



Passion. Preparation. Persistence.

Volume 9, Issue 5

THE BASSETT BULLETIN™

WATCH THE LOW HANGING LINES WHICH STATUTE APPLIES TO A UTILITY COMPANY?

In *Traxler v. Entergy Gulf States, Inc.*, the Supreme Court of Texas recently issued an opinion as to the applicability of a statute to a utility company where a house mover was electrocuted. One of the central issues was the interpretation of a specific statute and whether the Legislature intended to apply the technical or common meaning to specific types of power lines. The Court found in favor of Mr. Traxler and applied the common meaning to the statute.

THE BACKGROUND

Nicholas Traxler, an employee of a moving company, was riding on top of a portion of a house that was being moved down a residential street in Bridge City, Texas. His job was to help remove obstructions encountered while the house was moving down the street. While doing his job, he was struck by a live power line belonging to Entergy.

The power line that Traxler struck was about 20 feet from the ground, while the peak of the house's roof was about 17 feet from the ground. Traxler fell from the house and suffered injuries from the fall and from electrical shock. Traxler sued Entergy and his employer alleging several theories of negligence including negligence *per se*. The negligence *per se* claim against Entergy was based on Traxler's claim that the line was less than 22 feet above the surface of the traffic lane as required by Section 181.045 of the Texas Utilities Code. Traxler's employer settled out of the case before it went to trial.

The jury found that Entergy was negligent and the trial court rendered a judgment for Traxler. Entergy appealed the matter and the Court of Appeals reversed and rendered a take-nothing judgment against Traxler. The Court of Appeals agreed with Entergy's argument that Section 181.045 of the Texas utilities Code did not apply because the line in question was a "distribution line" rather than a "transmission line," and only the latter is subject to the statutory 22-foot requirement. Traxler appealed to the Supreme Court of Texas.

THE SUPREME COURT OF TEXAS

The focus of Traxler and Entergy's arguments is the use of the terms "distribution line" and "transmission line." This distinction was important to the parties because this arguably could impact which statute Entergy was supposed to follow in terms of the height of the wire.

Traxler, through an expert, testified that the terms "distribution line" and "transmission line" have no fixed, widely recognized meaning. In fact, he testified that the meanings of the terms vary from utility to utility and that the meanings have changed over time. He also testified that "there's no text you can go to" to define the terms. Traxler's position was that the Legislature used the terms interchangeably and the Utility Code applied to this case regardless of whether the line was a distribution line or a transmission line.

Entergy's position is that the Utility Code does *not* apply to the line that Traxler struck because the line in question was a distribution line and not a transmission line. As such, the National Electrical Safety Code applies to this line and the line only had to be 18.5 feet high.

The Court held the real issue comes down to the Legislature's intentions for this statute and whether the Legislature intended the terms "transmission lines" and "distribution lines" to have a common meaning or a technical meaning.

In deciding this issue, the Court's primary objective was to determine the Legislature's intent which, when possible, the Court discerns from the plain meaning of the words chosen. The Supreme Court ordinarily relies on the common meaning of the words chosen by the Legislature, which is a preference the Court has described as "cardinal law."

The Legislature has directed courts to employ the common usage rule, but has also directed that words in a statute be given a technical meaning if such a meaning has been acquired "by legislative definition or otherwise."

In this case, the Court declined to depart from its usual preference for relying on the common meaning of statutory terms. The Court held that the words "distribution" and "transmission" are common words that are used frequently in everyday conversation and writing and can mean the same thing in common language.

According to the Court, the Legislature surely understood the common, imprecise, and interchangeable meanings of these terms and has used these terms since 1947 in the relevant statutes without defining or distinguishing them. Instead, the Legislature has repeatedly referred to "transmission and distribution" lines in the plural in one part of the statute, and "a transmission line" in another, without expressly indicating that transmission lines and distribution lines are two different things. The Legislature has amended and then codified the statute, but has declined to include a statutory definition giving a more technical and distinguishing meaning to "transmission" and "distribution."

If the Legislature intended to distinguish the terms, the Court argued that the Legislature would have done so. Not only did the Legislature decline to give technical definitions distinguishing transmission and distribution lines, but it used the terms interchangeably.

The Supreme Court of Texas applied the general principle to the plain meaning of words to the interpretation of statutes and laws, and in so doing, found that the Court of Appeals, which ruled in favor of Entergy, applied a too technical interpretation of the law.

TIPS AND TAKE AWAYS

1. If you have a claim or potential claim, which could have a possible negligence *per se* issue, this case sets out the long standing rule, that carving out an exception, on a very technical interpretation of the statute, will probably not hold up in either the trial court or on appeal. Instead, the plain meaning rule will be applied to the statute.
2. While it is unlikely that the Supreme Court intended this ruling to be a loosening of the negligence *per se* law, we anticipate that Plaintiffs will argue that this case holds exactly that and they will argue for stricter “plain meaning” interpretation of codes and laws, in any negligence case involving transportation and utilities.
3. Entergy seemed to lack the evidence to show that the Legislature’s intent was to use a technical term for these power lines. As such, if you are faced with this situation, it will be well worth your time to determine how the Legislature has defined the term at issue or how it has used the term in order to bolster your argument that a technical meaning should be given.



The Bassett Firm

**Two Turtle Creek Village
3838 Oak Lawn Avenue
Suite 1300
Dallas, Texas 75219
(214) 219-9900 Telephone
(214) 219-9456 Facsimile
Toll Free: 1-800-310-9769
www.thebassettfirm.com**

ATTORNEYS

- **MIKE H. BASSETT**
- **JENNIFER R. ASHMORE**
- **ROBERT L. MCGEE, JR.**
- **WILLIAM A. NEWMAN**
- **MICHAEL J. NOORDSY**
- **J. ANDREW ROBERTSON**
- **MATHEW SAMUEL**

Information regarding *The Bassett Bulletin* TM is available from Annie C. (acopeland@thebassettfirm.com) at (214) 219-9900. ©2004 The Bassett Firm. All rights reserved.

The Bassett Bulletin TM is published twenty-six times a year, and is a complimentary publication of The Bassett Firm.
