

New Jersey Litigation Confirms Electricity Is Complex

by Dennis C. Linken on June 20, 2012

It may seem simple: after all, we simply insert a plug into a wall socket, turn the switch, and *voila*, the light works! A recent New Jersey case, however, concluded that what may appear to be simple is not necessarily so.

The plaintiffs, Curtis Westover and Joyce Westover, owned property in Hillsborough, Township, New Jersey. In June 1999, the Westovers hired Gregory Scurato to perform electrical work on their barn to prepare it for electrical service to be provided by Jersey Central Power & Light Company (JCP&L). Six years later a fire broke out on the Westovers' property destroying their barn. The Hillsborough Fire Marshall, called to the scene to investigate, observed "power lines actively arcing in the rear of the building and reported having heard loud popping, hissing sounds of ... high voltage electricity grounding."

The Fire Marshall opined that the electrical supply "wires failed prior to the fire starting," and that the "arcing power line ignited the combustibles and vegetative areas." Stating that "a fire caused the cables to fall," the Fire Marshall nevertheless conceded that he did not know "what caused that break in the wire." His Inspection Report pointed to an "[a]bove ground pole-mounted electrical supply line [that] failed causing arcing and sparks," and concluded that "[t]he cause of this fire has been determined to be: Arcing electrical equipment." The Fire Marshall further testified in a deposition that "although he had an opinion as to how the fire started, he could not point to an 'exact scientific cause.'"

In July 2007, the Westovers filed a complaint in the Superior Court of New Jersey, alleging that the electrical service conductors owned and maintained by JCP&L caused the fire. They offered three theories of liability: negligence; strict liability; and breach of contract.

In support of their claims, the Westovers produced two expert reports authored by a professional engineer. JCP&L, however, moved to suppress the engineer's reports and to preclude his testimony at trial. JCP&L's contention was that his conclusion amounted to "net opinions," as they failed to contain a necessary factual basis. The company argued that to withstand scrutiny, the reports required an adequate basis on which to support the engineer's conclusions.

The trial court agreed and precluded the engineer's testimony on the basis that his reports constituted inadmissible net opinions. The court concluded that the expert reports contained only conclusions, "none of which were [sic] adequately supported." As a result, JCP&L moved for summary judgment, first on the plaintiffs' negligence and strict

liability claims, and later on the breach of contract contention. JCP&L contended that “electricity is a complex instrumentality requiring expert testimony ...” and that an expert was necessary “to establish that the electricity itself, or the electrical service conductor, was defective.” In response, the plaintiffs argued that an expert was not necessary to prove their negligence claim and that they should prevail on a strict liability theory “because the electricity was in the ‘stream of commerce.’” The Westovers further pointed to JCP&L’s filed tariff as establishing a duty of care, allegedly violated by JCP&L, and as establishing an agreement allegedly breached by JCP&L.

The trial court agreed with JCP&L, reasoning that expert testimony was required “[d]ue to the highly technical and complex nature of plaintiffs’ claims ...” and that the case involved “a complex instrumentality....” Affirming its prior conclusions that the expert reports should be barred as net opinions, as they failed to contain an adequate factual foundation, the Court granted summary judgment on all counts.

The case then proceeded to the Appellate Division, which affirmed the trial court, primarily on a *de novo* review. The Appellate Court agreed that the engineer’s reports should be barred as they constituted “classic net opinions because they fail to systematically explain how and why the short circuit occurred. Are we to assume that short circuits occur spontaneously? If not, what was it about [JCP&L’s] alleged lack of maintenance ... that contributed to the happening of a short circuit.”

Further questions posed by the Court were telling: “For example, was the electrical service conductor composed of an inappropriate material; did the structure of the electrical service conductor fail due to premature environmental stressors or other outside forces; and what, exactly, is a short circuit?” The Appellate Court concluded that “[t]he Westovers’ grievances focus on complex electrical issues ...” and that expert testimony was therefore needed to establish liability on their negligence and strict liability counts. The existence of the fire and “the mere fact that damage occurred” as a result was not enough.

Similarly, as to the plaintiffs’ New Jersey breach of contract claim, the Appellate Court pointed to a lack of evidence of a breach and the need for an expert’s report to provide support as to “‘how an electric company ... provide[s] ... electricity, and how it maintains its equipment or facilities.’”

Evidently, what sometimes may appear to be simple may not on close examination be so simple after all.