

CAUSE NO. 10-14744

FILED
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GARY T. ZIMMERMAN
DISTRICT CLERK
DALLAS COUNTY TEXAS
DEPT. 100

IN RE: §
§
PETITION OF §
§
SGT. JOHN ROBERTSON AND KIM §
ROBERTSON §

IN THE DISTRICT COURT
193rd JUDICIAL DISTRICT
DALLAS COUNTY, TEXAS

**PETITION REQUESTING DEPOSITIONS
BEFORE SUIT AND TO INVESTIGATE CLAIMS**

This Petition Requesting Depositions Before Suit and to Investigate Claims is filed to identify and seek justice for the vast number of Texas consumers who were wrongfully overcharged for electricity consumption due to defective Smart Meters manufactured by Landis+Gyr.

The Petitioners are: (1) John Robertson, an active duty Sergeant and decorated combat veteran in the United States Army who proudly served his country in Bosnia and in two tours in Iraq; and (2) Kim Robertson, John's wife and the mother of their four children. Sergeant and Mrs. Robertson are collectively referenced herein as the "Robertsons." The Robertsons file this action in accordance with Rule 202 of the TEXAS RULES OF CIVIL PROCEDURE and would respectfully show the Court as follows:

I. Independent Testing Confirms Defective Smart Meters

After prolonged excuses, run-around and outright lying to consumers about their skyrocketing electric bills following the installation of Smart Meters, an independent investigation was conducted by Navigant Consulting (PI) LLC ("Navigant"). On July 30, 2010, Navigant issued a report entitled *Evaluation of Advanced Metering System (AMS) Deployment in Texas* (the "Report"). The Report unequivocally concludes that countless consumers were improperly overbilled for electric usage due to defective Smart Meters manufactured by Landis+Gyr, Inc. ("Landis+Gyr").

II. Jurisdiction and Venue

Pursuant to Rule 202 of the TEXAS RULES OF CIVIL PROCEDURE, venue is proper in this county because this is the county where the Robertsons anticipate the institution of a suit in which they may be a party and is the county where a witness to be deposed resides. This Court has jurisdiction over these matters pursuant to the appropriate sections of the Texas Constitution, the TEXAS GOVERNMENT CODE, and the TEXAS CIVIL PRACTICE AND REMEDIES CODE.

III. The Robertsons Seek Investigation of Defective Landis+Gyr Smart Meters

The Robertsons are a typical hard-working Texas family. Like so many Texas consumers in the service area of Oncor Electric Delivery Company, LLC (“Oncor”) who have received a Smart Meter, the Robertsons operate on a fixed income and work hard to make ends meet. The Robertsons welcome the concept of Smart Meters as a new technology that brings various efficiencies to the electric industry, environmental and otherwise. What the Robertsons cannot accept, however, are the erroneously high electric bills they have received since the installation of their Smart Meter.

Because the recent independent investigation performed by Navigant conclusively identifies objective manufacturing defects associated with Landis+Gyr Smart Meters that wrongfully caused overbilling, the time to conduct additional investigation in anticipation of a prospective lawsuit is now.

IV. Navigant Report Identifies Two Types of Defective Smart Meters

Navigant, Oncor and Landis+Gyr conducted a joint investigation into the Smart Meter overbilling debacle. One aspect of the investigation was to assess whether anything associated with the Landis+Gyr Smart Meters contributed to the inaccurate overbilling of Texas consumers for electric consumption.

To make a long story short, the investigation revealed that a large number of Landis+Gyr Smart Meters installed by Oncor are in fact defective. The Navigant Report identifies two separate models of Smart Meters with manufacturing defects that caused overbilling of Texas consumers, a “Rev D” model and a “Rev G” model. Both models manifested manufacturing defects resulting in the overbilling of consumers.

A. The Defective Rev D Landis+Gyr Smart Meters

Oncor originally purchased and deployed 128,000 Rev D Landis+Gyr Smart Meters. Testing by Navigant *and* Landis+Gyr confirmed the defective nature of the Rev D model Smart Meter. The primary defect with the Rev D model is a faulty internal manually-soldered (i.e., hand-soldered) joint on one of the Smart Meter components.

After additional testing and analysis, Landis+Gyr acknowledged and confirmed the reason why the Rev D meters failed was because of a defect in the quality of its manufacturing workmanship. This defect caused the “internal clock” of the Smart Meter to run faster than it should have. The result to the consumer was an inaccurate electric bill that overcharged them for electric consumption.

B. The Defective Rev G Landis+Gyr Smart Meters

Oncor originally purchased approximately 246,000 Rev G Landis+Gyr Smart Meters for deployment. Unlike the Rev D model with a hand-soldered joint, the Rev G model has an “Integrated Circuit” with all components integrated into the meter’s circuit board. Even though the Rev G meters do not have the hand-soldered joints that caused the Rev D Smart Meters to fail, they also manifested defects that caused them to run too fast and overbill consumers for electric consumption.

C. The “2118 Error Code”

Oncor and Landis+Gyr ascertained that the materially defective Rev D *and* Rev G Smart Meters generated a “2118 Error Code.” The 2118 Error Code discloses to the meter reader an inconsistency between the meter clock and one of the two independent validation checks on the appropriate functioning of the meter clock. In plain English, the 2118 Error Code announces loud and clear that the Smart Meter is running too fast and overbilling the consumer.

At the time the Report was issued, Landis+Gyr believed the issue resulting in the 2118 Event Codes on the Rev G Smart Meter was an unspecified “secondary issue involving the same or similar components and circuits as that identified in relation to the Rev D meters, but resulting from some other root cause instead of the questionable solder joints.”

D. Lack Knowledge of Full Impact on Consumers

It is notable that Report reflects a lack of knowledge respecting the scope of the defect issue, the number of consumers affected by the defective Landis+Gyr Smart Meters and/or the extent to which the affected consumers were improperly overbilled for electric consumption, both from a duration and amount standpoint. The Report even states that there may be *other* defective issues with the Landis+Gyr Smart Meters causing the overbilling of consumers. The Report calls for “additional testing and analysis.” Texas consumers fighting to keep up in this tough economy deserve swift action and immediate rectification of the erroneous billing.

V. Robertsons Request Depositions Before Suit

The Robertsons respectfully request that this Court enter an Order permitting Depositions Before Suit both to investigate a potential claim by the Robertsons and to investigate matters in anticipation of a suit in which the Robertsons may be a party. TEX. R. CIV. P. 202.2(d)(1) and (2).

VI. Subject Matter of Anticipated Suit

The subject matter of the anticipated suit is: (1) to address the objectively and independently verified defective nature of the Landis+Gyr Smart Meters; and (2) to seek relief and justice for the countless Texas consumers who were improperly and erroneously overbilled for electricity due to the manufacturing defects associated with the Landis+Gyr Smart Meters.

VII. Persons Robertsons Expect to Have Adverse Interest in Anticipated Suit

The Robertsons reasonably expect that Landis+Gyr, Inc., a party sought to be to be deposed in accordance with this Petition, will have interests adverse to their own in an anticipated suit. Landis+Gyr, Inc. is a corporation organized in the State of Delaware that does business in the State of Texas. It has headquarters at 30000 Mill Cree Ave., Suite 100, Alpharetta, Georgia 30022, (678) 258-1500 and 2800 Duncan Road, Lafayette, Indiana 47904, (765) 742-1001. Landis+Gyr, Inc.'s registered agent in Texas is Corporation Service Company, 211 E. 7th Street, Suite 620, Austin, Texas 78701.

VIII. Persons to Be Deposed

The Robertsons respectfully ask the Court to issue an Order authorizing them to examine the following persons by oral deposition:

Mr. Todd Lester

Navigant Consulting, Inc.
98 San Jacinto Blvd., Suite 900
Austin, Texas 78701
Phone number: (512) 493-5420

Substance of Testimony the Robertsons Expect to Elicit

The Robertsons seek to elicit testimony from Mr. Todd Lester, the author of the Report, concerning: (1) the investigation and analysis respecting the deployment of Landis+Gyr Smart Meters in the Oncor service area; (2) the testing and investigation performed relating to the Landis+Gyr Smart Meters in order to generate the Report; (3) the analysis and conclusions associated with the Landis+Gyr Smart Meters discussed in the Report; (4) the noted manufacturing defects in the Report associated with the Landis+Gyr Rev D Smart Meters; (5) the noted manufacturing defects in the Report associated with Landis+Gyr Rev G Smart Meters; (6) the noted "2118 Error Codes" associated with the Landis+Gyr Smart Meters discussed in the Report; (7) the "secondary issues" of Landis+Gyr Smart Meter failures noted in the Report; (8) the specific names, address and phone numbers of consumers who received a defective Landis+Gyr Smart Meter; and (9) the specific names, addresses and phone numbers of consumers who were overbilled due to a defective Landis+Gyr Smart Meter.

The Robertsons' Reasons for Desiring to Obtain Testimony

The Robertsons seek this deposition to investigate a potential claim or suit and to obtain testimony for use in an anticipated suit. Allowing the Robertsons to take the requested deposition may prevent a failure or delay of justice in an anticipated suit. Further, the likely benefit of allowing the Robertsons to take the requested deposition outweighs the burden or expense of the procedure.

Corporate Representative of Navigant Consulting, Inc.

Navigant Consulting, Inc. is a Delaware corporation doing business in Texas located at 98 San Jacinto Blvd., Suite 900, Austin, Texas 78701, Phone number: (512) 493-5420. Navigant Consulting, Inc.'s registered agent is Corporation Service Company, 211 E. 7th Street, Suite 260, Austin, Texas 78701.

Substance of Testimony the Robertsons Expect to Elicit

The Robertsons seek to elicit testimony from the corporate representative(s) of Navigant Consulting, Inc. concerning: (1) the investigation and analysis respecting the deployment of Landis+Gyr Smart Meters in the Oncor service area; (2) the testing and investigation performed relating to the Landis+Gyr Smart Meters in order to generate the Report; (3) the analysis and conclusions associated with the Landis+Gyr Smart Meters discussed in the Report; (4) the noted manufacturing defects in the Report associated with the Landis+Gyr Rev D Smart Meters; (5) the noted manufacturing defects in the Report associated with Landis+Gyr Rev G Smart Meters; (6) the noted "2118 Error Codes" associated with the Landis+Gyr Smart Meters discussed in the Report; (7) the "secondary issues" of Landis+Gyr Smart Meter failures noted in the Report; (8) the specific names, address and phone numbers of consumers who received a defective Landis+Gyr Smart Meter; and (9) the specific names, addresses and phone numbers of consumers who were overbilled due to a defective Landis+Gyr Smart Meter.

The Robertsons' Reasons for Desiring to Obtain Testimony

The Robertsons seek this deposition to investigate a potential claim or suit and to obtain testimony for use in an anticipated suit. Allowing the Robertsons to take the requested deposition may prevent a failure or delay of justice in an anticipated suit. Further, the likely benefit of allowing the Robertsons to take the requested deposition outweighs the burden or expense of the procedure.

Corporate Representative of Navigant Consulting (PI) LLC

Navigant Consulting (PI) LLC is a Delaware corporation doing business in Texas located at 98 San Jacinto Blvd., Suite 900, Austin, Texas 78701, Phone number: (512) 472-3400. Navigant Consulting (PI) LLC's registered agent is Corporation Service Company, 211 E. 7th Street, Suite 260, Austin, Texas 78701.

Substance of Testimony the Robertsons Expect to Elicit

The Robertsons seek to elicit testimony from the corporate representative(s) of Navigant Consulting (PI) LLC concerning: (1) the investigation and analysis respecting the deployment of Landis+Gyr Smart Meters in the Oncor service area; (2) the testing and investigation performed relating to the Landis+Gyr Smart Meters in order to generate the Report; (3) the analysis and conclusions associated with the Landis+Gyr Smart Meters discussed in the Report; (4) the noted manufacturing defects in the Report associated with the Landis+Gyr Rev D Smart Meters; (5) the noted manufacturing defects in the Report associated with Landis+Gyr Rev G Smart Meters; (6) the noted "2118 Error Codes" associated with the Landis+Gyr Smart Meters discussed in the Report; (7) the "secondary issues" of Landis+Gyr Smart Meter failures noted in the Report; (8) the specific names, address and phone numbers of consumers who received a defective Landis+Gyr Smart Meter; and (9) the specific names, addresses and phone numbers of consumers who were overbilled due to a defective Landis+Gyr Smart Meter.

The Robertsons' Reasons for Desiring to Obtain Testimony

The Robertsons seek this deposition to investigate a potential claim or suit and to obtain testimony for use in an anticipated suit. Allowing the Robertsons to take the requested deposition may prevent a failure or delay of justice in an anticipated suit. Further, the likely benefit of allowing the Robertsons to take the requested deposition outweighs the burden or expense of the procedure.

Corporate Representative of Oncor Electric Delivery Company, LLC

Oncor Electric Delivery Company, LLC is a company organized and doing business in the State of Texas. It is located in Dallas County, Texas at 1601 Bryan Street, Dallas, Texas 75201, phone number: 888-313-6862. Oncor's registered agent is C.T. Corporation System, 350 North St. Paul Street, Dallas, Texas 75201.

Substance of Testimony the Robertsons Expect to Elicit

The Robertsons seek to elicit testimony from the corporate representative(s) of Oncor Electric Delivery Company, LLC concerning: (1) the investigation and analysis respecting the deployment of Landis+Gyr Smart Meters in the Oncor service area; (2) the testing and investigation performed relating to the Landis+Gyr Smart Meters associated with the Report; (3) the analysis and conclusions associated with the Landis+Gyr Smart Meters discussed in the Report; (4) the noted manufacturing defects in the Report associated with the Landis+Gyr Rev D Smart Meters; (5) the noted manufacturing defects in the Report associated with Landis+Gyr Rev G Smart Meters; (6) the noted "2118 Error Codes" associated with the Landis+Gyr Smart Meters discussed in the Report; (7) the "secondary issues" of Landis+Gyr Smart Meter failures noted in the Report; (8) the specific names, address and phone numbers of consumers who received a defective Landis+Gyr Smart Meter; (9) the specific names, addresses and phone numbers of consumers who were overbilled due to a defective Landis+Gyr Smart Meter; and (10) the specific measures Oncor has undertaken to remedy the erroneously high bills resulting from the defective Landis+Gyr Smart Meters.

The Robertsons' Reasons for Desiring to Obtain Testimony

The Robertsons seek this deposition to investigate a potential claim or suit and to obtain testimony for use in an anticipated suit. Allowing the Robertsons to take the requested deposition may prevent a failure or delay of justice in an anticipated suit. Further, the likely benefit of allowing the Robertsons to take the requested deposition outweighs the burden or expense of the procedure.

Corporate Representative of Landis+Gyr, Inc.

Landis+Gyr, Inc. is a corporation organized in the State of Delaware that does business in the State of Texas. It has headquarters at 30000 Mill Cree Ave., Suite 100, Alpharetta, Georgia 30022 with a phone number of (678) 258-1500. It also has headquarters at 2800 Duncan Road, Lafayette, Indiana 47904 with a phone number of (765) 742-1001. Landis+Gyr, Inc.'s registered agent in Texas is Corporation Service Company, 211 E. 7th Street, Suite 620, Austin, Texas 78701

Substance of Testimony the Robertsons Expect to Elicit

The Robertsons seek to elicit testimony from the corporate representative(s) of Landis+Gyr, Inc. concerning: (1) the investigation and analysis respecting the deployment of Landis+Gyr Smart Meters in the Oncor service area; (2) the testing and investigation performed relating to the Landis+Gyr Smart Meters in connection with the Report; (3) the analysis and conclusions associated with the Landis+Gyr Smart Meters discussed in the Report; (4) the noted manufacturing defects in the Report associated with the Landis+Gyr Rev D Smart Meters; (5) the noted manufacturing defects in the Report associated with Landis+Gyr Rev G Smart Meters; (6) the noted "2118 Error Codes" associated with the Landis+Gyr Smart Meters discussed in the Report; (7) the "secondary issues" of Landis+Gyr Smart Meter failures noted in the Report; (8) the specific names, address and phone numbers of consumers who received a defective Landis+Gyr Smart Meter; (9) the specific names, addresses and phone numbers of consumers who were overbilled due to a defective Landis+Gyr Smart Meter; and (10) prior instances of deployment of Landis+Gyr Smart Meters in other locales that manifested defects resulting in meters running too fast and consumers being overbilled for electricity consumption.

The Robertsons' Reasons for Desiring to Obtain Testimony

The Robertsons seek this deposition to investigate a potential claim or suit and to obtain testimony for use in an anticipated suit. Allowing the Robertsons to take the requested deposition may prevent a failure or delay of justice in an anticipated suit. Further, the likely benefit of allowing the Robertsons to take the requested deposition outweighs the burden or expense of the procedure.

IX. Request for Court Order and Other Relief

In accordance with Rule 202 of the TEXAS RULES OF CIVIL PROCEDURE, the Robertsons respectfully request that the Court set a date for hearing on this Petition, and after the hearing, enter an Order permitting the Robertsons to take the depositions of the persons named in this Petition.

In accordance with Rule 202.4 of the TEXAS RULES OF CIVIL PROCEDURE the Robertsons request that the Court find as follows: (1) That allowing them to take the requested depositions may prevent a failure or delay of justice in an anticipated suit; and/or (2) The likely benefit of allowing the Robertsons to take the requested depositions to investigate a potential claim outweighs the burden or expense of the procedure.

The Robertsons also specifically request that, in accordance with Rules 199.2(5) and 202.5 of the TEXAS RULES OF CIVIL PROCEDURE, the Court Order the deponents to produce, at their respective depositions, documents or tangible things within the scope of discovery and within Respondents' possession, custody, or control that relate to the topics associated with their respective depositions. A delineation of the requested items associated with each deposition will be furnished to the deponents prior to the depositions in accordance with the Texas Rules of Civil Procedure.

The Robertsons also requests all other relief to which they may be entitled.

Respectfully submitted,

BERENT & WILSON, LP



JASON M. BERENT

Bar Card No. 24027143

MICHAEL S. WILSON

Bar Card No. 24008285

7557 Rambler Road, Suite 560

Dallas, Texas 75231

(214) 692-5800

FAX NO. (214) 692-5806

**ATTORNEYS FOR PETITIONERS
SGT. JOHN ROBERTSON AND KIM
ROBERTSON**

CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing instrument was forwarded to the following persons and entities as indicated below on November 10, 2010 Via Certified Mail. Return Receipt Requested and Via First Class Mail, in accordance with the applicable TEXAS RULES OF CIVIL PROCEDURE, as follows:

Mr. Todd Lester
Navigant Consulting, Inc.
98 San Jacinto Blvd., Suite 900
Austin, Texas 78701
Phone number: (512) 493-5420

Navigant Consulting, Inc.
ATTN: President and CEO
98 San Jacinto Blvd., Suite 900
Austin, Texas 78701

Navigant Consulting, Inc.
c/o Corporation Service Company
211 E. 7th Street, Suite 260
Austin, Texas 78701.

Navigant Consulting (PI) LLC
ATTN: Managing Member
98 San Jacinto Blvd., Suite 900
Austin, Texas 78701

Navigant Consulting (PI) LLC
c/o Corporation Service Company
211 E. 7th Street, Suite 260
Austin, Texas 78701.

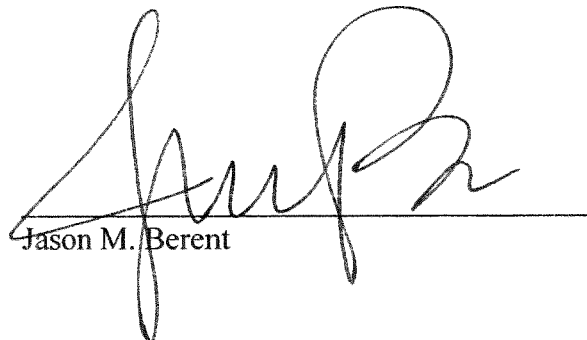
Oncor Electric Delivery Company, LLC
ATTN: Managing Member
1601 Bryan Street
Dallas, Texas 75201

Oncor Electric Delivery Company, LLC
c/o C.T. Corporation System
350 North St. Paul Street
Dallas, Texas 75201

Landis+Gyr, Inc.
ATTN: President and CEO
30000 Mill Cree Ave., Suite 100
Alpharetta, Georgia 30022

Landis+Gyr, Inc.
ATTN: President and CEO
2800 Duncan Road
Lafayette, Indiana 47904

Landis+Gyr, Inc.
c/o Corporation Service Company
211 E. 7th Street, Suite 620
Austin, Texas 78701



Jason M. Berent

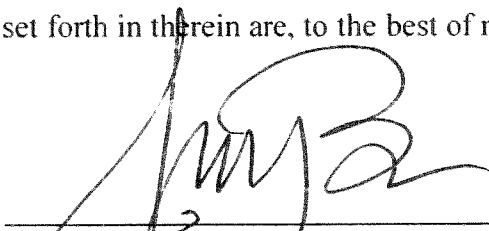
AFFIDAVIT OF JASON M. BERENT

THE STATE OF TEXAS §
COUNTY OF DALLAS §

Before me, the undersigned authority, personally appeared Jason M. Berent who, being by me duly sworn, deposed as follows:

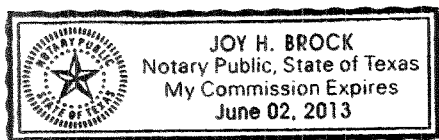
1. “My name is Jason M. Berent. I am over the age of 21, of sound mind and have never been convicted of a felony or crime involving moral turpitude. I have personal knowledge of the facts stated herein, and they are all true and correct.

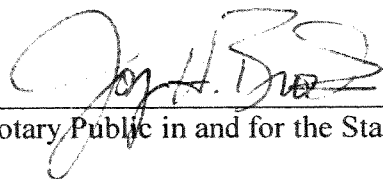
2. I am an attorney. I represent the Petitioners in connection with the Petition to Take Depositions Before Suit or to Investigate Claims (the “Petition”) to which this Affidavit is attached. As Petitioners’ attorney, I am familiar with the facts set forth in the Petition. All of the facts set forth therein are, to the best of my knowledge, true and correct.”



Jason M. Berent

SWORN TO AND SUBSCRIBED before me on November 10, 2010.





Notary Public in and for the State of Texas

