.  
 \*\*BE SURE TO SELECT THE CORRECT PAGER FROM THE PAGER LISTS.\*\*

**EXHIBIT # 6**  
**CFS-1100028012**

1. NOTIFY PREMISES <4,5>. IF NO ANSWER,
2. DISPATCH FIRE <1>. THEN,
3. NOTIFY RP'S STARTING WITH <8>.

C#	Phone Number	Date	Time	Qbr	Comment
		01/17/2011	00:33:01	SYS	RESPONSE TIME - 00:00:19
		01/17/2011	00:33:39	550	DROP TO 403
		01/17/2011	00:33:53	550	FILED - NOT FINALIZED
4	1-203-267-1945	01/17/2011	00:34:40	403	PREMISES NUMBER - BUSY
4	1-203-267-1945	01/17/2011	00:35:35	403	PREMISES NUMBER - BUSY
5		01/17/2011	00:35:43	403	ALTERNATE PREMISES - EMPTY
1	1-203-264-8228	01/17/2011	00:35:47	403	SOUTHURY, CT FIRE*
		01/17/2011	00:37:34	403	SPOKE TO DISPATCHER
		01/17/2011	00:39:33	403	STATED IT WAS A FULLY INVOLVED STRUCTURE
		01/17/2011	00:39:34	403	FIRE
		01/17/2011	00:39:44	403	DFD-570
		01/17/2011	00:40:16	403	STATED TO TRY AND GET AHOLD OF RPS AND
		01/17/2011	00:40:28	403	TO CALL THE DISPATCH NUMBER THAT WE HAVE
		01/17/2011	00:40:39	403	ON FILE, PER DISPATCHER
8	1-888-448-4805	01/17/2011	00:41:04	403	SCOTT RIBISH (ALPHAPAGER)
		01/17/2011	00:46:41	403	RECALL 5MINS PER INS
		01/17/2011	00:46:55	403	PLACED ON RECALL FOR 00:05:00
		01/17/2011	00:46:55	403	FILED - NOT FINALIZED
		01/17/2011	00:52:14	SYS	**** INCIDENT RECALLED!!! ****
		01/17/2011	00:52:46	500	NO CALL BACK
9	1-800-203-2216	01/17/2011	00:55:03	500	JONATHAN TURNER (ALPHPGR)
		01/17/2011	00:55:34	500	AF MSG ID 4862979
		01/17/2011	00:55:47	500	PENDING RECALL
		01/17/2011	00:56:03	500	PLACED ON RECALL FOR 00:05:00
		01/17/2011	00:56:03	500	FILED - NOT FINALIZED
		01/17/2011	00:59:40	606	JONATHAN TURNER
		01/17/2011	00:59:42	606	CALLED IN
		01/17/2011	00:59:47	606	ETA 1 HR
1	1-203-264-8228	01/17/2011	00:59:48	606	SOUTHURY, CT FIRE*
		01/17/2011	01:01:30	606	UFD 570
		01/17/2011	01:08:28	606	TM SENT
		01/17/2011	01:10:09	SYS	INCIDENT REPORT SENT
		01/17/2011	01:10:09	606	FINALIZED

AF ACTUAL FIRE  
 DLR DEALER/CUSTOMER SERVICE FOLLOW UP REQUESTED  
 DMB ATTENTION DAREN BAILEY



PILOTTS MALL, LLC  
 70 VISTA VIEW DRIVE  
 SOUTHURY, CT 06488

Acct: 8812130  
 Signal # 683851131  
 Sun 01/16/11 22:35:49

POWER FAIL  
 Signal: P  
 Zone/Id: 0  
 Line 10

WHEN ALPHA-PAGING RP'S, USE A 5-MIN RECALL AFTER SENDING EACH PAGE.  
 WHEN ALPHA-PAGING RP'S, USE A 5-MIN RECALL AFTER SENDING EACH PAGE.

**Exhibit #7**  
**CFS-1100028012**

0110-DL ARMED & READY 866-527-9562  
 POWER FAIL

WHEN NOTIFYING RP'S, USE THE MESSAGE CENTER TO SEND ALPHAPAGES.  
 \*\*BE SURE TO SELECT THE CORRECT PAGER FROM THE PAGER LISTS.\*\*

IF RESTORED, TAKE NO ACTION. NOTIFY <4,5>. IF NO ANSWER,  
 NOTIFY RP'S BEGINNING WITH <8>.

C#	Phone Number	Date	Time	Opr	Comment
		01/16/2011	22:38:52	SYS	RESPONSE TIME - 00:03:03
		01/16/2011	22:39:07	241	TRANS TO NOTIFY QUEUE
		01/16/2011	22:39:07	241	FILED - NOT FINALIZED
4	1-203-267-1899	01/16/2011	22:45:21	499	PREMISES NUMBER
		01/16/2011	22:46:13	499	NO ANSWER
5		01/16/2011	22:46:18	499	ALTERNATE PREMISES - EMPTY
8	1-888-448-4805	01/16/2011	22:51:26	499	SCOTT RIBISH (ALPHAPAGER)
		01/16/2011	22:52:10	499	AP SEND THROUGH MCM
		01/16/2011	22:52:48	499	PLEASE USE MSG ID:4862686 WHEN PAGING
		01/16/2011	22:52:51	499	RP9
		01/16/2011	22:53:15	499	RECALLING 5 MINS
		01/16/2011	22:54:18	499	PLACED ON RECALL FOR 00:05:00
		01/16/2011	22:54:18	499	FILED - NOT FINALIZED
		01/16/2011	22:57:15	CKG	PLACED ON RECALL FOR 00:02:00
		01/16/2011	22:57:15	CKG	FILED - NOT FINALIZED
		01/16/2011	22:59:16	SYS	**** INCIDENT RECALLED!!! ****
9	1-800-203-2216	01/16/2011	23:03:03	541	JONATHAN TURNER (ALPHPGR)
		01/16/2011	23:03:52	541	PER CALL LIST, AP SENT TO JONATHAN
		01/16/2011	23:04:02	541	TURNER PER MESSAGE CENTER. PLEASE REFER
		01/16/2011	23:04:14	541	TO INCIDENT# 4862686 FOR ADDITIONAL INFO
		01/16/2011	23:08:44	541	PER A/C INS. TM RECALLED 5 MINS
		01/16/2011	23:06:57	541	PER EMV, RECALL INCIDENT 5 MINS AS WELL
		01/16/2011	23:07:04	541	PLACED ON RECALL FOR 00:05:00
		01/16/2011	23:07:04	541	FILED - NOT FINALIZED
		01/16/2011	23:12:22	SYS	**** INCIDENT RECALLED!!! ****
10	1-203-746-2722	01/16/2011	23:14:10	EMV	JONATHAN TURNER
		01/16/2011	23:15:00	EMV	Passcode User 'ALL USERS' AUTHORIZED.
		01/16/2011	23:15:09	EMV	NTFD JONATHAN TURNER
		01/16/2011	23:15:37	EMV	REQ NA FOR 12 HOURS S:@ Z:@ EXCEPT FIRE
		01/16/2011	23:18:37	EMV	NA ENTERED
		01/16/2011	23:16:43	SYS	INCIDENT REPORT SENT
		01/16/2011	23:16:43	EMV	FINALIZED

RP SUB OR CONTACT RESPONDING/NOTIFIED

STATE OF CONNECTICUT, DEPARTMENT OF PUBLIC SAFETY-  
INVESTIGATION REPORT (DPS-302-E) (REVISED 2/3/06)

Report #: 1100028012 - 00132661

Report Type: Initial Report:  Prosecutors Report:  Supplement:  Re-open:  Assist:  Closing:   
 Attachments: Statements:  Teletype:  Photos:  Sketchmap:  Evidence:  Other:

CFS NO. 1100028012	INCIDENT DATE 01/17/2011	TIME 01:13	INCIDENT DATE 01/17/2011	TIME 01:13	PRIMARY OFFICER CHRISTENSEN, KENNETH W.	BADGE NO 0441	INVESTIGATING OFFICER TFC GREGORY JR, RICHARD J.	BADGE NO 1380
INCIDENT ADDRESS 00015 Vista View Drive Dr Southbury 06488					APARTMENT NO T130	TYPE OF EXCEPTIONAL CLEARANCE Not Applicable		CASE STATUS Active

SUPPLEMENTAL REPORT  
VIDEO DOCUMENTATION

ACTION TAKEN:

On 01/17/11 at approximately 0125 hours, this Detective was assigned by Sergeant Chris Guari #203 of the Connecticut State Police Office of State Fire Marshal to assist with the investigation of a residential structure fire located at 75 Vista View in the Town of Southbury, CT. Detective Kenneth Christensen #441 of the Connecticut State Police, Office of State Fire Marshal was also assigned to the investigation.

This Detective responded to the scene and arrived on 01/17/11 at approximately 0240 hours. Among other duties, this Detective was assigned to obtain video documentation of the scene. On 01/17/11 between approximately 0610 hours and 1015 hours, throughout the processing of the scene, this Detective videotaped the scene utilizing a Sony Handy-cam Digital Camcorder, owned by the Office of State Fire Marshal and assigned to the West Investigation Van. The video captured was then transferred onto a Memorex DVD-R utilizing a Sony disc burner.

The DVD-R was submitted as part of the case jacket and will be stored at the Office of State Fire Marshal located at 1111 Country Club Road, Middletown, CT. 06457

STATUS:

UNDETERMINED, AN INVESTIGATOR HAVING BEEN DULY SWORN DEPOSES AND SAYS THAT: I AM THE WRITER OF THE ATTACHED POLICE REPORT PERTAINING TO THIS INCIDENT NUMBER. THAT THE INFORMATION CONTAINED THEREIN WAS SECURED AS A RESULT OF (1) MY PERSONAL OBSERVATION AND KNOWLEDGE; OR (2) INFORMATION RELAYED TO ME BY OTHER MEMBERS OF MY POLICE DEPARTMENT OR OF ANOTHER POLICE DEPARTMENT; OR (3) INFORMATION SECURED BY MYSELF OR ANOTHER MEMBER OF A POLICE DEPARTMENT FROM THE PERSON OR PERSONS NAMED OR IDENTIFIED THEREIN, AS INDICATED IN THE ATTACHED REPORT. THAT THE REPORT IS AN ACCURATE STATEMENT OF THE INFORMATION SO RECEIVED BY ME.

INVESTIGATOR SIGNATURE <i>[Signature]</i>	INVESTIGATOR I.D.# 1380	REPORT DATE: 0710511	SUPERVISOR SIGNATURE <i>[Signature]</i>	SUPERVISOR I.D.# 131	DATE 9/26/14
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END SEP 21 2011

Report #: 1100028012 - 001326

Page 2 of 2

STATE OF CONNECTICUT, DEPARTMENT OF PUBLIC SAFETY-  
INVESTIGATION REPORT (DPS-302-E) (REVISED 2/3/06)



The case will remain open and active pending Detective Christensen's investigation and subsequent conclusion.

EA 0109

THE UNDERSIGNED, AN INVESTIGATOR HAVING BEEN DULY SWORN DEPOSES AND SAYS THAT: I AM THE WRITER OF THE ATTACHED POLICE REPORT PERTAINING TO THIS INCIDENT NUMBER. THAT THE INFORMATION CONTAINED THEREIN WAS SECURED AS A RESULT OF (1) MY PERSONAL OBSERVATION AND KNOWLEDGE; OR (2) INFORMATION RELAYED TO ME BY OTHER MEMBERS OF A POLICE DEPARTMENT OR OF ANOTHER POLICE DEPARTMENT; OR (3) INFORMATION SECURED BY MYSELF OR ANOTHER MEMBER OF A POLICE DEPARTMENT FROM THE PERSON OR PERSONS NAMED OR IDENTIFIED THEREIN, AS INDICATED IN THE ATTACHED REPORT. THAT THE REPORT IS AN ACCURATE STATEMENT OF THE INFORMATION SO RECEIVED BY ME.

INVESTIGATOR SIGNATURE: <i>[Signature]</i>	INVESTIGATOR I.D.#: 1380	REPORT DATE: 07/25/11	SUPERVISOR SIGNATURE: <i>[Signature]</i>	SUPERVISOR I.D.#: 131	DATE: 9/2/11
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STATE OF CONNECTICUT, DEPARTMENT OF PUBLIC SAFETY-  
INVESTIGATION REPORT (DPS-302-E) (REVISED 2/3/06)

Report #: 1100028012 - 00132658

Report Type: Initial Report:  Prosecutors Report:  Supplement:  Re-open:  Assist:  Closing:   
 Attachments: Statements:  Teletype:  Photos:  Sketchmap:  Evidence:  Other:

CFS NO. 1100028012	INCIDENT DATE 01/17/2011	TIME 01:13	INCIDENT DATE 01/17/2011	TIME 01:13	PRIMARY OFFICER CHRISTENSEN, KENNETH W.	BADGE NO 0441	INVESTIGATING OFFICER TFC GREGORY JR, RICHARD J.	BADGE NO 1380
INCIDENT ADDRESS 00015 Vista View Drive Dr Southbury 06488					APARTMENT NO T130	TYPE OF EXCEPTIONAL CLEARANCE/CASE STATUS Not Applicable Active		

SUPPLEMENTAL REPORT

PHOTOGRAPHIC REPORT

ACTION TAKEN:

On 01/17/11 at approximately 0135 hours, this Detective was assigned by Sergeant Guari #203 of the Connecticut State Police, Office of State Fire Marshal to assist with the investigation of a structure fire at 75 Vista View in the Town of Southbury, CT. Detective Christensen #441 of the Connecticut State Police, Office of State Fire Marshal was also assigned to the investigation.

This Detective responded to the scene and arrived on 01/17/11 at approximately 0240 hours. Among other duties, this Detective was assigned to obtain photographic documentation of the scene. On 01/17/11 between approximately 0610 hours and 1015 hours, throughout the processing of the scene, this Detective photographed the scene utilizing a Nikon D90 digital camera, owned by the Office of State Fire Marshal and assigned to the West Investigation Van. The photographs were then transferred to a Maxell 700mb CD-R compact disc. One copy of the disc was sent to the Connecticut State Police Photography Lab for archive storage, another copy of the disc was made for the case file.

A total of eighty-four (84) photographs were taken at the scene and are listed and described in this report. The photographs are a true and accurate depiction of the conditions observed at the time of this investigation.

END SEP 21 2011

THE UNDERSIGNED, AN INVESTIGATOR HAVING BEEN DULY SWORN DEPOSES AND SAYS THAT: I AM THE WRITER OF THE ATTACHED POLICE REPORT PERTAINING TO THIS INCIDENT NUMBER. THE INFORMATION CONTAINED THEREIN WAS SECURED AS A RESULT OF (1) MY PERSONAL OBSERVATION AND KNOWLEDGE; OR (2) INFORMATION RELAYED TO ME BY OTHER MEMBERS OF MY POLICE DEPARTMENT OR OF ANOTHER POLICE DEPARTMENT; OR (3) INFORMATION SECURED BY MYSELF OR ANOTHER MEMBER OF A POLICE DEPARTMENT FROM THE PERSON OR PERSONS NAMED OR IDENTIFIED THEREIN, AS INDICATED IN THE ATTACHED REPORT. THAT THE REPORT IS AN ACCURATE STATEMENT OF THE INFORMATION SO RECEIVED BY ME.

INVESTIGATOR SIGNATURE: 	INVESTIGATOR I.D.#: 1380	REPORT DATE: 07/05/11	SUPERVISOR SIGNATURE: 	SUPERVISOR I.D.#: 137	DATE: 9/21/11
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STATE OF CONNECTICUT, DEPARTMENT OF PUBLIC SAFETY-  
INVESTIGATION REPORT (DPS-302-E) (REVISED 2/3/06)



PHOTO#:

DESCRIPTION:

1. Title shot taken on 01/17/11, the date of this investigation
2. Exterior, street identification and scene approach
3. Exterior, housing development sign at the intersection of Vista and Route 188
4. Exterior, scene approach
5. Exterior, address shot and overall scene
6. Exterior, overall view of underground electrical utility box feeding the structure
7. Exterior, overall view of the east side of the structure, looking in a westerly direction
8. Exterior, intermediate view of the east side of the structure, looking in a northwesterly direction
9. Exterior, overall view of the south side of the structure, looking in a northerly direction
10. Exterior, overall view of the south side of the structure, looking in a northeasterly direction
11. Exterior, overall view of the west side of the structure, looking in a northeasterly direction
12. Exterior, intermediate view of the west side of the structure, looking in a southeasterly direction
13. Exterior, overall view of the north side of the structure, looking in a southeasterly direction (poor quality)
14. Exterior, overall view of the north side of the structure, looking in a southeasterly direction
15. Exterior, intermediate view of the north side of the structure, looking in a southerly direction
16. Exterior, overall view of the east side of the structure, looking in a southwesterly direction
17. Exterior, overall view of the underground electrical utility service entrance, looking in a westerly direction
18. Exterior, overall view of the front entrance to the structure, looking in a westerly direction
19. Exterior, intermediate view of photo #18
20. Exterior, overall view of underground electrical utility box at the street NOTE: box opened by CL&P
21. Exterior, close up view of underground electrical utility box at the street
22. Interior, stairway leading to second floor of the structure, looking in a northwesterly direction
23. Interior, overall view of the second floor southwest bedroom, looking in a southwesterly direction
24. Interior, overall view of the second floor bathroom, looking in an easterly direction
25. Interior, intermediate view of second floor southwest bedroom, looking in a northeasterly direction
26. Interior, overall view of the second floor southeast bedroom, looking in a southeasterly direction
27. Interior, overall view of the second floor hallway and balcony area, looking in an northeasterly direction

MA

THE UNDERSIGNED, AN INVESTIGATOR HAVING BEEN DULY SWORN DEPOSES AND SAYS THAT: I AM THE WRITER OF THE ATTACHED POLICE REPORT PERTAINING TO THIS INCIDENT NUMBER. THAT THE INFORMATION CONTAINED THEREIN WAS SECURED AS A RESULT OF (1) MY PERSONAL OBSERVATION AND KNOWLEDGE; OR (2) INFORMATION RELAYED TO ME BY OTHER MEMBERS OF A POLICE DEPARTMENT OR OF ANOTHER POLICE DEPARTMENT; OR (3) INFORMATION SECURED BY MYSELF OR ANOTHER MEMBER OF A POLICE DEPARTMENT FROM THE PERSON OR PERSONS NAMED OR IDENTIFIED THEREIN, AS INDICATED IN THE ATTACHED REPORT. THAT THE REPORT IS AN ACCURATE STATEMENT OF THE INFORMATION SO RECEIVED BY ME.

INVESTIGATOR SIGNATURE: 	INVESTIGATOR I.D.#: 1380	REPORT DATE: 7/05/11	SUPERVISOR SIGNATURE: 	SUPERVISOR I.D.#: 131	DATE: 09/21/11
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**STATE OF CONNECTICUT, DEPARTMENT OF PUBLIC SAFETY -  
INVESTIGATION REPORT (DPS-302-E) (REVISED 2/3/06)**

- 28. Interior, overall view of a centrally located (west) bedroom on the second floor, looking in a westerly direction
- 29. Interior, overall view of the balcony/atrium on the second floor, looking in an easterly direction
- 30. Interior, overall view showing walk in closet in the centrally located (west) bedroom on the second floor, looking in a northerly direction
- 31. Interior, overall view of photo #30
- 32. Interior, overall view of the second floor master bathroom in the northwest corner of the structure, looking in a northwesterly direction
- 33. Interior, overall view of the north central room on the second floor of the structure, looking in a northerly direction
- 34. Interior, overall view of the second floor landing, looking southwesterly direction
- 35. Interior, overall lower level view of the second floor northeast bedroom, looking in a northeasterly direction
- 36. Interior, overall upper level view of the second floor northeast bedroom, looking in a northeasterly direction
- 37. Interior, overall view of the first floor dining room, looking in a westerly direction
- 38. Interior, overall view of the first floor living room, looking in an easterly direction
- 39. Interior, overall view of the structures kitchen, looking in a northeasterly direction
- 40. Interior, overall view of the structures kitchen, looking in a southeasterly direction
- 41. Interior, overall view of the structures kitchen, looking in a northwesterly direction
- 42. Interior, overall view of the structures wet bar room off the kitchen, looking in a northeasterly direction
- 43. Interior, overall view of the structures wet bar room off the kitchen, looking in a southwesterly direction
- 44. Interior, overall view of the structures first floor hallway bathroom, looking in an easterly direction
- 45. Interior, overall view of the structures first floor laundry room, looking in an easterly direction
- 46. Interior, overall view of first floor office space on the structures northeast side, looking in a northerly direction
- 47. Interior, overall view of first floor office space on the structures northeast side, looking in a northwesterly direction
- 48. Interior, overall view from inside the first floor office space looking out to the attached garage, looking in a northerly direction
- 49. Interior, overall view from inside the structures attached garage, looking in a northerly direction
- 50. Interior, overall view from inside the structures attached garage, looking in a westerly direction
- 51. Interior, overall view from inside the structures attached garage, looking in an easterly direction
- 52. Interior, overall view of the structures basement access stairs, looking in a southerly direction
- 53. Interior, intermediate view showing oil-burner switch position (located at the top of the basement stairs)

UNDEERSIGNED, AN INVESTIGATOR HAVING BEEN DULY SWORN DEPOSES AND SAYS THAT: I AM THE WRITER OF THE ATTACHED POLICE REPORT PERTAINING TO THIS INCIDENT NUMBER. THAT THE INFORMATION CONTAINED THEREIN WAS SECURED AS A RESULT OF (1) MY PERSONAL OBSERVATION AND KNOWLEDGE; OR (2) INFORMATION RELAYED TO ME BY OTHER MEMBERS OF THE POLICE DEPARTMENT OR OF ANOTHER POLICE DEPARTMENT; OR (3) INFORMATION SECURED BY MYSELF OR ANOTHER MEMBER OF A POLICE DEPARTMENT FROM THE PERSON OR PERSONS NAMED OR IDENTIFIED THEREIN, AS INDICATED IN THE ATTACHED REPORT. THAT THE REPORT IS AN ACCURATE STATEMENT OF THE INFORMATION SO RECEIVED BY ME.

INVESTIGATOR SIGNATURE: <i>[Signature]</i>	INVESTIGATOR I.D.#: 1380	REPORT DATE: 7/5/11	SUPERVISOR SIGNATURE: <i>[Signature]</i>	SUPERVISOR I.D.#: 131	DATE: 9/21/11
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STATE OF CONNECTICUT, DEPARTMENT OF PUBLIC SAFETY-  
INVESTIGATION REPORT (DPS-302-E) (REVISED 2/3/06)



- 54. Interior, overall view of the structures basement, looking in a southwesterly direction
- 55. Interior, overall view of the structures basement, looking in a southeasterly direction
- 56. Interior, overall view of the structures boiler room in the basement (poor quality)
- 57. Interior, overall view of the structures boiler room in the basement, looking in an easterly direction
- 58. Interior, overall view of the structures electrical service breaker panel (poor quality)
- 59. Interior, overall view of the structures electrical service breaker panel, looking in a northerly direction
- 60. Interior, close up view of the main electrical service breaker panel
- 61. Interior, close up view of the electrical service breaker sub-panel (next to the main)
- 62. Interior, overall view of the structures oil-fired boiler
- 63. Interior, close up view showing the main power switch 'on' for the oil-fired boiler  
poor quality
- 64. Interior, overall view showing the structures heating oil supply tank and well pump, looking in an easterly direction
- 65. Interior, intermediate view showing the ceiling in the northeast corner of the basement
- 66. Interior, close up view showing the ceiling in the northeast corner of the basement
- 67. Exterior, overall view of the area of origin located northeasterly of the structures main entrance, looking in a southwesterly direction
- 68. Exterior, intermediate view of the area of origin, looking in a southwesterly direction NOTE: electrical service meter box face down on the ground
- 69. Exterior, close up view of the electrical service meter box in photo #69 NOTE: electrical arc damage
- 70. Exterior, intermediate view showing conduit for the underground electrical service utility entrance
- 71. Exterior, intermediate view of CL&P's transformer box (post CL&P examination)
- 72. Exterior, close up view of photo #72
- 73. Exterior, area of origin, showing the structures electrical service utility meter box (propped face up) during the investigation
- 74. Exterior, close up view of underground electrical service line from the street to the meter
- 75. Exterior, close up view of underground electrical service entrance from the meter box into the structure
- 76. Exterior, close up view of sill plate in the area of origin
- 77. Exterior, intermediate view showing upper view above the area of origin
- 78. Exterior, close up view of the face of the structures electrical service utility meter

THE UNDERSIGNED, AN INVESTIGATOR HAVING BEEN DULY SWORN DEPOSES AND SAYS THAT: I AM THE WRITER OF THE ATTACHED POLICE REPORT PERTAINING TO THIS INCIDENT NUMBER. THAT THE INFORMATION CONTAINED THEREIN WAS SECURED AS A RESULT OF (1) MY PERSONAL OBSERVATION AND KNOWLEDGE; OR (2) INFORMATION RELAYED TO ME BY OTHER MEMBERS OF MY POLICE DEPARTMENT OR OF ANOTHER POLICE DEPARTMENT; OR (3) INFORMATION SECURED BY MYSELF OR ANOTHER MEMBER OF A POLICE DEPARTMENT FROM THE PERSON OR PERSONS NAMED OR IDENTIFIED THEREIN, AS INDICATED IN THE ATTACHED REPORT. THAT THE REPORT IS AN ACCURATE STATEMENT OF THE INFORMATION SO RECEIVED BY ME.

INVESTIGATOR SIGNATURE: <i>[Signature]</i>	INVESTIGATOR I.D.#: 1380	REPORT DATE: 7/25/11	SUPERVISOR SIGNATURE: <i>[Signature]</i>	SUPERVISOR I.D.#: 131	DATE: 9/14/11
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Report #: 1100028012 - 001326

STATE OF CONNECTICUT, DEPARTMENT OF PUBLIC SAFETY-  
INVESTIGATION REPORT (DPS-302-E) (REVISED 2/3/06)

Page 5 of 5

- 80. Exterior, close up view of bottom side of the structures electrical service utility meter
- 81. Exterior, close up view showing the back of the structures electrical service utility meter
- 82. Exterior, close up view showing electrical arc damage to the back of the structures electrical service utility meter
- 83. Interior, intermediate view showing the main electrical service entrance cable from inside the basement
- 84. Closing shot

The photographs described above are being submitted as part of the case jacket.

STATUS:

Case open

FAT

THE UNDERSIGNED, AN INVESTIGATOR HAVING BEEN DULY SWORN DEPOSES AND SAYS THAT: I AM THE WRITER OF THE ATTACHED POLICE REPORT PERTAINING TO THIS INCIDENT NUMBER. THAT THE INFORMATION CONTAINED THEREIN WAS SECURED AS A RESULT OF (1) MY PERSONAL OBSERVATION AND KNOWLEDGE; OR (2) INFORMATION RELAYED TO ME BY OTHER MEMBERS OF MY POLICE DEPARTMENT OR OF ANOTHER POLICE DEPARTMENT; OR (3) INFORMATION SECURED BY MYSELF OR ANOTHER MEMBER OF A POLICE DEPARTMENT FROM THE PERSON OR PERSONS NAMED OR IDENTIFIED THEREIN, AS INDICATED IN THE ATTACHED REPORT. THAT THE REPORT IS AN ACCURATE STATEMENT OF THE INFORMATION SO RECEIVED BY ME.

INVESTIGATOR SIGNATURE: <i>D. W. [Signature]</i>	INVESTIGATOR I.D.#: 1380	REPORT DATE: 07/05/11	SUPERVISOR SIGNATURE: <i>[Signature]</i>	SUPERVISOR I.D.#: 131	DATE: 9/21/11
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STATE OF CONNECTICUT, DEPARTMENT OF PUBLIC SAFETY - INVESTIGATION REPORT (DPS-683-E) (REVISED 2/3/06)

Report #: 1100028012 - 00185116

Report Type: Initial Report:  Prosecutors Report:  Supplement:  Re-open:  Assist:  Closing:   
 Attachments: Statements:  Teletype:  Photos:  Sketchmap:  Evidence:  Other:

CFS NO. 1100028012	INCIDENT DATE 01/17/2011	TIME 01:13	INCIDENT DATE 01/17/2011	TIME 01:13	PRIMARY OFFICER CHRISTENSEN, KENNETH W.	BADGE NO 0441	INVESTIGATING OFFICER TFC CHRISTENSEN, KENNETH W.	BADGE NO 0441
INCIDENT ADDRESS 00015 Vista View Drive Dr Southbury 06488					APARTMENT NO T130	TOWN CD T130	TYPE OF EXCEPTIONAL CLEARANCE Not Applicable	CASE STATUS Active

OFFENSE / INCIDENT TYPE FIRE INVESTIGATION	CHARGE 29-310	LOCATION Residence/home
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STATUS CODE C=COMPLAINANT V=VICTIM A=ARRESTEE J=JUVENILE M=MISSING W=WITNESS O=OFFENDER/ACCUSED T=TOT

STATUS	NAME	SEX	RACE	D.O.B.	TELEPHONE	ADDRESS
W	Gregory, Richard (Det.)	M	W		(860) 685 - 8460	1111 Country Club Rd MIDDLETOWN CT
W	Baldwin, Timothy				(203) 262 - 0620	501 Main St Southbury CT
W C	Stormer, Henry	M	W		(203) 262 - 0620	501 Main St Southbury CT
W	Tolles, Russ	M	W		(203) 262 - 0620	501 Main Street Southbury CT
V	Pilots Mall LLC				(203) 359 - 7657	1 Omega Drive Stamford CT

CD	QTY	DESCRIPTION	BRAND	MODEL	YEAR	STATE	REG	MAKE	MODEL	COLOR	VIN/SERIAL NO.	EST. VALUE
2	1	Structures - Single occupancy										\$1,000,000.00

Date & Time of Incident:  
01/17/11 at 0024 hours.

Location:  
The fire occurred at # 75 Vista Drive, Southbury, CT.

Date & Time of Investigation:  
01/23/11 1430 hours

ENDD JAN 26 2012

THE UNDERSIGNED, AN INVESTIGATOR HAVING BEEN DULY SWORN DEPOSES AND SAYS THAT: I AM THE WRITER OF THE ATTACHED POLICE REPORT PERTAINING TO THIS INCIDENT NUMBER. THAT THE INFORMATION CONTAINED THEREIN WAS SECURED AS A RESULT OF (1) MY PERSONAL OBSERVATION AND KNOWLEDGE; OR (2) INFORMATION RELAYED TO ME BY OTHER MEMBERS OF MY POLICE DEPARTMENT OR OF ANOTHER POLICE DEPARTMENT; OR (3) INFORMATION SECURED BY MYSELF OR ANOTHER MEMBER OF A POLICE DEPARTMENT FROM THE PERSON OR PERSONS NAMED OR IDENTIFIED THEREIN, AS INDICATED IN THE ATTACHED REPORT. THAT THE REPORT IS AN ACCURATE STATEMENT OF THE INFORMATION SO RECEIVED BY ME.

INVESTIGATOR SIGNATURE: Det. K Christensen	INVESTIGATOR I.D.#: 5441	REPORT DATE: 01/23/11	SUPERVISOR SIGNATURE: <i>[Signature]</i>	SUPERVISOR I.D.#: 131	DATE: 1/23/11
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STATE OF CONNECTICUT, DEPARTMENT OF PUBLIC SAFETY-  
INVESTIGATION REPORT (DPS-683-E) (REVISED 2/3/06)

Report #: 1100028012 - 001851



Action Taken:

I have checked the status of supplemental reports. There are no other outstanding reports due.

Conclusion:

This case will be closed with no criminal aspect.

THE UNDERSIGNED, AN INVESTIGATOR HAVING BEEN DULY SWORN DEPOSES AND SAYS THAT: I AM THE WRITER OF THE ATTACHED POLICE REPORT PERTAINING TO THIS INCIDENT NUMBER. THAT THE INFORMATION CONTAINED THEREIN WAS SECURED AS A RESULT OF (1) MY PERSONAL OBSERVATION AND KNOWLEDGE; OR (2) INFORMATION RELAYED TO ME BY OTHER MEMBERS OF MY POLICE DEPARTMENT OR OF ANOTHER POLICE DEPARTMENT; OR (3) INFORMATION SECURED BY MYSELF OR ANOTHER MEMBER OF A POLICE DEPARTMENT FROM THE PERSON OR PERSONS NAMED OR IDENTIFIED THEREIN, AS INDICATED IN THE ATTACHED REPORT. THAT THE REPORT IS AN ACCURATE STATEMENT OF THE INFORMATION SO RECEIVED BY ME.

INVESTIGATOR SIGNATURE: <i>Detective B. Christensen</i>	INVESTIGATOR I.D.#: 441	REPORT DATE: 09/23/11	SUPERVISOR SIGNATURE <i>[Signature]</i>	SUPERVISOR I.D.#: 131	DATE: 12/28/11
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STATE OF CONNECTICUT, DEPARTMENT OF PUBLIC SAFETY-  
INVESTIGATION REPORT (DPS-683-E) (REVISED 2/3/06)

Report #: 1100027936 - 00017103

Report Type: Initial Report:  Prosecutors Report:  Supplement:  Re-open:  Assist:  Closing:   
 Attachments: Statements:  Teletype:  Photos:  Sketchmap:  Evidence:  Other:

1100027936	INCIDENT DATE 01/17/2011	TIME 00:25	INCIDENT DATE 01/17/2011	TIME 00:25	PRIMARY OFFICER BURNS, KEVIN	BADGE NO AC74	INVESTIGATING OFFICER Police Officer BURNS, KEVIN	BADGE NO AC74
INCIDENT ADDRESS Vista View Southbury 06488					APARTMENT NO T130	TOWN CD T130	TYPE OF EXCEPTIONAL CLEARANCE Not Applicable	CASE STATUS Non criminal

OFFENSE / INCIDENT TYPE FIRE / EXPLOSION INVESTIGATION	CHARGE 99-24	ATT/COMP Completed	LOCATION Residence/home
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STATUS CODE C=COMPLAINANT V=VICTIM A=ARRESTEE J=JUVENILE M=MISSING W=WITNESS O=OFFENDER/ACCUSED T=TOT

STATUS	NAME	SEX	RACE	D.O.B.	TELEPHONE	ADDRESS
W	Turner, Jonathan	M		01/09/1969		17 Flax Ln New Fairfield CT
WC	Shantley, Liam	M	W	04/14/1987	Hom	(203) 426 - 0099 10 Fairchild Dr Newtown CT
H	Pilots Mall LLC					1 Omega Dr Stamford CT

PROPERTY	CD	QTY	DESCRIPTION	BRAND	MODEL	YEAR	STATE	REG	MAKE	MODEL	COLOR	VIN/SERIAL NO.	EST. VALUE
2=	1		Structures - Single occupancy										\$998,000.00
			#75 Vista View Dr, Southbury, CT - residence entirely burned.										

ACTION TAKEN:

On 01/17/11, at 00:24, I was dispatched to #75 Vista View Dr in Southbury, CT to investigate a reported structure fire. The house is unoccupied and has been for sale approximately 3 years.

Upon arrival at 00:30, I found #75 Vista View on fire. Flames were enveloping the roof above the garage area and spreading up the siding from the corner where the electrical service attaches to the residence. I advised the Southbury Emergency Dispatch of the extent of the fire. I met with Liam Shanley. Shanley was driving by on Route 188 with his friends, Joseph Pisacreta (09/20/88) and Maye Dykman (12/04/91). Shanley stated that they turned around and saw that the residence was afire. Shanley stated that they immediately called for help.

Route 188 was completely shut down due to the amount of apparatus in the roadway. I took 4 photos of the residence while it was burning. The Southbury Fire Marshall, Henry Stormer responded to the scene. Fire Marshall Stormer began his investigation and contacted the

INVESTIGATOR SIGNATURE: <i>Kevin Burns</i>	INVESTIGATOR I.D.#: AC74	REPORT DATE: 01/23/11	SUPERVISOR SIGNATURE: <i>Set</i>	SUPERVISOR I.D.#: 272	DATE: 1/23/11
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THE UNDERSIGNED, AN INVESTIGATOR HAVING BEEN DULY SWORN DEPOSES AND SAYS THAT: I AM THE WRITER OF THE ATTACHED POLICE REPORT PERTAINING TO THIS INCIDENT NUMBER. THAT THE INFORMATION CONTAINED THEREIN WAS SECURED AS A RESULT OF (1) MY PERSONAL OBSERVATION AND KNOWLEDGE; OR (2) INFORMATION RELAYED TO ME BY OTHER MEMBERS OF MY POLICE DEPARTMENT OR OF ANOTHER POLICE DEPARTMENT; OR (3) INFORMATION SECURED BY MYSELF OR ANOTHER MEMBER OF A POLICE DEPARTMENT FROM THE PERSON OR PERSONS NAMED OR IDENTIFIED THEREIN, AS INDICATED IN THE ATTACHED REPORT. THAT THE REPORT IS AN ACCURATE STATEMENT OF THE INFORMATION SO RECEIVED BY ME.



STATE OF CONNECTICUT, DEPARTMENT OF PUBLIC SAFETY - INVESTIGATION REPORT (DPS-683-E) (REVISED 2/3/06)

Connecticut State Police Fire Marshalls Office for assistance. Detectives Kenneth Christensen and Richard Gregory responded to the scene.

At 02:15, I met with Jonathan Turner of Pilots Mall LLC. A Scott Ribisi (1/25/71) was with Turner and also works for Pilots Mall LLC.

Turner is the property manager for Pilots Mall LLC which is the owner of the property. Pilots Mall LLC owns all the residences on Vista View Dr and all have been on the market for almost 3 years. Turner stated that he received a report of a power failure at #70 Vista View Dr at 11:07 pm, but no other alarms (i.e. fire) from the residence at #75. He believed the alarm company (Armed & Ready) may have mistakenly gave the incorrect house number. Turner stated that he did not respond to the power failure alarm, believing that there was no problem at the residence. Turner stated that the residence was last checked on by Scott Ribisi on 01/14/11 at 8:00. Ribisi confirmed this information.

Fire Departments from Middlebury, Woodbury, Roxbury, Oxford and Newtown responded to the scene to assist with the extinguishing of the fire. At 06:05, the scene was released by the fire department and turned over to the Southbury Fire Marshalls Office and the Connecticut State Police Fire Marshall. Preliminary investigation revealed that the fire may have been caused by an underground electrical cable fault feeding the residence in the area of the attachment at the residence. Connecticut Light and Power was called to the scene and disconnected the power at the junction box near the roadway.

On 01/21/11, I contacted Fire Marshall Stormer. He advised me that the cause of the fire was an electrical malfunction and that the fire was ruled non-suspicious. Fire Marshall Stormer advised me that he would send a copy of his report that will be later included in this file.

PHOTOS TAKEN:

I took four photos were taken while the residence was burning.

Photo #1 - is a frontal view of the residence.

Photo #2 - is a frontal view of the residence.

Photo #3 - is a side view of the residence when the propane gas tank expelled its contents.

Photo #4 - side view of the residence while it was burning.

CONCLUSION:

This case will be closed as no criminal aspect.

(1)

THE UNDERSIGNED, AN INVESTIGATOR HAVING BEEN DULY SWORN DEPOSES AND SAYS THAT: I AM THE WRITER OF THE ATTACHED POLICE REPORT PERTAINING TO THIS INCIDENT NUMBER. THAT THE INFORMATION CONTAINED THEREIN WAS SECURED AS A RESULT OF (1) MY PERSONAL OBSERVATION AND KNOWLEDGE; OR (2) INFORMATION RELAYED TO ME BY OTHER MEMBERS OF MY POLICE DEPARTMENT OR OF ANOTHER POLICE DEPARTMENT; OR (3) INFORMATION SECURED BY MYSELF OR ANOTHER MEMBER OF A POLICE DEPARTMENT FROM THE PERSON OR PERSONS NAMED OR IDENTIFIED THEREIN, AS INDICATED IN THE ATTACHED REPORT. THAT THE REPORT IS AN ACCURATE STATEMENT OF THE INFORMATION SO RECEIVED BY ME.

INVESTIGATOR SIGNATURE: <i>Clark B...</i>	INVESTIGATOR I.D.#: AC74	REPORT DATE: 01/23/11	SUPERVISOR SIGNATURE <i>S. E. W.</i>	SUPERVISOR I.D.#: 272	DATE 1/25/11
--	-----------------------------	--------------------------	---	--------------------------	-----------------

OFF. Burns



## TOWN OF SOUTHBURY

### OFFICE OF THE FIRE MARSHAL

501 Main Street South  
Southbury, Connecticut 06488

(203) 262-0620  
Fax: (203) 264-3719

#### FIRE INVESTIGATION REPORT

Date of fire:	January 17, 2011	Time of Fire:	0024 hrs
Place of fire:	75 Vista View Drive	Type of fire:	Structure
Reporting:	Cell Phone to 911	By:	Joe Piscacureta, 203-546-0020 124 Head O' Meadow Rd, Newtown

**Assignment:** The assignment to conduct an origin and cause investigation was received on January 17, 2011 at 0024 hrs. Deputy Fire Marshal Timothy Baldwin arrived on scene at approximately 0030 hrs and I arrived on scene at approximately 0050 hours. Photographs were taken by me and DFM Baldwin prior to and during suppression. Scene investigation was delayed until approximately 0545 hrs. while waiting for Fire Department suppression and overhaul efforts to be completed.

**Fire Department Response:** The fire call was dispatched at approximately 0025 hrs. Lt's Gillotti and Decremer arrived on scene at approx. 0033 hrs. The first arriving apparatus was Engine 4 at approx. 0040 hrs., and Ladder 1 at 0045 hrs.

Upon arrival flames were already seen from the entire roof area of the structure with overhang collapse to ground level.

I observed that the first application of water to the fire, from Ladder 1 was at 0100 hrs.

Assistance was provided to the Southbury FD with manpower and equipment by the Oxford, Middlebury, Woodbury, Roxbury and Sandy Hook Fire Departments.

**Scene Information:** 75 Vista View Drive is a single family, 2 story wood frame residential dwelling located in a rural residential area served by well water and septic systems. The owner of the property is Pilots Mall LLC, PO Box 4047, Stamford CT 06905. Building department records show the home was built in 2005 and that the home is modular in construction. Assessor information shows the home to have 4,434 square feet of livable space. At the time of the fire, the home was vacant and unoccupied.

The home is constructed on a concrete foundation and is a modular, wood framed 2 story dwelling. The siding of the home is wood slat with a portion sided by cultured stone veneer. The garage and bonus room above were built on site. The roof is made up of composite shingle.

The front of the home faces east.

**Scene Investigation:** The fire scene investigation was commenced on January 17, 2011 at approximately 0545 hrs. I received a written consent to search form from Jonathan Turner, Property Manager for Pilots Mall LLC. (enclosed)

On scene assisting with the investigation were Deputy Fire Marshal's T. Baldwin and R. Tolles and Detectives K. Christenson and R. Gregory of the Office of the State Fire Marshal and Presley, Canine Accelerant Detection.

Connecticut Light and Power was contacted at 0606 hrs. to respond to the scene to ensure there was no power to the structure prior to investigators entering the structure. A representative arrived on scene at approx. 0645 hrs. We were assured no power was being directed toward #75 Vista View Drive through the underground supply line however we were advised by the lineman that there was a problem with the transformer and that he could not reset the transformer.

Connecticut Light and Power Representatives, including supervisor Joe Mancini of CL&P. 250 Freight Street, Waterbury CT, 203-592-6637 or 203-597-4418 was on scene. Due to a problem with the transformer feeding 75 Vista View Drive and another home, the transformer was replaced. I advised Mr. Mancini of the need for him to preserve the removed transformer for possible review and testing by potential interested parties. He assured me the unit would be preserved at the Waterbury CL&P site.

Prior to removal of the transformer it was documented with photographs by myself and Detectives Christenson and Gregory, including serial number information.

Scene photographs had been taken pre and during suppression efforts and are part of the photo CD made for this case file. Video and Photograph recordings were also conducted by CSP-OSFM.

Inspection of the scene was conducted. It was noted that total collapse occurred at the garage and the room above. Total collapse of the building's roof structure also occurred across the length of the building. The fire breached the exterior walls at the front of the home, in a room called the study. The fire also breached the exterior walls on the south side of the home. The lowest fire patterns were located in the front of the home to the north east of the study.

After visually following damage and burn patterns from least to most damage I found an area at the front of the structure, located between the front door and garage area which showed an area of complete burn. This area is considered to be the area of origin. (attached sketch).

*NOTE: The south side of the structure sustained exterior to interior fire damage as a result of roof and overhang fire collapse to the ground. I observed this damage which was enhanced by the drop fire heating up a 100 lb propane tank located on the south side wall at ground level. The tank heated up and the fire was fed by propane when the relief valve released propane into the air. Severe damage was sustained by the wood siding on this side of the home.*

In looking at the area, which would be the outer wall of the "study" of the home, I noted that at the top of the concrete foundation, the wood base for the structure had burned through to concrete in this area. There were no interior wall studs that survived the fire in this wall above the sill burn through. The thick overhead beams separating the first and second floor had also burned through and no longer existed in this area. I then photographed and documented this damage.

I additionally observed that the fire had burned through the flooring on the first and second floors in this area, indicating the area of most damage/greatest burn. Fire Chief Rick Lyle and Officer Kevin Burns both advised me that upon their initial arrival, flames were most concentrated to this area and had spread to the roof structure and room above the adjacent garage, before spreading to the attic/roof of the main portion of the structure.

All investigative signs point to this area at the study as the area of origin.

Further inspection of the home, namely the interior basement showed the electrical breaker panels to be in very good condition. A check of the breakers showed no breakers in the tripped position. Following the electrical line from the breaker panels to the inlet into the home and basement showed the electrical line was severed just below the area where the aforementioned damage was observed. It was noted that the wood flooring above this line was missing due to fire damage. After photographing the electrical panels and wiring I again went to the exterior area of the home outside the study. Detective Christenson had found the electrical meter box in the debris directly below the area of most damage. The meter itself no longer existed due to fire damage. The electrical wiring entering and exiting the meter box was severed. It should be noted this home was fed by underground electrical service from the ground based transformer.

The damage to the meter box and areas where electrical wiring entered the box and home, were consisted with the area of most damage. Having no tripped breakers within the breaker panels indicates the event that happened electrically occurred between the transformer and the meter box and did not involve interior wiring of the home itself.

The other homes in this development were inspected to observe similarities in the construction and placement/location of the electrical meters. Photos were taken of exemplar meters.

Since this home was vacant and for sale, there were no furnishings or contents within. Fire load was confined to combustibles within the construction.

Windows on the home were damaged as a result of the fire or fire department ventilation operations.

Doors on the home were damaged as a result of fire or fire department entry and suppression operations.

Security of the home at the time of the fire is not an issue.

Damage from fire totally destroyed the roof and second floor ceilings and walls of the home. The first floor of the home sustained water and smoke damage, as well as suppression and overhaul damage. The Garage and bonus room above the garage were completely destroyed. Exterior damage was noted on the south side of the home due to the ventilation of the propane tank located at ground level on that side of the home.

**Utilities:** Electrical service was connected to the building at the time of the fire. Heating was supplied with #2 fuel oil, (the tank and furnace were not impacted or involved in the fire). A 100 lb. propane tank on the south side of the home used for supplying gas fired logs was impacted by drop fire and vented its product, creating severe damage to the south side of the home.

The home was alarmed by Armed and Ready Alarm Company of Oxford CT. The fire alarm system was disabled in October of 2008 due to many false alarms within the vacant dwellings of Vista View Drive. At the time of the fire, the fire alarm system was not operable. However, the alarm system did report to Armed and Ready that power to the building failed at 2235 hrs. on 1/16/2011. This would indicate an electrical event 1 hour and 49 minutes before the fire was reported. Armed and Ready sent an alpha page to property manager Jonathan Turner at 2247 hrs. on 1/16/2011 and Mr. Turner advised Armed and Ready to put a hold on the alarm for 12 hours.

**Conclusion:** On or about 2235 hours on January 16, 2011 electrical power to the residence located at 75 Vista View Drive was interrupted based on information obtained from Armed and Ready Alarm Co. At approximately 0024 hours on January 17, 2011 passersby reported seeing fire coming from #75 Vista View Drive.

First arriving police and fire units noticed that fire was concentrated at the front/garage and roof areas of the home. This at approximately 0030 hours on January 17, 2011.

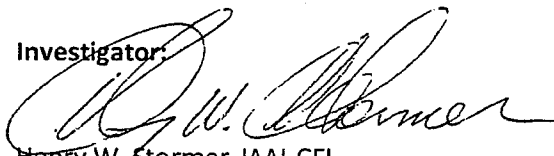
Investigation shows the area of origin, based on observation, fire damage and burn patterns to be on the north east side (front) of the home on the exterior north east side of the study, at the area of the electrical meter and service entry to the home. Fire damage patterns in this area indicate an exterior to interior burn, from the meter box and service line into the sill and floor area of the study and basement directly below.

Fire, burned upward through the walls of the study, into the second floor bedroom above and into the garage and bonus room area above the garage. Fire continued burning into the attic of the home and spread throughout the attic causing collapse of the roof and second floor ceilings. Fire caused collapse of the garage side of the structure also.

When CL&P arrived on scene at approximately 0700 hours on January 17, 2011, the lineman indicated he could not reset the power in the transformer due to a problem. CL&P officials eventually arrived on scene and by 1000 hours on January 17, 2011 replaced the transformer with a new one.

**Origin and Cause:** The origin of this fire is the electrical meter box/service line entry on the north east exterior of the home. The cause of the fire is an unknown electrical problem or malfunction and is deemed accidental.

Investigator:



Henry W. Stormer, IAAI-CFI

Fire Marshal

Town of Southbury CT

**Exhibit I**



Case: Ace American Insurance Company v.  
Eaton Electrical, Inc.

Transcript of Cristino, Joe

**Date:** December 20, 2012

*This transcript is printed on 100% recycled paper*



**GOREPERRY**  
REPORTING & VIDEO

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Internet: [www.goreperry.com](http://www.goreperry.com)

UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

-----X  
ACE AMERICAN INSURANCE COMPANY,

Plaintiff,

vs.

Case No. 3:11-cv-01741-CSH  
Date: December 20, 2012

EATON ELECTRICAL, INC.,

Defendant.

-----X

DEPOSITION OF JOSEPH CRISTINO

The deposition of Joseph Cristino was taken on December 20, 2012, beginning at 9:20 a.m., at 150 Trumbull Street, Hartford, Connecticut, before Susan Wandzilak, Registered Professional Reporter and Notary Public in the State of Connecticut.

Susan Wandzilak License No. 377

1 A P P E A R A N C E S

2 PETER G. ROSSI, ESQUIRE

Cozen O'Connor

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6 Attorney for Plaintiff

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8 600 Washington Avenue - 15th Floor

St. Louis, Missouri 63101

9 314-231-3332 Phone

314-241-7604 Fax

10 jbarton@sandbergphoenix.com

11 Attorney for Defendant

12

13

14

15

16

17

18

19

20

21

22

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25

1 Q. Can you tell me how much snow this meter  
2 panel was exposed to?

3 A. No, sir, I can't.

4 Q. Can you tell me how much snow made its way  
5 into the internal components of the meter panel?

6 A. No, I cannot.

7 Q. Can you tell me how much hail this meter  
8 panel was exposed to?

9 A. No, sir.

10 Q. Can you tell me whether any of this hail  
11 caused any damage or made its way into the internal  
12 working of the meter panel?

13 A. No, sir.

14 Q. Are there any other natural sources of  
15 moisture that we haven't covered that you believe are  
16 highly probable to have caused or contributed to cause  
17 this fire?

18 A. None that come to mind, sir.

19 Q. Okay. Do you have an opinion as to why this  
20 meter panel waited five years before it failed despite  
21 the fact that it was in your opinion subject to hail,  
22 snow, and rain?

23 A. Well, based on the location of the failure in  
24 meter, I think it was a matter of time. Time was  
25 necessary for this to, this failure to occur.

1 Q. How much time was it required for this  
2 failure to occur?

3 A. In my opinion, the time from when it was  
4 initially installed until January 16, 2011.

5 Q. How did time contribute to this failure?

6 A. It allowed for the buildup of moisture within  
7 that meter enclosure to reach the point where the  
8 fault occurred within the circuit breaker.

9 Q. How much moisture is required to build up  
10 within the circuit breaker to require a fault?

11 A. I don't know.

12 Q. Is it your testimony that once moisture  
13 enters the circuit breaker it does not leave it?

14 A. Other than through a fault event, yes, sir.

15 Q. Okay. So evaporation, things like that  
16 aren't going to happen. Once the moisture is going to  
17 get in there, it's going to stay in there for time and  
18 memorial?

19 A. No, sir. If the breaker enclosure reaches a  
20 high enough temperature, yes, evaporation could take  
21 place. The fact that this was on the northerly side  
22 of the structure, it may have seen some early morning  
23 easterly sun, so it was possible that it did get warm  
24 enough to evaporate.

25 Q. So it's your opinion that this unknown amount

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1 the fact that the breaker was in service, there were  
2 no indications that there was a mechanical problem  
3 with the breaker prior to putting it in service,  
4 -- and also the lack of any other failure  
5 mechanism or the presence of any other failure  
6 mechanism in the area of the circuit breaker.

7 Q. Do you believe moisture causes electrical  
8 fault activity?

9 A. Yes, it can.

10 Q. Okay. Are there any other things that can  
11 cause electrical fault activity in a circuit breaker?

12 A. Yes.

13 Q. Such as?

14 A. Another type of compromise of its insulation  
15 system such as a fracture or insulation degradation  
16 due to either malformation or some problem in the  
17 manufacturing process.

18 Q. Anything else that will cause electrical  
19 fault activity in a circuit breaker?

20 A. You know, lightning.

21 Q. Why would lightning cause electrical fault  
22 activity?

23 A. Well, lightning could actually exceed the  
24 insulation value of the electrical device and cause it  
25 to flash over and either degrade or become conductive



1 A. Yes, sir.

2 Q. And then you put in the freezer and froze  
3 it?

4 A. That's correct.

5 Q. And when it was frozen, you brought it back  
6 out and Mr. Almeida did what to it?

7 A. He manipulated the toggle from on to off.

8 Q. And did that work?

9 A. No, sir.

10 Q. Do you know why not?

11 A. We, we didn't take the breaker apart at that  
12 point. And we didn't have a way of x-raying it. So  
13 no.

14 Q. What does the fact that a breaker that is  
15 submerged in water and then frozen and having its  
16 toggle switch not work tell you about this case, if  
17 anything?

18 A. Well, what it does is it gives us insight as  
19 to the reaction of the circuit breaker to cold weather  
20 operation if it's exposed to moisture.

21 Q. When you say exposed to moisture, submerged  
22 for five minutes?

23 A. Well, submerged --

24 Q. And frozen?

25 A. Submerged for five minutes and frozen, yes,

## **Exhibit J**



6. When I was advised that an Eaton (Cutler Hammer) product may have been involved in the fire I contacted Eaton representatives Craig Melnick and Jennifer Dolan (who I worked with in another matter) via voice mail and email on February 1, 2011 and advised them that their product was in the vicinity of the fire's origin and that if they wanted to visit the loss site or examine the evidence they should contact me.

7. On February 1, 2011 Ms. Dolan (cc'd to Mr. Melnick) sent me an email acknowledging receipt of my message and requesting additional information on the loss.

8. On February 2, 21011 I again communicated with Eaton (Dolan and Melnick) via email. I provided them with Photos of their product taken at the fire scene, a copy of the fire marshal's report and the details of the claim. I also provided the following information;

“We represent ACE the property insurer for Omega the owner of the property. This property and two others were built in around 2004 and have been vacant since. The fire occurred on 1/17 at about 12:30am. On January 31 a joint inspection of the loss site and evidence collection took place. This inspection was initially scheduled last week but had to be cancelled due to weather. I placed all potentially interested parties on notice and invited them to participate in the inspection and evidence gathering including;

Connecticut Light and Power the local electric utility, Kelley Electric the company that installed the original electric service and completed the original electrical connection at the property, Eastbrook Construction, the company that acted as the general contractor for the original construction project, Westchester Modular Homes, the company that manufactured the modular construction units and Milbank the company that we thought manufactured the meter pan. All of the interested parties sent representatives and/or investigators or lawyers. Attached are two photos of the meter pan and the fire marshals report. I am glad to make the property and evidence available to you next week. Let me

know what day is good. There is some urgency because the building is in very bad shape and there is some indication that post fire and post our initial inspection unknown parties were in the building "salvaging" copper. We want to demo the building asap. Please let me know what day is good for you and ill check with my expert."

I provided relevant information regarding the loss and an opportunity for Eaton to visit and examine the loss site with the admonition that it would be soon razed.

9. I again communicated with Eaton on February 3, 2011 and provided additional photos of their product and additional in depth details regarding the loss including;

"I am sorry for your confusion. I think if you review my messages I have been consistently telling you that the meter pan was involved not the meter and that the meter pan and its breaker are Cutler Hammer products. In fact the unit may be a Cutler Hammer CMBXB200BTS (I believe the product is referred to in your company nomenclature as a meter breaker). The photos that I sent you were of a meter pan not a distribution panel. Until now I have not mentioned the electrical panel (basement distribution panel) or related equipment.

There was an electric meter outside of the house. It was enclosed in a meter pan that had a breaker in it. The electric service went into the house to the distribution panel. The fire started outside the house and the meter pan (referred to as a meter box by the fire marshal) was in the area of origin. The meter pan (box) and the breaker in the meter pan (box) are believed to be cutler hammer products. The meter is melted beyond recognition and we do not know who manufactured it. The house's distribution panel (inside the house in the basement) was in fine condition and had nothing to do with the fire. We do not know who manufactured the breaker panel but it was still there when we left the site on Monday.

The meter pan has been removed. The breaker, being a part of the pan, has also been removed. We believe that the meter is melted to it so it too has been removed. Electric cabling that was found in the area of origin and the remaining cables inside the pan/box have also been secured. These parts are all severely damaged and as you can see in the pictures I sent you there is at least one maybe two holes in the meter pan/box that appear to have been caused by electrical activity. The inside on the pan/box is also severely damaged. The cables are severed and indicate extensive electrical damage.

This property is located in a relatively remote location. Our site investigation is concluded. We plan on disassembling the meter pan ( thus far we have opened it but not taken it apart) and the CL&P transformer. The house will be torn down in the very near future. We will make the property available to you any day next week but thereafter will begin the process of dismantling the house.”

Eaton was advised regarding the identity of their product, the nature of the loss, the future plans for testing and inspection and specific plans to raze the property.

10. On February 4, 2011 I notified all interested parties, including Eaton via Ms. Dolan, that we planned further inspection and testing of the meter pan that was removed from the house and the CL&P transformer. I also included two protocols for the testing and advised Eaton (and the others) that if they had “any additions, deletions or objections to either” that they should contact me.

11. On February 8, 2011 I contacted Eaton via Ms. Dolan (and the other interested parties) and advised her that that the testing and inspection outlined in the protocol was scheduled for March 14, 2011. I again contacted Eaton on March 8, 2011 to provide the address of the test facility (QualiTech Labs) and the starting time and requested their advice regarding their participation.



12. Having not heard from Eaton by March 11, 2100 regarding their participation in the planned test I sent Ms. Dolan a reminder email and she advised me on March 12, 2011 that their engineer Rubin Morales would attend.

13. On March 24, 2011 I advised Eaton (and other interested parties) that the further inspection and testing of the CL&P transformer was scheduled for April 27, 2011 at a CL&P location. I was also advised that Eaton was now being represented by a liability adjuster from Sedgwick claims named Jennifer Rundle. I contacted Ms. Rundle and her co-worked Kevin Annarella on April 21, 2011 to remind them of the scheduled test and inspection of the CL&P equipment on April 27.

14. On June 13, 2011 I contacted Eaton via email via Ms. Dolan and Eaton's insurance representatives Ms. Rundle and Mr. Arranella at Sedgwick and advised them that further test and inspection of the evidence would take place. I again attached a protocol for the test and inspection of the evidence and asked for comments;

“Our consultant Joe Cristino would like to complete the testing. Attached is a protocol. Please advise with comments, additions or deletions. Once we have consensus on the protocol we will schedule. There is also a quote for testing the transformer oil attached. Does anyone have an objection? We will share the results.”

The further testing was initially scheduled for July 26, 2011 at Quail-Tech Labs. The test was re-scheduled until August 9, 2011 a date that was at first agreeable with Eaton's representatives but then was not so the tests had to be again re-scheduled this time to accommodate Eaton this time on September 7, 2011.

15. Once I learned that Eaton product was potentially involved in this matter I advised Eaton of meetings, inspections and tests that were planned and did my best to accommodate them so that they could participate. I provided them with test and inspection protocols well in advance of

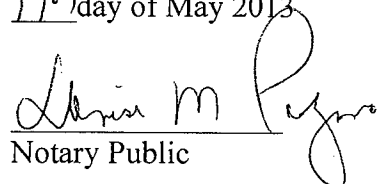
planned tests and inspections so that they would have time to comment and/or object or make suggested changes or recommended changes to the protocols as appropriate which they never did.

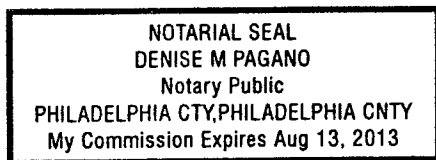
Dated: May 17, 2013

COZEN O'CONNOR as attorney's for ACE  
American Insurance Co.

By: /s/Peter G. Rossi  
Peter G. Rossi  
The Atrium, 1900 Market Street  
Philadelphia, PA 19103  
Tel.: 215-665-2783  
Fax: 215-701-2483  
[prossi@cozen.com](mailto:prossi@cozen.com)

Sworn before me this  
17<sup>th</sup> day of May 2013

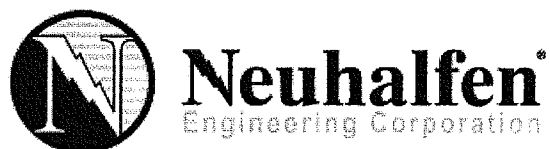
  
Notary Public



# **Exhibit K**

**ACE AMERICAN v. EATON**

**NE10278**



**To:**

**Jonathon T. Barton, Esq.  
Sandberg, Phoenix & von Gontard, P.C.  
600 Washington Avenue  
15<sup>th</sup> Floor  
St. Louis, Missouri 63101**

**February 14, 2013**

## ACE AMERICAN v. EATON

### I. INTRODUCTION

Neuhalfen Engineering Corporation, Inc. was retained on August 31, 2011, by Jennifer Dolan of Eaton Corporation with its offices located in Cleveland, Ohio. Ms. Dolan has requested Neuhalfen Engineering Corporation, Inc. to conduct an investigation and evaluation regarding a fire incident, which occurred on January 16, 2011. The fire incident occurred at a residential structure located in Southbury, Connecticut. Neuhalfen Engineering Corporation, Inc. was subsequently contacted on August 10, 2012, by Jonathon T. Barton, Esq. with the law firm of Sandberg, Phoenix & von Gontard, P.C., having its office located in St. Louis, Missouri. Mr. Barton further requested Neuhalfen Engineering Corporation, Inc. to conduct an investigation and evaluation regarding the fire incident. It has been alleged that the fire incident was caused by moisture intrusion into the residential structure's electrical service meter/breaker panel, and the subsequent moisture intrusion into the main circuit breaker positioned within the subject meter/breaker panel. The subject meter/breaker panel and the subject circuit breaker were products designed and manufactured by Eaton Corporation.

The investigation and evaluation conducted by Neuhalfen Engineering Corporation, Inc. has included a review and analysis of the existing documentation and information relating to the fire incident. An examination of the artifacts that were recovered from the scene of the fire incident was performed. The recovered artifacts included the subject meter/breaker panel; the subject circuit breaker; the subject utility meter; the subject utility cable; branch circuit conductors and duplex receptacles; the electrical distribution panel, subpanel, and alarm monitoring panel; and the subject distribution cable. An analysis of the scene photographs that were taken by other entities has also been performed. Further, an examination of an exemplar meter/breaker panel and an exemplar circuit breaker was performed. This report shall serve as a discussion of my findings and analyses to date.

### II. QUALIFICATIONS

Dr. Andrew J. Neuhalfen's qualifications are summarized in his Curriculum Vitae, attached as Appendix A. Dr. Neuhalfen received a Ph.D. degree in Materials Science and Engineering from Northwestern University in Evanston, Illinois, in 1992; and a B.S. degree in Electrical Engineering from the University of Illinois at Urbana-Champaign in 1983. Dr. Neuhalfen is a member of the Institute of Electrical and Electronics Engineers, the American Society of Materials, the International Microelectronics and Packaging Society, the International Association of Arson Investigators, the Illinois Society of Professional Engineers, the National Society of Professional Engineers, and the National Fire Protection Association. He has been published in numerous engineering-oriented publications, and he holds a number of patents; all of which are set forth in the Curriculum Vitae. Dr. Neuhalfen is a licensed Professional Engineer through the State of Illinois.

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Currently, Dr. Neuhalfen is employed by Neuhalfen Engineering Corporation, Inc. as President and Chief Technical Officer. He has been employed by Neuhalfen Engineering Corporation, Inc. since July 2008. As President and Chief Technical Officer, he is responsible for performing and supervising electrical related accident investigations, manufacturing process control and optimization, evaluation and assessment of intellectual property issues, and failure analysis of electrical systems and electronic components. During the time period from 1998 to 2008, Dr. Neuhalfen was employed by Packer Engineering, Inc. as Senior Vice President. As Senior Vice President of Packer Engineering, Inc., he was responsible for directing the activities of the Electrical Engineering Department; as well as performing and supervising electrical related accident investigations, applied research, manufacturing process control and optimization, evaluation and assessment of intellectual property issues, and failure analysis of electrical systems and electronic components. During the time period from 1992 to 1998, Dr. Neuhalfen was employed by Littelfuse, Inc. as the Engineering Manager of the Advanced Materials Development Department; and during the time period from 1983 to 1988, he was employed by Motorola, Inc. as a Development Engineer. Neuhalfen Engineering Corporation, Inc. is compensated \$400 per hour for the services rendered by Dr. Neuhalfen.

### III. BACKGROUND INFORMATION

It is my understanding that a fire incident occurred at the residential structure owned by Omega Engineering, Inc. (the "Omega House") on January 16, 2011, at approximately 10:30 p.m. The location of the fire incident was at 75 Vista View Drive in Southbury, Connecticut. It is my further understanding that the Omega House had remained vacant and unoccupied since its construction in 2005. Further, it is my understanding that the area of Southbury, Connecticut had experienced a large amount of snow accumulation during the weeks preceding the date of the fire incident. It had been reported that ice damming and snow accumulation were observed on residential structures located on nearby properties. The documentation has indicated that the weather conditions at the time of the fire incident were a temperature of 17°F, wind speed of 4.6 mph in a NNW direction, with no precipitation recorded, and a partly cloudy sky. Reportedly, Joseph Piscacureta, a passerby from Newtown, Connecticut, informed the local authorities of the fire incident on January 17, 2011, at approximately 12:24 a.m. It has been reported that Mr. Piscacureta stated he saw "flames coming from the roof".

The Omega House was described as a two story wood-framed residential dwelling. Reportedly, the Omega House was constructed in 2005, as a modular construction residential structure, and was built on a concrete foundation. It is my understanding that the developer of the property was Pilots Mall, L.L.C. ("Pilots Mall"), located in Stamford, Connecticut. Reportedly, three other residential structures of similar construction were built within the development along Vista View Drive in Southbury, Connecticut. The other three residential structures were located at 12 Vista View Drive, 70 Vista View Drive, and 106 Vista View Drive. It is my further understanding that the manufacturer of the modular construction for the Omega House was Westchester Modular Homes, Inc. ("Westchester") located in Wingsdale, New York. Further, it is my understanding that East Brook Construction Company, Inc. ("East Brook Construction") was the general

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contractor for the residential structures in the development, including the Omega House. It is my further understanding that SL Kelley Electric Company ("SL Kelley Electric") performed the installation of the subject meter/breaker panel, and other electrical components and wiring, at the Omega House during the Fall of 2005. It is my understanding that the subject meter/breaker panel had been installed on the exterior north wall on the east side of the structure for the Omega House. It had been reported that an electrical inspection was performed on the electrical distribution system at the Omega House during 2005. There were no reported issues with the performance nor operation of the subject meter/breaker panel prior to the date of the fire incident.

The electrical utility company that provided electrical service to the Omega House, and the other three residential structures within the development, was Connecticut Light & Power, Inc. ("CL&P"). A pad mount transformer, identified as number 968, provided the electrical service to the Omega House at 75 Vista View Drive and a second residential structure, located at 70 Vista View Drive. The electrical utility cables were routed underground from the subject transformer to each of the two residential structures. The electrical utility cables comprised an insulated three conductor aluminum system. At the Omega House, the subject utility cable was routed underground to the north wall of the Study / Den Room along the east side of the residential structure. The subject utility cable extended from the ground level vertically along the concrete wall of the foundation and the exterior wood siding of the structure for the Omega House, and then entered the bottom end wall for the subject meter/breaker panel. The deposition transcript of Jay Foster (the "Foster Deposition"), the Supervisor for Distribution Lines for CL&P, indicated that the electrical service to the Omega House was commenced during October 2005. Mr. Foster further testified that the circuit breaker for the secondary side of the subject transformer had actuated on the date of the fire incident. Further, Mr. Foster testified that subsequent to the fire incident, the circuit breaker for the secondary side of the subject transformer was damaged and could not be closed. Mr. Foster indicated that the circuit breaker for the secondary side of the subject transformer for the Omega House had experienced a severe overload current condition which had damaged the circuit breaker for the subject transformer.

It is my understanding that the subject meter/breaker panel was designed and manufactured by Eaton Corporation. The subject meter/breaker panel was identified as a combination meter enclosure which included an electric utility revenue meter and a main disconnect. The subject meter/breaker panel comprised a combination of the subject enclosure, the subject circuit breaker, and the subject utility meter. The subject meter/breaker panel was for use as a residential 200 A meter panel. The identification of the subject meter/breaker panel was a Cutler-Hammer Ringless Meter Main with a catalog number of CMBX B-200 BTS. The subject meter/breaker panel was listed by Underwriters Laboratories ("UL") and was classified as a NEMA 3R Rain Proof Enclosure. Reportedly, the subject meter/breaker panel was assembled by Durham Company, which was listed as a manufacturing facility for the Underwriters Laboratories documentation. The subject circuit breaker positioned within the subject meter/breaker panel was identified as a Cutler-Hammer Type CSR molded case circuit breaker. The catalog number for the subject circuit breaker was identified as CSR2200. The specifications for the subject circuit breaker included ratings of 200 A, 120/240 Vac, and a 25 kA Interrupting Capacity.



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The Cutler-Hammer meter/breaker panel, as provided by Eaton Corporation, consisted of a metal housing, meter cover, breaker cover, deadfront cover, wiring gutter enclosure, utility meter base, and a main circuit breaker. The meter/breaker panel was primarily comprised of three sections. One of the sections consisted of a wiring gutter enclosure utilized to route the incoming electrical service utility cable through the housing of the meter/breaker panel. The wiring gutter enclosure was located on the left side within the interior of the housing for the meter/breaker panel. The wiring gutter enclosure is secured to the housing of the meter/breaker panel by two screws. The second section of the meter/breaker panel consisted of an enclosure for the utility meter. The second section of the meter/breaker panel was positioned at the upper compartment of the unit, identified as the meter compartment. The meter cover of the meter/breaker panel was utilized to cover the meter compartment of the meter/breaker panel. The meter cover was flanged on the bottom and sides of the unit, and provided a circular opening for the utility meter. The third section of the meter/breaker panel consisted of an enclosure for the main circuit breaker. The third section of the meter/breaker panel was positioned at the lower compartment of the unit, identified as the breaker compartment. The deadfront cover of the meter/breaker panel was utilized as a partition for the breaker compartment of the meter/breaker panel and had a rectangular opening for the main circuit breaker. The deadfront cover was secured to the bottom end wall flange of the housing for the meter/breaker panel with two screws. The breaker cover was utilized to shield the breaker compartment of the meter/breaker panel. The breaker cover is flanged on the sides and bottom of the unit. The top edge of the breaker cover slides under the bottom flange of the meter cover for the meter/breaker panel. The breaker cover is secured to the enclosure for the meter/breaker panel with two hinges and a cover latch.

A barrier was positioned between the meter compartment and the breaker compartment within the housing of the meter/breaker panel. This barrier provided an oval opening for the routing of two electrical cables between the meter compartment and the breaker compartment of the meter/breaker panel. The two electrical cables were utilized to connect the load side terminals of the utility meter within the meter compartment to the line side terminals of the main circuit breaker within the breaker compartment of the meter/breaker panel. A second opening in the barrier between the meter compartment and the breaker compartment was provided for the positioning of the wiring gutter enclosure for the routing of the utility cables through the enclosure of the meter/breaker panel. A third opening in the barrier between the meter compartment and the breaker compartment of the meter/breaker panel was provided for the neutral bus.

The documentation has indicated that the Omega House was monitored for security by Armed and Ready Alarm Systems, Inc. ("Armed & Ready Alarm Systems") of Oxford, Connecticut. A review of the documentation has indicated that Armed & Ready Alarm Systems had received notification that the electrical service to the Omega House had been disrupted at approximately 10:35 p.m. on January 16, 2011. Additionally, the documentation has indicated that Armed & Ready Alarm Systems had received notification that the electrical service to the residential structure located at 70 Vista View Drive had been disrupted at approximately 10:35 p.m. on January 16, 2011. The documentation has also indicated that Armed & Ready Alarm Systems

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had sent notification of the disruption of the electrical service for the two residential structures to Jonathon Turner after 10:35 p.m. on January 16, 2011. It is my understanding that Mr. Turner is the property manager for Pilots Mall. Reportedly, Mr. Turner advised Armed & Ready Alarm Systems to place a hold on the alarms regarding the disruption of electrical services to the two residential structures for 12 hours. Prior to the date of the fire incident, on October 28, 2008, Mr. Turner had authorized Armed & Ready Alarm Systems to disable the fire detection systems for the four residential structures within the development. The residential structures for which notification of the fire detection systems were disabled included the Omega House at 75 Vista View Drive, 70 Vista View Drive, 12 Vista View Drive, and 106 Vista View Drive.

The Southbury Fire Department Investigation Report was reviewed and analyzed ("Southbury Fire Investigation Report"). The Southbury Fire Investigation Report stated "The damage to the meter box and areas where electrical wiring entered the box and home, were consistent with being the area of origin." Further, the Southbury Fire Investigation Report stated "Having no tripped breakers within the breaker panels indicates the event that happened electrically occurred between the transformer and the meter box and did not involve interior wiring of the home itself." The Southbury Fire Investigation Report further stated "Investigation shows the area of origin, based on observation, fire damage and burn patterns to be on the north east side (front) of the home on the exterior north east side of the study, at the area of the electrical meter and service entry to the home." Further, the Southbury Fire Investigation Report stated "Fire damage patterns in this area indicate an exterior to interior burn, from the meter box and service line into the sill and floor area of the study and basement directly below." The Southbury Fire Investigation Report had determined that "The origin of this fire is the electrical meter box/service line entry on the north east exterior of the home." Additionally, the Southbury Fire Investigation Report determined that "The cause of the fire is an unknown electrical problem or malfunction and is deemed accidental."

The State of Connecticut Department of Public Safety Investigation Report was reviewed and analyzed ("Public Safety Investigation Report"). The Public Safety Investigation Report stated that "The area of origin was determined to have been the exterior area where the meter socket / disconnect was located, on the north side wall of the den/family room, at the front of the residence." The Public Safety Investigation Report noted that "The sill plate was consumed and other structural members in this area were heavily damaged. This area was later determined to have been the area of origin." The Public Safety Investigation Report opined "Based on lines of demarcation, fire patterns and witness observations, the area of origin was where the meter socket / disconnect was located, on the exterior of the north side of the den/family room, at the front of the structure." Further, the Public Safety Investigation Report stated "The cause of the fire is related to an electrical malfunction where the power enters the structure." While observing the structure located at 106 Vista View Drive, the Public Safety Investigation Report also noted "I observed the ice build-up on the gutters in the area where that particular meter socket / disconnect was located. Turner stated the meter for #75 Vista View would have been closer to the valley of where the roof peaks meet, that it could have possibly been ice covered." The deposition transcript of Mr. Turner (the "Turner Deposition") indicated that he had observed ice build up in the gutters where the subject meter/breaker panel was positioned. The Public

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Safety Investigation Report further stated that “The investigation team did not rule out the affect an ice build-up or encasement by ice in the area of origin could have had at the time of the event.”

The deposition transcripts of Henry W. Stormer (the “Stormer Deposition”) and Kenneth W. Christensen (the “Christensen Deposition”) were reviewed and analyzed. Mr. Stormer was the Fire Marshal for the Town of Southbury. In his deposition transcript, Mr. Stormer indicated that he has not concluded that the subject meter/breaker panel caused the fire incident. Detective Christensen was the state police detective for the State of Connecticut Department of Public Safety. Detective Christensen testified that “The cause of the fire is related to an electrical malfunction where the power enters the structure.”

The expert reports submitted by Plaintiff’s counsel have been reviewed and analyzed. The expert reports were authored by Michael Driscoll (the “Driscoll Report”) dated November 12, 2012; and Joseph Cristino (the “Cristino Report”) dated November 12, 2012. The Driscoll Report opined that “this fire originated on the exterior east (front) side of the structure.” The Driscoll Report further opined that “More specifically, the origin was identified to be on the exterior north side of the study wall where the structure jutted toward the attached garage and where the meter breaker / meter pan assembly was installed and connected to the underground electrical service feed.” Further, the Driscoll Report opined that “The ignition source for this fire was an electrical short circuit that occurred within the meter breaker / meter pan assembly located within the point of fire origin.” The Driscoll Report further stated that “The specific failure within said assembly is described and identified in Mr. Joseph Cristino’s (Electrical Engineer, Cristino Associates) report.” The Cristino Report stated that “The preliminary analysis identified the area of fire origin as being in the vicinity of the electric service meter enclosure and underground conductor conduit location on the northerly side of the structure.” The Cristino Report opined that “The short circuit originated within the circuit breaker’s internal Line side components most probably due to a defect that allowed moisture ingress.” Further, the Cristino Report opined that “Based upon laboratory analysis and visual examination, the electrical failure within the Cutler Hammer™ combination meter socket enclosure was due to a fault that originated within the circuit breaker within the enclosure.” The Cristino Report further opined that “Neither an external electrical fault nor an external fire could have produced the observed damage and, more importantly, an external event could not have kept the component remains intact.”

#### **IV. INVESTIGATION**

An examination of the artifacts that were recovered from the scene of the fire incident was performed. The examination of the subject circuit breaker was performed on September 7, 2011; at the facilities of Quali-Tech, Inc. in Meriden, Connecticut. The examination included visual inspection, metallurgical processing and analyses, microscopic inspection utilizing a stereo microscope, scanning electron microscopy (“SEM”), and energy dispersive spectroscopy (“EDS”). Radiographs of the subject circuit breaker and an exemplar circuit breaker were presented for examination. The examination of the artifacts recovered from the scene of the fire

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incident was performed on December 7, 2012; at the storage facilities of Danbury Self Storage located in Danbury, Connecticut. The recovered artifacts that were presented for examination included the subject meter/breaker panel; the subject circuit breaker; the subject utility meter; the subject utility cable; branch circuit conductors and duplex receptacles; the electrical distribution panel, sub-panel, and alarm monitoring panel; and the subject distribution cable. Photographic documentation of the artifacts that were recovered from the scene of the fire incident was conducted to document the conditions of the artifacts at the time of the examinations. An inspection of the scene of this fire incident could not be performed.

An examination was performed on an exemplar meter/breaker panel and an exemplar circuit breaker at the facilities of Neuhalfen Engineering Corporation, Inc. in Algonquin, Illinois. Photographic documentation was performed on the exemplar meter/breaker panel and the exemplar circuit breaker.

The subject meter/breaker panel was examined and is shown in Fig. 1. The subject meter/breaker panel has been identified as a Cutler-Hammer unit, with Model Number CMBX B-200 BTS. The subject meter/breaker panel measured approximately 40" in length, 14 3/8" in width, and 4 3/4" in depth. The subject meter/breaker panel exhibited thermal damage from exposure to heat generated by an external fire. The thermal damage was observed over the exterior surfaces of the subject meter/breaker panel. The examination of the subject meter/breaker panel revealed a localized area of greater thermal damage positioned and oriented at the lower left corner of the unit. Figure 2 shows the area of the lower left corner of the subject meter/breaker panel with the observed greater thermal damage than the other areas of the unit. The area of the lower left corner of the subject meter/breaker panel was the entry position for the subject utility cable from the subject transformer that provided electrical power to the Omega House.

Figures 3, 4, 5, 6, and 7 show views of the subject meter/breaker panel at the top end wall, bottom end wall, right side, left side, and rear of the housing of the unit, respectively. The bottom end wall of the subject meter/breaker panel revealed three circular openings. The circular opening on the left side of the bottom end wall for the subject meter/breaker panel measured approximately 3 1/2" in diameter, and the circular opening on the right side of the bottom end wall for the subject meter/breaker panel measured approximately 2 1/2" in diameter. The scene photographs indicated that the left side opening of the bottom end wall for the subject meter/breaker panel was utilized for the subject utility cable. The scene photographs also indicated that the right side opening of the bottom end wall for the subject meter/breaker panel was utilized for the subject distribution cable. The third opening in the bottom end wall of the subject meter/breaker panel was 7/8" in diameter. The documentation from the scene photographs indicated that the third opening was utilized for the grounding conductor for the electrical service to the Omega House. The housing for the subject meter/breaker panel also exhibited damage associated with electrical fault activity. As is evident in Fig. 7, the rear of the housing for the subject meter/breaker panel revealed evidence of electrical fault activity. The electrical fault activity that was evident at the rear of the housing for the subject meter/breaker panel, shown in Fig. 8, created an oval shaped opening in the steel rear panel that measured approximately 3" by 1 1/4".

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The meter compartment for the subject meter/breaker panel was examined and is shown in Fig. 9. Figure 10 shows the interior enclosure of the meter compartment for the subject meter/breaker panel. The interior enclosure of the meter compartment for the subject meter/breaker panel measured approximately 19" in height by 14" in width by 4<sup>3</sup>/<sub>4</sub>" in depth. The exterior surface of the subject meter cover for the subject meter/breaker panel is shown in Fig. 11. The subject meter cover for the subject meter/breaker compartment measured approximately 19<sup>1</sup>/<sub>2</sub>" by 14<sup>1</sup>/<sub>2</sub>". The subject meter cover had a circular opening for the subject utility meter that measured approximately 6<sup>1</sup>/<sub>2</sub>" in diameter. Figure 12 shows the interior surface of the subject meter cover for the subject meter/breaker panel. The structure for the meter compartment for subject meter/breaker panel exhibited thermal damage from exposure to heat generated by an external fire. An examination of the structure for the meter compartment for the subject meter/breaker panel revealed no evidence of electrical fault activity.

The subject utility meter for the subject meter/breaker panel was examined. Figure 13 shows the front of the subject utility meter for the subject meter/breaker panel. The subject utility meter revealed the remnants of an electronic printed circuit board. The meter base for the subject utility meter is shown in Fig. 14. The diameter of the subject utility meter was approximately 6<sup>1</sup>/<sub>2</sub>" and the meter base of the subject utility meter measured approximately 7" by 7". The subject utility meter for the subject meter/breaker panel exhibited thermal damage due to heat from an external fire. An examination of the subject utility meter for the subject meter/breaker panel revealed no evidence of electrical fault activity.

The breaker compartment for the subject meter/breaker panel was examined and is shown in Fig. 15. The subject breaker cover for the breaker compartment of the subject meter/breaker panel was examined. The subject breaker cover for the subject meter/breaker panel measured approximately 21" by 14<sup>1</sup>/<sub>4</sub>". The breaker compartment for the subject meter/breaker panel measured approximately 20<sup>3</sup>/<sub>4</sub>" in height by 14" in width by 4<sup>3</sup>/<sub>4</sub>" in depth. The subject meter/breaker panel was presented without the subject circuit breaker in position at the time of the examination. Figure 16 shows the interior view of the breaker compartment for the subject meter/breaker panel with the subject deadfront cover positioned over the breaker compartment. It is evident from Fig. 16 that the subject wiring gutter enclosure was not installed within the subject meter/breaker panel at the time of the fire incident. The interior enclosure of the breaker compartment for the subject meter/breaker panel with the subject deadfront cover removed from the breaker compartment is shown in Fig. 17. The examination of the breaker compartment for the subject meter/breaker panel revealed evidence of electrical fault activity. The electrical fault activity within the breaker compartment for the subject meter/breaker panel was positioned on the rear panel of the housing and the mounting base for the subject circuit breaker. Figure 18 shows the electrical fault activity that was evident within the breaker compartment of the subject meter/breaker panel. The electrical fault activity that was evident at the rear of the housing within the breaker compartment for the subject meter/breaker panel, shown in Fig. 18, created an oval shaped opening in the steel panel that measured approximately 3" by 1<sup>1</sup>/<sub>4</sub>". The electrical fault activity that was evident within the breaker compartment of the subject meter/breaker panel



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was positioned behind the subject circuit breaker and corresponded with the electrical fault activity that was evident on the rear of the housing for the subject meter/breaker panel.

The subject deadfront cover for the breaker compartment of the subject meter/breaker panel was examined. Figure 19 shows the exterior surface of the subject deadfront cover for the breaker compartment of the subject meter/breaker panel. The interior surface of the subject deadfront cover for the breaker compartment of the subject meter/breaker panel is shown in Fig. 20. An examination of the subject deadfront cover revealed evidence of electrical fault activity. The electrical fault activity was evident in the upper left corner of the subject deadfront cover for the breaker compartment of the subject meter/breaker panel. Figure 21 shows the upper left corner of the subject deadfront cover for the breaker compartment of the subject meter/breaker panel as positioned near the subject barrier. As is evident from Fig. 21, electrical fault activity was evident on the upper left corner of the subject deadfront cover for the breaker compartment of the subject meter/breaker panel. Figure 22 shows the electrical fault activity that was evident at the upper left corner of the subject deadfront cover for the breaker compartment of the subject meter/breaker panel.

The lower portion of the subject deadfront cover for the breaker compartment of the subject meter/breaker panel was examined. The lower portion of the subject deadfront cover for the breaker compartment of the subject meter/breaker panel incorporated two openings for screws that were intended to secure the subject deadfront cover for the breaker compartment to the bottom end wall of the housing for the subject meter/breaker panel. An analysis of the scene photographs of the two openings at the lower portion of the subject deadfront cover for the breaker compartment of the subject meter/breaker panel revealed evidence that there was only one screw utilized to secure the subject deadfront cover for the breaker compartment to the bottom end wall of the housing for the subject meter/breaker panel at the time of the fire incident.

The subject barrier that was positioned between the meter compartment and the breaker compartment within the housing of the subject meter/breaker panel was examined and is shown in Fig. 23. The subject barrier provided an oval opening between the meter compartment and the breaker compartment for the routing of two electrical cables that were utilized to connect the load side terminals of the subject utility meter within the meter compartment to the line side terminals of the subject circuit breaker within the breaker compartment of the subject meter/breaker panel. The oval opening of the subject barrier within the housing of the subject meter/breaker panel measured approximately 5" by 1½". A second opening in the subject barrier between the meter compartment and the breaker compartment of the meter/breaker panel was provided for the subject wiring gutter enclosure for the routing of the subject utility cable through the enclosure. The opening provided by the subject barrier for the subject wiring gutter enclosure was examined. An examination of the subject barrier within the housing of the subject meter/breaker panel revealed evidence of electrical fault activity in the area of the opening that was utilized for the routing of the subject utility cable between the meter compartment and the breaker compartment for the subject meter/breaker panel. The electrical fault activity that was evident on the subject barrier is shown in Fig. 24. The electrical fault activity measured approximately ½" by ¾". The third opening in the subject barrier between the meter compartment and the breaker

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compartment for the meter/breaker panel was provided for the neutral bus. The neutral bus for the subject meter/breaker panel was comprised of aluminum. The neutral bus for the subject meter/breaker panel exhibited thermal damage from exposure to heat generated by an external fire.

The subject utility cable was examined and is shown in Fig. 25. The subject utility cable consisted of three aluminum conductors. The subject utility cable was routed from the subject transformer to the subject meter/breaker panel. The subject utility cable entered the subject meter/breaker panel through the opening at the lower left corner of the bottom end wall of the housing for the subject meter/breaker panel. The subject utility cable was routed through the left side of the breaker compartment within the enclosure of the subject meter/breaker panel. The subject utility cable passed through the left opening provided by the subject barrier, which would have been utilized for the subject wiring gutter enclosure, and entered the meter compartment of the subject meter/breaker panel. The two phase conductors of the subject utility cable were terminated at the line side terminals of the subject utility meter. The neutral conductor of the subject utility cable was terminated at the neutral bus within the meter compartment for the subject meter/breaker panel. The examination of the conductors for the subject utility cable revealed that one of the phase conductors, identified as "1", exhibited electrical fault activity. The electrical fault activity that was present on the end of the subject conductor for the subject utility cable is shown in Fig. 26. The analysis of the scene photographs revealed that the electrical fault activity present on the subject conductor for the subject utility cable corresponded to the electrical fault activity that was present on the subject barrier for the subject meter/breaker panel and the subject deadfront cover for the breaker compartment of the subject meter/breaker panel.

The remnants of the subject circuit breaker from the subject meter/breaker panel were examined. The remnants of the subject circuit breaker from the subject meter/breaker panel were presented in several containers for examination. The condition of the remnants of the subject circuit breaker is consistent with the artifact having been subjected to a prior destructive examination. The remnants of the subject circuit breaker were positioned and oriented, and are shown in Fig. 27. The dimensions of the remnants of the subject circuit breaker measured approximately 3¼" in height, 4¼" in width, and 2½" in depth. The subject circuit breaker exhibited evidence of thermal damage and electrical fault activity. The terminals for the line side and the load side of the subject circuit breaker exhibited thermal damage due to exposure to heat from an external fire. Figure 28 shows the load side of the subject circuit breaker from the subject meter/breaker panel. Figure 29 shows the line side of the subject circuit breaker from the subject meter/breaker panel. The views of the right side, left side, and bottom side of the subject circuit breaker from the subject meter/breaker panel are shown in Figs. 30, 31, and 32, respectively. The interior of the subject circuit breaker from the subject meter/breaker panel is shown in Fig. 33. The interior components for the line side and the load side of the subject circuit breaker exhibited damage due to electrical fault activity. The damage attributed to electrical fault activity is consistent with both phases of the subject circuit breaker being involved in the electrical arcing event. Figures 34 and 35 show the interior compartment for the handle of the subject circuit breaker from the



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subject meter/breaker panel.

The lower portion of the subject mounting base for the subject circuit breaker within the subject meter/breaker panel was examined. The top side and the underside for the lower portion of the subject mounting base for the subject circuit breaker within the subject meter/breaker panel are shown in Figs. 36 and 37, respectively. The lower portion of the subject mounting base for the subject circuit breaker exhibited evidence of electrical fault activity. The configuration and orientation of the damage due to the electrical fault activity that was evident on the lower portion of the subject mounting base for the subject circuit breaker corresponded with the damage attributed to electrical fault activity that was evident on the subject circuit breaker. The materials analysis performed on the underside of the lower portion of the subject mounting base for the subject circuit breaker revealed the presence of iron (Fe), copper (Cu), and aluminum (Al). The base material for the lower portion of the subject mounting base for the subject circuit breaker was analyzed to be comprised of iron (Fe).

The two electrical cables that were utilized to connect the load side terminals of the subject utility meter within the meter compartment to the line side terminals of the subject circuit breaker within the breaker compartment of the subject meter/breaker panel were examined. The two electrical cables for the subject circuit breaker were marked with a "1" and a "2". The length and diameter of the two electrical cables for the subject circuit breaker measured approximately 6" and 0.42", respectively. The two electrical cables for the subject circuit breaker did not exhibit evidence of electrical fault activity.

The branch circuit conductors and duplex receptacles were presented for examination. Figure 38 shows the two branch circuit conductors and the duplex receptacles. The artifact comprising the branch circuit conductors and duplex receptacles was identified as "Wiring 2 receptical in study". The branch circuit conductors and the duplex receptacles exhibited thermal damage due to exposure to heat from an external fire. A portion of the insulation on the branch circuit conductors revealed marking of "\*\*\*\*\* ROMEX ® BRAND SIMPULL 29 MAY 2005 15:13". There was no evidence of electrical fault activity present on the branch circuit conductors. The duplex receptacles comprised a hot bus, a neutral bus, and a grounding strap. The two duplex receptacles are shown in Figs. 39 and 40. The branch circuit conductors and the duplex receptacles did not exhibit any evidence of electrical fault activity.

The electrical distribution panel, subpanel, alarm monitoring panel, and subject distribution cable for the Omega House were presented for examination. The electrical distribution panel, subpanel, alarm monitoring panel, and subject distribution cable are shown in Fig. 41. The electrical distribution panel, subpanel, and alarm monitoring panel were secured to a plywood sheet. The subpanel was fed from the electrical distribution panel. The alarm monitoring panel is shown in Fig. 42. There was no evidence of electrical fault activity present on the components for the electrical distribution panel, subpanel, and alarm monitoring panel.

The subject distribution cable for the electrical distribution panel from the Omega House was examined. The subject distribution cable comprised four aluminum conductors and entered the

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electrical distribution panel at the top of the unit. The end of the subject distribution cable was examined and revealed evidence of exhibited evidence of melt due to heat from an external fire, as shown in Fig. 43. The subject distribution cable was fed from the lower right opening in the bottom end wall for the housing of the subject meter/breaker panel. The examination of the subject distribution cable did not reveal any evidence of electrical fault activity.

An exemplar meter/breaker panel and exemplar circuit breaker was procured and examined. The exemplar meter/breaker panel is shown in Fig. 44. The exemplar meter/breaker panel was an Eaton Corporation product identified as a Cutler-Hammer unit. The model number of the exemplar meter/breaker panel was CMBX B-200 BTS. The exemplar meter/breaker panel was Underwriters Laboratories Listed and a Type 3R Enclosure. The Underwriters Laboratories label for the exemplar meter/breaker panel provided the following information.

UL LISTED  
Class CTL  
Panelboard  
Issue No. HV 184701

The exemplar meter/breaker panel measured approximately 40" x 14½" x 5¼". Figures 45, 46, 47, 48, and 49 show views of the exemplar meter/breaker panel at the top end wall, bottom end wall, right side, left side, and rear of the housing for the unit, respectively. Figure 50 shows the meter compartment for the exemplar meter/breaker panel. The interior enclosure of the meter compartment for the exemplar meter/breaker panel is shown in Fig. 51. The breaker compartment for the exemplar meter/breaker panel is shown in Fig. 52. Figure 53 shows the interior view of the breaker compartment for the exemplar meter/breaker panel with the exemplar deadfront cover for the breaker compartment secured in position. The exemplar deadfront cover for the breaker compartment of the exemplar meter/breaker panel was secured to the bottom end wall of the housing for the unit utilizing two screws along the lower portion of the exemplar deadfront cover. Figure 54 shows the interior of the breaker compartment for the exemplar meter/breaker panel with the exemplar deadfront cover removed.

The exemplar meter/breaker panel consisted of a metal housing, meter cover, breaker cover, a deadfront cover, wiring gutter enclosure, utility meter base, and circuit breaker. The exemplar wiring gutter enclosure was positioned on the left side of the breaker compartment within the housing for the exemplar meter/breaker panel. A metal barrier was positioned between the meter compartment and the breaker compartment within the housing of the exemplar meter/breaker panel. Figure 55 shows the exemplar barrier between the meter compartment and the breaker compartment within the housing of the exemplar meter/breaker panel.

An exemplar circuit breaker within the exemplar meter/breaker panel was examined and is shown in Fig. 56. The exemplar circuit breaker was an Eaton Corporation product identified as a Cutler-Hammer unit with catalog number CSR2200N. The amperage rating of the exemplar circuit breaker was 200 A. The exemplar circuit breaker measured approximately 4¼" x 5¼" x 3". The data plate on the exemplar circuit breaker provided the following information.

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EATON  
Cutler-Hammer  
Circuit Breaker  
CSR 25k  
200 Amp      2 Pole  
120/240 V~ 60 Hz 40°C  
Cat. CSR2200N  
Style 7803C07G83  
Interrupting Capacity  
RMS Sym. Amps  
Volts          Amps  
120/240 ~      25k  
Terminal      Wire          Torque  
Wire          Size          Lb. In.  
CU/AL        2-300        250

Figure 57 shows the interior enclosure of the breaker compartment for the exemplar meter/breaker panel with the exemplar wiring gutter enclosure removed. The absence of the exemplar wiring gutter enclosure from the interior enclosure of the breaker compartment for the exemplar meter/breaker panel exposes the edges of the exemplar barrier and the exemplar deadfront cover as shown in Fig. 58. The exemplar wiring gutter enclosure from the exemplar meter/breaker panel is shown in Fig. 59.

## V. DISCUSSION

The analysis performed in this investigation and evaluation addresses the cause of the fire incident which occurred at the Omega House on January 16, 2011. Further, the analysis performed in this investigation and evaluation addresses the issues related to the determination of the role, if any, that the subject meter/breaker panel, the subject circuit breaker, or any of their components, had relative to the cause of this fire incident.

The analysis of the documentation and the examination of the recovered artifacts revealed three occurrences of electrical fault events. The examinations of the subject meter/breaker panel, the subject circuit breaker, and the subject utility cable revealed evidence of electrical fault activity. The evidence of electrical fault activity was positioned at two locations within the subject meter/breaker panel. One of the electrical fault events showed evidence of electrical fault activity that involved the subject utility cable, the subject barrier between the meter compartment and the breaker compartment, and the corner of the subject deadfront cover for the breaker compartment of the subject meter/breaker panel. The second electrical fault event showed evidence of electrical fault activity that involved components within the subject circuit breaker, the subject mounting base for the subject circuit breaker, and the rear of the housing for the subject meter/breaker panel. The third electrical fault event showed evidence of electrical fault

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activity on the conductors for the subject utility cable that were positioned at the base of the concrete wall of the foundation for the structure of the Omega House. This electrical fault event corresponded to the observed evidence of electrical fault activity positioned on the base of the concrete wall of the foundation, and at the consumed section of the wooden sill plate for the structure of the Omega House.

The damage due to electrical fault activity that was evident on the upper left corner of the subject deadfront cover and the left edge of the subject barrier for the subject meter/breaker panel corresponded to an electrical fault event involving an energized conductor for the subject utility cable. Further, the analysis of the orientations and positions of the electrical fault activity that was evident on the left edge of the subject barrier for the subject meter/breaker panel, the upper left corner of the subject deadfront cover, and the conductor for the subject utility cable demonstrates that the subject wiring gutter enclosure was not present within the subject meter/breaker panel at the time of this electrical fault event. Additionally, the analysis of the scene photographs indicate that the subject wiring gutter enclosure was not installed within the subject meter/breaker panel at the time of the fire incident. The absence of the subject wiring gutter enclosure from the subject meter/breaker panel would comprise the actions of an improper installation of the subject meter/breaker panel for the electrical system at the Omega House.

Furthermore, the subject deadfront cover for the subject meter/breaker panel was not properly secured to the housing for the subject meter/breaker panel at the time of the electrical fault event. The analysis of the scene photographs indicated that the subject deadfront cover for the subject meter/breaker panel was initially observed dislodged from the housing for the subject meter/breaker panel after the fire incident. The analysis conducted on the exemplar meter/breaker panel demonstrated that the proper means for securing the exemplar deadfront cover to the housing of the exemplar meter/breaker panel is through the utilization of two screws at the bottom end wall of the enclosure for the subject meter/breaker panel. The analysis of the scene photographs indicated that one of the two screws that were utilized to secure the subject deadfront cover to the housing of the subject meter/breaker panel was not installed at the time of the electrical fault event. The proper securement of the subject deadfront cover to the housing of the subject meter/breaker panel was not performed prior to the fire incident.

The exemplar meter/breaker panel was analyzed for the improperly installed conditions of the absence of the exemplar wiring gutter enclosure and an unsecured exemplar deadfront cover. As shown in Fig. 58, the absence of the exemplar wiring gutter enclosure and an unsecured exemplar deadfront cover exposes the edges of the exemplar barrier and the upper left corner of the exemplar deadfront cover to the channel for the routing of the utility cable. The analysis and evaluation performed in this investigation demonstrated that an improperly installed subject meter/breaker panel cannot be eliminated as a contributing factor to the cause of the fire incident at the Omega House.

The damage due to electrical fault activity that was evident on the rear of the housing for the subject meter/breaker panel, the subject mounting base for the subject circuit breaker, and the internal components of the subject circuit breaker corresponded to an electrical fault event

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initiating within the subject circuit breaker for the subject meter/breaker panel. The internal components of the operating mechanism for the line side and the load side of the subject circuit breaker exhibited damage associated with electrical fault activity. Further, an analysis of the radiographs of the subject circuit breaker revealed the internal damage that was evident within the operating mechanism of the subject circuit breaker. Further, the position and orientation of the operating handle for the subject circuit breaker was analyzed. Figure 60 shows the position and orientation of the operating handle for the exemplar circuit breaker in the ON condition. The position and orientation of the operating handle for the exemplar circuit breaker in the OFF condition is shown in Fig. 61. As compared to Figs. 34 and 35, which show the position and orientation of the operating handle for the subject circuit breaker, it is evident that the subject circuit breaker was in the ON condition at the time of the electrical fault event.

The analysis and evaluation performed in this investigation demonstrated that the subject meter/breaker panel was not properly installed at the Omega House prior to the electrical fault events and the fire incident. The analysis of the documentation has indicated that the subject meter/breaker panel, the subject circuit breaker, and the subject utility cable had been energized several years prior to the date of the fire incident. The absence of the subject wiring gutter enclosure and the unsecured subject deadfront cover within the housing of the subject meter/breaker panel would expose the left edge of the subject barrier and the upper left corner of the subject deadfront cover to the insulation on the energized conductors for the subject utility cable. The duration of time and the presence of pressure would cause the insulation of the energized conductor for the subject utility cable to become compromised. Once the insulation for the energized conductor for the subject utility cable became compromised and the energized conductor came into contact with the grounded metal of the subject barrier and the grounded metal of the subject deadfront cover, an electrical fault event would be generated. The occurrence of an electrical fault event would generate conductive plasma that would impede upon the energized internal components within the subject circuit breaker positioned in the breaker compartment of the subject meter/breaker panel. The conductive plasma would result in the electrical fault event involving the energized internal components within the subject circuit breaker of the subject meter/breaker panel. The electrical fault event that occurred between the energized internal components within the subject circuit breaker would result in the electrical fault activity that was evident on the subject mounting base for the subject circuit breaker and the rear of the housing for the subject meter/breaker panel.

An analysis of the Driscoll Report has been conducted. The Driscoll Report stated that "The fire consumed the wood siding and framing materials from the foundation sill level upward to the roof level immediately above." The Driscoll Report further stated that "The underground service cable traveling from the street side transformer to the exterior north side of the study room was located and identified to be melted / arc damaged at ground level." Further, the Driscoll Report stated "A clean burn pattern, consistent with the high temperatures created during electrical arcing, was identified to the concrete foundation wall where the main exterior service cable extended upward to the installed meter breaker / meter pan assembly." Furthermore, the Driscoll Report stated "The wood sill plate immediately behind where this cable traveled up the exterior wall to the breaker / meter pan assembly was consumed." These statements from the Driscoll



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Report has further established that the position and orientation of the electrical fault activity that was evident on the subject utility cable corresponded with the location of the base of the burn damage and consumption of the wooden sill plate for the structure of the Omega House. The electrical fault event along the subject utility cable, more likely than not, ignited the wood siding and the wooden sill plate for the residential structure of the Omega House. The electrical fault event that occurred between the conductors within the subject utility cable ceased at ground level with the actuation of the breaker for the secondary side of the subject transformer which provided electrical service to the Omega House.

Further, the analysis performed in this investigation and evaluation has demonstrated that the location of the initiation of this fire incident was below the subject meter/breaker panel on the structure of the Omega House. The examination of the subject meter/breaker panel revealed greater thermal damage positioned at the lower left corner of the housing for the subject meter/breaker panel. Further, the wooden sill plate for the structure of the Omega House at the location of the subject utility cable, which exhibited electrical fault activity, was consumed during the fire incident. The position and orientation of the electrical fault activity evident on the conductors for the subject utility cable corresponds with the low thermal damage that was evident on the wooden sill plate for the structure of the Omega House, the thermal damage that was evident on the concrete wall of the foundation for the structure for the Omega House, and the thermal damage that was evident on the lower left corner of the subject meter/breaker panel. Additionally, the analysis of conditions of the site for the Omega House and the neighboring properties demonstrated that the subject meter/breaker panel was mounted to a meter mounting base, rather than mounted directly to the wood siding of the residential structure. The meter mounting base is a non-metallic sheet, identified as an Arlington Industries, Inc. product with model number MM23. The analysis and evaluation performed in this investigation has demonstrated that the cause of the fire incident at the Omega House on January 16, 2011, was the electrical fault event that occurred on the subject utility cable which was positioned exterior to the subject meter/breaker panel.

The absence of electrical fault activity on the electrical circuits positioned downstream of the subject meter/breaker panel demonstrate that these electrical circuits were de-energized at the time of the fire incident. While the subject circuit breaker within the subject meter/breaker panel was determined to be in the ON condition after the fire incident, the resultant physical damage to the internal components within the subject circuit breaker would cause the electrical circuits downstream of the subject meter/breaker panel to be de-energized. The documentation has demonstrated that the subject distribution cable was present and extended from the bottom end wall of the subject meter/breaker panel to the residential structure of the Omega House subsequent to the fire incident. Further, the end of the subject distribution cable that was positioned within the basement of the structure near the sill plate was severed from a thermal event. The electrical distribution panel and subpanel that were positioned on a plywood sheet in the basement of the residential structure did not reveal any evidence of a failure nor malfunction. The scene documentation also demonstrated that the majority of the branch circuit breakers within the electrical distribution panel and the subpanel were in the ON condition; except for five branch circuit breakers which were observed to be in the OFF condition. The five branch circuit

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breakers within the electrical distribution panel that were observed to be in the OFF condition were associated with the branch circuits identified as "Wine Cooler", "Wet Bar GFI", "Bar Refrigerator", "Microwave", and "Refrigerator".

The deposition transcript of Michael Driscoll (the "Driscoll Deposition") has been reviewed and analyzed. Mr. Driscoll testified that he does not have any opinions that the subject meter/breaker panel is defective in design, nor that the subject meter/breaker panel is defective in manufacture. Further, Mr. Driscoll testified that the subject circuit breaker is not defective in design, nor that the subject circuit breaker is defective in manufacture. The Driscoll Report nor the Driscoll Deposition do not offer any opinions as related to the cause of the fire incident which occurred at the Omega House on January 16, 2011.

The Cristino Report has been reviewed and analyzed. The Cristino Report stated that "The preliminary analysis identified the area of fire origin as being in the vicinity of the electric service meter enclosure and underground conductor conduit location on the northerly side of the structure." As previously discussed, the fire damage that was evident at the wooden sill plate, the thermal damage that was evident at the concrete wall of the foundation on the residential structure for the Omega House, and the thermal damage that was evident on the lower left corner of the subject meter/breaker panel demonstrated that the fire originated at the location of the subject utility cable that was positioned external to the subject meter/breaker panel.

Further, the Cristino Report opined that "The short circuit originated within the circuit breaker's internal Line side components most probably due to a defect that allowed moisture ingress." The Cristino Report provided no explanation nor description which addressed the means for moisture intrusion into the subject meter/breaker panel nor the subsequent means for moisture intrusion into the subject circuit breaker located within the subject meter/breaker panel. The Cristino Report further opined that "Based upon laboratory analysis and visual examination, the electrical failure within the Cutler Hammer™ combination meter socket enclosure was due to a fault that originated within the circuit breaker within the enclosure." However, as previously discussed in this analysis, the existence of an improperly installed subject meter/breaker panel and the subsequent electrical fault event that occurred between the subject utility cable and the exposed edges of the subject barrier and the subject deadfront cover for the subject meter/breaker panel, the resultant conductive plasma would generate an electrical fault event to occur within the housing for the subject circuit breaker. The Cristino Report further opined that "Neither an external electrical fault nor an external fire could have produced the observed damage and, more importantly, an external event could not have kept the component remains intact." The damage due to electrical fault activity that was evident on the rear of the housing for the subject meter/breaker panel, the subject mounting base for the subject circuit breaker, and the internal components of the subject circuit breaker corresponded to an electrical fault event initiating within the subject circuit breaker. The electrical fault event generated by the improper installation of the subject meter/breaker panel would create the type of damage that was evident on these internal components of the subject circuit breaker and the subject meter/breaker panel. There was no evidence that an internal component failure nor malfunction existed nor occurred within the subject circuit breaker to initiate the electrical fault event.



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The deposition transcript of Joseph Cristino (the "Cristino Deposition") has been reviewed and analyzed. Mr. Cristino testified that he does not have any opinions that the subject meter/breaker panel is defective in design, nor that the subject meter/breaker panel is defective in manufacture. Further, Mr. Cristino testified that the subject circuit breaker is not defective in design, nor that the subject circuit breaker is defective in manufacture. Mr. Cristino further testified that he has no opinions regarding the area of origin for this fire incident. However, Mr. Cristino testified that the subject meter/breaker panel was properly installed even with the absence of the subject wiring gutter enclosure and the unsecured subject deadfront cover for the subject meter/breaker panel.

The analysis performed in this investigation and evaluation has demonstrated that there existed no evidence of moisture intrusion into the subject meter/breaker panel nor any subsequent moisture intrusion into the subject circuit breaker positioned within the subject meter/breaker panel. The subject meter cover, the subject breaker cover, and the top end wall were properly installed and secured to the subject meter/breaker panel at the time of the fire incident. The subject meter/breaker panel was listed by Underwriters Laboratories. Further, the subject meter/breaker panel did meet the requirements to be classified as a NEMA Type 3R Enclosure. The Cristino Report and the Cristino Deposition provided no explanation of the source of the alleged moisture, the alleged route of the alleged moisture into the subject meter/breaker panel, the alleged route of the alleged moisture to the subject circuit breaker within the subject meter/breaker panel, the alleged route of the alleged moisture into the subject circuit breaker, nor the internal components of the subject circuit breaker that allegedly initiated the electrical fault event from the presence of the alleged moisture. The Cristino Deposition stated that "The failure mechanism [is] based on the ingress of moisture." However, there has been no evidence presented that moisture did enter the meter compartment or the breaker compartment of the subject meter/breaker panel prior to the electrical fault event. The Cristino Deposition indicated that Mr. Cristino had concluded that moisture subsequently entered the subject meter/breaker panel and entered the interior of the subject circuit breaker with the electrical fault event being the evidence. However, the Cristino Deposition provided no explanation for the means of moisture intrusion into the subject meter/breaker panel nor the subsequent means of moisture intrusion into the subject circuit breaker within the subject meter/breaker panel.

The Cristino Deposition indicated that the alleged cause of the fire incident was "probably due to a defect that allowed moisture ingress." However, the Cristino Deposition does not provide any explanation nor any description of the alleged defect regarding the subject meter/breaker panel nor the subject circuit breaker. The only description provided in the Cristino Deposition was that an unknown defect with the subject meter/breaker panel allowed for moisture ingress.

The Cristino Deposition provided the following explanation of the mechanism for the alleged cause of the fire incident at the Omega House on January 16, 2011. {P168:117 – P169:12}:

Q: "Okay. So essentially, if I have got the logic correct with respect to your reasonable degree of engineering certainty, an unknown amount of moisture from

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an unknown source made its way into the breaker panel from some unknown point, migrated into the breaker in an unknown fashion, entered the breaker through an unknown source, compromising unknown components within the breaker that caused an arc fault on the line side. Did I accurately depict what your testimony is?"

A: "Yes, sir."

The proposed failure scenario for the alleged cause of the fire incident that occurred at the Omega House offered in the Cristino Deposition does not meet the conditions of materials science properties and electrical engineering principles to develop the alleged initiating event for the fire incident at the Omega House.

The analysis and evaluation performed in this investigation has demonstrated that the cause of the fire incident at the Omega House on January 16, 2011, was the electrical fault event that occurred on the subject utility cable which was positioned exterior to the subject meter/breaker panel. The improper installation of the subject meter/breaker panel has been determined to be a contributory factor to the cause of this fire incident at the Omega House on January 16, 2011. Furthermore, the analysis and evaluation performed in this investigation demonstrated that the subject meter/breaker panel did not exhibit a defect nor malfunction that can be attributed to the cause of the fire incident at the Omega House. Additionally, the analysis and evaluation performed in this investigation demonstrated that the subject circuit breaker did not exhibit a defect nor malfunction that can be attributed to the cause of the fire incident at the Omega House. The analysis and evaluation performed in this investigation has demonstrated that a properly installed meter/breaker panel can be eliminated as a cause of the fire incident at the Omega House.

## **VI. CONCLUSION**

The analysis and evaluation of the investigation performed by Neuhalfen Engineering Corporation, Inc. indicate that a properly installed meter/breaker panel was not the cause of this fire incident which occurred at the Omega House on January 16, 2011. Further, the analysis and evaluation of the investigation performed by Neuhalfen Engineering Corporation, Inc. indicate that the cause of this fire incident which occurred at the Omega House on January 16, 2011, was the electrical fault event that occurred on the subject utility cable which was positioned external to the subject meter/breaker panel. Additionally, the analysis and evaluation of the investigation performed by Neuhalfen Engineering Corporation, Inc. has determined that the subject meter/breaker panel was improperly installed at the Omega House prior to the date of the fire incident. The improper installation of the subject meter/breaker panel at the Omega House contributed to the cause of the fire incident that occurred at the Omega House on January 16, 2011. The following set of conclusions, to within a reasonable degree of engineering certainty, has been developed based upon my review, examination, and analysis to date:

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1. The analysis and evaluation of the investigation indicate that the cause of this fire incident was the electrical fault event that occurred on the subject utility cable which was positioned external to the subject meter/breaker panel.
2. The analysis and evaluation of the investigation has determined that the subject meter/breaker panel was improperly installed at the Omega House prior to the date of the fire incident.
3. The analysis and evaluation of the investigation has determined that the improper installation of the subject meter/breaker panel was a contributing factor to the cause of the fire incident.
4. The analysis and evaluation performed in this investigation demonstrated that the subject meter/breaker panel, as designed and manufactured, did not exhibit a defect nor malfunction that can be attributed to the cause of the fire incident at the Omega House.
5. The analysis and evaluation performed in this investigation has demonstrated that a properly installed meter/breaker panel can be eliminated as a cause of the fire incident at the Omega House.
6. The analysis and evaluation performed in this investigation demonstrated that the subject circuit breaker within the subject meter/breaker panel, as designed and manufactured, did not exhibit a defect nor malfunction that can be attributed to the cause of the fire incident at the Omega House.
7. The proposed failure scenario offered in the Cristino Report and the Cristino Deposition does not meet the conditions of materials science properties and electrical engineering principles to develop the alleged initiating event for the fire incident.
8. There was no evidence of a design defect nor manufacturing defect associated with the subject meter/breaker panel.
9. There was no evidence of malfunction nor defect associated with the design and manufacture of the subject meter/breaker panel.
10. There was no evidence of a design defect nor manufacturing defect associated with the subject circuit breaker that had been incorporated into the subject meter/breaker panel.
11. There was no evidence of malfunction nor defect associated with the design and manufacture of the subject circuit breaker that had been incorporated into the subject meter/breaker panel.
12. The subject meter/breaker panel was not unsafe, unreasonably dangerous, nor defective.
13. The subject circuit breaker within the subject meter/breaker panel was not unsafe, unreasonably dangerous, nor defective.
14. There was nothing that Cutler-Hammer did, nor failed to do, that contributed to the cause of the fire incident at the Omega House on January 16, 2011.
15. There was nothing that Eaton Corporation did, nor failed to do, that contributed to the cause of the fire incident at the Omega House on January 16, 2011.

Based upon the analyses and examinations performed in this evaluation, it is my opinion, to within a reasonable degree of engineering certainty, that a properly installed meter/breaker panel did not play any role in the cause of the fire incident that occurred at the Omega House on January 16, 2011. The subject meter/breaker panel was improperly installed prior to the date of this fire incident at the Omega House. There was nothing that Eaton Corporation did, nor failed

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to do, that contributed to the cause of the fire incident at the Omega House on January 16, 2011. Additionally, there was nothing that Cutler-Hammer did, nor failed to do, that contributed to the cause of the fire incident at the Omega House on January 16, 2011.

## VII. MATERIAL REVIEWED

1. Circuit Breaker Examination Protocol
2. Quali-Tech Lab Report – Final
3. Southbury Fire Marshal Report
4. Engineering Field Service Report by Ruben E. Morales of Eaton Corporation (March 21, 2011)
5. Artifact Inspection Images - March 14, 2011 (133 Images) (1 CD)
6. Documents {P-0001 – P-0228}
  - a. ACE Payment Schedule {P0001}
  - b. Armed & Ready Alarm Systems Documentation {P0002 – P0004}
  - c. VeriClaim Documentation {P0005 – P0011}
  - d. Southbury Fire Marshal Fire Incident Documentation {P0012 – P0092}
  - e. Southbury Fire Marshal Fire Incident Report {P0093 – P0101}
  - f. Site Photographs and Documentation {P0102 – P0228}
7. Quali-Tech, Inc. Report No. 11-17683 dated March 14, 2011 for Cristino Associates, Inc.
8. Quali-Tech, Inc. Report No. 11-17839 dated September 7, 2011 for Cristino Associates, Inc.
9. Underwriters Laboratories Documentation (UL0001 – UL0409)
  - a. UL File (E52977) “Test Records” {UL0001 – UL0156}
  - b. UL File (E52977) “Laboratory Data Package” {UL0157 – UL0206}
  - c. UL File (E52977) “Laboratory Data Package” {UL0207 – UL0211}
  - d. UL File (E52977) “Laboratory Data Package” {UL0212 – UL0223}
  - e. UL File (E52977) “Manufacturer Data Package” {UL0224 – UL0236}
  - f. UL File (E8741) “Laboratory Data Package” {UL0237 – UL0248}
  - g. UL File (E52977) “Laboratory Data Package” {UL0249 – UL0296}
  - h. UL File (E52977) “Laboratory Data Package” {UL0297 – UL0313}
  - i. UL File (E52977) “Laboratory Data Package” {UL0314 – UL0319}
  - j. UL File (E52977) “Laboratory Data Package” {UL0320 – UL0323}
  - k. UL File (E52977) “Laboratory Data Package” {UL0324 – UL0332}
  - l. UL File (E52977) “Laboratory Data Package” {UL0333 – UL0336}
  - m. UL File (E52977) “Laboratory Data Package” {UL0337 – UL0351}
  - n. UL File (E52977) “Compliance Review” {UL0352 – UL0354}
  - o. UL File (E52977) “Laboratory Data Package” {UL0355 – UL0362}
  - p. UL File (E52977) “Laboratory Data Package” {UL0363 – UL0371}
  - q. UL File (E52977) “e-Communications - 2004” {UL0372}
  - r. UL File (E52977) “e-Mail Incoming – March 2, 2004” {UL0373 – UL0374}
  - s. UL File (E52977) “e-Mail Incoming – March 2, 2004” {UL0375 – UL0385}

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- t. UL File (E52977) "e-Mail Outgoing" {UL0386 – UL0409}
10. Office of the State Fire Marshal Photographs taken on January 19, 2011 (84 Images)
11. Southbury Fire Department Photographs taken on January 19, 2011 (71 Images)
12. Video of Walk Through for 75 Vista View
13. Armed and Ready Alarm Systems Documentation (67 Pages) {EATON00204 – EATON00270}
14. Photographs taken on March 14, 2011 (133 Images) (1 CD)
15. Deposition Transcript of Henry Stormer (July 25, 2012)
16. Deposition Transcript of Timothy Baldwin (July 25, 2012)
17. Deposition Transcript of Shawn Burch (July 25, 2012)
18. Deposition Transcript of Kenneth Christensen (July 25, 2012)
19. Deposition Transcript of Jeffrey Johnson (July 31, 2012)
20. Deposition Transcript of Joseph Mancini (September 11, 2012)
21. Deposition Transcript of Jay Foster (September 11, 2012)
22. Exhibits to the Deposition of Foster
23. Durham Company Documentation {DURHAM0001 – DURHAM0084}
24. Report of Michael J. Driscoll (November 12, 2012)
25. Report of Joseph A. Cristino (November 12, 2012)
26. Plaintiff's Answers to Eaton Interrogatories
27. Plaintiff's Responses to Eaton Request for Production of Documents
28. Photographs of Exemplar Meter / Breaker Panel (57 Images) (1 CD)
29. Deposition Transcript of Richard S. Ribisl (December 17, 2012)
30. Deposition Transcript of Peter Sullivan (December 17, 2012)
31. Deposition Transcript of Jonathon Turner (December 17, 2012)
32. Deposition Transcript of Michael J. Driscoll (December 19, 2012)
33. Deposition Transcript of B. Christine Riggs (December 18, 2012)
34. Deposition Transcript of Joseph P. Fello (December 18, 2012)
35. Deposition Transcript of Joseph A. Christino (December 20, 2012)
36. NFPA 921, "Guide for Fire & Explosion Investigations", 2011 Edition
37. "Kirk's Fire Investigation", edited by John D. DeHaan, Ph.D., 7<sup>th</sup> Edition.

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Neuhalfen Engineering Corporation, Inc. based the above findings upon the information obtained and observations made prior to the preparation of this report. Neuhalfen Engineering Corporation, Inc. reserves the right to amend and/or modify this report should additional information become available.

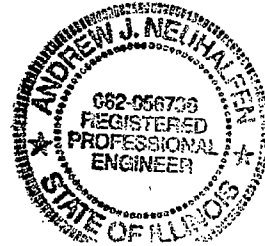
**NEUHALFEN ENGINEERING CORPORATION, INC.**

**Report prepared by:**



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Andrew J. Neuhalfen, Ph.D., P.E.  
President and Chief Technical Officer  
Neuhalfen Engineering Corporation, Inc.





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FIGURE 1. A photograph of the subject Meter/Breaker Panel. (Image No.: NEC\_1184)

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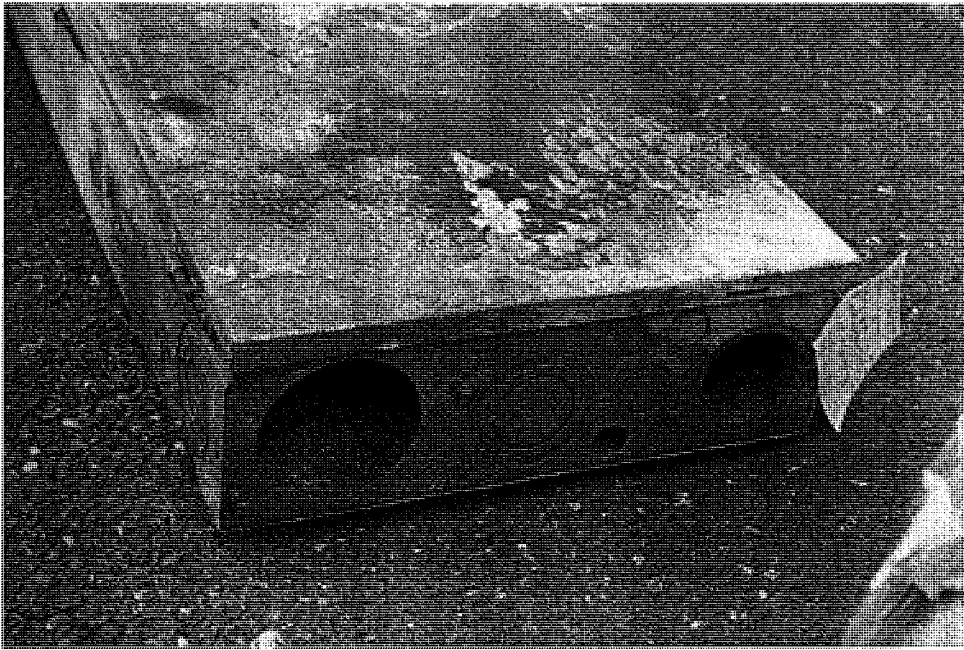


FIGURE 2. A photograph of the Lower Left Corner of the subject Meter/Breaker Panel. (Image No.: NEC\_1530)

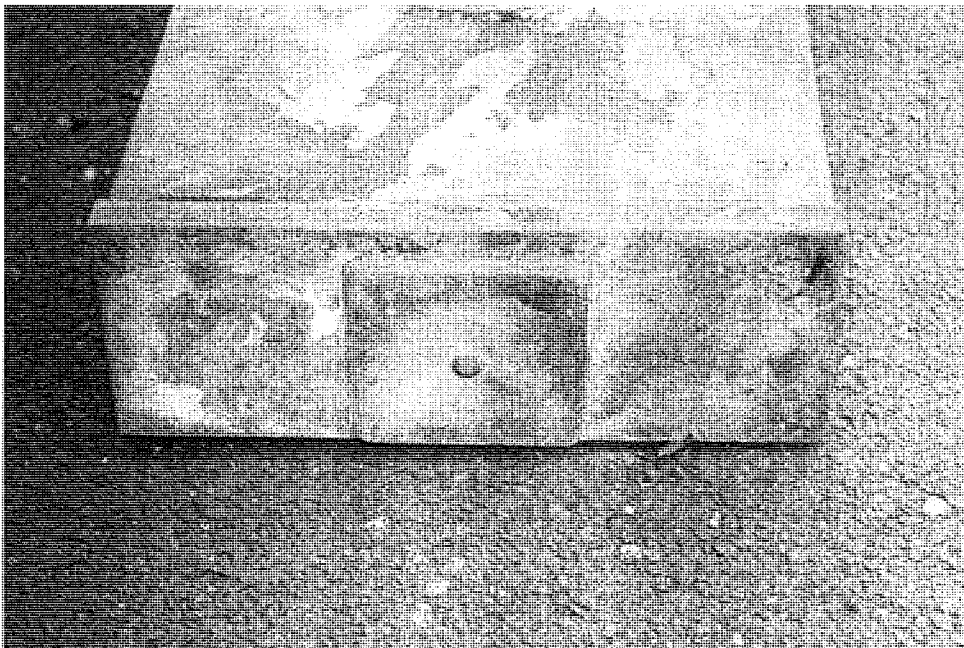


FIGURE 3. A photograph of the Top End Wall of the subject Meter/Breaker Panel. (Image No.: NEC\_1190)

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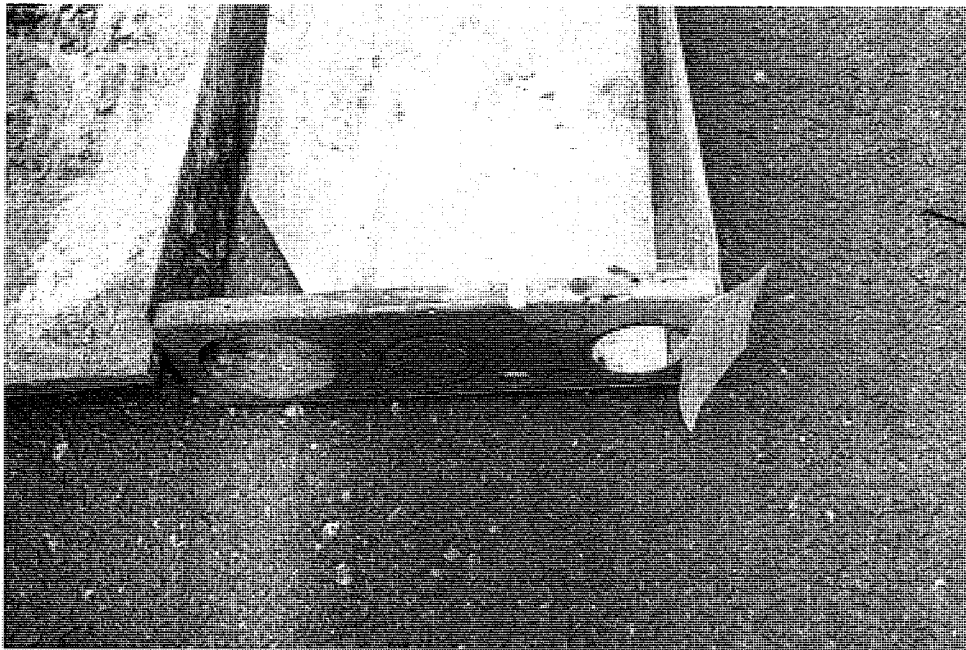


FIGURE 4. A photograph of the Bottom End Wall of the subject Meter/Breaker Panel. (Image No.: NEC\_1226)

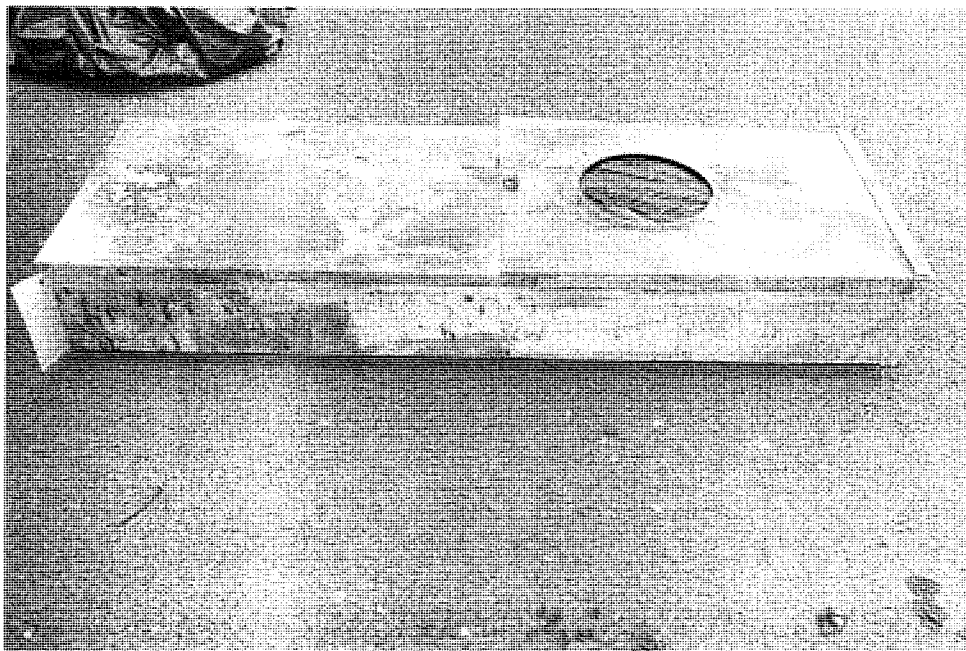


FIGURE 5. A photograph of the Right Side of the subject Meter/Breaker Panel. (Image No.: NEC\_1189)



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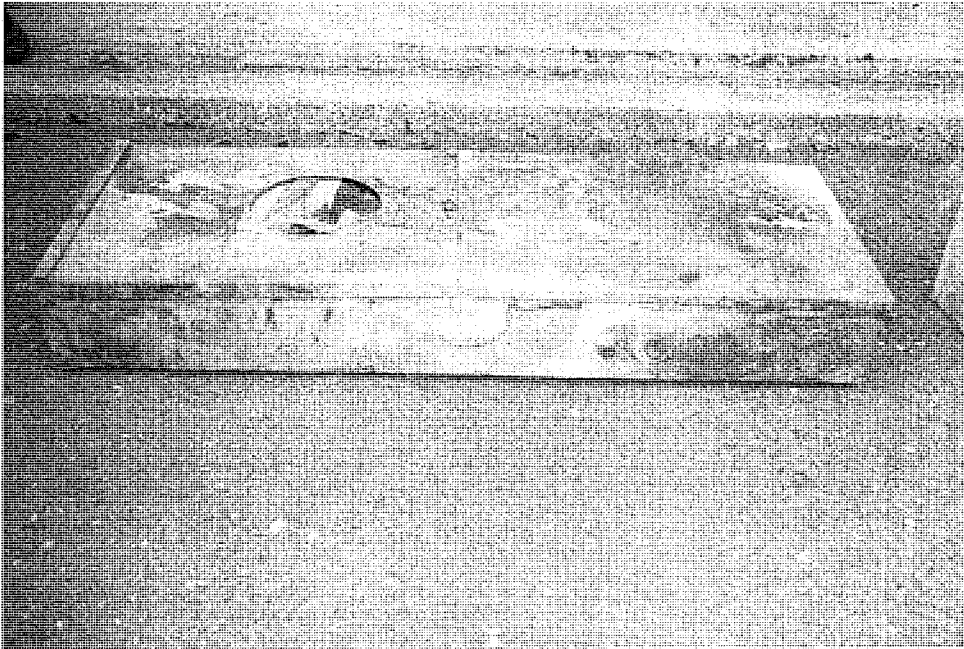


FIGURE 6. A photograph of the Left Side of the subject Meter/Breaker Panel. (Image No.: NEC\_1193)

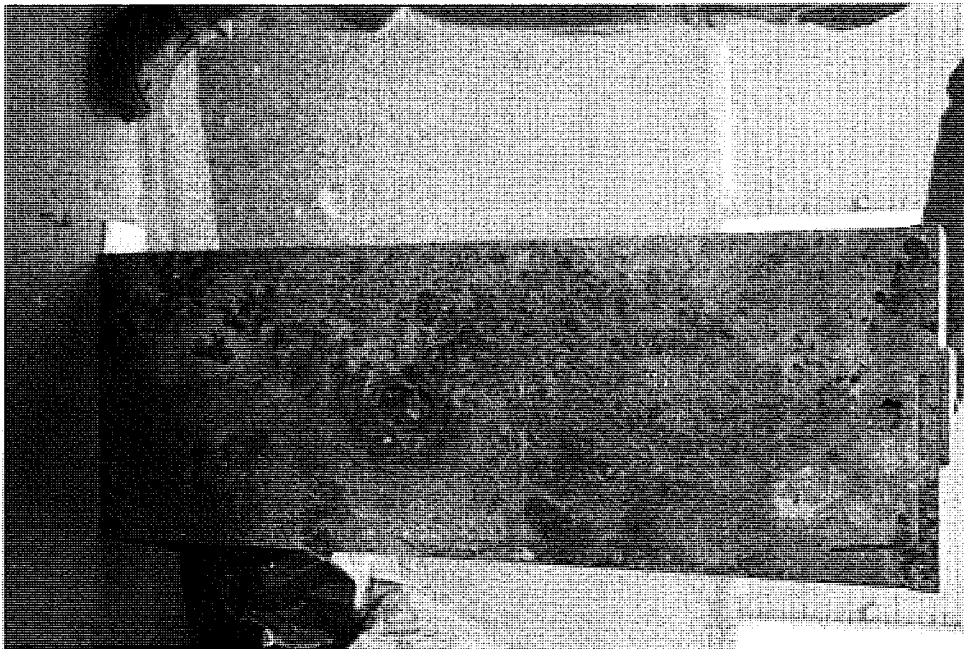


FIGURE 7. A photograph of the Rear of the subject Meter/Breaker Panel. (Image No.: NEC\_1715)

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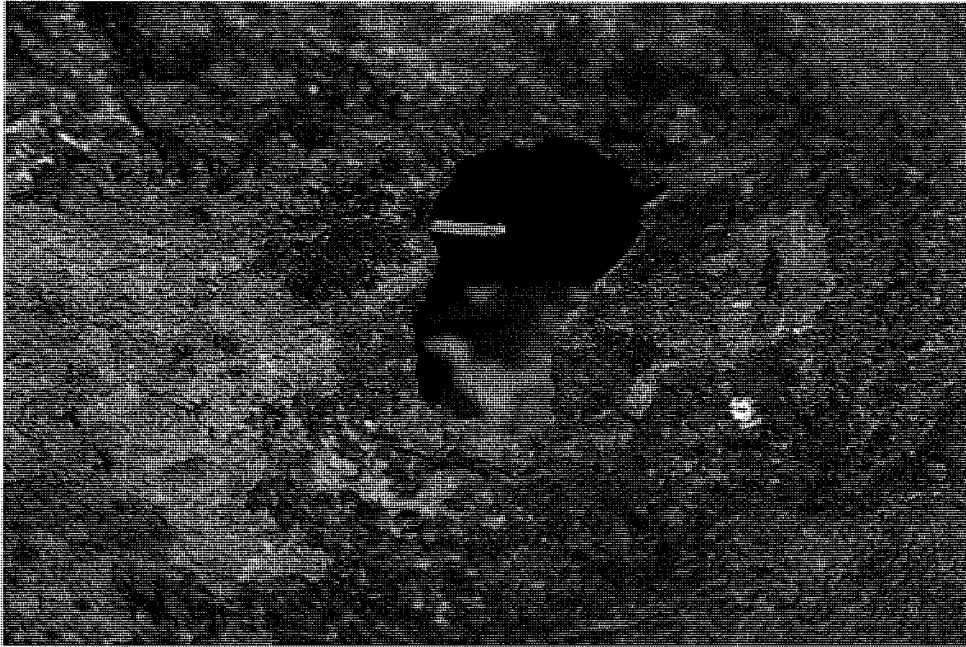


FIGURE 8. A photograph of the Oval Shaped Opening that was evident on the Rear Panel of the Housing for the subject Meter/Breaker Panel. (Image No.: NEC\_1729)

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FIGURE 9. A photograph of the Meter Compartment for the subject Meter/Breaker Panel.  
(Image No.: NEC\_1260)



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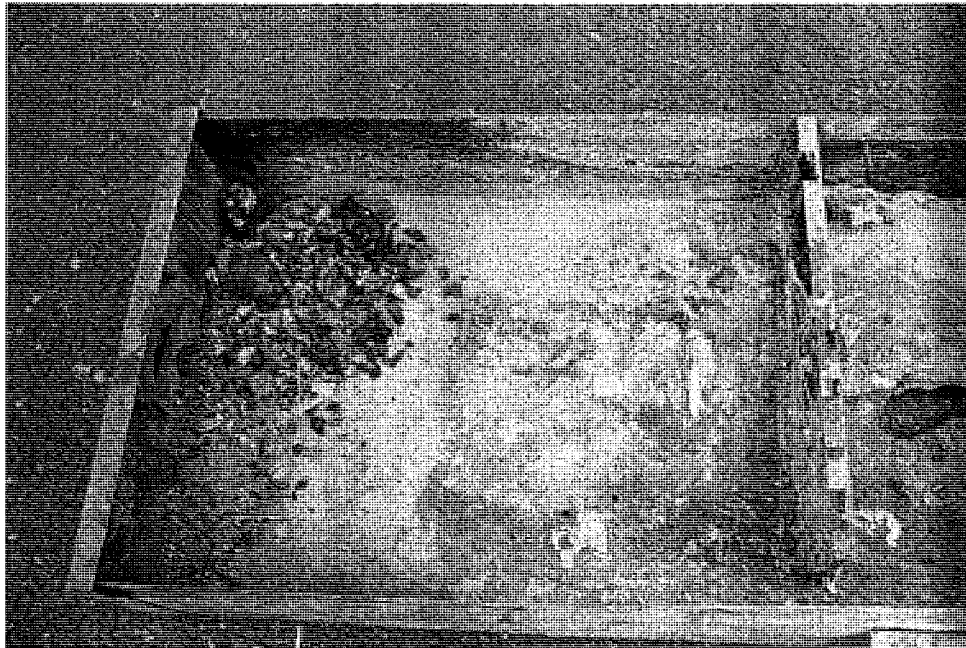


FIGURE 10. A photograph of the interior enclosure of the Meter Compartment for the subject Meter/Breaker Panel. (Image No.: NEC\_1298)

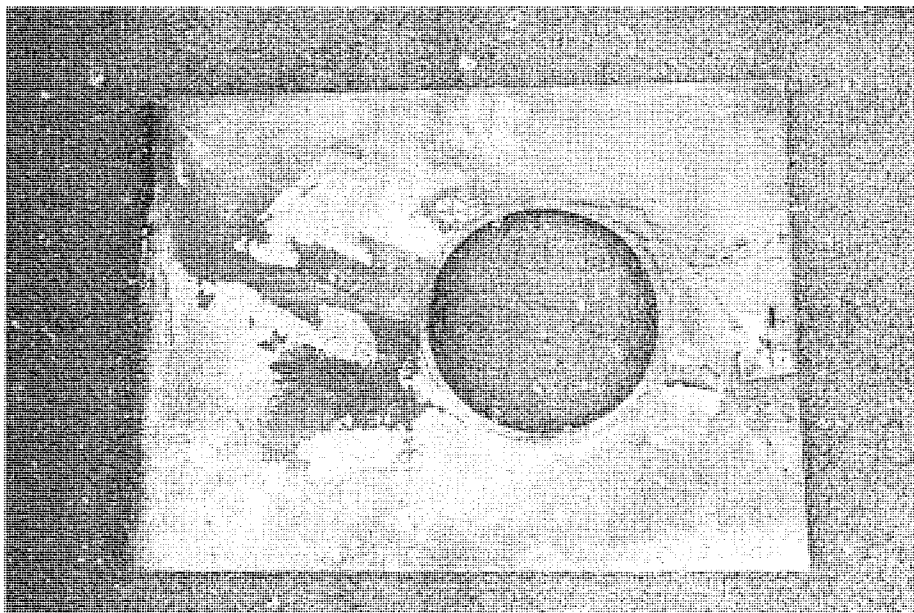


FIGURE 11. A photograph of the exterior surface of the subject Meter Cover for the subject Meter/Breaker Panel. (Image No.: NEC\_1261)

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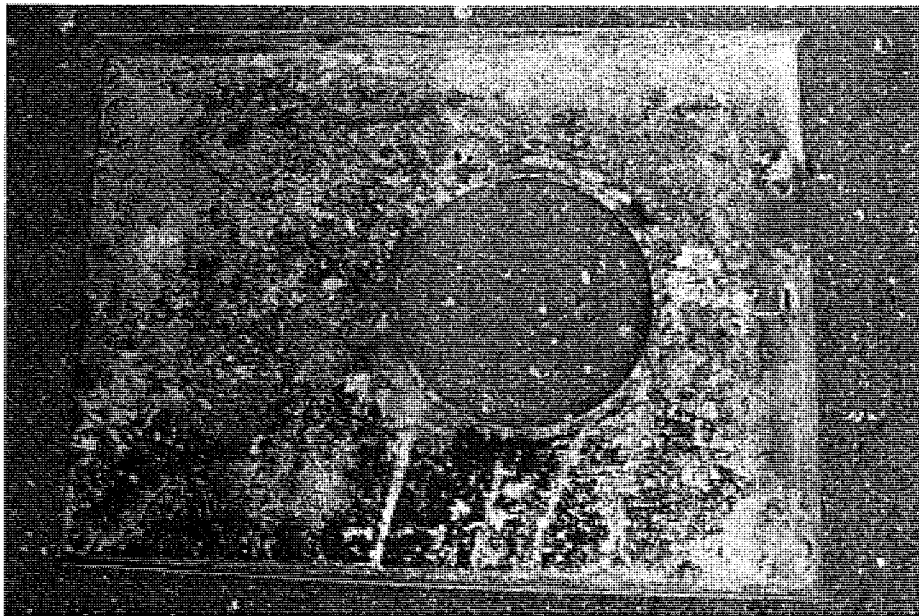


FIGURE 12. A photograph of the interior surface of the subject Meter Cover for the subject Meter/Breaker Panel. (Image No.: 7443J-133)

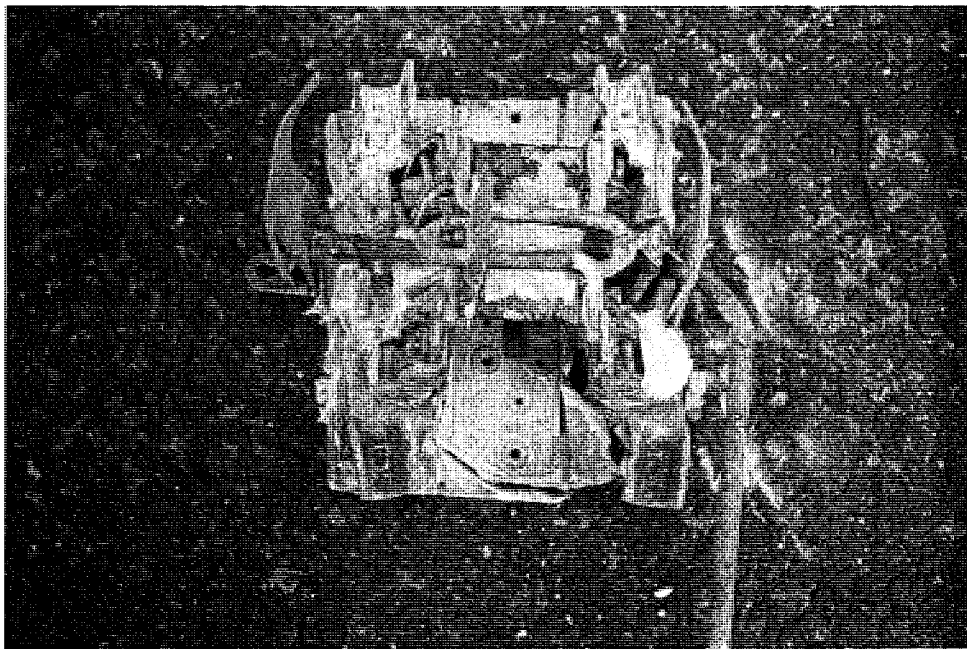


FIGURE 13. A photograph of the front of the subject Utility Meter for the subject Meter/Breaker Panel. (Image No.: NEC\_1740)

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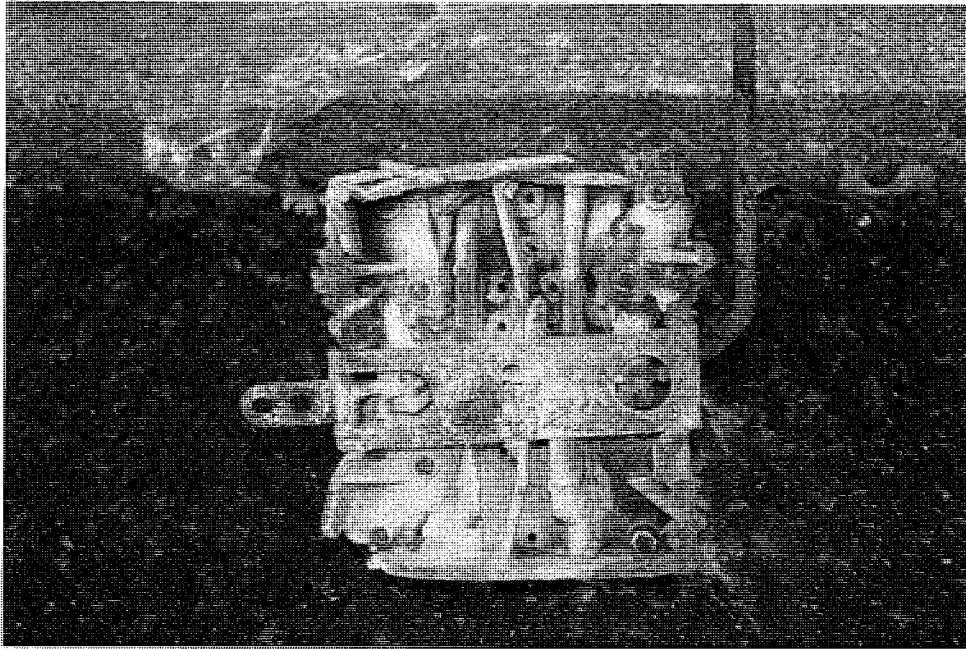


FIGURE 14. A photograph of the meter base of the subject Utility Meter for the subject Meter/Breaker Panel. (Image No.: NEC\_1757)



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FIGURE 15. A photograph of the Breaker Compartment for the subject Meter/Breaker Panel.  
(Image No.: NEC\_1202)

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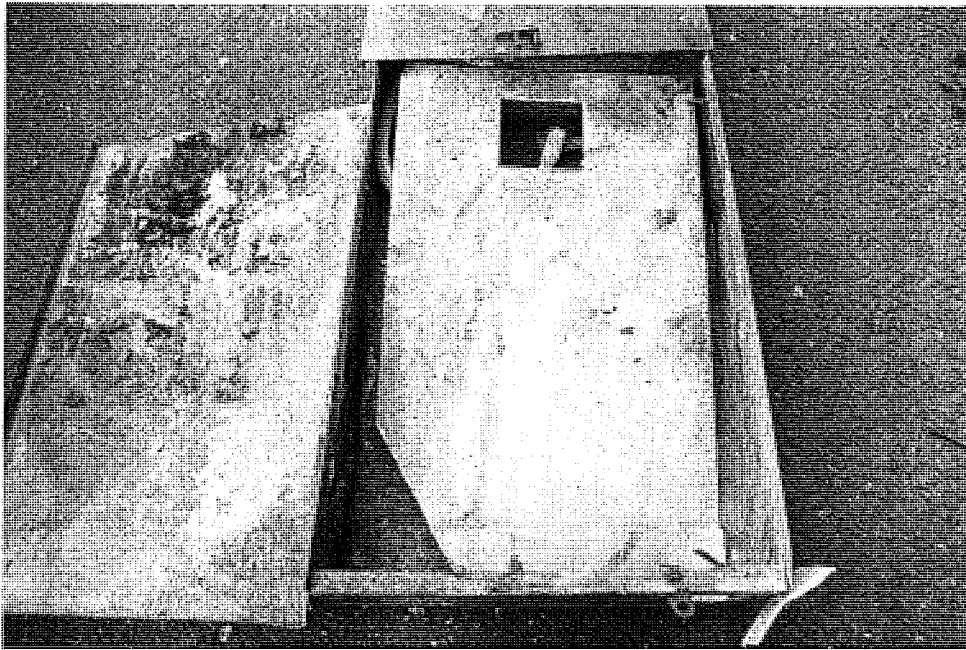


FIGURE 16. A photograph of the Interior View of the Breaker Compartment for the subject Meter/Breaker Panel with the subject Deadfront Cover positioned over the Breaker Compartment. (Image No.: NEC\_1234)

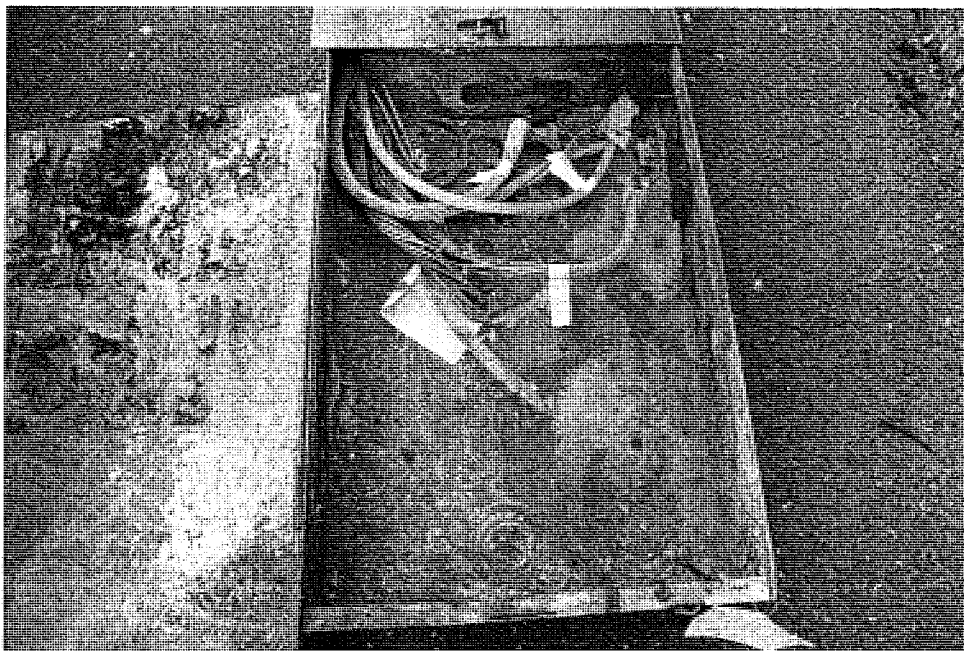


FIGURE 17. A photograph of the Interior View of the Breaker Compartment for the subject Meter/Breaker Panel with the subject Deadfront Cover removed from the Breaker Compartment. (Image No.: NEC\_1250)

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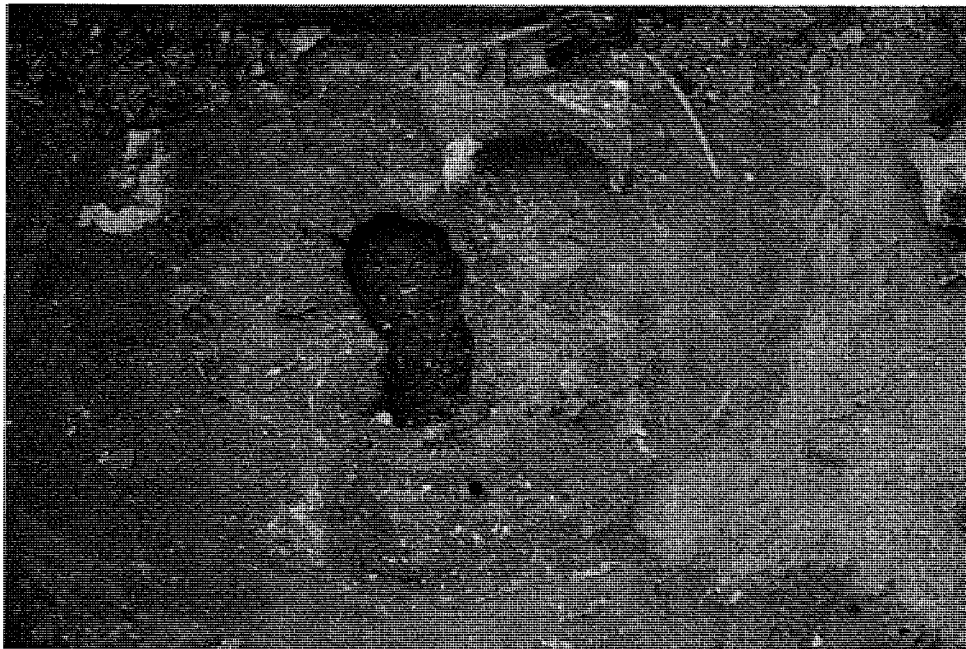


FIGURE 18. A photograph of the Oval Shaped Opening created by Electrical Fault Activity that was evident within the Interior Enclosure of the Breaker Compartment for the subject Meter/Breaker Panel. (Image No.: NEC\_1310)



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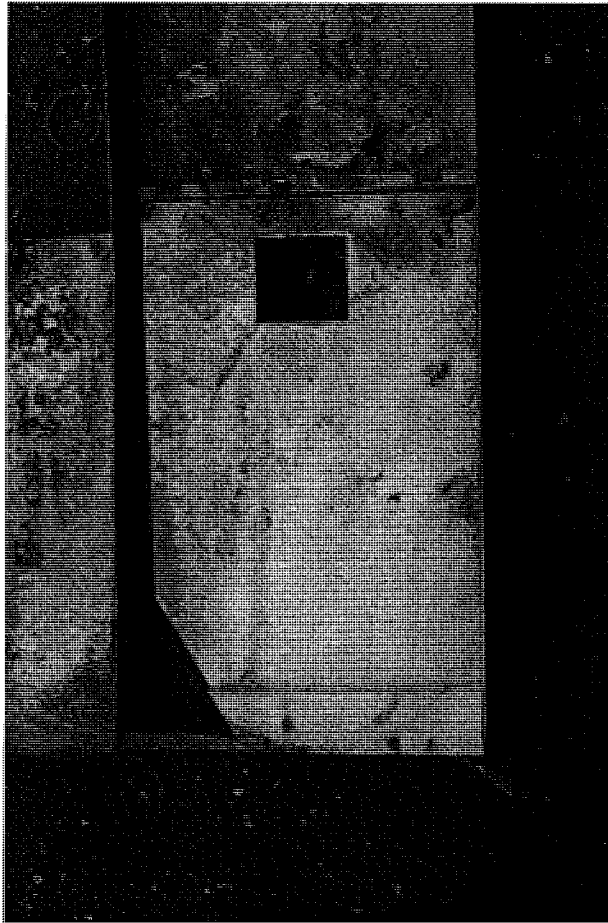


FIGURE 19. A photograph of the exterior surface of the subject Deadfront Cover for the Breaker Compartment of the subject Meter/Breaker Panel. (Image No.: NEC\_1403)

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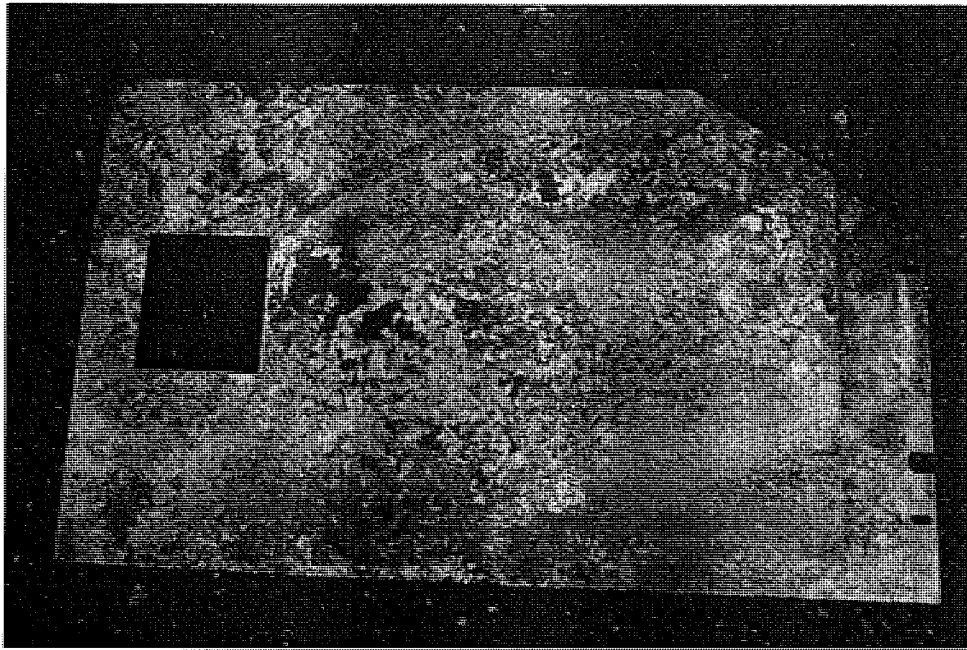


FIGURE 20. A photograph of the interior surface of the subject Deadfront Cover for the Breaker Compartment of the subject Meter/Breaker Panel. (Image No.: NEC\_1242)



FIGURE 21. A photograph of the electrical fault activity present at the upper left corner for the subject Deadfront Cover for the Breaker Compartment positioned near the subject Barrier of the subject Meter/Breaker Panel. (Image No.: NEC\_1414)

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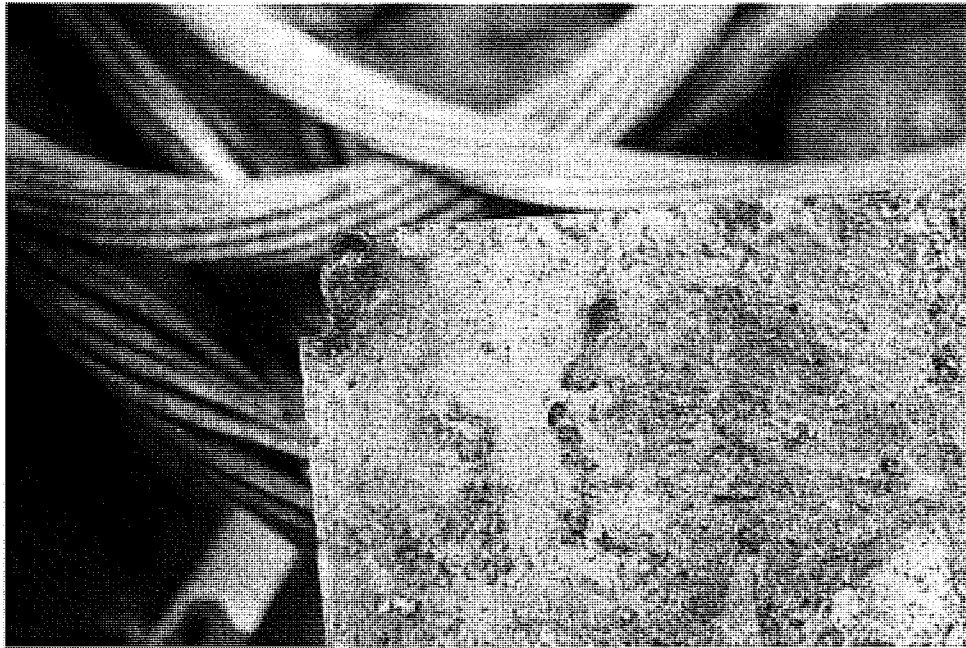


FIGURE 22. A photograph of the Electrical Fault Activity observed at the upper left corner of the subject Deadfront Cover for the Breaker Compartment of the subject Meter/Breaker Panel. (Image No.: NEC 1239)

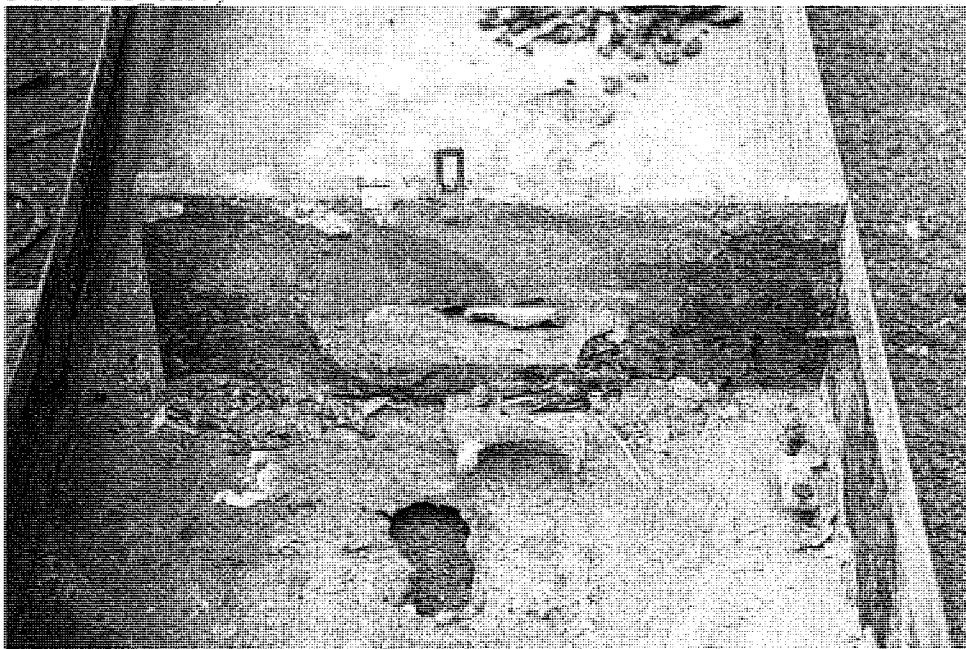


FIGURE 23. A photograph of the subject Barrier between the Meter Compartment and the Breaker Compartment within the Housing of the subject Meter/Breaker Panel. (Image No.: NEC\_1301)



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FIGURE 24. A photograph of the Electrical Fault Activity present on the subject Barrier between the Meter Compartment and the Breaker Compartment within the Housing of the subject Meter/Breaker Panel. (Image No.: NEC\_1305)

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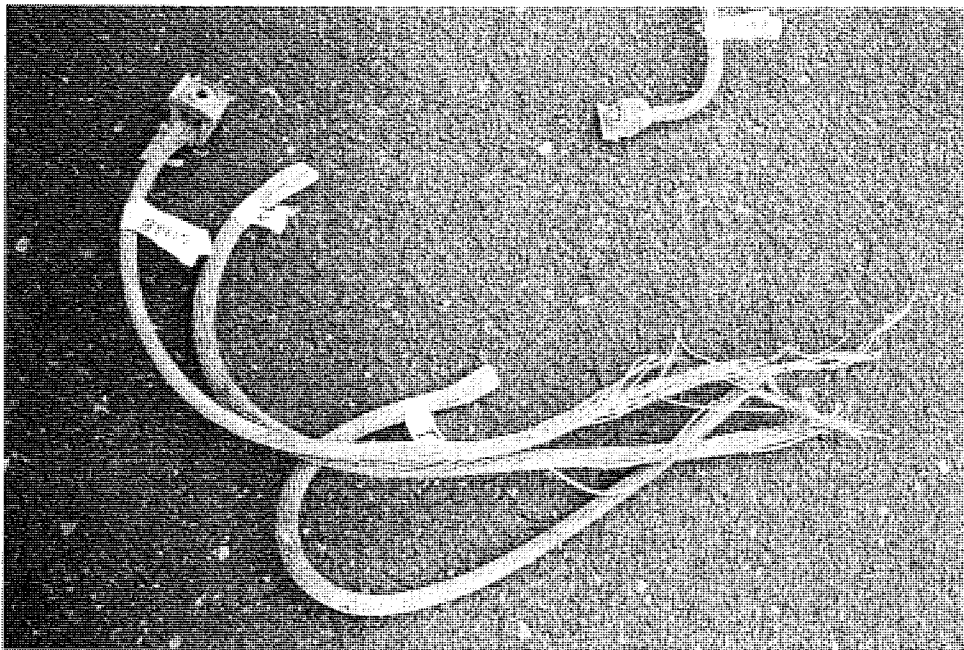


FIGURE 25. A photograph of the conductors for the subject Utility Cable for the subject Meter/Breaker Panel. (Image No.: NEC\_1496)

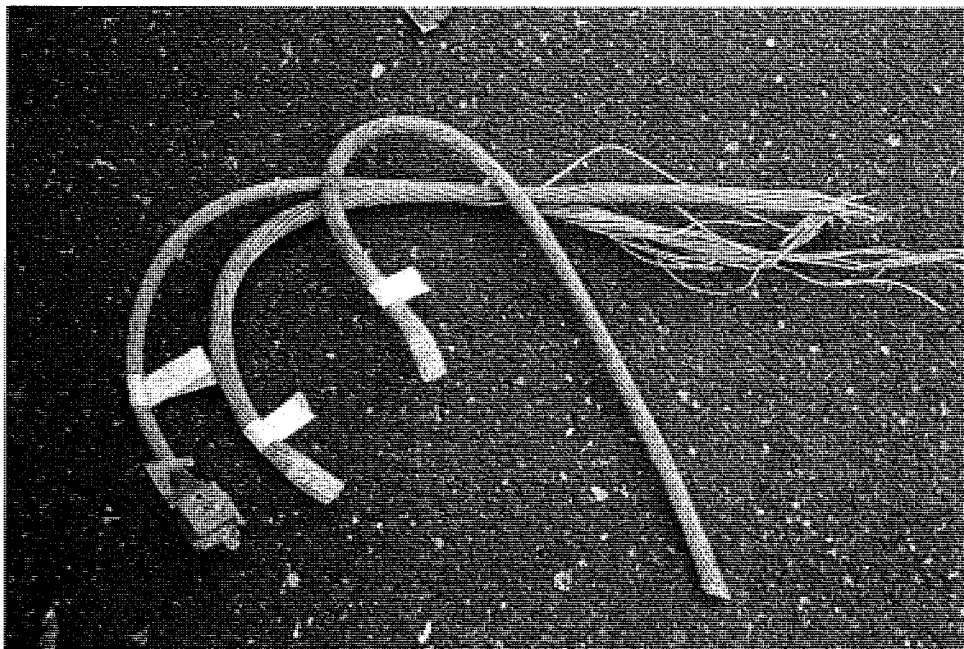


FIGURE 26. A photograph of the subject Conductor for the subject Utility Cable for the subject Meter/Breaker Panel. (Image No.: NEC\_1500)

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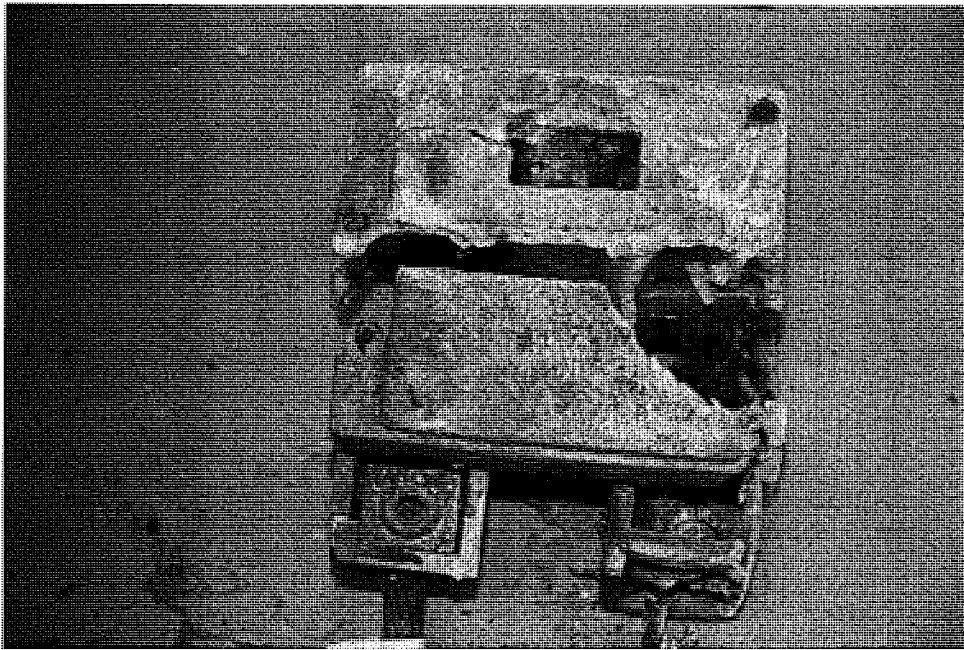


FIGURE 27. A photograph of the subject Circuit Breaker from the subject Meter/Breaker Panel. (Image No.: NEC\_3921)



FIGURE 28. A photograph of the Load Side of the subject Circuit Breaker from the subject Meter/Breaker Panel. (Image No.: NEC\_3699)



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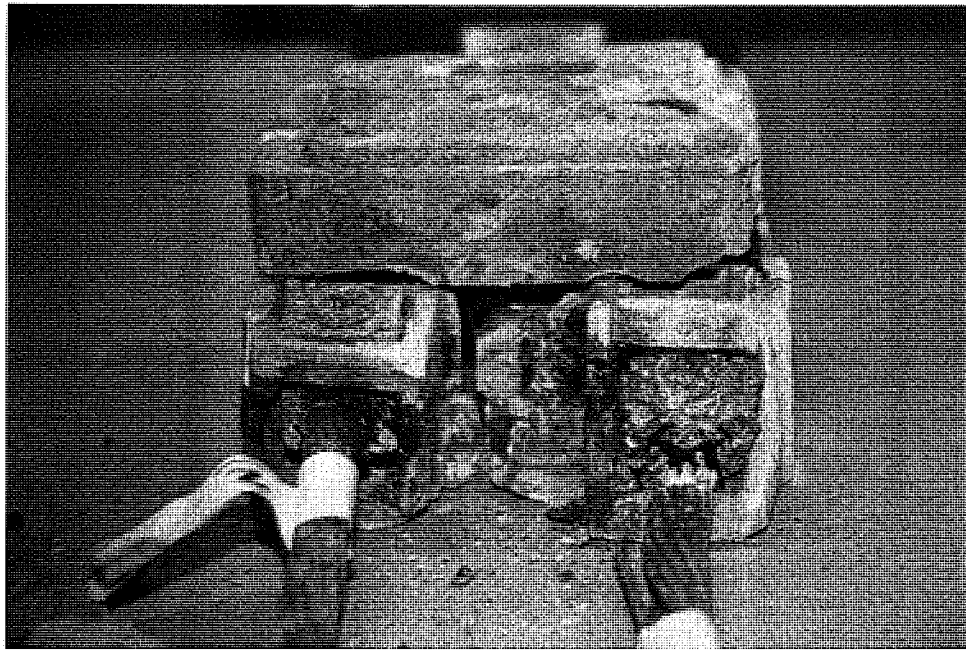


FIGURE 29. A photograph of the Line Side of the subject Circuit Breaker from the subject Meter/Breaker Panel. (Image No.: NEC\_3915)

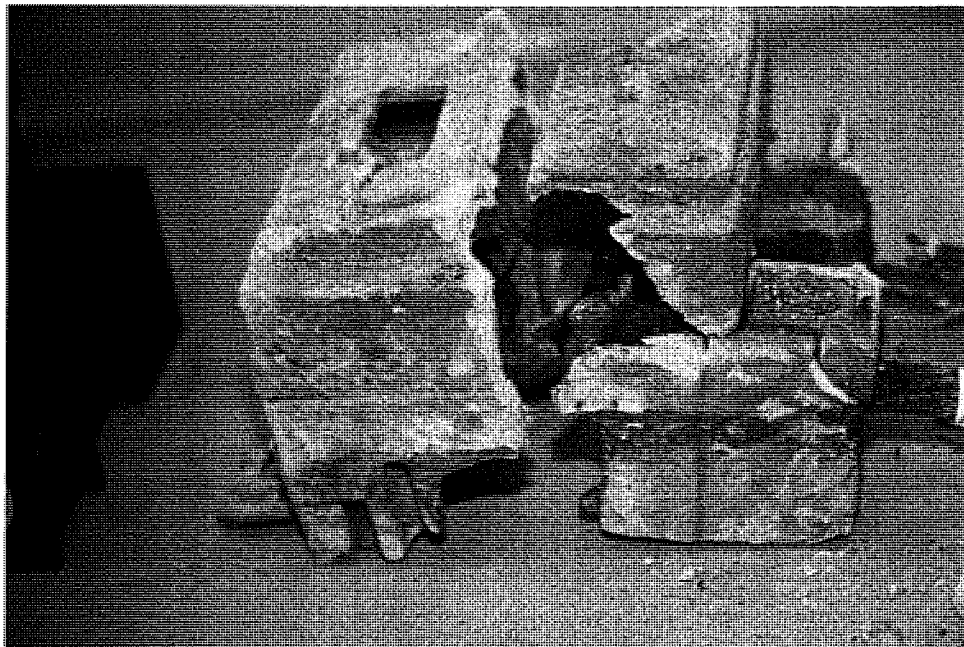


FIGURE 30. A photograph of the view of the Right Side of the subject Circuit Breaker from the subject Meter/Breaker Panel. (Image No.: NEC\_3918)

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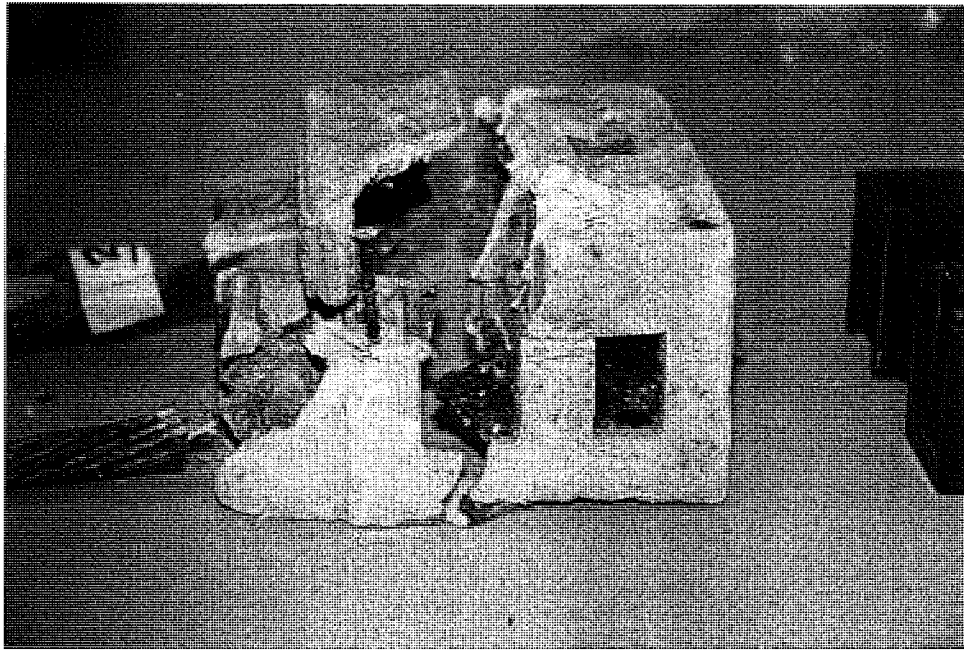


FIGURE 31. A photograph of the view of the Left Side of the subject Circuit Breaker from the subject Meter/Breaker Panel. (Image No.: NEC\_3920)

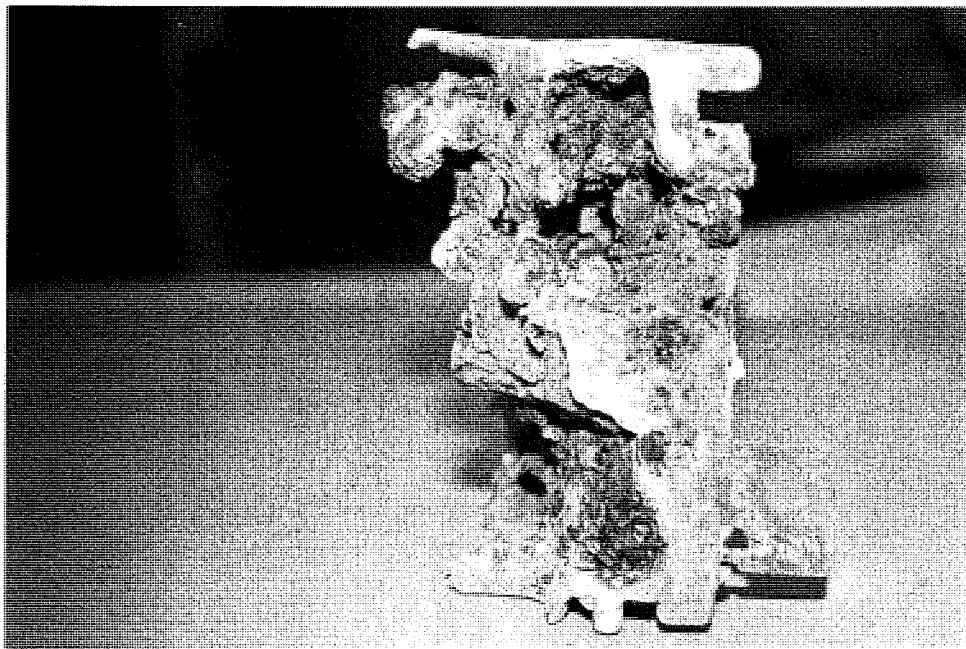


FIGURE 32. A photograph of the view of the Bottom Side of the subject Circuit Breaker from the subject Meter/Breaker Panel. (Image No.: NEC\_3730)



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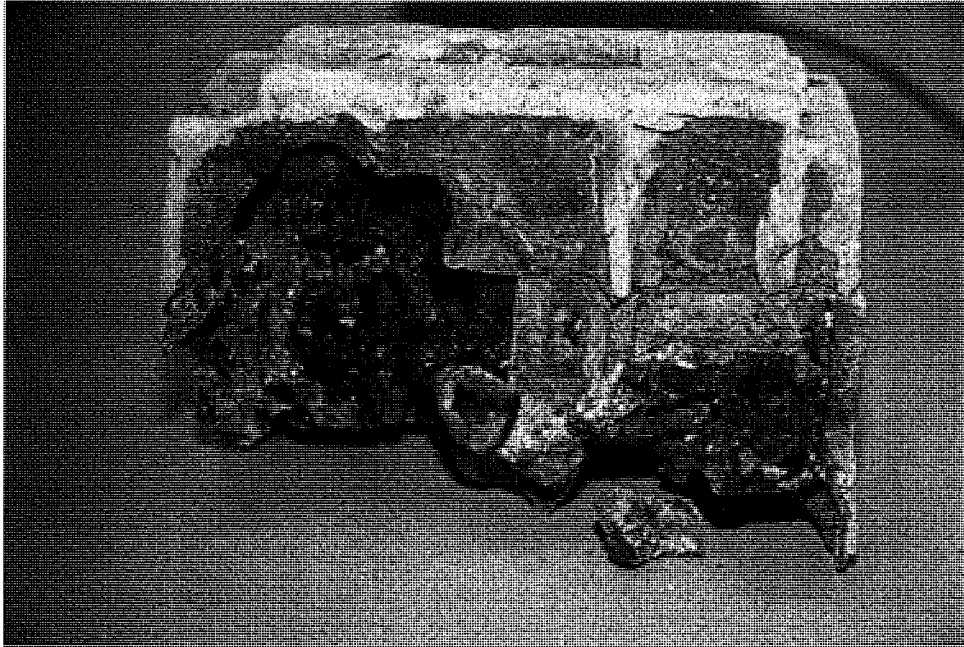


FIGURE 33. A photograph of the view of the Interior of the subject Circuit Breaker from the subject Meter/Breaker Panel. (Image No.: NEC\_3783)

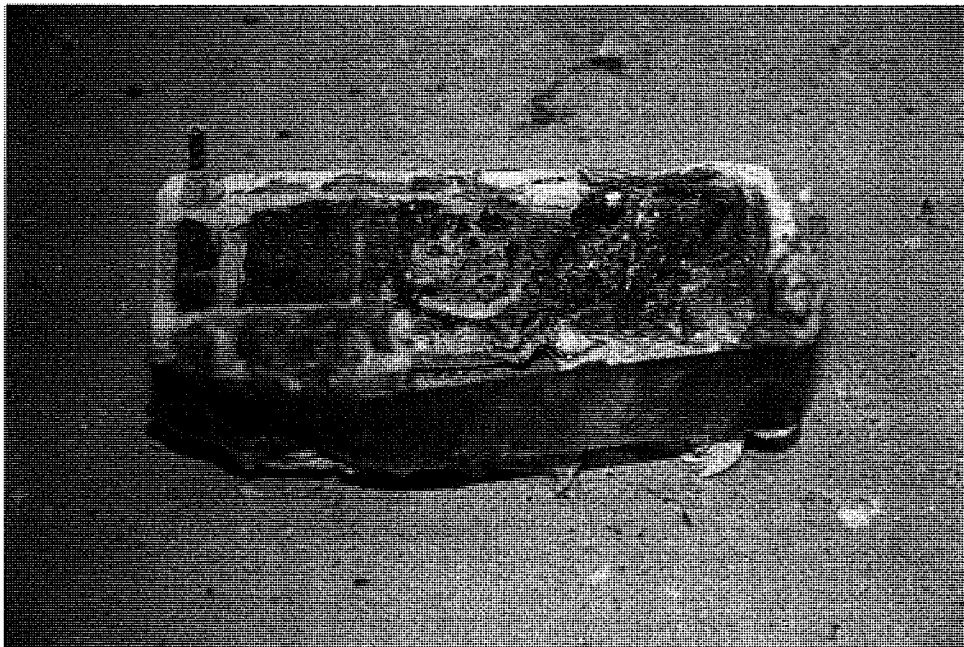


FIGURE 34. A photograph of the interior of the housing for the subject Circuit Breaker from the subject Meter/Breaker Panel. (Image No.: NEC\_4047)

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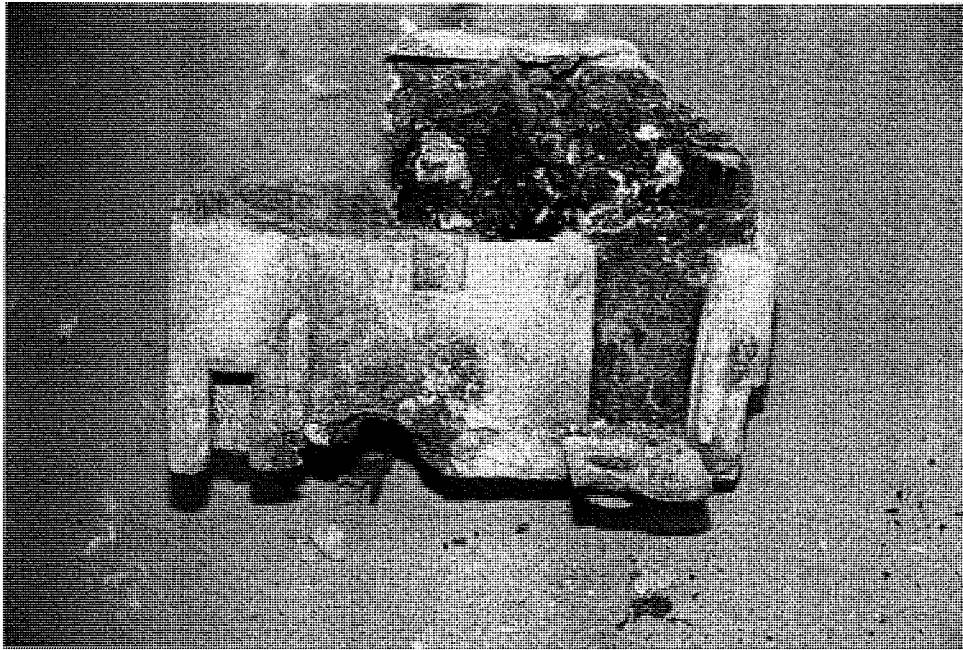


FIGURE 35. A photograph of the Load Side for the subject Circuit Breaker from the subject Meter/Breaker Panel. (Image No.: NEC\_4049)

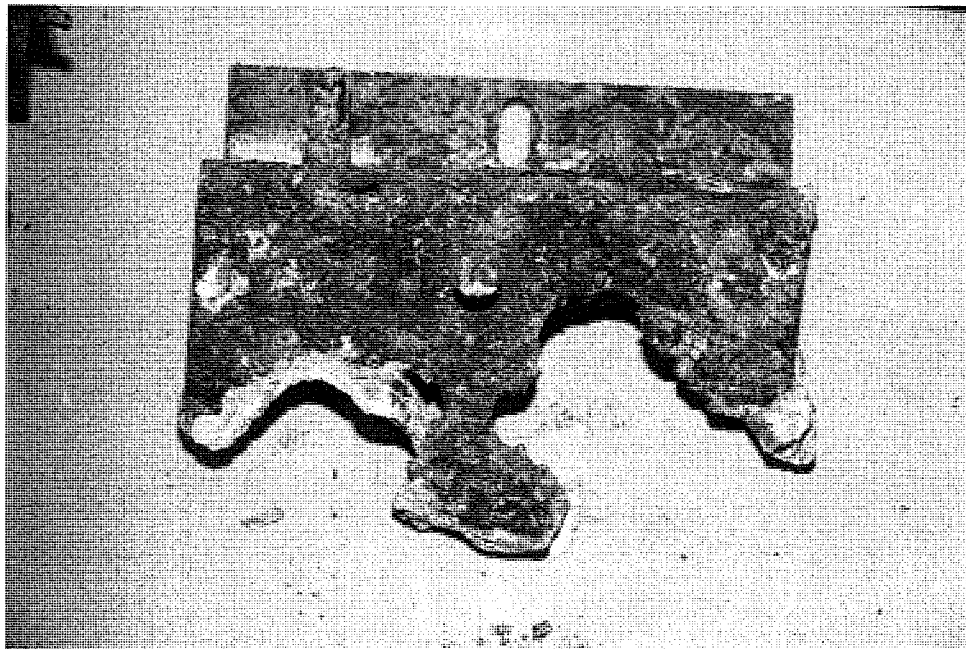


FIGURE 36. A photograph of the top side for the lower portion of the subject Mounting Base for the subject Circuit Breaker from the Housing for the subject Meter/Breaker Panel. (Image No.: NEC\_3874)



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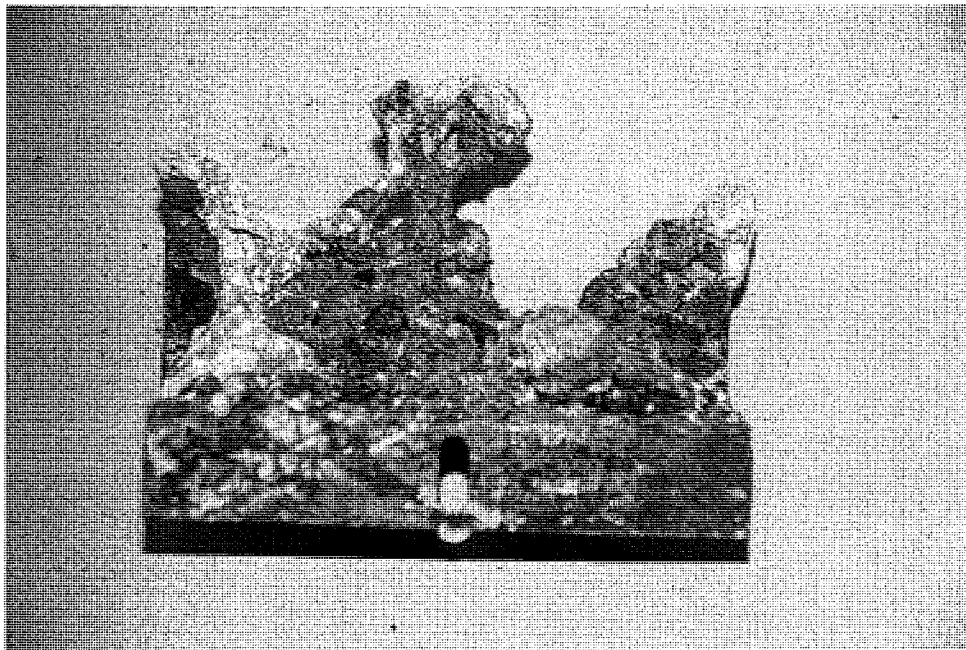


FIGURE 37. A photograph of the underside for the lower portion of the subject Mounting Base for the subject Circuit Breaker from the Housing for the subject Meter/Breaker Panel. (Image No.: NEC\_3925)

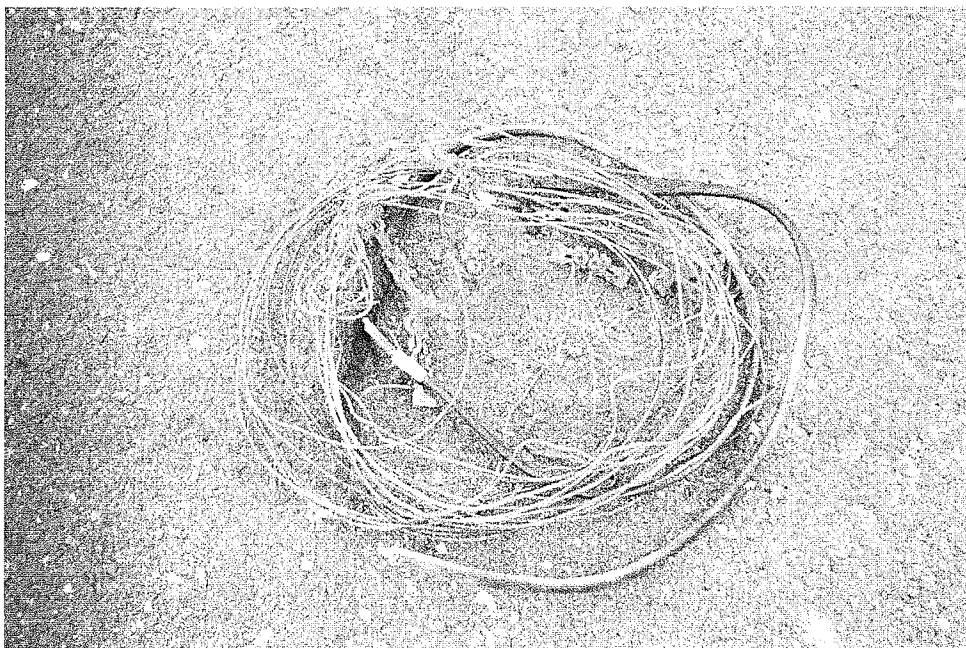


FIGURE 38. A photograph of the Branch Circuit Conductors and Duplex Receptacles from the Omega House. (Image No.: NEC\_1555)

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FIGURE 39. A photograph of one of the Duplex Receptacles for the Branch Circuit Conductors from the Omega House. (Image No.: NEC\_1564)

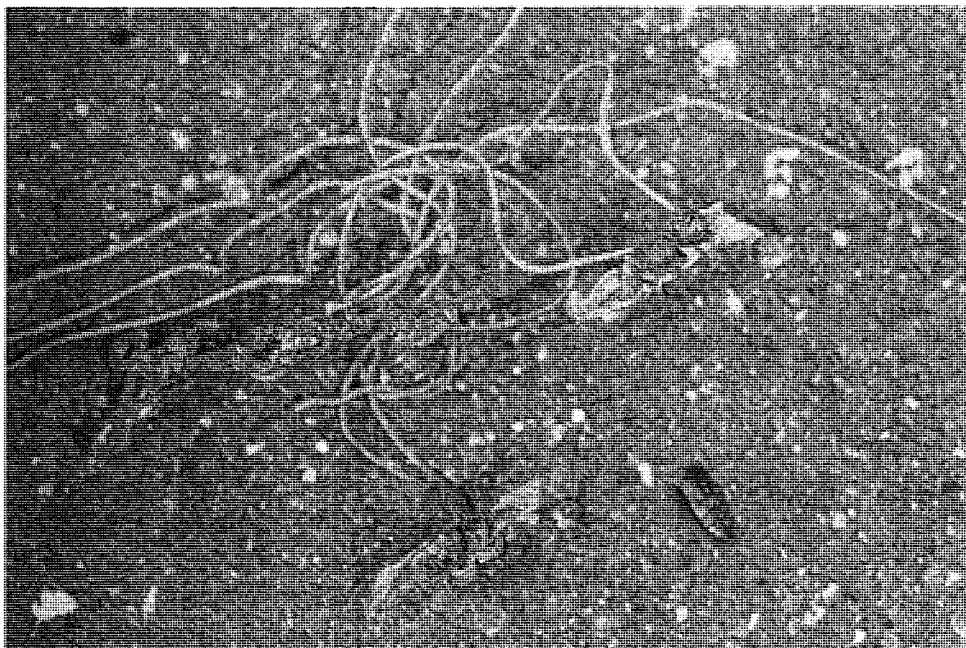


FIGURE 40. A photograph of the second Duplex Receptacle for the Branch Circuit Conductors from the Omega House. (Image No.: NEC\_1599)



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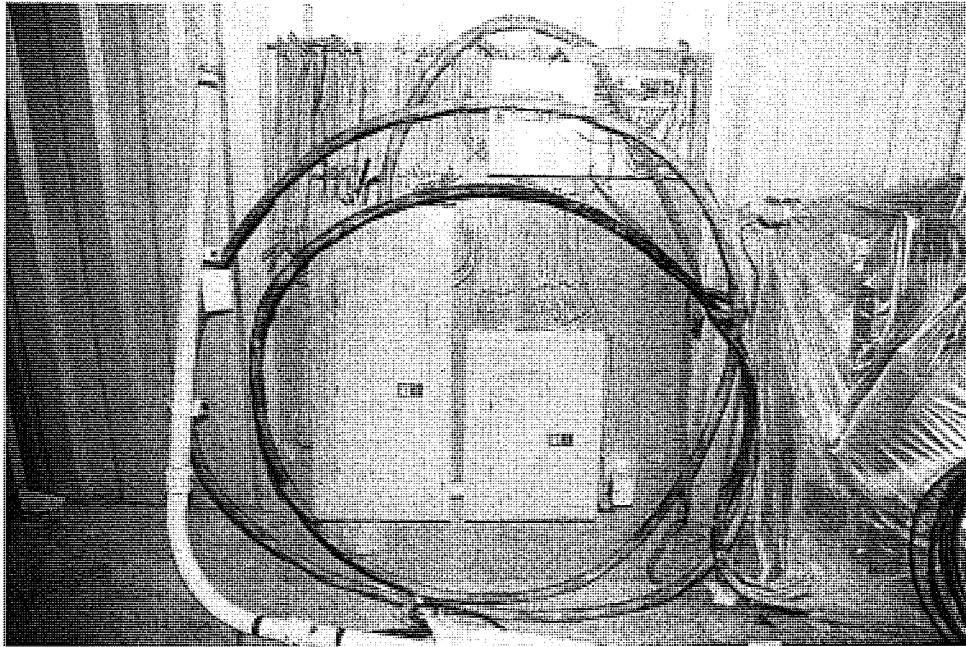


FIGURE 41. A photograph of the Electrical Distribution Panel, Subpanel, Alarm Monitoring Panel, and subject Distribution Cable from the Omega House. (Image No.: NEC\_1615)

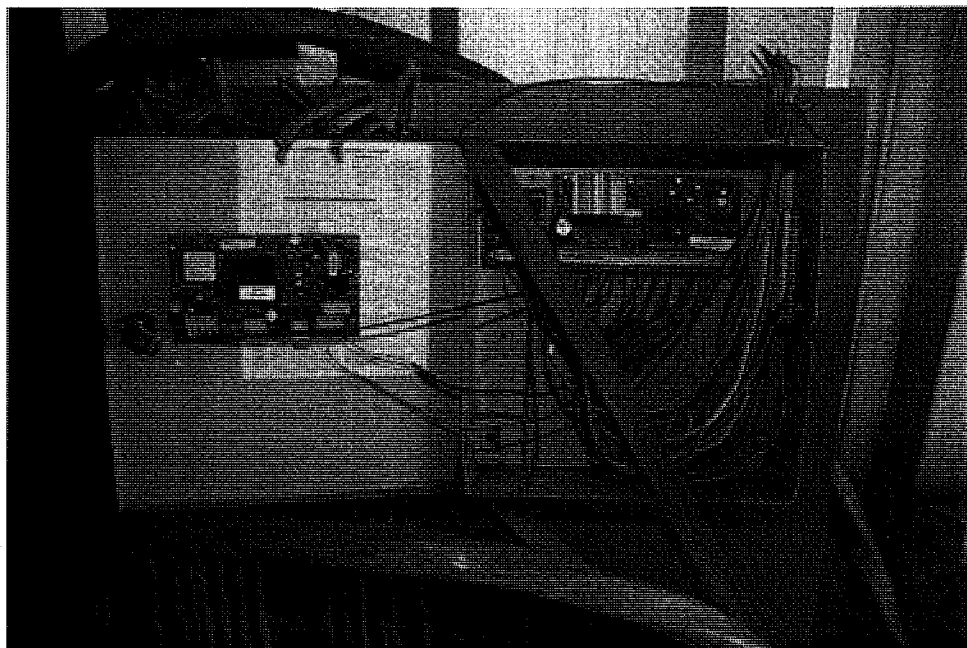


FIGURE 42. A photograph of the Alarm Monitoring Panel from the Omega House. (Image No.: NEC\_1629)

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FIGURE 43. A photograph of the subject Distribution Cable from the subject Meter/Breaker Panel. (Image No.: NEC\_1688)

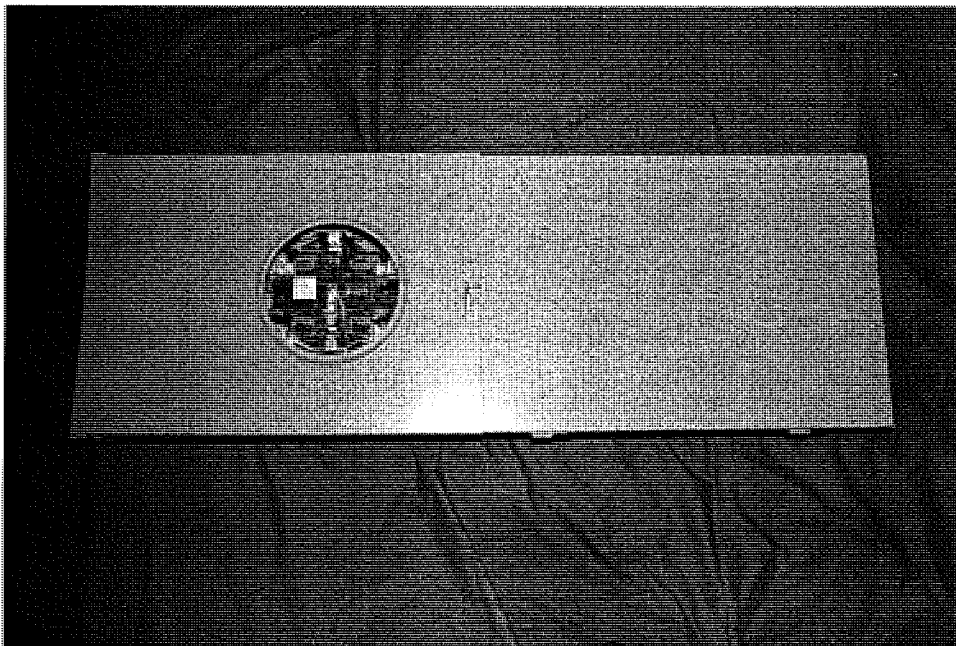


FIGURE 44. A photograph of the exemplar Meter/Breaker Panel. (Image No.: NEC\_1694)

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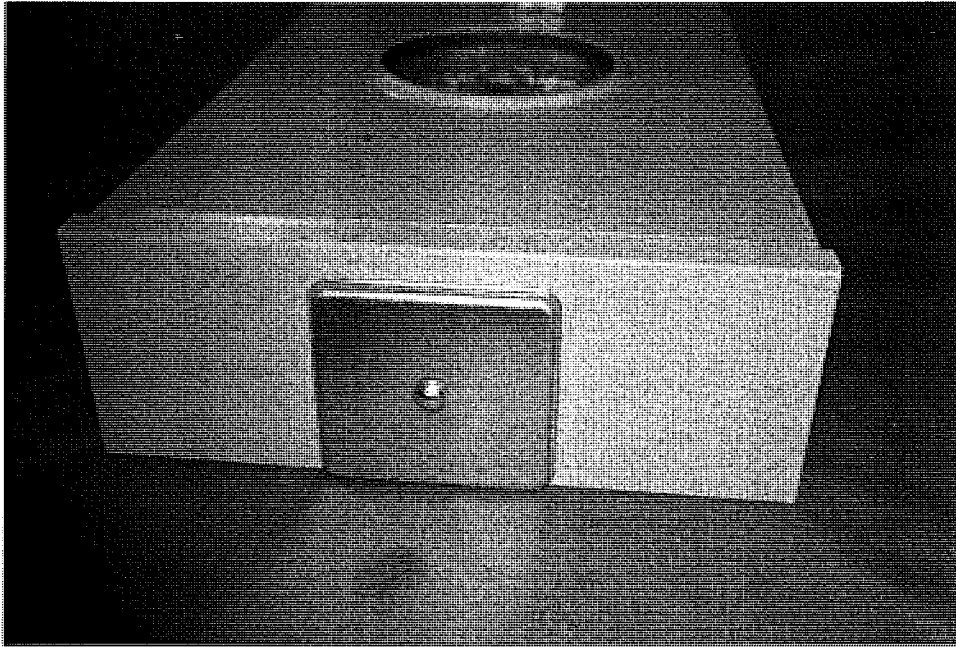


FIGURE 45. A photograph of the Top End Wall of the exemplar Meter/Breaker Panel. (Image No.: NEC\_1696)



FIGURE 46. A photograph of the Bottom End Wall of the exemplar Meter/Breaker Panel. (Image No.: NEC\_1698)



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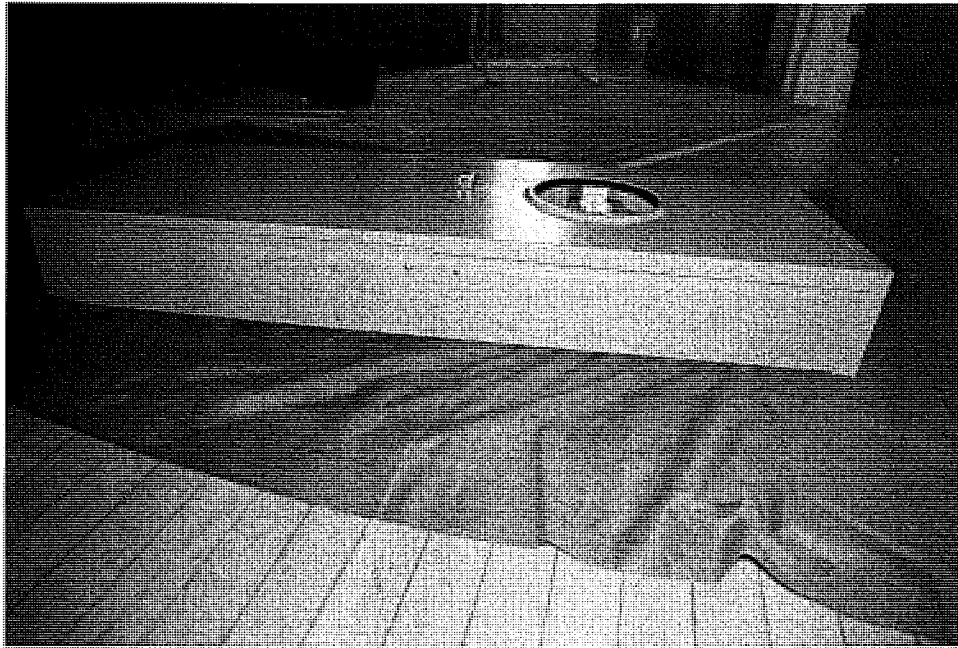


FIGURE 47. A photograph of the Right Side of the exemplar Meter/Breaker Panel. (Image No.: NEC\_1701)

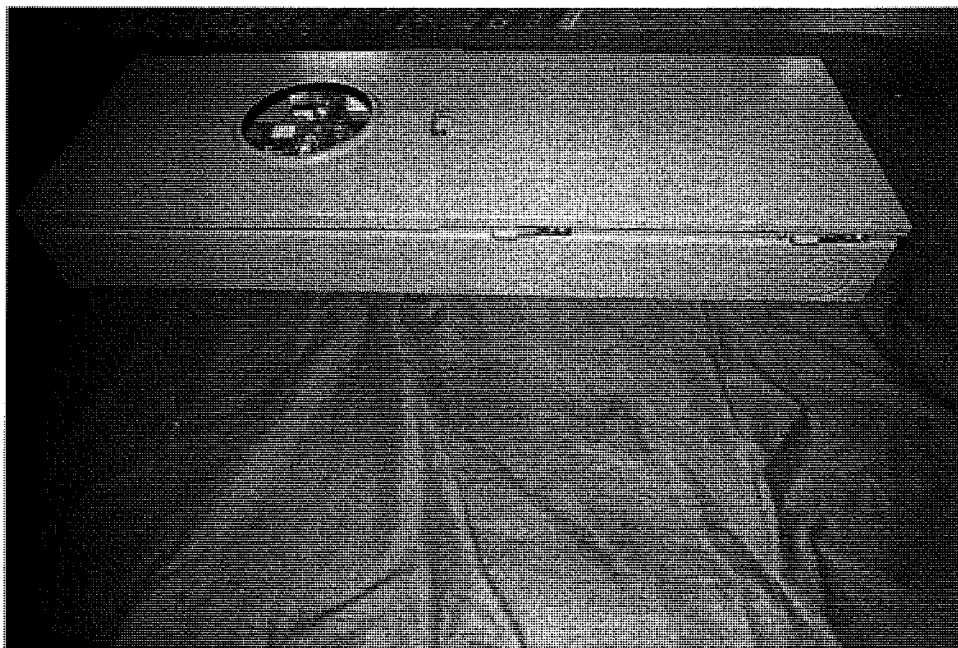


FIGURE 48. A photograph of the Left Side of the exemplar Meter/Breaker Panel. (Image No.: NEC\_1697)

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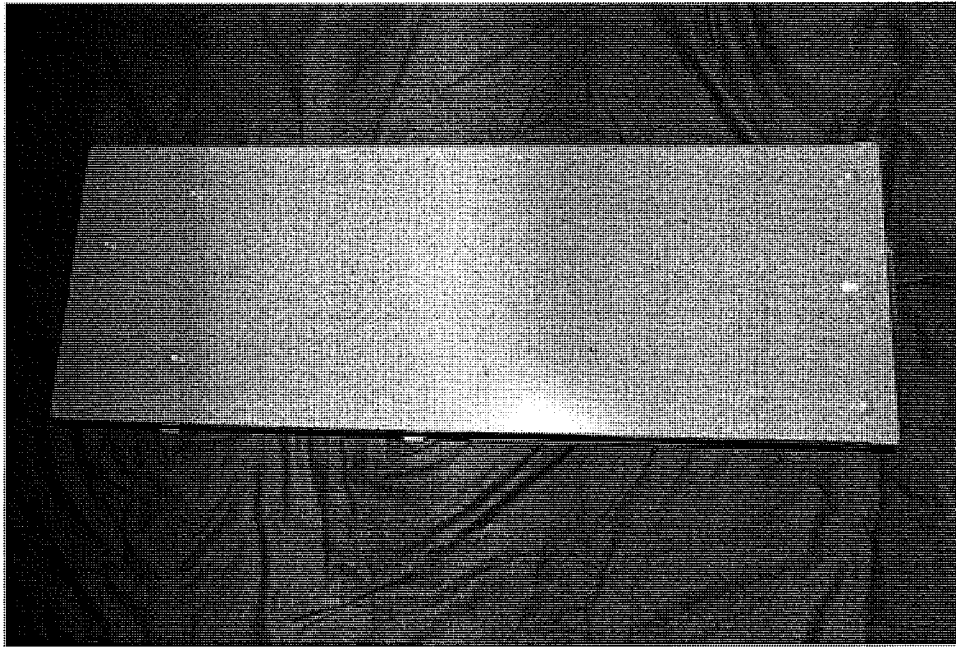


FIGURE 49. A photograph of the Rear of the Housing for the exemplar Meter/Breaker Panel.  
(Image No.: NEC\_1704)

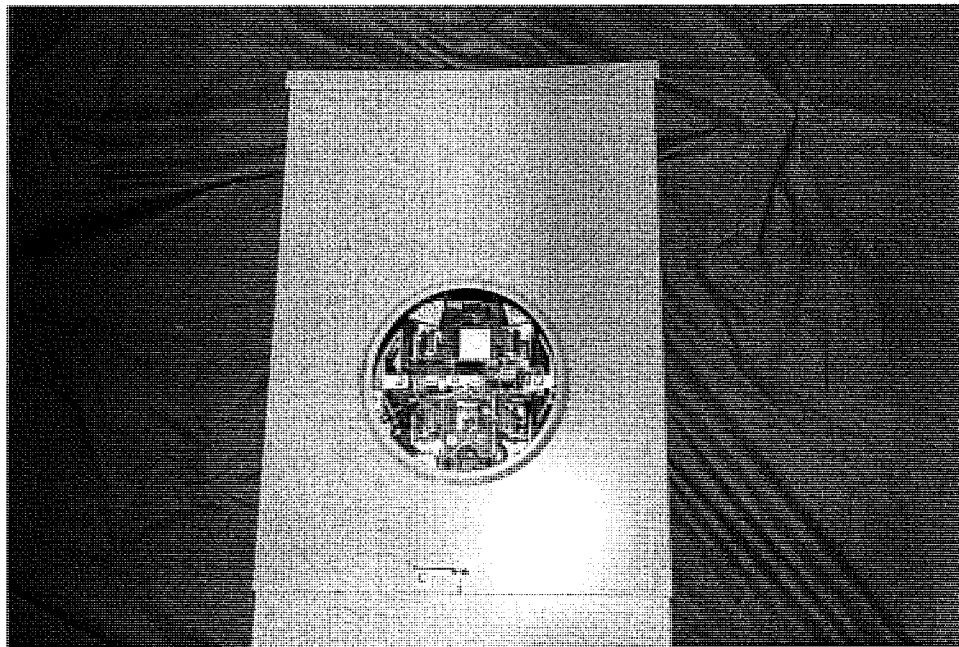


FIGURE 50. A photograph of the Meter Compartment for the exemplar Meter/Breaker Panel.  
(Image No.: NEC\_1705)



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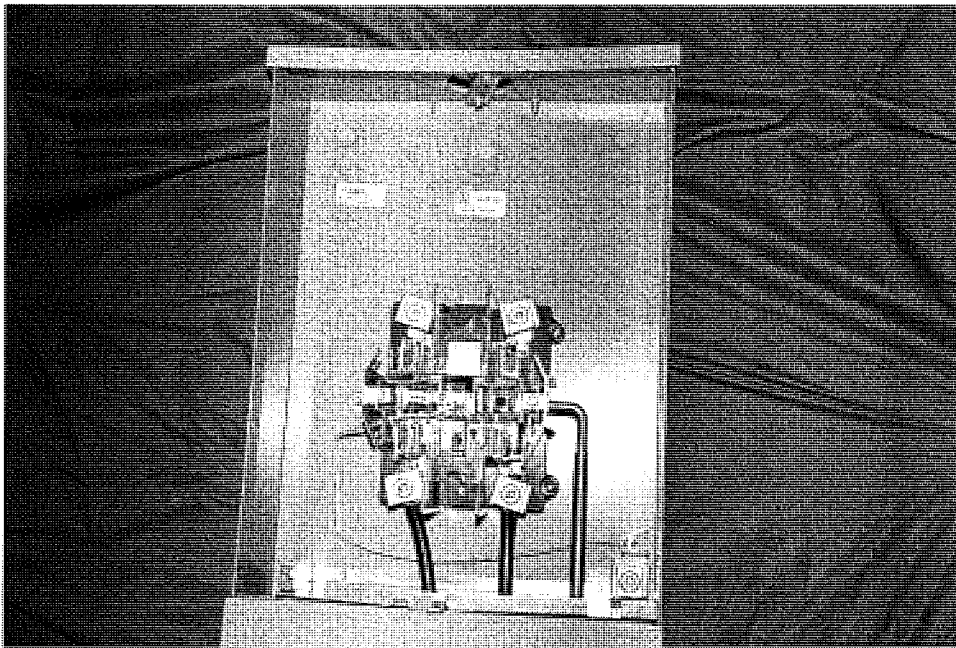


FIGURE 51. A photograph of the interior enclosure for the Meter Compartment for the exemplar Meter/Breaker Panel. (Image No.: NEC\_1708)

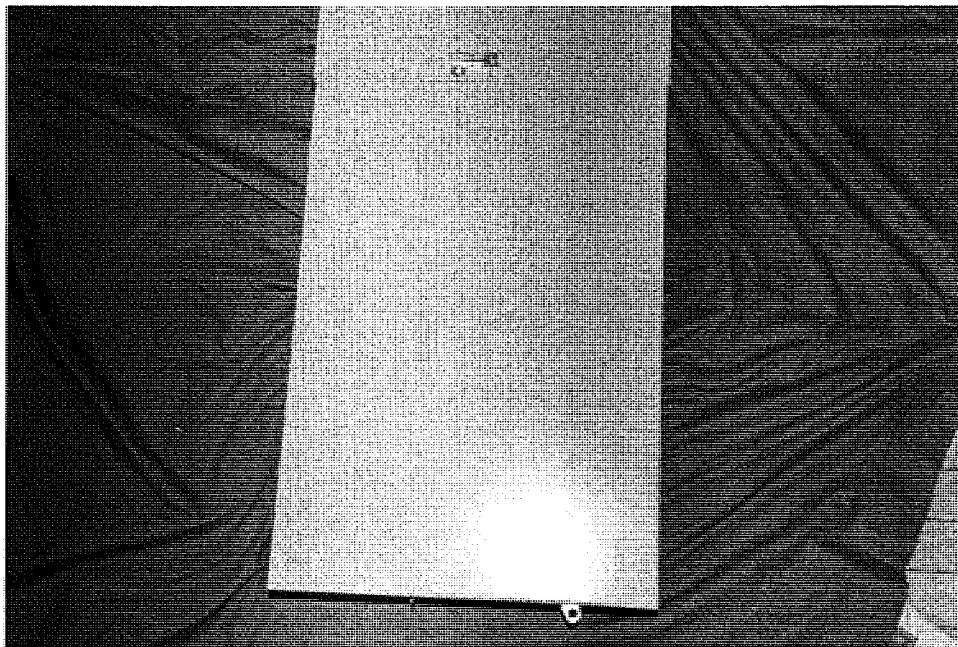


FIGURE 52. A photograph of the Breaker Compartment for the exemplar Meter/Breaker Panel. (Image No.: NEC\_1707)



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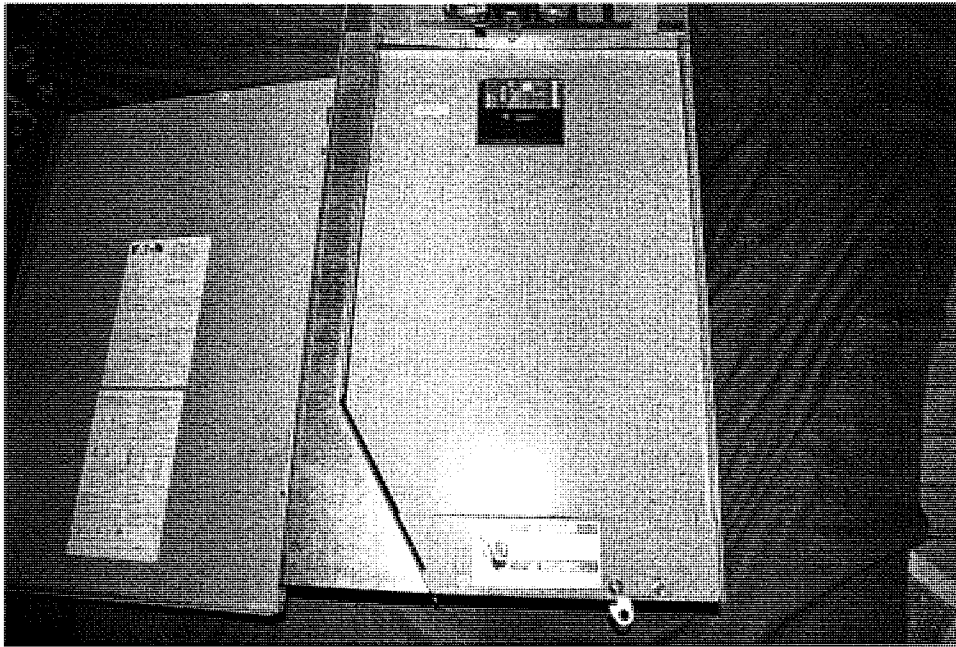


FIGURE 53. A photograph of the Breaker Compartment for the exemplar Meter/Breaker Panel with the Deadfront Cover in place. (Image No.: NEC\_1709)

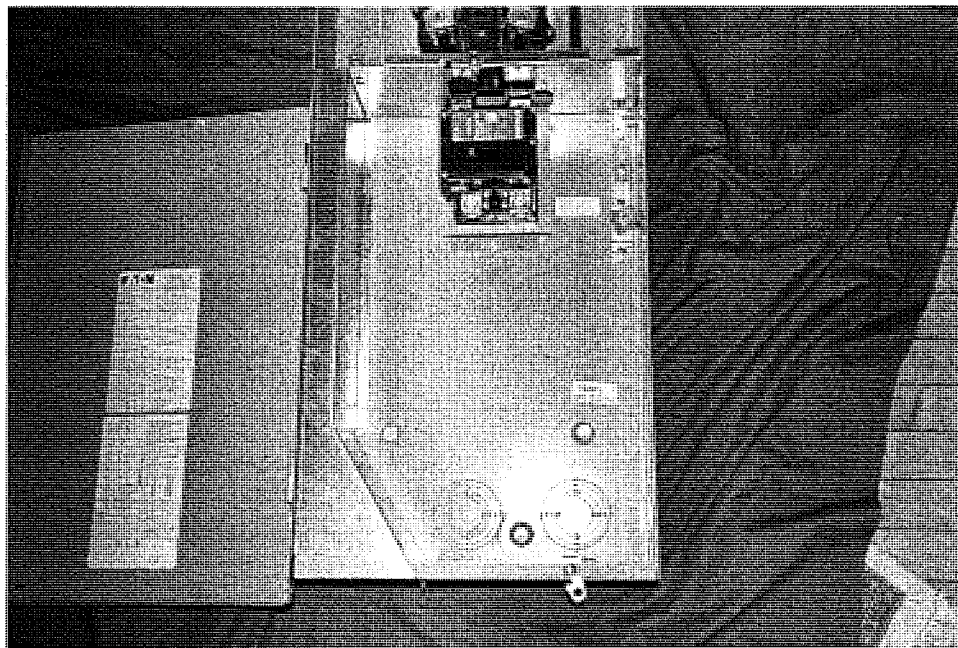


FIGURE 54. A photograph of the interior enclosure of the Breaker Compartment for the exemplar Meter/Breaker Panel with the exemplar Deadfront Cover removed. (Image No.: NEC\_1712)

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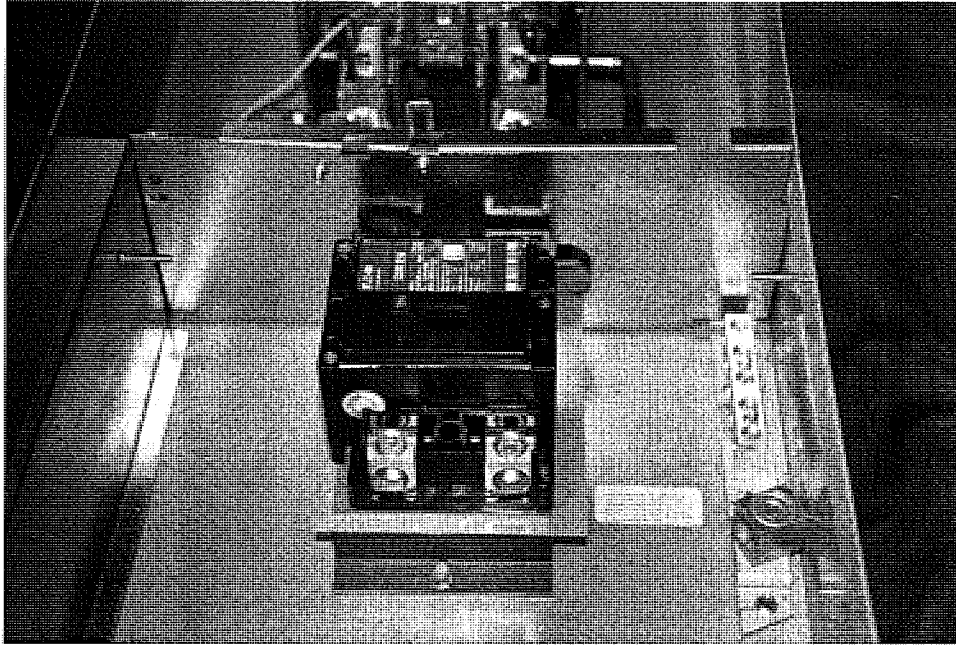


FIGURE 55. Photograph of the exemplar Barrier between the Meter Compartment and the Breaker Compartment for the exemplar Meter/Breaker Panel. (Image No.: NEC\_1715)

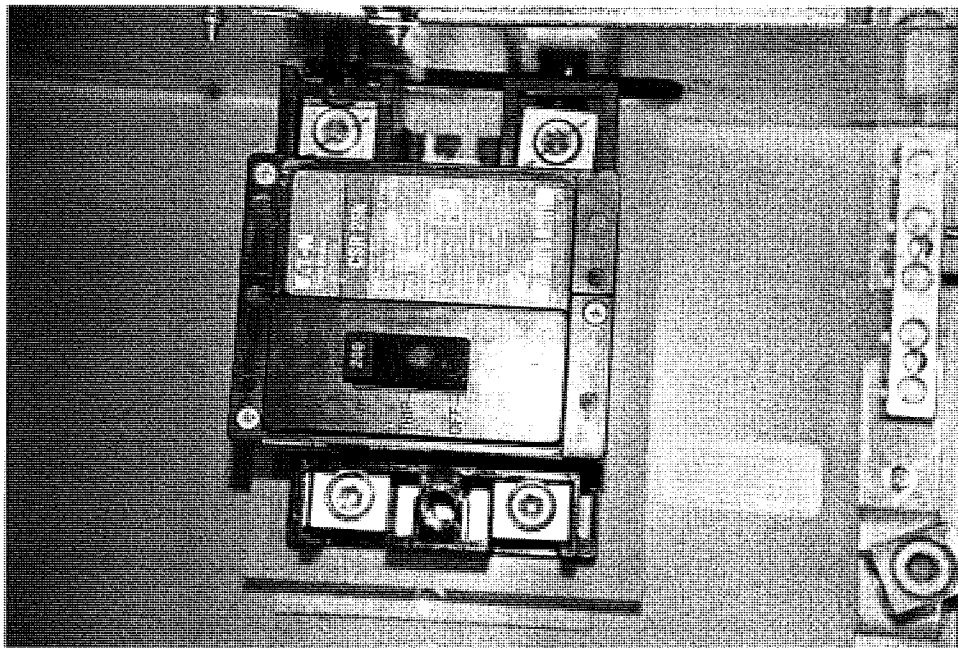


FIGURE 56. Photograph of the exemplar Circuit Breaker in the exemplar Meter/Breaker Panel. (Image No.: NEC\_1723)



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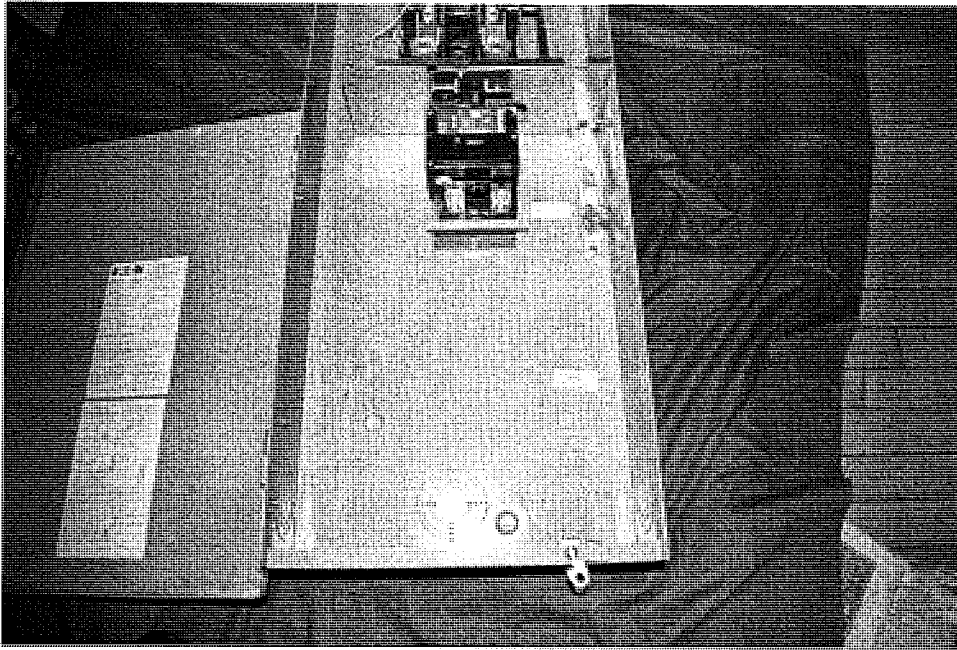


FIGURE 57. Photograph of the interior enclosure of the Breaker Compartment for the exemplar Meter/Breaker Panel with the exemplar Wiring Gutter Enclosure removed. (Image No.: NEC\_1717)



FIGURE 58. Photograph of the interior view of the Breaker Compartment for the exemplar Meter/Breaker Panel with the exemplar Wiring Gutter Enclosure removed and showing the edges of the exemplar Barrier and the exemplar Deadfront Cover. (Image No.: NEC\_1727)

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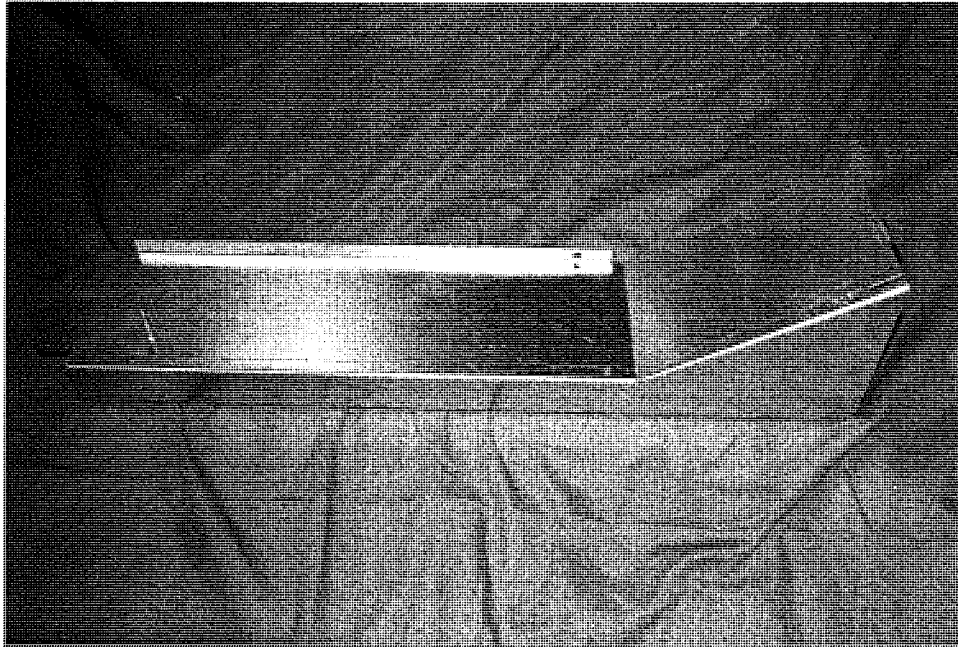


FIGURE 59. Photograph of the exemplar Wiring Gutter Enclosure from the exemplar Meter/Breaker Panel. (Image No.: NEC\_1729)

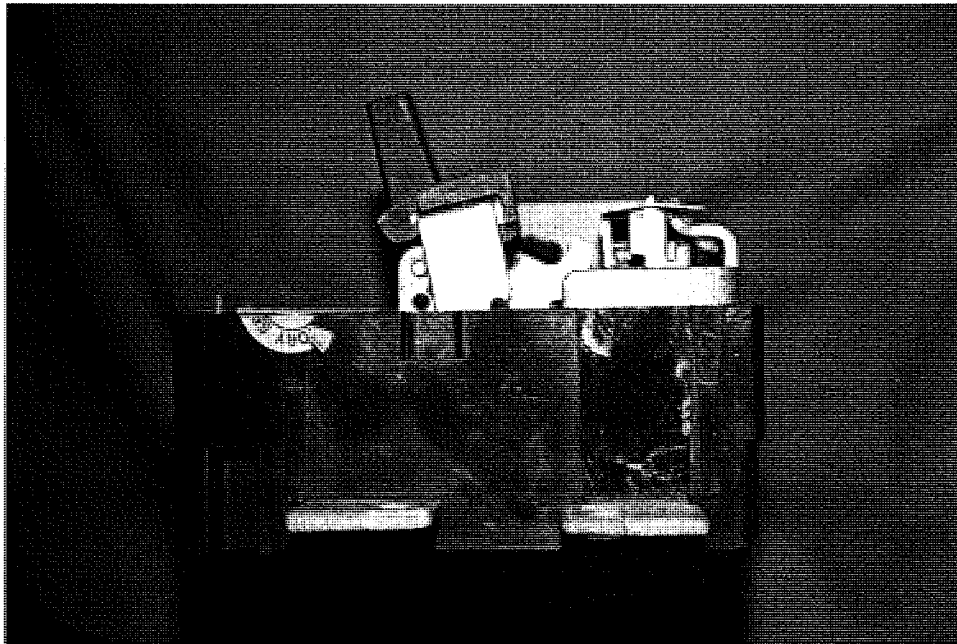


FIGURE 60. Photograph of the interior components of the exemplar Circuit Breaker with the Handle in the ON Condition. (Image No.: NEC\_1737)

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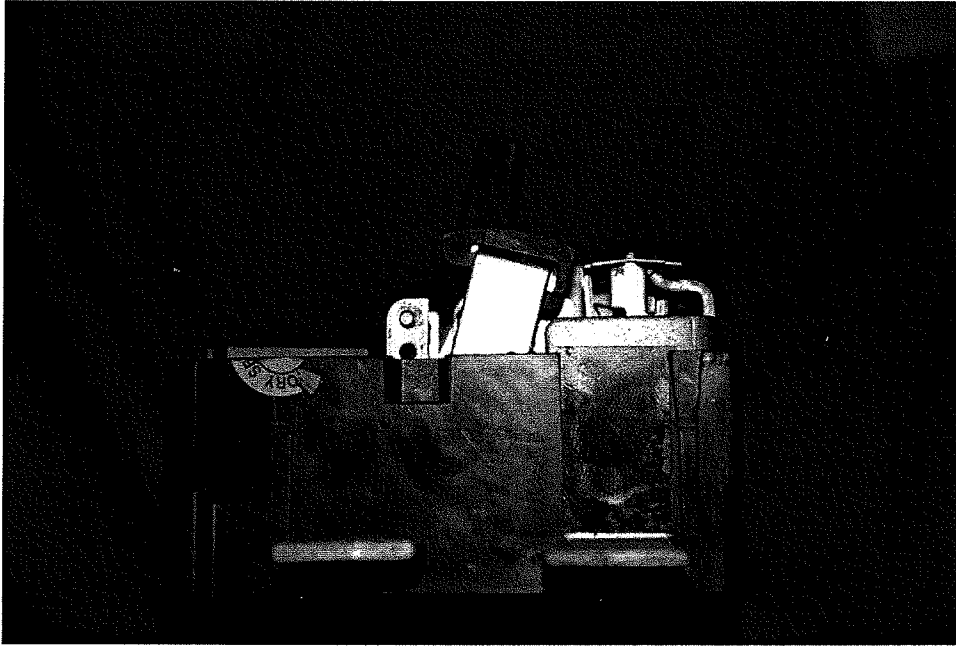


FIGURE 61. Photograph of the interior components of the exemplar Circuit Breaker with the Handle in the OFF Condition. (Image No.: NEC\_1738)

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## **Andrew J. Neuhalfen, Ph.D., P.E.**

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### **President and Chief Technical Officer**

#### **PROFESSIONAL EXPERIENCE**

2008 - Present      NEUHALFEN ENGINEERING CORPORATION, INC. - Algonquin, Illinois

Projects and expertise provide for the investigation, analysis, evaluation, and management of electrical-related and materials-related product and process performance issues; including electrical arc fault incidences, electrical shock and electrocution incidences, electrical-related fire incidences, product liability issues, and intellectual property assessments and evaluations. Additionally, projects and expertise include the assessment of applied research, manufacturing process control and optimization, failure analysis of microelectronic components and processes, and product development programs in the power, telecommunications, transportation, and computer industries.

1998 - 2008      Packer Engineering, Inc. - Naperville, Illinois

Senior Vice President and Head of the Electrical Engineering Department responsible for performing and managing electrical-related accident investigations, electrical shock and electrocution issues, electrical-related fire investigations, product liability issues, intellectual property evaluations, applied research, manufacturing process analysis, failure analysis of microelectronic components and processes, and product development programs in the power, telecommunications, automotive, and computer industries.

1992 - 1998      Littelfuse, Inc. - DesPlaines, Illinois

Engineering Manager responsible for the direction of activities associated with the research/development, selection, application, and analysis of materials, products, and technologies incorporated into company operations and products. Led the efforts to develop and implement electrical circuit protection devices for the industrial, electronic, telecommunications, automotive, and computer industries.

1983 - 1988      Motorola, Inc. - Schaumburg, Illinois

Development Engineer responsible for the design and manufacturability of electronic technologies for industrial, telecommunications, and automotive applications.

#### **ACADEMIC**

Ph.D.      Northwestern University, Evanston, Illinois - Materials Science and Engineering (1992)

B.S.      University of Illinois at Urbana-Champaign - Electrical Engineering (1983)



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## **AFFILIATIONS**

Institute of Electrical and Electronics Engineers (IEEE)  
American Society of Materials (ASM)  
International Microelectronics and Packaging Society (IMAPS)  
Illinois Society of Professional Engineers (ISPE)  
National Society of Professional Engineers (NSPE)  
International Association of Arson Investigators (IAAI)  
National Fire Protection Association (NFPA)

## **HONORS AND AWARDS**

Tau Beta Pi - National Engineering Honor Society  
Eta Kappa Nu - Electrical Engineering Honor Society  
Sigma Alpha Mu - Materials Science Honor Society  
Optical Society of America - Research Award 1989-1990  
Newport Research Award - Research Award 1990-1991  
Cabel Fellowship – Northwestern University 1991 - 1992

## **APPOINTMENT**

Vice-Chairman, Village of Algonquin; Planning and Zoning Commission

## **PUBLICATIONS and PATENTS**

### **PUBLICATIONS**

1. A.J. Neuhalfen and B.W. Wessels, "Photoluminescent Properties of Er-Doped  $\text{In}_{1-x}\text{Ga}_x\text{P}$  Prepared by Metalorganic Vapor Phase Epitaxy," Appl. Phys. Lett. 59, 2317 (1991).
2. A.J. Neuhalfen, D.M. Williams, and B.W. Wessels, "Photoluminescent Properties of Yb-Doped  $\text{InAsP}$  Alloys," Materials Science Forum, edited by G.Davies, G.G.DeLeo, M.Stavola (Trans Tech Publications, Aedermannsdorf, Switzerland), vol. 83-87, p.689 (1992).
3. A.J. Neuhalfen and B.W. Wessels, "Electronic and Photoluminescent Properties of  $\text{InP}$  Prepared by Flow Modulation Epitaxy," Appl. Phys. 71, 281 (1992).

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4. A.J. Neuhalfen and B.W. Wessels, "Rare-Earth Doped  $\text{In}_{1-x}\text{Ga}_x\text{P}$  Prepared by Metalorganic Vapor Phase Epitaxy," Advanced III-V Compound Semiconductor Growth, Processing and Devices, edited by S.J. Pearton, D.K. Sadana, J.M. Zavada (Mater. Res. Soc. Proc., Pittsburgh, PA), vol. 240, p. 195 (1992).
5. A.J. Neuhalfen and B.W. Wessels, "Thermal Quenching of  $\text{Er}^{3+}$ -Related Luminescence in  $\text{In}_{1-x}\text{Ga}_x\text{P}$ ," Appl. Phys. Lett. 60, 2657 (1992).
6. I.A. Buyanova, A.J. Neuhalfen, and B.W. Wessels, "Symmetry Properties of  $\text{Er}^{3+}$ -Related Centers in  $\text{In}_{1-x}\text{Ga}_x\text{P}$  with Low Alloy Compositions," Appl. Phys. Lett. 61, 2461 (1992).
7. A.J. Neuhalfen, "Miniaturization of Circuit Protection Devices to Meet Surface Mount Applications," Surface Mount International Symposium Proceedings, p. 784 (1995).

## PATENTS

1. Patent No. 6,043,966; March 28, 2000; "Printed Circuit Board Assembly Having An Integrated Fusible Link"
2. Patent No. 6,023,028; February 8, 2000; "Surface-Mountable Device Having A Voltage Variable Polymeric Material For Protection Against Electrostatic Damage To Electronic Components"
3. Patent No. 5,974,661; November 2, 1999; "Method Of Manufacturing A Surface Mount Device For Protection Against Electrostatic Damage To Electronic Components"
4. Patent No. 5,943,764; August 3, 1999; "Method Of Manufacturing A Surface Mount Fuse"
5. Patent No. 5,923,239; July 13, 1999; "Printed Circuit Board Assembly Having An Integrated Fusible Link"
6. Patent No. 5,844,477; December 1, 1998; "Method of Protecting A Surface Mount Fuse Device"
7. Patent No. 5,790,008; August 4, 1998; "Surface Mounted Fuse Device With Conductive Terminal Pad Layers And Groove On Side Surfaces"
8. Patent No. 5,552,757; September 3, 1996; "Surface Mounted Fuse Device"

UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT

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ACE AMERICAN INSURANCE COMPANY,

CASE NO. 3:11-CV-01741 (CSH)

Plaintiff,

v.

EATON ELECTRICAL, INC.,

Defendant.

JUNE 3, 2013

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**EATON CORPORATION'S REPLY TO PLAINTIFF'S  
MEMORANDUM IN OPPOSITION TO DEFENDANT'S  
MOTION TO STRIKE PLAINTIFF'S EXPERT**

Defendant Eaton Corporation, by and through its attorneys, Sandberg Phoenix & von Gontard P.C., and, pursuant to Local Rule 7(d), for its Reply to Plaintiff's Memorandum in Opposition to its Motion to Strike Plaintiff's Expert, hereby states as follows:

**INTRODUCTION:**

Plaintiff attempts to use misdirection and sleight-of-hand to distract the Court from the serious concerns and flawed methodology raised in Defendant's Motion to Strike Joseph Cristino (hereinafter "Cristino"). Notably, with an absence of citations to the record, Plaintiff attempts to focus the Court's attention on testing of unrelated products, misstatements of the record and unsupported claims of admissions. Such tactics do not lend credibility to the flawed methodology of Plaintiff's retained expert and must not be rewarded.

**ARGUMENT:**

Without citing to the record, Plaintiff's counsel argues Cristino's opinions are grounded in the scientific method and reliable. (*See* Doc. No. 44, Plaintiff's Memorandum in Opposition, p. 26, hereinafter "Opposition"). However, rather than focus on the methodology used by

Cristino in formulating his opinions<sup>1</sup> Plaintiff engages in a discussion of his *conclusions*—*ignoring the very methodology* they claim is “scientific and reliable”. Plaintiff accuses Defendant of failing to acknowledge the conclusions and instead focusing on Cristino’s methods discovered during a “careful and crafty” deposition. (Opposition, p. 2). Defendant makes no apology for advising the Court of the flawed basis for Cristino’s opinions. Indeed, it is the methodology and not the conclusion which is the focus of the Court’s analysis under *Daubert*. See e.g. *Walker v. Soo Line R.R. Co.*, 208 F.3d 581, 586 (7th Cir. 2000). Conclusions reached through circular logic and unsupported speculation, such as the opinions of Cristino in this case, are of no benefit to the trier of fact and must be stricken pursuant to Fed. R. Evid. 702, 401; *Daubert v. Merrill Dow Pharm., Inc.*, 509 U.S. 579, 589-590 (1993); and, *Kumho Tire Co. v. Carmichael*, 526 U.S. 137, 147 (1999).

**A. Unrelated Testing of a CL&P Transformer Does Not Support Cristino’s Conclusions as to the Meter Panel or its Breaker.**

Plaintiff has not alleged the existence of a defect in the Connecticut Light & Power (“CL&P”) transformer that failed on January 17, 2011. (See Doc. No. 8, Petition’s Complaint). Yet, in its opposition to Defendant’s Motion to Strike, Plaintiff claims “Cristino participated in joint inspection and *testing* of the CP&L [sic] transformer.” (Opposition, p. 8, emphasis in original). The CL&P transformer is not at issue in Plaintiff’s Complaint and is not part of the testing that would be required to confirm how a failure, if any, occurred in the subject meter panel or its breaker. Referring to testing of unrelated products and unspecified “inspections” that

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<sup>1</sup> After failing to conduct any testing on the meter panel or its circuit breaker, Cristino concluded that an unknown amount of moisture entered the meter panel from an unknown location and caused an unknown failure in its breaker. (Cristino, pp. 168-169). Of course, he also concluded that there was no design, manufacturing or warning defect in the subject meter panel or its breaker which caused or contributed to cause the alleged ingress of moisture. (Cristino, pp. 51-52).

do not form the basis of Cristino's opinions or support his conclusions is merely an attempt at misdirection.

After pointing to Cristino's unrelated testing, Plaintiff criticizes Defendant for not "speaking up" when Plaintiff tested the oil in the CL&P's transformer. (*Id.* at 18). Again, Defendant's election to criticize or consent to unrelated testing of a CL&P transformer has nothing to do with Cristino's opinions or his methodology concerning the meter panel or its breaker. Presumably these arguments are an attempt to suggest that Cristino performed some testing, albeit on different products, before he reached his conclusion. Perhaps if Cristino had tested the meter panel or its breaker in 2011 he could have advised the Plaintiff there was no design, manufacturing or warning defect and that the ingress of moisture would not cause the failure mode he theorized. (*See* Exhibit A, Deposition of Joseph Cristino, hereinafter "Cristino", pp. 51-52; 205-206). Further, had Cristino performed tests on the meter panel or its breaker prior to reaching his conclusions perhaps he could have informed Plaintiff's counsel that there is no basis for the subrogation cause of action.

As it stands, on November 12, 2012, Cristino concluded that an unknown amount of moisture from an unknown source would "most probably" cause the breaker to fail. (Exhibit B, Electrical Failure Analysis Report, hereinafter "Cristino Report" p. 8). Twenty-seven (27) days later and three (3) days before his deposition, Cristino submerged an exemplar circuit breaker in a bucket of water for five minutes to test his theory. (Cristino, pp. 195-196). Thereafter, he froze the breaker into a block of ice and installed it into an energized meter panel and proved his theory wrong on three separate occasions. (Cristino, pp. 205-206). Three days after proving his hypotheses wrong, Cristino testified that he knew of no manufacturing, design or warning defect in the meter panel or breaker but insisted—despite his testing—that an unknown amount of

moisture from an unknown source caused the failure that he could not reproduce. *Id.* Such opinions do not support a cause of action for product liability in Connecticut. *See e.g. Kuzmech v. Werner Ladder Co.*, No. 3:10-cv-266, 2012 WL 6093898, at \*9 (D. Conn. Dec. 7, 2012) (citations omitted) (Incorporated herein by reference as Exhibit C).

In addition to proving his theory wrong, Cristino's post opinion testing ignored how the moisture entered the meter panel and what effect, if any, the missing components<sup>2</sup> had on the integrity of the intended product. As Plaintiff noted in its opposition:

***“After the fire, parts were missing from the Eaton product so it did not conform to the Eaton plans and specification or the applicable standards.”***

(Opposition, p. 6).

It is Cristino's failure to conduct meaningful and relevant testing of his hypotheses before reaching his conclusions which violates the scientific method<sup>3</sup> and makes his opinion unreliable. Further, it is his reliance on speculation, assumption and circular logic while ignoring the results of his own post opinion testing that makes his opinions inadmissible as a matter of law.

**B. Testing a Hypothesis After you Render a Conclusion is Not an Approved Scientific Methodology—Nor is Ignoring the Results.**

Plaintiff claims Cristino will not rely on his post opinion testing which calls into question his moisture ingress failure theory unless it is raised during cross-examination. (Opposition, p. 12). However, Plaintiff also asserts Cristino's post opinion testing confirmed the breaker toggle switch would not function when frozen solid. (*Id.* at 13 and 25). The function of the toggle switch on an exemplar breaker subjected to conditions different than the subject breaker is not at issue in this case. What is at issue is whether the breaker would fail after being exposed to the

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<sup>2</sup> Plaintiff claims, without citation, that there is no credible evidence that the screw or wire gutter were missing prior to the fire. (Opposition, p. 13). Plaintiff's experts removed the meter panel from the scene and documented the missing screw and gutter.

<sup>3</sup> *See NFPA 921 Guide for Fire and Explosion Investigation* § 3.3.139 (2008).



most extreme moisture condition Cristino could create—while at the same time acknowledging the subject breaker was not exposed to such moisture.

- Q. What does the fact that a breaker that is submerged in water and then frozen and having its toggle switch not work tell you about this case, if anything?**
- A. Well, what it does is it gives us insight as to the reaction of the circuit breaker to cold weather operation if it's exposed to moisture.**
- Q. When you say exposed to moisture, submerged for five minutes?**
- A. Well, submerged --**
- Q. And frozen?**
- A. Submerged for five minutes and frozen, yes,**
- Q. Was the circuit breaker that was installed in the meter panel at 75 Vista View Drive ever submerged for five minutes?**
- A. To the best of my knowledge, no.**

(Cristino pp. 201-202).

By page 22 of Plaintiff's Memorandum in Opposition they assert the post opinion testing that Cristino is not going to rely upon "proved moisture could enter the breaker". (Opposition, p 22). Thus, when Cristino removed the breaker from the meter panel and submerged it in a bucket of water (an event which never occurred for the subject breaker) moisture made its way into the breaker components. Of course, the moisture did not cause a failure of the breaker when frozen and energized—presumably that is the part of the test Cristino is going to ignore—the outcome. Whether Cristino elects to use his post opinion testing or not is irrelevant to the *Daubert* analysis. The fact that he failed to conduct a test before reaching his conclusion is what violates the scientific method. The fact that he then ignored the results of the testing highlights the egregiousness of his opinions and his willingness to reach conclusions to support his client regardless of the facts, his own test and science.

Finally, Plaintiff argues, without citation, that "based on [Cristino's] tests and inspections, he determined the most likely cause was the ingress of moisture." (Opposition, p. 9). Yet, Cristino's testimony was clear that his conclusions of "moisture ingress" were not based

upon testing or inspections as Plaintiff's counsel asserts but instead the existence of a fault and reliance on circular logic:

- Q. And so the fault is your evidence of moisture and your only evidence of moisture; is that correct?**
- A. Yes.**
- Q. Okay. And you cannot tell me how that moisture got into the meter panel, nor how that moisture -- if it in fact did -- entered into the breaker. Is that right?**
- A. That's correct.**

(Cristino, p. 120).

The unsupported arguments of counsel that are contrary to the record cannot cure the failed methodology of their retained expert.

**C. Misstatements of the Record do not Lend Credibility to Cristino's Methodology.**

The Plaintiff shifts from arguing without citation that Cristino tested his causation theory to arguing that he does not need to test his theory because Eaton admits that moisture could cause the fault—again without citation. (Opposition, p. 11). Nothing could be further from the truth. Plaintiff claims that “Eaton admits moisture can get into the enclosure” then extrapolates from their argument that Eaton admits moisture is the cause of the fault. *Id.* Plaintiff's counsel's analysis is as flawed as his expert's. Setting aside for a moment the fact that the subject meter panel was missing key component parts, Defendant has never “admitted” moisture could get into the meter panel or that moisture would cause a fault in the breaker. Quite to the contrary, Jeff Johnson testified that the meter panel was rainproof—when all the components required by the standard are present, with overlapping panels designed to keep water out of the meter panel. (Exhibit D, Deposition of Jeffrey Johnson, pp. 121-123).

In response to the requirement that an expert rely on scientific testing, Plaintiff's counsel cries foul stating “Eaton would have Cristino prove something they admit”—again without

citation. (Opposition, p. 11). While Plaintiff's unsupported arguments are inventive—they do not support the flawed methodology used by Cristino in reaching his conclusions prior to conducting any testing—then ignoring the adverse results of those tests. It is the *Guide for Fire and Explosion Investigation* NFPA 921, the scientific method and qualified experts in the field that require an expert test their theory in order to establish that their hypothesis is correct and thus that their opinions are reliable. What this Defendant wants is for Cristino to comply with the scientific method relied on by experts in the field before reaching his conclusions. Furthermore, upon learning his theory was incorrect that Cristino follow the scientific method, discard his theory and declare the cause of the fire “undetermined”. *See* NPFA 921 § 4.3.6 (2008).

**D. Misstating the Conclusions of the Independent Fire Investigators Does not Support Cristino's Flawed Methodology.**

Plaintiff claims that Christino's conclusions were consistent with the local and state fire marshals and therefore his methodology must be reliable. (Opposition, p. 12). The fire marshals actually concluded that the cause of the fire was undetermined as is mandated by NFPA 921. NPFA 921 § 4.3.6 (2008). Upon conducting their examination and using deductive reasoning as required by the scientific method, they readily admitted that they did not know what caused the fire but that it was accidental. The only person who claims that the fire was caused by unknown conditions of the meter panel and its breaker through an unsupported failure mode is Cristino—who was hired by the Plaintiff to render such an opinion. As the fire marshals noted:

**Q Do you know what caused this fire as you sit here today?**

**A The actual cause? No.**

....

**Q Do you know if there was a failure, if any, in the meter panel?**

**A Not without a third party testing.**

(Exhibit E, Fire Marshal Timothy Baldwin, p. 59).

**Q Am I correct that you have not concluded that the meter panel caused this fire?**

**A I have not concluded that, no.**

**Q And do you have a specific cause of this fire?**

**A No, I don't.**

(Exhibit F, Fire Marshal Henry Stormer, p. 61).

**Q Am I correct that the exact cause of this fire was never determined?**

**A By me?**

**Q Yes.**

**A That's correct.**

(Exhibit G, State Fire Marshal Kenneth Christenson, p. 31).

The fire investigators who used NFPA 921 and scientific methodology to investigate the cause of the fire all concluded that it was “undetermined”. The only person who claims to know what caused the fire is Cristino. However, his “knowledge” is supported by the *ipse dixit* of the expert and not the facts of the case, testing or scientific methodology. Cristino’s conclusions were made before he tested his hypothesis and proved himself wrong and are therefore unreliable. The failed and flawed opinions of Joseph Cristino offer no probative value to the jury and must be excluded as a matter of law.

WHEREFORE, Eaton Corporation’s motion to strike Joseph Cristino as an expert witness should be granted.

**EATON CORPORATION**

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**CERTIFICATE OF SERVICE**

I hereby certify that on June 3, 2013, a copy of the foregoing Reply re Motion to Strike Expert Witness was filed electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by email to all parties by operation of the Court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the Court's CM/ECF System.

/s/ Jonathan T. Barton

Case: Ace American Insurance Company v.  
Eaton Electrical, Inc.

Transcript of Joe Cristino

Date: December 20, 2012

*This transcript is printed on 100% recycled paper*



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1

UNITED STATES DISTRICT COURT  
DISTRICT OF CONNECTICUT  
-----x  
ACE AMERICAN INSURANCE COMPANY,  
  
Plaintiff,  
  
vs. Case No. 3:11-cv-01741-CSH  
Date: December 20, 2012  
EATON ELECTRICAL, INC.,  
  
Defendant.  
-----x  
  
DEPOSITION OF JOSEPH CRISTINO  
  
The deposition of Joseph Cristino was taken  
on December 20, 2012, beginning at 9:20 a.m., at 150  
Trumbull Street, Hartford, Connecticut, before Susan  
Wandzilak, Registered Professional Reporter and Notary  
Public in the State of Connecticut.  
  
Susan Wandzilak License No. 377

3

1 STIPULATIONS  
2 IT IS HEREBY STIPULATED AND AGREED by  
3 and between counsel representing the parties that  
4 each party reserves the right to make specific  
5 objections at the trial of the case to each and  
6 every question asked and of answers given  
7 thereto by the deponent, reserving the right to  
8 move to strike out where applicable, except as to  
9 such objections as are directed to the form of  
10 the question.  
11 IT IS HEREBY STIPULATED AND AGREED by  
12 and between counsel representing the respective  
13 parties that proof of the official authority of  
14 the Notary Public before whom this deposition is  
15 taken is waived.  
16 IT IS FURTHER STIPULATED AND AGREED by  
17 and between counsel representing the respective  
18 parties that the reading and signing of the  
19 deposition by the deponent is not waived.  
20 IT IS FURTHER STIPULATED AND AGREED by  
21 and between counsel representing parties that all  
22 defects, if any, as to the notice of the taking  
23 of the deposition are waived.  
24 Filing of the Notice of Deposition with  
25 the original transcript is waived.

2

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4

1 **THE VIDEOGRAPHER: We are now on record.**  
2 **December 20, 2012. The time on videotaped record**  
3 **is approximately 9:47 a.m.**  
4 **You can swear the witness, please.**  
5 **JOSEPH CRISTINO,**  
6 **having been first duly sworn, testified as**  
7 **follows:**  
8 **THE COURT REPORTER: Can I have your full**  
9 **name and address for the record.**  
10 **THE WITNESS: Joseph Anthony Cristino. And**  
11 **our business address is Lois Lane in Redding**  
12 **Connecticut 06875.**  
13 **DIRECT EXAMINATION**  
14 **BY MR. BARTON:**  
15 **Q.** Mr. Cristino, my name is John Barton. I'm an  
16 attorney and I represent Eaton Corporation in a cause  
17 of action that Ace Insurance Company has brought  
18 against it arising out of a fire which occurred on  
19 January 16, 2011.  
20 I understand you have given your deposition a  
21 number of times; is that correct?  
22 **A.** Yes, sir.  
23 **Q.** Okay. Well, the same rules will apply, but  
24 for some reason lawyers always like to say them  
25 anyway, even to an expert witness who has given a

5	<p>1 number of depositions.</p> <p>2 So as we go along here, I'm going to ask you</p> <p>3 a series of questions. If at any time you don't</p> <p>4 understand my question or it's not clear in any way,</p> <p>5 just ask me to repeat or rephrase myself and I'll be</p> <p>6 glad to do so. Okay?</p> <p>7 A. Yes, sir.</p> <p>8 Q. All right. About how many depositions have</p> <p>9 you given?</p> <p>10 A. Approximately 20. It's in that deposition</p> <p>11 transcript list.</p> <p>12 Q. We'll get to that in a second.</p> <p>13 A. I never took the time to remember how many,</p> <p>14 how many times.</p> <p>15 Q. It's my understanding that you're here today</p> <p>16 because you have been retained by the plaintiff's</p> <p>17 attorney, Peter Rossi, to provide testimony in this</p> <p>18 case. Is that correct?</p> <p>19 A. That's correct.</p> <p>20 Q. Can I get your date of birth, sir?</p> <p>21 A. June 5th, 1947.</p> <p>22 Q. And are you currently employed?</p> <p>23 A. Yes, sir. I am.</p> <p>24 Q. And what is your occupation?</p> <p>25 A. I'm a consulting engineer.</p>	7	<p>1 until about two years ago approximately 40 to 45</p> <p>2 percent of our business was forensic analysis for</p> <p>3 electrical failures.</p> <p>4 Q. What is it now?</p> <p>5 A. Last year was the first time that we actually</p> <p>6 went over 50 percent. I think last year we were</p> <p>7 approximately 55 percent forensic and approximately 45</p> <p>8 percent design.</p> <p>9 Q. And who do you do design work for?</p> <p>10 A. Oh, our clients include the Third Taxing</p> <p>11 District Electrical Department. They are a municipal</p> <p>12 power company in East Norwalk, Connecticut.</p> <p>13 Advanced Fusion Systems, they are a</p> <p>14 developmental company in Newtown, Connecticut. We are</p> <p>15 still in the process of getting them on line.</p> <p>16 Rhode Island Hospital, New Milford Hospital,</p> <p>17 the Miriam Hospital in Rhode Island, Bradley Memorial</p> <p>18 Hospital in Connecticut, New Britain General Hospital</p> <p>19 in Connecticut.</p> <p>20 Q. And these design -- this design work that you</p> <p>21 are describing, that's design work done by Cristino</p> <p>22 Associates; is that correct?</p> <p>23 A. That is correct.</p> <p>24 Q. What percent of your work?</p> <p>25 <b>MR. ROSSI: Did you want him to finish his</b></p>
6	<p>1 Q. And who are you a consulting engineer for?</p> <p>2 A. With regard to my clients or the company that</p> <p>3 we work with?</p> <p>4 Q. The company that employs you.</p> <p>5 A. Oh, Cristino Associates, Inc.</p> <p>6 Q. And are you the owner of Cristino Associates,</p> <p>7 Inc.?</p> <p>8 A. I'm president and partner.</p> <p>9 Q. How many other partners do you have?</p> <p>10 A. One.</p> <p>11 Q. And who is your other partner?</p> <p>12 A. Lois Buchanan.</p> <p>13 Q. How many employees does Cristino Consulting,</p> <p>14 Inc., have?</p> <p>15 A. Associates.</p> <p>16 Q. How many associates?</p> <p>17 A. Right now we have five full-time employees</p> <p>18 and two part-time.</p> <p>19 Q. And what is the -- what does Cristino</p> <p>20 Consulting do?</p> <p>21 A. Cristino Associates?</p> <p>22 Q. Cristino Associates. Excuse me.</p> <p>23 A. We, we are an electrical engineering firm.</p> <p>24 Our core business is design of high voltage, medium</p> <p>25 voltage, and electrical distribution systems. And up</p>	8	<p>1 <b>answer?</b></p> <p>2 <b>MR. BARTON: He said that's correct.</b></p> <p>3 <b>MR. ROSSI: No, with regard to the clients.</b></p> <p>4 <b>You asked him a question. I'm not sure if he was</b></p> <p>5 <b>finished or not.</b></p> <p>6 <b>Do you have other clients?</b></p> <p>7 <b>MR. BARTON: Let me ask the question.</b></p> <p>8 <b>BY MR. BARTON:</b></p> <p>9 Q. Are you finished with the listing of design</p> <p>10 clients that Cristino Associates handles?</p> <p>11 A. I can add to it. I mean --</p> <p>12 Q. Well, I'm trying to get a sampling.</p> <p>13 A. Again, in my c.v there is a whole list of</p> <p>14 them there.</p> <p>15 Q. My question now is, How much design work do</p> <p>16 you, Mr. Cristino, do as opposed to forensic analysis?</p> <p>17 A. Approximately 50 to 60 percent.</p> <p>18 Q. Okay. So you divide your time between</p> <p>19 forensic and design and about 50 to 60 percent of your</p> <p>20 time is on the design side?</p> <p>21 A. That's correct.</p> <p>22 Q. With only 40 to 50 percent of your time on</p> <p>23 the forensic analysis side?</p> <p>24 A. That's correct.</p> <p>25 Q. And how long has it been that way?</p>

2 (Pages 5 to 8)

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45	<p>1 Q. Peter, do you know if Exhibit 79 is the</p> <p>2 report that you produced to us pursuant to Rule 26?</p> <p>3 MR. ROSSI: Yeah, I'm pretty sure it was.</p> <p>4 Can we go off the record just for a quick</p> <p>5 second?</p> <p>6 MR. BARTON: Sure.</p> <p>7 THE VIDEOGRAPHER: Off record, 10:37.</p> <p>8 (Briefly off the record, as a break is</p> <p>9 taken.)</p> <p>10 THE VIDEOGRAPHER: We're back on record,</p> <p>11 10:47.</p> <p>12 BY MR. BARTON:</p> <p>13 Q. Mr. Cristino, for purposes of your deposition</p> <p>14 today, we are going to use Exhibit 79, which is a</p> <p>15 little bit different than the expert report I received</p> <p>16 pursuant to the Rule 26 disclosure. And we will go</p> <p>17 through the differences.</p> <p>18 But I need to know, did you at any time</p> <p>19 change or amend any of the contents of your report or</p> <p>20 add or remove or alter any of the photographs in your</p> <p>21 report since November 12 of 2012?</p> <p>22 A. Not that I recall, no, sir.</p> <p>23 Q. Okay. When you type up your report, do you</p> <p>24 create the cover sheet last?</p> <p>25 A. It depends on the, the way in which I do it.</p>	47	<p>1 26 and I want to make sure we have the same language</p> <p>2 in each report. Okay?</p> <p>3 A. Very good.</p> <p>4 Q. The first paragraph on page 1 of Exhibit 79</p> <p>5 talks about a meeting that you had on January 31st of</p> <p>6 2011 with Mr. Driscoll; is that correct?</p> <p>7 A. That's correct.</p> <p>8 Q. And what was the purpose of that meeting?</p> <p>9 A. To walk through the fire scene.</p> <p>10 Q. Was that the first time you walked through</p> <p>11 the fire scene?</p> <p>12 A. Yes, sir.</p> <p>13 Q. And when you walked that fire scene, did you</p> <p>14 also take photographs?</p> <p>15 A. Yes, sir. I did.</p> <p>16 Q. And those are contained within your file</p> <p>17 which is Exhibit 82; is that correct?</p> <p>18 A. That's correct.</p> <p>19 Q. Have you worked with Mr. Driscoll before?</p> <p>20 A. Yes, I have.</p> <p>21 Q. About how many occasions?</p> <p>22 A. Approximately 20.</p> <p>23 Q. Did you perform an origin-and-cause</p> <p>24 investigation into this fire?</p> <p>25 A. No, sir.</p>
46	<p>1 Sometimes I will -- I mean, the cover sheet is a</p> <p>2 stand-alone.</p> <p>3 Q. With respect to Exhibit 79, did you first</p> <p>4 type the report and then later finalize by preparing</p> <p>5 the cover sheet and dating it and then signing it?</p> <p>6 A. That's possible.</p> <p>7 Q. You don't recall as you sit here today?</p> <p>8 A. No, sir, I don't.</p> <p>9 Q. Okay. And Exhibit 79 contains all of your</p> <p>10 final opinions; is that correct?</p> <p>11 A. Yes, sir.</p> <p>12 Q. And that's based on all the information that</p> <p>13 you reviewed and all the testing and work that you</p> <p>14 performed prior to November 12, 2012, correct?</p> <p>15 A. That's correct.</p> <p>16 Q. All right. I direct your attention to page</p> <p>17 one of Exhibit 79. Mr. Cristino, I'm going to walk</p> <p>18 through your report, for lack of a better phrase,</p> <p>19 okay, so I get a good overview of what your opinions</p> <p>20 are.</p> <p>21 A. Okay.</p> <p>22 Q. And as I go through the contents of your</p> <p>23 report, please let me know if where I'm directing you</p> <p>24 has different content than between the two reports.</p> <p>25 I'm using the one that I actually received under Rule</p>	48	<p>1 Q. Am I correct you are not going to be offering</p> <p>2 any testimony as to an area of origin in this case?</p> <p>3 A. That's correct.</p> <p>4 Q. And am I also correct that you have limited</p> <p>5 your testimony to a failure analysis of the electrical</p> <p>6 products that you believe are involved?</p> <p>7 A. That's correct.</p> <p>8 Q. Okay. And just so we have it on the record,</p> <p>9 what do you believe are the electrical products that</p> <p>10 are involved in this fire?</p> <p>11 A. The fire involved the Cutler Hammer</p> <p>12 combination meter socket, the circuit breaker within</p> <p>13 the meter socket, and the conductors enclosed by that</p> <p>14 meter socket.</p> <p>15 Q. When you say the conductors enclosed by the</p> <p>16 meter socket, what do you mean?</p> <p>17 A. There was a set -- there were three</p> <p>18 conductors from Connecticut Light &amp; Power Company that</p> <p>19 were routed from the transformer through an</p> <p>20 underground conduit to the meter socket, entered the</p> <p>21 meter socket in the lower left hand corner, were</p> <p>22 routed up through the left-hand side of the meter</p> <p>23 socket -- or combination meter socket enclosure, and</p> <p>24 then penetrated a barrier about two-thirds of the way</p> <p>25 up or three-quarters of the way up through the</p>

12 (Pages 45 to 48)

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49	<p>1 enclosure and then made a 180-degree bend and were 2 terminated at the top of the meter socket. 3 And then there was a second cable -- 4 actually, let's see. It would have been a 5 four-conductor cable: two energized conductors, a 6 neutral, and a concentric ground that formed what's 7 identified as an SER cable. 8 That routed out the load side of the Cutler 9 Hammer circuit breaker and down through the meter 10 enclosure and exited the lower -- if I remember 11 correctly, I think it's the lower right-hand corner of 12 the meter socket. 13 <b>Q.</b> Thanks, sir. Have you ever designed a meter 14 panel? 15 <b>A.</b> No, sir, I have not. 16 <b>Q.</b> Have you ever participated in the manufacture 17 of a meter panel? 18 <b>A.</b> No, sir. 19 <b>Q.</b> Have you ever participated in the assembly of 20 a meter panel? 21 <b>A.</b> With regard to manufacturing? 22 <b>Q.</b> Yes, sir. 23 <b>A.</b> No, sir. 24 <b>Q.</b> Okay. Have you ever designed a circuit 25 breaker?</p>	51	<p>1 sometime in the late eighties and one in the nineties. 2 <b>Q.</b> Okay. Are you going to be offering any 3 opinions in this case that the subject meter panel is 4 defective in design? 5 <b>A.</b> No, sir. 6 <b>Q.</b> Are you going to be rendering any opinions 7 that the subject meter panel in this case is defective 8 or suffers from any manufacturing defect? 9 <b>A.</b> No, sir. 10 <b>Q.</b> Do you hold yourself out as an expert in 11 warnings or failure to warn or instruct? 12 <b>A.</b> In certain instances, yes, sir, I am. 13 <b>Q.</b> In this case, are you going to be offering 14 any opinions on a failure to warn with respect to the 15 subject meter panel? 16 <b>A.</b> No, sir. 17 <b>Q.</b> In this case, are you going to be offering 18 opinions with respect to a failure to instruct with 19 respect to the subject meter panel? 20 <b>A.</b> No, sir. 21 <b>Q.</b> Turning your attention to the breaker that 22 was installed in the subject meter panel, do you know 23 what the type of breaker was? 24 <b>A.</b> Yes, sir. 25 <b>Q.</b> What was that?</p>
50	<p>1 <b>A.</b> No, sir. 2 <b>Q.</b> Have you ever participated in the 3 manufacturing or assembly of a circuit breaker? 4 <b>A.</b> No, sir, I have not. 5 <b>Q.</b> Have you ever installed a meter panel on a 6 home? 7 <b>A.</b> Yes, sir, I have. 8 <b>Q.</b> How many times? 9 <b>A.</b> Let's see three times. 10 <b>Q.</b> Was that through an employment that you had? 11 <b>A.</b> No, sir. 12 <b>Q.</b> Okay. Personal installations? 13 <b>A.</b> That's correct. 14 <b>Q.</b> For your own home? 15 <b>A.</b> Yes, sir. 16 <b>Q.</b> All three times? 17 <b>A.</b> Two times for homes and once for one of my 18 children. 19 <b>Q.</b> Are these new constructions? 20 <b>A.</b> Upgrades on two and new on one. 21 <b>Q.</b> And what brand meter panel did you use? 22 <b>A.</b> I don't recall. 23 <b>Q.</b> When did you do these? 24 <b>A.</b> The most recent was 2006 when we upgraded the 25 service in Cheshire. The other two, one was in the --</p>	52	<p>1 <b>A.</b> It was a Cutler Hammer -- well, an Eaton 2 Cutler Hammer CSR style circuit breaker. 3 <b>Q.</b> Okay. In this case are you going to be 4 rendering an opinion as to a defect in design of the 5 Cutler Hammer CSR2200 circuit breaker? 6 <b>A.</b> No, sir. 7 <b>Q.</b> In this case are you going to be rendering 8 opinions with respect to a manufacturing defect with 9 respect to the subject CSR2200 breaker? 10 <b>A.</b> No, sir. 11 <b>Q.</b> In this case, are you going to be rendering 12 any opinions with respect to a failure to warn or 13 instruct with respect to the CSR2200 breaker? 14 <b>A.</b> No, sir. 15 <b>Q.</b> Do you have any opinions with respect to 16 whether the installation of the subject meter panel 17 was properly installed? 18 <b>A.</b> Based on the, the remains that we were able 19 to examine on January 31st, it appeared that it had 20 been -- that the meter enclosure had been properly 21 installed. 22 <b>Q.</b> All right. Do you have any criticisms as to 23 the location of where the meter panel was located on 24 the home at 75 Vista View Drive? 25 <b>A.</b> No, sir, I do not.</p>

13 (Pages 49 to 52)

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53	<p>1 Q. Okay, let's go back to Exhibit 79, paragraph</p> <p>2 1 on page 1. On January 31st, 2011, it indicates that</p> <p>3 you spoke with Mr. Driscoll and, quote, other</p> <p>4 experts. Who are the other experts?</p> <p>5 A. I don't know if we had a sign-in sheet there,</p> <p>6 but there were quite a few individuals that were</p> <p>7 there, including -- let's see, if I remember</p> <p>8 correctly, Jim Matthew from the Wright Group (ph). I</p> <p>9 think Ron Parsons might have been there from the</p> <p>10 Wright Group. Peter Davis was there. I think Peter</p> <p>11 was with Valentine at the time. And I think John</p> <p>12 Mulcahey might have been there from Nevco.</p> <p>13 Q. Your Exhibit 28 contains a sign-in sheet</p> <p>14 which shows all the people that would have been</p> <p>15 present on January 31st of 2011. Is that correct?</p> <p>16 A. That I don't recall. I mean, there are</p> <p>17 several sign-in sheets there, but I thought the</p> <p>18 majority of them were from -- well, one of them was</p> <p>19 from the Connecticut Light &amp; Power transformer test,</p> <p>20 but I thought the majority were from the Quali-</p> <p>21 Tech.... There may be one other.</p> <p>22 Q. At any of the site inspections that you</p> <p>23 attended at 75 Vista View Drive, were there</p> <p>24 representatives of Eaton Corporation present?</p> <p>25 A. Not that I recall.</p>	55	<p>1 &amp; Power conduit run, the remains of the SER cable, and</p> <p>2 also the condition of the wall assembly and the area</p> <p>3 where the meter would have been -- the meter enclosure</p> <p>4 would have been mounted and residential wiring in that</p> <p>5 area.</p> <p>6 Q. When you say documented, what do you mean?</p> <p>7 Photographed?</p> <p>8 A. Photographed and reviewed and inspected.</p> <p>9 Q. Your report indicates that the fire origin</p> <p>10 was in the vicinity of the electrical service meter</p> <p>11 enclosure and the underground conductor conduit</p> <p>12 location. Am I correct, sir, that you are going to</p> <p>13 rely on Mr. Driscoll with respect to the area of</p> <p>14 origin for this fire, his opinions?</p> <p>15 A. Yes, sir, I am.</p> <p>16 Q. Okay. Your report, Exhibit 79, on page 1</p> <p>17 says that the area of origin is where the underground</p> <p>18 is in the vicinity of the electrical service meter.</p> <p>19 That's the meter panel that we have been talking</p> <p>20 about, correct?</p> <p>21 A. That's correct.</p> <p>22 Q. Okay. And underground conductor conduit</p> <p>23 location. What underground conductor and conduit</p> <p>24 location are you referring to?</p> <p>25 A. Well, previously I had identified that as a</p>
54	<p>1 Q. Okay. As a forensic engineer doing an</p> <p>2 electrical examination of the fire scene, is it</p> <p>3 important to attend the site of the fire, a site</p> <p>4 visit?</p> <p>5 A. It depends on what, what remains after the</p> <p>6 fire. But, you know, we would prefer to be there</p> <p>7 rather than not.</p> <p>8 Q. And why would you prefer to be there rather</p> <p>9 than not?</p> <p>10 A. To make a complete analysis.</p> <p>11 Q. Okay. And when you say a complete analysis,</p> <p>12 look at all the electrical components and the full</p> <p>13 picture of what occurred at the home; is that correct?</p> <p>14 A. For an electrical analysis, yes, sir.</p> <p>15 Q. And if you are not able to do that, that may</p> <p>16 compromise your opinions or your ability to analyze</p> <p>17 the electrical system in a home or where there is a</p> <p>18 fire; is that correct?</p> <p>19 A. Depending upon documentation and remains.</p> <p>20 Q. And when you say depending upon documentation</p> <p>21 and remains, what do you mean?</p> <p>22 A. Well, in this case, we, we -- the overall</p> <p>23 group documented everything that was left including</p> <p>24 the circuit breaker panels, the Connecticut Light &amp;</p> <p>25 Power insulation, the remains of the Connecticut Light</p>	56	<p>1 Connecticut Light &amp; Power conduit that ran from the</p> <p>2 transformer to the meter enclosure.</p> <p>3 Q. Any other conduit in that area?</p> <p>4 A. If I remember correctly, there was an exit</p> <p>5 point for the, for the ground conductor that went over</p> <p>6 to the system ground. But I don't recall there being</p> <p>7 any other conduit. Telephone might have been in</p> <p>8 conduit, but again I don't recall it off the top of my</p> <p>9 head.</p> <p>10 Q. What you have described, the conduit that</p> <p>11 went from the CL&amp;P transformer to the home,</p> <p>12 specifically to the meter panel, that's commonly</p> <p>13 referred to as the line side; is that correct?</p> <p>14 A. That would connect to the line side of the</p> <p>15 meter socket, yes, sir.</p> <p>16 Q. And going from the meter socket to -- into</p> <p>17 the home, is that called the load side?</p> <p>18 A. That's correct.</p> <p>19 Q. I'm just trying to get definitions straight</p> <p>20 so you and I can talk about what's line and what's</p> <p>21 load. Do you understand what I'm talking about?</p> <p>22 A. Yes, sir.</p> <p>23 Q. All right. Your report, Exhibit 79, page 1</p> <p>24 in paragraph 1, talks about the underground conductor</p> <p>25 conduit. I asked you what that included and you</p>

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109	<p>1 the SER cable coming into it.</p> <p>2 And as you see this breaker today, this is</p> <p>3 the way the breaker was that we saw it on January</p> <p>4 31st. So these copper aluminum connections that the</p> <p>5 terminals, the lugs that are at the top of this</p> <p>6 breaker, would have been here.</p> <p>7 And you can see in the photographs they are</p> <p>8 gone. So they basically were vaporized. They were</p> <p>9 destroyed in the electrical fault activity and melted</p> <p>10 along with the aluminum conductors.</p> <p>11 <b>Q.</b> Were the lugs actually vaporized or did you</p> <p>12 account for them all?</p> <p>13 <b>A.</b> If I remember correctly -- and again we would</p> <p>14 have to look at the photographs -- I think we found</p> <p>15 one portion of a -- the threaded Allen screw and</p> <p>16 possibly a portion of the body. But I would have to</p> <p>17 double-check and we will get to that when we get to</p> <p>18 the photographs.</p> <p>19 <b>Q.</b> When you're using the term vaporized, are you</p> <p>20 meaning that to be vaporized from electrical fault</p> <p>21 activity or are you meaning it to be melting that is</p> <p>22 just not there?</p> <p>23 <b>A.</b> I mean vaporized as in being exposed to the</p> <p>24 plasma of an electrical arc.</p> <p>25 <b>Q.</b> An electrical arc fault hit it, blew it</p>	111	<p>1 <b>A.</b> The overall meter enclosure, the combination</p> <p>2 meter socket enclosure.</p> <p>3 <b>Q.</b> And when you say the meter socket enclosure,</p> <p>4 you mean the upper portion or the lower portion?</p> <p>5 <b>A.</b> The overall assembly.</p> <p>6 <b>Q.</b> So the entire meter panel including the upper</p> <p>7 portion that has the revenue meter and the lower</p> <p>8 portion which contains the breaker; is that correct?</p> <p>9 <b>A.</b> That's correct.</p> <p>10 <b>Q.</b> All right. How did this moisture enter the</p> <p>11 enclosure?</p> <p>12 <b>A.</b> That, we don't have any --</p> <p>13 <b>Q.</b> You don't know?</p> <p>14 <b>A.</b> I don't know.</p> <p>15 <b>Q.</b> So if I were to ask you and go through all</p> <p>16 the various points and every aspect of this meter</p> <p>17 panel, you would not be able to tell me where this</p> <p>18 believed moisture entered the panel; is that correct?</p> <p>19 <b>A.</b> That's correct.</p> <p>20 <b>Q.</b> Okay. This may sound odd, but can you</p> <p>21 describe the moisture for me, sir?</p> <p>22 <b>A.</b> No, sir, I can't.</p> <p>23 <b>Q.</b> Okay.</p> <p>24 (Pause.)</p> <p>25 <b>THE WITNESS: Can we take a break for a</b></p>
110	<p>1 apart, and completely obliterated that component?</p> <p>2 <b>A.</b> No, the electrical, the electrical arc</p> <p>3 expanded to the point of where that existed and was of</p> <p>4 sufficient heat and duration to be able to melt it to</p> <p>5 the point of where it actually fell off its mount.</p> <p>6 Because there would have been two mounting screws</p> <p>7 coming through these terminals to hold the back side</p> <p>8 just as you see here.</p> <p>9 <b>Q.</b> So the electrical arc actually consumed those</p> <p>10 lugs on the load side?</p> <p>11 <b>A.</b> In my opinion, yes.</p> <p>12 <b>Q.</b> All right.</p> <p>13 <b>A.</b> Or a portion -- at least a portion of one of</p> <p>14 them that we found some remains of.</p> <p>15 <b>Q.</b> Page 3 of your report on Exhibit 79. And I</p> <p>16 want to direct your attention to bullet point number 4</p> <p>17 on that page. It says:</p> <p>18 Damage to the Cutler Hammer combination meter</p> <p>19 socket enclosure and internal components appeared to</p> <p>20 be consistent with an event created by the ingress of</p> <p>21 moisture into the enclosure and a result of electrical</p> <p>22 failure.</p> <p>23 Let's start with ingress of moisture into the</p> <p>24 enclosure. First, what enclosure are you referring</p> <p>25 to?</p>	112	<p>1 <b>minute?</b></p> <p>2 <b>MR. BARTON: Absolutely.</b></p> <p>3 <b>THE VIDEOGRAPHER: Off record, 12:26 p.m.</b></p> <p>4 <b>(Briefly off the record, as a break is</b></p> <p>5 <b>taken.)</b></p> <p>6 <b>THE VIDEOGRAPHER: We're back on record,</b></p> <p>7 <b>12:34.</b></p> <p>8 <b>BY MR. BARTON:</b></p> <p>9 <b>Q.</b> Mr. Cristino, before we took our break, we</p> <p>10 were discussing the moisture that you believe made its</p> <p>11 way into this meter panel from an unknown -- from some</p> <p>12 unknown way. My question to you is, What caused this</p> <p>13 moisture? Where did the moisture come from?</p> <p>14 <b>A.</b> Well, based on what we saw in the area in</p> <p>15 that development, there were snow drifts. We noted a</p> <p>16 snow drift across the road on a similar structure that</p> <p>17 was up to and over the front of the meter enclosure at</p> <p>18 that location and --</p> <p>19 <b>Q.</b> And let me just make sure I understand you.</p> <p>20 You're talking about snow on the ground drifting up</p> <p>21 past the actual revenue meter; is that correct?</p> <p>22 <b>A.</b> That's correct.</p> <p>23 <b>Q.</b> Okay. So this is snow on the ground.</p> <p>24 <b>A.</b> Yes, sir.</p> <p>25 <b>Q.</b> All right. Any other sources of moisture?</p>

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113	<p>1 A. Well, this meter enclosure had been</p> <p>2 installed, as I understood, for five years at the time</p> <p>3 of this loss so there would have been rain and other</p> <p>4 snowstorms and hail and all manner of natural moisture</p> <p>5 in that time period.</p> <p>6 Q. Do you believe that any rain, snowstorms,</p> <p>7 hail, or natural moisture of any type that occurred</p> <p>8 prior to January 16 of 2011 caused or contributed to</p> <p>9 cause the fire at 75 Vista View Drive?</p> <p>10 A. In my opinion, I think it's highly probable.</p> <p>11 Q. Okay. Which rain, snow, storms, or hail</p> <p>12 highly -- well, you believe highly are potentially a</p> <p>13 cause of the fire at 75 Vista View Drive?</p> <p>14 A. All of them.</p> <p>15 Q. All of them?</p> <p>16 A. Yes, sir.</p> <p>17 Q. Can you tell me how much rain this particular</p> <p>18 meter panel was exposed to?</p> <p>19 A. No, sir, I cannot.</p> <p>20 Q. Can you tell me if any of the rain this meter</p> <p>21 panel was exposed to ever made its way into the</p> <p>22 internal components of the meter?</p> <p>23 A. No, sir.</p> <p>24 Q. The meter panel.</p> <p>25 A. No, sir, I can't.</p>	115	<p>1 Q. How much time was it required for this</p> <p>2 failure to occur?</p> <p>3 A. In my opinion, the time from when it was</p> <p>4 initially installed until January 16, 2011.</p> <p>5 Q. How did time contribute to this failure?</p> <p>6 A. It allowed for the buildup of moisture within</p> <p>7 that meter enclosure to reach the point where the</p> <p>8 fault occurred within the circuit breaker.</p> <p>9 Q. How much moisture is required to build up</p> <p>10 within the circuit breaker to require a fault?</p> <p>11 A. I don't know.</p> <p>12 Q. Is it your testimony that once moisture</p> <p>13 enters the circuit breaker it does not leave it?</p> <p>14 A. Other than through a fault event, yes, sir.</p> <p>15 Q. Okay. So evaporation, things like that</p> <p>16 aren't going to happen. Once the moisture is going to</p> <p>17 get in there, it's going to stay in there for time and</p> <p>18 memorial?</p> <p>19 A. No, sir. If the breaker enclosure reaches a</p> <p>20 high enough temperature, yes, evaporation could take</p> <p>21 place. The fact that this was on the northerly side</p> <p>22 of the structure, it may have seen some early morning</p> <p>23 easterly sun, so it was possible that it did get warm</p> <p>24 enough to evaporate.</p> <p>25 Q. So it's your opinion that this unknown amount</p>
114	<p>1 Q. Can you tell me how much snow this meter</p> <p>2 panel was exposed to?</p> <p>3 A. No, sir, I can't.</p> <p>4 Q. Can you tell me how much snow made its way</p> <p>5 into the internal components of the meter panel?</p> <p>6 A. No, I cannot.</p> <p>7 Q. Can you tell me how much hail this meter</p> <p>8 panel was exposed to?</p> <p>9 A. No, sir.</p> <p>10 Q. Can you tell me whether any of this hail</p> <p>11 caused any damage or made its way into the internal</p> <p>12 working of the meter panel?</p> <p>13 A. No, sir.</p> <p>14 Q. Are there any other natural sources of</p> <p>15 moisture that we haven't covered that you believe are</p> <p>16 highly probable to have caused or contributed to cause</p> <p>17 this fire?</p> <p>18 A. None that come to mind, sir.</p> <p>19 Q. Okay. Do you have an opinion as to why this</p> <p>20 meter panel waited five years before it failed despite</p> <p>21 the fact that it was in your opinion subject to hail,</p> <p>22 snow, and rain?</p> <p>23 A. Well, based on the location of the failure in</p> <p>24 meter, I think it was a matter of time. Time was</p> <p>25 necessary for this to, this failure to occur.</p>	116	<p>1 of rain, snow, and hail of which you have no</p> <p>2 understanding of how much may have made its way into</p> <p>3 the breaker panel or how it would have made its way</p> <p>4 into the breaker panel somehow did make its way into</p> <p>5 the breaker panel and accumulated within the circuit</p> <p>6 breaker? And you believe that's the highly probable</p> <p>7 cause of the fire at 75 Vista View Drive?</p> <p>8 A. No, that's the highly probable cause of the</p> <p>9 failure within the circuit breaker that then caused</p> <p>10 the fire at 735 Vista View Drive, yes.</p> <p>11 Q. Fair enough.</p> <p>12 <b>THE VIDEOGRAPHER: May I interrupt for a</b></p> <p>13 <b>second?</b></p> <p>14 <b>MR. BARTON: You may.</b></p> <p>15 <b>THE VIDEOGRAPHER: We're getting some light</b></p> <p>16 <b>on the witness from the window. I can try and</b></p> <p>17 <b>block that.</b></p> <p>18 <b>MR. BARTON: We can go off.</b></p> <p>19 <b>THE VIDEOGRAPHER: Going off record, 12:39.</b></p> <p>20 <b>(Whereupon, it was decided to take luncheon</b></p> <p>21 <b>recess while technical adjustments are made.)</b></p> <p>22 <b>THE VIDEOGRAPHER: We are back on record.</b></p> <p>23 <b>This marks the beginning of videotape number 3,</b></p> <p>24 <b>1:14 p.m.</b></p> <p>25 <b>BY MR. BARTON:</b></p>

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117	<p>1 <b>Q.</b> Mr. Cristino, drawing your attention back to</p> <p>2 Exhibit 79, page 3. And I'm still working my way</p> <p>3 through the fourth bullet point from the top of that</p> <p>4 page.</p> <p>5 We were talking before the break about this</p> <p>6 unknown moisture entry in the enclosure. And your</p> <p>7 report goes on to say: This was characterized by</p> <p>8 electrical fault activity extending outward from the</p> <p>9 interior of the Cutler Hammer circuit breaker to the</p> <p>10 rear sheet metal mounting plate.</p> <p>11 And the lack of indications of road and farm</p> <p>12 activity, et cetera. My question to you is, What is</p> <p>13 the "this" that's being characterized by electrical</p> <p>14 fault activity?</p> <p>15 <b>A.</b> The failure mechanism based on the ingress of</p> <p>16 moisture.</p> <p>17 <b>Q.</b> Okay, so you believe that the moisture -- the</p> <p>18 reason why you're able to conclude moisture is because</p> <p>19 you're able -- you find an electrical fault activity?</p> <p>20 <b>A.</b> The reason why I was able to conclude</p> <p>21 moisture was</p> <p>22 -- the fact that there were no indications of</p> <p>23 any mechanical debris such as flashing or anything</p> <p>24 left over from the manufacturing process,</p> <p>25 -- the fact that there was -- at least based on</p>	119	<p>1 and fault. And another mechanism would be overload.</p> <p>2 <b>Q.</b> Did you find any evidence of an overload in</p> <p>3 this particular breaker?</p> <p>4 <b>A.</b> Well, based on the, the loading within the</p> <p>5 structure, which we understand to have been strictly</p> <p>6 some security lighting and a boiler to keep the</p> <p>7 building from freezing up, there were no indications</p> <p>8 of overload conditions. All the circuit wiring from</p> <p>9 the circuit breaker panels was intact. None of the</p> <p>10 circuit breakers in the circuit breaker panels</p> <p>11 indicated any -- any faults or failures.</p> <p>12 <b>Q.</b> Is your answer no, you did not find any</p> <p>13 evidence of an overload in the circuit breaker? If</p> <p>14 you did find evidence of an overload in the circuit</p> <p>15 breaker, I'm going to ask you what it is. If you</p> <p>16 didn't, tell me you didn't.</p> <p>17 <b>A.</b> No.</p> <p>18 <b>Q.</b> Thank you. Anything else that can cause</p> <p>19 electrical fault activity in a circuit breaker?</p> <p>20 <b>A.</b> Nothing else that comes to mind at this time.</p> <p>21 <b>Q.</b> If the circuit breaker is attacked by fire,</p> <p>22 would that cause electrical fault activity?</p> <p>23 <b>A.</b> It's possible.</p> <p>24 <b>Q.</b> Okay. Am I correct, sir, that you have no</p> <p>25 evidence of any moisture inside the subject meter</p>
118	<p>1 the fact that the breaker was in service, there were</p> <p>2 no indications that there was a mechanical problem</p> <p>3 with the breaker prior to putting it in service,</p> <p>4 -- and also the lack of any other failure</p> <p>5 mechanism or the presence of any other failure</p> <p>6 mechanism in the area of the circuit breaker.</p> <p>7 <b>Q.</b> Do you believe moisture causes electrical</p> <p>8 fault activity?</p> <p>9 <b>A.</b> Yes, it can.</p> <p>10 <b>Q.</b> Okay. Are there any other things that can</p> <p>11 cause electrical fault activity in a circuit breaker?</p> <p>12 <b>A.</b> Yes.</p> <p>13 <b>Q.</b> Such as?</p> <p>14 <b>A.</b> Another type of compromise of its insulation</p> <p>15 system such as a fracture or insulation degradation</p> <p>16 due to either malformation or some problem in the</p> <p>17 manufacturing process.</p> <p>18 <b>Q.</b> Anything else that will cause electrical</p> <p>19 fault activity in a circuit breaker?</p> <p>20 <b>A.</b> You know, lightning.</p> <p>21 <b>Q.</b> Why would lightning cause electrical fault</p> <p>22 activity?</p> <p>23 <b>A.</b> Well, lightning could actually exceed the</p> <p>24 insulation value of the electrical device and cause it</p> <p>25 to flash over and either degrade or become conductive</p>	120	<p>1 panel or the subject breaker except for your</p> <p>2 conclusion that moisture caused the electrical fault?</p> <p>3 <b>A.</b> That's correct.</p> <p>4 <b>Q.</b> Okay. So because you find a fault, you</p> <p>5 therefore have concluded that moisture must have been</p> <p>6 inside not only the meter panel, but the breaker; is</p> <p>7 that right?</p> <p>8 <b>A.</b> Because I find the fault?</p> <p>9 <b>Q.</b> You concluded that moisture not only entered</p> <p>10 the meter panel, but it entered the breaker. Is that</p> <p>11 correct?</p> <p>12 <b>A.</b> That's correct.</p> <p>13 <b>Q.</b> And so the fault is your evidence of moisture</p> <p>14 and your only evidence of moisture; is that correct?</p> <p>15 <b>A.</b> Yes.</p> <p>16 <b>Q.</b> Okay. And you cannot tell me how that</p> <p>17 moisture got into the meter panel, nor how that</p> <p>18 moisture -- if it in fact did -- entered into the</p> <p>19 breaker. Is that right?</p> <p>20 <b>A.</b> That's correct.</p> <p>21 <b>Q.</b> Your report indicates that a lack of</p> <p>22 indications of rodent or varmint activity in the</p> <p>23 absence of human -- and in the absence of human</p> <p>24 interaction and other causes. What would you expect</p> <p>25 to see if there was rodent or varmint activity?</p>

169	<p>1 testimony is?</p> <p>2 A. Yes, sir.</p> <p>3 <b>MR. ROSSI: He said there was no arc on the</b></p> <p>4 <b>line side.</b></p> <p>5 <b>BY MR. BARTON:</b></p> <p>6 Q. It says: The short circuit originated within</p> <p>7 the circuit breaker's internal line side components.</p> <p>8 Did I read that correct in your opinions</p> <p>9 stated?</p> <p>10 A. Yes, sir.</p> <p>11 Q. And you believe that this unknown defect</p> <p>12 which you cannot tell me or testify to allowed the</p> <p>13 moisture ingress; is that correct?</p> <p>14 A. That's correct.</p> <p>15 Q. Okay. And when you say moisture, I know I</p> <p>16 asked you to describe the moisture earlier. Water,</p> <p>17 ice, we don't know. Does it have to be water?</p> <p>18 A. Does it have to be water? It has to be</p> <p>19 moisture, some form of water.</p> <p>20 Q. Do you know what the temperature was on</p> <p>21 January 16, 2011, about 10:35 p.m.?</p> <p>22 A. Not accurately, sir, no.</p> <p>23 Q. Okay. Do you know what the temperature that</p> <p>24 water freezes at?</p> <p>25 A. Yes, I do.</p>	171	<p>1 Q. Okay. Are you aware if UL has any</p> <p>2 requirements with respect to meter panels to prevent</p> <p>3 the ingress of moisture?</p> <p>4 A. Yes, sir, to some, to some degree I do.</p> <p>5 Q. Okay. What is your understanding of the UL</p> <p>6 requirements to prevent the ingress of moisture into a</p> <p>7 meter panel?</p> <p>8 A. It depends on the style of the meter panel</p> <p>9 and its rating.</p> <p>10 Q. What about the CSR2200 meter panel?</p> <p>11 A. Well, yeah, but what is its --</p> <p>12 <b>MR. BARTON: He's talking about the --</b></p> <p>13 <b>BY MR. ROSSI:</b></p> <p>14 Q. I'm sorry, the CMBX B-200 BTS meter panel.</p> <p>15 A. As a NEMA 3R enclosure?</p> <p>16 Q. You tell me. What is the, what is the type</p> <p>17 of enclosure?</p> <p>18 A. Well, NEMA 3R means that it can handle rain</p> <p>19 up to 30 degrees out of the vertical.</p> <p>20 Q. Okay. Could the subject breaker panel in</p> <p>21 this case meet that requirement?</p> <p>22 A. For rain, yes.</p> <p>23 Q. Do you believe it did not meet that</p> <p>24 requirement for other substances?</p> <p>25 A. In this case, I think it's highly probable.</p>
170	<p>1 Q. What is that?</p> <p>2 A. Thirty-two degrees Fahrenheit.</p> <p>3 Q. And when we get below 32 degrees Fahrenheit,</p> <p>4 that water freezes, right, becomes ice?</p> <p>5 A. That's correct.</p> <p>6 Q. All right. Do you know prior to January 16,</p> <p>7 2011, at 10:35 p.m. when the last time the temperature</p> <p>8 in and around the Southbury, Connecticut, area had</p> <p>9 exceeded 32 degrees?</p> <p>10 A. No, I don't.</p> <p>11 Q. It says here: The meter enclosure was</p> <p>12 designed and manufactured for outdoor applications.</p> <p>13 Therefore the meter enclosure should have been capable</p> <p>14 of preventing the ingress of moisture typically</p> <p>15 experienced in a New England winter.</p> <p>16 How was the meter panel not capable of</p> <p>17 preventing the ingress of moisture?</p> <p>18 A. Well, again, that's part of the mechanism</p> <p>19 that caused the ingress of moisture we don't identify,</p> <p>20 we don't have a way of identifying that.</p> <p>21 Q. Okay. Can you tell me what mechanisms the</p> <p>22 meter panel used to prevent the ingress of moisture?</p> <p>23 A. Based on the remains and also the circuit</p> <p>24 breaker panel that we've got, it appears it uses</p> <p>25 overlapping surfaces.</p>	172	<p>1 Q. And why do you think it's highly probable?</p> <p>2 A. Because of the drifting snow.</p> <p>3 Q. Do you believe it was drifting snow that made</p> <p>4 its way into the meter panel?</p> <p>5 A. I think it's something that can't be ruled</p> <p>6 out.</p> <p>7 Q. Did this drifting snow enter in through the</p> <p>8 bottom, through the top, through the side, through the</p> <p>9 back? Can you tell me?</p> <p>10 A. No, sir, I can't.</p> <p>11 Q. And do you think if drifting snow somehow</p> <p>12 made its way into the meter panel, that that would</p> <p>13 somehow violate the UL standards?</p> <p>14 A. No, sir.</p> <p>15 Q. The circuit breaker, the CSR2200 circuit</p> <p>16 breaker, it has vent holes; is that your</p> <p>17 understanding?</p> <p>18 A. When you say vent holes, identifying the dark</p> <p>19 chute assemblies.</p> <p>20 Q. Sure. There is openings in the breakers; is</p> <p>21 that your understanding?</p> <p>22 A. Yes, sir.</p> <p>23 Q. There is ways for air to flow through it; is</p> <p>24 that correct?</p> <p>25 A. The intent is for air to exhaust from that to</p>

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173	<p>1 help extinguish the arc.</p> <p>2 <b>Q.</b> Do you believe those events should be closed?</p> <p>3 <b>A.</b> No, sir.</p> <p>4 <b>Q.</b> Are you aware of any breaker that exists in</p> <p>5 the marketplace which is waterproof?</p> <p>6 <b>A.</b> No, sir.</p> <p>7 <b>Q.</b> Do you believe the CSR2200 breaker was</p> <p>8 intended to be used in a water environment?</p> <p>9 <b>MR. ROSSI: What do you mean by water</b></p> <p>10 <b>environment, John?</b></p> <p>11 <b>MR. BARTON: If you don't understand, please</b></p> <p>12 <b>let me know.</b></p> <p>13 <b>THE WITNESS: Well, if you could explain what</b></p> <p>14 <b>you mean by water environment.</b></p> <p>15 <b>BY MR. BARTON:</b></p> <p>16 <b>Q.</b> Do you believe the CSR2200 breaker was</p> <p>17 designed to be used when subjected to water, moisture,</p> <p>18 the type of water or moisture you believe somehow</p> <p>19 infiltrated this particular breaker?</p> <p>20 <b>A.</b> No, sir, I don't believe it is.</p> <p>21 <b>MR. BARTON: Okay, I think we have to change</b></p> <p>22 <b>the tape. Why don't we go ahead and do that.</b></p> <p>23 <b>It's probably a good time for a break.</b></p> <p>24 <b>THE VIDEOGRAPHER: This concludes videotape</b></p> <p>25 <b>number 3. Going off record, 3:01 p.m.</b></p>	175	<p>1 <b>A.</b> That's correct.</p> <p>2 <b>Q.</b> It's not what they are designed to do?</p> <p>3 <b>A.</b> That's correct.</p> <p>4 <b>Q.</b> They are designed to monitor and trip when</p> <p>5 they sense fault activity or electrical anomalies on</p> <p>6 the load side; is that right?</p> <p>7 <b>A.</b> That's correct.</p> <p>8 <b>Q.</b> Okay. There are a number of photographs that</p> <p>9 are attached to the report that you have in front of</p> <p>10 you, Exhibit 79. I would like to go through those</p> <p>11 now.</p> <p>12 And let me start by asking you: Generally,</p> <p>13 these are excerpts of photographs you have taken out</p> <p>14 of your file materials to highlight some of your</p> <p>15 observations. Is that fair?</p> <p>16 <b>A.</b> Yes, sir.</p> <p>17 <b>Q.</b> Okay. And you have gone through the liberty</p> <p>18 of numbering the photographs that you have before you</p> <p>19 is that correct?</p> <p>20 <b>A.</b> Yes, sir, in the captions.</p> <p>21 <b>Q.</b> In the captions. And those are your</p> <p>22 annotations. You wrote that; is that right?</p> <p>23 <b>A.</b> That's correct.</p> <p>24 <b>Q.</b> All right. And photograph 1 of Exhibit 79</p> <p>25 shows us just an overview structure of 75 Vista View</p>
174	<p>1 <b>(Briefly off the record for technical</b></p> <p>2 <b>adjustments.)</b></p> <p>3 <b>MR. BARTON: We're back on record. This</b></p> <p>4 <b>marks the beginning of videotape number 4,</b></p> <p>5 <b>3:06 p.m.</b></p> <p>6 <b>BY MR. BARTON:</b></p> <p>7 <b>Q.</b> Mr. Cristino, we were reviewing your report,</p> <p>8 which is Exhibit 79. I direct your attention back to</p> <p>9 page 8. You indicate that due to the location of the</p> <p>10 fault, the Cutler Hammer main circuit breaker was</p> <p>11 unable to interrupt the electrical fault, thus</p> <p>12 allowing the fault to expand and intensify.</p> <p>13 Do you believe the circuit breaker that was</p> <p>14 installed in the meter panel on 75 Vista View Drive</p> <p>15 was designed to interrupt electrical faults on the</p> <p>16 line side from the breaker?</p> <p>17 <b>A.</b> There aren't any circuit breakers that are</p> <p>18 designed to interrupt faults on the line side.</p> <p>19 <b>Q.</b> I'm sorry. You said there's not any?</p> <p>20 <b>A.</b> There aren't any. And that's what makes them</p> <p>21 the line side. The line side is the source side of</p> <p>22 the vents.</p> <p>23 <b>Q.</b> So you wouldn't expect this circuit breaker</p> <p>24 to be able to stop an electrical fault occurring on</p> <p>25 the line side; is that right?</p>	176	<p>1 Drive; is that correct?</p> <p>2 <b>A.</b> Yes, sir.</p> <p>3 <b>Q.</b> All right. And if you will look at</p> <p>4 photograph number 4, this is a depiction of the meter</p> <p>5 panel at the first time you observed it. Is that</p> <p>6 correct?</p> <p>7 <b>A.</b> That's correct.</p> <p>8 <b>Q.</b> Are there any missing component parts within</p> <p>9 this meter panel?</p> <p>10 <b>A.</b> As seen in photograph number 4?</p> <p>11 <b>Q.</b> Yes.</p> <p>12 <b>A.</b> What's missing is the cover, the ringless</p> <p>13 cover that would cover the meter socket at the top</p> <p>14 there? There is -- at the --</p> <p>15 <b>Q.</b> The top cover. I understand what you're</p> <p>16 saying. The top cover where the meter would go in,</p> <p>17 that's been removed?</p> <p>18 <b>A.</b> It was -- yeah, it was off when I looked at</p> <p>19 it.</p> <p>20 <b>Q.</b> But it was still there, right? I mean, it</p> <p>21 exists?</p> <p>22 <b>A.</b> Yes, sir.</p> <p>23 <b>Q.</b> All right. Any other components that in</p> <p>24 looking at photograph 4 were not present?</p> <p>25 <b>A.</b> Well, let's see.</p>

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177	<p>1       <b>Q.</b> Let me ask a better way. Do you know if</p> <p>2 there were any missing pieces to the meter panel that</p> <p>3 was installed on 75 Vista View Drive?</p> <p>4       <b>A.</b> There appears to be the pieces for the gutter</p> <p>5 space.</p> <p>6       <b>Q.</b> Okay. And when you say the pieces for the</p> <p>7 gutter space, what do you mean?</p> <p>8       <b>A.</b> Let's see. If I could turn to another</p> <p>9 photograph --</p> <p>10       <b>Q.</b> Please do.</p> <p>11       <b>A.</b> -- it may make it easier for where we could</p> <p>12 look at the Cutler Hammer information that was</p> <p>13 provided.</p> <p>14       I've got -- probably photograph 18 would show</p> <p>15 a good portion of the lower section of the meter</p> <p>16 enclosure.</p> <p>17       <b>Q.</b> Okay.</p> <p>18       <b>A.</b> To the left of the circuit breaker, there</p> <p>19 should have been two pieces of sheet metal, one that</p> <p>20 would have gone vertical from the separator above the</p> <p>21 circuit breaker all the way -- extending all the way</p> <p>22 down to the bottom of the panel to where the, the</p> <p>23 knockout, the hole was at the bottom of the panel for</p> <p>24 the entry of the conduit from Connecticut Light &amp;</p> <p>25 Power.</p>	179	<p>1 component did not contribute to cause the failure, but</p> <p>2 allowed the failure to propagate?</p> <p>3       <b>A.</b> Yes, sir.</p> <p>4       <b>Q.</b> Okay. Did this missing component have any</p> <p>5 connection with what you believe to be the ingress of</p> <p>6 moisture into the circuit panel?</p> <p>7       <b>A.</b> Based on my observations, no.</p> <p>8       <b>Q.</b> Okay. Is it your understanding that Eaton</p> <p>9 Corporation intended for this wire way to be present</p> <p>10 at the installation and a complete product that was</p> <p>11 installed?</p> <p>12       <b>A.</b> Yes, sir.</p> <p>13       <b>Q.</b> Okay. So it's intended design included this</p> <p>14 wire way which was missing from the subject unit; is</p> <p>15 that right?</p> <p>16       <b>A.</b> Yes.</p> <p>17       <b>Q.</b> When the wire way was removed from this</p> <p>18 particular meter panel, did that expose the utility</p> <p>19 lines to any other risks or hazards?</p> <p>20       <b>A.</b> No, sir.</p> <p>21       <b>Q.</b> Do you believe it is safe and/or good</p> <p>22 practices to have a straight edge against power</p> <p>23 lines? And do you know what I mean by a straight</p> <p>24 edge?</p> <p>25       <b>A.</b> A straight metal edge?</p>
178	<p>1       And then there would have been a cover over</p> <p>2 the top of that, that first piece that basically</p> <p>3 created a gutter space, an enclosed wire way through</p> <p>4 which the utility conductors would have been routed.</p> <p>5       <b>Q.</b> Okay. Do you know what happened to that</p> <p>6 missing wire gutter, the gutter way?</p> <p>7       <b>A.</b> No, sir, I do not.</p> <p>8       <b>Q.</b> Did that cause or contribute to cause any</p> <p>9 failure mode and/or the fire in this case?</p> <p>10       <b>A.</b> In this case, in my opinion, it allowed the</p> <p>11 initial fault within the circuit breaker to more</p> <p>12 easily attack the connect line power conductors.</p> <p>13       <b>Q.</b> How did it allow the initial fault to more</p> <p>14 easily attack those conductors?</p> <p>15       <b>A.</b> If that -- if the vertical piece of the</p> <p>16 gutter space had been in place, there would have been</p> <p>17 an additional steel barrier between the fault and</p> <p>18 those Connecticut Light &amp; Power conductors.</p> <p>19       As it was, the molten steel that was being</p> <p>20 expelled in that fault, in the fault behind the</p> <p>21 circuit breaker, was able to impact the Connecticut</p> <p>22 Light &amp; Power conductors that were immediately</p> <p>23 adjacent to the circuit breaker and not protected by</p> <p>24 another piece of steel.</p> <p>25       <b>Q.</b> So is it your testimony that this missing</p>	180	<p>1       <b>Q.</b> You got it.</p> <p>2       <b>A.</b> No, sir.</p> <p>3       <b>Q.</b> Why not?</p> <p>4       <b>A.</b> Well, given the normal life cycle and</p> <p>5 functionality of electrical equipment, most conductors</p> <p>6 and equipment enclosures are subjected to vibration</p> <p>7 and movement.</p> <p>8       And at the very least, in my experience</p> <p>9 manufacturers will install either a rolled edge or put</p> <p>10 some type of protective cover over a straight edge as</p> <p>11 to not permit long-term degradation or impact of</p> <p>12 installation by a straight edge.</p> <p>13       <b>Q.</b> Did the missing wire way in the subject meter</p> <p>14 panel subject the line conductors to a straight edge?</p> <p>15       <b>A.</b> Based upon what I see in photograph 14, I</p> <p>16 would say no.</p> <p>17       <b>Q.</b> Okay. Drawing your attention back to Exhibit</p> <p>18 79, photograph number 4, can you tell me what other</p> <p>19 parts are missing from the meter panel.</p> <p>20       <b>A.</b> No, sir, I can't from what I see in 14.</p> <p>21       <b>Q.</b> As someone who does electric design work, is</p> <p>22 it your recommendation that electrical equipment be</p> <p>23 installed completely and have all of its component</p> <p>24 parts?</p> <p>25       <b>A.</b> Yes, sir.</p>

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181	<p>1 Q. Do you ever recommend that people remove</p> <p>2 component parts from electrical machinery or</p> <p>3 distribution systems?</p> <p>4 A. Only to aid in installation.</p> <p>5 Q. Okay. But if they have to remove it to aid</p> <p>6 in installation, they should reassemble the electrical</p> <p>7 device; is that correct?</p> <p>8 A. That's correct.</p> <p>9 Q. Do you know if the removal of component parts</p> <p>10 from electrical devices such as meter panels somehow</p> <p>11 changed its underwriters laboratory certification?</p> <p>12 A. Based on my experience, it's, it's likely.</p> <p>13 Q. Okay. Because Underwriters Laboratory tests</p> <p>14 a complete piece of equipment as intended to be sold,</p> <p>15 distributed, and received by the customer?</p> <p>16 A. That's correct.</p> <p>17 Q. Okay. So as soon as we start removing</p> <p>18 component parts, that alters what the finished product</p> <p>19 should be?</p> <p>20 A. That's correct.</p> <p>21 Q. Okay. I draw your attention to photograph</p> <p>22 6. There is a photograph of an aluminum conductor</p> <p>23 welded to the inside panel of the meter enclosure. Do</p> <p>24 you know if that conductor that is welded to the</p> <p>25 inside panel is line or load side?</p>	183	<p>1 The gap is, is relatively self-explanatory.</p> <p>2 It's the gap through which conductors would have been</p> <p>3 routed.</p> <p>4 This is one of the aluminum conductors from</p> <p>5 Connecticut Light &amp; Power that is seen at the top just</p> <p>6 below this arc damage that we see on the steel.</p> <p>7 Q. The arc damage that you see on the steel --</p> <p>8 A. Yes, sir.</p> <p>9 Q. -- did that occur after the arc fault</p> <p>10 occurred within the meter panel -- I'm sorry, within</p> <p>11 the breaker, in your opinion?</p> <p>12 A. Yes, sir.</p> <p>13 Q. Okay. So first the breaker experienced an</p> <p>14 arc fault and then later the arc faults that we see</p> <p>15 depicted in photograph 8 occurred. Is that your</p> <p>16 testimony?</p> <p>17 A. It had to be.</p> <p>18 Q. Why did it have to be?</p> <p>19 A. Because this notch that we see that is burned</p> <p>20 through the separator is closer to the source than</p> <p>21 what the circuit breaker was. So if this is what the</p> <p>22 initial point of failure was, the circuit breaker</p> <p>23 would not have had energy to fault and to fail in the</p> <p>24 manner in which it failed.</p> <p>25 Q. Okay. Does the existence of an arc fault at</p>
182	<p>1 A. That's line side.</p> <p>2 Q. Okay. How do you know?</p> <p>3 A. The gauge of the wire. It's 4 off, which</p> <p>4 would have been the Connecticut Light &amp; Power</p> <p>5 underground conductors.</p> <p>6 Q. I want to draw your attention to photograph</p> <p>7 number 8. All right. What's depicted in photograph</p> <p>8 number 8?</p> <p>9 A. We are looking at the --</p> <p>10 Q. Would you read the caption that is underneath</p> <p>11 it.</p> <p>12 A. Oh, I'm sorry. Yeah. Photograph 8, the</p> <p>13 underside of the horizontal sheet metal separator and</p> <p>14 supply side conductor routing gap.</p> <p>15 Q. Okay. So we're looking at the underside of</p> <p>16 the divider where the line side would come through; is</p> <p>17 that correct?</p> <p>18 A. That's correct.</p> <p>19 Q. All right. What is depicted in photograph 8</p> <p>20 of Exhibit 79, sir?</p> <p>21 A. What we are looking at is the separator.</p> <p>22 Q. Okay.</p> <p>23 A. This more or less hazy vertical piece on the</p> <p>24 left-hand side of the photograph would be the</p> <p>25 left-hand portion of the enclosure itself.</p>	184	<p>1 that location that we see in photograph 8, does that</p> <p>2 mean that if an arc fault occurred there first, that</p> <p>3 power would have been terminated to the line side that</p> <p>4 meets up with the circuit breaker inside the panel?</p> <p>5 A. Yes.</p> <p>6 Q. Why is that?</p> <p>7 A. Because this is the line side conductor that</p> <p>8 would have been supplying power up through the meter</p> <p>9 socket down through the copper conductors to the</p> <p>10 circuit breaker.</p> <p>11 Q. Okay, so explain it me how some arc damage</p> <p>12 there would suddenly stop power leading to the circuit</p> <p>13 breaker.</p> <p>14 A. Because what would have happened here is what</p> <p>15 we saw later on as this fault evolved. If the fault</p> <p>16 initiated here, the aluminum would have faulted.</p> <p>17 So we would have had arc fault between</p> <p>18 aluminum conductors. It would have damaged this</p> <p>19 steel. And it would have melted the aluminum down to</p> <p>20 the bottom of the panel as we see here. But there</p> <p>21 would not have been any energy that would have been</p> <p>22 available at the circuit breaker.</p> <p>23 Q. And that's my question: Why wouldn't there</p> <p>24 have been any energy available at the circuit breaker</p> <p>25 if the arc fault began at the damage point we see in</p>

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185	<p>1 photograph 8?</p> <p>2 <b>A.</b> This is the same thing as I explained before,</p> <p>3 having that hose that we cut off five feet before the</p> <p>4 end. If you consider the circuit breaker being the</p> <p>5 end of the line, if we cut the circuit here at this</p> <p>6 notch where the line side conductors are which are on</p> <p>7 the line side, on the source side of the circuit</p> <p>8 breaker, electrical current could not flow through the</p> <p>9 conductors.</p> <p>10 <b>Q.</b> Is it your testimony that the arc fault</p> <p>11 damage we see here also corresponds with the severing</p> <p>12 or cutting of the line side conductors?</p> <p>13 <b>A.</b> It does because you can see the remains of</p> <p>14 the line side conductor on the other side of the steel</p> <p>15 panel.</p> <p>16 <b>Q.</b> Okay. So you believe first the fault</p> <p>17 occurred within the breaker, then secondly at this</p> <p>18 point we see here at the edge as is depicted in</p> <p>19 photograph number 8. Is that the order of things?</p> <p>20 <b>A.</b> Yes, sir.</p> <p>21 <b>Q.</b> Let me hand you Exhibit No. 83. Can you read</p> <p>22 what photograph number that is.</p> <p>23 <b>A.</b> It says photograph number 8.</p> <p>24 <b>Q.</b> Can you explain to me why the photograph</p> <p>25 number 8 I received is different from the photograph</p>	187	<p>1 determine components, what parts and pieces were in</p> <p>2 various locations in that mass of aluminum that was</p> <p>3 found at the bottom of the panel.</p> <p>4 <b>Q.</b> Okay. I want to draw your attention to</p> <p>5 photograph 42 of Exhibit 79. And it looks like this</p> <p>6 is a photograph of the back side or the bottom of a</p> <p>7 BW2200 breaker. Is that your understanding as well?</p> <p>8 <b>A.</b> On the left-hand side would be the BW22</p> <p>9 upside down, so the load terminals would be to the top</p> <p>10 and the line terminals would be to the bottom.</p> <p>11 <b>Q.</b> Okay.</p> <p>12 <b>A.</b> And on the right side is the subject circuit</p> <p>13 breaker.</p> <p>14 <b>Q.</b> Do you know if the BW2200 configuration is</p> <p>15 identical to the CSR2200?</p> <p>16 <b>A.</b> With the exception of the additional</p> <p>17 components in the arc chute assembly, it's my</p> <p>18 understanding that it is.</p> <p>19 <b>Q.</b> Okay. There are a number of x-rays contained</p> <p>20 at the back of your report; is that correct?</p> <p>21 <b>A.</b> Yes, sir.</p> <p>22 <b>Q.</b> What do these x-rays tell you, if anything?</p> <p>23 <b>A.</b> Well, we, we have taken film type x-rays of</p> <p>24 both an exemplar unit and the subject unit before the</p> <p>25 lab exam in September. So what we're attempting to do</p>
186	<p>1 number 8 that was presented to me today and when it</p> <p>2 was added.</p> <p>3 There is no corresponding photograph that</p> <p>4 matches the photograph 8 in the exhibit you're looking</p> <p>5 at right now if that's what you're looking for.</p> <p>6 <b>A.</b> Yes, sir, that is what I was looking for.</p> <p>7 <b>Q.</b> Yeah, that's what I looked for, too.</p> <p>8 <b>A.</b> (After review.) No, sir, I can't.</p> <p>9 <b>Q.</b> Do you recall amending or changing your</p> <p>10 report in any way after November 12th of 2012?</p> <p>11 <b>A.</b> No, sir, I don't.</p> <p>12 <b>Q.</b> Do you have any recollection of inserting</p> <p>13 photograph number 8 that we have in Exhibit 79 into</p> <p>14 your report?</p> <p>15 <b>A.</b> No, sir, I don't.</p> <p>16 <b>Q.</b> If you will turn to photograph 27 of Exhibit</p> <p>17 79, let's just use that one. This looks like the</p> <p>18 portion of debris that you analyzed using a scanning</p> <p>19 electron microscope. Is that right?</p> <p>20 <b>A.</b> Yes, sir.</p> <p>21 <b>Q.</b> Okay. What was the purpose of that exercise?</p> <p>22 <b>A.</b> What we want to do is to see using electron</p> <p>23 dispersion spectroscopy, the EDS, in the -- on the</p> <p>24 little drawing there -- just to identify what elements</p> <p>25 that were there in an effort to see if we could</p>	188	<p>1 is just to identify the component locations before</p> <p>2 disassembly to -- at one point it was to aid in</p> <p>3 disassembly if disassembly was necessary, especially</p> <p>4 of the subject circuit breaker.</p> <p>5 And as could be seen in like photograph --</p> <p>6 radiograph number 2, the one that is identified number</p> <p>7 2, we can see even though this -- the left-hand image</p> <p>8 is displaced downward towards the page, this is the</p> <p>9 similar portion of the assembly as to what is on the</p> <p>10 subject breaker to the right.</p> <p>11 <b>Q.</b> Have you ever x-rayed a CSR2200?</p> <p>12 <b>A.</b> Other than at -- oh, I'm sorry. No, I have</p> <p>13 not. Well, in this case, it's assuming that the</p> <p>14 remains are necessarily the 2200.</p> <p>15 <b>Q.</b> You are correct. Have you ever x-rayed an</p> <p>16 exemplar CSR2200?</p> <p>17 <b>A.</b> No, sir, I have not.</p> <p>18 <b>Q.</b> Let me see that report.</p> <p>19 <b>A.</b> Sure.</p> <p>20 <b>Q.</b> Mr. Cristino, I want to go through some of</p> <p>21 the documents that are contained in group Exhibit 82.</p> <p>22 And I will represent to you at end of this deposition</p> <p>23 today, I'm going to ask that we have an entire copy</p> <p>24 made of this entire binder. And we can leave it with</p> <p>25 the court reporter or give it to you to have it made,</p>

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189	<p>1 however you would like. Okay?</p> <p>2 A. Sure.</p> <p>3 Q. And I understand Exhibit 82 was compiled by</p> <p>4 an assistant of yours; is that correct?</p> <p>5 A. Yes, sir.</p> <p>6 Q. You charge Mr. Rossi for your time; is that</p> <p>7 correct?</p> <p>8 A. Up until the beginning of this deposition,</p> <p>9 yes, sir.</p> <p>10 Q. And now you're charging me, right?</p> <p>11 A. Yes, sir.</p> <p>12 Q. What are you charging Mr. Rossi for your</p> <p>13 time?</p> <p>14 A. The same as what I'm charging you.</p> <p>15 Q. And what would that be?</p> <p>16 A. Whatever is on that sheet.</p> <p>17 Q. Do you know what it is?</p> <p>18 A. Off the top of my head, sir, no, I don't.</p> <p>19 Q. Are you a principal engineer?</p> <p>20 A. Yes, sir, I am.</p> <p>21 Q. Your regular rate is \$230 per hour?</p> <p>22 A. Yes.</p> <p>23 Q. What do you charge your regular rate for?</p> <p>24 A. Design work on scene investigation time,</p> <p>25 laboratory analysis, and report prep.</p>	191	<p>1 Q. You have also included your c.v. Is this</p> <p>2 current and up to date?</p> <p>3 A. It should be, sir.</p> <p>4 Q. Is there anything you want to add to your c.v</p> <p>5 or remove from it, any amendments that you want to</p> <p>6 make to it?</p> <p>7 A. Not that I can think of.</p> <p>8 Q. This is complete current and accurate?</p> <p>9 A. It should be.</p> <p>10 Q. Okay. You also have a section listed as</p> <p>11 trials and depositions in group Exhibit 82?</p> <p>12 A. Yes, sir.</p> <p>13 Q. These are what's commonly referred to as your</p> <p>14 Rule 26 disclosure; is that right?</p> <p>15 A. Yes, sir.</p> <p>16 Q. And the P would be for plaintiff and the D</p> <p>17 would be for defendant; is that right?</p> <p>18 A. Yes, sir.</p> <p>19 Q. Have you ever testified against Eaton</p> <p>20 Corporation before?</p> <p>21 A. No, sir, not that I know of.</p> <p>22 Q. You have a section that is entitled loss at</p> <p>23 75 Vista View, Southbury, Connecticut, invoices. Are</p> <p>24 these all the invoices that you have submitted to</p> <p>25 Mr. Rossi?</p>
190	<p>1 Q. Okay. And in terms of trial or deposition</p> <p>2 testimony, how much do you charge? \$300 an hour?</p> <p>3 A. Is that what's on there? Yes, sir.</p> <p>4 Q. That's what's on here.</p> <p>5 A. Then that's what it is.</p> <p>6 Q. Have you done trial or deposition testimony</p> <p>7 in this case for Mr. Rossi?</p> <p>8 A. Other than today, no, sir.</p> <p>9 Q. Are you charging him 230 hours -- or \$300 an</p> <p>10 hour for your time here today or are you charging me</p> <p>11 that?</p> <p>12 A. I'm charging you that.</p> <p>13 Q. So you're charging me \$300 an hour?</p> <p>14 A. Yes, sir.</p> <p>15 Q. And all the time you worked with Mr. Rossi in</p> <p>16 doing your report and investigation, I take it you</p> <p>17 charged him \$230 an hour?</p> <p>18 A. Yes, sir.</p> <p>19 Q. Do you know how much you have charged him</p> <p>20 total in your investigation in preparation of the</p> <p>21 report in this case?</p> <p>22 A. No, sir, I don't.</p> <p>23 Q. Have you brought the invoices with you here?</p> <p>24 A. Yes, the invoices are on the second or third</p> <p>25 page.</p>	192	<p>1 A. It should be, sir.</p> <p>2 Q. Okay. And has Mr. Rossi compensated for your</p> <p>3 time and effort in this matter?</p> <p>4 A. I wouldn't know.</p> <p>5 Q. I'm sorry?</p> <p>6 A. I wouldn't know.</p> <p>7 Q. Who would?</p> <p>8 A. Our office manager.</p> <p>9 Q. And who is that?</p> <p>10 A. Lois Buchanan.</p> <p>11 Q. Has anyone else in your office worked on this</p> <p>12 file other than you and Ms. Buchanan?</p> <p>13 A. Ms. Horn, Cathy Horn (ph), is our secretary.</p> <p>14 She usually proofreads and makes copies of my</p> <p>15 reports.</p> <p>16 If I'm not mistaken, our lead technician Nuno</p> <p>17 Almeida conducted an exam with some of your people at</p> <p>18 a storage facility.</p> <p>19 Q. Okay.</p> <p>20 A. I think that was a short time ago. Somebody</p> <p>21 stopped over to see the panel and the other artifacts.</p> <p>22 Q. Anyone else from your office work on this</p> <p>23 file?</p> <p>24 A. Not that I believe.</p> <p>25 Q. Okay. You have a section here that says</p>

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197	<p>1 circuit breaker?</p> <p>2 A. The same as the CRS, to see if there was any</p> <p>3 damage that would result from -- from moisture within</p> <p>4 the circuit breaker?</p> <p>5 Q. Okay. Was there any damage that</p> <p>6 resulted from moisture within the circuit breaker?</p> <p>7 A. No, sir, there was not.</p> <p>8 Q. And I take it that after you submerged the</p> <p>9 circuit breaker for five minutes, you took it apart?</p> <p>10 A. Yes, sir, we did.</p> <p>11 Q. And that revealed that after it's been</p> <p>12 submerged for five minutes, water will, in fact, enter</p> <p>13 through the vent holes and get inside the circuit</p> <p>14 breaker. Is that your understanding?</p> <p>15 A. That's correct.</p> <p>16 Q. Do you believe that the manufacturer intends</p> <p>17 for this circuit breaker to be submerged?</p> <p>18 A. No, sir.</p> <p>19 Q. And I trust you will never install this</p> <p>20 circuit breaker anywhere now that it has been</p> <p>21 submerged. Is that correct?</p> <p>22 A. That's correct.</p> <p>23 Q. Why did you take the -- I believe this is the</p> <p>24 CSR2200 circuit breaker. Why did you take the top off</p> <p>25 after you had submerged it?</p>	199	<p>1 Q. After you had submerged it for five minutes,</p> <p>2 how long did you keep it out of water before you</p> <p>3 disassembled the breaker?</p> <p>4 A. Within a matter of 10 to 15 minutes.</p> <p>5 Q. At any point after its submersion -- that's a</p> <p>6 bad question.</p> <p>7 How many times did you examine it after it</p> <p>8 had been submerged? Just the one time 10 to 15</p> <p>9 minutes later?</p> <p>10 A. Yes, sir.</p> <p>11 Q. Where is this submerged CSR2200 circuit</p> <p>12 breaker now?</p> <p>13 A. If I'm not mistaken, it's in my car.</p> <p>14 Q. Other than the exemplar meter panel that is</p> <p>15 in your car and this CSR2200 circuit breaker, are</p> <p>16 there any other components, parts, exemplars,</p> <p>17 documents, or anything else that relates to this case</p> <p>18 in your car?</p> <p>19 A. There would be, I think, two more circuit</p> <p>20 breakers in the car.</p> <p>21 Q. And when you say two more, of the CSR2200?</p> <p>22 A. The BWH and then another CSR.</p> <p>23 Q. Okay. Do they still have moisture in them?</p> <p>24 A. We would have to open them up and take a</p> <p>25 look.</p>
198	<p>1 A. To observe the internal workings and see</p> <p>2 where moisture would have been trapped and where</p> <p>3 moisture would have settled.</p> <p>4 Q. And did that assist you in forming your</p> <p>5 opinions in any way?</p> <p>6 A. It gave us some insight as to where, where</p> <p>7 the moisture would be within the circuit breaker.</p> <p>8 Q. Where would the moisture be within the</p> <p>9 circuit breaker?</p> <p>10 A. In and around the arc chute chambers and the</p> <p>11 bus assemblies.</p> <p>12 Q. Anywhere else after it has been submerged for</p> <p>13 five minutes?</p> <p>14 A. That was pretty much it.</p> <p>15 Q. Were there any areas within the circuit</p> <p>16 breaker that were not subjected to moisture after you</p> <p>17 submerged it for five minutes?</p> <p>18 A. The portion of the toggle assembly, the upper</p> <p>19 portion of the toggle assembly.</p> <p>20 Q. Any other section of the breaker that was not</p> <p>21 exposed to moisture after it had been submerged for</p> <p>22 five minutes?</p> <p>23 A. Well, when you say exposed to moisture, it</p> <p>24 would have been -- we are looking for it to retain</p> <p>25 moisture.</p>	200	<p>1 Q. They're reassembled?</p> <p>2 A. Yes, sir.</p> <p>3 Q. I take it you haven't opened them back up to</p> <p>4 take a look, have you?</p> <p>5 A. No, sir.</p> <p>6 Q. Since you submerged the circuit breakers,</p> <p>7 have you tested them in any way?</p> <p>8 A. We did a test. There is a CD here, if I may.</p> <p>9 Q. Please.</p> <p>10 A. I put dates on them. I don't know if I put</p> <p>11 the date on them. Yeah. Yesterday. I got a CD. One</p> <p>12 of the things that we --</p> <p>13 Q. You've handed me a CD dated December 19,</p> <p>14 2012; is that correct?</p> <p>15 A. Yes, sir.</p> <p>16 Q. And what is on this CD?</p> <p>17 A. That's a video of one of the circuit breakers</p> <p>18 that we froze. And there is a hand in the, in the</p> <p>19 photograph. If I'm not mistaken, it is Mr. Almeida's</p> <p>20 hand attempting to turn the circuit breaker from the</p> <p>21 on position to the off position.</p> <p>22 Q. While it's frozen?</p> <p>23 A. After it was taken out of the freezer, yes.</p> <p>24 Q. So let me see if I understand it right. You</p> <p>25 submerged a CSR2200 circuit breaker for five minutes?</p>

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201	<p>1 A. Yes, sir.</p> <p>2 Q. And then you put in the freezer and froze</p> <p>3 it?</p> <p>4 A. That's correct.</p> <p>5 Q. And when it was frozen, you brought it back</p> <p>6 out and Mr. Almeida did what to it?</p> <p>7 A. He manipulated the toggle from on to off.</p> <p>8 Q. And did that work?</p> <p>9 A. No, sir.</p> <p>10 Q. Do you know why not?</p> <p>11 A. We, we didn't take the breaker apart at that</p> <p>12 point. And we didn't have a way of x-raying it. So</p> <p>13 no.</p> <p>14 Q. What does the fact that a breaker that is</p> <p>15 submerged in water and then frozen and having its</p> <p>16 toggle switch not work tell you about this case, if</p> <p>17 anything?</p> <p>18 A. Well, what it does is it gives us insight as</p> <p>19 to the reaction of the circuit breaker to cold weather</p> <p>20 operation if it's exposed to moisture.</p> <p>21 Q. When you say exposed to moisture, submerged</p> <p>22 for five minutes?</p> <p>23 A. Well, submerged --</p> <p>24 Q. And frozen?</p> <p>25 A. Submerged for five minutes and frozen, yes,</p>	203	<p>1 Mr. Almeida ran through it on his own.</p> <p>2 Q. Okay. And Exhibit 82 also has a blue section</p> <p>3 that says October 29, 2012, frozen breaker</p> <p>4 photographs. I take it these are what the breaker</p> <p>5 looked like after you froze it; is that correct?</p> <p>6 A. Yes, sir.</p> <p>7 Q. After you froze these breakers, did you</p> <p>8 subject them to any electrical test in a frozen state</p> <p>9 after they had been submerged for five minutes?</p> <p>10 A. After they had been dried, yes.</p> <p>11 Q. Okay. And what was the result of that</p> <p>12 testing?</p> <p>13 A. What the result of the testing was was that</p> <p>14 the first two tests, the circuit breaker just remained</p> <p>15 energized and on a third breaker test our lab didn't</p> <p>16 have sufficient energy and we wound up tripping</p> <p>17 circuit breakers upstream so we basically blacked out</p> <p>18 the lab.</p> <p>19 Q. So you're -- and when you say -- I take it</p> <p>20 you did three tests on three different breakers?</p> <p>21 A. Yes.</p> <p>22 Q. And the results of those three tests on three</p> <p>23 different breakers were the ones that had been</p> <p>24 submerged and frozen continued to work and then on the</p> <p>25 third test you actually tripped your breaker at your</p>
202	<p>1 sir.</p> <p>2 Q. Was the circuit breaker that was installed in</p> <p>3 the meter panel at 75 Vista View Drive ever submerged</p> <p>4 for five minutes?</p> <p>5 A. To the best of my knowledge, no. But it was</p> <p>6 subjected to weather conditions for over five years.</p> <p>7 And this was our way of providing a means of</p> <p>8 documenting what that circuit breaker would operate</p> <p>9 like if it did have moisture inside and was subjected</p> <p>10 to low temperatures.</p> <p>11 Q. Is the only video you took....</p> <p>12 <b>MR. BARTON: Let's mark this.</b></p> <p>13 <b>(Whereupon, Exhibit No. 85 was marked for</b></p> <p>14 <b>identification.)</b></p> <p>15 <b>BY MR. BARTON:</b></p> <p>16 Q. What I have now marked as Exhibit 85, which</p> <p>17 is the video dated December 19, 2012, is this the only</p> <p>18 video you've taken in this case?</p> <p>19 A. Yes, sir.</p> <p>20 Q. Did you run through a trial run before you</p> <p>21 turned on the videotape of the breaker?</p> <p>22 A. No, sir.</p> <p>23 Q. Am I correct you and Mr. Almeida were the</p> <p>24 only two present?</p> <p>25 A. No, sir, I wasn't present at that time.</p>	204	<p>1 facility and couldn't conduct the test.</p> <p>2 A. That's correct.</p> <p>3 Q. And I take it you didn't videotape any of</p> <p>4 those tests?</p> <p>5 A. No, sir, we did not.</p> <p>6 Q. Did you take photographs of those tests?</p> <p>7 A. There may be some photographs in that --</p> <p>8 Q. Did you conduct those tests?</p> <p>9 A. No, sir, Mr. Almeida did.</p> <p>10 Q. When were those tests conducted?</p> <p>11 A. I think -- take a look at it. It should be</p> <p>12 -- you will see -- it's easy to tell because the panel</p> <p>13 is in there with the wires connected to the breaker.</p> <p>14 Q. Let me get to that. On the Exhibit 82, we</p> <p>15 also see a blue section that says September 7</p> <p>16 photographs. These are Mr. Almeida's photographs from</p> <p>17 the artifact inspection we did; is that correct?</p> <p>18 A. I believe that's when you sent people to our</p> <p>19 facility.</p> <p>20 Q. Correct. All right. And we see a section</p> <p>21 called test photographs dated December 17, 2012.</p> <p>22 A. Right.</p> <p>23 Q. And were you present during the tests on</p> <p>24 December 17, 2012?</p> <p>25 A. December 17 would have been --</p>

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205	<p>1 Q. Monday?</p> <p>2 A. Monday? No, sir, I was not.</p> <p>3 Q. Have you reviewed these photographs before?</p> <p>4 A. Yes, sir, I looked at them.</p> <p>5 Q. And what, if any effect, did the photographs</p> <p>6 taken on December 17 2012, have with respect to your</p> <p>7 opinions, if any?</p> <p>8 A. None.</p> <p>9 Q. Do you know what these photographs depict?</p> <p>10 Is this ice?</p> <p>11 A. Yes, it is. There should have been some ice</p> <p>12 on the back of the circuit breaker.</p> <p>13 Q. How did the moisture get on the back of this</p> <p>14 circuit breaker that forms the ice?</p> <p>15 A. Again, this is one of the breakers that was</p> <p>16 exposed to moisture and then frozen.</p> <p>17 Q. Okay. So it was submerged and then frozen?</p> <p>18 A. Yes, sir.</p> <p>19 Q. All right. And then I take it you later</p> <p>20 installed it on a meter panel and energized it; is</p> <p>21 that correct?</p> <p>22 A. That's correct.</p> <p>23 Q. And that's what we see here in these other</p> <p>24 photographs?</p> <p>25 A. That's correct.</p>	207	<p>1 A. As far as I know, he was by himself.</p> <p>2 Q. Who instructed him to do that testing, if</p> <p>3 anyone?</p> <p>4 A. I, I instructed him to perform that test.</p> <p>5 Q. Why?</p> <p>6 A. We had, we had performed the, the other tests</p> <p>7 previously and it was just a matter of performing an</p> <p>8 additional test after we saw that that....</p> <p>9 <b>MR. BARTON: Can you mark this.</b></p> <p>10 <b>(Whereupon, Plaintiff's Exhibit No. 86 was</b></p> <p>11 <b>marked for identification.)</b></p> <p>12 <b>BY MR. BARTON:</b></p> <p>13 Q. Within Exhibit 81 there is a number of</p> <p>14 documents. I'm going to mark some of them separate</p> <p>15 just to make it easy for us.</p> <p>16 Let me hand you Exhibit 86. Can you tell me</p> <p>17 what this is.</p> <p>18 A. Yes, sir, that's a telephone log of a</p> <p>19 telephone conversation I had with the owner of SL</p> <p>20 Kelley Electric.</p> <p>21 Q. Earlier in this deposition, I asked you who</p> <p>22 you spoke with and what witnesses you spoke with in</p> <p>23 connection with this case and you indicated none. Did</p> <p>24 you just forget that you spoke with Mr. Kelley?</p> <p>25 A. I didn't consider him to be a witness.</p>
206	<p>1 Q. And those tests prove that the circuit</p> <p>2 breaker continued to function normally. Is that</p> <p>3 right?</p> <p>4 A. That's correct.</p> <p>5 Q. And you took no videos of that testing; is</p> <p>6 that right?</p> <p>7 A. That's correct.</p> <p>8 Q. Is this circuit breaker we see here depicted</p> <p>9 in your test, is it frozen?</p> <p>10 A. Well, it should be in the thawing stage of</p> <p>11 having been frozen.</p> <p>12 Q. Okay, so this is the one that had been</p> <p>13 submerged, frozen. And it looks like it still has ice</p> <p>14 on it and you energized it?</p> <p>15 A. Yes.</p> <p>16 Q. And it worked fine?</p> <p>17 A. Yes, sir, it did.</p> <p>18 Q. And we only have three photographs of that;</p> <p>19 is that right?</p> <p>20 A. Yes, sir.</p> <p>21 Q. And Mr. Almeida is the one that did that</p> <p>22 testing?</p> <p>23 A. Yes, sir.</p> <p>24 Q. And do you know who was present with</p> <p>25 Mr. Almeida when that testing was done on Monday?</p>	208	<p>1 Q. Why did you talk to him?</p> <p>2 A. I was attempting to identify the -- what we</p> <p>3 had discussed before, that gutter assembly. It had</p> <p>4 been something that showed up in our photographs and</p> <p>5 something that I never remember seeing from the first</p> <p>6 day that I was on the fire scene.</p> <p>7 And so this is a matter of following up with</p> <p>8 a telephone conversation and just getting his, his</p> <p>9 remembrance of what had transpired up to and including</p> <p>10 the installation of the panel.</p> <p>11 Q. And did anyone instruct you to call</p> <p>12 Mr. Kelley?</p> <p>13 A. I had spoken with Attorney Rossi and gotten</p> <p>14 permission from him to do so.</p> <p>15 Q. Okay. And Exhibit 86 is your notes from that</p> <p>16 conversation?</p> <p>17 A. Yes, sir.</p> <p>18 Q. And did Mr. -- let me ask a better question.</p> <p>19 When was the first time you realized the</p> <p>20 gutter was missing from this meter panel?</p> <p>21 A. When I observed that usual -- excuse me, the</p> <p>22 unusual slant in the panel construction, that was my</p> <p>23 first indication.</p> <p>24 And then when we received the information</p> <p>25 from Eaton (maybe about a year later I think we got</p>

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209	<p>1 that), that was the first time that I knew. But I</p> <p>2 was, I was suspect from the day that we did the</p> <p>3 inspection in 2011.</p> <p>4 <b>Q.</b> Is there some reason why you didn't mention</p> <p>5 the missing components in your report of November 12,</p> <p>6 2012?</p> <p>7 <b>A.</b> No, sir.</p> <p>8 <b>Q.</b> What did Mr. Kelley tell you with respect to</p> <p>9 the gutter?</p> <p>10 <b>A.</b> Well, as he remembered, it was there when his</p> <p>11 fellows purchased it. He said he normally doesn't use</p> <p>12 Eaton products. I can't remember. He used another</p> <p>13 major manufacturer. But given the time line of the 75</p> <p>14 Vista View installation, his fellows went to a local</p> <p>15 supply house. And Cutler Hammer had some type of</p> <p>16 program in place and so they got the meter enclosure</p> <p>17 at a very reduced cost.</p> <p>18 And they, his two electricians, as reported</p> <p>19 to me, delivered it to the site, installed it on the</p> <p>20 side of the building, installed the SER cable from the</p> <p>21 bottom of the circuit breaker.</p> <p>22 And in his statement, he stated that then</p> <p>23 Connecticut Light &amp; Power showed up and installed</p> <p>24 their wiring and made their connections.</p> <p>25 <b>Q.</b> Did Mr. Kelley tell you who the electricians</p>	211	<p>1 <b>A.</b> No, sir, I did not.</p> <p>2 <b>Q.</b> So if I have got it right, you spoke with</p> <p>3 Mr. Kelley on December what? The 10th?</p> <p>4 <b>A.</b> Yes, sir.</p> <p>5 <b>Q.</b> Of 2012, at Mr. Rossi's suggestion. And</p> <p>6 Mr. Kelley advised you that two of his guys who you</p> <p>7 cannot identify installed the meter panel and he</p> <p>8 believed that the wire way -- the gutter wire way</p> <p>9 would have been present. Is that right?</p> <p>10 <b>A.</b> Yes, sir.</p> <p>11 <b>Q.</b> Did Mr. Kelley indicate to you that he spoke</p> <p>12 with the two gentleman who installed the meter panel?</p> <p>13 <b>A.</b> No, sir, he did not.</p> <p>14 <b>Q.</b> Okay. Did you ask him how he knows that the</p> <p>15 gutter was in place on a meter panel he has never seen</p> <p>16 which was installed by two employees who he cannot</p> <p>17 identify?</p> <p>18 <b>A.</b> I didn't ask him to identify the employees.</p> <p>19 I can't that he couldn't. I never asked who installed</p> <p>20 it.</p> <p>21 In the process of talking to him, he had --</p> <p>22 he was the only person in the office. He had the</p> <p>23 phone ringing in the background. And I asked him for</p> <p>24 the information that I thought was important and he</p> <p>25 presented it to me.</p>
210	<p>1 were who were the ones that installed the meter at 75</p> <p>2 Vista View Drive?</p> <p>3 <b>A.</b> No, he did not. I didn't ask.</p> <p>4 <b>Q.</b> Okay. When you say Mr. Kelley advised you</p> <p>5 that the gutter was present on the meter panel when</p> <p>6 his guys installed it, did you ask him how he knows</p> <p>7 that?</p> <p>8 <b>A.</b> No, sir, I didn't.</p> <p>9 <b>Q.</b> Did you ask Mr. Kelley if he had ever been to</p> <p>10 75 Vista View Drive?</p> <p>11 <b>A.</b> I had asked him if he had been there for the</p> <p>12 installation, at which time he explain to me that he</p> <p>13 didn't do field work, that he was basically in the</p> <p>14 office.</p> <p>15 <b>Q.</b> So it's your understanding that Mr. Kelley</p> <p>16 was never at Vista View prior to the fire; is that</p> <p>17 right?</p> <p>18 <b>A.</b> That I don't know. I mean, I just know that</p> <p>19 he wasn't there for the installation.</p> <p>20 <b>Q.</b> Okay.</p> <p>21 <b>A.</b> He might have been there for a drive-by or to</p> <p>22 drop some equipment off to his people, but I don't</p> <p>23 know.</p> <p>24 <b>Q.</b> Did you ask Mr. Kelley if he had ever seen</p> <p>25 the meter panel prior to the fire?</p>	212	<p>1 There was a discussion with regard to, you</p> <p>2 know, what, what the gutter was and where the gutter</p> <p>3 was. And that's when he said -- you know, stated to</p> <p>4 me that it had been present when it was purchased. So</p> <p>5 how he knew that, you know, I didn't press the issue</p> <p>6 on that.</p> <p>7 <b>Q.</b> Did he tell you why his employees got a</p> <p>8 discount on this meter panel?</p> <p>9 <b>A.</b> He said that Cutler Hammer was running some</p> <p>10 special promotion and they -- they meaning the supply</p> <p>11 house -- was able to provide it at a greatly reduced</p> <p>12 price.</p> <p>13 <b>Q.</b> Did you work with -- and if Don is a</p> <p>14 consultant, tell me. But did you work with Don Galler</p> <p>15 at all in connection with this case?</p> <p>16 <b>MR. ROSSI: Yes, he's a retained expert.</b></p> <p>17 <b>MR. BARTON: He was retained, but</b></p> <p>18 <b>nontestifying.</b></p> <p>19 <b>MR. ROSSI: Right. And I wanted to produce</b></p> <p>20 <b>that letter, but I didn't want to take his name</b></p> <p>21 <b>out of it, so.... Because the letter has --</b></p> <p>22 <b>MR. BARTON: Yeah, it does.</b></p> <p>23 <b>MR. ROSSI: -- information in it.</b></p> <p>24 <b>BY MR. BARTON:</b></p> <p>25 <b>Q.</b> Other than Mr. Kelley, have you spoken with</p>

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1 anyone else in connection with this case, excluding  
 2 your conversations with Mr. Rossi or Mr. Galler?  
 3 A. Or Mr. Driscoll?  
 4 Q. Or Mr. Driscoll.  
 5 A. No.  
 6 Q. Nobody else? Have you had any other phone  
 7 interviews with anybody that I would call a witness?  
 8 A. I don't believe so.  
 9 Q. Okay. Mr. Cristino, do you believe we have  
 10 covered all of your opinions and the basis for them  
 11 today?  
 12 A. Yes.  
 13 Q. Is there anything we have missed?  
 14 A. No, sir.  
 15 Q. Stapled to the back of Exhibit 81 is eight CD  
 16 Roms. I won't go through them all. But these  
 17 comprise not only your photographs, but the documents  
 18 received by Mr. Rossi and through Quali-Tech; is that  
 19 correct?  
 20 A. Yes, sir.  
 21 Q. They're all labeled.  
 22 A. Yes, sir, they are.  
 23 **MR. ROSSI: I think your photos are in there**  
 24 **too.**  
 25 **MR. BARTON: Yeah.**

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1 **BY MR. BARTON:**  
 2 Q. Other than the documents Mr. Rossi has  
 3 removed, do I now have and have we now gone through  
 4 all of the documents that are contained in your file,  
 5 sir?  
 6 A. Yes, sir.  
 7 Q. And I believe we've exhausted your opinions  
 8 in this case; is that right?  
 9 A. Well, I've got opinions you haven't even  
 10 touched on. But for this case.  
 11 Q. Well, in this case.  
 12 A. Yes, sir.  
 13 **MR. BARTON: I'm sure you have many**  
 14 **opinions. Mr. Cristino, thank you for your time**  
 15 **today. I don't have any to further questions for**  
 16 **you.**  
 17 **MR. ROSSI: He'll read and sign.**  
 18 **THE VIDEOGRAPHER: That concludes his**  
 19 **testimony. Going off videotape number 4,**  
 20 **4:00 p.m.**  
 21 **(Whereupon, at 4:00 p.m., the taking of the**  
 22 **deposition concluded.)**  
 23 **\*\*\*\*\***  
 24  
 25

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1 **CERTIFICATE**  
 2 I, Susan Wandzilak, hereby certify that I am  
 3 a Registered Professional Reporter and Notary Public  
 4 in and for the State of Connecticut, commissioned and  
 5 qualified to administer oaths.  
 6 I further certify that the deponent named in  
 7 the foregoing deposition was by me duly sworn, and  
 8 thereupon testified as appears in the foregoing  
 9 deposition; that said deposition was taken by me  
 10 stenographically in the presence of counsel and  
 11 reduced to typewriting under my direction, and the  
 12 foregoing pages are a true and accurate copy of the  
 13 original transcript of the testimony.  
 14 I further certify that I am neither of  
 15 counsel nor attorney to either of the parties to said  
 16 suit, nor am I an employee of either party to said  
 17 suit, nor of either counsel in said suit, nor am I  
 18 interested in the outcome of said cause.  
 19 Witness my hand and seal as Notary Public  
 20 this 5th day of January 2013.  
 21  
 22 \_\_\_\_\_  
 23 SUSAN WANDZILAK  
 24  
 25

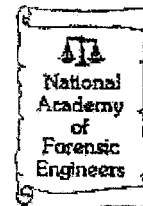
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# CRISTINO ASSOCIATES INC.

ELECTRICAL POWER SYSTEMS ENGINEERING  
DESIGN, FORENSICS AND TRAINING



## 75 Vista View Drive Southbury, CT Electrical Failure Analysis Report

Prepared By:

Joseph A. Cristino, P.E.

CT License # 13432

November 12, 2012

On January 31, 2011, the writer met with Fire Investigator Michael Driscoll (of PT&C Forensic Investigations) and other experts at a residential structure located at 75 Vista View Drive in Southbury, Connecticut. A fire had occurred at the exterior of the structure on January 17, 2011, that extended into the structure and caused structural damage. The preliminary analysis identified the area of fire origin as being in the vicinity of the electric service meter enclosure and underground conductor conduit location on the northerly side of the structure.

The purpose of the January 31<sup>st</sup> site examination was to initiate an investigation of the January 17<sup>th</sup> fire, evaluate possible electrical ignition sources and to formulate and proceed with a course of action to determine the cause of the fire.

This report is based upon the January 31<sup>st</sup> site examination, subsequent examinations and testing at the Connecticut Light and Power Company's (CL&P) Freight Street facility, in Waterbury, Connecticut, and QualiTech Laboratories in Meriden, Connecticut, a review of material provided by Eaton Corporation and discussions with Fire Investigator Driscoll. The writer reserves the right to supplement and/or amend should additional information become available.

**BACKGROUND INFORMATION:**

- The residential structure at 75 Vista View Drive was one of four structures within the same development that were built but never occupied.
- Electrical service to all of the structures within the development was supplied via 13,800-volt underground cables, above-grade, pad-mount transformers and underground 120/240-volt underground conductors.
- A pad-mount transformer was located to the right side of the driveway (facing the structure) and supplied 75 Vista View and one other residential structure located across Vista View Drive.

- An underground PVC conduit ran from the pad-mount transformer to a Cutler Hammer™ combination meter enclosure located on the northerly face of the structure. Note: A combination meter enclosure is one which has provisions for an electric utility revenue meter and a main disconnect (circuit breaker or fused disconnect switch). In addition, this enclosure was equipped with a meter by-pass which permitted the removal of the revenue meter without interruption of power to the structure.
- The Cutler Hammer™ combination meter enclosure exhibited signs of electrical fault activity within its confines. This damage extended outward through the back of the metal enclosure.
- The exterior wall of the residential structure in the area of the Cutler Hammer™ combination meter enclosure location exhibited fire damage.
- The underground PVC conduit that was routed from the CL&P pad-mount transformer to the Cutler Hammer™ combination meter enclosure had been partially consumed in the area below the meter enclosure.
- The type SER cable that interconnected the Cutler Hammer™ combination meter enclosure with the main circuit breaker panel located within the basement was consumed up to where it exited the meter enclosure.
- The Cutler Hammer™ combination meter enclosure was fitted with a circuit breaker that was electrically connected to the revenue meter socket within the enclosure.
- The meter enclosure's circuit breaker was oriented so that its toggle operated horizontally (side-to-side) although the electrical connections were oriented vertically (Line Connections at the Top and Load Connections at the Bottom). The circuit breaker was rated for 200 amperes with an interrupting rating of 22,000 amperes.

- Portions of the meter enclosure circuit breaker's Line Side connections (those coming from the meter socket) sustained physical damage due to electrical fault activity.
- One of the circuit breaker's Load Side terminals (those connecting to the conductors routed to the basement circuit breaker panel) was damaged as a result of electrical fault activity.
- The CL&P revenue meter was damaged with only portions of the current-sensing components remaining within the meter socket jaws.
- Damage to the Cutler Hammer™ combination meter socket enclosure and internal components appeared to be consistent with an event created by the ingress of moisture into the enclosure and a resultant electrical failure. This was characterized by electrical fault activity extending outward from the interior of the Cutler Hammer™ circuit breaker to the rear sheet metal mounting plate and the lack of indications of rodent or varmint activity and the absence of human interaction or other causes.

Following the January 31<sup>st</sup> site examination, the CL&P pad-mount transformer was inspected and tested at the CL&P Area Work Center at Freight Street in Waterbury, Connecticut. CL&P Western Regional Test Department and Waterbury Area Work Center Electrical Maintenance personnel provided assistance and performed some of the testing.

- The transformer was a 25 kVA, pad-mount type, oil filled, single-phase unit with a CL&P designation of #968.
- The transformer had a high voltage rating of 13,800/7,970 volts and a low voltage rating of 240/120 volts.
- The transformer was fitted with a secondary circuit breaker; the circuit breaker was found to be inoperable and had been reported to have a

feeling “like mush” when a CL&P Lineman attempted to operate it at the fire scene at 75 Vista View Drive.

- Continuity tests performed on the transformer’s primary (13,800/7,970–volt) winding indicated that it was intact.
- Continuity tests performed on the transformer’s secondary (240/120–volt) winding indicated that the low voltage circuit breaker was in the “OPEN” position and that the secondary winding was electrically isolated from the transformer’s output bushings.
- Samples of the transformer’s dielectric oil were tested using a Hipotronics OC60A Oil Test Set; test results indicated that the oil was dielectrically sound and that the transformer did not experience an internal dielectric or electrical failure. Note: The oil test results indicate that the secondary circuit breaker failure was not due to an electrical fault within the transformer but rather a mechanical failure that did not negatively impact the integrity of the transformer’s insulation system. The circuit breaker most probably failed during its operation while interrupting the fault within the Cutler Hammer™ combination meter socket enclosure at 75 Vista View. Had the transformer circuit breaker failed prior to the January 17<sup>th</sup> incident, electrical power would not have been available to the structure; the type of failure that occurred within the transformer circuit breaker could not have created an electrical power anomaly that would have caused the January 17<sup>th</sup> incident.
- The pad–mount transformer did not exhibit any exterior signs of distress, overheating or failure.
- Test results and visual examination of the CL&P pad–mount transformer that served 75 Vista View Drive indicate that the detected transformer damage was the result of the transformer supplying energy into the fault



and that the transformer neither caused nor created the January 17, 2011, electrical fault.

On March 14, 2011, and September 7, 2011, artifacts from the 75 Vista View Drive loss site were examined at the QualiTech Laboratories, 190 Pratt Street, Meriden, Connecticut. The March 14<sup>th</sup> session included interested parties, including representatives from the Connecticut Light and Power Company (CL&P). The September 7<sup>th</sup> session focused on analysis of the 200-amp Cutler Hammer™ circuit breaker remains.

#### March 14, 2011, Observations

- The Cutler Hammer™ combination meter enclosure exhibited damage throughout the interior of the portion of the enclosure within which the 200-amp main circuit breaker was mounted.
- Other damage was observed in the area of the revenue meter socket.
- Most of the aluminum conductors that had been routed through the meter enclosure had been consumed by the electrical fault activity.
- The 200-amp main circuit breaker had been mounted to a steel sheet metal plate which was located against the rear of the meter enclosure in the area below the revenue meter socket.
- A sheet of Mylar insulation separated the rear of the circuit breaker from the steel sheet metal mounting plate that was attached to the metal enclosure.
- A portion of the steel sheet metal mounting plate had been consumed by electrical fault activity. The damage aligned with damage at the back of the 200-amp main circuit breaker.

- The damage to the main circuit breaker and steel sheet metal mounting plate aligned with a hole through the sheet metal that made up the rear of the meter enclosure.
- The Load side connections of the main circuit breaker, within the meter enclosure, were found to have been melted along with the aluminum conductors that had been in place prior to the January 17, 2011, incident.
- The material that comprised the outer portions of the main circuit breaker was found to be brittle and friable.
- Approximately 50% of the main circuit breaker's internal components had been consumed or destroyed by the January 17, 2011, incident.
- Mr. Ruben Morales, of Eaton Corporation, identified the circuit breaker and combination meter enclosure as a BW2200 circuit breaker within a MB816B200BTS enclosure. (Subsequent research revealed that the Cutler Hammer™ division of Eaton Corporation produced this meter enclosure in several configurations and that the M816B200BTS enclosure included additional circuit breakers located in a dedicated distribution circuit breaker area located below the main circuit breaker.)
- Based upon the actual SL Kelley Electric invoice and additional research, it was determined that the circuit breaker panel was a model CMBXB200BTS with a model CRS2200 circuit breaker. This was verified in the deposition testimony of the Eaton Corporation designee Jeffrey Johnson.
- The main circuit breaker was found to have a unique internal and external configuration. The Line side connections were located at the top of the circuit breaker (with the circuit breaker placed vertically). The Load side connections were located at the bottom of the circuit breaker (again, the circuit breaker positioned vertically). The action of the ON-OFF Toggle operated Left to Right. To produce the electrical connections and

toggle action, the circuit breaker was designed and manufactured with a crisscross in its internal electrical bus work. This placed internal components that were electrically energized at 240-volts within approximately ½-inch of each other. Externally, the circuit breaker was fitted with mechanical lugs on its Line side terminals and metal plates on its Load side.

Additional laboratory analysis was undertaken on September 7, 2011. The subject 200-amp circuit breaker from the loss site and a circuit breaker of similar construction were subjected to radiographic analysis prior to the laboratory examination. The radiographs were used to aid in analyzing the failure within the subject circuit breaker. The circuit breaker of similar construction (a Cutler Hammer BW2200) was non-destructively disassembled and used to obtain additional details of the internal components and their respective locations:

- The damage to the subject circuit breaker was identified to be centered in the area of the internal portions of the right-side Line side components.
- When the subject circuit breaker's remains were compared against the BW2200 circuit breaker, a hole was visible from the front of the circuit breaker's outer surface, through the circuit breaker's interior components, through to the circuit breaker's rear surface, through to the damaged sheet metal mounting plate at the rear of the meter enclosure and through the metal of the meter enclosure.
- The observed damage was consistent with that caused by an electrical fault within the subject circuit breaker, including the melting of the mounting plate and the sheet metal of the meter enclosure.
- Samples were identified and cut from the sheet metal mounting plate for analysis within the QualiTech Scanning Electron Microscope (SEM).

**CONCLUSION:**

Based upon the site examination, laboratory analysis and information obtained from Eaton Corporation Cutler Hammer™, it can be stated with a reasonable degree of engineering certainty that the January 17, 2011, failure within the Cutler Hammer™ combination meter enclosure that was mounted on the exterior of an residential structure located at 75 Vista View Drive, Southbury, Connecticut, was due to a short circuit within the 200-amp main circuit breaker mounted within the meter enclosure. The short circuit originated within the circuit breaker's internal Line side components most probably due to a defect that allowed moisture ingress. The meter enclosure was designed and manufactured for outdoor applications. Therefore, the meter enclosure should have been capable of preventing the ingress of moisture typically experienced in a New England winter. The moisture compromised the circuit breaker's internal insulation system which included the Bakelite-type material from which the circuit breaker body was formed and the internal insulating air gaps. The fault most probably was located in the area of the internal Line side components within the circuit breaker. (This is based upon the observed damage within the circuit breaker remains.) Due to the location of the fault, the Cutler Hammer™ main circuit breaker was unable to interrupt the electrical fault, thus allowing the fault to expand and intensify. This resulted in the production of temperatures in excess of 2500° Fahrenheit; caused failures of the Mylar insulation at the back of the circuit breaker and two steel components; the extension of the electrical fault outside of the confines of the meter enclosure caused the combustible materials to which the meter enclosure was mounted to ignite.

Based upon laboratory analysis and visual examination, the electrical failure within the Cutler Hammer™ combination meter socket enclosure was due

to a fault that originated within the circuit breaker within the enclosure. Outside sources and failure scenarios have been considered and eliminated because of the location and severity of the damage to the aluminum, insulation material and steel components within the Cutler Hammer™ combination meter socket enclosure. Neither an external electrical fault nor an external fire could have produced the observed damage and, more importantly, an external event could not have kept the component remains intact.

Jeffrey Johnson

Page 1

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF CONNECTICUT

ACE AMERICAN INSURANCE	)	
COMPANY,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	Case No. 3:11-CV-01741-CSH
	)	
EATON ELECTRICAL, INC.,	)	
	)	
Defendant.	)	

DEPOSITION OF JEFFREY JOHNSON  
TAKEN OF BEHALF OF THE PLAINTIFF  
JULY 31, 2012

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Jeffrey Johnson

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<p>1 IN THE UNITED STATES DISTRICT COURT</p> <p>2 FOR THE DISTRICT OF CONNECTICUT</p> <p>3</p> <p>4 ACE AMERICAN INSURANCE )</p> <p>5 COMPANY, )</p> <p>6 )</p> <p>7 Plaintiff, )</p> <p>8 )</p> <p>9 vs. )Case No. 3:11-CV-01741-CSH</p> <p>10 )</p> <p>11 EATON ELECTRICAL, INC., )</p> <p>12 )</p> <p>13 Defendant. )</p> <p>14</p> <p>15 DEPOSITION OF JEFFREY JOHNSON, produced, sworn,</p> <p>16 and examined on the 31st day of July, 2012, between</p> <p>17 the hours of 9:55 A.M. and 12:18 P.M. of that day,</p> <p>18 at the offices of Midwest Litigation Services, 15 S.</p> <p>19 Old State Capitol Plaza, Springfield, Illinois 62701,</p> <p>20 before Robin A. Enstrom, a Registered Professional</p> <p>21 Reporter, Certified Shorthand Reporter, and a Notary</p> <p>22 Public within and for the State of Illinois.</p> <p>23</p> <p>24</p>	<p>1 IT IS HEREBY STIPULATED AND AGREED by and</p> <p>2 between Counsel for the Plaintiff and Counsel for the</p> <p>3 Defendant that this deposition may be taken in</p> <p>4 shorthand by Robin A. Enstrom, RPR, CSR, and Notary</p> <p>5 Public, and thereafter transcribed into typewriting,</p> <p>6 with the signature of the witness being expressly</p> <p>7 reserved.</p> <p>8</p> <p>9 * * * * *</p> <p>10</p> <p>11 (Deposition began at 9:55 A.M.)</p> <p>12</p> <p>13 MR. BARTON: This is Jon Barton. I</p> <p>14 represent Eaton Corporation. We're here today</p> <p>15 pursuant to a 30(b)(6) notice of deposition for Eaton</p> <p>16 Corporation's corporate designee with respect to a</p> <p>17 number of areas pursuant to a notice dated July 10,</p> <p>18 2012.</p> <p>19 Mr. Jeff Johnson is being produced today</p> <p>20 to testify with respect to the following topics</p> <p>21 identified in plaintiff's amended notice of</p> <p>22 deposition, also subject to the definitions outlined</p> <p>23 in that notice.</p> <p>24 The topic areas are, one, the design and</p>

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<p>1 probably take it that way in a subassembly, but</p> <p>2 different manufacturers like to do things in a</p> <p>3 different sequence sometimes.</p> <p>4 Q. Uh-huh.</p> <p>5 A. So I would probably have the lever bypass</p> <p>6 mounted to the bracket and fifth jaw probably already</p> <p>7 installed on the socket. It's just a drop-in. You</p> <p>8 drop it in. You put the other screws in to mount the</p> <p>9 bracket to the enclosure.</p> <p>10 So now you have the enclosure with the</p> <p>11 socket already installed, and then you would probably</p> <p>12 put in the neutrals, the neutral bus with the lug.</p> <p>13 Then there's another connection with the bar that goes</p> <p>14 between the two neutral busses. You would probably</p> <p>15 put that in, fasten it to the enclosure. And, of</p> <p>16 course, that gives you the subfeed lug on the bottom</p> <p>17 when you install that bus.</p> <p>18 Then you would put the barrier -- I would</p> <p>19 probably put the barrier across at that point. I do</p> <p>20 not know, again, sequence-wise exactly what they do.</p> <p>21 Q. Put the -- because you said the barrier</p> <p>22 screws in; right?</p> <p>23 A. The barrier screws to the back of the</p> <p>24 case, but it also has a rivet through the sidewall on</p>	<p>1 A. How you going get the wire in there?</p> <p>2 Q. Because it doesn't bend?</p> <p>3 A. Yeah. You're not going to be able to get</p> <p>4 it in between the two. So you have to slip one on.</p> <p>5 Q. So you would slip the breaker on?</p> <p>6 A. Yes. And then you -- then once you have</p> <p>7 the breaker on there, then I would expect then you do</p> <p>8 torques. You would torque to your specific values.</p> <p>9 And just from seeing the device, I see that they</p> <p>10 marked -- they mark when they torque.</p> <p>11 Q. What do they mark?</p> <p>12 A. It looks like a -- looks like a -- maybe a</p> <p>13 Magic Marker type -- just a slash to guarantee that</p> <p>14 they've done the torque. So the operator on the line</p> <p>15 would do the torque and mark the torque joint.</p> <p>16 Q. Where did you see a slash?</p> <p>17 A. Across the barrel screws.</p> <p>18 Q. And how do you know that that's what that</p> <p>19 means?</p> <p>20 A. It's typical in the industry.</p> <p>21 Q. Did you ask anyone?</p> <p>22 A. I did not ask anyone, but I did -- I did</p> <p>23 ask if -- you know, are your -- you're using</p> <p>24 calibrated torque wrenches with your connections, and</p>
<p>Page 119</p> <p>1 the right-hand side --</p> <p>2 Q. Okay.</p> <p>3 A. -- if you're facing the enclosure. So you</p> <p>4 would put the barrier in.</p> <p>5 Then you would most likely after that --</p> <p>6 you may put the latch at the bottom of the case for</p> <p>7 the door with this little spring. It's a</p> <p>8 spring-loaded latch.</p> <p>9 Then you would probably put the wires in.</p> <p>10 Put the wires -- slip them into here.</p> <p>11 Q. The wires between the socket and the</p> <p>12 breaker?</p> <p>13 A. Between the socket and the breaker. And</p> <p>14 then I would imagine you would place the bracket with</p> <p>15 the insulator on it into the enclosure. Probably</p> <p>16 screw it down to the enclosure, and then slip the</p> <p>17 breaker onto the wires, and then fasten the two holes</p> <p>18 through the breaker into the bracket.</p> <p>19 Q. Why would you do it that way? Why</p> <p>20 wouldn't you mount the socket and the breaker and then</p> <p>21 put the wires in?</p> <p>22 A. Why wouldn't you mount -- oh, to mount</p> <p>23 these two first?</p> <p>24 Q. Yes.</p>	<p>Page 121</p> <p>1 that's the case.</p> <p>2 Q. What did he say?</p> <p>3 A. They are using calibrated torque wrenches.</p> <p>4 They're calibrated once a year.</p> <p>5 Q. By who?</p> <p>6 A. I do not know who their calibration</p> <p>7 certification is with.</p> <p>8 Now, those are probably quality questions</p> <p>9 that would --</p> <p>10 MR. BARTON: They are --</p> <p>11 A. Quality could answer those, I would</p> <p>12 expect.</p> <p>13 Q. (By Mr. Rossi) The one thing I didn't ask</p> <p>14 about was the Mylar liner. Do they buy that from you?</p> <p>15 A. No.</p> <p>16 Q. They resource that?</p> <p>17 A. They purchase that under our drawing from</p> <p>18 another vendor.</p> <p>19 Q. Do you know who?</p> <p>20 A. I know who it -- who they had discussed</p> <p>21 with before. Whether that's still valid, it was</p> <p>22 McPherson at one time.</p> <p>23 Q. Now, these -- this -- these enclosures are</p> <p>24 weatherproof?</p>

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<p>1 A. Not weatherproof. They're rainproof. 3R 2 rainproof is the consideration.</p> <p>3 Q. 3R rainproof -- what does that mean? 4 A. That's the UL specification that's in UL 5 50, and you'd have to actually read the standard to 6 see what that actually is. There's a lot written on 7 it.</p> <p>8 Q. Uh-huh. 9 A. But, basically, it means that it can -- it 10 has withstood -- it or another construction very 11 similar to this enclosure has withstood the rain and 12 no -- no -- what is -- how is it actually termed? I 13 believe it's -- I believe it states no water can enter 14 above live parts, and you can't have an accumulation 15 of water in the bottom end wall.</p> <p>16 Now, when it says "rainproof," many people 17 think absolutely no moisture can ever get into the 18 enclosure. That is not the case, and that's not what 19 the standard says.</p> <p>20 Q. You try and keep moisture out, however? 21 A. Of course, you do. You know, you do your 22 utmost to keep it out.</p> <p>23 Q. And what is it that makes these enclosures 24 rainproof?</p>	<p>1 are going to be exposed. Of course, at the bottom 2 area, it doesn't -- it's -- it doesn't have to be 3 shielded because of that connection. The way that 4 flanged area is down here on the bottom, it's not 5 necessary to have a return flange down there because 6 the water would shield off.</p> <p>7 Q. Is there anything else you can think of 8 that is designed into this product to make it 9 rainproof?</p> <p>10 A. Well, you have a hubcap on the top that 11 covers the extruded opening in the top. If they 12 wanted to top feed it, they can take that cap off.</p> <p>13 Q. The top of the enclosure? 14 A. The top of the enclosure. That makes it 15 that way. It's -- you know, it's welded, which is -- 16 you know, that's another method. It could be welded, 17 riveted, or screwed as long as you meet the UL 50 18 criteria, and they consider that rain-proofing method 19 to be appropriate. That's the general concept.</p> <p>20 I hate to ask again. Can I take a break? 21 Q. Oh, absolutely. 22 (Short recess.) 23 Q. (By Mr. Rossi) These enclosures -- this 24 particular product is intended to be sold in New</p>
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<p>1 A. The design of the product. 2 Q. Well, tell me about the features that make 3 it rainproof. 4 A. Well, there's specific overlaps that have 5 to be met with your covers. Say, for example, this 6 door underneath this cover has to -- 7 Q. Exhibit 1? 8 A. Exhibit 1. This door down here would have 9 to, once it's engaged, have a minimum overlap of a 10 half-inch, according to the UL requirements. 11 This cover under here would be the same 12 thing. 13 Q. The top cover? 14 A. The top cover. The meter cover under the 15 hood. Same thing with the flanges on the sidewalls of 16 the case. 17 Depending on the type of construction an 18 enclosure has, UL has a criteria that has to be met 19 for that particular construction. I mean, there's 20 different -- different ways of forming that can give 21 you different -- different dimensions of what you have 22 to overlap. 23 This is pretty common, and it's a 24 half-inch overlap pretty much on any of the areas that</p>	<p>1 England; correct? 2 MR. BARTON: Object to form. Vague. 3 A. As mentioned before, the product could be 4 sold pretty much anywhere in the United States if the 5 local jurisdiction and the utility allow it. 6 Q. (By Mr. Rossi) And you said earlier that 7 this was 3R rainproof? 8 A. Yes. 9 Q. But it's not snowproof? 10 MR. BARTON: Object to form. Misstates 11 witness' testimony. 12 A. I don't believe there's a classification 13 for snowproof. 14 Q. (By Mr. Rossi) It's not iceproof? 15 A. There is no icing testing requirement for 16 these products. 17 Q. Now, at the conclusion of the 18 manufacturing process at Durham, what do they do with 19 the product? 20 A. Well, I know at the conclusion that they 21 have -- they have a quality checklist that they go 22 through on finish product before they pack it out -- 23 Q. Have you ever seen one of those quality 24 checklists?</p>

32 (Pages 122 to 125)

Case: Ace American Insurance Company vs.  
Eaton Electrical, Inc.

Transcript of the Testimony of Timothy Baldwin

Date: July 25, 2012



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1	3
UNITED STATES DISTRICT COURT FOR THE DISTRICT OF CONNECTICUT  -----X ACE AMERICAN INSURANCE COMPANY : CAUSE NO. : 3:11-CV-01741-CSH VS. : : EATON ELECTRICAL, INC. : -----X  <b>DEPOSITION OF: TIMOTHY BALDWIN</b> <b>DATE: JULY 25, 2012</b> <b>HELD AT: SIEGEL O'CONNOR</b> <b>150 TRUMBULL STREET</b> <b>HARTFORD, CONNECTICUT</b>  Reporter: MIMI Z. ARMANDO, LSR # 00222	1 INDEX 2 WITNESS: Page: 3 TIMOTHY BALDWIN 4 Direct examination by Attorney Barton 6 5 Cross examination by Attorney Rossi 62 6 7 Redirect examination by Attorney Barton 76 8 DEFENDANT'S EXHIBITS Page: 9 Exhibit 1, fire investigation report..... 19 10 Exhibit 2, photo..... 22 11 Exhibit 3, photo..... 23 12 Exhibit 4, photo..... 24 13 Exhibit 5, photo..... 26 14 Exhibit 6, photo..... 27 15 Exhibit 7, Southbury volunteer firemen's association website page..... 27 16 Exhibit 8, photo..... 33 17 Exhibit 9, photo..... 34 18 Exhibit 10, photo..... 38 19 Exhibit 11, photo..... 66 20 Exhibit 12, photo..... 67 21 Exhibit 13, e-mail from Ruth Taubl..... 73 22 Exhibit 14, 10/28/08 letter..... 74 23 24 (Note: Reporter retained original exhibits; copies sent with copies of transcript, originals kept with original transcript.) 25
2	4
1 <b>APPEARANCES:</b> 2 3 <b>REPRESENTING THE PLAINTIFF:</b> 4 <b>COZEN O'CONNER</b> 5 <b>1900 MARKET STREET</b> 6 <b>PHILADELPHIA, PENNSYLVANIA 19103</b> 7 <b>By: PETER ROSSI, ESQ.</b> 8 9 10 <b>REPRESENTING THE DEFENDANT:</b> 11 <b>SANDBERG, PHOENIX &amp; von GONTARD, P.C.</b> 12 <b>600 WASHINGTON AVENUE - 15TH FLOOR</b> 13 <b>ST. LOUIS, MISSOURI 63101-1313</b> 14 <b>By: JONATHAN T. BARTON, ESQ.</b> 15 16 17 18 <b>ALSO IN ATTENDANCE:</b> 19 <b>Brian Capouch, Videographer</b> 20 21 22 23 24 25	1 <b>STIPULATIONS</b> 2 3 It is stipulated by counsel for the parties that 4 all objections are reserved until the time of trial, 5 except those objections as are directed to the form of 6 the question. 7 8 It is stipulated and agreed between counsel for 9 the parties that the proof of the authority of the 10 Notary Public before whom this deposition is taken is 11 waived. 12 13 It is further stipulated that any defects in the 14 Notice are waived. 15 16 It is further stipulated that the reading and 17 signing of the deposition transcript by the witness is 18 waived. 19 20 21 22 23 24 25

57	<p>1 Q So no inspection into an incendiary cause was 2 considered?</p> <p>3 A No.</p> <p>4 Q So we didn't take -- you didn't take soil 5 samples?</p> <p>6 A There may have been. I don't recall. 7 Especially when you're doing an undetermined fire, you 8 may take samples just to, again, rule things out, but I 9 do not recall if samples were taken.</p> <p>10 Q The report indicates that Presley, the canine 11 accelerant detection dog was present?</p> <p>12 A Yes, he was. He responds with 13 Detective Christensen. He is Presley's handler so the 14 two of them respond together.</p> <p>15 Q Do you know if Presley was actually brought 16 out to the scene to detect any detection?</p> <p>17 A I don't recall.</p> <p>18 Q Did you speak with Joe Mancini at all? He is 19 the representative from Connecticut Light &amp; Power?</p> <p>20 A I am not sure which gentleman from CL&amp;P 21 Mr. Mancini was. I did have conversations with the 22 CL&amp;P rep who was on the truck who was there but we did 23 have quite a few representatives from CL&amp;P there.</p> <p>24 Q Do you remember what you and the gentleman in 25 the truck discussed?</p>	59	<p>1 this fire?</p> <p>2 A Really nothing.</p> <p>3 Q Okay.</p> <p>4 A Everything was in the hands of Fire Marshal 5 Stormer.</p> <p>6 Q Do you know what caused this fire as you sit 7 here today?</p> <p>8 A The actual cause? No. I know the area of 9 origin. I feel very comfortable with the area of 10 origin.</p> <p>11 Q But as to what specifically caused --</p> <p>12 A What was the hot item to touch or combustible 13 item? No, I do not.</p> <p>14 Q I guess using the parlance, what was the 15 first fuel ignited?</p> <p>16 A I don't know that for sure.</p> <p>17 Q Do you know if there was a failure, if any, 18 in the meter panel?</p> <p>19 A Not without a third party testing.</p> <p>20 Q Do you know if there was a failure in the 21 transformer?</p> <p>22 A The only thing I know about the transformer 23 is that there was -- it was not able to reset.</p> <p>24 Q In your many years as a fire investigator and 25 working for various fire departments, had you ever</p>
58	<p>1 A He again was talking about how the 2 transformer would not reset and I actually assisted 3 with them trying to dig out some snow and stuff around 4 different things that they needed to do. There was 5 probably about two feet of snow around the area at the 6 time.</p> <p>7 Q Around the transformer?</p> <p>8 A Around the transformer, that whole area. You 9 know, you have the snow, the snowplow roll over and 10 everything is down there.</p> <p>11 Q Was the subdivision plowed?</p> <p>12 A Yes.</p> <p>13 Q Do you know when the snowplow came through?</p> <p>14 A There wasn't snow that night so I don't know. 15 So there wasn't a need for snow removal that night.</p> <p>16 Q What time did you leave the scene that day?</p> <p>17 A I would have to look at the report to see 18 what time we left the scene. It was late morning.</p> <p>19 Q It looks like the Connecticut Light &amp; Power 20 came around six in the morning?</p> <p>21 A Uh-huh.</p> <p>22 Q Do you think you left afternoon?</p> <p>23 A It was close to noon.</p> <p>24 Q After you left the scene, what, if anything, 25 else did you do with respect to the investigation into</p>	60	<p>1 reported to any fire scenes where the transformer was 2 believed to be the cause of the fire?</p> <p>3 A I have been to utility pole fires where the 4 transformer was on fire.</p> <p>5 Q Where they exploded or something of that 6 nature?</p> <p>7 A Yeah. But quite often that's from a failure 8 of the what is really -- there could be a problem with 9 the transformer, there could be a problem with the 10 connection to the transformer.</p> <p>11 Q Sure. Were you -- have you ever been called 12 out to any fire scenes where there had been an 13 overvoltage or some other event coming from a 14 transformer to a residence?</p> <p>15 A Absolutely. Not overvoltage but a loss of a 16 neutral. And I have been to overvoltages. We have had 17 problems in substations, houses across the street from 18 the power substations.</p> <p>19 Q Explain to me when you say loss of a neutral?</p> <p>20 A I don't understand it very well other than 21 when you do lose a neutral it sends more power to the 22 -- through the conductor and you'll end up -- the 23 conditions that you get from it is light bulbs will 24 pop, appliances will be overpowered, so there is a lot 25 -- outlets will fail, overheating, and so on and so</p>

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Case: Ace American Insurance Company vs.  
Eaton Electrical, Inc.

Transcript of the Testimony of Henry Stormer

Date: July 25, 2012



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57	<p>1 Q And that was for an arson inspection, wasn't</p> <p>2 it?</p> <p>3 A It was for a fire investigation, but in case</p> <p>4 we developed arson, in Connecticut because of case law,</p> <p>5 we would have to put someone on notice that if we did</p> <p>6 find evidence of an arson, that that evidence would be</p> <p>7 sent to the lab for analysis.</p> <p>8</p> <p>9 (Defendant's Exhibit 25, fire incident field notes,</p> <p>10 marked for identification.)</p> <p>11</p> <p>12 <b>BY MR. BARTON:</b></p> <p>13 Q Let me hand you what has been marked as</p> <p>14 Exhibit 25. Can you tell me what that document is?</p> <p>15 A That would be pages from the NFPA 921</p> <p>16 checklist from the back of NFPA 921.</p> <p>17 Q And is this your handwriting?</p> <p>18 A Yes, it is.</p> <p>19 Q And these are notes you filled out actually</p> <p>20 during your investigation?</p> <p>21 A Yes.</p> <p>22 Q I would like to draw your attention to page 3</p> <p>23 where it says, Name of person last in structure prior</p> <p>24 to fire and it says maintenance. And it indicates on</p> <p>25 January 14, 2011 somebody was in the house for</p>	59	<p>1 Q It would be important to follow up and find</p> <p>2 out why somebody was in that home a few days before to</p> <p>3 find out what maintenance they did?</p> <p>4 A I don't know if I put it there before and it</p> <p>5 was just a question because I wanted to ask who was the</p> <p>6 last person in the structure or if I did it after I</p> <p>7 wrote it. I'm sorry, I just don't recall.</p> <p>8 Q That's all right. That's why we do these</p> <p>9 things.</p> <p>10</p> <p>11 (Defendant's Exhibit 26, fire incident report, marked</p> <p>12 for identification.)</p> <p>13</p> <p>14 <b>BY MR. BARTON:</b></p> <p>15 Q Let me hand you what has been marked as</p> <p>16 Exhibit 26. And I apologize for the quality of this.</p> <p>17 It is very difficult to read. But do you recognize</p> <p>18 that document?</p> <p>19 A It is difficult because this isn't the</p> <p>20 original. Yeah, it is an incident report that I had</p> <p>21 designed as fire marshal so that -- I had designed this</p> <p>22 form because there were so many fires that we would go</p> <p>23 on that would be extremely minor in nature but the</p> <p>24 insurance companies would need something so that they</p> <p>25 could pay the claim because, you know, we had such a</p>
58	<p>1 maintenance. Do you know what maintenance was being</p> <p>2 performed on the home?</p> <p>3 A No.</p> <p>4 Q Do you know if that maintenance pertained to</p> <p>5 any electrical issues?</p> <p>6 A No, I do not.</p> <p>7 Q So you don't know if that was an electrician,</p> <p>8 we don't know if it was a sprinkler guy or anybody?</p> <p>9 A I would assume that if I wrote maintenance</p> <p>10 that I got the information from Mr. Turner.</p> <p>11 Q I thought we don't assume when we do fire</p> <p>12 investigations?</p> <p>13 A We don't.</p> <p>14 Q So we don't know --</p> <p>15 A I don't know who it was.</p> <p>16 Q Where did you get that information; do you</p> <p>17 know?</p> <p>18 A That would have been from Mr. Turner. The</p> <p>19 real estate info I did get from the real estate agent</p> <p>20 herself.</p> <p>21 Q And I see a star next to it. Did you put the</p> <p>22 star there?</p> <p>23 A Yes.</p> <p>24 Q And why did you do that?</p> <p>25 A I have no idea.</p>	60	<p>1 high amount of elderly population in Southbury that we</p> <p>2 had a lot of kitchen fires. And this just became a</p> <p>3 form that we filled out to have the basics, incident</p> <p>4 number, date and time, who went, what type of fire.</p> <p>5 Q But you filled out this report?</p> <p>6 A I did.</p> <p>7 Q And in it it says, Origin and cause of the</p> <p>8 fire, and that's your handwriting; is that correct?</p> <p>9 A Yes.</p> <p>10 Q It looks like it says, Fire started at the?</p> <p>11 A Exterior electrical meter, service entry due</p> <p>12 to electrical problem/malfunction.</p> <p>13 Q Were you able to ever identify what that</p> <p>14 electrical problem/malfunction was?</p> <p>15 A No, I was not.</p> <p>16</p> <p>17 (Defendant's Exhibit 27, assessor's property card,</p> <p>18 marked for identification.)</p> <p>19</p> <p>20 <b>BY MR. BARTON:</b></p> <p>21 Q This exhibit, Exhibit No. 26, also references</p> <p>22 a CAD sheet attached. Let me hand you Exhibit 27, is</p> <p>23 that the CAD sheet?</p> <p>24 A No, that would be the assessor's property</p> <p>25 card. The CAD sheet is Exhibit 16.</p>

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61	<p>1 Q Very well. Thank you. Exhibit 26 -- I'm</p> <p>2 sorry, 27 the --</p> <p>3 A The assessor's card.</p> <p>4 Q The assessor's card. Did you obtain that</p> <p>5 information?</p> <p>6 A Yes.</p> <p>7 Q And what was the purpose of that?</p> <p>8 A I do it in every fire because we look at</p> <p>9 especially in a situation like this, I look to see if</p> <p>10 there were any liens on the property, if there was any</p> <p>11 reason for anyone involved in investing in this</p> <p>12 property to light the house on fire, which is just</p> <p>13 common for any fire I did as a fire marshal.</p> <p>14 Q Am I correct that you have not concluded that</p> <p>15 the meter panel caused this fire?</p> <p>16 A I have not concluded that, no.</p> <p>17 Q And do you have a specific cause of this</p> <p>18 fire?</p> <p>19 A No, I don't.</p> <p>20 <b>MR. BARTON: Thank you. I don't have any</b></p> <p>21 <b>further questions for you.</b></p> <p>22 <b>MR. ROSSI: I have a few questions for you.</b></p> <p>23</p> <p>24</p> <p>25</p>	63	<p>1 Q Did you consider that?</p> <p>2 <b>MR. BARTON: Same objection.</b></p> <p>3 A We considered everything at that point just</p> <p>4 trying to determine -- the information that we had</p> <p>5 available to us and trying to make a decision as public</p> <p>6 investigators, yeah, you know, you look at what came</p> <p>7 first the chicken or the egg. Was it a problem in the</p> <p>8 house that caused a problem with the transformer? A</p> <p>9 problem with the transformer that caused the problem</p> <p>10 with house? And that I don't know.</p> <p>11 <b>BY MR. ROSSI:</b></p> <p>12 Q You never resolved that issue, did you?</p> <p>13 A No, I did not.</p> <p>14 Q And you did inspect the meter pan at the</p> <p>15 scene; correct?</p> <p>16 A Yes.</p> <p>17 Q And did you notice that there was a hole</p> <p>18 burned in the back of the meter pan?</p> <p>19 A That was the first thing we noticed when we</p> <p>20 uncovered it.</p> <p>21 Q Did you ever have an explanation in your own</p> <p>22 mind for that?</p> <p>23 A The best explanation we give it or I gave it</p> <p>24 was electrical activity that would have burned a hole</p> <p>25 through metal. And the same as I described earlier, it</p>
62	<p>1 <b>CROSS EXAMINATION BY MR. ROSSI:</b></p> <p>2</p> <p>3 Q I am Peter Rossi. I represent the plaintiff</p> <p>4 in this case. You said earlier that there was an</p> <p>5 electrical event that preceded --</p> <p>6</p> <p>7 (Off the record.)</p> <p>8</p> <p>9 <b>BY MR. ROSSI:</b></p> <p>10 Q I'm Peter Rossi. I represent the plaintiff</p> <p>11 in this case. Earlier in your testimony you said that</p> <p>12 you thought an electrical event preceded the fire by</p> <p>13 about an hour-and-a-half; correct?</p> <p>14 A Correct.</p> <p>15 Q And you were unable to determine what that</p> <p>16 electrical event was?</p> <p>17 A Correct.</p> <p>18 Q You were unable to determine where that</p> <p>19 electrical event originated?</p> <p>20 A Correct.</p> <p>21 Q Did you consider that perhaps it originated</p> <p>22 inside 75 Vista View?</p> <p>23 <b>MR. BARTON: Object to form. Calls for</b></p> <p>24 <b>speculation.</b></p> <p>25 <b>BY MR. ROSSI:</b></p>	64	<p>1 is the same type of event that would have burned</p> <p>2 through a sill plate that was maybe six inches thick.</p> <p>3 Q In your experience as a fire investigator,</p> <p>4 you know that -- was that steel, the back of that box?</p> <p>5 A I believe it was -- it may have been. It</p> <p>6 might have been sheet metal. I'm not, you know, a</p> <p>7 metallurgist. I'm not sure.</p> <p>8 Q What temperatures would be necessary to burn</p> <p>9 that hole in there, if you know?</p> <p>10 A My guess would be in excess of a thousand</p> <p>11 degrees.</p> <p>12 Q A thousand degrees?</p> <p>13 A In excess.</p> <p>14 Q And did you inspect the front of the meter</p> <p>15 pan enclosure where that hole was?</p> <p>16 A We looked at it.</p> <p>17 Q Isn't that where the breaker was located?</p> <p>18 A I believe it was.</p> <p>19 Q And did you find that the breaker was</p> <p>20 deteriorated?</p> <p>21 <b>MR. BARTON: Object to form. Vague.</b></p> <p>22 A Without conducting the type of inspections</p> <p>23 that I watch conducted now, I looked at it and said,</p> <p>24 Wow, there was a lot of damage.</p> <p>25 <b>BY MR. ROSSI:</b></p>

16 (Pages 61 to 64)

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Case: Ace American Insurance Company vs.  
Eaton Electrical, Inc.

Transcript of the Testimony of Kenneth Christenson

Date: July 25, 2012



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29	<p>1 into the basement through here.</p> <p>2 <b>Q</b> Going from the meter panel into the basement;</p> <p>3 is that correct?</p> <p>4 <b>A</b> Yes. It is getting into the basement.</p> <p>5 <b>Q</b> Let me hand you another exhibit to see if</p> <p>6 this helps. I will represent to you that this is a</p> <p>7 photograph taken from the basement looking up to the</p> <p>8 area where the meter panel was. This is Exhibit 23.</p> <p>9 <b>A</b> Okay. So what I'm talking about is the part</p> <p>10 of this -- I mean, this is feeding the panel, but this</p> <p>11 ultimately was at one point bringing the power into the</p> <p>12 residence.</p> <p>13 <b>Q</b> So this would have been the power cable going</p> <p>14 from the meter panel to the breaker box inside the</p> <p>15 home; is that correct?</p> <p>16 <b>A</b> Yes.</p> <p>17 <b>Q</b> And you noticed some anomalies with that</p> <p>18 cable?</p> <p>19 <b>A</b> Well, I noticed that it was -- there was --</p> <p>20 some kind of electrical issue happened. I'm sure there</p> <p>21 is a piece on the floor in the basement and it was, you</p> <p>22 know, whether it was the cause or effect at that point</p> <p>23 in time, you know.</p> <p>24 <b>Q</b> When you say there was a piece on the floor</p> <p>25 in the basement, a piece of cable?</p>	31	<p>1 investigation report, I am going to jump forward here</p> <p>2 to the conclusion so I can ask you some follow-up</p> <p>3 questions. It says in the last paragraph that the</p> <p>4 cause of the fire is related to an electrical</p> <p>5 malfunction where the power enters the structure. The</p> <p>6 exact cause is undetermined pending an examination by</p> <p>7 an electrical engineer or other engineering experts.</p> <p>8 Am I correct that the exact cause of this fire was</p> <p>9 never determined?</p> <p>10 <b>A</b> By me?</p> <p>11 <b>Q</b> Yes.</p> <p>12 <b>A</b> That's correct.</p> <p>13 <b>Q</b> Am I also correct that you do not know what</p> <p>14 the electrical malfunction, if any, was with respect to</p> <p>15 the power entering the structure?</p> <p>16 <b>A</b> I don't know if it was an issue with the pad</p> <p>17 or whether it was an issue with the socket and</p> <p>18 disconnect meter.</p> <p>19 <b>Q</b> And when you say the pad, you mean the --</p> <p>20 <b>A</b> Transformer.</p> <p>21 <b>Q</b> Do you understand that Connecticut Light &amp;</p> <p>22 Power was having problems with the transformer that</p> <p>23 day?</p> <p>24 <b>A</b> Well, I know that there was a power issue and</p> <p>25 I know as we already spoke earlier in the testimony</p>
30	<p>1 <b>A</b> Yes.</p> <p>2 <b>Q</b> Did that piece of cable have any arc beading</p> <p>3 on it?</p> <p>4 <b>A</b> There would have been evidence of power at</p> <p>5 the time. I can't say I made note of it in the report.</p> <p>6 <b>Q</b> And when you say power at the time, evidence</p> <p>7 of some electrical fault occurring on the wire from the</p> <p>8 meter panel to the breaker box?</p> <p>9 <b>A</b> Somewhere along that -- somewhere in that</p> <p>10 area, yes.</p> <p>11 <b>Q</b> Did you collect or gather that fragment of</p> <p>12 wire?</p> <p>13 <b>A</b> No.</p> <p>14 <b>Q</b> And so we're clear, that's not the job of the</p> <p>15 fire marshal to do anyway; correct?</p> <p>16 <b>A</b> Basically that was left for somebody that had</p> <p>17 more expertise than we did.</p> <p>18 <b>Q</b> And I need to ask this: Did you at any time</p> <p>19 consult with an electrical engineer or bring an</p> <p>20 electrical engineer out to the scene?</p> <p>21 <b>A</b> No.</p> <p>22 <b>Q</b> That is something you left for other</p> <p>23 interested parties to handle?</p> <p>24 <b>A</b> Correct.</p> <p>25 <b>Q</b> Turning back to Exhibit 35, your</p>	32	<p>1 that they had a problem trying to reset that pad.</p> <p>2 <b>Q</b> The last line of your report says, The</p> <p>3 investigation team did not rule out the effect an ice</p> <p>4 buildup or encasement by ice in the area of origin</p> <p>5 could have had at the time of the event. What does</p> <p>6 that refer to?</p> <p>7 <b>A</b> Well, essentially that particular winter</p> <p>8 there was a considerable amount of snow, ice. In the</p> <p>9 report we did look at another home that was similar, it</p> <p>10 wasn't the same. There was icicles. For whatever</p> <p>11 reason that one area was probably about -- one spot was</p> <p>12 probably about ten feet long roughly in terms of where</p> <p>13 that meter disconnect was. There wasn't -- there was</p> <p>14 ice coming -- hanging down from the gutters but not</p> <p>15 overhead at that particular meter.</p> <p>16 The reason why I mention that was because if</p> <p>17 you look at the photos or if you look at -- if you look</p> <p>18 in Exhibit 39, you see remnants of the drain proximity,</p> <p>19 the proximity to power comes in. It is just a</p> <p>20 possibility. I don't know. I'm not stating that as</p> <p>21 fact, but I'm not discounting the effect that if that</p> <p>22 meter was -- if there was whatever, for whatever reason</p> <p>23 because there is snow or insulation or in terms of heat</p> <p>24 transfer and so forth, that if that meter, if that</p> <p>25 disconnect had some natural kind of effect from weather</p>

8 (Pages 29 to 32)

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**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF CONNECTICUT**

<b>ACE AMERICAN INSURANCE</b>	)	
<b>COMPANY</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	<b>Civ No. 3:11-CV-01741-CSH</b>
	)	
<b>EATON ELECTRICAL, INC.</b>	)	
	)	<b>APRIL 21, 2014</b>
<b>Defendant.</b>	)	

**DEFENDANT EATON CORPORATION’S MOTION TO  
STRIKE PRIVILEGE LOG AND COMPEL PRODUCTION OF DOCUMENTS**

Defendant Eaton Corporation, by and through its attorneys, Sandberg Phoenix & von Gontard P.C., and pursuant to Rule 37 of the Federal Rules of Civil Procedure, Local Rule 37, and the Court’s Order Granting Defendant’s Renewed Motion to Compel (Doc. No. 69), hereby moves to strike Plaintiff’s supplemental privilege log (Doc. No. 70) and to compel the production of documents improperly removed from Plaintiff’s testifying expert’s file and in support thereof states as follows:

1. This is a strict product liability subrogation claim brought by Plaintiff, ACE American Insurance Co. (hereinafter “ACE” or Plaintiff) on behalf of its insured Omega Engineering Inc. (“Omega”). ACE paid Omega for damage to Omega’s property located at 75 Vista View Drive in Southbury, Connecticut as a result of a fire which occurred on January 17, 2011. (*See* Plaintiff’s Complaint, Doc. No. 1). The fire completely consumed the structure.

2. Although all independent fire investigators could not determine the cause of the fire, Plaintiff alleges the fire was caused by an unspecified defect in the meter panel attached to



the property at issue. (*See* Plaintiff's Complaint ¶¶ 16-20, Doc. No. 1; *See also* Defendant's Motion for Summary Judgment and Memorandum in Support, Doc. Nos. 36 and 39).

3. To support their allegation of strict product liability, Plaintiff identified Joseph Cristino (hereinafter "Cristino") as its testifying causation expert on February 13, 2012 and produced his expert report pursuant to Rule 26 on November 12, 2012.

4. Defendant served a Notice of Deposition *duces tecum* for Cristino's deposition requiring that certain documents be produced at the time of his deposition, specifically his entire expert file. (*See* Exhibit A, Notice of Cristino Deposition).

5. During his deposition Cristino testified the fire was caused when an unknown amount of moisture entered Defendant's meter panel in an unknown manner causing an arc fault in unknown components of the breaker.

**Q. Okay. So essentially, if I have got the logic correct with respect to your reasonable degree of engineering certainty, an unknown amount of moisture from an unknown source made its way into the breaker panel from some unknown point, migrated into the breaker in an unknown fashion, entered the breaker through an unknown source, compromising unknown components within the breaker that caused an arc fault on the line side. Did I accurately depict what your testimony is?**

**A. Yes, sir**

(Exhibit B, Joseph Cristino Deposition, hereinafter "Cristino" p. 168).

6. However, Cristino testified that he knows of no design, manufacturing or warning defect in the subject meter panel.

**Q. Okay. Are you going to be offering any opinions in this case that the subject meter panel is defective in design?**

**A. No, sir.**

**Q. Are you going to be rendering any opinions that the subject meter panel in this case is defective or suffers from any manufacturing defect?**

**A. No, sir.**

...

**Q. In this case, are you going to be offering any opinions on a failure to warn with respect to the subject meter panel?**

**A. No, sir.**

**Q. In this case, are you going to be offering opinions with respect to a failure to instruct with respect to the subject meter panel?**

**A. No, sir.**

(Christino, p. 51)

7. Plaintiff's expert also testified there was no design, manufacturing or warning defect in the subject breaker which was enclosed in the meter panel.

**Q. Okay. In this case are you going to be rendering an opinion as to a defect in design of the Cutler Hammer CSR2200 circuit breaker?**

**A. No, sir.**

**Q. In this case are you going to be rendering opinions with respect to a manufacturing defect with respect to the subject CSR2200 breaker?**

**A. No, sir.**

**Q. In this case, are you going to be rendering any opinions with respect to a failure to warn or instruct with respect to the CSR2200 breaker?**

**A. No, sir.**

(Cristino, p.52).

8. With no opinions concerning any design, manufacturing or warning defects, significant questions are raised as to why and under what basis Plaintiff elected to bring a subrogation action against Defendant.

9. On December 20, 2012, the morning of Cristino's deposition, counsel for Plaintiff improperly removed an unknown number of documents from Cristino's file claiming privilege pursuant to Rule 26 only after their removal was discovered during questioning.

**Q. Okay. Did anyone remove any documents from your file today?**

**A. Yes, sir.**

**Q. Who removed those documents?**

**A. Mr. Rossi.**

**Q. What documents did he remove?**

**MR. ROSSI: Objection.**

**BY MR. BARTON:**

**Q. What documents did he remove?**

**MR. ROSSI: Don't answer that. I will be happy to represent what documents I removed. And they are privileged and trial preparation documents.**

**MR. BARTON: I have not seen a privilege log.**

(Cristino, pp. 25-26).

10. Despite the affirmation that Counsel for Plaintiff would represent what documents were removed from his experts file, he failed to identify the number of documents removed, the contents of the documents removed or provide a sufficient privilege log until ordered by the Court. (*See* Doc. No. 69).

11. On April 3, 2014 Plaintiff produced a Supplemental Privilege Log identifying twenty-six (26) categories of documents that were removed from Cristino's file the morning of his deposition. (Doc. No. 70). A cursory review of the documents and privileges claimed reveals that Plaintiff's claims of privilege are improper.

12. Following receipt of the Supplemental Privilege Log this Defendant engaged in a good faith attempt to resolve the discovery dispute through correspondence, e-mail communication and a telephone conference with opposing counsel pursuant to Local Rule 37. (*See* Exhibit C, correspondence dated April 8, 2014). The good faith attempts to resolve the discovery dispute failed necessitating the present motion.

**A. *Documents Improperly Removed from Plaintiff's Testifying Experts File Over Which No Claim of Privilege is Asserted:***

13. Plaintiff removed at least one document from their testifying expert's file over which no claim of privilege has been asserted. The document concealed from Defendant has been described as e-mail communication between Don Galler (alleged non-testifying consultant) and Cristino dated October 29, 2012 concerning the shipment of an exemplar from e-Bay.

(Plaintiff's Supplemental Privilege Log attached hereto as Exhibit D, (hereinafter "Supp. Log"), Claim 2<sup>1</sup>). It is unclear why the Plaintiff would remove such a document or identify it in privilege log without claiming any privilege.

14. On April 8, 2014 in an effort to avoid this discovery dispute in good faith, counsel for Defendant pointed out that no claim of privilege had been asserted demanding production of the document. (*See* Exhibit C). Plaintiff failed to assert a privilege, amend the privilege log or produce the document over which no privilege is claimed.

15. As no claim of privilege has been asserted over the October 29, 2012 e-mail concerning the shipment of an exemplar product, the document should not have been removed from Plaintiff's testifying experts file or included in a privilege log and now must be produced.

**B. *Improperly Concealing Documents Contained in Plaintiff's Testifying Expert's File Based on Relevancy.***

16. The Plaintiff has improperly asserted that Documents contained in their testifying expert's file are not relevant to the subject matter of the pending litigation. Relevancy is not a basis to assert a "privilege". Nevertheless, Plaintiff has claimed relevancy as the basis to withhold six (6) categories of documents. The documents improperly withheld include the following:

- a. Acknowledgement letters regarding an exemplar product; (Supp. Log, Claims 3 and 4).
- b. An evidence list showing the chain of custody for unspecified evidence; (Supp. Log, Claim 5).
- c. E-mail containing information "concerning Eaton's Underwriter's Laboratory listing and the meaning of abbreviations in UL standard"

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<sup>1</sup> In an effort to address the individual claims of privilege this defendant has numbered each of the claims contained within Plaintiff's Supplemental Privilege Log (Doc. No. 70) for reference.

which the Plaintiff's testifying expert relied upon to review Defendant's discovery; (Supp. Log, Claim 11).

- d. Eaton's Response to Plaintiff's Second Set of Request for Documents reviewed and relied upon by Plaintiff's testifying expert. (Supp. Log, Claim 26).

17. Relevancy is not a privilege but an evidentiary standard to be determined at the time of trial by the Court. *See* Fed. R. Evid. 401. As such, relevancy is not a basis under which the Plaintiff may improperly remove documents from a testifying expert's file.

18. Parties may obtain discovery regarding any non-privileged matter that is relevant to the subject matter involved in the pending litigation. Fed.R.Civ.P. 26(b)(1). The information sought need not be admissible at trial as long as the discovery appears reasonably calculated to lead to the discovery of admissible evidence. Fed.R.Civ.P. 26(b)(1). Materials used, relied upon or reviewed by a testifying expert witness are wholly relevant to the subject matter of the pending litigation. It is the very reason parties are required to disclose the facts and data contained within a testifying expert's file.

19. "Relevance" under Rule 26(b)(1) has been broadly defined to include "any matter that bears on, or that reasonably could lead to other matter[s] that could bear on any issue that is or may be in the case." *Oppenheimer Fund, Inc. v. Sanders*, 437 U.S. 340, 351 (1978).

20. As such, Plaintiff's improper claims of relevance as a basis to conceal documents from Defendant must be stricken.

**D. *Plaintiff's Improper Use of Rule 26(b)(4)(D) Governing Non-Testifying Expert Opinions as Basis to Remove Documents from their Testifying Experts File.***

21. Plaintiff claims that the removal of documents from their testifying expert witness file was justified because the opinions of a non-testifying expert are privileged. As this Court

knows, privileges can be waived by disclosing information to a testifying expert. Additionally, the documents improperly withheld do not constitute the opinions of a non-testifying expert.

22. Rule 26(b)(4)(D) states:

(D) *Expert Employed Only for Trial Preparation.* Ordinarily, a party may not, by interrogatories or deposition, discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or to prepare for trial and who is not expected to be called as a witness at trial. But a party may do so only:

(i) as provided in Rule 35(b); or

(ii) on showing exceptional circumstances under which it is impracticable for the party to obtain facts or opinions on the same subject by other means.

(Federal Rule of Civil Procedure 26(b)(4)(D)).

23. Here, Defendant is not seeking discovery of the non-testifying expert's opinions but the materials contained within Plaintiff's testifying expert's file over which Rule 26(b)(4)(D) provides no privilege. The three categories of documents removed from Plaintiff's testifying expert's file including the following:

- a. Acknowledgement of Galler's October 29 email regarding the exemplar product; (Supp. Log, Claim 3).
- b. Cristino's acknowledgement that exemplar product has arrived; (Supp. Log, Claim 4).
- c. Photographs of evidence and of the exemplar with no discussion of either. (Supp. Log, Claim 6).

24. These documents do not constitute the mental impressions of a non-testifying expert witness. Furthermore, even if they did, such a privilege would be waived when presented to a testifying expert for review.



25. Cristino testified that he did not know when he received the exemplar or where it came from during his deposition. This information is critical to evaluate the condition and history of the exemplar relied upon by Plaintiff's testifying expert in formulating his opinions.

- Q. And how did you acquire the exemplar meter panel?**  
**A. Let's see. The exemplar meter panel I received from a colleague.**  
**Q. The name of the colleague?**  
**A. Don Galler.**  
**Q. And where does Mr. Galler work?**  
**A. He works at MIT.**  
**Q. Do you know how Mr. Don Galler obtained the subject meter panel?**  
**A. No, sir, I don't.**  
**Q. You don't know where he purchased it from or if he just had it on hand?**  
**A. No, sir, I don't.**  
.....  
**Q. Okay. Do you have any documents that show when this exemplar meter panel was transmitted to you?**  
**A. No, sir, I don't believe I do.**

(Cristino, pp. 65-67).

26. Apparently, there were documents showing when and where the exemplar was received. However, that information was improperly concealed from this Defendant under a false claim of privilege.

27. Plaintiff also withdrew an unknown number of photographs (with no discussion) that were contained in Cristino's file. Apparently, these photographs were of an exemplar and perhaps showed testing that was done in support of Cristino's opinions or that contradict his conclusions. During Cristino's deposition Defendant's counsel was improperly advised that no documents containing facts or data were removed.

**MR. ROSSI....And so I removed things that you are not entitled to see.**

**MR. BARTON: Well, what things would those be?**

**MR. ROSSI:** They are e-mails and some of his notes with regard to my conversations with him.

**MR. BARTON:** So if you sent him any correspondence suggesting he change his opinion or providing him with additional information that he may rely on that you have now removed from the file, I'm not entitled to that?

**MR. ROSSI:** No, I didn't remove any documents that identified facts or data that a party's attorney provided.

**MR. BARTON:** Again, I have not seen a privilege log. You'll need to instruct him not to answer and I will call that up because I have no idea what you are talking about.

**BY MR. BARTON:**

**Q.** How many documents did Mr. Rossi remove from your file today that he didn't want me to see?

**A.** I don't know.

**Q.** Were you there when he was removing documents from your file?

**A.** Yes, sir, I was.

(Cristino, pp. 26-27).

28. Through this process the unknown number of documents improperly removed from Cristiano's file has increased from mere e-mails and notes of conversations with counsel, to photographs of evidence, documents confirming the purchase and transmittal of an exemplar, discovery responses, analysis of standards and the investigation process undertaken. These documents are not privileged and call into questions the motivation of counsel in excluding them from Defendant's review.

**E. *Improper Use of Rule 26(b)(4)(C) as Basis to Conceal the Facts, Data and Assumptions Relied Upon by Plaintiff's Testifying Experts File.***

29. Rule 26(b)(4)(C) of the Federal Rules of Civil Procedure states:

***Trial-Preparation Protection for Communications Between a Party's Attorney and Expert Witnesses.*** Rules 26(b)(3)(A) and (B) protect communications between the party's attorney and any witness required to provide a report under Rule 26(a)(2)(B), regardless of the form of the communications, ***except to the extent that the communications:***

(i) relate to compensation for the expert's study or testimony;

(ii) identify *facts or data that the party's attorney provided* and that the expert considered in forming the opinions to be expressed; or

(iii) identify *assumptions that the party's attorney provided* and that the expert relied on in forming the opinions to be expressed.

(Federal Rule of Civil Procedure 26(b)(4)(C) emphasis added).

30. In this case, Plaintiff has claimed privilege under Rule 26(b)(4)(C) over nineteen (19) categories of documents that were removed from Cristino's file on the morning of his deposition. Notably, the documents include non-privileged materials such as:

- a. Summaries of inspections of the subject product, (Supp. Log, Claim 1);
- b. Photographs of an exemplar product, (Supp. Log, Claim 6);
- c. Direction from counsel to the testifying expert that the arrangement of the exemplar is incorrect, (Supp. Log, Claim 7);
- d. Cristino's handwritten notes regarding suggested testing of the exemplar, (Supp. Log, Claim 8);
- e. Cristino's handwritten notes concerning the type and size of the insulation<sup>2</sup> used on the circuit breaker, (Supp. Log, Claim 9);
- f. Cristino's handwritten notices concerning x-rays of the evidence, model of the circuit breaker and time of outage, (Supp. Log, Claim 10);
- g. E-mail communication concerning UL listing and technical information contained on Defendant's web page concerning the subject product, (Supp. Log, Claim 11);
- h. Cristino's investigation report regarding his preliminary findings, (Supp. Log, Claim 12);

---

<sup>2</sup> The presence of the insulation between the breaker and meter panel renders plaintiff's theory even more implausible.

- i. Correspondence regarding pre-suit investigation conducted by Plaintiff's expert, (Supp. Log, Claim 16);
- j. Cristino's report concerning his investigation and evidence inspection, (Supp. Log, Claim 17);
- k. Multiple requests from counsel regarding opinions concerning the cause of fire, (Supp. Log, Claims 18, 19 and 20);
- l. Communication advising the testifying expert that suit has been filed against Defendant, (Supp. Log, Claim 21);
- m. E-mail communications requesting information regarding Cristino's investigation, (Supp. Log, Claims 22 and 23);
- n. Cristino's report regarding his findings after the inspection of a CP&L transformer which was damaged on the day of the fire, (Supp. Log, Claim 24);
- o. Cristino's report regarding cause of the fire, and notes concerning radiographs of evidence. (Supp. Log, Claim 25).

31. These documents are the very facts, data and assumptions produced to and relied upon by the Plaintiff's testifying expert which this Defendant is entitled to review. These materials are not mere scheduling items but substantive information concerning the facts of the case and the basis for the testifying expert's opinions.

**F. *Plaintiff's Improper Use of Rule 26(b)(3)(B) to Claim All Communication with a Testifying Expert as the Mental Impressions of Counsel.***

32. The Plaintiff has cited Rule 26(b)(3)(B) as a basis to remove ten (10) documents from their testifying expert's file. The Plaintiff claims that the communication contained within the testifying expert witness file is protected from disclosure because it constitutes the mental

impressions of counsel. However, Plaintiff fails to cite the entire rule, which excludes from such materials those documents discoverable pursuant to Rule 26(b)(4)—or material in the possession of the testifying expert.

33. Rule 26(b)(3) states in pertinent part:

(3) *Trial Preparation: Materials.*

(A) *Documents and Tangible Things.* Ordinarily, a party may not discover documents and tangible things that are prepared in anticipation of litigation or for trial by or for another party or its representative (including the other party's attorney, consultant, surety, indemnitor, insurer, or agent). **But, subject to Rule 26(b)(4)**, those materials may be discovered if:

(i) they are otherwise discoverable under Rule 26(b)(1); and

(ii) the party shows that it has substantial need for the materials to prepare its case and cannot, without undue hardship, obtain their substantial equivalent by other means.

(B) *Protection Against Disclosure.* If the court orders discovery of those materials, it must protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of a party's attorney or other representative concerning the litigation.

(Federal Rule of Civil Procedure 26(b)(3)(B) emphasis added).

34. Here the Plaintiff removed ten (10) documents from his testifying expert's file claiming work-product. Those documents include the following:

- a. E-mail from Plaintiff's counsel concerning the incorrect arrangement of a subject breaker and six photographs of the exemplar product—two of which were taken by the testifying expert; (Supp. Log, Claim 7);
- b. The handwritten notes of Joseph Cristino concerning testing of the exemplar; (Supp. Log, Claim 8);
- c. The handwritten notes of Joseph Cristino concerning the insulation of the circuit breaker; (Supp. Log, Claim 9);

- d. The handwritten notes of Joseph Cristino concerning the x-ray of evidence and model number of circuit breaker and time of outage; (Supp. Log, Claim 10);
- e. E-mail exchange between Joe Cristino and Counsel for Plaintiff concerning the UL listing and technical information from Eaton's website concerning the subject product as well as additional information needed by the testifying expert; (Supp. Log, Claim 12);
- f. Questions/requests from Plaintiff's counsel regarding pre-suit investigation and lab examination re cause of fire. (Supp. Log, Claim 17, 19, 20 and 23);

35. The Federal Rules of Civil Procedure contemplate expansive expert discovery. Work product protection is afforded to communications between a party's attorney and an expert witness required to provide a report under Rule 26(a)(2)(B), unless the communications: "(i) relate to compensation for the expert's study or testimony; (ii) **identify facts or data that the party's attorney provided and that the expert considered in forming the opinions to be expressed**; or (iii) **identify assumptions that the party's attorney provided** and that the expert relied on in forming the opinions to be expressed." Fed.R.Civ.P. 26(b)(4)(C)(i)-(iii).

36. Rule 26(b)(3) does not provide work-product protection to all documents in the hands of a reporting expert, only those documents specifically covered by Rules 26(b)(4)(B) and (C). *Powerweb Energy, Inc. v. Hubbell Lighting, Inc.*, 2014 WL 655206 (D.Conn. Feb 20, 2014) (copy attached as Exhibit E).

37. Here, the Plaintiff has claimed correspondence and communication containing data, facts and assumptions relied upon by the expert constitute work product and the mental



impressions of counsel. These documents appear to reflect opposing counsel's efforts to guide, direct and bolster the opinions and foundations of their testifying expert's opinions and findings. As such, they do not enjoy the privilege afforded under the federal rules.

**G. *Plaintiff's Improper Use of Rule 26(b)(4)(B) to Claim All Prior Investigation Reports and Materials as "Draft Reports"*.**

38. Federal Rule of Civil Procedure 26(b)(4)(B) provides work product protection for "drafts of any report or disclosure required under Rule 26(a)(2)"

39. The Plaintiff has abused the draft reporting privilege claiming preliminary findings, investigation materials and reports provided by their testifying expert witness were "required" under the rules and somehow constitutes "drafts" of his expert report. The Plaintiff claims these drafts were generated over a year before the Rule 26 report was prepared.

40. In contrast, Cristino testified under oath that *there were no draft reports*. This it appears this claim of privilege was created in hindsight to justify the removal of various documents from their testifying expert's file.

**BY MR. BARTON:**

- Q. And the question was, did you at any time submit any drafts to Mr. Rossi for his review?**
- A. Not that I recall.**
- Q. So in the past -- when did you begin drafting this report which is Exhibit 79?**
- A. What's the date on that?**
- Q. November 12 of 2012.**
- A. Probably within a few weeks of the date on that.**
- Q. Okay, within a few weeks. Within two weeks of November 12?**
- A. I would say yes.**
- Q. Okay. And as you sit here today, you can't recall if whether in the past five or six weeks you presented Mr. Rossi with any drafts of this report for his commentary or edits?**
- A. I don't believe I did, but that's, that's the fact.**

(Christino, pp. 23-24 )

41. The documents improperly removed from Plaintiff's testifying experts file under a claim that they constitute "drafts" of the required expert report includes the following:

- a. A letter dated September 11, 2011 concerning the initial inspection of the subject breaker drafted one year and two months before his final Rule 26 report was prepared. (Supp. Log, Claim 16);
- b. An e-mail dated September 20, 2011 regarding the testifying expert's findings from an evidence inspection—again over one year prior to the Rule 26 report being finalized. (Supp. Log, Claim 18);
- c. An e-mail dated April 27, 2011 concerning an inspection of a CL&P transformer drafted one year, six months and sixteen days before the Rule 26 report was finalized. (Supp. Log, Claim 24);
- d. An e-mail from Plaintiff's testifying expert dated April 28, 2011 concerning the investigation and radiographs of evidence---again over a year and six months prior to the Rule 26 report being finalized. (Supp. Log, Claim 25);

42. These documents are not drafts of the required expert report but instead reflect the investigation process of the testifying expert as well as the facts and data he relied upon in formulating his opinions. As such, these documents must be produced.

WHEREFORE, Defendant respectfully moves this Court to issue an Order Striking Plaintiff's Privilege Log and compelling the production of all documents identified therein and for such other and further relief as this Court deems just.

Respectfully submitted,

**EATON CORPORATION**

By: /s/ Jonathan T. Barton  
Jonathan T. Barton (phv 05115)  
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**CERTIFICATE OF SERVICE**

I hereby certify that on April 21, 2014, a copy of the foregoing Motion to Strike Privilege Log and to Compel was filed electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by email to all parties by operation of the Court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the Court's CM/ECF System.

/s/ Jonathan T. Barton  
Jonathan T. Barton

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF CONNECTICUT

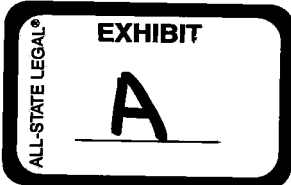
*ACE AMERICAN INSURANCE COMPANY* )  
)  
Plaintiff, )  
)  
v. )  
)  
*EATON ELECTRICAL, INC.* )  
)  
Defendant. )  
)

Cause No. 3:11-CV-01741-CSH

**NOTICE OF VIDEO DEPOSITION**

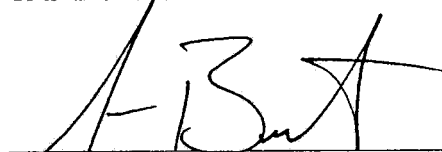
TO: All Counsel of Record  
DATE AND HOUR: December 20, 2012, 9:00 a.m.  
PLACE OF DEPOSITION: Mulvey, Oliver, Gould & Crotta  
83 Trumbull Street  
New Haven, CT 06511  
WITNESS TO BE DEPOSED: Joe Cristino  
MANNER OF RECORDING: Steno and Video  
REPORTER: Gore Perry Reporting

PLEASE TAKE NOTICE that at the above date and hour and place, we shall cause the deposition to be taken upon oral examination, pursuant to the Federal Rules of Civil Procedure, before a reporter and suitable notary public. Further, it is hereby requested that the witness produce his entire expert witness file and documents included in Exhibit A attached hereto. If the party producing this witness refuses to produce the information identified, please advise the undersigned immediately so that an appropriate subpoena may be issued. Any party or his/her attorney may appear and participate as he/she sees fit.



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*Attorneys for Defendant  
Eaton Electrical, Inc.*

**Certificate of Service**

The undersigned certifies that a copy of the foregoing was sent by United States mail, postage pre-paid, this ~~20th~~<sup>21st</sup> day of November, 2012, to the following counsel of record:

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Francis J. Drumm, III  
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New Haven, CT 06511

Pete Rossi  
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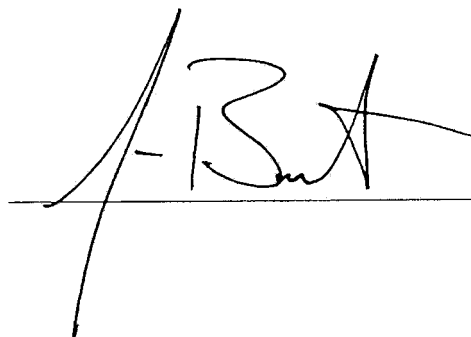


EXHIBIT A  
SCHEDULE OF REQUESTED DOCUMENTS

You are requested to bring with you to your deposition any and all information and material you have received, reviewed or generated in connection with your retention on this case, including, but not limited to, those items outlined in the following paragraphs.

1. Any and all photographs, videotapes, reports, documents, correspondence (including all e-mail), memoranda or other writings prepared or generated by you or your staff or received by you or your staff in connection with your employment in this case.
2. All computer generated software or programs created by you or used by you in connection with any aspect of this case. Note: If you use commercially prepared computer software, please bring a representative document from the software package showing the name and version of the software, the vendor's name, and the licensing number of the software.
3. All computer printouts or graphs created from any computer generated software or programs written or used by you in connection with any aspect of the case.
4. Copies of all medical records which you have examined or listened to in connection with this case.
5. Copies of any reports prepared by you or furnished to counsel.
6. Copies of all documents that you have in the current file maintained at you in connection with this matter.
7. Copies of any and all notes, calculations or other data prepared by you in formulating your opinions in connection with this case.
8. Payment records, timesheets and billing records indicating the time spent on your work in this case and the hourly charges therefore in connection with this case.
9. Reports of any other experts which you have read and used in formulating any opinions in connection with this case.
10. Any publications, treaties, textbooks, manuals or other documents used as reference by you in connection with this case.
11. Any memorandum reviewed which was prepared by the attorney engaging you, an investigator or paralegal, in connection with this case.
12. Any other document or writing of any kind or description which you have viewed in formulating your opinion on opinions in connection with this case.



13. Copies of all resumes used by you in connection with your consulting work and copies of all resumes used by you in connection with other professional activities.

14. Copies of any notes taken by you while contemplating or reaching your opinions in this case and any notes taken by you during meetings with plaintiff and his attorneys, representatives and agents.

15. A listing of all cases sometimes referred to as a Rule 26 Federal Rule Disclosure List in which you have given testimony either in deposition or trial over the last four years.

# Case: Ace American Insurance Company v. Eaton Electrical, Inc.

Transcript of Joe Cristino

**Date:** December 20, 2012

*This transcript is printed on 100% recycled paper*



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21	<p>1 asked you to make some opinions in this case; is that</p> <p>2 correct?</p> <p>3 <b>A.</b> That is -- the question that I analyze the</p> <p>4 events of January 16, 17. That's correct.</p> <p>5 <b>Q.</b> Okay. And have you completed your</p> <p>6 investigation into the events of January 16 or 17?</p> <p>7 <b>A.</b> To date, yes, sir.</p> <p>8 <b>Q.</b> Okay. Do you require any additional</p> <p>9 information before creating your final opinions in</p> <p>10 this case?</p> <p>11 <b>A.</b> At this point, no, sir.</p> <p>12 <b>Q.</b> Is there any additional testing that you</p> <p>13 would like to do or that you have asked Mr. Rossi that</p> <p>14 you should do?</p> <p>15 <b>A.</b> At this point, no, sir.</p> <p>16 <b>Q.</b> Okay. So you have completed all the testing</p> <p>17 you deem necessary to render your final opinion in</p> <p>18 this case; is that correct?</p> <p>19 <b>A.</b> That's correct.</p> <p>20 <b>Q.</b> You completed all the investigation you deem</p> <p>21 necessary to render your final opinion as well; is</p> <p>22 that right?</p> <p>23 <b>A.</b> That's correct.</p> <p>24 <b>Q.</b> And I understand you have reduced your final</p> <p>25 opinion to writing; is that correct, sir?</p>	23	<p>1 <b>MR. ROSSI: Objection. That's protected by</b></p> <p>2 <b>the Federal Rules -- Federal Rule of Civil</b></p> <p>3 <b>Procedure.</b></p> <p>4 <b>MR. BARTON: I don't know what you're talking</b></p> <p>5 <b>about.</b></p> <p>6 <b>MR. ROSSI: Protecting drafts of any reports</b></p> <p>7 <b>or disclosure required under 26(a)(2).</b></p> <p>8 <b>MR. BARTON: My question stands. You will</b></p> <p>9 <b>have to instruct him not to answer because I</b></p> <p>10 <b>didn't ask to see the report. I just asked the</b></p> <p>11 <b>question.</b></p> <p>12 <b>BY MR. BARTON:</b></p> <p>13 <b>Q.</b> And the question was, Did you at any time</p> <p>14 submit any drafts to Mr. Rossi for his review?</p> <p>15 <b>A.</b> Not that I recall.</p> <p>16 <b>Q.</b> So in the past -- when did you begin drafting</p> <p>17 this report which is Exhibit 79?</p> <p>18 <b>A.</b> What's the date on that?</p> <p>19 <b>Q.</b> November 12 of 2012.</p> <p>20 <b>A.</b> Probably within a few weeks of the date on</p> <p>21 that.</p> <p>22 <b>Q.</b> Okay, within a few weeks. Within two weeks</p> <p>23 of November 12?</p> <p>24 <b>A.</b> I would say yes.</p> <p>25 <b>Q.</b> Okay. And as you sit here today, you can't</p>
22	<p>1 <b>A.</b> Yes, I have.</p> <p>2 (Whereupon, Exhibit No. 79 was marked for</p> <p>3 identification.)</p> <p>4 <b>BY MR. BARTON:</b></p> <p>5 <b>Q.</b> Let me hand you what has been marked as</p> <p>6 Cristino 79, Exhibit 79. Can you identify this for</p> <p>7 the record, please.</p> <p>8 <b>A.</b> Yes, sir. That's our report dated November</p> <p>9 12, 2012.</p> <p>10 <b>Q.</b> Is this the only report that you have</p> <p>11 prepared in connection with this case?</p> <p>12 <b>A.</b> Yes, sir.</p> <p>13 <b>Q.</b> Were there any drafts of this report dated</p> <p>14 November 12, 2012?</p> <p>15 <b>A.</b> No, sir.</p> <p>16 <b>Q.</b> So you sat down one time and you typed up</p> <p>17 this entire report; is that correct?</p> <p>18 <b>A.</b> No, sir.</p> <p>19 <b>Q.</b> Who typed it up?</p> <p>20 <b>A.</b> I did.</p> <p>21 <b>Q.</b> Over what period of time did you type up this</p> <p>22 report?</p> <p>23 <b>A.</b> Probably a day or two.</p> <p>24 <b>Q.</b> Did you ever submit any drafts of this report</p> <p>25 to Mr. Rossi for his evaluation or review?</p>	24	<p>1 recall if whether in the past five or six weeks you</p> <p>2 presented Mr. Rossi with any drafts of this report for</p> <p>3 his commentary or edits?</p> <p>4 <b>A.</b> I don't believe I did, but that's, that's the</p> <p>5 fact.</p> <p>6 <b>Q.</b> One of the things I asked for you to do today</p> <p>7 was to bring all of the e-mail correspondence that you</p> <p>8 have with Mr. Rossi. Did you do that?</p> <p>9 <b>A.</b> The e-mail correspondence is in the pocket of</p> <p>10 the loose leaf.</p> <p>11 <b>Q.</b> Okay. And I appreciate that. But my</p> <p>12 question was, Have you brought all of the e-mail</p> <p>13 correspondence that you have had with Mr. Rossi,</p> <p>14 including whether or not there were any e-mail</p> <p>15 correspondence transmitting drafts of this report to</p> <p>16 his attention for any edits or commentary?</p> <p>17 <b>A.</b> I brought all the e-mails with me today.</p> <p>18 <b>Q.</b> Okay. So if you, in fact, did send Mr. Rossi</p> <p>19 any e-mails or any draft reports, we would see</p> <p>20 certainly the transmittal correspondence contained</p> <p>21 within this file; is that correct?</p> <p>22 <b>MR. ROSSI: We removed various e-mails from</b></p> <p>23 <b>his file. I did.</b></p> <p>24 <b>BY MR. BARTON:</b></p> <p>25 <b>Q.</b> Okay. Then I guess let me -- well, let's get</p>

6 (Pages 21 to 24)

25

1 your answer to my question.  
 2 Are all of your e-mails with Mr. Rossi  
 3 contained in your file that you have brought here  
 4 today?  
 5 A. That file?  
 6 Q. How many files do you have concerning 75  
 7 Vista View Drive?  
 8 A. I had one file, but....  
 9 Q. Okay. My question is, Have you brought here  
 10 today all e-mail correspondence that you have with  
 11 Mr. Rossi?  
 12 A. When I arrived here this morning, I had all  
 13 of my e-mail correspondence that I sent to Mr. Rossi.  
 14 Q. Okay. Did anyone remove any documents from  
 15 your file today?  
 16 A. Yes, sir.  
 17 Q. Who removed those documents?  
 18 A. Mr. Rossi.  
 19 Q. What documents did he remove?  
 20 **MR. ROSSI: Objection.**  
 21 **BY MR. BARTON:**  
 22 Q. What documents did he remove?  
 23 **MR. ROSSI: Don't answer that. I will be**  
 24 **happy to represent what documents I removed. And**  
 25 **they are privileged and trial preparation**

26

1 documents.  
 2 **MR. BARTON: I have not seen a privilege log.**  
 3 **MR. ROSSI: I will indicate to you that the**  
 4 **rule protects communications between a party's**  
 5 **attorney and expert witnesses. Communications**  
 6 **between a party's attorney, an expert witness**  
 7 **is required to provide a report under**  
 8 **26(a)(2)(B), which is what he is.**  
 9 **Regardless of the form of the communications,**  
 10 **except to the extent that the communications**  
 11 **relate to compensation, which I have left in the**  
 12 **file.**  
 13 **For the expert's study or testimony, identify**  
 14 **facts or data that the party's attorney provided**  
 15 **and that the expert considered in forming the**  
 16 **opinions to be expressed, I left that in the**  
 17 **file.**  
 18 **And identify assumptions that the party's**  
 19 **attorney provided and that the expert relied on**  
 20 **in forming the opinions to be expressed. That's**  
 21 **also left in the file, if there is any.**  
 22 **And so I removed things that you are not**  
 23 **entitled to see.**  
 24 **MR. BARTON: Well, what things would those**  
 25 **be?**

27

1 **MR. ROSSI: They are e-mails and some of his**  
 2 **notes with regard to my conversations with him.**  
 3 **MR. BARTON: So if you sent him any**  
 4 **correspondence suggesting he change his opinion**  
 5 **or providing him with additional information that**  
 6 **he may rely on that you have now removed from the**  
 7 **file, I'm not entitled to that?**  
 8 **MR. ROSSI: No, I didn't remove any documents**  
 9 **that identified facts or data that a party's**  
 10 **attorney provided.**  
 11 **MR. BARTON: Again, I have not seen a**  
 12 **privilege log. You'll need to instruct him not**  
 13 **to answer and I will call that up because I have**  
 14 **no idea what you are talking about. I don't**  
 15 **know.**  
 16 **BY MR. BARTON:**  
 17 **Q. How many documents did Mr. Rossi remove from**  
 18 **your file today that he didn't want me to see?**  
 19 **A. I don't know.**  
 20 **Q. Were you there when he was removing documents**  
 21 **from your file?**  
 22 **A. Yes, sir, I was.**  
 23 **Q. I'm sorry?**  
 24 **A. Yes, sir, I was, for part of the time.**  
 25 **Q. Did you watch him remove those documents?**

28

1 **A. Not, not particularly. No, sir.**  
 2 **Q. Okay. So you have no idea how many pieces of**  
 3 **paper he removed from your file?**  
 4 **A. That's correct.**  
 5 **Q. Okay. Of the paper and documents that**  
 6 **Mr. Rossi removed from your file to prevent me from**  
 7 **reviewing today --**  
 8 **MR. ROSSI: I did it pursuant to the Federal**  
 9 **Rules, not to prevent you from anything. You are**  
 10 **not entitled to it. It's pretty -- it's black**  
 11 **and white in the rules. Unless you have another**  
 12 **rule or unless this court doesn't abide by the**  
 13 **Federal Rules, you're not entitled to see it.**  
 14 **MR. BARTON: I'm not sure what it is. I'm**  
 15 **not sure what you --**  
 16 **MR. ROSSI: I've already represented to you**  
 17 **that I removed e-mails between Mr. Cristino and I**  
 18 **and notes that he took during conversations with**  
 19 **me.**  
 20 **MR. BARTON: What did those e-mails say.**  
 21 **MR. ROSSI: Well, you're not entitled to**  
 22 **that.**  
 23 **MR. BARTON: I'm entitled to a privilege log**  
 24 **identifying that information.**  
 25 **MR. ROSSI: The rule doesn't call for a**

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1 enclosure and then made a 180-degree bend and were  
 2 terminated at the top of the meter socket.  
 3 And then there was a second cable --  
 4 actually, let's see. It would have been a  
 5 four-conductor cable: two energized conductors, a  
 6 neutral, and a concentric ground that formed what's  
 7 identified as an SER cable.  
 8 That routed out the load side of the Cutler  
 9 Hammer circuit breaker and down through the meter  
 10 enclosure and exited the lower -- if I remember  
 11 correctly, I think it's the lower right-hand corner of  
 12 the meter socket.  
 13 Q. Thanks, sir. Have you ever designed a meter  
 14 panel?  
 15 A. No, sir, I have not.  
 16 Q. Have you ever participated in the manufacture  
 17 of a meter panel?  
 18 A. No, sir.  
 19 Q. Have you ever participated in the assembly of  
 20 a meter panel?  
 21 A. With regard to manufacturing?  
 22 Q. Yes, sir.  
 23 A. No, sir.  
 24 Q. Okay. Have you ever designed a circuit  
 25 breaker?

50

1 A. No, sir.  
 2 Q. Have you ever participated in the  
 3 manufacturing or assembly of a circuit breaker?  
 4 A. No, sir, I have not.  
 5 Q. Have you ever installed a meter panel on a  
 6 home?  
 7 A. Yes, sir, I have.  
 8 Q. How many times?  
 9 A. Let's see three times.  
 10 Q. Was that through an employment that you had?  
 11 A. No, sir.  
 12 Q. Okay. Personal installations?  
 13 A. That's correct.  
 14 Q. For your own home?  
 15 A. Yes, sir.  
 16 Q. All three times?  
 17 A. Two times for homes and once for one of my  
 18 children.  
 19 Q. Are these new constructions?  
 20 A. Upgrades on two and new on one.  
 21 Q. And what brand meter panel did you use?  
 22 A. I don't recall.  
 23 Q. When did you do these?  
 24 A. The most recent was 2006 when we upgraded the  
 25 service in Cheshire. The other two, one was in the --

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1 sometime in the late eighties and one in the nineties.  
 2 Q. Okay. Are you going to be offering any  
 3 opinions in this case that the subject meter panel is  
 4 defective in design?  
 5 A. No, sir.  
 6 Q. Are you going to be rendering any opinions  
 7 that the subject meter panel in this case is defective  
 8 or suffers from any manufacturing defect?  
 9 A. No, sir.  
 10 Q. Do you hold yourself out as an expert in  
 11 warnings or failure to warn or instruct?  
 12 A. In certain instances, yes, sir, I am.  
 13 Q. In this case, are you going to be offering  
 14 any opinions on a failure to warn with respect to the  
 15 subject meter panel?  
 16 A. No, sir.  
 17 Q. In this case, are you going to be offering  
 18 opinions with respect to a failure to instruct with  
 19 respect to the subject meter panel?  
 20 A. No, sir.  
 21 Q. Turning your attention to the breaker that  
 22 was installed in the subject meter panel, do you know  
 23 what the type of breaker was?  
 24 A. Yes, sir.  
 25 Q. What was that?

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1 A. It was a Cutler Hammer -- well, an Eaton  
 2 Cutler Hammer CSR style circuit breaker.  
 3 Q. Okay. In this case are you going to be  
 4 rendering an opinion as to a defect in design of the  
 5 Cutler Hammer CSR2200 circuit breaker?  
 6 A. No, sir.  
 7 Q. In this case are you going to be rendering  
 8 opinions with respect to a manufacturing defect with  
 9 respect to the subject CSR2200 breaker?  
 10 A. No, sir.  
 11 Q. In this case, are you going to be rendering  
 12 any opinions with respect to a failure to warn or  
 13 instruct with respect to the CSR2200 breaker?  
 14 A. No, sir.  
 15 Q. Do you have any opinions with respect to  
 16 whether the installation of the subject meter panel  
 17 was properly installed?  
 18 A. Based on the, the remains that we were able  
 19 to examine on January 31st, it appeared that it had  
 20 been -- that the meter enclosure had been properly  
 21 installed.  
 22 Q. All right. Do you have any criticisms as to  
 23 the location of where the meter panel was located on  
 24 the home at 75 Vista View Drive?  
 25 A. No, sir, I do not.



53	<p>1 Q. Okay, let's go back to Exhibit 79, paragraph</p> <p>2 1 on page 1. On January 31st, 2011, it indicates that</p> <p>3 you spoke with Mr. Driscoll and, quote, other</p> <p>4 experts. Who are the other experts?</p> <p>5 A. I don't know if we had a sign-in sheet there,</p> <p>6 but there were quite a few individuals that were</p> <p>7 there, including -- let's see, if I remember</p> <p>8 correctly, Jim Matthew from the Wright Group (ph). I</p> <p>9 think Ron Parsons might have been there from the</p> <p>10 Wright Group. Peter Davis was there. I think Peter</p> <p>11 was with Valentine at the time. And I think John</p> <p>12 Mulcahey might have been there from Nevco.</p> <p>13 Q. Your Exhibit 28 contains a sign-in sheet</p> <p>14 which shows all the people that would have been</p> <p>15 present on January 31st of 2011. Is that correct?</p> <p>16 A. That I don't recall. I mean, there are</p> <p>17 several sign-in sheets there, but I thought the</p> <p>18 majority of them were from -- well, one of them was</p> <p>19 from the Connecticut Light &amp; Power transformer test,</p> <p>20 but I thought the majority were from the Quali-</p> <p>21 Tech.... There may be one other.</p> <p>22 Q. At any of the site inspections that you</p> <p>23 attended at 75 Vista View Drive, were there</p> <p>24 representatives of Eaton Corporation present?</p> <p>25 A. Not that I recall.</p>	55	<p>1 &amp; Power conduit run, the remains of the SER cable, and</p> <p>2 also the condition of the wall assembly and the area</p> <p>3 where the meter would have been -- the meter enclosure</p> <p>4 would have been mounted and residential wiring in that</p> <p>5 area.</p> <p>6 Q. When you say documented, what do you mean?</p> <p>7 Photographed?</p> <p>8 A. Photographed and reviewed and inspected.</p> <p>9 Q. Your report indicates that the fire origin</p> <p>10 was in the vicinity of the electrical service meter</p> <p>11 enclosure and the underground conductor conduit</p> <p>12 location. Am I correct, sir, that you are going to</p> <p>13 rely on Mr. Driscoll with respect to the area of</p> <p>14 origin for this fire, his opinions?</p> <p>15 A. Yes, sir, I am.</p> <p>16 Q. Okay. Your report, Exhibit 79, on page 1</p> <p>17 says that the area of origin is where the underground</p> <p>18 is in the vicinity of the electrical service meter.</p> <p>19 That's the meter panel that we have been talking</p> <p>20 about, correct?</p> <p>21 A. That's correct.</p> <p>22 Q. Okay. And underground conductor conduit</p> <p>23 location. What underground conductor and conduit</p> <p>24 location are you referring to?</p> <p>25 A. Well, previously I had identified that as a</p>
54	<p>1 Q. Okay. As a forensic engineer doing an</p> <p>2 electrical examination of the fire scene, is it</p> <p>3 important to attend the site of the fire, a site</p> <p>4 visit?</p> <p>5 A. It depends on what, what remains after the</p> <p>6 fire. But, you know, we would prefer to be there</p> <p>7 rather than not.</p> <p>8 Q. And why would you prefer to be there rather</p> <p>9 than not?</p> <p>10 A. To make a complete analysis.</p> <p>11 Q. Okay. And when you say a complete analysis,</p> <p>12 look at all the electrical components and the full</p> <p>13 picture of what occurred at the home; is that correct?</p> <p>14 A. For an electrical analysis, yes, sir.</p> <p>15 Q. And if you are not able to do that, that may</p> <p>16 compromise your opinions or your ability to analyze</p> <p>17 the electrical system in a home or where there is a</p> <p>18 fire; is that correct?</p> <p>19 A. Depending upon documentation and remains.</p> <p>20 Q. And when you say depending upon documentation</p> <p>21 and remains, what do you mean?</p> <p>22 A. Well, in this case, we, we -- the overall</p> <p>23 group documented everything that was left including</p> <p>24 the circuit breaker panels, the Connecticut Light &amp;</p> <p>25 Power insulation, the remains of the Connecticut Light</p>	56	<p>1 Connecticut Light &amp; Power conduit that ran from the</p> <p>2 transformer to the meter enclosure.</p> <p>3 Q. Any other conduit in that area?</p> <p>4 A. If I remember correctly, there was an exit</p> <p>5 point for the, for the ground conductor that went over</p> <p>6 to the system ground. But I don't recall there being</p> <p>7 any other conduit. Telephone might have been in</p> <p>8 conduit, but again I don't recall it off the top of my</p> <p>9 head.</p> <p>10 Q. What you have described, the conduit that</p> <p>11 went from the CL&amp;P transformer to the home,</p> <p>12 specifically to the meter panel, that's commonly</p> <p>13 referred to as the line side; is that correct?</p> <p>14 A. That would connect to the line side of the</p> <p>15 meter socket, yes, sir.</p> <p>16 Q. And going from the meter socket to -- into</p> <p>17 the home, is that called the load side?</p> <p>18 A. That's correct.</p> <p>19 Q. I'm just trying to get definitions straight</p> <p>20 so you and I can talk about what's line and what's</p> <p>21 load. Do you understand what I'm talking about?</p> <p>22 A. Yes, sir.</p> <p>23 Q. All right. Your report, Exhibit 79, page 1</p> <p>24 in paragraph 1, talks about the underground conductor</p> <p>25 conduit. I asked you what that included and you</p>



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1 depositions have you reviewed, any?  
 2 A. None that I can recall.  
 3 Q. All right. So you have spoken with no  
 4 witnesses and you reviewed only Mr. Johnson's  
 5 deposition. Is that a fair summary?  
 6 A. That's correct.  
 7 Q. Have you examined an exemplar of the meter  
 8 panel, a CMBX B-200 BTS, that is involved in this  
 9 case?  
 10 A. Yes, sir, I have.  
 11 Q. When did you examine the exemplar meter  
 12 panel?  
 13 A. Let's see. If I remember correctly, it would  
 14 have been just prior to writing the report.  
 15 Q. And when you say just prior to writing the  
 16 report, when was that?  
 17 A. If I remember correctly, sometime around  
 18 November 1st or in the area between November 1st and  
 19 November 12th.  
 20 Q. And how did you acquire the exemplar meter  
 21 panel?  
 22 A. Let's see. The exemplar meter panel I  
 23 received from a colleague.  
 24 Q. The name of the colleague?  
 25 A. Don Galler.

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1 Q. And where does Mr. Galler work?  
 2 A. He works at MIT.  
 3 Q. Do you know how Mr. Don Galler obtained the  
 4 subject meter panel?  
 5 A. No, sir, I don't.  
 6 Q. You don't know where he purchased it from or  
 7 if he just had it on hand?  
 8 A. No, sir, I don't.  
 9 Q. Okay. What is your relationship with  
 10 Mr. Galler?  
 11 A. We are colleagues. We work sometimes on the  
 12 same assignment. In the last 5 to 10 years, we've,  
 13 we've been on the same side and sometimes we've been  
 14 on opposing sides.  
 15 Q. Okay. What does he do at MIT?  
 16 A. If I remember correctly, he runs the scanning  
 17 electron microscope and the metallurgy lab.  
 18 Q. Okay. So the subject -- or I'm sorry, not  
 19 the subject. The exemplar meter panel that you  
 20 received came from Mr. Don Galler sometime between  
 21 November 1 of 2012 and November 12 of 2012; is that  
 22 correct?  
 23 A. As I remember, yes, sir.  
 24 Q. Okay. Did Mr. Galler send you an invoice for  
 25 the exemplar meter panel?

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1 A. I don't believe so.  
 2 Q. Have you paid for the exemplar meter panel?  
 3 A. No, sir, not --  
 4 Q. So he gifted this meter panel to you?  
 5 A. As far as I know, sir, yes, sir.  
 6 Q. Do you still have this exemplar meter panel?  
 7 A. Yes, sir, I do.  
 8 Q. Is it in your office or facility?  
 9 A. No, sir.  
 10 Q. Where is it?  
 11 A. It's in my car.  
 12 Q. Today?  
 13 A. Yes, sir.  
 14 Q. Why is it in your car?  
 15 A. In case we needed to look at one, I brought  
 16 one with me.  
 17 Q. Okay. Do you have any documents that show  
 18 when this exemplar meter panel was transmitted to you?  
 19 A. No, sir, I don't believe I do.  
 20 Q. How did Mr. Galler know you wanted an  
 21 exemplar meter panel? If you know. Did you request  
 22 it from him?  
 23 A. I don't believe that I did request it from  
 24 him. I think it, I think it came through Attorney  
 25 Rossi.

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1 Q. Were you given any advanced notice that a  
 2 meter panel was going to be delivered to your office  
 3 from anyone or did one day it just appear?  
 4 A. Do you have to --  
 5 Q. No, you can answer the question and then  
 6 we'll take a break.  
 7 A. If I remember correctly, we received a call  
 8 that there was going to be a meter panel and a few  
 9 circuit breakers arriving.  
 10 Q. Okay. Had you requested that a meter panel  
 11 and a few circuit breakers come to your office?  
 12 A. No, sir, I had not.  
 13 **MR. BARTON: Let's go ahead and take a break**  
 14 **so we can change the tape.**  
 15 **THE VIDEOGRAPHER: This concludes videotape**  
 16 **number 1. Going off record, 11:19 a.m.**  
 17 **(Briefly off the record, as a break is**  
 18 **taken.)**  
 19 **THE VIDEOGRAPHER: We're back on record.**  
 20 **This marks the beginning of videotape number 2,**  
 21 **11:29 a.m.**  
 22 **BY MR. BARTON:**  
 23 Q. Mr. Cristino, did you rely on Exhibit 84, the  
 24 deposition of Jeff Johnson, in formulating your  
 25 opinions that we have in your expert report?

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1 B-Y-R-A-M, substation. Can you tell me the make and  
 2 model of that circuit breaker?  
 3 A. If I remember correctly, on that one it was  
 4 General Electric. Again, I think it was a Magne-  
 5 Blast.  
 6 Q. Was it an identical design to the CSR2200?  
 7 A. No, sir, it was not.  
 8 Q. Can you tell me, was this Byram substation  
 9 breaker installed in a meter panel?  
 10 A. No, sir, it was not.  
 11 Q. Can you tell me how water or moisture made  
 12 its way into this GE circuit breaker?  
 13 A. If I remember correctly, on Byram, it was  
 14 another roof seal.  
 15 Q. Okay. Am I correct that you -- were you  
 16 required to prepare reports or render opinions with  
 17 respect to these five circuit breakers?  
 18 A. I rendered opinions, didn't have to produce  
 19 reports.  
 20 Q. Okay. And am I correct that your opinions  
 21 with respect to these five circuit breakers was that  
 22 none of them were defective?  
 23 A. That's correct.  
 24 Q. Yet you are going to render an opinion -- or  
 25 are you going to render an opinion that the circuit

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1 breaker that was installed in the meter panel at 75  
 2 Vista View Drive was defective?  
 3 A. No, sir, I didn't say the breaker was  
 4 defective.  
 5 Q. Okay, I just want to make sure.  
 6 A. Right.  
 7 Q. And if you have any reports or materials or  
 8 documents with respect to these five cases, I would  
 9 ask that you preserve them. We will be issuing a  
 10 subpoena to get copies of all that.  
 11 A. We don't have any of those. The Wallingford  
 12 matter was over 20 years old. And the East Norwalk  
 13 loss was -- let's see. I started consulting for them  
 14 in 1980, so that's -- yeah, that's over 30 years old.  
 15 And the other three were when I worked for Connecticut  
 16 Light & Power and I haven't been with them since 1987.  
 17 Q. I want to draw your attention to Exhibit 79,  
 18 page 8. This is your conclusions; is that correct?  
 19 A. Yes, sir.  
 20 Q. And your conclusions are based on a  
 21 reasonable degree of engineering certainty; is that  
 22 right?  
 23 A. Yes, sir.  
 24 Q. What does that mean?  
 25 A. When I perform an analysis based on the facts

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1 as presented to me, the results of laboratory testing  
 2 and analysis and based on other factors, you know, if  
 3 there are other factors to take into consideration,  
 4 using engineering, you know, a good sound engineering  
 5 logic that the opinion that I express can be supported  
 6 by an engineering analysis.  
 7 Q. All right, page 8 of Exhibit 79 states that  
 8 the short circuit originated within the circuit  
 9 breaker's internal line side components -- and I  
 10 believe we have already discussed that -- most  
 11 probably due to a defect that allowed moisture  
 12 ingress. What is the defect that you are referring  
 13 to?  
 14 A. I don't know what the defect is.  
 15 Q. Okay. How can you say that the moisture  
 16 ingress was most probably due to a defect when you  
 17 don't know what the defect is?  
 18 A. Well, because there should not be moisture  
 19 getting inside the circuit breaker or the circuit  
 20 breaker panel. So if that does get in there, then  
 21 there is a defect.  
 22 Q. And if, in fact, there was no moisture inside  
 23 the meter panel, would you conclude there was no  
 24 defect?  
 25 A. Well, if using that logic, then the breaker

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1 didn't fail. And yet we've got this hole and the  
 2 house is burned down.  
 3 Q. Well, you're missing one of the main points  
 4 of logic. Perhaps the breaker did fail, but perhaps  
 5 your opinions are wrong. That's the difference.  
 6 All I'm asking you is, If no moisture was  
 7 inside that meter panel, would you conclude that there  
 8 is no defect or would you just try to find something  
 9 else?  
 10 A. If there was no moisture in the panel, then  
 11 that would lead us to believe that there was a defect  
 12 in the circuit breaker that caused it to fail without  
 13 moisture.  
 14 Q. And you couldn't tell me what that is either,  
 15 right?  
 16 A. No, sir, I could not.  
 17 Q. Okay. So essentially, if I have got the  
 18 logic correct with respect to your reasonable degree  
 19 of engineering certainty, an unknown amount of  
 20 moisture from an unknown source made its way into the  
 21 breaker panel from some unknown point, migrated into  
 22 the breaker in an unknown fashion, entered the breaker  
 23 through an unknown source, compromising unknown  
 24 components within the breaker that caused an arc fault  
 25 on the line side. Did I accurately depict what your

169	<p>1 testimony is?</p> <p>2 A. Yes, sir.</p> <p>3 <b>MR. ROSSI: He said there was no arc on the</b></p> <p>4 <b>line side.</b></p> <p>5 <b>BY MR. BARTON:</b></p> <p>6 Q. It says: The short circuit originated within</p> <p>7 the circuit breaker's internal line side components.</p> <p>8 Did I read that correct in your opinions</p> <p>9 stated?</p> <p>10 A. Yes, sir.</p> <p>11 Q. And you believe that this unknown defect</p> <p>12 which you cannot tell me or testify to allowed the</p> <p>13 moisture ingress; is that correct?</p> <p>14 A. That's correct.</p> <p>15 Q. Okay. And when you say moisture, I know I</p> <p>16 asked you to describe the moisture earlier. Water,</p> <p>17 ice, we don't know. Does it have to be water?</p> <p>18 A. Does it have to be water? It has to be</p> <p>19 moisture, some form of water.</p> <p>20 Q. Do you know what the temperature was on</p> <p>21 January 16, 2011, about 10:35 p.m.?</p> <p>22 A. Not accurately, sir, no.</p> <p>23 Q. Okay. Do you know what the temperature that</p> <p>24 water freezes at?</p> <p>25 A. Yes, I do.</p>	171	<p>1 Q. Okay. Are you aware if UL has any</p> <p>2 requirements with respect to meter panels to prevent</p> <p>3 the ingress of moisture?</p> <p>4 A. Yes, sir, to some, to some degree I do.</p> <p>5 Q. Okay. What is your understanding of the UL</p> <p>6 requirements to prevent the ingress of moisture into a</p> <p>7 meter panel?</p> <p>8 A. It depends on the style of the meter panel</p> <p>9 and its rating.</p> <p>10 Q. What about the CSR2200 meter panel?</p> <p>11 A. Well, yeah, but what is its --</p> <p>12 <b>MR. BARTON: He's talking about the --</b></p> <p>13 <b>BY MR. ROSSI:</b></p> <p>14 Q. I'm sorry, the CMBX B-200 BTS meter panel.</p> <p>15 A. As a NEMA 3R enclosure?</p> <p>16 Q. You tell me. What is the, what is the type</p> <p>17 of enclosure?</p> <p>18 A. Well, NEMA 3R means that it can handle rain</p> <p>19 up to 30 degrees out of the vertical.</p> <p>20 Q. Okay. Could the subject breaker panel in</p> <p>21 this case meet that requirement?</p> <p>22 A. For rain, yes.</p> <p>23 Q. Do you believe it did not meet that</p> <p>24 requirement for other substances?</p> <p>25 A. In this case, I think it's highly probable.</p>
170	<p>1 Q. What is that?</p> <p>2 A. Thirty-two degrees Fahrenheit.</p> <p>3 Q. And when we get below 32 degrees Fahrenheit,</p> <p>4 that water freezes, right, becomes ice?</p> <p>5 A. That's correct.</p> <p>6 Q. All right. Do you know prior to January 16,</p> <p>7 2011, at 10:35 p.m. when the last time the temperature</p> <p>8 in and around the Southbury, Connecticut, area had</p> <p>9 exceeded 32 degrees?</p> <p>10 A. No, I don't.</p> <p>11 Q. It says here: The meter enclosure was</p> <p>12 designed and manufactured for outdoor applications.</p> <p>13 Therefore the meter enclosure should have been capable</p> <p>14 of preventing the ingress of moisture typically</p> <p>15 experienced in a New England winter.</p> <p>16 How was the meter panel not capable of</p> <p>17 preventing the ingress of moisture?</p> <p>18 A. Well, again, that's part of the mechanism</p> <p>19 that caused the ingress of moisture we don't identify,</p> <p>20 we don't have a way of identifying that.</p> <p>21 Q. Okay. Can you tell me what mechanisms the</p> <p>22 meter panel used to prevent the ingress of moisture?</p> <p>23 A. Based on the remains and also the circuit</p> <p>24 breaker panel that we've got, it appears it uses</p> <p>25 overlapping surfaces.</p>	172	<p>1 Q. And why do you think it's highly probable?</p> <p>2 A. Because of the drifting snow.</p> <p>3 Q. Do you believe it was drifting snow that made</p> <p>4 its way into the meter panel?</p> <p>5 A. I think it's something that can't be ruled</p> <p>6 out.</p> <p>7 Q. Did this drifting snow enter in through the</p> <p>8 bottom, through the top, through the side, through the</p> <p>9 back? Can you tell me?</p> <p>10 A. No, sir, I can't.</p> <p>11 Q. And do you think if drifting snow somehow</p> <p>12 made its way into the meter panel, that that would</p> <p>13 somehow violate the UL standards?</p> <p>14 A. No, sir.</p> <p>15 Q. The circuit breaker, the CSR2200 circuit</p> <p>16 breaker, it has vent holes; is that your</p> <p>17 understanding?</p> <p>18 A. When you say vent holes, identifying the dark</p> <p>19 chute assemblies.</p> <p>20 Q. Sure. There is openings in the breakers; is</p> <p>21 that your understanding?</p> <p>22 A. Yes, sir.</p> <p>23 Q. There is ways for air to flow through it; is</p> <p>24 that correct?</p> <p>25 A. The intent is for air to exhaust from that to</p>

43 (Pages 169 to 172)

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April 8, 2014

*VIA E-MAIL ONLY* [prossi@cozen.com](mailto:prossi@cozen.com)

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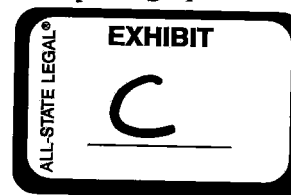
**Re: Ace American Insurance Company v. Eaton Electrical, Inc.**

Dear Mr. Rossi:

We are in receipt of your thirteen page supplemental privilege log dated April 3, 2014 identifying the twenty-six categories of documents you removed from Joseph Cristino's file the morning of his deposition. At least one document has no claim of privilege and therefore must be produced. In addition, you claim relevance under Rule 26(b)(4)(D) as your privilege. As you know, relevancy is not a privilege. Further, relevancy will be determined at the time of trial. The question we must ask is whether or not the documents contained within your testifying expert's file are discoverable. Your cite to a rule dealing with non-testifying experts in support of your relevancy claim which is inapplicable. As such, for each of the documents where you claim relevancy as a "privilege" for the documents contained in your testifying expert's file, we would ask that you remove such privileges and produce the documents which were improperly removed from your expert's file.

You have also claimed privilege over a number of documents for which there appears to be no basis. For example, the December 10, 2012 email summarizing the inspection provided to you and Mr. Cristino is fully discoverable and not privileged under the Federal Rules of Civil Procedure. Further, the September 29, 2012 email between Don Galler and yourself containing photos of evidence of an exemplar is also not privileged. First, they are photographs of an exemplar which were contained within your expert's file. Secondly, he testified that he reviewed the photographs and relied upon the information contained within in his file in rendering his opinions. Thus, the fact that photographs of an exemplar were sent to you and yet removed from Mr. Cristino's file on the morning of his deposition is suspicious and also does not imbue those documents with privilege. We are aware of two photographs of a frozen exemplar that were contained within your expert's file. These two photographs were left in the file by you and it is unclear whether that was through a mistake or because you did not believe these photographs to

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contain the privilege you now claim. As you may recall, Cristino testified that his assistant is the one who took the photographs and he may or may not have been present at the time they were taken. Thus, to the extent you have additional photographs of an exemplar breaker which were contained in your expert's witness file, we are entitled to review them and, if need be, revisit the improperly withheld information with your expert witness.

Similarly, the October 1, 2012 email concerning photographs of an exemplar and your guidance to Cristino on his testing methodology is not privileged. Indeed, that is the very information we were hoping to discover by obtaining your expert witness's file. In like manner, your expert's handwritten notes concerning his discussions with you contained in the file are not privileged. Joseph Cristino's notes do not constitute your mental impressions. The fact that you would explain your theory of the case or provide other information to your testifying expert and allow him to take notes regarding same does not create a privilege. Thus, your expert's handwritten notes dated October 22, October 10 and July 25, 2012 are discoverable and should not have been withdrawn from your expert's witness file.

In like manner, the email between Kathy Horn and Joe Cristino explaining what UL abbreviations meant dated February 13, 2012, is wholly relevant to the cause of action despite your claim otherwise. To the extent attorneys and other parties needed to explain the UL report to your expert witness is probative of his knowledge, understanding, expertise and qualifications or lack thereof.

The pre-suit investigation report from Cristino to you prior to initiating litigation is not privileged under Rule 26(b)(3)(a). As you know, my client was not placed on notice of this suit until after the home at issue had been razed and the initial inspection completed. Thus, to the extent any work product privilege would apply to such documents, an argument which we expressly deny, then we can show substantial need to obtain the information of your expert's initial impressions of the accident scene which we were precluded from viewing. More importantly, however, the pre-suit investigation report deals with the facts and data the expert relied upon at least initially in rendering his opinions. Thus, it is fully discoverable. The same can be said for the September 20, 2011 email as well as the pre-suit investigation email dated September 20, 2011.

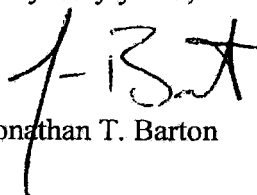
Your expert's initial opinions concerning the cause of the fire and your request for same dated September 20, 2012 and the email string from September 26 to September 27, 2012 is also not protected under Rule 26(b)(3)(a). The types of questions and directions that you were sending the expert render the information discoverable on the thought process and motivation of your expert to render certain opinions, specifically those that would allow you to bring an improper cause of action against my client. All of the pre-suit emails are also discoverable and do not constitute draft reports. This is communication between you and your expert witness concerning the facts and the data relied upon and should have been produced.

Additionally, it is unclear why you would have removed Eaton's response to plaintiff's second set of request for documents from your expert's witness file. You claim it is irrelevant because it is already in our possession. Yet, you allowed various deposition and other documents which also could have arguably been in our possession. There is no privilege claimed

over our discovery responses to the extent they were present within your expert witness's file, we have a right to discover that information and understand what, if any, notes your witness took regarding the responses. Regardless, removing such documents from your expert's file is improper.

Given the timing set by the court, it is our intent to move to compel production of the documents you improperly withheld on or before April 17, 2014. However, in a continuing good faith attempt to resolve this discovery dispute, we would ask that you produce the documents improperly withheld from your expert's witness file within the next five days. Please consider this our continuing good faith attempt to resolve this discovery dispute.

Very truly yours,

A handwritten signature in black ink, appearing to read "JTBart", written over the typed name.

Jonathan T. Barton

JTB:kmc



ACE American Insurance Company v. Eaton Electrical, Inc.  
 Case No.: 3:11-cv-01741-CSH

PLAINTIFF'S SUPPLEMENTAL PRIVILEGE LOG

DOCUMENT TYPE	DATE	AUTHOR	ADDRESSEE	SUBJECT	PRIVILEGE
Email	12/10/12	Nuno S. Almeida Cristino Assoc.	Peter Rossi cc: Joe Cristino (testifying expert)	Joe Cristino (testifying expert along with Mike Driscoll) employee Nuno attended an evidence inspection and this message from him to counsel cc to Joe Cristino summarizes who attended for defendant and what they did during the inspection.	26(b)(4)(C) this communication is between counsel and expert and does not relate to compensation, facts or data that the expert considered or assumptions that the expert relied upon
Email	10/29/12	Don Galler Retained Non Testifying Expert	Joe Cristino	Email from non testifying expert to Cristino regarding shipment of exemplar from e-bay	
Email	10/29/12	Joe Cristino	Don Galler cc to Cristino employees Cathy and Nuno	Acknowledgement of Galler's 10/29 email re exemplar	Relevance. 26(b)(4)(D) discovery of non-testifying expert not allowed.

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<b>DOCUMENT TYPE</b>	<b>DATE</b>	<b>AUTHOR</b>	<b>ADDRESSEE</b>	<b>SUBJECT</b>	<b>PRIVILEGE</b>
4 Email	11/5/12	Cathy Horn (Cristino Assoc.)	Don Galler	Cristino's acknowledgement that exemplar arrived	Relevance. 26(b)(4)(D) discovery of non-testifying expert not allowed.
5 CAI Document	10/24/12	Cathy Horn (Cristino Assoc.)	File	Evidence List Chain of Possession	Relevance
6 Email	9/29/12	Don Galler	Peter Rossi	Photos of evidence and exemplar with no discussion of either.	26(b)(4)(D) discovery of non-testifying expert not allowed. 26(b)(4) (C) this communication is between counsel and expert and does not relate to compensation, facts or data that the expert considered or assumptions that the expert relied upon.

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DOCUMENT TYPE	DATE	AUTHOR	ADDRESSEE	SUBJECT	PRIVILEGE
Email	10/1/12	Peter Rossi	Joe Cristino	Photos of evidence and exemplar that Galler sent counsel which counsel forwards to Cristino. Two of the photos are taken by Cristino of the evidence and four by Galler of the exemplars with a discussion of counsel's understanding of the arrangement and orientation of the exemplar and evidence including the breaker and bracket and the possibility that the arrangement of the exemplar and evidence is incorrect in Cristino's photos	26(b)(4)(C) this communication is between counsel and expert and does not relate to compensation, facts or data that the expert considered or assumptions that the expert relied upon and 26(b)((3)(B) the mental impressions, conclusions and opinions of counsel concerning the litigation

<b>DOCUMENT TYPE</b>	<b>DATE</b>	<b>AUTHOR</b>	<b>ADDRESSEE</b>	<b>SUBJECT</b>	<b>PRIVILEGE</b>
Handwritten Notes	10/22/12	Joe Cristino	File	Cristino's handwritten notes regarding telecon with counsel Peter Rossi & Don Galler notes reference investigation and testing of exemplar evidence in the future	26(b)(4)(C) this communication is between counsel and expert and does not relate to compensation, facts or data that the expert considered or assumptions that the expert relied upon 26(b)(3)(B) the mental impressions, conclusions and opinions of counsel concerning the litigation
Handwritten Notes	10/10/12	Joe Cristino	File	Cristino's handwritten notes regarding telecon with counsel Peter Rossi & non testifying consultant Don Galler. Notes reference insulation of the circuit breaker including details about the type and dimension of the insulation	26(b)(4)(C) this communication is between counsel and expert and does not relate to compensation, facts or data that the expert considered or assumptions that the expert relied upon 26(b)(3)(B) the mental impressions, conclusions and opinions of counsel concerning the litigation

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DOCUMENT TYPE	DATE	AUTHOR	ADDRESSEE	SUBJECT	PRIVILEGE
Handwritten Notes	7/25/12	Joe Cristino	File	Cristino's handwritten notes regarding telecon with counsel Peter Rossi & non testifying consultant Don Galler. Notes reference x-rays of evidence, model number of circuit breaker and the time of outage.	26(b)(4)(C) this communication is between counsel and expert and does not relate to compensation, facts or data that the expert considered or assumptions that the expert relied upon 26(b)((3)(B) the mental impressions , conclusions and opinions of counsel concerning the litigation
Email	2/13/12	Cathy Horn (Cristino Assoc.)	Joe Cristino	Horn providing Cristino information that will be provided to counsel regarding Eaton's Underwriter's Laboratory Listing and meaning of abbreviations in UL standard in response to 2/9/12/ request from Rossi.	Relevance. 26(b)(3)(A) this information was prepared on behalf of counsel in anticipation of litigation and trial

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DOCUMENT TYPE	DATE	AUTHOR	ADDRESSEE	SUBJECT	PRIVILEGE
Emails	2/12/12 2/9/12	Joe Cristino Peter Rossi	Peter Rossi Joe Cristino	Emails between Cristino and counsel Rossi in which Rossi inquires about Eaton's UL listing and technical info on Eaton's web site and Cristino responds regarding some of the information and agrees that he will get the balance of the information which is referenced in 2/13 Horn email.	26(b)(3)(A) this information was prepared on behalf of counsel in anticipation of litigation and trial. 26(b)(4)(C) this communication is between counsel and expert and does not relate to compensation, facts or data that the expert considered or assumptions that the expert relied upon
Outlook Calendar Email	2/8/12	Peter Rossi	Joe Cristino & Mike Driscoll	Outlook calendar reminder regarding due date for expert reports	26(b)(4)(C) this communication is between counsel and experts regarding case scheduling and does not relate to compensation, facts or data that the expert considered or assumptions that the expert relied upon

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Outlook Calendar Email	2/8/12	Peter Rossi	Joe Cristino & Mike Driscoll	Outlook calendar reminder regarding Expert Deposition Deadline	26(b)(4)(C) this communication is between counsel and experts regarding case scheduling and does not relate to compensation, facts or data that the expert considered or assumptions that the expert relied upon
Outlook Calendar Email	2/8/12	Peter Rossi	Joe Cristino & Mike Driscoll	Outlook Calendar reminder regarding Trial Ready Date	26(b)(4)(C) this communication is between counsel and experts regarding case scheduling and does not relate to compensation, facts or data that the expert considered or assumptions that the expert relied upon

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DOCUMENT TYPE	DATE	AUTHOR	ADDRESSEE	SUBJECT	PRIVILEGE
Email	9/11/11	Joe Cristino	Peter Rossi	Pre-suit investigation. Draft report and preliminary findings prepared by testifying expert regarding September 7 <sup>th</sup> Examination at Qualitech of Subject Breaker. Eaton representatives were present. This was pre-suit and in anticipation of litigation	26(b)(3)(A) documents prepared in anticipation of litigation. 26(b)(4)(B)the rules protect draft reports in any form. 26(b)(4)(C) this communication is between counsel and expert does not relate to compensation, facts or data that the expert considered or assumptions that the expert relied upon.
Email	9/20/11	Peter Rossi	Joe Cristino	Pre-suit inquiry from counsel to expert regarding pre-suit investigation and lab exam that Eaton was aware of an invited to and, upon information and belief, attended.	26(b)(3)(A) documents prepared in anticipation of litigation. 26(b)(4)(C) this communication is between counsel and expert does not relate to compensation, facts or data that the expert considered or assumptions that the expert relied upon. 26(b)((3)(B) the mental impressions, conclusions and opinions of counsel concerning the litigation

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<u>DOCUMENT TYPE</u>	<u>DATE</u>	<u>AUTHOR</u>	<u>ADDRESSEE</u>	<u>SUBJECT</u>	<u>PRIVILEGE</u>
Email	9/20/11	Joe Cristino	Peter Rossi	Cristino's response to counsel in the form of a draft report regarding the pre-suit investigation and evidence inspection that Eaton was aware of and participated in.	26(b)(3)(A) documents prepared in anticipation of litigation. 26(b)(4)(B) the rules protect draft reports in any form. 26(b)(4)(C) this communication is between counsel and expert does not relate to compensation, facts or data that the expert considered or assumptions that the expert relied upon
Email	9/20/12	Peter Rossi	Joe Cristino	Pre litigation request by counsel to expert for info. re: Investigation and cause of the fire. No information or data was provided by counsel to expert just counsel's questions.	26(b)(3)(A) documents prepared in anticipation of litigation. 26(b)(4)(C) this communication is between counsel and expert does not relate to compensation, facts or data that the expert considered or assumptions that the expert relied upon. 26(b)((3)(B) the mental impressions, conclusions and opinions of counsel concerning the litigation

DOCUMENT TYPE	DATE	AUTHOR	ADDRESSEE	SUBJECT	PRIVILEGE
Email	9/26-27/12	Peter Rossi	Joe Cristino	Pre litigation request for info. from counsel to expert re: investigation and cause of the fire. No information or data was provided by counsel to expert just counsel questions	26(b)(3)(A) documents prepared in anticipation of litigation. 26(b)(4)(C) this communication is between counsel and expert does not relate to compensation, facts or data that the expert considered or assumptions that the expert relied upon. 26(b)((3)(B) the mental impressions, conclusions and opinions of counsel concerning the litigation
Email	1/9/12	Peter Rossi	Joe Cristino & Mike Driscoll	Counsel advising experts that a lawsuit has been initiated and scheduling counsel agreed to.	26(b)(4)(C) this communication is between counsel and expert does not relate to compensation, facts or data that the expert considered or assumptions that the expert relied upon. 26(b)((3)(B) the mental impressions, conclusions and opinions of counsel concerning the litigation

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Email	1/9/12	Joe Cristino	Cathy Horn (Cristino Assoc.)	Upon information this email forwards Rossi's email (without comment simply "FYI"), of the same date from Cristino to his staff so that the dates can be calendared.	Relevance
Email	4/27/11	Peter Rossi	Joe Cristino	<b>Pre suit</b> request for info from counsel to expert re: investigation no data or information provided just counsel questions.	26(b)(3)(A) documents prepared in anticipation of litigation 26(b)(4)(C) this communication is between counsel and expert does not relate to compensation, facts or data that the expert considered or assumptions that the expert relied upon. 26(b)((3)(B) the mental impressions, conclusions and opinions of counsel concerning the litigation

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**UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF CONNECTICUT**

<b>ACE AMERICAN INSURANCE</b>	)	
<b>COMPANY</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	
<b>v.</b>	)	<b>Civ No. 3:11-CV-01741-CSH</b>
	)	
<b>EATON ELECTRICAL, INC.</b>	)	
	)	<b>APRIL 21, 2014</b>
<b>Defendant.</b>	)	

**DEFENDANT EATON CORPORATION'S  
L. Civ. R. 37 AFFIDAVIT**

I, Jonathan T. Barton, being duly sworn, depose and say:

1. I am over the age of eighteen, believe in the obligation of an oath, and file this affidavit pursuant to L. Civ. R. 37 as Defendant's counsel in this case.

2. I certify that despite good faith efforts on my part with Plaintiff's counsel in an attempt to resolve these issues, the parties are unable to resolve the issues in the accompanying Motion to Compel.

3. Following receipt of the Supplemental Privilege Log I engaged in a good faith attempt to resolve the discovery dispute through correspondence, e-mail communication and a telephone conference with opposing counsel pursuant to Local Rule 37. (See Exhibit C, correspondence dated April 8, 2014 attached to Defendant's Motion to Strike Privilege Log and Compel Production of Documents). The good faith attempts to resolve the discovery dispute failed necessitating the present motion.

In accordance with 28 U.S.C. § 1746, I certify under penalty of perjury that the foregoing is true and correct.

Executed on April 21, 2014.

/s/ Jonathan T. Barton  
Jonathan T. Barton