



GBW | OUR METHOD FOR SUCCESS

HOW DID YOU
WIN THAT CASE?

**\$4.7 MILLION GENERAL
DAMAGES VERDICT**

ELECTROCUTION WRONGFUL DEATH

*Estate of Pablo Padilla Ayala vs.
Southern California Edison Company*
Holding a Public Utility Accountable
For High-Voltage Power Line Electrocution

PRESENTERS



Robert D. Jarchi

is a partner at Greene Broillet & Wheeler, LLP who was named as one of the “Best Lawyers in America” in the “Best Lawyers” 2016-2020 editions identifying top attorneys nationwide. Robert was also named one of the “Top 100 Civil Plaintiff Trial Lawyers” by the “National Trial Lawyers” organization in 2016-2020, and was selected as a Southern California “Super Lawyer” for the years 2014-2020. Robert was honored by the Los Angeles Daily Journal as a “Top 20 Under 40” attorney in the State



Molly McKibben

is a partner with expertise in catastrophic personal injury, wrongful death, and product liability on behalf of consumers. Molly has made the list of “Up and Coming Top 50 Women Lawyers” from 2016 through 2020, a “Top 100: Personal Injury” attorney from 2017 through 2020, and a Rising Star from 2015 through 2020 for Southern California by Super Lawyers Magazine. Molly is one of Daily Journal’s 2020 Top 40 Under 40 and was chosen as CAOC’s Consumer Attorney of



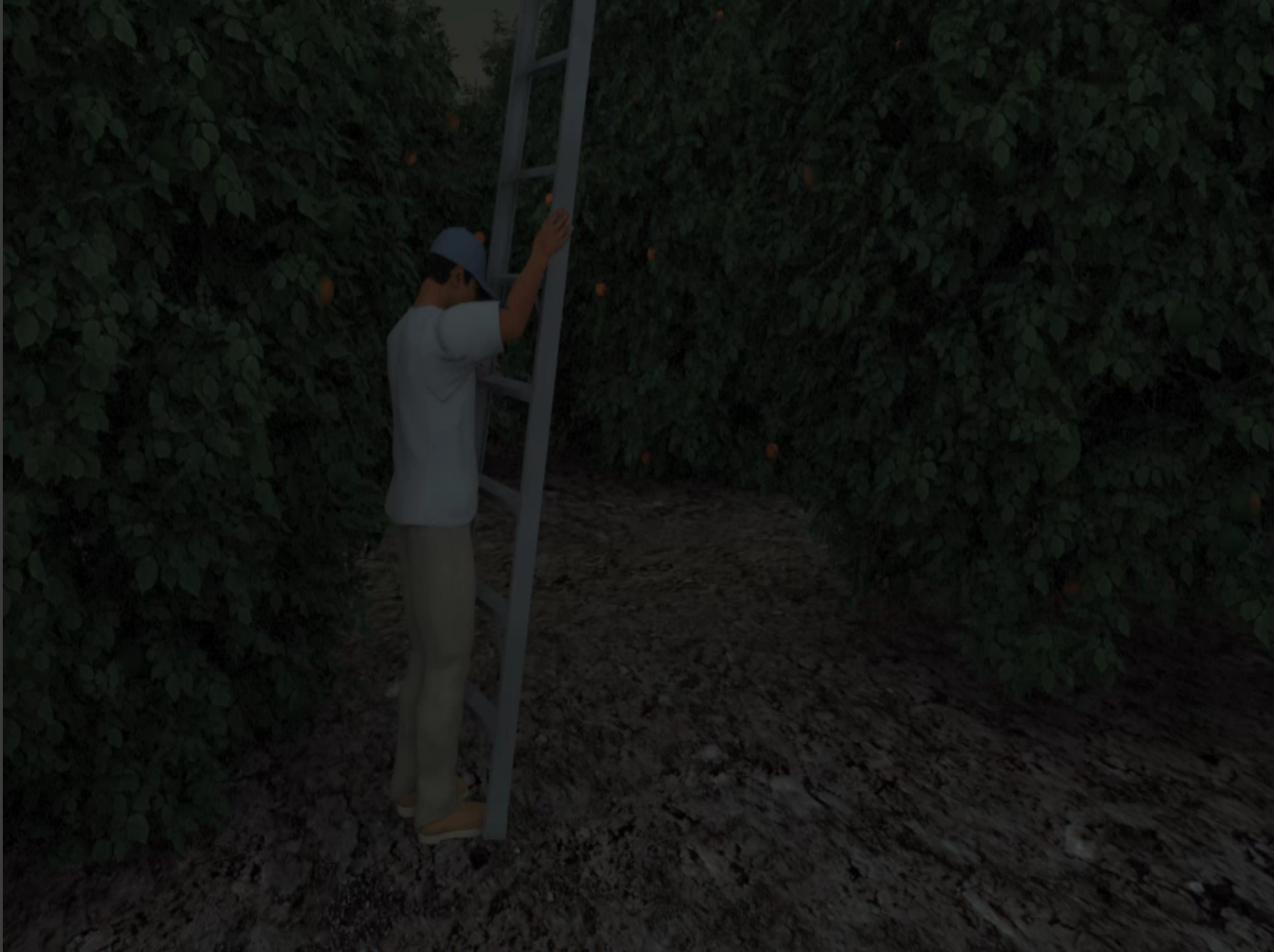
Christian Nickerson

is a trial attorney specializing in employment litigation, business litigation, catastrophic personal injury, and wrongful death cases. He has achieved over \$160 million in jury verdicts and negotiated settlements on behalf of clients and is a two-time finalist for CAOC’s Consumer Attorney of the Year Award. Christian was named Top 40 under 40 by the National Trial Lawyers and recognized as a Southern California Rising Star, 2015 – 2020.

The Incident - What Happened?

- **Pablo Padilla Electrocuted**
 - Experienced fruit harvester
 - Picking grapefruit from trees with a 20 foot ladder at 5:20 a.m.
 - Three Power lines measured at 18'10", 21'5", & 22'4"
 - Ladder contacted 12KV high voltage power transmission line.





SCE Liability **Defenses**

- **Power lines heights were safe – 20 foot ladder unforeseeable & unnecessary**
- **Power lines complied with Public Utilities Commission Rules**
- **Blame others & decedent**

SCE Damages “**Defenses**” & Case Challenges

- **Conservative jurisdiction**
- **Very low economic damages**
- **National origin, class, race bias**
- **Migrant worker – absent husband & father**

Result

- **\$4,745,000 General Damages Verdict**
- **SCE 80% responsible**
 - **Employer 15% responsible**
 - **Harvest Supervisor (S&R) 5% responsible**
 - **Decedent 0% responsible**

SCE: Liability **Defenses**

- **Power lines heights were safe – 20 foot ladder unforeseeable & unnecessary**
- **Power lines complied with Public Utilities Commission Rules**
- **Blame others & decedent**

SCE Defense: Power Line Height “Safe”

- Poles like this are everywhere - can't control people unsafely using cranes, lifts, ladders near lines
- Employer and decedent's fault for using unnecessarily high 20 foot high ladder on 10-12 ft high trees, not foreseeable.





Our Theories of Liability

CACI 416 – SCE’s Heightened Duty

Instruction
No. 30

People and companies must be very careful in constructing, insulating, inspecting, maintaining, and repairing power lines and transmission equipment at all places where it is reasonably probable that they will cause harm to persons or property.

SCE PMQ Testimony

- **SCE has known since 1980s of dangers of power lines over orchards and foreseeable ladder use.**
 - TR 6/16/15, 33:4-10
- **SCE has known since 1980s harvesters arrive in early morning hours**
 - TR 6/16/15, 35:18-23
- **Knew risk was death or serious injury to harvesters**
 - TR 6/16/15, 33:11-15
- **Aware of Avocado picker with limbs amputated**
 - TR 6/16/15, 34:2-6



SCE's Heightened Duty

Instruction
No. 30

People and companies must be very careful in constructing, insulating, inspecting, maintaining, and repairing power lines and transmission equipment at all places where it is reasonably probable that they will cause harm to persons or property.

3 Separate Verdicts against SCE for Negligence:

- 1) Power Line Height Unsafe
- 2) Trees Not Trimmed/Remediated
- 3) Negligence Per Se (Regulation Violation)

SCE's Heightened Duty

Instruction
No. 30

People and companies must be very careful in constructing, insulating, inspecting, maintaining, and repairing power lines and transmission equipment at all places where it is reasonably probable that they will cause harm to persons or property.

3 Separate Verdicts against SCE for Negligence:

1) Power Line Height Unsafe

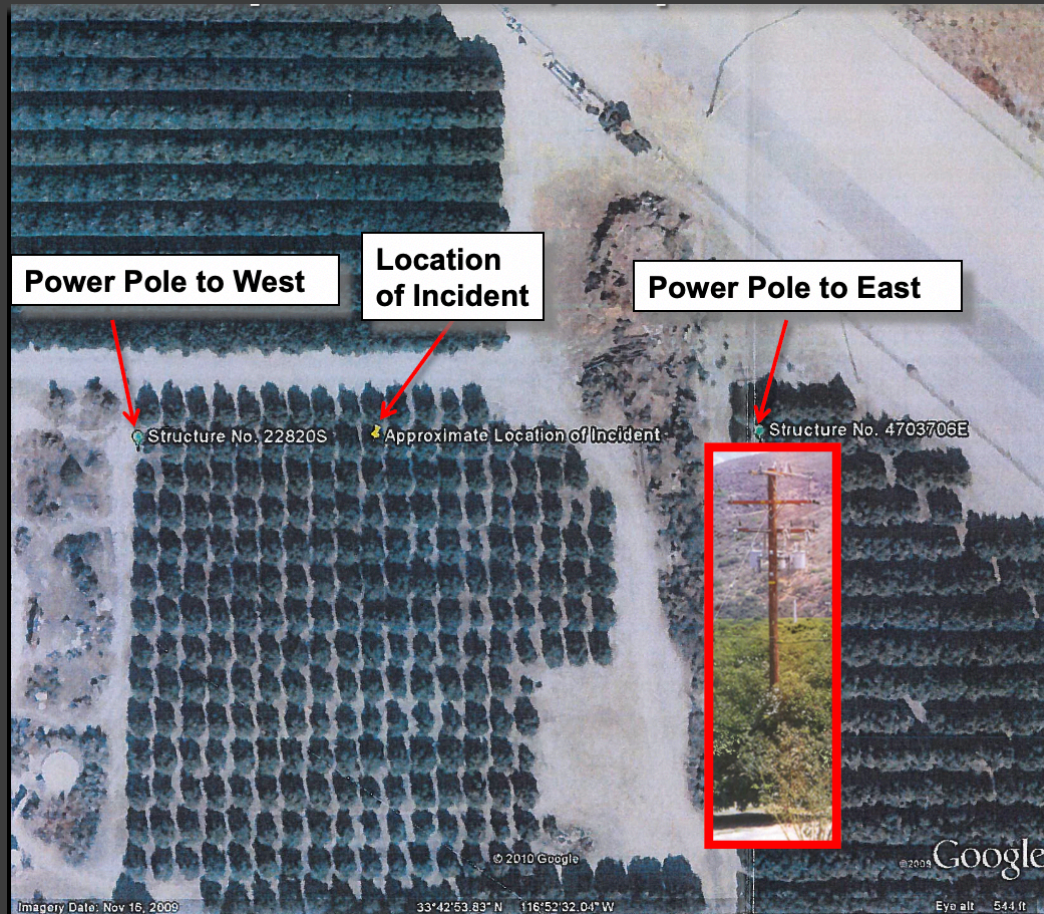
2) Trees Not Trimmed/Remediated

3) Negligence Per Se (Regulation Violation)

SCE Mr. Pallante Testimony

- SCE Planner of subject pole replacement 2009

(TR 6/9/15, 87:9-13)



15

SCE Planner Mr. Pallante Testimony

- **Identified grapefruit trees as a hazard 2 ft below lines**
(TR 6/9/15, 95:12-25; 96:6-21, 98:28-100:1)
- **Remediated hazard by designing lines to be raised to 25 ft minimum clearance to prevent injury/death**
(TR 6/9/15, 98:17-27, 102:25-28)
- **Didn't put minimum clearance in plan** (TR 6/9/15, 106:8-25)
- **Never inspected work** (TR 6/9/15, 108:10-17)



SCE Planner Mr. Pallante Testimony

- Identified grapefruit trees as a hazard 2 ft below lines

(TR 6/9/15, 95:12-25; 96:6-21, 98:28-100:1)

- Remediated hazard by designing lines to be raised to 25 ft minimum clearance to prevent injury/death

(TR 6/9/15, 98:17-27, 102:25-28)

- Didn't put minimum clearance in plan (TR 6/9/15, 106:8-25)

- Never inspected work (TR 6/9/15, 108:10-17)



SCE Mr. Pallante Testimony



14 "Question: And you said on the day that you went to do
15 your field inspection you were looking for potential hazards,
16 correct?

17 "Answer: Yes.

18 "Question: And so one of the potential hazards there
19 was -- there was a row of fruit trees beneath a distribution
20 line, correct?

21 "Answer: Yes."

TR 6/9/15, 96:6-21

SCE Attorney's Opening Statement

22 needed to be replaced, that corner pole. Mr. Pallante will
23 testify that he does not recall seeing any problem with the
24 elevation of the lines.

TR 6/9/15, 47:22-24

SCE Mr. Pallante Testimony



17 Q. BY MR. JARCHI: You didn't leave the power line heights
18 the way you found them, you remediated this, correct?

19 A. Yes.

20 Q. So in your plan in 2009, after you had conducted your
21 inspection, your plan was to raise the vertical clearance of
22 those power lines, right, sir?

23 A. Yes.

TR 6/9/15, 98:17-27

SCE Mr. Pallante Testimony



2 Q. BY MR. JARCHI: Now, sir, you were trained by SCE back
3 in 2006 that in any agricultural area the minimum height
4 requirement in terms of vertical clearance from the power line to
5 the ground was 25 feet, correct, sir?

6 A. Yes.

7 Q. And when we're talking about an agricultural area,
8 we're talking about things like orchards, right?

9 A. Correct.

SCE Mr. Pallante Testimony



20 Q. In your design for the pole replacement for the span
21 that was involved in Mr. Padilla's incident was that that span
22 was to have a minimum 25-foot vertical clearance at the lowest
23 point of sag, correct, sir?

24 A. Yes.

TR 6/9/15, 100:18-28

SCE Mr. Pallante Testimony



25 Q. And you know that if you don't follow that minimum
26 standard, someone might be killed or someone might get seriously
27 hurt, correct?

28 A. Yes.

TR 6/9/15, 102:25-28

Instruction
No. 30

People and companies must be very careful in constructing, insulating, inspecting, maintaining, and repairing power lines and transmission equipment at all places where it is reasonably probable that they will cause harm to persons or property.



Exhibit 201-8

25 Foot Minimum Design to Remediate Hazard

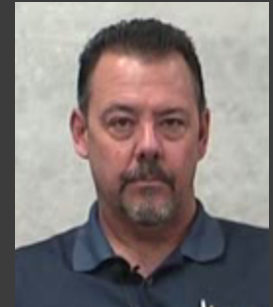
SCE Measurements:

18'10", 21'5", & 22'4"

(Tomas, TR 6/16/15, 99:3-8)

SCE Witness Testimony re Subject Line

- **SCE Troublemaker Mr. Fraijo: In 30 years lowest line ever seen above orchard.**
 - TR 6/9/15, 121:18-22
- **SCE Claim Rep. Mr. Tomas: In 10 years lowest line ever seen in agricultural area.**
 - TR 6/16/15, 97:14-17
- **SCE Troublemaker Mr. Lee: 31 years years experience, would call in 20 foot high lines over grove as a hazard**
 - TR 6/16/16, 183:13-15, 185:8-14



40 Ft. Safe Standard

25 Ft. Minimum Standard

SCE - 18'10"



Orchard Tree

Safe Height of Power Lines Above Orchards

- SCE Foreman Mr. Johnson: prior jobs 40 feet min. clearance in agricultural area
 - TR 6/17/15, 2:13-19
- Defense Consultant Mr. Spease: Last two jobs 35 feet min. clearance in agricultural area
 - TR 6/25/15, 111-112
- Utility Expert Mr. Sero: safe standard above orchard trees is 40 feet
 - TR 6/22/15, 21:8-22

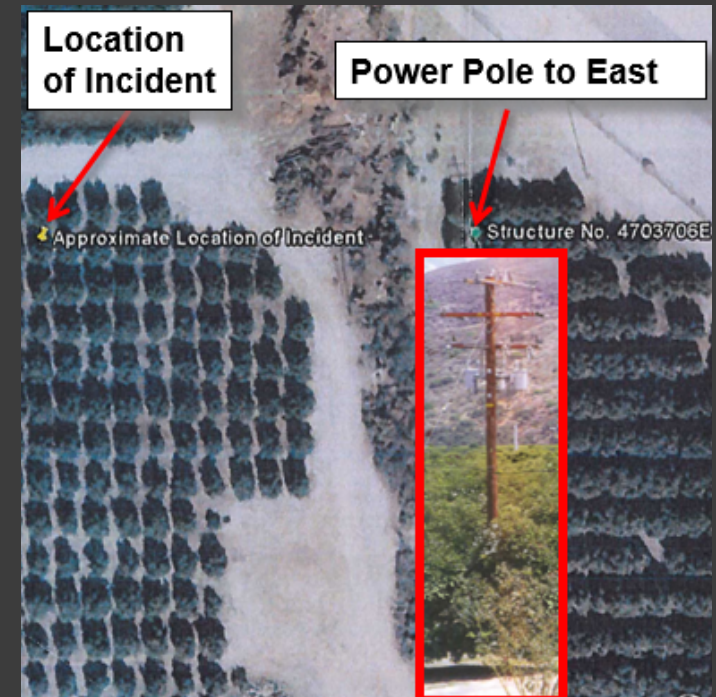


September 2009 Pole Replacement

Foreman Mr. Levan



- **No knowledge of minimum clearance standards**
 - TR 6/18/15, 100:1-6
- **One size fits all: 18 feet clearance everywhere**
 - TR 6/18/15 99:10-21
- **Eyeballed or “guessed” clearances, no tools used**
 - TR 6/18/15, 98:27-99:9, 97:22-25
- **Plan called for double cross arm, only constructed single cross arm.**
 - TR 6/18/15, 103:4-8, 103:25-28



Instruction
No. 30

People and companies must be very careful in constructing, insulating, inspecting, maintaining, and repairing power lines and transmission equipment at all places where it is reasonably probable that they will cause harm to persons or property.



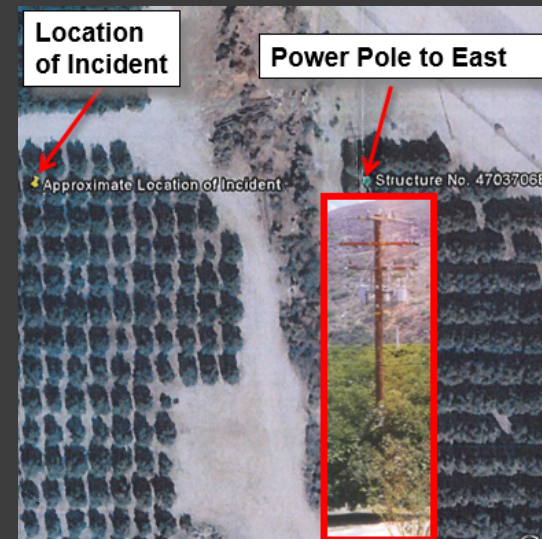
Exhibit 201-8

2009 Pole Replacement Never Inspected by SCE to Confirm 25 Feet Min Clearance for Safety

Actual Measurements:
18'10", 21'5", & 22'4"
(Tomas, TR 6/16/15, 99:3-8)

Subject Pole Broken: May 2010 Pole Repair

- Edison, Mark Johnson Foreman
 - Required to inspect all lines after repair
 - Knew lines should be 25 feet
 - TR 6/17/15, 6:2-6
 - Work done in dark, didn't inspect in daylight
 - TR 6/17/15, 19:11-15
 - Pablo Padilla Ayala killed 6 weeks later



SCE May 2010 Crossarm Repair Foreman



22 Q. Now, once you see that a crossarm is broken, what you
23 do is look at all the structures connected to that broken
24 crossarm and to the utility pole issue to see if it's affected
25 anything else that's connected to that pole, correct?

26 A. Correct.

27 Q. And that's important because if something breaks on a
28 pole, it can affect the things that are attached to it, for
1 example, the power lines, right?

2 A. Correct.

SCE May 2010 Crossarm Repair Foreman



5 Q. And you finished the whole job in the dark, you did the
6 work, and neither yourself nor anyone else from SCE, to your
7 knowledge, ever went back after you finished the work in the dark
8 to check the work in daylight to see if these 12,000-volt lines
9 hanging over an orchard were at the proper height, correct, sir?

10 A. To my best knowledge, no.

TR 6/17/15, 16:5-10



SCE May 2010 Crossarm Repair Foreman



22 Q. Okay. Well, you left the site at around 4:30, 5:00,
23 then you had to drive back to the yard, and you clocked out. At
24 that time, that was about 7:00 a.m. or so, that was 24 hours
25 consecutively?

26 A. Yes.

TR 6/17/15, 17:22-26

SCE May 2010 Crossarm Repair Foreman



3 Q. Now, SCE policy and common sense prohibits you from
4 working 24 hours straight without taking an 8-hour break, right,
5 sir?

6 A. Nowadays, yes.

7 Q. And there have been many other times where you've done
8 pole work for SCE where you've worked 24 hours straight like
9 this, working on these highly dangerous power lines, right, sir?

10 A. Yes.

11 Q. Power lines that are hanging over the public, right?

12 A. Yes.

DAILY CREW TIMESHEET

TEMPORARY UPGRADE APPROVED BY: *MD* 5/22/10

CHM: *MD*

SAP Order # *8004*
or Cost Center *91274*
80095721

TEMPORARY UPGRADE				DAILY CREW TIMESHEET																						
A	B	C	D	DATE																						
SUP2 (GP)	SUP2 (GS)	E-CREW FOREMAN 8481	OTHER:	MO	DAY	YR																				
				TOTAL HOURS																						
LINE	RATE CODE	FROM	TO	EMPLOYEE NAME	N.T.	O.T.	D.T.	N.T.	O.T.	D.T.	N.T.	O.T.	D.T.	N.T.	O.T.	D.T.	N.T.	O.T.	D.T.	N.T.	O.T.	D.T.	N.T.	O.T.	D.T.	
1		0001	0700	Johnson ✓			7																			7
2				Barney ✓																						
3				Becerra ✓																						
4				Hernandez, D ✓																						
5				Perez ✓																						

LINE	TO CODE	FROM	TO	MEDICAL REASON	LINE(S)	MEALS	LINE(S)	MEALS TAKEN	LINE(S)	MEALS TAKEN	LINE(S)	EVERGREEN
AS	0700	1530		fatigue ✓		<input type="checkbox"/> WORKED THROUGH LUNCH						4-5
						<input type="checkbox"/> EARNED LUNCH	1-5	0330	TO	0600		1-3
						<input type="checkbox"/> NO MEALS TAKEN						<input type="checkbox"/> INCLUDES TRAVEL TIME

W.O.	HRS	FROM	TO	ADDRESS OR LOCATION	DESCRIPTION OF WORK	METER ORDER / SEQ #
A	0001	0700	44996	BeaTista ex M	finished replacing set of doubles replaced traps & escorpian replaced down guy	

LINE	TO CODE	FROM	TO	MEDICAL REASON
AS	0700	1530		fatigue ✓

PLAINTIFF'S EXHIBIT 112
Johnson V. Zickler

Exhibit 172



Exhibit 201-8

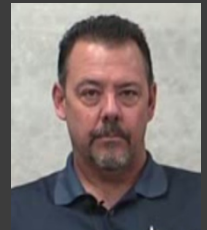
SCE Witness Testimony re Subject Line

**Three power lines had 3 ½ foot variation in height:
18'10", 21'5", & 22'4".**

(Tomas, TR 6/16/15, 99:3-8)

•**Mr. Fraijo: 30 years experience, would not find even a one foot variation acceptable.**

•TR 6/9/15, 122:8-12



•**Mr. Lee: 31 years experience, one foot variation is too much.**

•TR 6/16/15, 188:16-189:4



•**Mr. Johnson: 33 years experience, all three lines should be uniform.**

•TR 6/17/15, 10:19-23



•**Mr. Spease: more than a foot variation requires re-sag**

•TR 6/25/15, 98:16-21



SCE's Heightened Duty

Instruction

No. 30

People and companies must be very careful in constructing, insulating, inspecting, maintaining, and repairing power lines and transmission equipment at all places where it is reasonably probable that they will cause harm to persons or property.

3 Separate Verdicts against SCE for Negligence:

1) Power Line Height Unsafe

2) Trees Not Trimmed/Remediated

3) Negligence Per Se (Regulation Violation)

SCE Liability **Defenses**

- Power lines heights were safe – 20 foot ladder unforeseeable & unnecessary
- Power lines complied with Public Utilities Commission Rules
- Blame others & decedent

SCE Liability Defenses

- SCE Complied with PUC GO 95, Rule 35
 - More than 18 Inches Between Trees and Power Line

General Order 95 Section III

Requirements for All Lines

35 Vegetation Management

Where overhead conductors traverse trees and vegetation, safety and reliability of service demand that certain vegetation management activities be performed in order to establish necessary and reasonable clearances the minimum clearances set forth in [Table 1, Cases 13 and 14](#), measured between line conductors and vegetation under normal conditions, shall be maintained. (Also see [Appendix E](#) for tree trimming guidelines.) These requirements apply to all overhead electrical supply and communication facilities that are covered by this General Order, including facilities on lands owned and maintained by California state and local agencies.

13	Radial clearance of bare line conductors from tree branches or foliage (aaa) (ddd)	-	-	18 inches (bbb)	-	18 inches (bbb)
-----------	--	---	---	------------------------------------	---	------------------------------------



SCE Liability Defenses

- SCE Complied with PUC GO 95, Rule 35
 - More than 18 Inches Between Trees and Power Line

General Order 95

Section III

Requirements for All Lines

35 Vegetation Management

Where overhead conductors traverse trees and vegetation, safety and reliability of service demand that certain vegetation management activities be performed in order to establish necessary and reasonable clearances the minimum clearances set forth in [Table 1, Cases 13 and 14](#), measured between line conductors and vegetation under normal conditions, shall be maintained. (Also see [Appendix E](#) for tree trimming guidelines.) These requirements apply to all overhead electrical supply and communication facilities that are covered by this General Order, including facilities on lands owned and maintained by California state and local agencies.

13	Radial clearance of bare line conductors from tree branches or foliage (aaa) (ddd)	-	-	18 inches (bbb)	-	18 inches (bbb)
----	--	---	---	------------------------------------	---	------------------------------------

“Compliance with the general orders of the [PUC] does not establish as a matter of law due care by the power company, but merely relieves it of the charge of negligence per se. It does not affect the question of negligence due to the acts or omissions of the company as related to the particular circumstances of the case” Pegastaff v. PG&E, 239 Cal.App.4th 1303, 1321-1322 (2015).

Line Clearing Manual (LCM)

2007 ISSUE
September 28, 2007

This document is classified "Internal"
per ESM Policy 04.001.001.
SCE Internal

Copyright 2007 by Southern California Edison Company.
All rights reserved. No part of this work covered by the copyright herein may be reproduced, stored in a retrieval system, or transmitted in any form or by any means electronic, mechanical, photocopying, recording, or by any information storage and retrieval system, without the prior written permission of Southern California Edison Company.



Attachment 1: SCE Public Web Site: "Caring for Your Trees" (Sheet 1 of 8)



Home About SCE Contact Us My Account Search

Customer Service Rebates & Savings Safety Power & Our Environment Community & Recreation Doing Business

Home > Safety > Caring For Your Trees > Planting

SCE.com Log In

User Name:

Password:

Remember Me

Forgot your password?
New user? Learn more | Register

- Safety Tips
- Kids Safety
- Safety Tips for Seniors
- Bark Beetle
- Caring For Your Trees
- Planting

Caring For Your Trees

Planting

Ask These Questions When You're About To Plant A Tree

- It could save you time, money, and maybe your life!
- What is the purpose of the tree? (e.g., shade, fruit, screen)
- What benefits do you want the tree to provide?
- What is the tree's 10-year profile (size and shape)?
- What is the climate zone where the tree is to be planted?
- What are the soil conditions?
- What is the sun and wind exposure?
- What is the trunk and branch wood strength?
- Does it have invasive roots?
- How quickly or slowly does the tree grow?
- Will there be a lot of litter from twigs, fruit, flowers or leaves?
- Is the tree susceptible to pests?
- Is the tree disease-resistant?

Other Languages

• en español

Tools & Resources

To view PDF files, download Adobe® Reader®

Right Tree, Right Place Brochure

REMEMBER the "10-FOOT" rule — keep all trees, equipment and people at least 10 feet away from electric power lines! To eliminate possible contact between trees and overhead electric wires, only trees whose mature height and spread will not grow closer than 10 feet to the wires should be considered. A local arborist or tree supplier should be able to help suggest plant species that are appropriate to plant under power lines. More details are available in SCE's "Right Tree, Right Place" brochure.

On a tree's 10-year profile paper or drawing used in your planting order in California, utilities will come out to your site free of charge, and mark the

REMEMBER the "10-FOOT" rule — keep all trees, equipment and people at least 10 feet away from electric power lines! To eliminate possible contact between trees and overhead electric wires, only trees whose mature height and spread will not grow closer than 10 feet to the wires should be considered. A local arborist or tree supplier should be able to help suggest plant species that are appropriate to plant under power lines. More details are available in SCE's "Right Tree, Right Place" brochure.

TOP

RM-9	TREE PLANTING, TRIMMING, AND REMOVAL— SAFETY GUIDELINES	EFFECTIVE DATE 9-28-2007
PAGE 2	Line Clearing Manual SCE Internal	APPROVED 20

S&R Supervisor Witness to Scene



Question by SCE's Attorney:

20 Q. Do you have an estimate what the height of the trees
21 were on the day of this accident?

22 A. About 16 or 17 feet.

TR 6/18/15, 25:20-22

Power Line Measurements:

18'10", 21'5", & 22'4"

(Tomas, TR 6/16/15, 99:3-8)

~2 ft. between trees and lowest line

Line Clearing Manual (LCM)

2007 ISSUE
September 28, 2007

This document is classified "Internal"
per ESM Policy 04.001.001.
SCE Internal

Copyright 2007 by Southern California Edison Company. All rights reserved. No part of this work covered by the copyright herein may be reproduced, stored in a retrieval system, or transmitted in any form or by any means electronic, mechanical, photocopying, recording, or by any information storage and retrieval system, without the prior written permission of Southern California Edison Company.



GL, Glossary

A-300	In tree care operations, standard practices (pruning) for tree, shrub and other woody plant maintenance.
ANSI	American National Standards Institute
CAISO	California Independent System Operator
CAL FIRE	California Department of Forestry and Fire Protection
CCM	Central Construction Management — The Central Construction Management group is responsible for project, contract and construction management of over \$160 million in capital-system upgrades, expansions and facility additions; management of over 66 Company personnel and 400 contractors performing various civil/structure and electrical improvements to the distribution system.
CCR	Code of Regulations (applied at a state, city, or local level)
CDFG	California Department of Fish and Game
Compliance	Meeting prescribed standards.
Conductor	A wire, either aluminum or copper, used to supply electricity.
Contract Daily	A document used to recap line clearing work performed by contract tree crews.
Contract Operations	Responsible for performing tree trimming and removal under a contract purchase order.
Contract Purchase Order	A document describing the terms and conditions for service performance. Corporate Environment, Health and Safety

Electrical Hazard

An electrical hazard exists when a worker, tool, tree or any other conductive object is closer than 10 feet from an energized overhead electrical conductor.

Distribution Voltages	Voltages ranging from 2.4 kV to 35 kV.		
DOC	Distribution Operations Center		
Door Hanger	A printed card left at a customer residence to request permission to provide vegetation maintenance or to leave awareness information.		
Electrical Hazard	An electrical hazard exists when a worker, tool, tree or any other conductive object is closer than 10 feet from an energized overhead electrical conductor.		
ESAP	Endangered Species Alert Program		
GCC	Grid Control Center		
EFFECTIVE DATE	9-28-2007	GLOSSARY	GL
APPROVED	OC	Line Clearing Manual SCE Internal	PAGE 1

Line Clearing Manual (LCM)

2007 ISSUE
September 28, 2007

This document is classified "Internal" per ESM Policy 04.001.001.
* SCE Internal *

Copyright 2007 by Southern California Edison. All rights reserved. No part of this work may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, or by any information storage and retrieval system, without the prior written permission of Southern California Edison.

Planting new trees?

If you're planting a new tree, please consider where you are placing it and what it will look like in 10 or 20 years. Look up from the proposed place where it will be planted and see if there are wires overhead or nearby. We ask that trees within 20 feet of a power line be of a type that grow no more than 25 feet tall. Trees 20 to 50 feet from a power line should not grow more than 40 feet tall. Those growing taller than 40 feet should be planted more than 50 feet from power lines.

Planting new trees?

If you're planting a new tree, please consider where you are placing it and what it will look like in 10 or 20 years. Look up from the proposed place where it will be planted and see if there are wires overhead or nearby. We ask that trees within 20 feet of

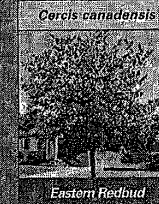
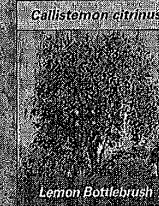
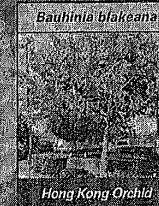
of a type that grow no more than 25 feet tall. Trees 20 to 50 feet from a power line should not grow more than 40 feet tall. Those growing taller than 40 feet should be planted more than 50 feet from power lines.

A major source of power line outages is trees that fall on or near power lines. Most growth in utility poles is from dead wood that can fall or sail. Trees that land on power lines can catch fire and shake roofs. Trees should not be planted near power lines. One example is the Windmill palm, which has a mature

fires

Department of Public Utilities to help you choose a tree limb that won't touch power lines in cleared areas. Tree limbs touching power lines can catch fire and cause outages. To help you choose a tree limb that won't touch power lines, Edison asks that you choose trees that are no taller than 25 feet from any power pole. Please check regarding utility lines when you plant your

Here is a sampling of the trees that Edison recommends you plant

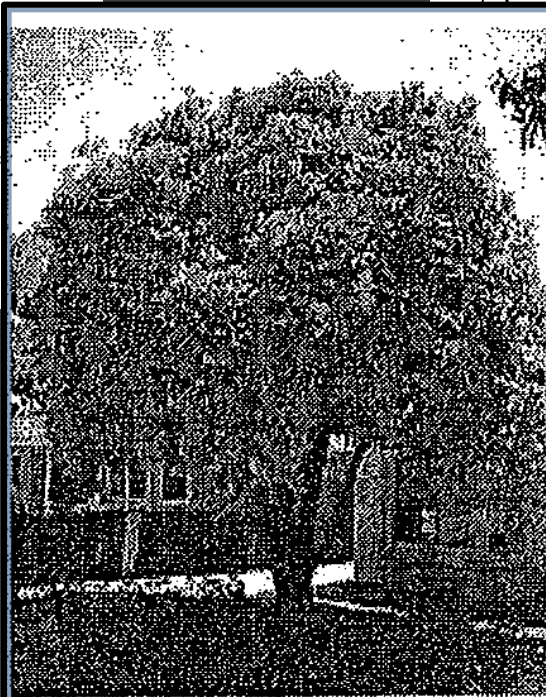


Line Clearing Manual (LCM)

2007 ISSUE
September 28, 2007

This document is classified "Internal"
per ESM Policy 04.001.001.
SCE Internal

Copyright 2007 by Southern California Edison Company. All rights reserved. No part of this work covered by the copyright herein may be reproduced, stored in a retrieval system, or transmitted in any form or by any means, electronic, mechanical, photocopying, recording, or otherwise, without the prior written permission of Southern California Edison Company.



Citrus Fruit Trees (Citrus)
summer fruiting (lemon, lime, grapefruit,
orange, tangerine)

Mature height: 30 feet
Mature spread: 15 feet
Sunset Zones 8, 9, 12-14
[Click here for more information](#)

Attachment 1: SCE Public Web Site: "Caring for Your Trees" (Sheet 4 of 8)



Home About SCE Contact Us My Account Search

Customer Service Rebates & Savings Power & Our Environment Community & Recreation Doing Business with Edison

Home > Safety > Caring For Your Trees > Photo Gallery

Caring For Your Trees

Photo Gallery

Listed below is a partial list of recommended trees for planting under or near power lines. These trees may not be appropriate for every microclimate in California. Another source of information about tree species is the Selectree for California web site at <http://selectree.calpoly.edu/>.

Other Languages
• en español

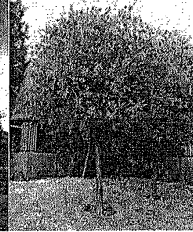
Photos (with the exception of Hawthorne, Malus spp, Pyrus calleryana, and Arbutus) by Dennis Rosenberg, Metaphor Media

- SCE.com Log In
- User Name:
- Password:
- Remember Me
- Forgot your password?
- Don't have an account? Learn more | Register
- Safety Tips
- Kids Safety
- Safety Tips for Seniors
- Bark Beetle
- Caring For Your Trees
- Planting
- Now That It's Your Tree
- Photo Gallery
- Safety
- Rotating Outages
- Emergency Planning
- Electric Magnetic Fields (EMF)
- Field Safety
- Fire Safety
- Expand All | Collapse All

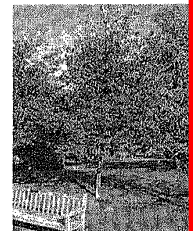
Partial List Of Recommended Trees



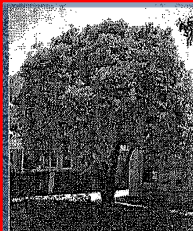
Eastern Redbud (*Cercis canadensis*)
spring blooming with striking pink flowers, heart-shaped leaves
Mature height: 35 feet
Mature spread: 35 feet
Sunset Zones 1-3, 7-20
[Click here for more information](#)



Lemon Bottlebrush (*Callistemon citrinus*)
spring flowering, with red bottlebrush-like flowers
Mature height: 25 feet
Mature spread: 20 feet
Sunset Zones 8, 9, 12-24
[Click here for more information](#)



Washington Hawthorn (*Crataegus spp.*)
summer blooming, white flowers, fall color; winter fruiting, attracts birds



Citrus Fruit Trees (*Citrus*)
summer fruiting (lemon, lime, grapefruit, orange, tangerine)

007	TREE PLANTING, TRIMMING, AND REMOVAL— SAFETY GUIDELINES	RM-9
20	Line Clearing Manual SCE Internal	PAGE 5

D. H. KELLEY ET AL }
TO CALIF. ELECTRIC POWER CO. } RIGHT OF WAY

February 5, 1946

D. H. KELLEY and MARGARET B. KELLEY, husband and wife, Grantors, in consideration of One Dollar, receipt whereof is hereby acknowledged, do hereby grant to the Grantee, CALIFORNIA ELECTRIC POWER COMPANY, its successors and assigns, a right of way and easement for the construction, maintenance, operation, inspection, repair, replacement and removal of electric lines and telephone lines and cables, including such additional lines as said Grantee may from time to time in future require, upon and by means of one line of poles, with supporting structures, crossarms, wires guys, anchors, fixtures and appurtenances, for the transmission of electric energy for any and all purposes for which the same may be used, and communication, upon, over and across that certain real property situate in the county of Riverside, State of California, described as follows:

The Northeast Quarter (NE¹/₄) of Section Twenty-eight (28), Township Five (5) South, Range One (1) East, San Bernardino Base and Meridian. The center line of said right of way and easement is described as follows:

Beginning on the west line of said Northeast Quarter (NE¹/₄) of Section Twenty-eight (28) at a point Thirty-one (31) feet south of the northwest corner thereof and running thence east, parallel to and Thirty-one (31) feet south of the north line of said Northeast Quarter (NE¹/₄), a distance of Thirteen Hundred Twenty (1320) feet, more or less, to a point on the east line of said Section Twenty-eight (28).

The Grantee shall have the right to clear the right of way hereby granted and keep the same free of brush, wood growth and any other obstruction to such extent as may be necessary to prevent contact or interference with said lines, and the operation thereof, and to protect persons from injury or death, and said lines and other property from fire, destruction or damage; and to enter upon and travel, including transport of materials, over and across the above described land and real property for any and all uses and purposes in the exercise of the right of way and easement rights herein granted; provided that such right shall be reasonable exercised and that the Grantee shall be liable for any damage negligently done by it to the said land and real property.

Witness my hand and the hand of Margaret B. Kelley, Grantor
H. J. Jacobson, Notary Public for said County and State
Description checked FWH, approved JWH, Engineer approved as to legal features HWH, Attorney.

W. C. 260-7160-050

STATE OF CALIFORNIA

County of Riverside.

On this 5th day of February, 1946, before me, Fran A. Sommers, a Notary Public in and for said County, personally appeared H. J. Jacobson, Notary Public in and for said County, personally known to me to be the same person whose name is subscribed to the within instrument as a subscribing witness thereto, who being by me duly sworn, deposes and says that he resides in the County of Riverside State of California, that he was present and saw D. H. Kelley and Margaret B. Kelley, the said Grantors, personally known to him to be the same persons described in and whose names are subscribed to the within instrument as parties thereto, sign and execute the same; and that he is not, then and there subscribed his name to said instrument as a witness.

Witness my hand and official seal, the day and year in this certificate first here written.
(Notary Seal) Franca A. Sommers, Notary Public in and for said County and State.
October 24, 1946

W/ previously signed and indexed. 188 08 2/10/46.

Received for Record Mar. 20, 1946 at 4:51 Min. past 10 o'clock A.M. at County of Riverside. Certified in Book No. 729 of Official Records, page 113. Records of this office county, California.
Page 1120 Frank W. Ross, Recorder.

RIGHT OF WAY

The Grantee shall have the right to clear the right of way hereby granted and keep the same free of brush, wood growth and any other obstruction to such extent as may be necessary to prevent contact or interference with said lines, and the operation thereof, and to protect persons from injury or death, and said lines and other property from fire, destruction or damage; and to enter upon and travel, including transport of materials, over and across the above described land and real property for any and all uses and purposes in the exercise of the right of way and easement rights herein granted; provided that such right shall be reasonable exercised and that the Grantee shall be liable for any damage negligently done by it to the said land and real property.

Exhibit 223-2

SCE PMQ Testimony

- **SCE must regularly inspect and reevaluate vegetation/local conditions for safety over time.**
 - TR 6/16/15, 54:11-19, 55:4-7
- **Subject trees were inspected annually by SCE but not trimmed or removed.**
 - TR 6/16/15, 59:17-25, 60:9-18
- **SCE has removed trees that were “improper plantings” in the past or requested property owner remove trees, but this was not done here.**
 - TR 6/16/15, 46:12-23, 52:11-22, 53:8-16



SCE Defenses

- **Power lines heights were safe – 20 foot ladder unforeseeable & unnecessary**
- **Power lines complied with Public Utilities Commission Rules**
- **Blame others & decedent**

Instruction
No. 32

Power lines constructed in 1946 under California Public Utilities Commission General Order 95, Rule 37 required that the minimum above ground clearance for power lines was as follows:

1) 25 feet above ground along thoroughfares in rural districts or across other areas capable of being traversed by vehicles or agricultural equipment where any part of the line overhangs any traversable portion of a public or private roadway;

2) However, this 25 feet minimum clearance may be reduced to 18 feet above ground along thoroughfares in rural districts or across other areas capable of being traversed by vehicles or agricultural equipment where no part of the line overhangs any traversable portion of a public or private roadway. However, care should be exercised in using this minimum clearance along roads, above or along ditches where mechanical devices are used for maintenance, near trees in orchards, near trees or structures which can be climbed and in other similar situation;

or

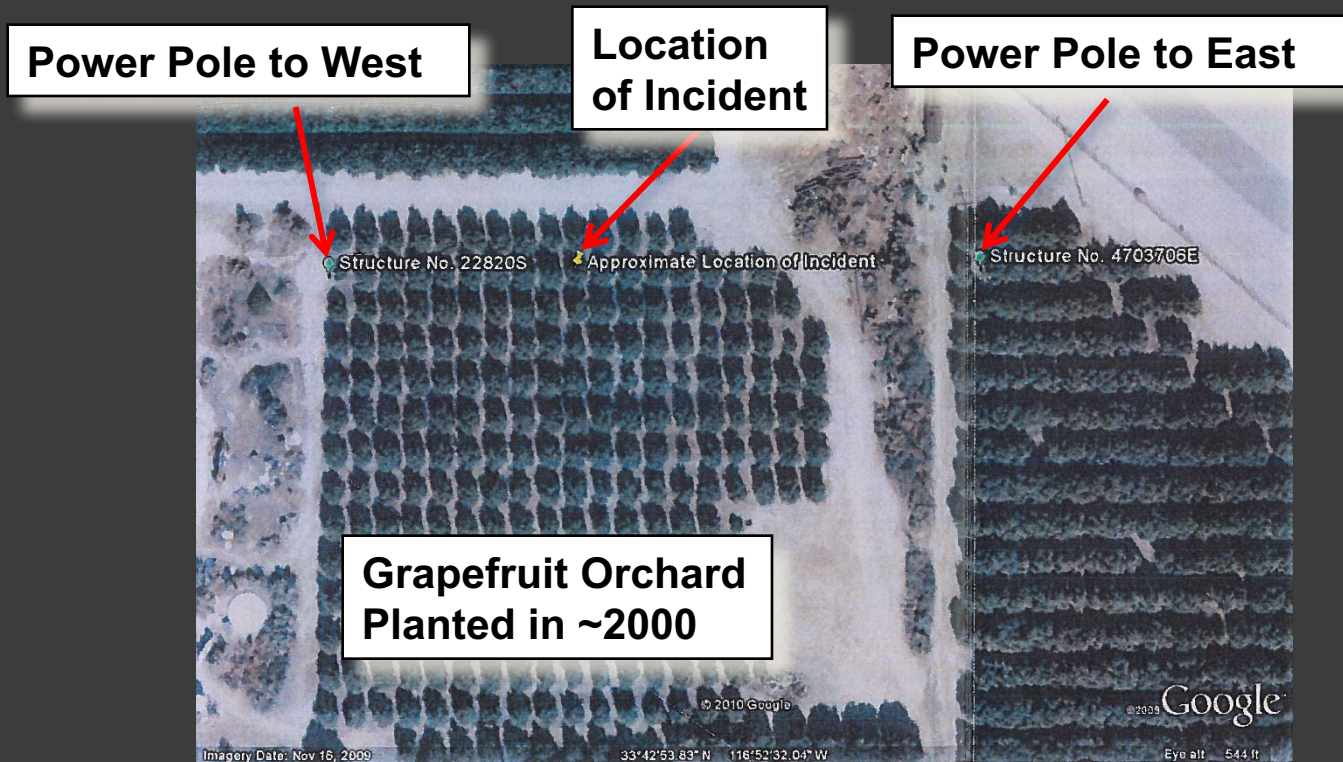
3) 17 feet above ground in areas accessible to pedestrians only.

If you decide

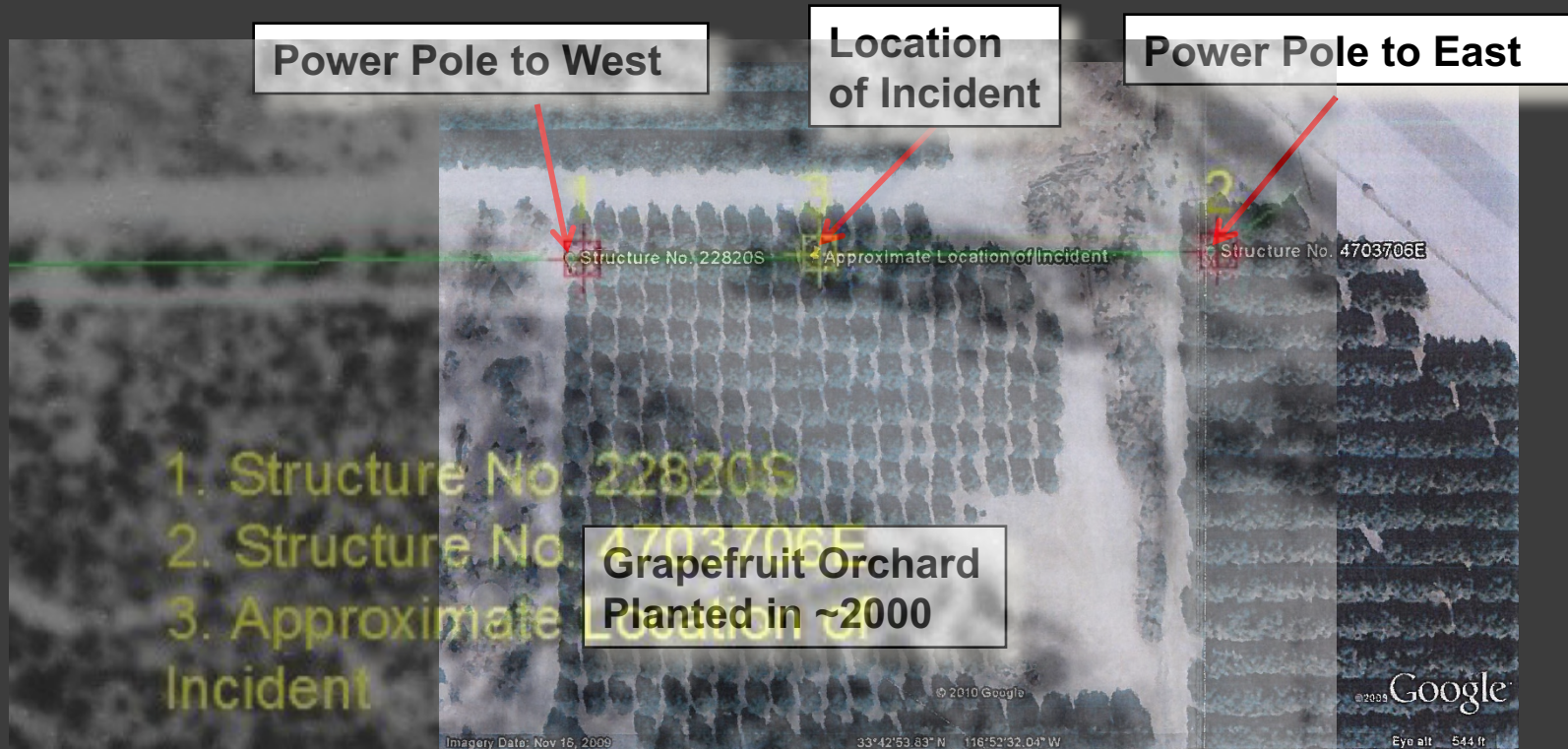
1. That SOUTHERN CALIFORNIA EDISON violated this law; and
2. That the violation was a substantial factor in bringing about the harm, then you must find that SOUTHERN CALIFORNIA EDISON was negligent.

If you find that SOUTHERN CALIFORNIA EDISON did not violate this law or that the violation was not a substantial factor in bringing about the harm, then you must still decide whether SOUTHERN CALIFORNIA EDISON was negligent in light of the other instructions.

Circle K Ranch, Hemet, California July 2010



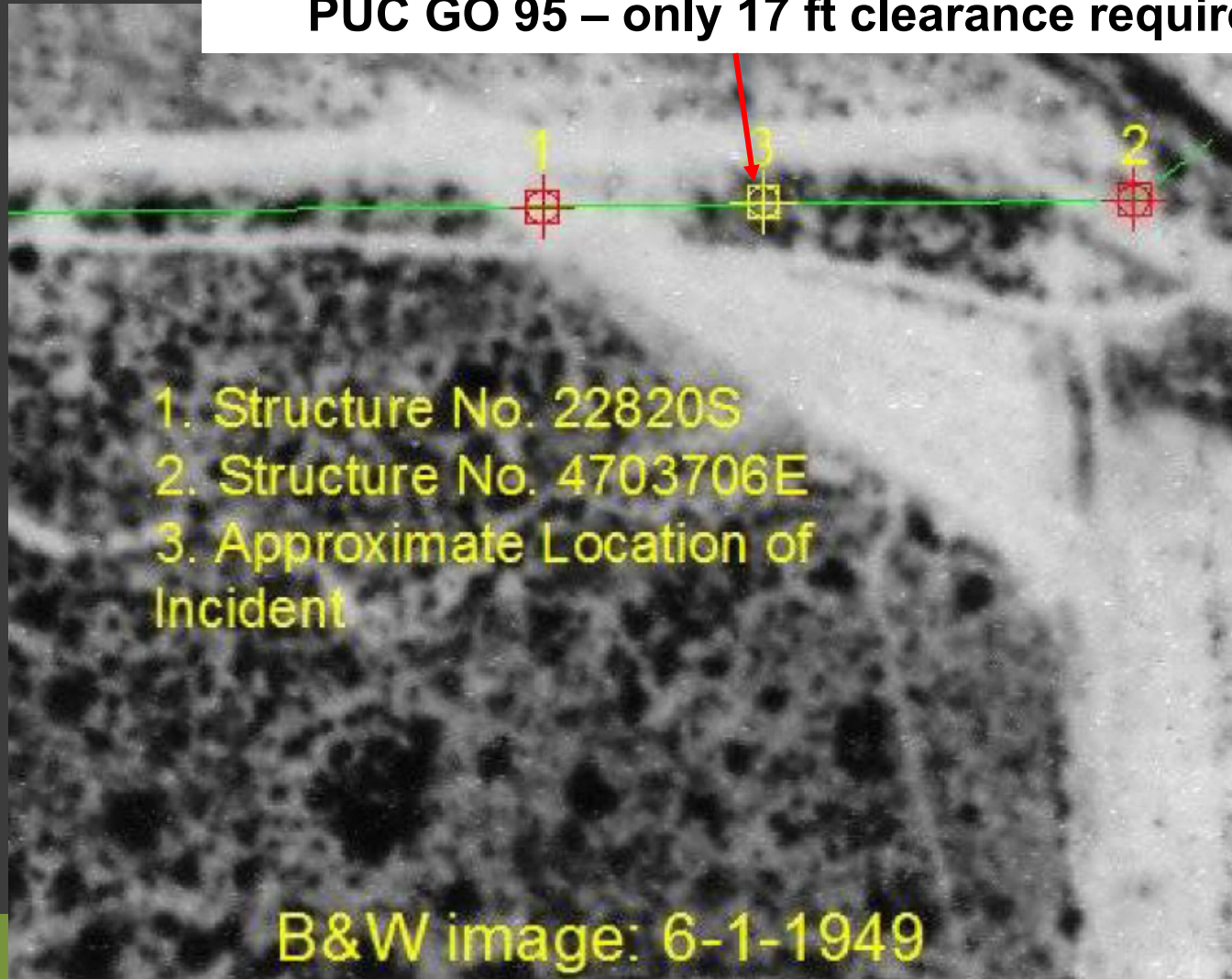
Circle K Ranch, Hemet, California July 2010



B&W image: 6-1-1949

SCE **Defense**: PUC Regulations

**Defense: “pedestrian area” in 1946
PUC GO 95 – only 17 ft clearance required**



1. Structure No. 22820S
2. Structure No. 4703706E
3. Approximate Location of Incident

Conversion of SCE Defense into Plaintiff Theory

Instruction No. 30	People and companies must be <u>very careful</u> in <u>constructing, insulating, inspecting, maintaining, and repairing power lines</u> and transmission equipment at <u>all places</u> where it is <u>reasonably probable</u> that they will <u>cause harm to persons or property</u> .
-----------------------	--

3 Separate Verdicts against SCE for Negligence:

1) Power Line Height Unsafe

2) Trees Not Trimmed/Remediated

3) Negligence Per Se (Regulation Violation)

Instruction
No. 32

Power lines constructed in 1946 under California Public Utilities Commission General Order 95, Rule 37 required that the minimum above ground clearance for power lines was as follows:

1) 25 feet above ground along thoroughfares in rural districts or across other areas capable of being traversed by vehicles or agricultural equipment where any part of the line overhangs any traversable portion of a public or private roadway;

2) However, this 25 feet minimum clearance may be reduced to 18 feet above ground along thoroughfares in rural districts or across other areas capable of being traversed by vehicles or agricultural equipment where no part of the line overhangs any traversable portion of a public or private roadway. However, care should be exercised in using this minimum clearance along roads, above or along ditches where mechanical devices are used for maintenance, near trees in orchards, near trees or structures which can be climbed and in other similar situation;

or

3) 17 feet above ground in areas accessible to pedestrians only.

If you decide

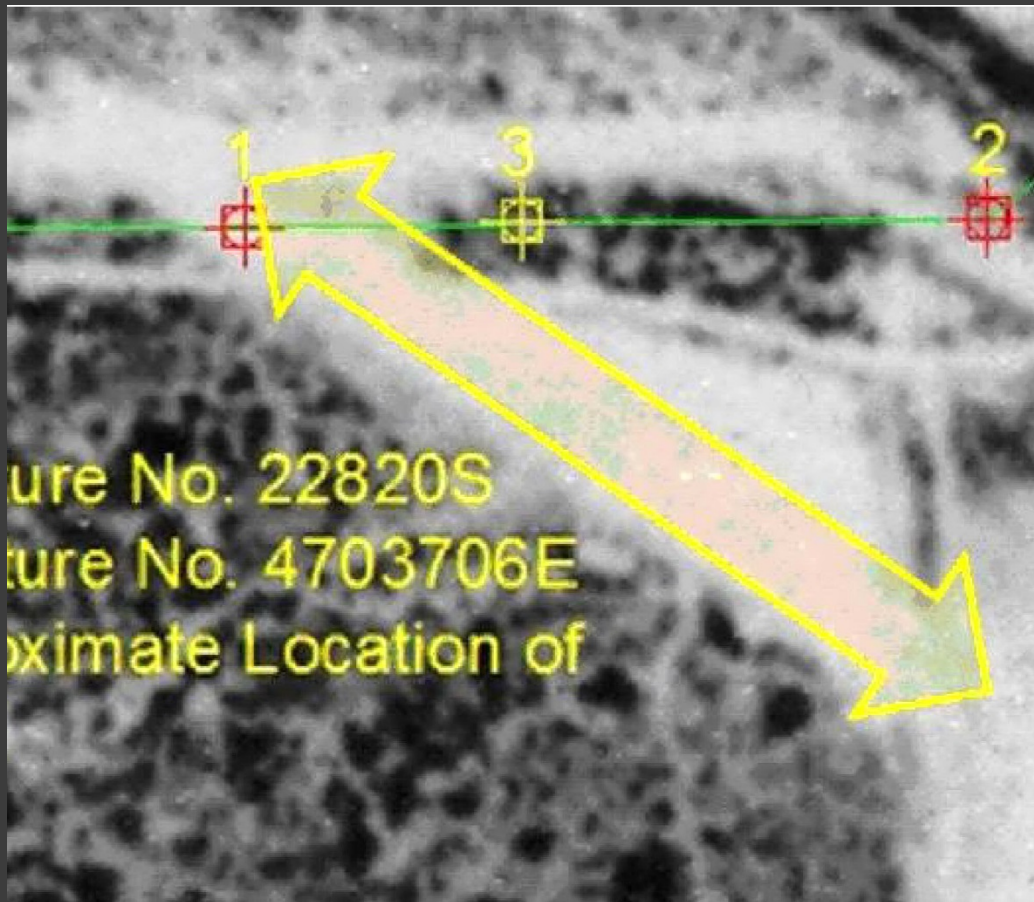
1. That SOUTHERN CALIFORNIA EDISON violated this law; and
2. That the violation was a substantial factor in bringing about the harm, then you must find that SOUTHERN CALIFORNIA EDISON was negligent.

If you find that SOUTHERN CALIFORNIA EDISON did not violate this law or that the violation was not a substantial factor in bringing about the harm, then you must still decide whether SOUTHERN CALIFORNIA EDISON was negligent in light of the other instructions.

Instruction
No. 32

Power lines constructed in 1946 under California Public Utilities Commission General Order 95, Rule 37 required that the minimum above ground clearance for power lines was as follows:

- 1) 25 feet above ground along thoroughfares in rural districts or across other areas capable of being traversed by vehicles or agricultural equipment where any part of the line overhangs any traversable portion of a public or private roadway;



SCE Defenses

- **Power lines heights were safe – 20 foot ladder unforeseeable & unnecessary**
- **Power lines complied with Public Utilities Commission Rules**
- **Blame others & decedent**

SCE Defense: Blame Others & Decedent

- **Six Separately Represented Defendants & Employer**
 - Utility Defendants
 - 1) **Southern California Edison (SCE)** – Utility Built/Owned Power Lines
 - Subcontractors:
 - 2) **Asplundh** – tree inspections & trimming
 - 3) **Hot Line Construction** – did subject pole repair nine months before the incident
 - Fruit Harvestors Defendants & Employer
 - 4) **Circle K-5 Ranch** – owned the orchard
 - 5) **Sun World** – contracted to harvest from orchard
 - 6) **Gold Grower (decedent's employer)** – subcontracted to harvest from orchard
 - 7) **S&R** – subcontracted to supervise the harvest

Multi-Defendant Lawsuit

- Focus group findings - liability shared by various Defendants

- Avoids empty chair



- David v. Goliath



SCE Defenses: Employer to Blame

- **Decedent's Employer not present, did not inspect site and provided improper equipment**
- **Decedent's Employer violated OSHA Regulations (Negligence Per Se)**

SCE **Defenses**: Employer to Blame

- Decedent's Employer not present, did not inspect site and provided improper equipment
- Decedent's Employer violated OSHA Regulations (Negligence Per Se)

SCE Defenses: Employer Violated OSHA

- **Employer Responsible for Safe Operations / Place of Employment** – 20 ft ladders, 10-12 ft trees

• **Labor Code section 6401:** *“Employer shall adopt and use practices, means, methods, operations, and processes which are reasonably adequate to render such place of employment safe and healthful”*

- **Employer Violated “6 Foot Rule”** – de facto violation - contacted power line

• **CCR section 2946 (OSHA “6 foot rule”):** *“Except where overhead electrical distribution and transmission lines have been de-energized and visibly grounded, no employer shall permit the operation, erection, handling, or transportation of tools, machinery, materials, structures, scaffolds, or the moving of any house or other building or any other activity where any part of the above or any part of an employee's body will come closer than six feet.”*

SCE Defenses: Employer Violated OSHA

- **Employer Must Not Provide Metal Ladders Near Power lines**
– must use wood or fiberglass

- **CCR section 3287:** *“Portable metal ladders shall not be used in the vicinity of electrical lines or a place where they may come in contact with them.”*

- **Employer Must Call SCE to De-Energize Lines – did nothing**

- **CCR section 2948** *“When any operations are to be performed, tools or materials handled or equipment is to be moved or operated within specified clearances of any energized high voltage lines, the person or persons responsible for the work to be done shall promptly notify the operator [SCE] of the high voltage line of the work to be performed and shall be responsible for the completion of the safety measures as required by section 2946(b).”*

Who Was In A Better Position to Protect from the Hazard?



- 20,000 employees with thousands of years of institutional knowledge on power line hazards
- Small army of planners/experts on identifying/remediating electrical hazards
- Specialized equipment to measure power lines

Fruit Harvestors

- Business is picking fruit, not power lines
- Did not own/control the hazard, can't remedy the hazard
- Impossible to determine line heights without measuring

Who Was In A Better Position to Protect from the Hazard?



- 20,000 employees with thousands of years of institutional knowledge on power line hazards
- Small army of planners/experts on identifying/remediating electrical hazards
- Specialized equipment to measure power lines

Fruit Harvestors

- Business is picking fruit, not power lines
- Did not own/control the hazard, can't remedy the hazard
- Impossible to determine line heights without measuring

Using Defense Attorney Questions Against Defendant

Question by SCE Defense Attorney :

21	Q.	And one cannot even determine what the height of the
22		lines are unless somebody goes out and measures them, correct?
23	A.	Correct.

TR 6/18/15, 120:21-23

Human Factors Expert Dr. Gill

2 A. Mr. Cruz, the supervisor, had testified that, yes, he
3 knew there were power lines there, but he wasn't concerned
4 because he thought they were higher than what the ladders were.
5 That's a perfect example of where the accommodation illusion has
6 fooled him into believing that.

TR 6/23/15, 192:2-13

SCE Defenses: **Blame Decedent**

- SCE has public information and warnings against using metal ladders
- Employer warned decedent about power lines
- Decedent had been to this location before
- Power lines presence is open and obvious

SCE Defenses: **Blame Decedent**

- SCE has public information and warnings against using metal ladders
- Employer warned decedent about power lines
- Decedent had been to this location before
- Power lines presence is open and obvious

SCE Trial Billboard a Few Blocks From Courthouse



SCE Defenses: **Blame Decedent**

- SCE has public information and warnings against using metal ladders
- Employer warned decedent about power lines
- Decedent had been to this location before
- Power lines presence is open and obvious

S & R Farm Labor Contractor, Inc.

Safety Rules to Prevent Contact with High Voltage Lines

- Remember the rule of 10 feet of distance. Keep all vehicles, equipment, tools and personnel at least 10 feet away from high voltage lines.
- Do not operate or keep machinery or equipment near high voltage lines.
- Make sure that there are no high voltage lines near the harvesting or pruning areas. If any high voltage lines are loose or lower than normal, please inform your foreman so that he/she may call the local electric company so that the insecure condition may be corrected before continuing to work.
- Always check for high voltage lines overhead before loading or moving equipment, machinery or tools (i.e. ladders).
- Maintain all ladders, tubes and water pipes horizontally or leveled with the floor, and avoid standing up ladders, tubes or water pipes vertically without checking for any high voltage lines nearby or overhead.
- Use extreme precaution to avoid being electrocuted by contact with high voltage lines. Remember that unfortunately these types of accidents usually result in serious injury and even death.

Human Factors Expert Dr. Gill

- **July 9, 2010 US Naval Observatory Data for Subject Location**

- **Civil Twilight: 5:16 a.m.**



- **Incident: 5:20 a.m.**

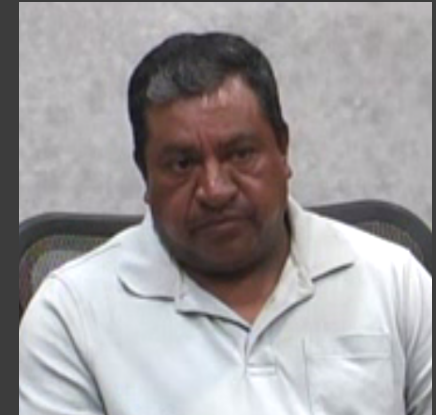
- **Sunrise: 5:45 a.m.**

(TR 6/23/15, 196-197)



S&R Supervisor Mr. Cruz

- **Picked workers up at 3:30 a.m., drove them to a different field in the dark everyday, didn't identify destination.**
 - **TR 6/18/15, 13:24-14:2**
- **Arrived at subject location at 5:00 a.m. in the dark**
 - **TR 6/18/15, 13:20-23**



Expert Witness Dr. Gill

- Decedent did nothing wrong
 - No drugs or alcohol
 - Wearing personal protective equipment
 - No horseplay, cell phone, distraction
 - Just doing his job
 - Arrived in the dark
 - (TR 6/23/15, 204)
- Jury found 0% fault on decedent



Inspection Report

Thu Dec 30, 2010 10:12am

Rpt ID	Assignment Nr.	CSHO ID	Supervisor ID	Inspection Nr.	Opt. Insp. Nr.
0950633	0	J7695		313509549	002-11

Establishment Name		GOLD GROWER SERVICES INC			
Site Address	44996 BAUTISTA ROAD HEMET, CA 92544	Site Phone		Site FAX	
Mailing Address	6122 MUSCAT PLACE ALTA LOMA, CA 91737	Mail Phone	(909) 559-7021	Mail FAX	
Controlling Corp		Employer ID			
Ownership	A. Private Sector	City	1580	County	065
Legal Entry	A. Corporation	Previous Activity (State Only)			

Related Activity					
Type	Number	Satisfied	Type	Number	Satisfied
A. Accident	102613114				

Employed in Establishment	41	Advance Notice?	No	Category	S. Safety
Covered By Inspection	41	Union?	No	Primary SIC	0761
Controlled By Employer	41	Walkaround?	No	Secondary SIC	
		Interviewed?	Yes	Inspected	

Inspection Type	A. Fatality/Catastrophe	Reason No Inspection	
Scope of Inspection	B. Partial Inspection		
Classification			
Strategic Initiatives			
National Emphasis			
Local Emphasis			

Anticipatory Warrant Served?	No	Denial Date	Date ReEntered	Date ReDenied	ReEntered
Anticipatory Subpoena Served?	No				

Entry	07/09/10	First Closing Conference	12/30/10
Opening Conference	07/09/10	Second Closing Conference	
Walkaround	08/09/10	Exit	07/09/10
Days On Site	2	Case Closed	
		No Citations Issued	

Type	ID	Optional Information
S	14	SCIF
S	18	HEAT
N	01	313509549

CSHO Signature	<i>Jose Calderon</i>	Date	12/30/10
District Manager Signature	<i>William A. Wheeler</i>	Date	12/30/10

Cal-OSHA Citations, Report, & Investigator Testimony

Make Them Inadmissible

Motions *in Limine* Using:

- **California *Labor Code* § 6304.5**
- **Hearsay (Cal. *Evid. Code* § 1200)**
- **California *Evidence Code* § 352**

Application

Pablo Padilla (Decedent) =
Gold Grower Services, Inc. employee

Cal-OSHA issued citations to:

- Gold Grower
- S&R Farm Labor Contractor
- Eligio Cruz

Cal-OSHA Citations

California Labor Code § 6304.5

“Neither the issuance of, or failure to issue, a citation by [Cal-OSHA] shall have any application to, nor be considered in, nor be admissible into, evidence in any personal injury or wrongful death action...”

Cal-OSHA Report

- **Cal-OSHA reports often contain multiple layers of hearsay**
- **Business record exception does not apply**
 - *MacLean v. City and County of San Francisco* (1957) 151 Cal. App. 2nd 133, 143:
 - (1) Reports contain information from witnesses who have no business duty to report to OSHA investigators
 - (2) If information contained in the report is based on the investigator's observations, they can be deposed and testify as to what they say

Cal-OSHA Report

- **Should be excluded under *Evidence Code* § 352**
 - Court may exclude evidence if its probative value < admission would waste time or create prejudice/confusion
- **Use *Sherrell v. Kelso* (1981) 116 Cal. App. 3d Supp. 22, 31**
 - Exclude to protect against danger of jury giving it undue weight because of “official” character

Cal-OSHA Investigator Testimony

California Labor Code § 6304.5

“The testimony of employees of the division shall not be admissible as expert opinion or with respect to the application of occupational safety and health standards...”

Application

- Cal-OSHA Citations Inadmissible ✓
- Cal-OSHA Report Inadmissible ✓
- Cal-OSHA Investigator Ineffective ✓
- Gold Grower Services = 15% at fault
- S&R Farm Labor = 5% at fault

THE *PRIVETTE* DOCTRINE

- A plaintiff injured by his own employer cannot sue the company that hired the employer for the **sole** negligence of the employer.
- The theory underlying the *Privette* doctrine is that an employee injured by his employer is compensated by the exclusive remedy of Worker's Compensation, and that by hiring the contractor, the hirer has broadly delegated responsibility for performing the hired work safely to the contractor. (*SeaBright Ins. Co. v. US Airways, Inc.*, 52 Cal. 4th 590, 600.)

THE *PRIVETTE* DOCTRINE

- Thus, under *Privette*, an injured employee generally cannot sue the company that hired his negligent employer if the company that hired the employer can show that it did nothing to cause the harm to the Plaintiff.
- (*Hooker v. Department of Transportation* (2002) 27 Cal.4th 198, 214; *McKown v. Wal-Mart Stores, Inc.* (2002) 27 Cal.4th 219, 223-225; see *Ray v. Silverado Constructors* (2002) 98 Cal.App.4th 1120, 1125-28.)

THE *PRIVETTE* DOCTRINE

- General *Privette* Rule:
- Hirer has no-duty to the employees of contractors

THE *PRIVETTE* DOCTRINE

- Here, Sun World was the hirer
- Sun World hires Gold Grower as the contractor to provide harvesters to pick fruit
- Padilla is an employee of Gold Grower
- Padilla dies while attempting to pick fruit –
Privette Analysis

THE *PRIVETTE* DOCTRINE

Privette limitations

- An employee of a contractor, such as Plaintiff, may seek recovery against the hirer of a contractor, here Gold Grower, where any of the following occur:
 - (1) the hirer's own affirmative acts cause or contribute to the employee's harm;
 - (2) the hirer retains control over some aspect of the work being performed and the hirer's conduct affirmatively contributes to the employee's harm; OR
 - (3) the hirer owes a nondelegable duty to the employee the breach of which contributes to Plaintiff's harm.

THE *PRIVETTE* DOCTRINE

Affirmative contribution limitation

- The Supreme Court in *Hooker* explained: “Such affirmative contribution need not always be in the form of actively directing a contractor or contractor’s employee. There will be times when a hirer will be liable for its *omissions*. For example, if the hirer promises to undertake a particular safety measure, then the hirer’s negligent failure to do so should result in liability if such negligence leads to an employee injury.” (*Hooker*, at p. 212, fn. 3 (emphasis added).)

THE *PRIVETTE* DOCTRINE

Application

- **ARGUMENT:** Sun World is liable for its *direct negligence* in its retained control over the property and the manner in which decedent performed his work, and that such negligence affirmatively contributed to decedent's injuries.
- **THE EVIDENCE:**
 - (1) The express contract between Sun World and the property owner provided that Sun World would retain "field supervision."
 - (2) Sun World was regularly on the property, selecting which trees would be picked and even the manner in which the harvesters picked the fruit from the trees;

THE *PRIVETTE* DOCTRINE

Application

- (3) Sun World employees testified that they were regularly present and would “oversee” the harvesters’ work, which included supervising and advising harvesters if they were not properly performing the work.
- (4) Sun World knew of the extreme risk of serious injury or death posed by the power lines directly above trees that were being harvested, yet instructed the workers to harvest the block of trees including the subject power lines and met them there before dawn to do so.
- (5) Sun World provided the harvesters with 20-foot aluminum ladders

Special/General Employer

Where an employer sends an employee to do work for another person, and both have the right to exercise certain powers of control over the employee, that employee may be held to have two employers – his original or “general” employer and a second, the “special employer”

Montague v. AMN Healthcare, Inc. (2014) 223 Cal.App.4th 1515

Kowalski v. Shell Oil Co. (1979) 23 Cal.3d 168

Special/General Employer

Application

- **Defendant S & R Labor contractor claimed that it was not responsible for the actions of Mr. Padilla's supervisor, because the supervisor was a special employee of Gold Grower**
- **BUT.....**

Special/General Employer

Application

CACI 3707 – Special Employment – Joint Responsibility

- **If you decide that [the supervisor] was the special employee of [Gold Grower], but that [S&R Labor Contractor] partially controlled [the supervisor]’s activities along with [Gold Grower], then you must conclude that both [S&R Labor Contractor] and [Gold Grower] are responsible for the conduct of [the supervisor]**

Special/General Employer

Application

- **Jury found that the supervisor was negligent and was an employee of both Gold Grower and S&R**
- **Gold Grower: 15 % at fault**
- **S&R: 5 & at fault**

Harms and Losses



SCE Damages “Defenses” & Case Challenges

- **Conservative jurisdiction**
- **Very low economic damages**
- **National origin, class, race bias**
- **Migrant worker – absent husband & father**

SCE Damages “Defenses” & Case Challenges

- **Conservative jurisdiction**
- **Very low economic damages**
- **National origin, class, race bias**
- **Migrant worker – absent husband & father**

SCE Loss of Earnings Damages Expert

Ayala v. Southern California Edison, et al.

Schedule IV: Loss of Support to Spouse

DOV: 06/01/14

DRAFT



Period	Years	Mexican Pesos		Exchange Rate	U.S. Dollars	
		Annual Support	Present Value		Present Value	
Past						
07/09/10 - 01/01/11	0.00 - 0.48	36,000	17,280	13.151	\$	1,314
01/01/11 - 01/01/12	0.00 - 1.00	36,000	36,000	12.943		2,781
01/01/12 - 01/01/13	0.00 - 1.00	36,000	36,000	13.695		2,629
01/01/13 - 01/01/14	0.00 - 1.00	36,000	36,000	13.275		2,712
01/01/14 - 06/01/14	0.00 - 0.42	36,000	15,120	12.916		1,171
Total Past			140,400			\$ 10,607
Future						
06/01/14 - 03/13/34	0.00 - 19.78	36,000	561,327	12.916	\$	43,460
Total Future			561,327			\$ 43,460
TOTAL PAST AND FUTURE			701,727			\$ 54,067

Notes:

Estimate loss begins date of death (H1, H3-2).

Estimate provided support of 3,000 pesos/month to spouse (SI 15, Depo 63.15).

Exchange rates from 2010-13 based on IRS currency exchange rates (B9-1-2).

Exchange rates from 01/01/14 and beyond based on current exchange rates (B9-3).

	NDR
Annual	2.50%
Monthly	0.21%

CONFIDENTIAL - For Settlement Purposes Only

Page 8

Defense: Low Economic Damages

- **Some conservative jurors only want to award economic damages**
- **May use \$54,000 as the yard stick to measure general damages**

Defense: Low Economic Damages

- **Some conservative jurors only want to award economic damages**
- **May use \$54,000 as the yard stick to measure general damages**

Waive Economic Damages

SCE Damages “Defenses” & Case Challenges

- **Conservative jurisdiction**
- **Very low economic damages**
- **National origin, class, race bias**
- **Migrant worker – absent husband & father**

National Origin Bias

- **Motion in Limine to exclude country of residence – instead reside “out of state”**
 - **Waive economic damages**
- **Evidence Code section 351.2**
- ***“(a) In a civil action for personal injury or wrongful death, evidence of a person’s immigration status shall not be admitted into evidence, nor shall discovery into a person’s immigration status be permitted.”
(Effective January 1, 2017.)***

National Origin/Race/Class Bias



- Law is equitable – we are on the side of equity – use early and often.
- *Voir dire* – jurors promise to decide on the evidence alone, not nationality/race/class/language or issues outside of the evidence.
- Closing argument – instruct jurors if jurors violate instructions, stop / inform judge

SCE Damages “Defenses” & Case Challenges

- **Conservative jurisdiction**
- **Very low economic damages**
- **National origin, class, race bias**
- **Migrant worker – absent husband & father**

SCE Damages **Defenses**

- **Defense Claimed Decedent & Spouse Apart Over Half of Marriage**
 - Married 12/4/2004
 - Apart 1 year, 3 months (3/22/2006-6/4/2007)
 - Apart 1 year, 6 months (1/14/2009- 7/10/2010 (death))
- **Decedent did not see Wife & Children for 1.5 years prior to his death**



Our Response

- Migrant workers must be separated from spouses
- Was their life/relationship worth any less because of his job?
- Equal justice for rich and poor alike



General Damages

- Conservative jurors – math equation - mock trials
- All jurors – connect with human loss
- All jurors – sincere presentation



Sandra Romero, Esq.

**\$4.7 MILLION GENERAL
DAMAGES VERDICT**

ELECTROCUTION WRONGFUL DEATH

Estate of Pablo Padilla Ayala vs.

Southern California Edison Company

Holding a Public Utility Accountable

For High-Voltage Power Line Electrocution

CONCLUSION / QUESTIONS

Robert Jarchi – rjarchi@gbw.law

Molly McKibben – mmckibben@gbw.law

Christian Nickerson – cnickerson@gbw.law

Sandra Romero - sromero@romerolaw.us