

TABLE OF CONTENTS

Table of Cases, Statutes and Other Authorities.....ii

Jurisdictional Statementiii

Statement of Facts.....1

Point Relied On.....3

Argument5

Conclusion.....15

Affidavit of Service16

Appendix17

TABLE OF CASES, STATUTES AND OTHER AUTHORITIES

<u>Baker v. Empire Dist. Elec. Co.</u> , 24 S.W.3d 255 (Mo.Ct. App. 2000)	12,13
<u>Calderone v. St. Joseph Light & Power Co.</u> , 557 S.W.2d 658 (Mo.Ct.App. 1977)	11
<u>Clinkenbeard v. City of St. Joseph</u> , 10 S.W.2d 54 (Mo. 1928)	5,6
<u>Erbes v. Union Elec. Co.</u> , 353 S.W.2d 659 (Mo. 1962).....	7
<u>Godfrey v. Union Elec. Co.</u> , 874 S.W.2d 504 (Mo.Ct.App. 1994)	6
<u>Hanson v. Union Elec. Co.</u> , 963 S.W.2d 2 (Mo.Ct.App. 1998).....	6,7,10
<u>Hawk v. Union Elec. Co.</u> , 798 S.W.2d 173 (Mo.Ct.App. 1990)	7,11
<u>Hood-Rich, Inc. v. County of Phelps</u> , 872 S.W.2d 584 (Mo.Ct.App. 1994)	5
<u>Hornbeck v. All Am. Indoor Sports, Inc.</u> , 898 S.W.2d 714 (Mo.Ct.App. 1995).....	5
<u>ITT Commercial Fin. Corp. v. Mid Am. Marine Supply Corp.</u> , 854 S.W.2d 371 (Mo.banc 1993)	5
<u>Kidd v. Kansas City Light & Power Co.</u> , 239 S.W. 584 (Mo.Ct.App. 1922)	11
<u>Martin v. City of Washington</u> , 848 S.W.2d 487 (Mo.banc 1993).....	5
<u>Mrad v. Missouri Edison Co.</u> , 649 S.W.2d 936 (Mo.Ct.App. 1983).....	8
<u>Noe v. Pipe Works, Inc.</u> , 874 S.W.2d 502 (Mo.Ct.App. 1994).....	6
<u>Scaife v. Kansas City Power & Light Co.</u> , 637 S.W.2d 731 (Mo.Ct.App. 1982)	11
<u>Thornton v. Union Elec. Light & Power Co.</u> , 72 S.W.2d 161 (Mo.Ct.App. 1934).....	8,9
Trial Court “Order and Judgment”	2,5,9

JURISDICTIONAL STATEMENT

This Appeal is taken by Plaintiffs/Appellants Edward Grattan and Katherine Grattan from a Summary Judgment entered by the St. Louis Circuit Court of the City of St. Louis, Missouri on March 18, 2003 in an action for personal injury against Union Electric Company. St. Louis, Missouri is within the territorial jurisdiction of the Missouri Court of Appeals, Eastern District. Therefore, appellate jurisdiction of this case is in this Court, as this appeal does not involve any categories reserved for the exclusive jurisdiction of the Supreme Court of Missouri. This Appeal is within the general appellate jurisdiction of the Court of Appeals, Eastern District, under the Missouri Constitution, Article V, Section III.

STATEMENT OF FACTS

On or about February 3, 1992, Plaintiff/Appellant Edward Grattan, a patent attorney for Monsanto, was travelling on Ladue Road at or near its intersection with Babler Road in the County of St. Louis, State of Missouri on his way from Monsanto headquarters to an off-site facility. While travelling to the off-site Monsanto facility, live electrical wires came down upon the travelled portion of the roadway and engulfed and contacted Mr. Grattan's vehicle. (Legal File, Police Report pp. 147-151). While Mr. Grattan sat in his vehicle, which was lawfully upon the roadway, surrounded by live electrical wires, he sustained an electrical shock which resulted in serious injuries including a lower leg amputation. (Legal File, Deposition of Dr. Raymond Fish, pp. 154-158).

Plaintiffs' allege that Defendant/Respondent Union Electric Company had a duty to insulate or isolate its electrical lines. (Legal File, Plaintiffs' Petition, pp. 12-15). Plaintiffs' expert testified Defendant/Respondent breached its duty of care to Mr. Grattan by failing to timely discontinue electric current (with appropriate de-energizing equipment) to its downed electric wires which were on the travelled portion of the roadway and, as a result, were neither insulated nor isolated. (Legal File, Deposition of Dr. Robert Nebours, pp. 141-146). Per Plaintiffs' expert, regardless of whether electrical wires come down upon the roadway either by rain, earthquake, or even an automobile collision, live electrical wires upon a travelled portion of the roadway are neither insulated nor isolated. (Legal File, Deposition of Dr. Robert Nabours, pp. 141-146).

In the case at bar, the live electrical wires came down upon the roadway due to a motor vehicle (owned and operated by Waste Management of Missouri, Inc.) colliding with a

utility pole immediately adjacent to Ladue Road at or near its intersection with Babler Road in the County of St. Louis, State of Missouri. The collision with the utility pole resulted in several utility poles being downed in a “domino effect” along with the live electrical lines attached to said poles. The live power lines ended up upon the travelled portion of the roadway surrounding and contacting Mr. Grattan’s vehicle.

On or about January 23, 2003, Defendant/Respondent filed a Motion for Summary Judgment alleging that Defendant owed no duty to Plaintiff/Appellant Edward Grattan under the facts as presented above. (Legal File, Defendant’s Motion for Summary Judgment, pp. 20-23). Following the filing of responsive materials by Plaintiffs (Legal File, pp. 138-159) and a hearing on March 4, 2003, the Trial Court held that Union Electric Company owed no legal duty to Plaintiff/Appellant Edward Grattan despite the facts that live electrical wires came down upon the travelled portion of the roadway, the lines were neither insulated nor isolated, and Mr. Grattan was in no way responsible for the electrical wires coming down upon the travelled portion of the roadway. Thereafter, the Trial Court granted Union Electric Company’s Motion for Summary Judgment and entered judgment against Plaintiffs/Respondents. (Legal File, Order and Judgment, pp. 170-196).

POINT RELIED ON

(A) THE TRIAL COURT ERRED IN GRANTING UNION ELECTRIC COMPANY'S MOTION FOR SUMMARY JUDGMENT AFTER CONCLUDING THAT UNION ELECTRIC COMPANY OWED NO LEGAL DUTY TO PLAINTIFF EDWARD GRATTAN BECAUSE ELECTRIC UTILITIES EMPLOYING WIRES HIGHLY CHARGED IN STREETS, HIGHWAYS, OR OTHER PUBLIC PLACES HAVE A DUTY TO EITHER INSULATE SUCH WIRES OR PLACE THEM BEYOND THE RANGE OF CONTACT WITH PERSONS RIGHTFULLY USING SUCH STREETS, HIGHWAYS, OR PLACES AND TO EXERCISE THE UTMOST CARE TO KEEP THEM SO, WHICH UNION ELECTRIC COMPANY FAILED TO DO IN THIS CASE IN THAT:

- (i) EDWARD GRATTAN WAS INJURED AS A RESULT OF LIVE ELECTRICAL WIRES COMING DOWN UPON THE TRAVELLED PORTION OF THE HIGHWAY;**
- (ii) EDWARD GRATTAN WAS NEITHER THE OPERATOR OF NOR A PASSENGER IN THE VEHICLE THAT STRUCK THE ELECTRIC POLE WHICH CAUSED THE LIVE ELECTRICAL WIRES TO COME DOWN UPON THE TRAVELLED PORTION OF THE HIGHWAY NOR WAS HE IN ANY WAY INVOLVED IN THAT COLLISION;**
- (iii) LIVE ELECTRICAL WIRES ON THE TRAVELLED PORTION OF A HIGHWAY ARE NEITHER INSULATED NOR ISOLATED;**
- (iv) EVIDENCE FROM PLAINTIFFS' EXPERT ESTABLISHES THAT UNION ELECTRIC COMPANY FAILED TO TIMELY DISCONTINUE ELECTRIC CURRENT FROM ITS DOWNED POWER LINES OR FAILED TO EMPLOY APPROPRIATE DE-ENERGIZING OR CIRCUIT INTERRUPTING EQUIPMENT TO ENABLE IT TO TIMELY DISCONTINUE ELECTRIC CURRENT;**
- (v) UNION ELECTRIC COMPANY'S ELECTRICAL WIRES WERE STRUNG OVER THE HIGHWAY IN AN AREA WHERE THEY WOULD NECESSARILY FALL ACROSS THE HIGHWAY IN THE EVENT OF A POLE FALLING BY REASON OF A STORM, EARTHQUAKE OR EVEN AN AUTOMOBILE COLLISION, THEREBY ENDANGERING THE LIVES OF PERSONS RIGHTFULLY UPON THE HIGHWAY; AND**
- (vi) IT IS A MATTER OF COMMON KNOWLEDGE THAT MOTOR VEHICLES TRAVELING ON HIGHWAYS FREQUENTLY GET**

**OUT OF CONTROL, ESPECIALLY AT CURVES, AND RUN OFF
THE PAVEMENT, STRIKING OBJECTS THAT ARE IN THEIR
WAY.**

Baker v. Empire Dist. Elec. Co., 24 S.W.3d 255 (Mo.Ct.App. 2000)
Calderone v. St. Joseph Light & Power Co., 557 S.W.2d 658 (Mo.Ct.App. 1977)
Clinkenbeard v. City of St. Joseph, 10 S.W.2d 54 (Mo. 1928)
Erbes v. Union Elec. Co., 353 S.W.2d 659 (Mo. 1962)
Godfrey v. Union Elec. Co., 874 S.W.2d 504 (Mo.Ct.App. 1994)
Hanson v. Union Elec. Co., 963 S.W.2d 2 (Mo.Ct.App. 1998)
Hawk v. Union Elec. Co., 798 S.W.2d 173 (Mo.Ct.App. 1990)
Hood-Rich, Inc. v. County of Phelps, 872 S.W.2d 584 (Mo.Ct.App. 1994)
Hornbeck v. All Am. Indoor Sports, Inc., 898 S.W.2d 714 (Mo.Ct.App. 1995)
ITT Commercial Fin. Corp. v. Mid Am. Marine Supply Corp., 854 S.W.2d 371
(Mo.banc 1993)
Kidd v. Kansas City Light & Power Co., 239 S.W. 584 (Mo.Ct.App. 1922)
Martin v. City of Washington, 848 S.W.2d 487 (Mo.banc 1993)
Mrad v. Missouri Edison Co., 649 S.W.2d 936 (Mo.Ct.App. 1983)
Noe v. Pipe Works, Inc., 874 S.W.2d 502 (Mo.Ct.App. 1994)
Scaife v. Kansas City Power & Light Co., 637 S.W.2d 731 (Mo.Ct.App. 1982)
Thornton v. Union Elec. Light & Power Co., 72 S.W.2d 161 (Mo.Ct.App. 1934)
Trial Court “Order and Judgment”

ARGUMENT

The criteria for testing the propriety of summary judgment on appeal are no different than those employed by the trial court in determining whether to grant a motion for summary judgment initially. Hood-Rich, Inc. v. County of Phelps, 872 S.W.2d 584, 587 (Mo.Ct.App. 1994). The appellate court's review of a summary judgment is essentially de novo. ITT Commercial Fin. Corp. v. Mid Am. Marine Supply Corp., 854 S.W.2d 371, 376 (Mo.banc 1993). The party seeking summary judgment bears the burden of establishing a right to judgment as a matter of law and any evidence that presents a genuine issue as to the material facts defeats the motion for summary judgment. Hornbeck v. All Am. Indoor Sports, Inc., 898 S.W.2d 714 (Mo.Ct.App. 1995). The party challenging a motion for summary judgment is afforded all reasonable inferences from the record. Martin v. City of Washington, 848 S.W.2d 487 (Mo.banc 1993). Plaintiffs request that this Court reverse the trial court's entry of summary judgment in favor of Defendant so that they may proceed with their personal injury claim against Union Electric Company in the Circuit Court.

In granting summary judgment in favor of Defendant/Respondent, the trial court improperly interpreted Clinkenbeard v. City of St. Joseph, 10 S.W.2d 54 (Mo. 1928) in stating that "Missouri courts have consistently held that... a vehicle's collision with a utility pole located off the travelled portion of a road is not a reasonably foreseeable occurrence, and hence a utility cannot be liable in an action for negligence brought by someone who has suffered injuries as a result of such a collision." (Legal File, Order and Judgment of the Trial Court, p. 186). The Trial Court also incorrectly stated that "the rule in Clinkenbeard defeats Plaintiffs' claims in the case at bar". (Legal File, Order and Judgment of the Trial Court, p.

189). However, as this Court correctly held in Noe v. Pipe Works, Inc., 874 S.W.2d 502 (Mo.Ct.App. 1994), the Missouri Supreme Court in Clinkenbeard v. City of St. Joseph held that “an action for negligence would not lie against a utility corporation when the plaintiff was injured by driving from the improved portion of a roadway and striking a utility pole maintained wholly outside of the travelled and improved portion of that roadway.” Noe v. Pipe Works, Inc., 874 S.W.2d at 504. This Court then went on to note that the Missouri Supreme Court expressly held that “there is no duty owed to an **operator** of a motor vehicle that has left the road”. Id., at 504.

Furthermore, in Godfrey v. Union Elec. Co., 874 S.W.2d 504 (Mo.Ct.App. 1994), this Court restated that “Clinkenbeard holds that there is no duty owed to the **operator** of a motor vehicle who leaves the improved or normally travelled portion of a roadway and strikes an object maintained wholly outside of that roadway.” Godfrey v. Union Elec. Co., 874 S.W.2d at 505. However, this Court extended this rationale and held that Clinkenbeard “also applies to a **passenger** in such a vehicle”. Id., at 505.

Several years later, in Hanson v. Union Elec. Co., 963 S.W.2d 2, 5 (Mo.Ct.App. 1998), this Court once again restated the law as outlined in Clinkenbeard and extended in Godfrey that utilities do not owe a duty of care to drivers or passengers of cars who drive off the travelled portion of the road and strike utility poles. However, this Court correctly held that, with respect to the duty of care owed by utilities, “their duty of care is abrogated only in limited circumstances where vehicles collide with the utility pole and suit is brought by the **driver** or a **passenger**.” Hanson v. Union Elec. Co., 963 S.W.2d at 5. More importantly, this Court recognized that “Clinkenbeard does not grant utilities **complete immunity**. In

other circumstances... the utilities must meet their duty of care to the general public.” Id., at 5. Based on the foregoing, the trial court’s granting of summary judgment upon its incorrect interpretation of Clinkenbeard is erroneous and the granting of summary judgment in favor of Defendant/Respondent Union Electric Company must be reversed.

As Mr. Grattan was not a driver of the vehicle that left the roadway and struck a utility pole, nor was he a passenger in any such vehicle, Clinkenbeard does not apply in the case at bar. As a result, Union Electric Company was required to exercise the highest degree of care in connection with its transmission of electricity through its lines. Hanson v. Union Elec. Co., 963 S.W.2d at 5. An electric supplier may satisfy this duty of care by isolating or insulating the electrical wires. Id., at 5. An electric company employing wires highly charged in streets, highways, or other public places is duty bound either to insulate such wires or place them beyond the range of contact with persons rightfully using such streets, highways or places, and to exercise the utmost care to keep them so. Erbes v. Union Elec. Co., 353 S.W.2d 659, 664 (Mo. 1962). A Plaintiff can submit a case against a utility company on another theory if he has established the requisite fact on which liability is premised, namely that Defendant utility company has failed to either insulate or isolate. Hawk v. Union Elec. Co., 798 S.W.2d 173, 176 (Mo.Ct.App. 1990).

As previously stated, Plaintiff Edward Grattan’s vehicle never left the travelled portion of the roadway, it never collided with a utility pole and Mr. Grattan was in no way responsible for the live electrical wires coming down upon the travelled portion of the highway. Therefore, Clinkenbeard is clearly inapplicable in the case at bar. As a result, Defendant Union Electric Company was required to use the highest degree of care to

insulate or isolate its live electrical wires. Mrad v. Missouri Edison Co., 649 S.W.2d 936, 940 (Mo.Ct.App. 1983). This duty was obviously breached in that live electrical wires on a highway, regardless of how said live wires happen to get on the highway, are neither insulated nor isolated. (Legal File, Deposition of Dr. Nabours, pp. 141-146). Even Defendant's expert testified that absent special circumstances, live electrical wires on a highway are neither insulated nor isolated. The duty to insulate or isolate has been well crafted over the years by the courts of this State. The trial court's application of Clinkenbeard in the case at bar disembowels the life force of the duty to exercise the highest degree of care to insulate or isolate live electrical wires. The misapplication of Clinkenbeard in the case at bar threatens to annihilate the meaning of the duty owed by an electric utility to the general public.

The case of Thornton v. Union Elec. Light & Power Co., 72 S.W.2d 161 (Mo.Ct.App. 1934), is a case strikingly similar to the case at bar and one in which the Plaintiff made a submissible case of negligence against the utility company. Plaintiff Thornton was not involved in the accident in which the pole was struck, but rather came upon the scene and stopped to render assistance. While helping persons involved in the accident, energized lines that were on a pole that was previously struck fell and contacted Plaintiff, rendering him unconscious with serious injuries. The Court held that Clinkenbeard was inapplicable and Plaintiff made a submissible case of negligence against the utility company. In so holding, the court noted that "it was for the jury to say whether or not Defendant, in the exercise of the utmost care and foresight, ought to have anticipated that a collision of a motor vehicle with one of its anchor poles, resulting in the breaking down of

the pole, was likely to occur.” Thornton v. Union Elec. Light & Power Co., 72 S.W.2d at 165. It is significant that the court noted that it is a matter of common knowledge that motor vehicles travelling on highways frequently get out of control and run off the pavement, striking an object that are in their way, especially at curves in the highway. Id., at 164. The court also distinguished the case from that of Clinkenbeard v. City of St. Joseph by noting that (1) the Plaintiff was not involved in the accident in which the pole was struck and (2) the Plaintiff was injured as a result of a live wire coming down on the travelled portion of the highway.

Likewise, this court’s holding in Hanson v. Union Elec. Co. mandates reversal of the trial court’s granting of summary judgment in favor of Defendant. In Hanson, Plaintiff’s house burned down due to electrical lines coming down upon Plaintiff’s house as a result of an intoxicated driver striking an electrical pole off the travelled portion of the roadway. According to the trial court’s interpretation of Clinkenbeard in the case at bar, Union Electric Company would have owed no duty to the Plaintiff homeowner in Hanson due to the fact that the damage was caused by an off road collision with an electrical pole, despite the fact that Plaintiff homeowner was in no way involved with the collision that caused the downed lines. Instead of acknowledging its inability to square its decision with Hanson, the trial court, instead, refers to Hanson as a “rare case”. (Legal File, Order and Judgment of the Trial Court, p.191). However, in holding that Clinkenbeard was inapplicable, this Court reversed a grant of summary judgment in favor of Union Electric Company and held that “foreseeability is a jury question” and “Union Electric Company owed the highest duty of care in maintaining its electrical wires,” namely the duty to either insulate or insolate its

wires. Hanson v. Union Elec. Co., 963 S.W.2d at 6. In so holding, this Court was of the opinion that there was a genuine issue of a material fact, namely whether Union Electric Company insulated or isolated its live electrical lines.

As in Thornton v. Union Elec. Light & Power Co. and Hanson v. Union Elec. Co., Plaintiff Edward Grattan was not involved in the collision whereby the utility pole was struck and was in no way responsible for the live electrical wires being on the travelled portion of the roadway. As in Thornton, Mr. Grattan was injured as a result of live wires coming down upon the travelled portion of the highway, thereby rendering said live electrical lines neither insulated nor isolated. According to Plaintiffs' expert Dr. Robert Nabours, Union Electric Company failed to fulfill its duty to insulate or isolate its electrical lines in that it failed to timely discontinue electric current to its downed lines. (Legal File, Deposition of Dr. Robert Nabours, pp. 141-146). Based upon the foregoing, there clearly is an issue of material fact and it is for the jury to decide whether Defendant knew, or in the exercise of the highest degree of care ought to have known, that live wires would fall upon the highway as a result of a collision of an automobile or truck and endanger the lives of persons such as Mr. Grattan who were rightfully on the highway. While Defendant's electrical lines may have been properly insulated and isolated prior to coming down upon the travelled portion of the highway, Defendant also has a duty to assure that the charged lines remain isolated and do not come in contact with individuals, such as Mr. Grattan, who rightfully use the highway. As previously stated, Plaintiffs' expert provided testimony that Union Electric Company breached this duty of care owed to Mr. Grattan, and as a result, so long as the requisite fact upon which liability is premised is established, namely Defendant's

failure to insulate or isolate, other theories can be submitted. Hawk v. Union Elec. Co., 798 S.W.2d at 176.

Defendant also clearly had a duty to timely discontinue or de-energize the electric current to the downed power lines. Calderone v. St. Joseph Light & Power Co., 557 S.W.2d 658 (Mo.Ct.App. 1977); Kidd v. Kansas City Light & Power Co., 239 S.W. 584 (Mo.Ct.App. 1922). In this case, Defendant admitted that the power lines at issue were equipped with de-energizing equipment. (Legal File, Union Electric Company's Answers To Interrogatories, pp. 152-153). Therefore, Defendant recognized its duty to provide ground fault or circuit interrupting equipment on its lines and, as a result, there is a genuine issue of material fact as to whether or not (1) it properly maintained, operated or monitored said equipment, (2) whether the electric current was timely discontinued in the case at bar or (3) whether proper de-energizing equipment was in place.

In Defendant's Motion for Summary Judgment, several cases were cited and relied upon; however, said cases are clearly distinguishable from the case at bar. In Scaife v. Kansas City Power & Light Co., 637 S.W.2d 731 (Mo.Ct.App. 1982), a car struck a utility pole causing an explosion and Plaintiff, who was in a nearby house, was injured when she fell as a result of the explosion. Plaintiff brought suit against the utility company alleging that the pole was too close to the road and the pole was not insulated. In affirming the trial court's granting of Defendant's Motion for Summary Judgment, the appellate court based its decision primarily on the fact that Plaintiff made bare allegations and failed to respond to affidavits, exhibits and depositions filed by Defendant in support of its Motion for Summary

Judgment. Essentially, Plaintiff chose to rely on pleadings and failed to file responsive documents to Defendant's Motion.

In Baker v. Empire Dist. Elec. Co., 24 S.W.3d 255 (Mo.Ct.App. 2000), Plaintiff Mr. Baker was driving, with his wife, Mrs. Baker, being a passenger in his vehicle, when said vehicle was involved in a collision with another vehicle. As a result of the collision, the other vehicle struck Defendant's utility pole located off the roadway, causing live electrical wires to fall to the ground. Plaintiffs' vehicle slid off the road as a result of the collision and came to rest where the utility pole was originally located, resulting in Mrs. Baker suffering electric shock injuries from the charged lines that were on the ground. In holding that Clinkenbeard v. City of St. Joseph was controlling precedent and, therefore, Defendant owed no duty to Plaintiffs, the Southern District Court of Appeals noted that the critical facts were (1) the utility pole that was struck was off the travelled portion of the roadway, and (2) the injuries that were sustained that were the basis of the Plaintiffs' claims were the consequence of the automobile with which Plaintiffs' vehicle collided striking the utility pole. (ie: Plaintiffs' vehicle played a part in causing the electrical lines to be downed.) Baker v. Empire Dist. Elec. Co., 24 S.W.3d at 260. It is also significant to point out that Plaintiffs' vehicle in Baker was off the travelled portion of the highway when the electric shock occurred. Perhaps of most significance is the Court's statement that there is "no difference in the circumstances of a passenger in a vehicle that left the road and struck a utility pole located off the road and the circumstances of Mr. and Mrs. Baker." Id., at 263. Therefore, Clinkenbeard was applicable.

Unlike Baker, Mr. Grattan was in no way involved in causing Defendant's pole to be struck, which resulted in the charged electrical lines coming down onto the roadway. Unlike Baker, Mr. Grattan's vehicle never left the travelled portion of the roadway and was lawfully on the highway when the charged lines came down upon his vehicle. Furthermore, it is significant that in making a reference to and distinguishing Thornton v. Union Elec. Light & Power Co., the Baker Court relied on the fact that the Plaintiff in Thornton was not involved in the accident that produced the broken pole. Baker v. Empire Dist. Elec. Co., 24S.W.3d at 263. Mr. Grattan's situation certainly is different from that of a driver or passenger of a motor vehicle that leaves the roadway, strikes an electric pole, and is injured.

For the foregoing reasons, the case at bar is clearly controlled by Thornton v. Union Elec. Light & Power Co. and Hanson v. Union Elec. Co.. The live electrical wires on the travelled portion of the roadway were neither insulated nor isolated and there is a genuine issue of material fact as to whether or not Defendant, in the exercise of the highest degree of care, breached its duty of care to Plaintiff Edward Grattan. Furthermore, as part of Defendant's duty to exercise the utmost care to keep their charged electrical lines from coming in contact with persons rightfully using the highways, there is a genuine issue of material fact as to (1) whether or not the use of ground fault or circuit interrupting equipment to de-energize the lines is required, (2) whether or not Union Electric Company adequately maintained, operated and monitored its equipment, electrical lines and ground fault and circuit interrupting equipment (3) whether or not the de-energizing equipment employed by Union Electric Company was appropriate on these particular power lines, and (4) whether Union Electric Company discontinued the electric current to the downed power

lines in a timely fashion. Therefore, the granting of summary judgment in favor of Union Electric Company was erroneous.

CONCLUSION

Plaintiffs respectfully request that this Honorable Court reverse the granting of summary judgment in favor of Union Electric Company and remand for further proceedings leading to trial of this case.

Respectfully submitted,

THE HULLVERSON LAW FIRM

BY: _____
STEPHEN H. RINGKAMP, #24195
SCOTT L. KOLKER, #44161
1010 Market Street, Suite 1550
St. Louis, Missouri 63101
(314) 421-2313 Telephone
(314) 421-2341 Facsimile

Attorneys for Plaintiffs

AFFIDAVIT OF SERVICE

State of Missouri)
) SS
City of St. Louis)

Scott L. Kolker, being first duly sworn upon his oath states that two copies of the foregoing Appellants' Brief were mailed this ____ day of July, 2003 to:

Mr. James J. Virtel
Armstrong, Teasdale, LLP
One Metropolitan Square, Suite 2600
St. Louis, Missouri 63102

SCOTT L. KOLKER

Subscribed and sworn to before me this _____ day of July, 2003.

Notary Public

My Commission Expires:

APPENDIX

TABLE OF CONTENTS

Order and Judgment of Trial Court.....A1