

Despite stark facts, power line cases can be complex

By MARK McGRATH

When people or the equipment they are using come into contact with overhead power lines, tragedy is the inevitable result. Even when victims survive such incidents, electricity inflicts horrific damage upon the human body, causing severe burns, tissue necrosis and even limb loss. >

Even more tragic is the fact that virtually all power line incidents are preventable. Only rarely is an individual injured or killed by contacting a power line in the absence of negligence on the part of someone, be it an electricity provider, a property owner, the victim himself or some other responsible party.

NATURE OF THE DUTY OWED

Public utilities, electric membership cooperatives, municipalities and others who provide electrical service are held to a high standard of care under North Carolina law. Given the dangers associated with electricity, suppliers of electricity owe "the highest degree of care" to members of the public.

Providers of electricity are required to exercise reasonable care in the construction and maintenance of their power lines when they are positioned in locations where they are likely to come into contact with members of the public. Our courts have recognized that because electricity is an "inherently dangerous" commodity, suppliers of electricity must exercise the "highest degree of care" and the utmost diligence, prudence, care and foresight in constructing, maintaining and inspecting their power lines.

With respect to parties other than electricity providers, the duty is one of reasonable care under the circumstances. This ordinary negligence standard would apply to construction workers, contractors, design professionals and property owners. Our courts have held, for example, that the owner of a movie lot had a duty to take reasonable precautions to protect workers from overhead power lines when the owner inspected the lot every day and was on the set when the telephone poles involved in the incident were dug in close proximity to the power lines.

RESPONSIBLE PARTIES

The universe of potential defendants in a power line contact case is a broad one. Providers of electricity are predictably the most likely defendants in such a case. Other potential defendants are less obvious.

Many electrical injuries occur during construction projects. Typical misadventures involve forklifts, cranes, scaffolding and ladders that contact power lines. In construction cases, general contractors, subcontractors, project managers and other construction personnel are required to take reasonable measures to protect workers on the site from coming into contact with power lines, and they will be held legally responsible when they fail to do so. In these cases, the now well-established multi-employer work site doctrine will be helpful in proving negligence against general contractors and others who are in a position to enforce observance of safety standards on the project site. Engineers, architects, project managers and design professionals who inspect work and assume a supervisory role on construction projects will also be subject to a duty of reasonable care.

BASIS OF LIABILITY

As in any negligence case, plaintiffs are required to prove that the defendant departed from the applicable standard of care. As to providers of electricity, this will typically involve proving that the defendant negligently constructed, installed or maintained its lines or failed to take proper precautions to prevent contact with them. For example, a public utility will be liable when a power line contact is the product of inadequate clearances between the power line and the ground or adjacent structures. These clearances are established by the National Electrical Safety Code, which sets highly detailed clearance requirements for power lines according to the current that the lines carry. When providers of electricity know or should know that construction work or other activities are being performed in close proximity to power lines, they are required to take reasonable measures to prevent a contact injury. Such measures could include insulation of the lines, temporary de-energizing of the lines and the installation of insulated barriers to protect workers from coming into contact with energized lines.

With respect to other potentially responsible parties, the measures to be taken will vary with the circumstances. For example, a property owner who knows that power lines pose a danger to children climbing trees near the lines would be under a duty to report the danger to the owner of the lines, take measures to prevent children from playing on the lines, provide warnings or even take the tree down. A general contractor on a work site where overhead lines are present would be under a duty to enforce applicable safety standards and inspect work sites to ensure that work is not being performed in dangerous proximity to energized lines.

Statutes and applicable standards also come into play and may even give rise to a claim for negligence per se. North Carolina has also enacted the Overhead High-Voltage Line Safety Act. Among other things, the act prohibits performing work within 10 feet of energized lines without first notifying the lines' owner. Upon receipt of such notice, the owner is required to take specified precautionary safety measures to minimize or eliminate the risk of electrical injury while people are performing the work. These measures include placement of temporary mechanical barriers, temporary de-energization and grounding and temporary relocation and elevation of the lines. Curiously, the act provides that its provisions do not create a cause of action and that a violation of the act does not constitute negligence or contributory negligence. It further provides that violations of the act by one party will not relieve other responsible parties from liability for violations of existing standards. Because the courts have not yet had occasion to interpret the provisions of the act, the manner in which it will be applied in power line contact cases, if it applies at all, remains very much in doubt.

Many other industry and safety standards can also come into play in power line contact cases. These include, for example, the rules in Chapter 29 of the Code of Federal Regulations. Perhaps most relevant are the regulations set forth in Title 29, Chapter 1926, which prescribe safety standards for construction work. These regulations provide detailed requirements for work that is performed in proximity to energized electrical equipment, including overhead power lines. The regulations provide, for example, that work on elevated scaffolding cannot be performed within specified distances of power lines, the distance varying with the electrical load carried by the lines.

In some cases, other areas of the law might come into play. For example, if a boat or other vessel contacts an overhead power line while operating in navigable waterways, the law of admiralty will apply. In addition, Army Corps of Engineers permits are required for power lines that span navigable waters. These permits contain detailed provisions regarding the clearances permitted between the lines

and bridges, the water surface and other objects, and establish conditions of permit approval. These permits, together with the entire permitting file, need to be reviewed in such cases.

CONCLUSION

Power line contact cases typically involve catastrophic injuries. As a result, they can be attractive prospects for plaintiff attorneys. Despite their cosmetic factual simplicity, these claims implicate issues and entire bodies of law that can be fairly esoteric and not necessarily intuitive to those who have not handled them previously. Careful factual research, familiarity with the applicable legal framework and attention to detail are critical to success in these challenging cases.