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Taintor & Pierce Secure First Circuit Victory

Chris Taintor and Russell Pierce recently posted a major appellate victory before the United States Court of Appeals for the First Circuit in *Friedman v. Central Maine Power Company*. In its decision, the First Circuit affirmed an Order of Summary Judgment in favor of Central Maine Power Company in a case challenging the safety of the radiofrequency (RF) energy emitted by CMP's "smart meters." The First Circuit decision is the culmination of six years of litigation, which followed an earlier administrative proceeding before the Maine Public Utilities Commission, an appeal from the Maine Public Utlities Commission (MPUC) to the Law Court, and a complaint to the Maine Human Rights Commission (MHRC).

In the federal lawsuit, the Plaintiff, a CMP customer claimed a violation of three federal disability discrimination laws -- the Americans with Disabilities Act, the Fair Housing Act, and the Rehabilitation Act -- by charging him a fee to "opt-out" of the company's Advanced Metering Infrastructure (AMI) program. That program created a "mesh network" of electric meters that communicate, through the emission of RF waves, with CMP's billing system, relieving the company and ratepayers of the cost associated with having meters read manually.

When the AMI program was approved by the MPUC, the Commission gave customers the right to "opt out" of the program, either by keeping their analog meter or by having a smart meter in "non-transmitting" mode. However, because smart meters had become CMP's "standard" meters, customers who opted out of the program were required to pay a modest initial fee for the non-standard meter, and an annual fee to cover the additional cost of manual meter-reading. Some customers exercised that option because they believed that having a transmitter in their home was an "electronic trespass," while others harbored concerns about the health effects of RF.

The Plaintiff and others then brought before the MPUC a challenge to the rollout of AMI, arguing that RF emitted by smart meters would create health risks. CMP defeated those challenges at the MPUC, which determined that smart meters posed no risk to the public, and the MPUC's decision was affirmed by the Law Court.

After the Plaintiff was diagnosed with a rare form of cancer, he asked CMP to "accommodate" his disability by waiving the opt-out fee. He alleged that the opt-out was necessary, because exposure to the RF emitted by a smart meter in his home would worsen his cancer. CMP refused his request, because there was no scientific evidence supporting the claim that RF exposure from a smart meter is harmful. The Plaintiff brought a complaint to the MHRC, and eventually in the United States District Court.

In response to CMP's Motion *in Limine*, the United States District Court excluded a number of key opinions proffered by the Plaintiff's experts, which left the Plaintiff without evidence of "specific causation." Because there was no admissible scientific evidence that smart meters posed a risk to the Plaintiff, the District Court entered Summary Judgment in CMP's favor. The First Circuit unanimously affirmed the District Court's judgment.

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