Unit 8: Negligence

Slide 1

Negligence

The different levels of negligence will play an important role during your investigation and the final outcome of your case. You will need to establish the basis for negligence through evidence, experts, records, etc. that will show the electric utilities duty to exercise reasonable care, the breach of that duty, and that the breach was the proximate cause of the injury or damage.

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Objective

Describe the different categories of Negligence and evidentiary requirements needed for each.

Know the different categories of Negligence and evidentiary requirements needed for each.

Slide 3

Objective

Describe the how these requirements may be applicable to the construction, maintenance, inspection, and operations of an electric utility.

Know how these requirements may be applicable to the construction, maintenance, inspection, and operations of an electric utility.
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“Negligence Definition”

A failure to exercise the care which a reasonably prudent person would do under similar circumstances – or doing of something which a reasonably prudent person would not do.

Make the following key points:

- Although a person’s knowledge, experience, and perception are taken into account for determining negligence, most people are considered to have knowledge of basic facts commonly known in the community – that live electrical wires are dangerous.
- An employee within the electrical utility company must know the characteristics and dangers of its product, at least to the extent they are generally known in the industry – “Industry Standards”.

Slide 5

“Ordinary Care Definition”

Ordinary or reasonable care is that care which persons of ordinary prudence would use in order to avoid injury to themselves or others.

Make the following key points:

- Please note that the basis of this definition establishes the standard person is NOT the extraordinary cautious individual, nor the exceptionally skillful one, but a person of reasonable and ordinary prudence. (BAJI 3.10)
Unit 8: Negligence

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“Case Definition”

“It may be safely said that on the basis of past experience it is a matter of common knowledge that a forest fire [i.e., a wildfire] does not ordinarily happen unless someone has been negligent.”


Make the following key points:

- The establishment of electric utility facilities and equipment within the wildland environment is not within itself hazardous.
- However, not examining the foreseeable environmental conditions that the facilities and equipment will be exposed to, following the required installation methodologies based on those foreseeable conditions, conducting frequent inspections of and maintaining the equipment and facilities in good working order, and anticipating vegetative growth patterns and other conditions that would impact the system would constitute simple negligence.

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“Case Definition”

Failure to anticipate that during high winds that power lines might break or otherwise cause a short circuit that could ignite nearby combustible, untrimmed vegetation growing in close proximity to its distribution facilities and lines, as in this instant case, must be deemed to be negligence


Make the following key points:

“Don’t Look – Don’t Ask – Don’t Tell” doesn’t work here!!!
Unit 8: Negligence

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<table>
<thead>
<tr>
<th>Categories</th>
</tr>
</thead>
<tbody>
<tr>
<td>Simple Negligence</td>
</tr>
<tr>
<td>Negligence, per se</td>
</tr>
</tbody>
</table>

Make the following key points:

- When an unexcused violation of a fire safety statute results in the very harm the statute was designed to protect against, the violator is deemed “negligent as a matter of law”. *(Travelers Indemnity Company v. Titus (1968) 265 Cal.App.2d 515,517; accord, Polk v. City of Los Angeles, supra, 26 Cal.2d at 542)*

Slide 9

<table>
<thead>
<tr>
<th>Categories</th>
</tr>
</thead>
<tbody>
<tr>
<td>Res ipso loquitur</td>
</tr>
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</table>

Make the following key points:

- Within your jurisdictional area there should be similar categories of negligence.
- Check with your appropriate legal counsel for specifics.
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**Application to Electric Utility Situations**

**Construction and Installation**

- **Duty:** Designed to meet foreseeable conditions
- **Breach:** Failed to properly plan for conditions
- **Proximate Cause:** Foreseeable wind broke crossarm

**Span length allowed sag into vegetation**

Make the following key points:

- Duty in Handling Electricity: “The exercise of ordinary care by those charged with the maintenance of wires and other facilities for transmitting electricity requires efficient insulation be used and maintained at all places where there is a probability of injury to person or property from contact with transmission lines and facilities if not so insulated. In installing, maintaining and supervising electric transmission lines and facilities, caution commensurate with existing danger is required.” (BAJI 3.42)

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**Application to Electric Utility Situations**

**Maintenance**

- **Duty:** Maintain system as designed
- **Breach:** Failed to incorporate maintenance program
- **Proximate Cause:** Crossarm degraded and broke

**Tie wires corroded causing line to fall**

Make the following key points:

- Insulators not cleaned of debris accumulation.

- Connector pin holes rounded out by movement of insulator pin over extended time period – Hardware separated from arm – line drop.
Unit 8: Negligence

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Application to Electric Utility Situations

Inspections
- Duty: Monitor system for changes in conditions
- Inspectors properly trained – reporting system
- Breach: Reported deficiencies not corrected – timely
- Inspections failed to recognized deficiencies
- Proximate Cause: Deficiency caused circuit outage
- Vegetation in violation not reported

Make the following key points:

- Training, frequency, efficiency, documentation.

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Application to Electric Utility Situations

Vegetation Clearance
- Duty: Incorporate vegetation clearance program
- Maintain standard clearance requirements
- Breach: Clearance crews do not clear vegetation
- Clearance program insufficient for growth
- Proximate Cause: Foreseeable wind broke crossarm
- Vegetation allowed to encroach into line/pole

Make the following key points:

- When a sagging power line came within arcing distance of vegetation, it was proper to apply the doctrine of res ipsa loquitur Phillips v. Southern California Edison Co., Ltd. (9137) 23 Cal.App.2d 222, 225; and, “[t]he accident itself proves that [the clearance] was not sufficient, res ipsa loquitur” [Italics in original ruling] Anstead v Pacific Gas & Electric Co., supra, 203 Cal. 639
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Application to Electric Utility Situations

Operations

Duty: Operate system in a safe and reliable manner
Incorporate additional safety measures for known problems or during extreme fire weather conditions
Breach: System overloaded because of demand
Safety requirements or features overridden
Proximate Cause: Additional load cause greater line sag
Lack of proper safety measures allowed power surge

Make the following key points:

➢ If it can be shown that the utility has experienced several outages in the past caused by birds or animals on a particular circuit and they have not incorporated available safety features, squirrel guards, insulation on perch areas, installing anti-perch hardware or perch platforms; negligence can be shown.

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Knowledge Check

In order to show negligence on the part of an electric utility, the investigation must show that the utility:

A. Owed a duty
B. Breached that duty
C. The breach was the proximate cause of the incident
D. All of the above

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A. Owed a duty
B. Breached that duty
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D. All of the above

The correct answer is: D.

The fire investigator must be able to prove that the utility had a duty to perform, that they breached that duty, and that the breach was directly related to cause of the fire.
Unit 8: Negligence

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Knowledge Check

To apply the principle of Negligence per se the offending party must have:
A. Failed to exercise reasonable care
B. Breached a duty to perform
C. Violated a statute, ordinance, or safety order that caused the incident
D. Failed to have the knowledge, experience, or skills to perform the job

To apply the principle of "Negligence per se" the offending party must have:
A. Failed to exercise reasonable care
B. Breached a duty to perform
C. Violated a statute, ordinance, or safety order that caused the incident
D. Failed to have the knowledge, experience, or skills to perform the job

The correct answer is: C.

Negligence per se is "negligence as a matter of law" and is applicable when an unexcused violation of a fire safety statute, ordinance, or regulation results in the very harm the requirement was designed to protect against.

TRANSITION to Unit 9: Records and Information.