

Avoid Personal Injury Suits by Identifying Roles, Duties and Obligations

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In the initial planning stage of a construction project, it is extremely important to explicitly identify the roles, duties and obligations of every party, otherwise your company could be held liable in a personal injury suit.

The decision of *Jesko v Consume's Energy Company* (Michigan Court of Appeals, July 21, 2005) held that a construction worker, who received an electrical shock when the long aluminum handle of the tool he was using touched an overhead wire, cannot sue either the architect or the power company for his injuries.

In *Jesko*, the plaintiff worked as a subcontractor and, at the time of the incident, was smoothing concrete for a roof of a three-story building with the assistance of a "bull float," which was a large flat rectangular piece of wood attached to a metal handle that could be extended to 18 feet in length. The plaintiff was working next to a utility pole (located close to the construction site) that had been relocated by the power company. The utility pole stood approximately thirty-five feet above ground and ten feet away from what would become the west wall of the building. About a week prior to the incident, the general contractor had erected a scaffold, the closest edge of which was approximately eight feet from the wire.

The accident occurred when the plaintiff was in a backstroke of smoothing concrete for the roof and the bull float touched the wires connected to the electrical pole behind him. Although the plaintiff admitted it was necessary to avoid the wires while performing his work, he filed a negligence suit against, among others, the general contractor and the power company for injuries arising out of the accident.

With respect to the architect, the *Jesko* court looked to the contract documents to ascertain the duties assumed under the contract. The court concluded that the architect, while it was paid a fee for a fulfilling a supervisory role, had absolutely no duty under the contract to inspect construction, nor did it have the authority to stop work. The court also noted that the architect did not have actual knowledge that workers would be within a zone of danger.

Moreover, the wire was relocated after the architect designed the building and construction commenced. Relocation fell under the purview of the power company and the general contractor. Any "approval" of the relocation of the architect reflected only in approval of payment, not of the specific location. Most importantly, the court relied on the general conditions, which were incorporated into the contract governing the construction project. The general conditions clearly provided that the contractor was "responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the work."

Significantly, the contract further provided that the general contractor, not the architect, was to notify the "owners of adjacent property and of underground facilities and utility owners when prosecution of the

work may affect them and cooperate in the protection, removal, and relocation and replacement of their property.”

With respect to the power company, the court similarly concluded that it owed no duty to the plaintiff. The court believed that the power company could not reasonably foresee the kind of injury that the plaintiff suffered.

The overhead power lines were placed before construction began and the city engineer approved the location of the power lines. The power company was not provided blueprints of the construction project, nor was it invited to take part in any of the construction meetings.

In addition, the power company was never asked to shut off the power to the overhead lines in question, nor did anyone request that the lines be covered with protective sleeves.

The court concluded that the power company had no way of knowing that anyone would build a scaffold within 10 feet of the power line in question and that it had no way of knowing that someone would use a bull float with a conductive handle in close proximity to the power lines. The court relied on the fact that the plaintiff and his fellow employees were made aware of the power lines and the fact that the plaintiff himself testified that he knew where the lines were.

The *Jesko* case emphasizes the importance of explicitly identifying the roles, duties and obligations of every party to a construction project. Clearly, the *Jesko* court relied heavily on the contract documents, including the general conditions, to conclude that neither the architect nor the power company undertook any supervisory role or duties relating to the relocation of the power line which caused the plaintiff's incident.