

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF COLLETON)	CASE NO.: 2017-CP-15-0423
)	
Tiffany N. Provence, as Special)	
Administrator for the Estate of Jose Refugio)	
Licona Larios,)	PLAINTIFF'S PRETRIAL BRIEF
Plaintiff,)	
)	
vs.)	
)	
South Carolina Electric & Gas Company;)	
PENSCO Trust Company LLC; and)	
Edisto Sales & Rentals Realty, LLC,)	
Defendants.)	

1. Name of attorneys handling the case:

Attorneys for Plaintiff:

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2. Are all motions disposed of? If not, did you comply with Rule 11? List Pending motions and date filed.

Pending motions are as follows:

- a. **Plaintiff's Motion to Strike Defendant PENSICO's Answer, or in the Alternative, to Limit Certain Defenses Pursuant to Rule 37(D), SCRPC (Filed 09/12/19)**
 - b. **Plaintiff's Motions *in Limine* (filed 09/20/19):**
 - i. **Plaintiff's Motion *in Limine* No. 1 – Employer Fault**
 - ii. **Plaintiff's Motion *in Limine* No. 2 – OSHA Regulations & Violations**
 - iii. **Plaintiff's Motion *in Limine* No. 3 – Immigration Status**
 - c. **Prior to trial, Plaintiff will also be filing an Omnibus Motion *in Limine* that addresses a number of straightforward evidentiary issues.**
3. Briefly and concisely state the facts upon which the claim or defenses are based:

This matter arises from the death of Jose Larios which occurred on November 29, 2015. Mr. Larios was a landscaper hired to trim palm trees located in the back yard of a vacation rental property at 3402 Myrtle Street on Edisto Beach, South Carolina. The property is owned by a self-funded IRA trust, Defendant PENSICO, and managed by Defendant Edisto Realty.

While trimming one of the thirty-five palms on the property, Mr. Larios contacted the base of a long branch with his chainsaw and was shocked due to a hidden

SCE&G power line that was contacting the palm tree. At the time he was shocked, he was standing on a ladder (positioned against the palm tree) approximately 25 feet in the air, he screamed out loudly, fell off the ladder to the ground suffering serious injuries and ultimately died.

Investigations into this incident were performed by the Colleton County Coroner's Office, OSHA, and the MUSC pathologist who performed an autopsy on Mr. Larios. It was determined as a result of these investigations that Mr. Larios fell from the ladder because he suffered an electrical shock when the palm tree he was trimming contacted an overhead SCE&G powerline that was hidden amidst the tree. The investigations revealed that Mr. Larios had an electrical burn mark on his abdomen, that there was a burn mark on the chainsaw he was utilizing, and that there were burnt palm branches in the area he was working. Mr. Larios' co-worker, who at the time was on the ground picking up the trimmed palm fronds, also has testified that he saw and smelled smoke coming off Mr. Larios immediately following his scream.

Defendants have denied liability.

Plaintiff contends that SCE&G failed to properly maintain separation between its power line and the palm trees surrounding it, such that the line was not visible at the time the incident occurred and thus created a latent hazard that proximately caused Mr. Larios' death. Plaintiff will present evidence that the trees surrounding the power line had not been trimmed or inspected according to SCE&G's policies and industry standard.

SCE&G asserts (1) there was no electrical event and therefore Plaintiff never received a shock; and (2) even if there was such a shock, Plaintiff's injuries and death were the result of his own conduct.

With regard to Defendant Edisto Realty, Plaintiff will present evidence that it manages, inspects, and maintains the property at 3402 Myrtle Street in exchange for its rental management fee. Defendant Edisto Realty also pays invoices for regular upkeep on the property, including of the landscaping company for which Mr. Larios worked. As the property manager, it owed all business invitees (including Mr. Larios) a duty to discover, and then either eliminate—or at least warn of—any latent dangers on the property. Plaintiff will present evidence that no representative of Edisto Realty inspected the property to discover latent dangers, and as a result Edisto Realty failed to eliminate or warn about the danger created by a tree-engulfed power line.

Defendant Edisto Realty takes the position that they have a limited responsibility for maintenance of the property, and that any duty to warn of or eliminate hazards lies solely with the owner of the property.

As to Defendant PENSICO Trust Company, Plaintiff will present evidence that PENSICO—an investment firm that owns the property in trust for the benefit of J. Ray Jackson, Sr—never visited, inspected, maintained, warned, or took other steps

to safeguard its property from latent dangers which may harm invitees. Mr. Jackson, the beneficiary of the property, has also testified that he never inspected or safeguarded the property, and that instead he relied on Edisto Realty as the property manager to either eliminate hazards or inform him of any issues that needed to be addressed on the property.

Defendant PENSICO has failed to provide a 30(b)(6) or any other witness in this case to testify as to the basis of its defense. However, it has seemingly defended the case by suggesting that it only holds legal title to the property through an investment vehicle, and therefore has no responsibility to maintain or safeguard its property.

4. The issues involved in this case are:

Plaintiff relies on well-established South Carolina law in pursuing both survival and wrongful death claims on theories of both negligence and gross negligence.

With regard to Defendant SCE&G, under South Carolina law, electric utilities owe a duty “to exercise a very high degree of care in [its] construction, repair, inspection and maintenance [of its electric wires] to prevent injury to others.” *See Nespeca v. Duke Energy Carolinas LLC*, 2016 WL 1427368 (D.S.C. 2016-MGL) (citing *Weeks v. Carolina Power & Light Co.*, 153 S.E. 119, 123 (S.C. 1930) (internal quotation marks omitted)).

“An electric company is bound to use due diligence to receive information as to the condition of its wires, and failure to use due diligence in this respect would constitute negligence.” *Weeks v. Carolina Power & Light Co.*, 156 S.C. 158, 153 S.E. 119 (1930); *Mitchell v. Charleston Light & Power Co.*, 45 S.C. 146, 22 S.E. 767 (1895).

“Electricity is a very dangerous thing. Someone has appropriately referred to it as ‘chained lightning.’ That lightning will break the little chains which are supposed to hold it. Power companies and their employees, even more than all other people, ought to know the great danger of electricity. They ought to take care to see that their wires, which convey electric current, are properly guarded, so as to prevent injuries to persons and property. This duty is incumbent upon them under the law of this state.” *Weeks v. Carolina Power & Light Co.*, 156 S.C. 158, 153 S.E. 119, 122 (1930)

With regard to Defendant PENSICO, under South Carolina law, landowners owe to “invitee[s] a duty of due care to discover risks and to warn of or eliminate foreseeable unreasonable risks.” *See Wintersteen v. Food Lion, Inc.*, 336 S.C. 132, 137, 518 S.E.2d 828, 830 (Ct. App. 1999), *aff’d*, 344 S.C. 32, 542 S.E.2d 728 (2001).

For management companies such as Defendant Edisto Realty, South Carolina law similarly imposes a duty to discover and then eliminate or warn third parties of latent hazards and dangers. *See Cook v. Wal-Mart Stores, Inc.*, No. 3:17-CV-1391-DCC, 2018 WL 345085, at *3 (D.S.C. Jan. 10, 2018); *Benjamin v. Wal-Mart Stores, Inc.*, 413 F. Supp. 2d 652, 655–56 (D.S.C. 2006).

5. List names of witnesses to be called at trial and give a brief statement as to what each would testify:

The Plaintiff reserves the right to call any party and witnesses listed in Answers to Interrogatories or otherwise listed by the Defendants. Plaintiff also reserves the right to call any witnesses previously identified and/or deposed by any party. Finally, Plaintiff reserves the right to call rebuttal witnesses and supplement or amend this list as discovery in this case progresses. At this time, Plaintiff identifies the following witnesses:

1. **Tiffany N. Provence**

Tiffany N. Provence is the Special Administrator for the Estate of Jose Refugio Licona Larios. She is the Plaintiff and is expected to testify on behalf of the Estate of Jose Larios on behalf of its beneficiaries.

2. **Gaspar Licona**

Gaspar Licona is the brother of Jose Refugio Licona Larios. He is expected to testify as to his knowledge of the facts and circumstances of this case and as to damages.

3. **Wendy Licona (minor)**

Wendy Licona is the niece of Jose Refugio Licona Larios. She lived with her uncle, Mr. Larios and is expected to testify as to damages.

4. **Beverly O'Brien**

Beverly O'Brien was Mr. Larios' co-worker and friend. She is expected to testify as to her knowledge of the facts and circumstances of this case, as well as to damages.

5. **Pedro Abraham**

Pedro Abraham was Mr. Larios' co-worker, and the lone eye witness to Mr. Larios' shock and fall from the ladder. He is expected to testify as to his knowledge of the facts and circumstances of this case, as well as to damages. Plaintiff reserves the right to present Mr. Abraham's deposition testimony at

trial pursuant to rule 32(a)(3), SCRPC. Page and line designations are attached as Exhibit A.

6. Cameron Luden, SCE&G

Cameron Luden is an employee of SCE&G who was involved in SCE&G's investigation into Mr. Larios' death. He is expected to testify as to his recollection and knowledge related to that investigation.

7. Lou Ehinger, SCE&G

Lou Ehinger is an employee of SCE&G and was SCE&G's arborist overseeing tree trimming in the area of 3402 Myrtle Street in 2013 and for some time thereafter. He is expected to testify as to SCE&G's tree trimming practices.

8. Thomas Aaron Williams

Thomas Williams is an employee of SCE&G who was involved in SCE&G's investigation into Mr. Larios' death. He is expected to testify as to his recollection and knowledge related to that investigation.

9. Richard Carter, Deputy Coroner

The Colleton County Coroner's Office investigated this incident and the death of Jose Larios. The Coroners are expected to testify as to their recollection and knowledge related to their investigation.

10. Marion Whaley, Deputy Coroner

The Colleton County Coroner's Office investigated this incident and the death of Jose Larios. The Coroners are expected to testify as to their recollection and knowledge related to their investigation.

11. S. Erin Presnell, M.D.

Dr. Presnell performed the autopsy of Jose Larios. She is expected to testify regarding her examination of Mr. Larios and his injuries. Page and line designations are attached as Exhibit A.

12. Christopher Dennison, Compliance Officer

OSHA performed an investigation following Mr. Larios' death. Mr. Dennison is expected to testify as to his recollection and knowledge related to that investigation.

13. Mark Branham

Mr. Branham was designated as SCE&G's 30(b)(6) representative to testify on a number of topics relevant to this case. Plaintiff reserves the right to present Mr. Branham's deposition testimony at trial pursuant to Rule 32(a)(2), SCRCP.

14. Matthew Kizer

Mr. Kizer, through Defendant Edisto Realty, is the owner of Edisto Realty. He is expected to testify as to his knowledge of Edisto Realty's management of the rental property at 3402 Myrtle Street where the incident giving rise to this suit occurred.

15. Jane Smoak

Ms. Smoak was designated as Defendant Edisto Realty's 30(b)(6) representative to testify on a number of topics relevant to this case. Plaintiff reserves the right to present Ms. Smoak's deposition testimony at trial pursuant to Rule 32(a)(2), SCRCP. Page and line designations are attached as Exhibit A.

16. J. Ray Jackson, Sr.

Mr. Jackson, through Defendant PENSCO, is the owner of 3402 Myrtle Street. He is expected to testify as to his knowledge and maintenance of the property. Plaintiff reserves the right to present Mr. Jackson's deposition testimony at trial pursuant to rule 32(a)(3), SCRCP. Page and line designations are attached as Exhibit A.

17. Edward Brill

Mr. Brill is Plaintiff's expert witness and an expert in the field of electrical engineering and the standard of care for electrical utility companies.

Depending on Defendants' presentation of their case and cross-examination, Plaintiff may need to call rebuttal witnesses.

6. Unique legal authorities upon which the claim or defense is based:

None.

7. State any unusual questions concerning admission of evidence or procedure likely to arise at trial:

Other than those addressed in Plaintiff's pretrial evidentiary motions, none.

For example, Defendants are alleging that the negligence in this case is that of Mr. Larios' non-party employer, Stevens Irrigation and Landscaping/Will Stevens. The Supreme Court of South Carolina in *Machin v. Carus Corp.*, 419 S.C. 527, 799 S.E.2d 468 (2017), has limited the ability of a defendant to utilize the "empty chair employer" defense under the facts in this case. Plaintiff has fully briefed this matter in Plaintiff's Motion *in Limine* No. 1, which is being submitted contemporaneously herewith.

8. List exhibits to be offered at trial:

In addition to those records and exhibits identified by the Defendants, Plaintiff intends to rely upon the records compiled during the course of discovery, including but not limited to the following:

1. National Electrical Safety Code Section 218 – Vegetation Management (2012)
2. ANSI A300 – Utility Pruning
3. SCE&G Tree Trimming PowerPoint
4. SCE&G Outage Log
5. Coroner Report and Photos
6. Gaspar Licona's Photos
7. Highlighted Spans trimmed by Lewis Tree Service
8. Lewis Tree Service Invoices
9. Map of SCEG single-phase facilities behind 3402 Myrtle
10. SCE&G Line Clearing Specifications
11. OSHA Inspection Report
12. OSHA Photos
13. SCE&G Linemen timesheets
14. Trimming history report for span behind 3402 Myrtle
15. Edisto Vender Analysis
16. PENSICO Quit Claim Deed
17. PENSICO Website - IRA
18. PENSICO Trust Agreement
19. Check from SCE&G to Larios
20. Family Photos
21. Memorial Photos
22. SCE&G RRTA
23. SCE&G ATI & RRF (10-26-2017)
24. SCE&G Tree Trimming Website Video
25. Lewis Tree Service Electrical Contact
26. Lewis Tree Service Electrical Contact Procedure

27. Lewis Tree Service Aerial Equipment Use Procedure

To the extent not identified above, any and all documents produced by any party or non-party in discovery may be used at trial, including all exhibits to any deposition taken by any party in this case.

9. State damages:

Plaintiff seeks all noneconomic damages available under South Carolina law to be determined by the jury as well as punitive damages. More specifically, Plaintiff seeks to recover (1) damages for Mr. Larios' conscious pain and suffering and mental anguish prior to death; and (2) all damages available under the law to Mr. Larios' beneficiaries, including mental shock and suffering, wounded feelings, grief, sorry, and loss of society and companionship.

10. List any settlement negotiations that were attempted before trial and the status of the settlement negotiations:

Plaintiff made separate demands to each defendant in this case in May of 2019. The parties conducted a mediation with Sam Clawson on June 24, 2019 which was unsuccessful. Plaintiff is ready for trial.

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September 19, 2019
Charleston, South Carolina

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF COLLETON)	CASE NO.: 2017-CP-15-0423
)	
Tiffany N. Provence, as Special)	
Administrator for the Estate of Jose Refugio)	
Licona Larios,)	PLAINTIFF'S DEPOSITION
Plaintiff,)	DESIGNATIONS
)	
vs.)	
)	
South Carolina Electric & Gas Company;)	
PENSCO Trust Company LLC; and)	
Edisto Sales & Rentals Realty, LLC,)	
Defendants.)	

Plaintiff Tiffany N. Provence, as Special Administrator for the Estate of Jose Refugio Licona Larios, comes now and designates portions of the below depositions. Plaintiff notifies all parties that they reserve the right to introduce the following deposition testimony and all deposition exhibits at the trial of this matter.

1. Deposition of S. Erin Presnell, M.D.
 March 1, 2018
 Charleston, South Carolina

Page Line Designations:
 Page 4, Line 15
 Page 5, Lines 2 through 3
 Page 7, Lines 12 through 23
 Page 9, Lines 3 through 5
 Page 9, Lines 16 through 21
 Page 11, Line 25 through Page 12, Line 3
 Page 12, Lines 9 through 11
 Page 13, Line 18 through Page 14, Line 1
 Page 14, Lines 9 through 15
 Page 14, Lines 20 through 24
 Page 15, Lines 3 through 6
 Page 15, Lines 21 through 24
 Page 16, Lines 9 through 18
 Page 16, Lines 22 through 25
 Page 17, Lines 3 through 11
 Page 17, Line 19 through Page 18, Line 1
 Page 18, Lines 2 through 3

Page 18, Lines 5 through 6
Page 18, Lines 8 through 10
Page 19, Lines 3 through 4
Page 20, Lines 7 through 12
Page 20, Line 20 through Page 21, Line 2
Page 24, Lines 3 through 6
Page 25, Lines 3 through 10
Page 27, Lines 6 through 10
Page 28, Lines 12 through 24
Page 31, Lines 19 through 22
Page 37, Lines 19 through 22
Page 38, Lines 3 through 7
Page 40, Lines 4 through 11
Page 41, Lines 10 through 18
Page 41, Line 23 through Page 42, Line 3
Page 42, Lines 13 through 14
Page 42, Line 23 through Page 43, Line 8
Page 43, Line 18 through Page 44, Line 3

All exhibits

2. Deposition of J. Ray Jackson, Sr.
June 21, 2019
Rutherfordton, North Carolina

Page Line Designations:

Page 4, Lines 9 through 15
Pages 10, Line 16 through 11, Line 1
Page 11, Lines 17 through 21
Page 12, Lines 5 through 11
Page 17, Lines 13 through 22
Page 18, Lines 15 through 17
Pages 20, Line 10 through Page 21, Line 3
Page 23, Lines 8 through 11
Page 24, Lines 12 through 18
Page 25, Lines 15 through 25
Pages 27, Line 23 through Page 28, Line 2
Page 28, Lines 3 through 8
Pages 28, Line 24 through Page 29, Line 5
Page 29, Lines 13 through 15
Page 29, Lines 24 through 25
Page 30, Lines 2 through 23
Page 31, Lines 5 through 15
Page 37, Lines 8 through 22
Page 37, Lines 23 through 25
Page 38, Lines 3 through 20
Page 42, Lines 18 through 23

Pages 43, Line 1 through Page 44, Line 5
Page 44, Lines 17 through 21
Page 47, Lines 11 through 25
Pages 51, Line 24 through Page 52, Line 1
Page 52, Lines 3 through 8
Pages 54, Line 13 through Page 55, Line 24
Pages 57, Line 15 through Page 58, Line 8
Pages 58, Line 12 through Page 59, Line 19

All exhibits

3. Pedro Abraham
August 20, 2019
Edisto Island, South Carolina

Page Line Designations:

Page 4, Line 11 through Page 5, Line 2
Page 5, Line 25 through Page 8, Line 6
Page 8, Lines 10 through 12
Page 8, Lines 15 through 16
Page 8, Lines 18 through 19
Page 8, Lines 23 through 25
Page 9, Lines 2 through 4
Page 9, Line 6 through Page 10, Line 15
Page 10, Line 22 through Page 11, Line 15
Page 11, Line 17 through Page 13, Line 18
Page 13, Line 20 through Page 14, Line 14
Page 14, Line 19 through Page 15, Line 9
Page 15, Line 10 through 22
Page 16, Lines 1 through 4
Page 16, Line 6
Page 16, Lines 10 through 12
Page 16, Line 16 through Page 17, Line 11
Page 60, Lines 14 through 17
Page 60, Line 20 through Page 61, Line 13
Page 61, Lines 17 through 20
Page 61, Line 24 through Page 62, Line 3
Page 62, Line 6
Page 62, Lines 17 through 23
Page 62, Line 25
Page 63, Lines 4 through 11
Page 63, Line 13
Page 63, Line 15
Page 63, Lines 17 through 23

All exhibits

4. Jane Smoak
May 22, 2019
Charleston, South Carolina

Page Line Designations:

Page 4, Lines 19 through 21
Page 5, Lines 6 through 8
Pages 5, Line 18 through Page 6, Line 3
Page 11, Lines 9 through 14
Page 13, Lines 6 through 23
Page 14, Lines 11 through 15
Pages 14, Line 25 through Page 16, Line 21
Pages 17, Line 20 through Page 18, Line 18
Pages 19, Line 9 through Page 20, Line 13
Page 21, Lines 6 through 21
Page 23, Lines 3 through 17
Pages 26, Line 17 through Page 28, Line 2
Pages 28, Line 17 through Page 29, Line 14
Page 32, Lines 3 through 8
Pages 32, Line 19 through Page 33, Line 5
Pages 33, Line 21 through Page 34, Line 2
Pages 35, Line 22 through Page 36, Line 17
Page 38, Lines 14 through 18
Page 42, Lines 9 through 16
Page 44, Lines 5 through 20
Pages 45, Line 6 through Page 47, Line 12
Page 52, Lines 11 through 14
Pages 55, Line 11 through Page 57, Line 6

All exhibits

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September 19, 2019
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